

IN THE MATTER OF AN ARBITRATION BEFORE A TRIBUNAL  
CONSTITUTED  
IN ACCORDANCE WITH THE TREATY BETWEEN THE U.S.A. AND THE  
REPUBLIC OF ECUADOR CONCERNING THE ENCOURAGEMENT AND  
RECIPROCAL PROTECTION OF INVESTMENT, SIGNED AUGUST 27, 1993  
(THE "TREATY")

and

THE UNCITRAL ARBITRATION RULES 1976

- - - - -X  
 In the Matter of Arbitration :  
 Between: :  
 :  
 CHEVRON CORPORATION (U.S.A.), :  
 TEXACO PETROLEUM COMPANY (U.S.A.), :  
 :  
 Claimants, : PCA Case No.  
 : 2009-23  
 and :  
 :  
 THE REPUBLIC OF ECUADOR, :  
 :  
 Respondent. :  
 - - - - -X Volume 1

TRACK 2 HEARING

Tuesday, April 21, 2015

The World Bank  
700 18th Street, N.W.  
J Building  
Conference Room JB1-080  
Washington, D.C. 20003

The Hearing in the above-entitled matter convened  
at 9:00 a.m. before:

MR. V.V. VEEDER, Q.C., President

DR. HORACIO GRIGERA NAÓN, Arbitrator

PROFESSOR VAUGHAN LOWE, Q.C., Arbitrator

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P R O C E E D I N G S

1  
2 PRESIDENT VEEDER: Good morning, ladies and  
3 gentlemen. This is the resumed Hearing in Phase II of the  
4 arbitration between Chevron Corporation and the Texaco  
5 Petroleum Company as Claimants and the Republic of Ecuador  
6 as the Respondent.

7 I think there's no need to renew old  
8 acquaintances, but we do welcome Dechert and Professor  
9 Mayer for the Respondent, and you will see on my extreme  
10 left Ms. Jessica Wells, the additional Secretary to the  
11 Tribunal.

12 Now, we thank the Parties for planning out the  
13 map of this Hearing; and, from that, we understand that  
14 today will be given over to the Parties' opening oral  
15 submissions, the Claimants in the morning, the Respondents  
16 in the afternoon, not to exceed more than four hours.

17 There are certain procedural matters which remain  
18 outstanding. We'd like those to be taken up, if you wish  
19 to, during your oral submissions rather than starting with  
20 the procedural disputes at the outset of this morning, but  
21 we would like to complete the submissions today and start  
22 with the Witness clean tomorrow morning.

23 There are two minor housekeeping matters. One is  
24 that we will need mid-morning breaks and mid-afternoon  
25 breaks for the shorthand writers and for the interpreters;

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09:01 1 and, as to that, we'd like to leave it to counsel when it  
2 least interrupts their submissions to decide when those  
3 breaks would be taken. They would be about 15 minutes or  
4 so.

5 If you speak very fast and the interpreters and  
6 shorthand writers get very tired, we may need two breaks,  
7 but again we'll come to that later.

8 And the second matter is, are there any  
9 housekeeping matters which require us to address them now  
10 at this stage before the Claimants start their opening  
11 oral submissions?

12 We ask the Claimants first.

13 MR. BISHOP: Mr. Chairman, there are obviously  
14 some procedural issues outstanding. We do not believe they  
15 need to be taken up today. We believe that they could be  
16 taken up tomorrow. We're not planning on making  
17 submissions on those as part of the Opening Statements, but  
18 we agree that we should not slow down the course of the day  
19 by taking those up.

20 PRESIDENT VEEDER: Thank you very much.

21 And the Respondent?

22 MR. BLOOM: We agree that whatever procedural  
23 matters are pending probably are best left not for today.  
24 I think we're going to be having a very long day as it is.

25 PRESIDENT VEEDER: I think we're all concerned

09:02 1 about that. It will be inevitably a long day.  
 2 Without more, we give the floor to the Claimants.  
 3 And is that you, Mr. Pate?  
 4 MR. PATE: I think first the introduction from  
 5 Mr. Bishop.  
 6 PRESIDENT VEEDER: Mr. Bishop.  
 7 OPENING STATEMENT BY COUNSEL FOR CLAIMANTS  
 8 MR. BISHOP: Yes, thank you. Mr. Chairman, yes,  
 9 Mr. Pate, the General Counsel of Chevron will make a very  
 10 short statement at the beginning of our presentation, and  
 11 then Professor Paulsson will give our introduction, and  
 12 then I will make a presentation after that. That's the way  
 13 in which we will begin.  
 14 There will be a natural break, I think, around a  
 15 little over two hours into our presentation, maybe two  
 16 hours and ten minutes. If the Tribunal wishes to break  
 17 earlier, obviously we can, but I think that would be about  
 18 a natural break after my presentation.  
 19 PRESIDENT VEEDER: Thank you.  
 20 MR. PATE: Thank you, Mr. President, Members of  
 21 the Tribunal.  
 22 This is my sixth opportunity to address you at  
 23 the outset of a tribunal proceeding, so I begin with a few  
 24 observations about where we have been and where we are  
 25 today.

09:03 1 When I first addressed you in 2010, the evidence  
 2 of the Cabrera fraud was just coming to light, and there  
 3 was hope that Ecuador would decide to end its allegiance  
 4 with Steven Donziger and his co-conspirators.  
 5 Remember: The Party line during that period even  
 6 as late as 2012 in Ecuador was that the Lago Agrio  
 7 Litigation was purely private and did not involve the  
 8 Government of Ecuador.  
 9 By today, however, we have the Foreign Minister of  
 10 Ecuador confirming on video that enforcement of a plainly  
 11 fraudulent judgment is a top foreign policy priority of the  
 12 nation. When I appeared before the Tribunal in 2012,  
 13 Chevron at least hoped that Ecuador would obey the lawful  
 14 Orders of this Tribunal, which ordered Ecuador, as you will  
 15 recall, to use all means "at its disposal" to prevent  
 16 enforcement of the fraudulent judgment, and then later, to  
 17 use "all means necessary" to do so. Ecuador flouted the  
 18 Tribunal's orders. It now even proclaims in advance that  
 19 it will not obey future Orders and attacks the Tribunal as  
 20 corrupt, saying in official Government publications that  
 21 this Tribunal issues "illegal rulings" that, "trample law  
 22 and justice."  
 23 For the next three weeks we will sit together with  
 24 civility and professionalism to review the ever-growing  
 25 mountain of evidence of fraud, bribery, and corruption that

09:05 1 has become the subject of a 500-page United States District  
 2 Court opinion, as well as the rulings of other courts. We  
 3 will revisit the forged Expert Reports, the bribes from the  
 4 self-described secret account, the cook and the waiter,  
 5 then the puppet and the puppeteer, the "go to jail" e-mail,  
 6 the Honey & Honey restaurant bribe meeting that even Steven  
 7 Donziger admits he attended, the typo-for-typo inclusion of  
 8 the Plaintiffs' private material in the sham judgment from  
 9 Lago Agrio, and, most importantly, the Government of  
 10 Ecuador's white-washing and endorsement of the whole sordid  
 11 scheme as national policy.  
 12 The vast bulk of the fraud evidence is  
 13 uncontested, and no serious alternative narrative will be  
 14 presented. What we will hear instead is Ecuador attacking  
 15 Chevron for doing what was necessary to expose the  
 16 corruption, but every time Ecuador does this, it proves  
 17 Chevron's case. Ecuador commits a denial of justice  
 18 through its stubborn failure to address the corruption  
 19 evidence that Chevron has exposed, and the unrepentant  
 20 words and actions of its highest officials put the lie to  
 21 its cynical arguments about the exhaustion of illusory  
 22 remedies.  
 23 There is no blinking that the outcome of these  
 24 proceedings will send a message to the international  
 25 investing business community and to host countries as well.

09:07 1 The message will be either that there is a right to justice  
 2 guaranteed by international law and made effective by  
 3 neutral tribunals or instead that, notwithstanding  
 4 overwhelming evidence that an official Government policy of  
 5 promoting a corrupt Judgment in defiance of lawful  
 6 international injunctions is beyond the power of  
 7 international law to redress.  
 8 Now, naturally, much care must be given when  
 9 assessing serious allegations against any sovereign, but if  
 10 the institutions charged with applying international law  
 11 cannot call what happened here by its name--a denial of  
 12 justice--an outcome entitled to no international effect,  
 13 then it would be difficult to see that investor-State  
 14 arbitration serves any purpose.  
 15 And with that, may I ask that the Tribunal invite  
 16 Mr. Paulsson to begin our counsel's presentation.  
 17 PRESIDENT VEEDER: Thank you, Mr. Pate.  
 18 Mr. Paulsson.  
 19 MR. PAULSSON: Members of the Tribunal, nothing  
 20 like this case has ever been seen before. There have, of  
 21 course, been cases of fraud, cases of political corruption,  
 22 cases of failure of due process, but not all of these so  
 23 lamentably pervasive in a single case. If you take a  
 24 special interest in the subject of denial of justice, as I  
 25 have, you can read the multitude of decisions of Tribunals



09:08 1 and Commissions in the 19th and 20th centuries. You can  
 2 read the more recent judgments of international courts of  
 3 human rights or awards of investment treaty tribunals. You  
 4 will never come across such comprehensive and brazen  
 5 violations of due process.  
 6 Manufactured evidence, bribery, intimidation, a  
 7 ghostwritten Judgment, and all of the evidence documenting  
 8 this malfeasance cynically ignored by Ecuador's higher  
 9 courts and prosecutors without even the beginnings of a  
 10 plausible excuse for this determined indifference to such  
 11 shameful conduct.  
 12 But that is far from all. Ecuador's Head of  
 13 State has vociferously applauded this judicial debasement,  
 14 publicly demanding punishment of the foreigners and  
 15 branding all of those who dare to give them legal advice  
 16 as traitors to the homeland, "vende patrias." These are  
 17 not occasional outbursts, but an obsessive feature of the  
 18 Saturday addresses which have become a fixture of  
 19 President Correa's tenure. With his face filling the  
 20 country's television screens, he blames all of the  
 21 problems of the Oriente, not on the Ecuadorian  
 22 Government's policies with respect to agriculture,  
 23 resettlement, and land distribution, not on the abysmal  
 24 negligence of Petroecuador in environmental matters over  
 25 the past 23 years, but on foreign scapegoats, the first of

09:10 1 which, as he refers to Chevron, is "Texaco."  
 2 Apparently, it is not enough for Petroecuador to  
 3 shirk its own remedial obligations under the Settlement  
 4 and Release Agreements. Ecuador would now, with its joint  
 5 and several liability theory, have Chevron serve as  
 6 indemnitor for Petroecuador's current and future oil  
 7 operations in the area.  
 8 President Correa needs no evidence. He's the  
 9 Head of State and knows whom to punish. Emblematic of the  
 10 case's political prominence, in January 2014, the Vice  
 11 Minister of Foreign Affairs stated that enforcement of the  
 12 Judgment, I quote, "is one of the issues that we're going  
 13 to promote as part of Ecuador's foreign policy." That's  
 14 Exhibit C-2152. The meaning of all this has not been lost  
 15 on the judges hearing Chevron's appeals. The pattern of  
 16 threats, sanctions, and removals of judges who dare to  
 17 rule against the Government is clear. The question,  
 18 gentlemen, is not, as Ecuador would have it, how one could  
 19 find a denial of justice. The challenge is rather how  
 20 anyone could explain why this is not.  
 21 Here, the Ecuadorian judiciary, improperly  
 22 influenced by the Executive, turned itself into the  
 23 instrument of a fraudulent scheme, a shakedown to extort  
 24 billions of dollars from Chevron. As the forensic  
 25 evidence conclusively shows, the Judge at first instance

09:11 1 allowed the Plaintiffs' lawyers to draft the  
 2 billion-dollar Lago Agrio Judgment. The appellate Court  
 3 perpetuated the denial of justice by affirming every jot  
 4 and tittle of the ghostwritten judgment, without taking  
 5 any steps to investigate the substantial and unrefuted  
 6 evidence of misconduct Chevron had placed before  
 7 it--misconduct that in no sense is collateral or  
 8 ancillary, but goes to the core of the case. And the  
 9 Correa Administration is now actively promoting the  
 10 Judgment enforcement abroad, including through diplomatic  
 11 channels. We are, gentlemen, looking at a massive  
 12 meltdown of the rule of law.  
 13 The basic proposition governing this arbitration  
 14 is this: The state incurs international responsibility if  
 15 it administers its laws to aliens in a fundamentally  
 16 unfair manner. Your Tribunal is well acquainted with the  
 17 various formulations that have sought to encapsulate a  
 18 generic definition of denial of justice. Additional and  
 19 related standards of State conduct as set forth in the  
 20 Treaty itself, including the requirements of effective  
 21 means, fair and equitable treatment, and  
 22 non-discrimination.  
 23 I will not take time to repeat general abstract  
 24 propositions. With your permission I will return toward  
 25 the end of our presentation this morning to deal with

09:12 1 specific aspects of the subject, in particular the  
 2 exhaustion requirement.  
 3 The voluminous evidence before you speaks for  
 4 itself. What it shows is not indifference to fairness,  
 5 but rather positive antagonism to this all-important  
 6 value. Due process, it seems, is too good for foreigners  
 7 who resist extortion. This case is a result of a quid pro  
 8 quo alliance between a populist government and unethical  
 9 plaintiffs' attorneys, its machinations enabled by the  
 10 tragic reality of a subordinated judiciary. Knowing that  
 11 any suit against a State-owned company would be dead on  
 12 arrival in Ecuador's courts, the lawyers who represented  
 13 the Plaintiffs early on waived their rights to file any  
 14 claim against Petroecuador. And the lawsuit against  
 15 Chevron was manna to the Correa Administration, which was  
 16 keen to deflect attention away from Petroecuador's ongoing  
 17 and harmful operations and to place all blame for all  
 18 social ills in the Oriente on a long-departed U.S.  
 19 multinational.  
 20 Early on, it was clear that this case was not one  
 21 about science. When results from the judicial inspection  
 22 process failed to substantiate their fanciful claims, the  
 23 Plaintiffs, in Mr. Donziger's unforgettable words, decided  
 24 to go over to the dark side. After independent experts  
 25 rejected the need for remediation at Sacha 53, the

09:14 1 Plaintiffs pressured Judge Yánez to cancel the judicial  
 2 inspection process and allow the Plaintiffs to select an  
 3 ostensibly independent Court-appointed expert who would,  
 4 as their lawyer secretly put it, totally play ball with  
 5 them.

6 Judge Yánez was already embroiled in a  
 7 jobs-for-sex scandal and thus vulnerable. After the  
 8 Plaintiffs threatened to file a separate complaint against  
 9 him, Yánez capitulated to their demand made in ex parte  
 10 meetings to which Chevron certainly was not invited, that  
 11 he appoint Mr. Cabrera. And while Ecuador's judiciary was  
 12 allowing the Plaintiffs to manufacture evidence, its  
 13 Executive was helping them create leverage by pursuing  
 14 baseless criminal charges against key company officials,  
 15 amongst the serious, most serious abuses there can be of  
 16 sovereign power. This was part of Ecuador's coordinated  
 17 efforts to undermine the Settlement and Release Agreement,  
 18 which stood as a legal bar to the Plaintiffs' diffuse  
 19 environmental claims.

20 Discovery of the Cabrera fraud through U.S.  
 21 Section 1782 proceedings did not cause Ecuador to blink  
 22 for a moment. Believing that the invocation of the word  
 23 sovereign could shield even the most egregious misconduct  
 24 and hoping no doubt that Chevron would at some point  
 25 capitulate to the threat of a multi billion dollar

09:15 1 liability and pay some lesser amount but still  
 2 astronomical amount, President Correa continued to give  
 3 his heavy-handed support.

4 The Lago Agrio Court yet again changed the  
 5 procedural rules to allow the Plaintiffs to file  
 6 makeweight cleansing Expert Reports. Still, the  
 7 Plaintiffs' counsel did not trust an Ecuadorian judge to  
 8 write a judgment that could be enforced abroad. Thus,  
 9 after being promised half a million dollars, Zambrano,  
 10 insufficiently experienced to write even the most routine  
 11 orders in civil cases, limited himself to signing the  
 12 pre-drafted 18 billion-dollar Judgment put before him.  
 13 Indeed, it seems unlikely Zambrano never even read the  
 14 Judgment, considering his inability to recall basic parts  
 15 of it during his RICO trial testimony. He has chosen not  
 16 to come here for this Hearing, while his government had  
 17 given him a cushy salary, but professes to have no means  
 18 to influence his decision.

19 The politics have only escalated since the  
 20 fraudulent judgment issued, with the Government doing all  
 21 it can to promote its enforcement abroad. Correa has  
 22 lobbied for its enforcement in State-to-State meetings.  
 23 The Ecuadorian enforcement court lent its hand by  
 24 purporting to pierce the corporate veil of Chevron and  
 25 scores of its subsidiaries around the world, and the

09:16 1 Executive Branch continues to work hand-in-hand with the  
 2 Plaintiffs, notably on the notorious Mano Sucia campaign,  
 3 the glossy anti-Chevron media rampage replete with its own  
 4 website and cameos by highly paid B-list celebrities whose  
 5 primary qualifications for opining on environmental  
 6 conditions seem to be that they have graced the covers of  
 7 People magazine.

8 What are a few million dollars of investment in  
 9 propaganda when you're trying to get your hands on  
 10 billions of dollars from a designated villain? If you're  
 11 looking for some comic relief in this sad affair, just  
 12 Google, for example, Sharon Stone and Lago Agrio. It will  
 13 lead you to a trail of cynicism and foolishness as long as  
 14 your patience will allow.

15 But this is a profoundly serious matter. The  
 16 rule of law is under attack. Forms of justice have been  
 17 abused. The narrative of this case is saturated with five  
 18 types of poison: Judicial fraud and corruption, gross  
 19 violations of due process, Executive interference,  
 20 Judgments which are a mockery of legal reasoning, factual  
 21 findings taken out of thin air.

22 Looked at from the prism of law, each of these  
 23 defects, if that's the word, standing alone constitutes a  
 24 sufficient basis for attracting international  
 25 responsibility. When they recur as comprehensively as in

09:18 1 this case and the State adopts an adamantly unrepentant  
 2 stance and simply ignores the voluminous evidence of fraud  
 3 as if it did not exist, we're faced with a denial of  
 4 justice of historic proportions.

5 Sitting across the table from you, you have the  
 6 Attorney General of Ecuador, who could tell you that his  
 7 Government has reconsidered and is finally ready to  
 8 disavow the corrupt judgment. That would be unexpected.  
 9 This Tribunal has already given Ecuador several  
 10 opportunities to correct this injustice, but it has  
 11 elected to disregard your Interim Measures Awards and  
 12 maintain its indefectible allegiance to Donziger and  
 13 Fajardo. Contrast Ecuador's choice with other members of  
 14 the conspiracy who have seen the light. The law firm of  
 15 Patton Boggs not only withdrew from the case, it expressed  
 16 its regret at becoming involved. Paid Chevron \$15 million  
 17 and relinquished its interest in the Judgment. A managing  
 18 partner of the New York firm Constantine Cannon testified  
 19 that he felt, his words, "physically ill" upon learning of  
 20 Stratus's role in drafting the Cabrera Report, prompting  
 21 his firm to withdraw. The Plaintiffs' principal funders  
 22 have also resiled. Burford Capital announced that it had  
 23 been fraudulently induced into the case, terminated its  
 24 funding agreement, and disclaimed any proceeds from the  
 25 judgment.

09:19 1 As for Joe Kohn, a well-known Philadelphia  
 2 Plaintiffs' attorney, he walked away from the case  
 3 notwithstanding the 16 years of work and the 7 million he  
 4 had personally invested in it. Russell DeLeon transferred  
 5 his stake in the Judgment and forfeited his \$23 million  
 6 investment in the scheme explaining that his law school  
 7 friend Donziger, had, his word, "misled" him about  
 8 important facts. And Stratus Consulting, the Colorado  
 9 firm the Plaintiffs hired to ghostwrite the Cabrera  
 10 Report, has disavowed all of its "findings and  
 11 conclusions," their words, and specifically acknowledged  
 12 the absence of any scientific data showing among other  
 13 things, groundwater contamination and adverse health  
 14 effects from petroleum.

15 Yet Ecuador's alliance with the Plaintiffs  
 16 endures. Bear this in mind when the Attorney General's  
 17 lawyers tell you that the Government would be more than  
 18 happy to correct the very wrong which it is now actively  
 19 seeking to enforce. If only Chevron would go to yet  
 20 another Ecuadorian Court to complain about Zambrano's  
 21 behavior, now under the Collusion Protection Act, and then  
 22 sometime in what remains of this decade get a decision  
 23 which can be appealed, gentlemen, to the very next-level  
 24 courts which have already ratified the Lago Agrio Judgment  
 25 without any consideration of its corrupt and fraudulent

09:21 1 foundation.

2 I will presently ask you to invite Mr. Bishop to  
 3 address you on the core subject of the fraud and the  
 4 corruption, which infuses the Lago Agrio Judgment. Next,  
 5 Mr. Coriell will show that the Lago Agrio Case, as it was  
 6 litigated and decided, concerns only diffuse environmental  
 7 claims barred by the Settlement and Release Agreement. He  
 8 will also analyze some of the more absurd legal features  
 9 of the Judgment itself.

10 You will then hear Ms. Renfroe deal with  
 11 environmental issues, with respect to which you will see  
 12 that Ecuador's allegations backfire and backfire badly.  
 13 Indeed, it was the inability of the Plaintiffs to prove  
 14 their allegations of contamination and establish causation  
 15 that led to manufacturing of evidence and other acts of  
 16 fraud that bring us here today.

17 As you listen to their presentations, I urge you  
 18 to ask yourself the question which Sir Gerald Fitzmaurice  
 19 articulated in his remarkable contribution on denial of  
 20 justice in the 1932 British Yearbook: "Is this a decision  
 21 which an honest and competent Court could possibly have  
 22 given?"

23 In fact, I would like to leave you with the  
 24 context of that question. Fitzmaurice was reflecting on  
 25 the accepted general rule that an erroneous conclusion of

09:22 1 law or fact, even though it results in a serious  
 2 injustice, does not suffice to engage the State's  
 3 responsibility. But he qualified this as follows, and I  
 4 quote him again: "An unjust judgment may and often does  
 5 afford strong evidence that the Court was dishonest; or,  
 6 rather, it raises a strong presumption of dishonesty. It  
 7 may even afford conclusive evidence if the injustice be  
 8 sufficiently flagrant so that the Judgment is of a kind  
 9 which no honest and competent Court could possibly have  
 10 given."

11 Let those words resonate as you now listen, if  
 12 you please, to Mr. Bishop.

13 PRESIDENT VEEDER: Thank you.

14 Mr. Bishop.

15 MR. BISHOP: Thank you, Mr. Chairman.

16 An unjust Judgment, that label aptly describes  
 17 the Lago Agrio Judgment. The Lago Case involved a massive  
 18 scheme of extortion, corruption, and fraud fully supported  
 19 by the Government of Ecuador and with the willing  
 20 participation of Ecuadorian judges, all for the purpose of  
 21 fixing the outcome of the case regardless of its merits.

22 The result was a \$9.5 billion Judgment, the  
 23 largest in the history of the country by many factors, a  
 24 judgment which has now been affirmed by the highest court  
 25 of Ecuador and certified as enforceable without any review

09:23 1 of whether it was fraudulent or corrupt. And despite the  
 2 overwhelming evidence of fraud, the government has  
 3 embraced the Judgment and is willfully promoting its  
 4 enforcement around the world in violation of this  
 5 Tribunal's Interim Awards.

6 Now, you heard Professor Paulsson describe this  
 7 as the most comprehensive and pervasive example of denial  
 8 of justice in the history of international law, and it is,  
 9 indeed, without precedent. So, how did we get to this  
 10 point? How did the Lago Agrio Case come to this point?  
 11 I'd like to step back and take just a few moments to give  
 12 a broad overview of how we got here before I launch into  
 13 the details of the case.

14 In 1995, the Republic of Ecuador settled all  
 15 diffuse environmental claims with TexPet, with TexPet  
 16 agreeing to remediate certain sites that were agreed by  
 17 both Parties. Now, that left the remaining sites,  
 18 however, as the responsibility of Petroecuador. TexPet  
 19 performed its share of the remediation, and the Government  
 20 certified and approved that remediation at every single  
 21 site. And you've heard from Mr. Rosanía, who was the head  
 22 of the environmental department of the Ministry of Energy  
 23 at one of our earlier hearings. He testified before you  
 24 that the remediation was done properly and that he was  
 25 proud of it. And he was Ecuador's witness. They were the

09:25 1 ones who brought him to that Hearing.  
 2 But very importantly, the Government and  
 3 Petroecuador chose not to spend the money to remediate  
 4 their share of the sites, and that's a critical fact. If  
 5 the Government and Petroecuador had fulfilled their own  
 6 responsibilities, it's doubtful we would be here today,  
 7 but they didn't. And that Government decision created the  
 8 conditions for much of what has happened since in the Lago  
 9 Case.  
 10 After the Settlement Agreement was signed,  
 11 Ecuador changed governments and the new administration  
 12 made a deal with the Plaintiffs. At the request of the  
 13 Attorney General, the Plaintiffs' lawyer signed a waiver  
 14 of claims agreement, what they also referred to as a quid  
 15 pro quo agreement in which the Plaintiffs waived the right  
 16 to sue or recover from either the Government of Ecuador or  
 17 Petroecuador.  
 18 Now, that changed the political equation within  
 19 Ecuador.  
 20 With little or no economic risk then, the  
 21 Government was free to support the Plaintiffs politically,  
 22 and it could shift the financial burden as it saw it of  
 23 the remaining remediation away from Petroecuador and onto  
 24 the shoulders of Texaco and Chevron, resulting in a  
 25 windfall to the Government.

09:26 1 After he was elected the President of Ecuador,  
 2 President Correa found a useful political and  
 3 nationalistic issue in attacking a foreign company and  
 4 Chevron in supporting the indigenous peoples of the  
 5 Oriente. At that point, like a confluence of rivers  
 6 coming together, there was a joining of interests between  
 7 the Plaintiffs and the Government. And as you will see in  
 8 the factual presentation, the Plaintiffs' schemes and  
 9 misconduct grew bolder and bolder under the Correa  
 10 administration, but the Government's support of the  
 11 Plaintiffs and their case never wavered, no matter what  
 12 occurred.  
 13 The Government sided with the Plaintiffs and  
 14 became very much a partisan in this case. It made the  
 15 Plaintiffs' case into a national cause. President Correa  
 16 himself took strong public positions on issues in the  
 17 case, and he called for criminal charges to be filed  
 18 against Chevron's lawyers who had signed the Settlement  
 19 Agreement, and after he changed the Prosecutor General,  
 20 such charges were filed. During the course of the case,  
 21 Correa also undermined generally the independence of the  
 22 judiciary, purging judges who made decisions with which he  
 23 didn't agree, and sending a strong signal to all judges in  
 24 Ecuador to toe the Government line or face consequences.  
 25 There can be no doubt that President Correa was

09:28 1 trying to politically pressure and influence the courts,  
 2 effectively to undermine their independence and  
 3 impartiality.  
 4 Now, Steven Donziger, the Plaintiffs' lead  
 5 counsel had to find a way to circumvent the Plaintiffs'  
 6 causation problem with Petroecuador's operations, and he  
 7 also wanted to inflate the size and significance of the  
 8 case. He didn't like Petroecuador's \$70 million estimate  
 9 to remediate the area. He wanted damages hyperinflated  
 10 into the billions, and that greed for big money has been a  
 11 driving force throughout the Lago Agrio Case.  
 12 Now, to accomplish this, he needed a technical  
 13 expert to provide some external validation of his claims,  
 14 and he found the perfect vehicle in the sole  
 15 Court-appointed global damage expert, Richard Cabrera, who  
 16 was willing to sell his Report to the Plaintiffs for a  
 17 price.  
 18 Now, even though Cabrera was a court auxiliary  
 19 with obligations to the Parties of independence and  
 20 impartiality, he accepted bribes, and he allowed the  
 21 Plaintiffs to ghostwrite his Reports, but that fraud came  
 22 undone and was publicly exposed in 2010. Now, since at  
 23 that point the case was drawing to a close and Cabrera was  
 24 the only basis for a large damage award, the Plaintiffs  
 25 had to use his work, but they also had to disguise his

09:29 1 work through what they themselves referred to as  
 2 "cleansing experts."  
 3 Now, with the Cabrera fraud exposed, the  
 4 Plaintiffs' lawyers now knew, in fact more than ever, that  
 5 they needed to control the contents of the Judgment. They  
 6 had too many problems simply to leave the Judgment to  
 7 chance. They had to make sure the Judgment's reliance on  
 8 Cabrera was disguised. They had to justify suing the  
 9 wrong party in Chevron. They had to justify why the  
 10 Judgment could ignore Petroecuador's impacts, and they  
 11 needed a trust in order to assure their funders that all  
 12 the money wouldn't disappear.  
 13 So, when the opportunity presented itself with  
 14 Judge Zambrano taking over the case, they made a corrupt  
 15 deal to pay a bribe in exchange for being able to  
 16 ghostwrite the Judgment. And having struck this deal,  
 17 they then drafted the Judgment using what they had before  
 18 them, which was their own internal memos and documents.  
 19 But that scheme was also exposed, and we might  
 20 well ask: Once the Cabrera scheme was exposed publicly  
 21 and the ghostwriting of the Judgment scheme was exposed,  
 22 what happened in Ecuador?  
 23 Now, one would expect that a normal and neutral  
 24 Government and judiciary would be outraged by this  
 25 conduct. One would expect that they would demand and

09:31 1 aggressively pursue investigations to get to the bottom of  
 2 the scandal and insist on it.  
 3 But what happened in Ecuador is very revealing  
 4 because what happened in Ecuador is nothing, because the  
 5 Plaintiffs had the strong political support of President  
 6 Correa and the Government, and President Correa had  
 7 committed the Government to the Plaintiffs' case as a  
 8 national cause, so nothing was done.  
 9 So, even after the fraud and corruption was  
 10 revealed, the Government continued to support the  
 11 Plaintiffs and their attorneys, and it stonewalled all  
 12 investigations. No one has been charged, no one has been  
 13 punished. And the Government has chosen to support the  
 14 fraudulent Judgment, and even to promote its enforcement  
 15 abroad, thereby flouting the Interim Awards issued by this  
 16 Tribunal to maintain the status quo.  
 17 But what about the appeals, you might ask? Well,  
 18 in 2007, President Correa had battled with the  
 19 Constitutional Court, and then he purged all the members  
 20 of that Court somewhat violently and replaced them with  
 21 his own supporters; and later the Judges on the National  
 22 Court of Justice were also replaced, so with President  
 23 Correa strongly supporting the Plaintiffs in their case,  
 24 the appellate and cassation courts decided, well, they  
 25 decided they just couldn't decide the claims of fraud and

09:33 1 corruption or even review those claims. They just didn't  
 2 have jurisdiction, they said.  
 3 But they did have jurisdiction, it seems, to  
 4 affirm the fraudulent Judgment and certify it as  
 5 enforceable around the world, despite the evidence of  
 6 fraud.  
 7 No words were wasted by the appellate courts on  
 8 the possibility of remanding the case to a lower court to  
 9 review the evidence of corruption before affirming the  
 10 Judgment and allowing it to become enforceable.  
 11 So, where does that leave us? An Ecuadorian judge  
 12 agreed to a bribe and allowed the Plaintiffs themselves to  
 13 decide their own case and write their own Judgment and  
 14 award themselves \$9.5 billion. There was no impartial  
 15 decision-maker. And knowing the Government's strong  
 16 support of the Plaintiffs' case, the stacked appellate  
 17 courts abdicated their constitutional responsibility and  
 18 affirmed and certified the Judgment as enforceable. And  
 19 despite the evidence of fraud, the Government has made the  
 20 Lago Case into a national cause and is promoting the  
 21 Judgment around the world as a first priority of the  
 22 government's foreign policy.  
 23 In sum, the conduct of the Republic as a whole  
 24 breaches the Settlement Agreement, it breaches your Interim  
 25 Awards, it violates the Bilateral Investment Treaty, and it

09:34 1 constitutes a denial of justice.  
 2 Now, my task today is to outline key facts of the  
 3 case, and I've organized my presentation to address six  
 4 issues:  
 5 First, the Government's political interference  
 6 with the case;  
 7 Second, the Cabrera fraud that taints the  
 8 Judgment;  
 9 Third, the Plaintiffs' payments to Mr. Guerra to  
 10 ghostwrite Court Orders favorably to them in the Lago Case;  
 11 Fourth, the Plaintiffs' ghostwriting of the  
 12 Judgment;  
 13 Fifth, Zambrano's false testimony in the RICO case  
 14 about how the Judgment was created;  
 15 And, finally, the Appellate Courts' failure to  
 16 review the allegations of fraud and corruption.  
 17 And in due course, I'll also address Ecuador's  
 18 factual arguments.  
 19 Now, in the course of this arbitration, Claimants  
 20 have provided overwhelming evidence that at least nine of  
 21 the Plaintiffs' internal documents that were never filed in  
 22 the Court record were used in drafting the Judgment, and  
 23 Ecuador itself admits that at least three of those  
 24 documents were used in preparing the Judgment. The Fusion  
 25 Memo, the Selva Viva Database, and the Clapp Report. And

09:35 1 here's why.  
 2 On Slide 10 what you'll see is Pages 20, 21, and  
 3 24 of the Judgment, and the highlighted portions that you  
 4 see are the words that the Judgment took verbatim, word for  
 5 word from the Plaintiffs' own Fusion memo. As you can see,  
 6 almost every single word on the page was copied from that  
 7 document. And the Fusion Memo is not found anywhere in the  
 8 Court record.  
 9 Now, these facts alone established that the  
 10 Plaintiffs ghostwrote the Judgment, but this is only one  
 11 example. There is much more, and I'll return to this in  
 12 more detail later in my presentation.  
 13 There are four characters who played key roles in  
 14 implementing the fraudulent scheme that resulted in the  
 15 Judgment. The first one is Steven Donziger, the  
 16 Plaintiffs' lead lawyer in the Lago Case who sought to  
 17 politicize the case, who, in his own words, intimidated the  
 18 Lago Agrio judges, and who is the author of the now  
 19 admitted Cabrera fraud. We have a video clip in which you  
 20 can hear from Donziger himself about the litigation tactics  
 21 that he pursued in the case.  
 22 (Video played.)  
 23 MR. BISHOP: Now, the second--  
 24 PRESIDENT VEEDER: Just help us, for the  
 25 transcript, that's Exhibit C-360?

09:38 1 MR. BISHOP: Yes, Exhibit C-360, yes, that's  
 2 correct.  
 3 ARBITRATOR GRIGERA NAÓN: Is my understanding  
 4 correct that the lady is from Stratus?  
 5 MR. BISHOP: Yes, that was Ann Maest, who was from  
 6 Stratus. That's correct. She was one of the consultants  
 7 to the Plaintiffs for environmental issues. That's right.  
 8 Now, the second of the characters I'll mention is  
 9 Rafael Correa who, after being elected President of  
 10 Ecuador, adopted the Plaintiffs' case as a national cause.  
 11 He endorsed the Plaintiffs' case. He condemned Chevron in  
 12 the strongest possible terms, and he has embraced and  
 13 promoted the Judgment as a matter of Government policy.  
 14 The third, there is Judge Nicolás Zambrano, who  
 15 had been a corrupt criminal prosecutor, and he needed help  
 16 in drafting even simple Court Orders, so he turned to his  
 17 friend Alberto Guerra to ghostwrite Orders in the Lago  
 18 Agrio case. Zambrano ultimately sold the Judgment to the  
 19 Plaintiffs in return for allowing them to ghostwrite it.  
 20 And fourth and finally, there's Alberto Guerra.  
 21 He was an insider to the fraudulent scheme. He was paid  
 22 by the Plaintiffs to draft Court Orders favorably for them  
 23 in the Lago Case, and he was Zambrano's intermediary in  
 24 approaching the Plaintiffs' lawyers about a bribe in  
 25 return for ghostwriting the Judgment.

09:39 1 Now, of these four, only Mr. Guerra is going to  
 2 testify before you in the course of the next three weeks,  
 3 and that's because we're bringing him. Guerra is here  
 4 precisely because he agreed to provide evidence to  
 5 Chevron, and then fearing for his safety in his native  
 6 Ecuador, he came to the United States where Chevron is  
 7 financially supporting him in what is effectively a  
 8 witness protection program. Chevron would not be doing  
 9 that, and indeed would not need to do that, if he weren't  
 10 in danger in Ecuador.  
 11 In fact, what does it say about the Government,  
 12 that both the President and the Vice President of the  
 13 country have called Guerra a traitor, a traitor to the  
 14 nation just for giving evidence in this case? Now, that's  
 15 an attempt to intimidate a witness, and it comes from the  
 16 highest political officials of the country.  
 17 But Mr. Guerra's testimony has been important for  
 18 revealing the truth of what happened during the case  
 19 because it was only after Guerra came forward, for  
 20 example, that it was learned that Zambrano had solicited a  
 21 bribe from the Plaintiffs. After that, Mr. Donziger was  
 22 confronted about it in his testimony at the RICO trial,  
 23 and he had to admit it. But that fact would never have  
 24 come to light except for the testimony of Mr. Guerra.  
 25 Now, the question for this Tribunal with regard

09:41 1 to Guerra isn't his general character. He admits that, as  
 2 a judge, he both solicited and accepted bribes. We're not  
 3 bringing him here because he's a saint. The Claimants are  
 4 bringing him to testify precisely because he was an  
 5 insider to the scheme, to the fraud, and the specific  
 6 question for you to decide is simply whether he's telling  
 7 the truth about specific matters related to this case.  
 8 And you certainly don't have to just take his word for it.  
 9 You're undoubtedly going to want to know the extent to  
 10 which his evidence is corroborated by independent  
 11 evidence, and it is, and you can.  
 12 And you can look to the report of Mr. Adam  
 13 Torres, an expert witness for us that you have before you,  
 14 because he reviews that corroborating evidence in detail  
 15 in that report.  
 16 Now, in fact, the documentary evidence that he  
 17 discusses is, by itself, sufficient to prove the  
 18 ghostwriting of the Court Orders and the Judgment.  
 19 Mr. Guerra just explains it.  
 20 Now, Ecuador itself could have brought to this  
 21 Hearing Mr. Zambrano to testify, but they're not. They  
 22 could have brought Mr. Donziger or Pablo Fajardo, another  
 23 of the key Plaintiffs' lawyers. And if their testimony  
 24 would have been helpful to its case, they certainly would  
 25 have brought them here to testify before you. But in the

09:42 1 course of the next three weeks you will not hear from any  
 2 of those men.  
 3 Now, when Donziger took over as lead counsel in  
 4 the Lago Case in late 2005, the Plaintiffs had a major  
 5 problem on the merits of the case: They weren't finding  
 6 significant contamination during the judicial inspections  
 7 and the testing. Their own experts, David Russell and Dr.  
 8 Charles Calmbacher, were telling them that in their  
 9 e-mails, so Donziger responded by falsifying the Expert  
 10 Reports of Dr. Calmbacher, and Dr. Calmbacher has  
 11 testified to that fact under oath.  
 12 But the crowning blow to the Plaintiff's effort  
 13 to mount a legitimate case fell at Sacha 53 in early 2006  
 14 when the five independent settling experts found that  
 15 there was no significant risk to human health or the  
 16 environment. Now, unfortunately, that was the only report  
 17 that they were ever allowed to give because at that point  
 18 the Plaintiffs changed their strategy. Donziger changed  
 19 their strategy. He refocused it away from the merits of  
 20 the case and on to two new prongs: First, politics as a  
 21 way to pressure the judges, and second the appointment of  
 22 a single global expert and one that he could control.  
 23 Now, in his own words, Donziger tells us why he  
 24 focused on politics, and I will let him speak for himself.  
 25 (Video played.)

09:45 1 MR. BISHOP: I want you to note that last clip in  
2 particular, "we're mobilizing the country politically so  
3 that no judge can rule against us and feel like he can get  
4 away from it in terms of his career." That summarizes  
5 exactly why Donziger sought to politicize the case: To  
6 control the judges, to make them fear the Plaintiffs, to  
7 undermine their impartiality ultimately.

8 And Donziger found an eager ally in the newly  
9 elected President Correa. When President Correa took  
10 office in January 2007, he invited the Plaintiffs' lawyers  
11 to give a presentation to the cabinet of the new  
12 government, after which, according to Donziger, he  
13 appointed a commission to monitor the case.

14 But I want you to note in this slide the last  
15 statement made by Donziger: "This is becoming, as we had  
16 always envisioned, a true national issue." Now, that's  
17 important. He wanted the Plaintiffs' case to be adopted  
18 by the Government as a national issue because then no  
19 judge could rule against them and get away with it. That  
20 was the point.

21 President Correa strongly allied himself and his  
22 Government with the Plaintiffs at this point. He toured  
23 the Oriente with the Plaintiffs' lawyers in April 2007 and  
24 repeatedly proclaimed that the Plaintiffs had the full  
25 support and backing of the National Government, including

09:46 1 its assistance in gathering evidence.

2 He endorsed the Plaintiffs' case, taking a strong  
3 public position, and I quote him, "Texaco must be held  
4 liable," thereby sending a strong message to the courts  
5 about how they should rule in the case. And he even told  
6 the Plaintiffs privately that he would personally call the  
7 Judge. And the only reason to do any of that was to  
8 undermine the impartiality of the judges.

9 And so that no one would miss the point, he  
10 publicly called the Plaintiffs' lawyers true heroes,  
11 personally giving them his endorsement, and by contrast,  
12 he called Chevron's lawyers traitors to the nation, vende  
13 patrias. And he later called Chevron's witnesses and  
14 experts traitors as well, and the State published the  
15 names and personal information about Chevron's lawyers and  
16 experts, including their personal identification numbers.

17 Correa also called for criminal charges to be  
18 filed against the Chevron lawyers who had signed the  
19 Settlement Agreements; and, after that, criminal charges  
20 were filed. And repeatedly and during the case, he called  
21 Chevron "an open enemy of the country." "Enemy" and  
22 "traitors," now those are strong words. That's the  
23 language of a national interest, a national interest  
24 that's threatened by a foreign enemy and a national  
25 interest that's being betrayed from within.

09:48 1 And it's also the language of intimidation,  
2 seeking to foreclose Ecuadorian lawyers, experts and  
3 witnesses from working with Chevron.

4 So, in short, as Donziger had hoped, President  
5 Correa made the Lago Agrio Case into a matter of national  
6 interest, a national cause, and repeatedly signaled the  
7 courts his strong position on the case and that of the  
8 Government and what he expected them to do.

9 Now, the second issue that I will take up is that  
10 of the Cabrera fraud. You have seen the video clips of  
11 Donziger. He wanted a massive Judgment, and he wasn't  
12 willing to confine himself to the boundaries of the  
13 evidence. In his own words, he wanted to jack up the  
14 damage numbers into the billions so he could pressure  
15 Chevron. But to do that, he needed a vehicle, a vehicle  
16 that would provide external validation, and he needed to  
17 control that vehicle. Now, that vehicle was the sole  
18 court-appointed global damage expert, and Donziger gained  
19 control because of a weakened Judge Yáñez was willing to  
20 appoint the Plaintiff's handpicked choice, Richard  
21 Cabrera, with whom they had already secretly been meeting  
22 and Cabrera was willing to sell his Report to them for  
23 bribes.

24 Now, although Judge Yáñez had twice told Fajardo  
25 that there was no legal basis for terminating the judicial

09:49 1 inspections and Fajardo had reported that in e-mails,  
2 nevertheless, Donziger and Fajardo coerced Judge Yáñez  
3 into ending those inspections. And we can see it in  
4 Donziger's own words in Slide 18, and I will quote him.  
5 He framed the issue this way: "Our issues first and  
6 foremost are whether the Judge will accept the renuncia of  
7 the inspections. If it doesn't happen, then we're in an  
8 all-out war with the Judge to get him removed."

9 You see the Plaintiffs' attitude brazenly  
10 reflected in that statement by Donziger. And what they  
11 did next was that they brought a mob of demonstrators to  
12 the Court to protest before the Judge, to intimidate the  
13 Judge. That was their strategy. And again, Donziger says  
14 it in his e-mails very clearly.

15 Now, after that demonstration, they then met with  
16 the Judge, and again Donziger tells us what happened:  
17 "Pablo Fajardo met with the Judge today. The Judge, who  
18 is on his heels from the charges of trading jobs for sex  
19 in the Court, says he is going to accept our request to  
20 withdraw the rest of the inspections. The Judge wants to  
21 forestall the filing of a complaint against him by us,  
22 which we have prepared but not yet filed."

23 And then Donziger tells us the ending of this  
24 part of the story: "Legal case: Going well with Yáñez  
25 decision to cancel inspections. We wrote up a complaint

09:51 1 against Yánez, but never filed it, while letting him know  
2 we might file it if he doesn't adhere to the law and what  
3 we need."

4 Now, those statements by Donziger are striking.  
5 They're striking because of their clear intent to coerce  
6 the Judge, to undermine the impartiality of the Judge;  
7 that is, to get the ruling they wanted by whatever means  
8 were necessary to get it.

9 The Federal Court in the Southern District of New  
10 York in the RICO Case summarized exactly what happened  
11 next with respect to this. Donziger and Fajardo took  
12 advantage of a weakened Judge Yánez. They made him fear  
13 the Plaintiffs, and they coerced him into terminating the  
14 judicial inspections and appointing Cabrera as the global  
15 damage expert.

16 Now, as the global expert, Cabrera was an  
17 auxiliary of the Court, in the Court's own words in one of  
18 its Orders. He was the auxiliary of the Court for  
19 purposes of determining the scientific elements of the  
20 case on which the Judgment was going to be based, and he  
21 had an obligation to the Parties under the law of complete  
22 impartiality, independence and transparency, and that's  
23 again, provided in the Court Orders and the law.

24 But despite those obligations of independence,  
25 Donziger had something quite different in mind for the

09:52 1 independent--or the supposedly independent expert, and  
2 Donziger described several times in several ways exactly  
3 what he intended, and this is one of them. He said that  
4 what they were looking for in the global expert was  
5 someone who would "totally play ball with us and let us  
6 take the lead while projecting the image that he is  
7 working for the Court." Somebody who would let us take  
8 the lead and play ball with us totally, but project an  
9 image he's working for the Court. That's what he said.

10 He wanted somebody he could hold out to the world  
11 as an independent validation of their claims, but somebody  
12 he could secretly control. In other words, he wanted to  
13 corrupt the Court process, and that's exactly what was  
14 done.

15 Now, even though the Plaintiffs knew that Cabrera  
16 was obligated to be independent and impartial, they  
17 secretly met with him and planned his work. Now,  
18 Slide 22, which you see before you, is from a secret  
19 meeting of March 3, 2007, attended by the Plaintiffs'  
20 lawyers, their technical environmental experts, and  
21 Mr. Cabrera. You see Cabrera in the middle, Pablo Fajardo  
22 on the right and Luis Yanza of the President of the Amazon  
23 Defense Front on the left. This meeting took place before  
24 Cabrera was appointed, but the Plaintiffs had already  
25 wired his appointment with the Judge so they knew exactly

09:54 1 what was going to happen.

2 But I would also call your attention to the  
3 PowerPoint that you see behind them. This is the  
4 PowerPoint that Fajardo used in conducting the meeting,  
5 and it's entitled "Plan for the Global Expert Report."  
6 And this is a clip of Mr. Fajardo conducting that meeting.  
7 (Video played.)

8 MR. BISHOP: "But not Chevron." "But not  
9 Chevron." Chevron was to be kept in the dark about this  
10 whole process, in Donziger's words.

11 Now, in the course of their secret meetings with  
12 Cabrera and with Judge Yánez, the Plaintiffs' lawyers used  
13 code names to describe Cabrera and Yánez, the cook and the  
14 waiter. Now, you've seen in previous hearings that we've  
15 had, this and other e-mails in which Plaintiffs use these  
16 code names, the cook to describe Judge Yánez, and the  
17 waiter to describe Cabrera.

18 Now, why would they do that? Why would they use  
19 code names? The only reason is because they knew what  
20 they were doing was wrong. They knew what they were doing  
21 was illegal. And the reason they were using code names is  
22 reinforced, in fact, by the fact that they were bribing  
23 Cabrera from what they themselves referred to as "our  
24 secret account." Our secret account. Those aren't my  
25 words. Those are the Plaintiffs' own words. They paid

09:56 1 Cabrera more than \$100,000 from their secret account and  
2 they even gave him fringe benefits like insurance. And  
3 they installed as his Secretary one of the Plaintiffs'  
4 lawyers girlfriends and in their e-mails they said exactly  
5 why they were doing it: Which was to control Cabrera in  
6 his work.

7 Now, what did the Plaintiffs get in return from  
8 Cabrera? Well, as their secret meeting showed, they got  
9 to plan his work, they got to conduct his sampling and his  
10 testing. Donziger, in fact, has testified in the RICO  
11 Case that the Plaintiffs themselves prepared Cabrera's  
12 Work Plan, and they told him where and what to sample for.  
13 And they got to control his results and recommendations by  
14 ghostwriting his reports.

15 Now, Stratus Consulting Company is--was the  
16 Plaintiffs' main environmental consultants. They  
17 ghostwrote most of Cabrera's Reports. Getting the  
18 evidence out of Stratus to prove this wasn't easy. It  
19 required filing 1782 discovery proceedings in the United  
20 States and fighting many battles in court. Stratus  
21 resisted giving up their e-mails, and Donziger tried to  
22 obstruct the process, as the RICO Court found. But piece  
23 by piece the evidence came out, and now we know exactly  
24 what happened.

25 Douglas Beltman was in charge of this project for



09:58 1 Stratus, and he has now testified as to exactly what the  
 2 fraudulent scheme was and how it played out.  
 3 What happened is that Stratus was asked by the  
 4 Plaintiffs' lawyers to ghostwrite Cabrera's First Report,  
 5 and they ghostwrote it in English, a language that Cabrera  
 6 doesn't speak, and they ghostwrote it in the first person  
 7 as if it were being written by "I," Cabrera, and they  
 8 carefully kept their own involvement in this process  
 9 secret per the instructions of Mr. Donziger. And also per  
 10 his instructions, they came to exactly the results he  
 11 wanted, recommending \$16 billion in damages.  
 12 But that wasn't the ended of Stratus' work  
 13 because Stratus was then asked by the Plaintiffs to  
 14 prepare comments for the Plaintiffs to file in Court to  
 15 the Cabrera Report criticizing it, saying it hadn't gone  
 16 far enough, it hadn't considered all the damages, and the  
 17 damages weren't big enough, so then Stratus prepared  
 18 comments for the Plaintiffs to file to that report, which  
 19 they themselves had ghostwritten, critiquing it. Then  
 20 Stratus was asked to prepare Cabrera's Second Report  
 21 responding to those comments that the Plaintiffs had filed  
 22 in Court, that they had ghostwritten, and so they  
 23 ghostwrote Cabrera's Second Report, and not surprisingly,  
 24 accepted their own recommendations and increased the  
 25 damages now to an incredible \$27 billion.

10:00 1 This was a well-orchestrated scheme controlled by  
 2 Donziger and Fajardo to, in Donziger's words, "jack up the  
 3 damages" into the billions, to hold out Cabrera as  
 4 independent validation for their case, and to pressure  
 5 Chevron. But the Cabrera Reports were a fraud from the  
 6 very beginning. Bought and paid for and controlled by the  
 7 Plaintiffs.  
 8 And all of this is now admitted. Stratus has  
 9 admitted under oath secretly ghostwriting the Cabrera  
 10 Reports. Donziger has admitted it in his RICO testimony,  
 11 and Ecuador doesn't dispute the key facts of this Cabrera  
 12 fraud.  
 13 Now, when Stratus' e-mails were being subpoenaed  
 14 and the fraud started to be exposed in 2010, one of the  
 15 Plaintiffs' lawyers in Ecuador wrote to Donziger and said  
 16 this: "The effects are potentially devastating in  
 17 Ecuador. Apart from destroying the proceeding, all of us,  
 18 your attorneys, might go to jail."  
 19 The Plaintiffs' Ecuadorian lawyers knew that what  
 20 they had done was illegal, they said it right here, very  
 21 clearly. And we might well ask, why didn't they go to  
 22 jail? Why didn't this destroy the proceeding? Why  
 23 weren't the Plaintiffs' lawyers investigated and charged?  
 24 The answer undoubtedly lies in the strong political  
 25 support they had obtained from President Correa and his

10:01 1 Government.  
 2 Now, having invested three years in the Cabrera  
 3 Reports, the Plaintiffs couldn't get rid of Cabrera. This  
 4 was three years of the case with Cabrera as the key  
 5 component. So, while they couldn't get rid of Cabrera,  
 6 though, they needed to disguise him, so Donziger hatched a  
 7 new scheme which he referred to as the "cleansing  
 8 process." The purpose was to cleanse the case of the  
 9 taint of the Cabrera fraud. Although the time had long  
 10 passed under Ecuadorian law to appoint expert witnesses,  
 11 the Plaintiffs simply invented a new procedure. And Judge  
 12 Ordoñez sanctioned that new procedure, entering what can  
 13 only be referred to as a bizarre and biased order,  
 14 allowing them to file what was called "specialist  
 15 reports"--they couldn't call them experts because they  
 16 couldn't have new experts, but to file specialist  
 17 reports--and to do see in only six weeks. And as soon as  
 18 that six weeks had expired and those reports were filed,  
 19 Judge Ordoñez immediately closed the case.  
 20 Now, one of the Plaintiffs' lawyers said in an  
 21 e-mail exactly what they had in mind for these cleansing  
 22 experts. They wanted experts who would "rely on the same  
 23 data as Cabrera and come to the same conclusions as  
 24 Cabrera so Cabrera could be accepted as a valid basis for  
 25 damages." That was the point: Use Cabrera but disguise

10:03 1 him.  
 2 Now, Donziger was asked in his deposition about  
 3 these experts, and what they did to come to their  
 4 conclusions, and this is his testimony:  
 5 "QUESTION: Did any of the new experts go to  
 6 Ecuador?  
 7 "ANSWER: I don't believe so.  
 8 "QUESTION: None of them did new site  
 9 inspection?  
 10 "ANSWER: That's correct.  
 11 "QUESTION: None of them did any new  
 12 sampling?  
 13 "ANSWER: They did not as far as I know.  
 14 "QUESTION: Or environmental testing?  
 15 "ANSWER: That's correct.  
 16 "QUESTION: All of the experts prepared their  
 17 reports in the span of approximately a month or  
 18 less?  
 19 "ANSWER: That's about right, yes."  
 20 The new experts relied on the Cabrera Reports and  
 21 data because they had to do so. None of them had ever  
 22 been to Ecuador or done any sampling or testing of their  
 23 own.  
 24 Mr. Barnthouse is an example of that. He  
 25 testified very candidly that he based his ecological

10:04 1 assessment on the Cabrera Report, and yet the Judgment  
 2 cites Mr. Barnthouse for ecological damages. This is an  
 3 example of the Judgment relying on the Cabrera Reports in  
 4 disguise.  
 5 Now, another place where the Judgment clearly  
 6 relies on the Cabrera Report is in its finding that there  
 7 are 880 pits to be remediated.  
 8 Now, the Judgment says that the Judge himself  
 9 determined that number by interpreting the aerial  
 10 photographs of the area.  
 11 Well, Mr. James Ebert, who among other things, is  
 12 an expert in interpreting aerial photographs, says it's  
 13 highly unlikely if not impossible for the Judge to have  
 14 done that. Among other reasons, because there are no  
 15 photographs for about a third of the sites. The photos  
 16 were in black and white, they were monoscopic, and they  
 17 were of low resolution.  
 18 So, what the Judgment says that the Judge did just  
 19 isn't possible.  
 20 But, in fact, we know where the 880 number comes  
 21 from. It comes from the Cabrera Report, Annex H-1. The  
 22 Judgment says that the 880 pits are ones that have some  
 23 Environmental Impact that cannot be attributed to  
 24 Petroecuador. Well, Annex H-1 of the Cabrera Report lists  
 25 certain pits and information about those pits. And when

10:05 1 you subtract from that number, the no-impact pits and those  
 2 attributed to Petroecuador according to the comments in  
 3 Annex H-1, what you're left with is a number, 880. So that  
 4 number came from Cabrera's Reports itself. It didn't come  
 5 from the Judge himself becoming an expert all of a sudden  
 6 in reading aerial photographs.  
 7 And that pit number was important because it was  
 8 an integral part of the calculation of how the Judgment  
 9 reached the number of \$5.4 billion for soil remediation.  
 10 That \$5.4 billion is a calculation of 880 pits times  
 11 \$6 million per pit for remediation. That's how the  
 12 Judgment got there. Both of those numbers are grossly  
 13 inflated, and I might add that the \$6 million per pit, for  
 14 example, that the norm in the industry is only about  
 15 \$75,000 per pit.  
 16 Well, looking at this same evidence, the Federal  
 17 Court in the Southern District of New York found that the  
 18 Judgment relied upon the Cabrera fraud in at least three  
 19 ways: For the pit count, as we have just gone through, for  
 20 the potable water damages, and by relying on the Barnthouse  
 21 Report which, in turn, relied upon Cabrera. So, thus, the  
 22 Federal Court found that the Cabrera Report, "played an  
 23 important role in holding Chevron liable to the extent of  
 24 more than \$8 billion."  
 25 Now, Ecuador tells you that, well, the Judgment on

10:07 1 its face says it didn't rely on Cabrera, and that's the end  
 2 of the story. That's their response. Well, it's not. We  
 3 have to look at the substance, not merely the form.  
 4 Formalistic declarations cannot substitute for a thorough  
 5 investigation and analysis of the fraud. When there is  
 6 fraud in a case, as there clearly is in this instance, a  
 7 court cannot rely on the record without investigating the  
 8 fraud, determining what happened, delineating the fraud and  
 9 its effects very precisely, and ensuring that those effects  
 10 are thoroughly expunged from the case. But neither the  
 11 Lago Agrio Court nor the Appellate Courts ever engaged in  
 12 that analysis. They never did that.  
 13 And because the courts refused to investigate and  
 14 decide the fraud as well as delineate and expunge its real  
 15 effects, they ensured that the taint of the Cabrera fraud  
 16 would endure in the Judgment.  
 17 But regardless of the failure to investigate, the  
 18 Judgment, as we have just seen, does rely upon the Cabrera  
 19 Reports. Ecuador admits that the Judgment relies on the  
 20 Cabrera data. The cleansing experts relied on Cabrera's  
 21 data in his Reports to a significant extent, as they had to  
 22 do, and the Rico Court itself found the Judgment, both  
 23 directly and indirectly, relies on the Cabrera Reports.  
 24 The Plaintiffs had invested three years of this  
 25 case in Cabrera. He was the only basis for a large damage

10:09 1 award, so the Judgment had to rely on Cabrera, and it did  
 2 so.  
 3 I will turn next to my third point, that Mr.  
 4 Guerra was paid by the Plaintiffs to ghostwrite Court  
 5 Orders favorably to the Plaintiffs. In Ecuador, it's  
 6 illegal for anyone other than the Judge to draft Court  
 7 Orders or Judgments or to assist the Judge in doing so, as  
 8 Dr. Velázquez testifies in his expert report which you have  
 9 before you.  
 10 But following their pattern of ghostwriting the  
 11 Cabrera Reports, the Plaintiffs also ghostwrote Judge  
 12 Zambrano's Court's Orders in the Lago Case. Zambrano had  
 13 been a criminal prosecutor from 1994 until 2008 when he  
 14 became a judge, and he wasn't experienced though in either  
 15 the substance or the procedure of civil cases. He needed  
 16 somebody to help him with Court Orders in civil cases. And  
 17 at that point in time, Mr. Guerra needed a job. So Guerra  
 18 and Zambrano had a close long-standing relationship as they  
 19 have both testified, so Zambrano asked Guerra to ghostwrite  
 20 Court Orders for him generally in these civil cases.  
 21 And Zambrano himself has admitted that in his RICO  
 22 testimony. He admitted that Guerra drafted Court Orders  
 23 for him in civil cases in the period 2009 to 2012, which  
 24 happens to be exactly the period when Zambrano was  
 25 presiding over the Chevron Case. And he's also admitted

10:10 1 that Guerra would sometimes ship him drafts of the Court  
 2 Orders using TAME Shipping, and you have the TAME Shipping  
 3 records before you in this case.  
 4 So, now, the scope and extent of that ghostwriting  
 5 is made clear by the Expert Reports of Spencer Lynch, who  
 6 is a Digital Forensics Expert with the Stroz Friedberg  
 7 firm. He's testified that he found on Zambrano's computers  
 8 82 Court Orders that were issued by him that ultimately had  
 9 originated, however, on Guerra's computers, and at least 48  
 10 of those draft rulings were saved on USB devices which were  
 11 shared between Guerra's computer and Zambrano's computer.  
 12 So, there is no dispute that Guerra was ghostwriting Court  
 13 Orders for Zambrano.  
 14 Now, Guerra has testified that his ghostwriting  
 15 included the Chevron Case, but Zambrano denied that. When  
 16 Judge Núñez was being recused in September 2009 and  
 17 Zambrano was taking over for the first time, Chevron filed  
 18 a motion to nullify all of Núñez's Orders because of the  
 19 videotapes that showed him pre-judging Chevron's guilt  
 20 during a bribery scandal. This was the first motion that  
 21 Zambrano was asked to decide when he took over the case.  
 22 Around that time, Guerra contacted Chevron's  
 23 Ecuadorian lawyers to fix that motion for a price, but  
 24 Chevron declined. There is in the record of this case a  
 25 contemporaneous Affidavit made in October 2009 by

10:14 1 this time to describe Guerra and Zambrano, the puppeteer  
 2 and the puppet. "The puppeteer won't move his puppet until  
 3 the audience pays him something," and "since we are paying  
 4 the puppeteer." Well, again, we can ask ourselves why  
 5 would they do this? Why are they resorting to code names  
 6 for Guerra and Zambrano? Well, the answer again is they  
 7 were secretly paying Guerra to ghostwrite these Court  
 8 Orders, and that's illegal in Ecuador.  
 9 Now, the third corroboration you will find on  
 10 Slide 43, and this is very important: This is very  
 11 revealing. Because we have the bank records of both  
 12 Mr. Guerra and of the Plaintiffs themselves, and we can  
 13 match them up to show that Mr. Guerra's testimony that he  
 14 was being paid \$1,000 a month to ghostwrite these Court  
 15 Orders is exactly right. It is corroborated by the  
 16 documentary evidence.  
 17 Selva Viva is an Ecuadorian company that was set  
 18 up by Donziger for one purpose, and that was to support the  
 19 Plaintiffs in the Lago Agrio Case, and Donziger himself was  
 20 the President of that company, that we have those bank  
 21 records.  
 22 Now, you can clearly see on Slide 43 the pattern  
 23 of what was occurring, and I would like to take you through  
 24 it.  
 25 October 27, 2009, Fajardo e-mails Donziger: "The

10:12 1 Mr. Racines, who was one of Chevron's Ecuadorian lawyers  
 2 which corroborates Guerra's testimony about this.  
 3 Now, when Chevron refused that bribe attempt,  
 4 Zambrano then made an arrangement with the Plaintiffs and  
 5 Guerra made his own deal with him in which he agreed that  
 6 the Plaintiffs would pay him \$1,000 a month in return for  
 7 him ghostwriting Zambrano's Orders to come out favorably to  
 8 the Plaintiffs, although occasionally throwing Chevron a  
 9 bone to avoid suspicion.  
 10 Now, Mr. Guerra's testimony about the ghostwriting  
 11 of these Court Orders is corroborated in at least five  
 12 ways: First, by the Plaintiffs' own e-mails.  
 13 When Judge Núñez was being recused in  
 14 September 2009, Fajardo sent an e-mail to Donziger, and he  
 15 said this: "I understand that Zambrano himself asked Judge  
 16 Núñez that Núñez help him with the Orders. The problem is  
 17 who will carry more weight, Núñez or Guerra?" So, in the  
 18 Chevron Case itself, the Plaintiffs were expressly  
 19 recognizing in their own e-mails that Zambrano's Orders  
 20 were going to be ghostwritten. And you can see their  
 21 mental wheels turning as to who they would prefer to be  
 22 writing those Orders: Judge Núñez, who was being recused  
 23 because of a bribery scandal, or Guerra?  
 24 Now, second, as they did with the Cabrera fraud,  
 25 the Plaintiffs again resorted to the use of code names,

10:15 1 puppeteer won't move his puppet until he's paid something."  
 2 Two days later there is a \$1,000 cash withdrawal from the  
 3 Selva Viva account, and on the same day there is \$1,000  
 4 cash deposit made into Mr. Guerra's account.  
 5 On November 26, again, there is a \$1,000 cash  
 6 withdrawal from the Selva Viva account and the next day a  
 7 \$1,000 deposit into Mr. Guerra's account. And on that same  
 8 day, Yanza e-mails Donziger, the budget is higher since we  
 9 are paying the puppeteer.  
 10 December 22nd, there is a \$1,000 cash withdrawal  
 11 from the Selva Viva account, and the next day the same  
 12 amount of money is deposited into Mr. Guerra's account, and  
 13 this time we have a signature on the deposit slip, and that  
 14 signature is of Ximena Centeno, who worked for Selva Viva.  
 15 She worked for the Plaintiffs.  
 16 So, we have here clear evidence that it was the  
 17 Plaintiffs themselves who were making these \$1,000 deposits  
 18 into Mr. Guerra's account and paying him exactly as  
 19 Mr. Guerra has testified.  
 20 On February the 4th, 2010, we see the same pattern  
 21 playing out: A \$1,000 cash withdrawal from the Selva Viva  
 22 account, and the next day a \$1,000 deposit into  
 23 Mr. Guerra's account, again by an employee of the  
 24 Plaintiff.  
 25 And this happened throughout Zambrano's first term

10:17 1 on the case, from October 2009 to February 2010, and there  
 2 was no reason for the Plaintiffs to be paying Mr. Guerra  
 3 except for him to ghostwrite Court Orders for them in the  
 4 Lago Case.  
 5 Now, fourth, we can also look at the forensic  
 6 examination of Mr. Guerra's computer. Mr. Lynch testifies  
 7 that what he found on Guerra's computer were drafts of nine  
 8 Court Orders ultimately issued by Zambrano in the Chevron  
 9 Case. These drafts pre-date--on Guerra's computer, they  
 10 pre-date the date of the issuance of the Orders later by  
 11 Zambrano, and they're clearly drafts of those Court Orders.  
 12 So, we see the forensic evidence also corroborates  
 13 Mr. Guerra's testimony.  
 14 And we can put all of this together into the  
 15 patterns with all of the documentary evidence, the TAME  
 16 Shipping records, the computer records and the bank  
 17 records. And I would like to take you through it on  
 18 Slide 45.  
 19 Now, October 2009 was the first order Zambrano  
 20 issued in the case when he took over for the first time.  
 21 That was that order on Chevron's motion to nullify all of  
 22 Judge Núñez's previous Orders. October 20th, draft Order  
 23 is last saved on Guerra's computer. The next day, Zambrano  
 24 issues an Order with text matching that found on Guerra's  
 25 draft. And on that same day, Fajardo sends an e-mail to

10:19 1 the Plaintiffs' legal team: Things here are under control.  
 2 Things are under control. They had made their deal with  
 3 Guerra and with Zambrano, and they knew how things were  
 4 going to come out. They were under control.  
 5 November 18th, a draft Order is last saved on  
 6 Guerra's computer, and the next day the TAME Shipping  
 7 records show that Guerra sent a shipment to the Lago Agrio  
 8 Courthouse, and four days later, Zambrano issued an Order  
 9 with text matching that found on Guerra's computer.  
 10 November 29, a draft Order is last saved on  
 11 Guerra's computer, the same day the TAME Shipping records  
 12 show that Guerra sent a shipment to the Lago Agrio Court,  
 13 and the next day, Zambrano issued an Order with text  
 14 matching that found on Guerra's computer. And this pattern  
 15 plays out nine times.  
 16 Now, in short, Guerra's ghostwriting of Court  
 17 Orders for Zambrano is fully corroborated by the  
 18 documentary evidence, by Guerra's computer, by the  
 19 Plaintiffs' own e-mails, by both Guerra's bank records and  
 20 the Plaintiffs' bank records and by the TAME Shipping  
 21 records.  
 22 Mr. Adam Torres, in his Expert Report, links all  
 23 of this evidence together and concludes that it's  
 24 consistent with widely recognized patterns of public  
 25 corruption, and it's notable that Mr. Torres has not been

10:20 1 called for cross-examination by Ecuador.  
 2 Now, that brings me to my fourth point, and this  
 3 is that the Plaintiffs ghostwrote the Judgment, and I will  
 4 approach this subject in three ways: First by looking at  
 5 the evidence of the bribery solicitation and the  
 6 corroborating evidence; second, we'll focus on the  
 7 Plaintiffs' documents that are indisputably copied into the  
 8 Judgment; and, finally, we will look at the credibility of  
 9 Zambrano's testimony in the RICO Case about how the  
 10 Judgment was drafted.  
 11 Now, Zambrano, as I've said, presided over the  
 12 Lago Case twice. This first one was this period  
 13 October 2009 to February 2010. At that point, Judge  
 14 Ordoñez became the President of the Court, and that meant  
 15 he also became the Presiding Judge of the Chevron Case.  
 16 But Ordoñez was recused in September 2010, and Zambrano  
 17 again, for the second time, became the Presiding Judge in  
 18 the case.  
 19 Now, when Zambrano took over the case for the  
 20 second time, the case was drawing to a close, and at this  
 21 point, Zambrano asked Guerra to solicit a bribe in return  
 22 for ghostwriting the Judgment, first from Chevron, and when  
 23 Chevron refused that offer, then from the Plaintiffs.  
 24 Again, Chevron's Ecuadorian lawyers have filed declarations  
 25 in the RICO Case that corroborate Guerra's testimony that

10:22 1 he did try to solicit a bribe from Chevron, and there is a  
 2 contemporaneous Declaration to that effect in 2010, and  
 3 that evidence is before you in this case.  
 4 Now, before going further, I want to respond to an  
 5 argument that Ecuador makes here. When they say that  
 6 Chevron could have avoided the corruption issues if it had  
 7 just reported this bribery solicitation. When making this  
 8 argument, Ecuador intentionally overlooks the obvious  
 9 context, and context which it had created, namely the  
 10 extremely hostile situation that Correa's Government  
 11 created for Chevron in this case and the unwillingness of  
 12 the Government to do anything that would help Chevron or  
 13 that would derail or even slow down the case. And the way  
 14 the Núñez bribery scandal was handled by Ecuador I think  
 15 vividly illustrates this point, and it's certainly relevant  
 16 to Chevron's actions.  
 17 Judge Núñez was caught on videotape talking to  
 18 remediation contractors about a \$3 million bribe in  
 19 exchange for remediation work to result from the Judgment.  
 20 Patricio García, who Ecuador acknowledges was a political  
 21 coordinator for Correa's party, says on this videotape that  
 22 they were acting for the Presidency, that the Government  
 23 itself was the one behind this, and that of the \$3 million  
 24 bribe, \$1 million was to go to the Judge and another  
 25 \$1 million to the Presidency.

10:24 1 Those statements provide a glimpse of what was  
 2 happening behind the scenes. Judge Núñez met with the  
 3 Parties, not once but twice, during this scheme. At the  
 4 proper time in the bribery negotiations, Judge Núñez was  
 5 brought into the room to meet with the contractors and  
 6 answer their questions. And in the course of that, he  
 7 affirmed that Chevron was guilty, that he would find them  
 8 guilty, that the damages would be huge, and that the  
 9 Judgment would be issued in a few months.  
 10 Chevron had nothing to do with creating these  
 11 videotapes, but when they were brought to its attention, it  
 12 reported them to the authorities in Ecuador.  
 13 But what happened next weren't condemnations of  
 14 the bribery scheme by the Government, but instead  
 15 Government attacks on Chevron for reporting this scheme.  
 16 President Correa called Chevron's reporting of this scandal  
 17 a desperate attempt to delay the proceedings. The Attorney  
 18 General referred to it as a scheme organized by Chevron.  
 19 The Secretary of Transparency called Chevron irresponsible  
 20 and the video recording a crime. And the Prosecutor  
 21 General himself referred to it as a trick.  
 22 The result of all this was that Judge Núñez, while  
 23 temporarily suspended from the bench, ultimately stayed as  
 24 a judge and even became a president of the Provincial Court  
 25 of Sucumbíos later, and the Prosecutor General in turn

10:25 1 closed the investigation requested by Chevron calling  
 2 Chevron's request "reckless and malicious" and even  
 3 threatened to investigate Chevron's lawyers.  
 4 So, what happened when Chevron reported this  
 5 bribery scheme is that the Government changed the focus  
 6 away from the bribery and instead focused on the  
 7 videotapes. And that way, they avoided taking any action  
 8 on the bribery itself but instead implied that it was  
 9 Chevron that had done something wrong.  
 10 Now, unlike the Núñez bribery scandal, Chevron had  
 11 no video or tape-recording of the Judgment bribe  
 12 solicitation, and without it, its lawyers could have been  
 13 sued for defamation or even criminally charged, and the  
 14 same could have happened to Chevron. Ecuador's Prosecutors  
 15 had already shown their willingness to bring sham criminal  
 16 charges against Chevron lawyers, and those charges were  
 17 still pending at this time. And Chevron was not aware at  
 18 that time, and certainly had no objective evidence then  
 19 that Zambrano had struck a deal with the Plaintiffs  
 20 themselves.  
 21 Chevron's lawyer, Adolfo Callejas, testified about  
 22 this in the Rico Case, and what he said was this: "I was  
 23 very mindful of what had happened when we filed a report  
 24 regarding the illegal activities of Judge Núñez. Instead  
 25 of having Núñez investigated, the Plaintiffs managed to

10:27 1 have him investigated, Chevron's lawyer. And he goes on to  
 2 say: "And there was no recording of the phone call. The  
 3 other person could have said it never happened. And he  
 4 could have been charged or sued with having infringed on  
 5 their honor and reputation."  
 6 So, who could Chevron have reported this situation  
 7 to? The Ecuadorian Government was a partisan in the case.  
 8 It had already taken strong public positions against  
 9 Chevron, and now a videotape existed suggesting that it was  
 10 the Government itself that was the one behind this. There  
 11 were no impartial authorities to report this to.  
 12 If Chevron thought it could have obtained relief,  
 13 it certainly would have sought it, but the Correa  
 14 Government created such a hostile environment, such a  
 15 hostile situation for Chevron, as an open enemy of the  
 16 country, in Correa's words, they're reporting the bribe  
 17 solicitation could not have helped Chevron's situation, but  
 18 quite perversely, in the Alice in Wonderland world of  
 19 Ecuador, could have only heard it.  
 20 But, finally, we don't have to speculate on what  
 21 would have happened if Chevron had reported it, because we  
 22 know, we can look now at what Ecuador actually did when the  
 23 evidence of the bribe and the ghostwriting came to its  
 24 attention. Now, did it arrest and prosecute Zambrano? No.  
 25 In fact, Zambrano now works for a company controlled by

10:28 1 Petroecuador and makes more than he ever did.  
 2 Well, did Ecuador at least stay the Judgment until  
 3 it could get to the bottom of this scheme? No, we know  
 4 that didn't happen. It did not obey your Interim Awards.  
 5 What actually happened is that President Correa  
 6 praised the Judgment as the most important Judgment in the  
 7 history of the country, and a year later, after all of the  
 8 evidence had come out and was public, he again praised the  
 9 Appellate Decision. He and his Government continued to  
 10 support the Plaintiffs, they viciously attacked Chevron,  
 11 and they promoted the enforcement of the Judgment as they  
 12 are still doing. So, this Government was not going to  
 13 credit Chevron's complaints or do anything that would help  
 14 derail or even slow down the case.  
 15 In the unique situation of this case, getting any  
 16 relief in Ecuador for Chevron was at that time and is now  
 17 futile.  
 18 Now, Mr. Guerra already knew Donziger and Fajardo  
 19 well from ghostwriting the Court Orders during Zambrano's  
 20 first term, but when Zambrano took over in the second term,  
 21 Guerra sent an e-mail to Donziger in which he asked  
 22 Donziger for help with his daughter in the United States on  
 23 a personal basis, but his last statement is key: "I will  
 24 support the matter of Pablo Fajardo so it will come out  
 25 soon and well." Well, the matter of Pablo Fajardo is

10:30 1 exactly the Lago Agrio Case. And we certainly know what  
 2 "come out soon and well" means now.  
 3 Because of Mr. Guerra's testimony, we now know  
 4 that after Chevron rejected the bribe solicitation, at  
 5 Zambrano's request, Guerra reached out to Fajardo and  
 6 Donziger. He called Fajardo, and Fajardo then set a  
 7 meeting at the Honey & Honey restaurant in Quito.  
 8 Attending that meeting were Guerra and, on behalf of the  
 9 Plaintiffs, Mr. Yanza, Mr. Donziger, and Mr. Fajardo.  
 10 And the only reason for them to meet with Guerra  
 11 was because they knew he represented Zambrano, and the only  
 12 thing he had to offer was to sell the Judgment through  
 13 Zambrano.  
 14 Now, at that meeting, Guerra passed on Zambrano's  
 15 proposal that the Plaintiffs pay him \$500,000 in exchange  
 16 for ghostwriting the Judgment. And Donziger, in his sworn  
 17 testimony in the RICO case, has corroborated Mr. Guerra's  
 18 testimony. He admits that, in fact, the Plaintiffs did  
 19 meet with Mr. Guerra, and he admits that at this meeting  
 20 Guerra did solicit a \$500,000 bribe in exchange for fixing  
 21 the case.  
 22 Where they differ is on the result. Guerra says  
 23 that Donziger told him they regretted it but they just  
 24 didn't have the money at that point in time. Donziger says  
 25 he rejected the bribe outright. But Guerra has testified

10:31 1 that Zambrano later told him that he worked out a deal with  
 2 Fajardo, with Zambrano agreeing to pay the  
 3 Plaintiffs--excuse me, with Zambrano agreeing to allow the  
 4 Plaintiffs to ghostwrite the Judgment in return for  
 5 \$500,000 to be paid out of the Judgment's proceeds.  
 6 Now, we know that this bribe solicitation to the  
 7 Plaintiffs occurred. Donziger has admitted it in his RICO  
 8 testimony. But what did the Plaintiffs do after that bribe  
 9 solicitation occurred? Well, did they report it to the  
 10 authorities? No, we know that didn't happen. Donziger has  
 11 admitted in his testimony they didn't report it. What they  
 12 actually did, after Guerra had solicited this bribe, is  
 13 that Fajardo approached Guerra about being an expert  
 14 witness for them in the RICO case in New York on the  
 15 integrity of the judicial system in Ecuador. That's what  
 16 they did. And Donziger admitted in his RICO testimony that  
 17 he was aware that that approach took place.  
 18 So, the Plaintiffs certainly weren't outraged by  
 19 this bribe solicitation. They later reached out to Guerra  
 20 to be an expert for them.  
 21 Now, there were compelling reasons why the  
 22 Plaintiffs had to ghostwrite the Judgment. They had many  
 23 problems in the case and they had to take care exactly what  
 24 the Judgment said. Zambrano clearly wasn't up to the task  
 25 of writing this Judgment either by training or experience.

10:33 1 He had to have Guerra help him with even routine civil  
 2 Orders. And having made so many deals with the devil  
 3 already, the Plaintiffs couldn't leave the most important  
 4 part of the case, the Judgment, to chance. They needed to  
 5 control the contents of the Judgment.  
 6 First, because now that the Cabrera fraud was  
 7 publicly exposed and they couldn't deny it, they needed to  
 8 ensure that the Judgment would not expressly rely on the  
 9 Cabrera Reports because that would endanger the enforcement  
 10 of the Judgment abroad. The purpose of the cleansing  
 11 experts was to use the Cabrera Reports but in a disguised  
 12 form, so they needed to draft the Judgment very carefully  
 13 to obfuscate its reliance on Cabrera.  
 14 Second, they also needed control because they had  
 15 sued the wrong party. As Donziger himself had said, at one  
 16 time expressly, that they sued the wrong party in Chevron.  
 17 But now with the Judgment coming up they had to provide  
 18 some justification for how they could prevail against  
 19 Chevron. So what they did was to turn to their own  
 20 internal documents which they had before them in drafting  
 21 the merger section of the Judgment. They turned to the  
 22 Fusion Memo and the Erion Memo, their own internal memos  
 23 which were never filed with the Court, and they used those  
 24 to carefully draft that part of the Judgment.  
 25 Third, they had a major problem with causation

10:35 1 because of Petroecuador's operations and the fact they  
 2 didn't sue it and couldn't sue it because of their quid pro  
 3 quo agreement with the Government. So they needed to write  
 4 the Judgment in order to justify a decision against only  
 5 Chevron and to ignore Petroecuador's impacts.  
 6 Fourth, in order to pressure Chevron, they also  
 7 wanted to control the amount of the damages and the  
 8 allocation of those damages, and we can see the Plaintiffs'  
 9 fingerprints very clearly in this Judgment in the  
 10 \$8.5 billion punitive damage award, which they inserted as  
 11 their bargaining tool. They put that in, conditioned on a  
 12 public apology which would have effectively meant an  
 13 admission. So, they put that in the Judgment as the  
 14 Plaintiffs' own bargaining tool to pressure Chevron.  
 15 And finally, they needed to make sure that the  
 16 money would go into a trust so that they could assure their  
 17 funders the money wouldn't all disappear.  
 18 Now, it's telling that when Donziger was asked the  
 19 question in the RICO case whether the Plaintiffs prepared a  
 20 proposed Judgment, he evaded the question. In 12 words he  
 21 gave three different answers: "I don't believe so. I  
 22 don't know. It's possible." Now, that's not an answer,  
 23 it's an obfuscation. It's a Richard Nixon-type answer. He  
 24 knew the real answer--he knew the real answer--but he was  
 25 trying to fudge it, but at the end he gave it away. "It's

10:36 1 possible." Well, in fact, it's more than possible. The  
2 Plaintiffs' fingerprints are all over the Judgment, and I  
3 would like to move now to that issue.

4 At least nine of the Plaintiffs' internal  
5 documents were used in drafting the Judgment. The list is  
6 on Slide 57 before you, and none of those documents were  
7 ever filed in the Court record.

8 Now, it's likely that the Plaintiffs used more of  
9 their own documents in drafting the Judgment, but we never  
10 obtained access to Mr. Fajardo's computer or his documents  
11 or those of the other Plaintiffs' Ecuadorian lawyers for  
12 the Plaintiffs, Mr. Yanza, Mr. Sáenz, or Mr. Prieto. Those  
13 documents were subpoenaed in the RICO case, but Fajardo ran  
14 to an Ecuadorian court, got an order blocking access to  
15 those documents and they were never revealed and never  
16 produced in the RICO case.

17 Now, as I noted earlier, Ecuador itself does not  
18 take issue with the fact that the Judgment relies on at  
19 least three of these Plaintiffs' documents in preparing the  
20 Judgment: The Fusion Memo, the Clapp Report, and the Selva  
21 Viva Database.

22 Now, the next slide is the three pages of the  
23 Judgment that I showed you earlier, Pages 20, 21, and 24,  
24 and what you see is that the highlighted words are words  
25 that were taken verbatim from the Plaintiffs' own Fusion

10:39 1 And the next one is from the Fajardo Trust e-mail  
2 which is copied on the left into Page 186 of the Judgment,  
3 which is the Trust section. The highlighted words are  
4 words copied verbatim from that e-mail.

5 And I might add that the Fajardo e-mail and the  
6 Judgment contain the same idiosyncratic case citations and  
7 word choices.

8 Now, the Judgment also contains identical mistakes  
9 as those made in the Plaintiffs' own internal documents.  
10 What you see here is from the Plaintiffs' Index Summary,  
11 and you'll see the Court Record on the left with certain  
12 page numbers, for example, then the Plaintiffs' June Index  
13 Summary makes certain mistakes. It gets the page numbers  
14 wrong at various--in various places--614 instead of 612, et  
15 cetera--and at one point it puts a spurious accent mark in  
16 the word "ambientales," quite improperly.

17 But what you see is that the Plaintiffs' documents  
18 were making mistakes as compared to the Court Record, but  
19 then the Judgment copies exactly those same mistakes into  
20 the Judgment, showing that the Judgment was again copying  
21 from the Plaintiffs' documents. This, again, I think is  
22 evidence that the Plaintiffs were cutting and pasting from  
23 their own documents in the Judgment.

24 Now, the Judgment also copies extensively from the  
25 Plaintiffs' internal Selva Viva Database--that is an Excel

10:38 1 Memo.

2 Now, on the next slide, you see a split screen of  
3 Page 5 of the Fusion Memo and Page 21 of the Judgment. And  
4 I would like for you in particular to note on the left-hand  
5 side of the screen at bottom, the footnote, Footnote 12 of  
6 the Fusion Memo. The Judgment itself did not use  
7 footnotes, so the footnotes were put into the body of the  
8 Judgment. But note this footnote. There is an  
9 out-of-order numbering sequence, with the Number 6964 out  
10 of order, and in the footnote there is also a perfectly  
11 proper period at the end of it.

12 But watch what happens when the footnote gets put  
13 into the body of the Judgment. You see that the Judgment  
14 now copies verbatim, including the out-of-order numbering  
15 sequence that we had seen in the footnote, but also the  
16 period that was at the end of the footnote is now put into  
17 the middle of a sentence in the Judgment and is quite  
18 incorrect. It's a spurious period at this point, creating  
19 two sentence fragments.

20 But what we see here is clear evidence that the  
21 Plaintiffs were cutting and pasting from their own  
22 documents into the Judgment.

23 Now, the next slide shows you on the left the  
24 Clapp Report and the same words were copied into the  
25 Judgment.

10:41 1 spreadsheet that the Plaintiffs used--and there are over  
2 100 examples--about 100 examples--of the Judgment copying  
3 from this database. But since Ecuador admits that, I'm  
4 only going to give you one example. And this is an example  
5 of certain filed Lab Results that for certain samples show  
6 those Lab Results as being in micrograms per kilogram. But  
7 for exactly those same samples, the Selva Viva Database  
8 makes a mistake. It lists them incorrectly as being in  
9 milligrams per kilogram. And then, for exactly those same  
10 samples, the Judgment makes exactly the same mistake  
11 because it's copying from the Selva Viva Database.

12 As I said, there are about 100 examples of this in  
13 the Judgment, but since it's essentially admitted, I'm only  
14 going to give the one for now in the interest of time.

15 Now, another of the Plaintiffs' documents that the  
16 Judgment relies on is the Moodie Memo. Moodie, Nick  
17 Moodie, was an Australian intern who worked for the  
18 Plaintiffs and he wrote a causation memo discussing  
19 Australian and U.S. tort causation law, and this is another  
20 of the Plaintiffs' fingerprints in the Judgment.

21 Professor Michael Green, who is the reporter for  
22 the U.S. restatement of torts, has compared the Moodie Memo  
23 to the Judgment, and he's concluded that it's highly  
24 unlikely that the Judgment was prepared independently of  
25 the Moodie Memo for three reasons: First, because of the

10:43 1 same foreign law that they both address in the causation  
2 section; second, because of the same idiosyncratic choice  
3 of which U.S. law to address in both documents; and, third,  
4 because of the same mistakes that are common to both  
5 documents.

6 Now, the next slide shows you a chart of some of  
7 the commonalities between the Moodie Memo on the left and  
8 the Judgment on the right, and you will see virtually  
9 exactly the same legal propositions asserting to the same  
10 law in both documents, and this was one of the things that  
11 Professor Green was relying upon.

12 But Professor Green did not have all of the  
13 evidence at that time. Because since his Report, we have  
14 now found in the forensic examination of Zambrano's  
15 computer a December 21 Providencias--Providencias being a  
16 draft of the Judgment about the--as of December 21, it had  
17 about the first 107 pages of the Judgment.

18 But what we see now is clear evidence of copying  
19 from the Moodie Memo. You see, for example, that the  
20 Moodie Memo in its discussion of substantial factor cites  
21 to two U.S. cases: Whitley versus Philip-Morris and  
22 Rutherford versus Owens Illinois. Well, those cases are  
23 not in the Court Record. Mr. Juola has testified to that.  
24 In this Providencias, found on Mr. Zambrano's computer as  
25 of December 21, you see a discussion of the substantial

10:44 1 factor test, and what does it do? It cites to exactly the  
2 two same U.S. cases as are cited in the Moodie Memo.

3 And as I said, this is one of the important  
4 discoveries to come out of the forensic examination of  
5 Zambrano's computers, and we find from it that there was  
6 another of the Plaintiffs' documents that was copied into  
7 the Judgment, and that was the Erion Memo.

8 That memo cites--discusses certain legal  
9 propositions and cites in support of those propositions  
10 nine U.S. authorities. And those same legal propositions  
11 and those same nine U.S. citations in precisely the same  
12 form are found in the December 21 Providencias on  
13 Zambrano's computer. And you see one example, on Slide 67,  
14 patent injustice citing to the Penn Central Securities case  
15 with the same cite, and the manifest injustice citing to  
16 the Acushnet River case with an incomplete citation, but  
17 you see the same incomplete citation in both documents,  
18 although the Providencias never gives the full citation for  
19 that case.

20 On the next slide you see exactly the same pattern  
21 playing out with two more cases being cited in support of  
22 certain legal propositions in the Erion Memo, and for  
23 exactly the same propositions, those same two U.S. cases in  
24 exactly the same form are cited in the Providencias on  
25 Zambrano's computer.

10:46 1 So, what is Ecuador's response to all of this  
2 evidence? Well, Ecuador speculates that the documents, or  
3 at least some of them, just must have been filed but the  
4 Court clerk was just incompetent. It was just sloppy  
5 recordkeeping, they said. That's their defense.

6 Well, Dr. Patrick Juola, a professor at Duquesne  
7 University, performed an electronic search of the record.  
8 He checked the quality of the record, and he found it to be  
9 generally excellent. Where there were any issues, he  
10 performed a page by page hand search with two people  
11 working independently. He also searched the 69 CDs of the  
12 Court Record that went up on appeal, and his analysis  
13 confirmed that the Plaintiffs' internal documents, which  
14 are copied in the Judgment, the ones I've been talking  
15 about, are not found in the Court Record.

16 Independently, Mr. Samuel Hernandez of Morningside  
17 Translations, also conducted a hand review of the parts of  
18 the Court Record where you would logically expect to find  
19 any of these documents, such as in the Plaintiffs' own  
20 filings, but he also confirmed that the Plaintiffs' work  
21 product is not found in the record.

22 Now, very importantly, Ecuador itself has had full  
23 access to the Court Record, and if any of these documents  
24 were found in the Court Record over the last three years,  
25 they certainly would have called them to your attention.

10:48 1 But they haven't. Ecuador has failed to identify any of  
2 these documents anywhere in the Court Record, and they have  
3 not pointed you to any place where you can find them. And  
4 none of the RICO Defendants pointed in that case to where  
5 any of these documents could be found in the record.

6 Now, that hasn't prevented Ecuador from  
7 speculating, however, that, for example, the Fusion Memo  
8 was filed. There were some e-mails early on that indicated  
9 the Plaintiffs might file that document, but as the  
10 judicial inspection approached at which they were going to  
11 discuss with the Court the merger issue, Donziger sent  
12 several e-mails to another the Ecuadorian--another of the  
13 Ecuadorian lawyers, Juan Pablo Sáenz, insisting that Sáenz  
14 give him a list of every merger document to be filed at the  
15 inspection, and the word "every" was capitalized as an  
16 emphasis by Donziger. He wanted a list of every document  
17 they were going to file. And in response, he got that  
18 list, and that list lists every single document that they  
19 intended to file, and it does not include the Fusión Memo,  
20 and there is no dispute about that.

21 And we also have the Court's list of the documents  
22 it received at that judicial inspection, and there is no  
23 dispute that the Court's own list of the documents received  
24 does not include the Fusion Memo. So, we have both sides,  
25 what the Plaintiffs intended to file and what the Court



10:49 1 received, and the Fusion Memo is not in there.  
 2 Now, Ecuador suggests, however, that perhaps the  
 3 judge was just informally shown the document or read the  
 4 document. But we know that didn't happen, because Zambrano  
 5 wasn't the Presiding Judge at this judicial inspection. In  
 6 fact, he wasn't the Presiding Judge at any of the judicial  
 7 inspections. They had already concluded before he became  
 8 the Presiding Judge, so we know that Zambrano could not  
 9 have been handed, shown or read the Fusion Memo in this  
 10 way.  
 11 Now, Ecuador also speculates that the Clapp Report  
 12 surely must have been filed. And, again, there were  
 13 e-mails from the Plaintiffs suggesting that they might file  
 14 it at one time. But when Cabrera was appointed as the  
 15 global expert in March of 2007, the Plaintiffs changed  
 16 their plans, and we can see it very clearly, because what  
 17 the Plaintiffs did was they used the Clapp Report in  
 18 drafting Annex K to the Cabrera Reports, but now having  
 19 used the Clapp Report in drafting the Cabrera Reports, they  
 20 couldn't very well file the Clapp Report into the Court  
 21 Record without revealing the Cabrera ghostwriting scheme.  
 22 And as I've said, nobody has found the Clapp Report  
 23 anywhere in the Court Record, not Mr. Hernandez, not  
 24 Mr. Juola, and not Ecuador itself.  
 25 Now, Ecuador also claims that the Fajardo e-mails

10:51 1 in December 2010 and January 2011 show that the Plaintiffs  
 2 didn't know when the Judgment was going to be issued and  
 3 thus couldn't have ghostwritten the Judgment. But this  
 4 explanation just exalts substance over form--excuse me,  
 5 exalts pretense over substance--and ignores the evidence in  
 6 this case. Fajardo knew very well that the Judgment wasn't  
 7 going to rely on the Plaintiffs' alegatos because he was  
 8 already drafting the Judgment when he was sending these  
 9 e-mails.  
 10 The first of Fajardo's e-mails that Ecuador points  
 11 you to is dated December 17, 2010. But now, with the  
 12 Zambrano hard drive examination, forensic examination, we  
 13 have this December 21, 2010 Providencias found on  
 14 Zambrano's computers, only four days after Fajardo had sent  
 15 that e-mail. And what we see is that it was already  
 16 copying from six--at least six of the Plaintiffs' internal  
 17 documents.  
 18 But the Plaintiffs still needed to file the  
 19 alegatos as a matter of form before the Judgment was  
 20 issued. So, Fajardo, in the e-mails, was exhorting his  
 21 team to finish the alegatos as soon as they can, but he  
 22 couldn't tell the non-core team members that the fix was  
 23 in. And by late 2010, when he sent these e-mails, Fajardo  
 24 already knew very well that the e-mails might be subpoenaed  
 25 in the United States, especially for U.S. team members.

10:53 1 That had already happened with Donziger and with Stratus,  
 2 and other 1782s were already filed and proceeding in the  
 3 United States at that time.  
 4 And very importantly, all of Fajardo's e-mails to  
 5 which Ecuador points included either American members of  
 6 the team who were recipients of those e-mails or very  
 7 junior members of the team, but they weren't core members  
 8 of that team.  
 9 The Federal Court in the RICO case noted this fact  
 10 very expressly, saying that all of these e-mails went to  
 11 non-core members of the team in saying there is no reason  
 12 to believe that any of the core three--Fajardo, Donziger  
 13 and Yanza--would have confided the fact that they had  
 14 bribed Zambrano to any of the other recipients of the  
 15 e-mails, and noting that this trio had a long record of  
 16 keeping knowledge of questionable behavior as close to  
 17 their personal vests as possible.  
 18 Now, by contrast, when there was truly sensitive  
 19 information involved, Fajardo included only the core team  
 20 members, as in these three e-mails which were confined to  
 21 Fajardo, Donziger, and Yanza, and these e-mails are e-mails  
 22 where they were discussing ghostwriting the Judgment.  
 23 So, in short, the Fajardo e-mails aren't proof of  
 24 anything except that Fajardo and Donziger played it close  
 25 to the vest when important information about questionable

10:54 1 conduct was involved, and these e-mails certainly don't  
 2 explain or wash away the clear evidence that the  
 3 Plaintiffs' unfiled documents were used in drafting the  
 4 Judgment.  
 5 Now, Ecuador's defense to all of this, as I said,  
 6 is just sloppy recordkeeping by the clerk, but that is not  
 7 a defense under Ecuadorian law. Dr. Velázquez, in his  
 8 Report, says that, under Ecuadorian law, documents must be  
 9 filed to have any procedural or evidentiary value in a  
 10 case, the normal rule you would find in any Court system.  
 11 And he goes on to say that a judge may not base a judgment  
 12 in Ecuador on a document that's not included in the record.  
 13 That would illegitimize the judgment and should result in  
 14 its nullity. And I might note that Dr. Velázquez has not  
 15 been called for cross-examination by Ecuador.  
 16 Now, that brings me to my fifth point, which  
 17 relates to Zambrano's testimony in the RICO case. Zambrano  
 18 testified there that the Judgment--this judgment--was the  
 19 largest and most significant decision of his career. In  
 20 fact, we know that's true because it's the largest decision  
 21 in the history of Ecuador by many factors.  
 22 And he says he spent months working on it. And he  
 23 says he wrote every word of this judgment himself with no  
 24 help from anyone else. That was his testimony. And the  
 25 day after the Judgment was issued, Zambrano appeared at a

10:56 1 press conference with the head of the Judicial Council who  
2 called him a shining star, and I will let him--his words  
3 speak for themselves.

4 (Video played.)

5 MR. BISHOP: But despite the significance of this  
6 judgment to him, when Zambrano was asked at the RICO trial  
7 if he had any documents--any documents whatsoever--showing  
8 that he authored the Judgment, he had to answer "no."

9 Now, he says he had made notes, but he says he  
10 threw those notes away about a year later, even though he  
11 knew Chevron was appealing the Judgment, and even though  
12 he knew Chevron was claiming that the Judgment was  
13 ghostwritten, he cavalierly tossed his notes away. So, he  
14 has no documents evidencing that he wrote the Judgment.

15 And when he was asked about the contents of the  
16 Judgment, he couldn't answer even the basics. He was  
17 asked the very simple question of what theory of causation  
18 was adopted by the Judgment. Well, despite a several page  
19 discussion of this topic in the Judgment, he didn't know  
20 the answer.

21 He was asked what the English word "workover"  
22 means which appears in the Judgment twice. He didn't  
23 know--perhaps because that word was taken, was cut and  
24 pasted verbatim from the Fusion Memo by the Plaintiffs  
25 themselves.

10:59 1 But we know that testimony is false, and Ecuador  
2 itself admits that that testimony is wrong. Zambrano  
3 indicated he started drafting the Judgment in  
4 mid-November 2010, but the new computer wasn't even  
5 purchased until November 26th, and it wasn't activated  
6 until December the 7th. And from then until the Judgment  
7 was issued on February 14th, 2011, Microsoft Word was only  
8 open on the new computer for a total of 36 hours, not  
9 nearly enough time to draft the Judgment. So, Zambrano's  
10 repeated and insistent testimony that the Judgment was  
11 drafted only on the new computer is demonstrably false.

12 Now, Zambrano also testified that he personally  
13 hired an 18-year-old recent graduate, Evelyn Calva, to  
14 type the Judgment. He didn't use any of the court  
15 secretaries with the Court. He says he personally hired  
16 her, he personally paid her, and she worked only on the  
17 Chevron Case. He testified that he dictated almost every  
18 word of the Judgment to her, about 85 percent, and never  
19 handed her a document to type from. It was all done by  
20 dictation.

21 And he also testified that the remarkable  
22 Ms. Calva, 18 years old, did legal research for him and  
23 did legal research in foreign law, and that she's the one  
24 who found the U.S., English, and Australian case law  
25 discussed in the Judgment, and she found it on the

10:57 1 He was asked what the term "TPH" means which is  
2 used in the Judgment 41 times, but he couldn't answer  
3 beyond saying it has something to do with hydrocarbons.

4 Well, Ecuador suggests that, well, maybe he was  
5 just confused because the proper acronym in Spanish is  
6 "HTP" and not "TPH," but this only proves the point,  
7 because the original Spanish version of the Judgment  
8 doesn't use the Spanish acronym "HTP." It uses the  
9 English acronym "TPH," and it uses it 41 times.

10 So, if Zambrano was confused about this as  
11 Ecuador says, it's because he didn't draft the Judgment.

12 And it's remarkable that Zambrano, if he did  
13 draft the Judgment, wouldn't know the term TPH, because  
14 this was precisely the term that was the basis for the  
15 largest damage award in the Judgment: The \$5.4 billion  
16 for soil remediation. \$5.4 billion was awarded precisely  
17 to clean up TPH, so it was of real significance in the  
18 Judgment.

19 Now, Zambrano also testified that the Judgment  
20 was drafted only on the new computer in his office, and,  
21 in fact, he repeated that testimony several times, and he  
22 was quite insistent on it. He even drew a map of his  
23 office, noted where the new computer was located, and said  
24 that his typist sat only there and only typed the Judgment  
25 only on the new computer. He was very clear about that.

11:01 1 internet.

2 Now, I ask you: Is it plausible that the foreign  
3 law cases discussed in the Judgment were found on the  
4 internet, as Zambrano testified, by his 18-year-old  
5 assistant? Could you do legal research in a foreign  
6 language and on a foreign legal system which you don't  
7 know and could you have done it when you were 18 years  
8 old? I know I certainly couldn't. But the evidence is  
9 clearly inconsistent with Ms. Calva having done any of  
10 this.

11 First, Ecuador isn't bringing Ms. Calva to  
12 testify in this Hearing to corroborate Zambrano's  
13 testimony.

14 Second, there is no evidence whatsoever that she  
15 had any training or experience in doing legal research,  
16 much less in foreign law, or that she had the language  
17 skills in English and French to do so.

18 And, third, the forensic evidence on Zambrano's  
19 computer is inconsistent with his testimony.

20 And fourth, we can compare the Judgment again  
21 with the Plaintiffs' internal Moodie Memo and see plainly  
22 that the Judgment closely tracks that memo of the  
23 Plaintiffs, its legal propositions and the U.S. case law  
24 that it cites.

25 So, what's more plausible? That the 18-year-old

11:02 1 Ms. Calva did legal research in foreign law on the  
2 internet and just happened to find exactly the same cases  
3 that were cited by the Plaintiffs in their unfiled  
4 documents? Or that the Plaintiffs themselves ghostwrote  
5 the Judgment with their own documents in front of them?  
6 And is it plausible--is it plausible--that  
7 Ms. Calva just happened to type from Zambrano's dictation  
8 the same identical mistakes that are found in the  
9 Plaintiffs' unfiled documents?  
10 Now, the timing of Zambrano's testimony in the  
11 RICO case is also suspect. Judge Zambrano was dismissed  
12 as a judge in February 2012 for "inexcusable judicial  
13 error revealing notorious ineptitude or carelessness in  
14 the administration of justice." Now, he was dismissed  
15 because he released a high-profile--a major drug  
16 trafficker in a high-profile national police action--he  
17 released him from custody, and he was clearly suspected of  
18 corruption, of having accepted a bribe, but he was found  
19 guilty expressly of the inexcusable judicial error.  
20 Well, he was also found guilty in a second  
21 incident and dismissed for, again, for inexcusable  
22 judicial error, for arbitrary action, totally contrary to  
23 the provisions of express legal rules. Yet this is the  
24 judge that Ecuador tells you wrote every word of the  
25 188-page Judgment.

11:04 1 Now, Zambrano also had a history when he was a  
2 prosecutor of soliciting bribes. There are many  
3 complaints in the file from individuals, from attorneys  
4 accusing him of soliciting bribes as a prosecutor. One of  
5 those was a petition filed by 41 people in 2006, just two  
6 years before he became a judge. And this is what they  
7 said: "Our collective indignation is based not only on  
8 events that occurred recently, but also because we have  
9 become aware of a number of irregular and reprehensible  
10 acts of Zambrano, who has been unable to maintain an  
11 honorable track record as a public official, but has made  
12 his professional career by a path of extortion, blackmail  
13 and shame." That's what they said about him.  
14 We also know that in 2004, the Napo Bar  
15 Association itself requested that the Prosecutor General  
16 suspend Zambrano for soliciting bribes. And we also know  
17 that when he was considered for judgeship, the national  
18 police certified that Zambrano had been arrested twice for  
19 theft.  
20 Now, after being dismissed as a judge, Zambrano  
21 was then unemployed for a year, until he signed the  
22 Declaration in the RICO case in March of 2013. Just a  
23 month after that, he was then invited to a new job as a  
24 legal advisor to the Refinery of the Pacific, a large  
25 company, a major investment of Petroecuador and a company

11:06 1 controlled by Petroecuador, the national oil company of  
2 Ecuador. So, you can see that he was hired to this new  
3 position with--for a company of Petroecuador only a month  
4 after giving his RICO Declaration.  
5 But at the RICO Hearing, it was interesting that  
6 Zambrano didn't even know the basics about his new  
7 employer. He had never visited the company's website and  
8 he didn't even know he had an e-mail address there.  
9 And what was--you're undoubtedly going to ask,  
10 what was Zambrano's explanation for how these Plaintiffs'  
11 documents got copied into the Judgment? Well, this is  
12 from his RICO Declaration, Paragraph 16, and this is what  
13 he said: "I should mention that occasionally documents  
14 related to the case that were not incorporated into the  
15 process were left at the door to my office at the Court.  
16 This was relevant information that, as I read it, I  
17 realized it could be of use in my decision." That's his  
18 apparent explanation. He's saying he nontransparently and  
19 ex parte accepted unfiled documents and used them in  
20 drafting the Judgment.  
21 Now, he tried to clean up this testimony by  
22 saying, well, he matched up the information in the  
23 documents to the record. He doesn't say he matched up the  
24 documents themselves. He says he matched up the  
25 information in them. But we know it's demonstrably untrue

11:07 1 for those Plaintiffs' documents that were copied into the  
2 Judgment.  
3 But if this Declaration is correct, if his  
4 explanation is correct, that's a violation of Ecuadorian  
5 law. But, quite frankly, it's just not plausible. What's  
6 far more plausible is that the Plaintiffs themselves  
7 ghostwrote the Judgment using their own documents which  
8 they had before them.  
9 And the Federal Court in the RICO case rejected  
10 Zambrano's testimony. It found that his testimony was  
11 unpersuasive for a host of reasons, among which were the  
12 many inconsistencies in it, and finding that Zambrano was  
13 a remarkably unpersuasive witness. Unfortunately, he  
14 won't be here this week so you can see exactly the same  
15 thing that the RICO Court saw.  
16 Now, I would like to turn quickly to my final  
17 point--I think my time is starting to run short--and my  
18 final point is that the appellate courts abdicated their  
19 responsibility to review the fraudulent conduct.  
20 Former Minister Álvarez, in his three Expert  
21 Reports which you have before you in this case--and  
22 Mr. Álvarez also has not been called for cross-examination  
23 by Ecuador--but in his three Reports he has chronicled the  
24 events of the Ecuadorian judiciary since the Correa  
25 administration took power. Since then, that

11:08 1 administration has purged the Constitutional Court, has  
 2 twice replaced the judges on the National Court of  
 3 Justice, and also the members of the Judicial Council.  
 4 And the administration's own statistics for only an  
 5 18-month period show that they had dismissed 442 judges  
 6 and suspended 334 judges. And, in fact, if we take into  
 7 account all of the judges that were sanctioned in that  
 8 18-month period, it's well over half of the judges in  
 9 Ecuador. As one news editorial said, those statistics  
 10 show either widespread incompetence in the judiciary or  
 11 political tampering with the judiciary, or both.  
 12 Now, you have seen this next slide before in an  
 13 earlier Hearing. This shows just a few of the many cases  
 14 in which the Correa administration has dismissed or  
 15 suspended judges for the rulings in specific cases in  
 16 which Correa took an interest. And we know that Correa  
 17 has taken a specific interest in the Lago Agrio Case, not  
 18 only endorsing the Plaintiffs' case, but also endorsing  
 19 the Judgment as the most important judgment in the history  
 20 of the country, and also endorsing the Appellate Decision.  
 21 Now, former Minister Álvarez has given the  
 22 opinion that in the context of President Correa's efforts  
 23 to control the courts, the Ecuadorian judiciary is not  
 24 independent in cases in which the Executive takes an  
 25 interest, and the Southern District of New York in the

11:10 1 RICO case found the same thing.  
 2 Now, Ecuador suggests that it's just Mr. Álvarez  
 3 saying this, but it's not. Many former members of  
 4 Ecuador's judiciary have publicly noted the lack of  
 5 judicial independence during the Correa administration. A  
 6 former Justice of the Supreme Court and former President  
 7 of the Inter-American Court of Human Rights is one of  
 8 them.  
 9 Another, in the second bullet point, is Carlos  
 10 Estarellas. Now, Ecuador keeps referring you to their  
 11 judicial reforms and they keep trumpeting their 2005  
 12 judicial reform over and over. But this is the man who  
 13 was the Chairman of the Special Committee that selected  
 14 the numbers of the Supreme Court in that reform, but this  
 15 is what he's saying now in 2010 during the Correa  
 16 administration: "The great misfortune of justice is that  
 17 political interests are not resigned to have no  
 18 interference in the courts. In Ecuador, I do not see the  
 19 principle of independence, as contemplated in the  
 20 Constitution, is being complied with."  
 21 Now, you don't have to go so far as to find a  
 22 general lack of independence of the judiciary in Ecuador.  
 23 Our point is that in the specific circumstances of this  
 24 case, with President Correa and his Government making the  
 25 Lago Agrio Case into a national cause, with them calling

11:12 1 Chevron an open enemy of the country, Chevron could not  
 2 get a fair trial in Ecuador, and that's as far as you or  
 3 we need to go.  
 4 Now, against this background, the Lago Agrio  
 5 Judgment was appealed, but the Appellate Court, whose  
 6 Constitution was manipulated, abdicated its constitutional  
 7 duty to review the allegations of fraud and corruption and  
 8 to correct the wrongdoing. And the National Court of  
 9 Justice followed exactly the same pattern: Despite its  
 10 constitutional duties, it also refused to look at the  
 11 evidence of fraud and corruption.  
 12 Now, since then, despite at least 12 letters from  
 13 Chevron requesting investigations over the past six years  
 14 of this pattern of fraud and corruption, the Government  
 15 has done nothing of substance. No one has been charged,  
 16 and no one has been punished.  
 17 And, in fact, since the Judgment was issued,  
 18 President Correa and the Government have stepped up their  
 19 attacks on Chevron and strongly supported the Judgment.  
 20 In almost every weekly national radio address, President  
 21 Correa supports the Plaintiffs, the Judgment, and attacks  
 22 Chevron very strongly. In fact, during a very critical  
 23 stage of the enforcement proceedings for the Judgment in  
 24 Argentina, President Correa flew to Buenos Aires, he met  
 25 with the President of Argentina, and he told the press,

11:13 1 "of course we're going to support our citizens and try to  
 2 ensure that the court ruling is complied with."  
 3 I would also point you to the fact that the  
 4 Foreign Ministry has conducted many meetings abroad  
 5 through the embassies, again attacking Chevron and  
 6 supporting the Judgment, and the Foreign Ministry has even  
 7 published a pamphlet, after your Interim Awards were  
 8 published, calling the Lago Agrio Judgment "the first big  
 9 triumph" and declaring that the Judgment is enforceable  
 10 everywhere in the world. And Ecuador's Foreign Ministry,  
 11 on the instructions of President Correa, has made this a  
 12 matter of first priority for the foreign policy of the  
 13 country, and I will let you hear that directly from the  
 14 Foreign Minister.  
 15 (Video played.)  
 16 MR. BISHOP: With the case as a matter of first  
 17 priority of Ecuador's foreign policy, then that means it's  
 18 a matter of national interest, and it's a matter of  
 19 government policy. And all of this has been done by the  
 20 Government, it continues to be done in violation of the  
 21 Interim Awards that you have issued.  
 22 With that, I will end my part of the  
 23 presentation, and I'm going to turn the floor over to  
 24 Mr. Coriell, but I suspect that all of us probably need a  
 25 break at this point.

11:15 1 Thank you, Mr. President.  
 2 PRESIDENT VEEDER: I think you guessed right.  
 3 Let's have a 15-minute break, which is not more  
 4 than 15 minutes, and we will resume with Mr. Coriell.  
 5 (Brief recess.)  
 6 PRESIDENT VEEDER: Let's resume.  
 7 Mr. Coriell, you have the floor.  
 8 MR. CORIELL: Thank you, Mr. President.  
 9 Members of the Tribunal, you've seen from  
 10 Mr. Bishop the Judgment fraud this morning, and now I'd  
 11 like to take a look at the Judgment itself, not for mere  
 12 error, not as an appellate court would do, but at the  
 13 egregious substantive holdings that show that in the words  
 14 of Mr. Fitzmaurice, no honest and competent Court could  
 15 have made them.  
 16 And I want to focus on the three most egregious  
 17 legal absurdities in the Judgment. We've briefed a series  
 18 of them, but I want to talk first about how the Judgment  
 19 ignores and, in fact, breaches, to take you back to the  
 20 Track 1 issues, the Settlement and Release Agreements.  
 21 Number 2, how it ignores the basic tort element  
 22 of causation, a requirement in any legal system for Civil  
 23 Liability, and third, how it ignores Ecuadorian principles  
 24 of corporate separateness.  
 25 So, legal absurdity Number 1, relating to the

11:31 1 Release Agreements.  
 2 And you'll recall, of course, your Track 1 Award  
 3 from a little over a year ago, and I've put the operative  
 4 language on the screen at Slide 106. It's from  
 5 Paragraph 112, Section 3, where you said that "the scope  
 6 of the Releases" does not extend to "any environmental  
 7 claim made by an individual"--and here you gave the  
 8 standard--"for personal harm in respect of that  
 9 individual's rights separate and different" from  
 10 Ecuador's.  
 11 And you went on to say, though, that it does have  
 12 legal effect under Ecuadorian law to preclude any diffuse  
 13 claim under Article 19.2, whether it's made by Ecuador or  
 14 by an individual not claiming, and here that language is  
 15 again, "personal harm actual or threatened."  
 16 So, two key holdings here that we can key off of  
 17 from your Award. The first is that diffuse claims under  
 18 Article 19.2, which is the constitutional provision giving  
 19 a right to a clean environment, are barred; and the second  
 20 is that the standard for whether a claim is diffuse or  
 21 individual for determining whether it's barred under these  
 22 releases is personal harm. You say it twice here: An  
 23 individual complaint as opposed to a diffuse complaint  
 24 must allege personal harm, and an individual Judgment as  
 25 opposed to a diffuse Judgment must vindicate personal harm

11:32 1 with personal harm findings.  
 2 Well, the Lago Agrio Judgment, we submit, has no  
 3 personal harm findings. It vindicates only diffuse  
 4 claims, claims that you held are barred by the Releases,  
 5 and we can see this first by looking at the Plaintiffs'  
 6 own words. My colleague's passing around what was an  
 7 appendix to our Track 1B Reply Memorial in January of  
 8 2014, which contains the series of statements by the  
 9 Plaintiffs, by Ecuador in this arbitration and Court  
 10 filings and statements by the Ecuadorian courts showing at  
 11 each level how this is a diffuse case. But let's look at  
 12 Slide 107 to the words of Plaintiffs' lawyer Julio Prieta,  
 13 where he said, "what we're claiming in this lawsuit has  
 14 never been indemnifications for damages to individuals due  
 15 to health reasons or for the death of a particular  
 16 person." In other words, no individual damages. We're  
 17 not suing for millions as indemnification for sick  
 18 persons. We're demanding a compensation system for  
 19 something that is diffuse, and that's public health.  
 20 Slide 108 is an excerpt from the Lago Agrio  
 21 Plaintiffs' pleadings in a 2014 court filing before the  
 22 Second Circuit in the RICO case describing the Lago Agrio  
 23 Judgment that they had won, and you see at Pages 5 and 6,  
 24 they say, the Provincial Court of Sucumbios, that's the  
 25 First Instance Appellate Court that affirmed the Lago

11:34 1 Agrio Judgment, "declined to hold Chevron liable" for  
 2 what? For "individualized damages to inhabitants for  
 3 injuries." So, look at those words: Chevron is not  
 4 liable for individualized damages. It's not liable for  
 5 actual injuries caused to personal--to particular  
 6 individuals. So, no personal harm in the words of the  
 7 Plaintiffs, and that should be the end of the story.  
 8 And Ecuador itself recognizes as much or at least  
 9 it used to do so because it told you in no uncertain  
 10 terms, before your Track 1 Award forced them to change  
 11 their story, that this is a diffuse or a collective  
 12 Judgment, not an individual one. You see Paragraph 35  
 13 from their preliminary jurisdictional objections back in  
 14 2010. "The environmental Plaintiffs have elected to  
 15 narrow from Aguinda their requested relief in the Lago  
 16 Agrio Litigation and not pursue personal-injury claims.  
 17 So, not pursue personal-injury claims, full stop. In  
 18 other words, again, no personal harm.  
 19 And Ecuador reiterated the point in oral argument  
 20 at the May 2010 interim measures Hearing. I suspect it  
 21 wasn't practical to be bring thousands of personal-injury  
 22 claims." That's why they dropped it. Exactly. The  
 23 reason that it wasn't practical is because as you know,  
 24 Ecuador had and it has no class action mechanism. The  
 25 Plaintiffs couldn't aggregate their individual claims in a

11:36 1 representative way like they could in the United States.  
 2 They had to do it by signing up each and every individual  
 3 as a named Plaintiff.  
 4 In Ecuador, you can't represent the individual  
 5 rights of others who are similarly situated. You can only  
 6 act in a representative capacity with respect to diffuse  
 7 rights.  
 8 And what this means is that, absent a class  
 9 action, this case can only be about one of two things.  
 10 There's just two options: The first, if it's 48  
 11 individual claims, then we should see a judgment that  
 12 assesses personal harm as to these 48, and only these 48,  
 13 named Plaintiffs. But we know that the Judgment doesn't  
 14 do that. And, in fact, Ecuador doesn't even argue before  
 15 you that the Judgment does that. You've seen the  
 16 Plaintiffs' words you've seen Ecuador's words before your  
 17 Track 1 Award say affirmatively that it does not do that.  
 18 So, that's how we get to the inescapable  
 19 conclusion that this Judgment vindicates only diffuse or  
 20 collective rights. Again, personal harm, as you held,  
 21 that's the key, and it's not in the Judgment as to these  
 22 Plaintiffs.  
 23 Now, at every level of this case, the Ecuadorian  
 24 courts have expressly said that the Judgment vindicates no  
 25 individual rights because it finds no personal harm to the

11:37 1 named Plaintiffs. We can start with the Judgment at  
 2 Page 33. The Plaintiffs have not requested personal  
 3 compensation for any harm. They've "demanded the  
 4 protection of a collective right according in accordance  
 5 with the formalities provided by the EMA, the redress of  
 6 environmental harm," that's the link to Article 19.2 of  
 7 the Constitution, which you held the diffuse use of that  
 8 was released, which has been alleged in this lawsuit and  
 9 affects more than 30,000 people, those supposedly being  
 10 undetermined.  
 11 So, a collective right to repair harm to a  
 12 30,000-member community of undetermined people. How can  
 13 Ecuador tell you with a straight face that this refers to  
 14 individual rights?  
 15 And remember, if the named Plaintiffs represent  
 16 those 30,000 others that you just saw them identify in the  
 17 Judgment, they can only do so as representatives of the  
 18 diffuse community interest, and the reason for that is  
 19 because, as Ecuador has said and as you've held in your  
 20 Track 1B Decision, no one can represent another's  
 21 individual rights in Ecuador without that person's express  
 22 consent. It's at Paragraph 165 of your recent decision:  
 23 "The Respondent acknowledges that the named Plaintiffs did  
 24 not, and could not, represent anyone but themselves before  
 25 the Lago Agrio Court."

11:39 1 So, again, those two options I mentioned earlier,  
 2 they could represent just themselves, just the 48, or they  
 3 could represent the community in a diffuse way under the  
 4 EMA, and that's exactly what they ultimately did; that's  
 5 what the Judgment purported to vindicate. So, that's the  
 6 Judgment.  
 7 Move to the Clarification Order, which was even  
 8 more precise because here you have an express disclaimer  
 9 that the Judgment vindicated any individual rights, and  
 10 it's at Page 24. "When mention is made of damage to  
 11 persons, it is explained in the Judgment that what is  
 12 involved is damage to their culture and damage to their  
 13 health. This should not be confused with personal damage  
 14 in the sense of damage to individuals. Rather, it should  
 15 be understood as damage to persons or human beings in  
 16 general." So, this is the Clarification Order instructing  
 17 the Parties that if there is anything in the Judgment that  
 18 even seems to be referring to individualized harm or to a  
 19 vindication of individualized rights, that's not what the  
 20 Judgment was doing. That's not what that language was  
 21 intended to do. It's referring to damage to persons or  
 22 human beings in general. This should not be confused with  
 23 personal damage in the sense of damage to individuals.  
 24 So, again, no personal harm, to use your Track 1  
 25 Award's language. How could this language in the

11:40 1 Clarification Order be any clearer as to the nature of the  
 2 rights being vindicated?  
 3 Same with the Appellate Decision at Page 3, "the  
 4 economic losses suffered by the Plaintiffs" were "not  
 5 alleged in the complaint." There's not any claim  
 6 whatsoever for their compensation; the record contains no  
 7 grounds that would justify ordering the Defendant to  
 8 indemnify them. The complaint asks for the remediation of  
 9 the environmental damage. There is that link to 19.2  
 10 again: Diffuse environmental damage, not personal harm.  
 11 No claim, no grounds in the record whatsoever for  
 12 individual economic losses suffered by the Plaintiffs.  
 13 And then the Cassation Decision comes out and  
 14 says in as few words as possible, and you've seen this  
 15 language before. It's at Page 185 of the National Court's  
 16 Judgment, and it calls these so-called, "popular action  
 17 lawsuits "having to do with diffuse rights under which  
 18 Rule this complaint has been filed;" that is to say, they  
 19 are collective rights.  
 20 So, Ecuador's national Court of Justice is  
 21 telling us two things here: The first is that diffuse and  
 22 collective rights are the same in the context of this  
 23 particular case, Ecuador's attempts to play semantic games  
 24 between these two terms notwithstanding.  
 25 But the second is that this is a diffuse-rights

11:41 1 case. You see it in black and white, "having to do with  
 2 diffuse rights under which rule this complaint has been  
 3 filed." That's it. So, Ecuador is here today telling you  
 4 that this is an individual-rights case, and you see on the  
 5 screen the National Court of Justice telling you that it's  
 6 a diffuse-rights case. How can they do this with a  
 7 straight face?

8 Now, speaking of the National Court of Justice,  
 9 recall that Ecuador has a pending request before you to  
 10 reconsider your final and binding Track 1 Award, based on  
 11 the Cassation Decision that contradicted you, that  
 12 disagreed with you, as you see in the language on the  
 13 screen--and I'm not going to read it, but it's the  
 14 operative language, by saying that the 1995 Settlement  
 15 does not bar diffuse claims, by saying that Claimants were  
 16 not released from diffuse liability under Article 19.2 of  
 17 the Constitution.

18 You see, there has never really been a debate  
 19 about the substantive rights that the Judgment purports to  
 20 vindicate in Lago Agrio. You've seen the Plaintiffs,  
 21 you've seen Ecuador, you've seen the courts say exactly  
 22 what we are here saying here today, that this is a  
 23 diffuse-rights case, not an individual-rights case. What  
 24 Ecuador did was it fought Claimants' Track 1 claim  
 25 originally, you will recall, on the ground that the

11:43 1 settlements didn't bar diffuse claims. That's what the  
 2 Cassation Decision said. You see it on the screen. But  
 3 Ecuador lost that argument with your binding Track 1  
 4 Award, and so the remaining piece of the puzzle, the last  
 5 step which is that the Judgment is wholly diffuse and  
 6 therefore barred by settlement, it just isn't seriously in  
 7 dispute.

8 Now, aside from the words of the Plaintiffs, the  
 9 words of Ecuador, what the courts have said at every  
 10 level, the easiest way to see that is to look at the  
 11 actual substance of the Judgment itself at each of the  
 12 seven categories of harm that it found. And I've listed  
 13 those on Slide 117, and the reason is because under each  
 14 one of these, we see the same thing, which is a total lack  
 15 of individualized findings and a confirmation of what the  
 16 courts said, that this is a purely diffuse-rights  
 17 judgment. I told you that it's a diffuse-rights judgment,  
 18 if you look at the substance, which you pointed out was  
 19 the primary thing to look at in your Track 1B Decision, it  
 20 shows you that it is a diffuse-rights Judgment.

21 And we can take as the best example of this from  
 22 these Categories, the most personal type of harm  
 23 imaginable, which is the harm to health, but in this  
 24 Judgment it's only talking about the harm to public  
 25 health, a diffuse not an individual harm. And you can

11:44 1 look at the language that I've excerpted on the screen  
 2 from Pages 138 and 139 of the Judgment and consider how  
 3 impossible it is to square with the notion that this is a  
 4 judgment based on individual claims. The Court says,  
 5 "with regard to the harm to people's health," "proof has  
 6 not been presented of the existence of harm to the health  
 7 of specific persons." There exists harm to public  
 8 health--that's diffuse--but "no medical certificates have  
 9 been submitted to show the existence of harm or injuries  
 10 to or a specific health problem of a given individual."  
 11 "The reparation of particular harm has not been  
 12 requested." "The submitted evidence does not necessarily  
 13 refer to the particular harm, but to the harm to public  
 14 health." The fact that no particular injuries or harm  
 15 have been proved--this is the Court's conclusion--the fact  
 16 that no particular injuries or harms have been proved is  
 17 irrelevant, and it goes on to say, the reason is because  
 18 they're only analyzing the existence of harm to public  
 19 health. So public health, not individual, not personal  
 20 harm.

21 More specifically as to the health findings,  
 22 potential cancer discussed in the Judgment, diffuse, not  
 23 individual. Page 184, "there exists sufficient  
 24 indications to demonstrate the existence of an excessive  
 25 number of cancer deaths. However, "we must note that the

11:46 1 reparation of particular cases of cancer has not been  
 2 demanded nor are such cases identified; thus, they're not  
 3 remediable."  
 4 So, \$800 million in this Judgment to address  
 5 cancer where not a single particular case of cancer has  
 6 been alleged or identified.

7 Now, that's an absurd result for a lot of  
 8 different reasons, but it's certainly dispositive that  
 9 this is not a judgment based on individual claims. And I  
 10 hope that Ecuador would at least agree that if you're  
 11 going to vindicate an individual cancer claim, you'd have  
 12 to at a minimum identify an individual's instance of  
 13 cancer.

14 The Clarification Order goes on in the same  
 15 subject, Page 23. We're not going to have a list of  
 16 affected persons because "it was clearly established" that  
 17 we are facing "a situation of damage to public health and  
 18 not to individualized claims for injuries or diseases."  
 19 We're not even listing affected persons. Again, how can  
 20 anyone say with a straight face that this means personal  
 21 harm?

22 Now, what I've taken you through so far Ecuador  
 23 doesn't like to spend time talking about. It doesn't like  
 24 to talk about how the Plaintiffs have characterized the  
 25 Judgment, how it used characterize it, what the courts in

11:47 1 Ecuador themselves have said characterizing the Judgment,  
 2 and that's because they really don't have an answer to the  
 3 overwhelming weight of the evidence that you've just seen.  
 4 What they do is they point as their single defense to the  
 5 2002 Delfina Torres case, and they say Delfina Torres is  
 6 an individual case. It's similar to Lago Agrio;  
 7 therefore, Lago Agrio must be an individual case.  
 8       There's two points with respect to Delfina  
 9 Torres. The first is the obvious one at the level of  
 10 form, and that's that the Delfina Court, as you know, it's  
 11 not in dispute, refers to the itself as a case vindicating  
 12 individual rights under Article 2214 of the Civil Code.  
 13 The Lago Agrio Case, at every level, as you've just seen,  
 14 refers to itself as vindicating diffuse or collective  
 15 rights. So, that's the distinction between the two.  
 16       But the second point is that if you dig into the  
 17 substance of the two cases, you see that that confirms the  
 18 distinction that the courts have made. One truly is  
 19 individual, one truly is diffuse.  
 20       Now, you talked about the substance, as, of  
 21 course you recall, of the Delfina Torres case in your  
 22 Track 1B Decision, and I've put up your operative summary  
 23 from Paragraph 174 of the Decision. In doing so, you  
 24 recognized the key feature that distinguishes Delfina from  
 25 Lago Agrio, which is the individualized harm findings.

11:49 1 So, you talk about how the Court did three things in  
 2 Delfina. Number one, it acknowledged that "the normal  
 3 relief for injury suffered by the Plaintiffs is pecuniary  
 4 compensation." Number two, it held that "pecuniary  
 5 compensation, due to those Plaintiffs" in Delfina as  
 6 individuals and, in your words, "but no other person"  
 7 amounted to \$11 million; in other words, individualized  
 8 findings of \$11 million worth of harm to the Plaintiffs in  
 9 the case.  
 10       And then, and only then, third, "in view of the  
 11 desire expressed by the Plaintiffs, such amount was to be  
 12 applied to remedial works to satisfy the needs of the  
 13 community," but the cost of those works was "not to exceed  
 14 the amount of \$11 million." In other words, it could be  
 15 used for the community, but the cost was not to exceed the  
 16 amount determined of personal harm.  
 17       In other words, Delfina found specific harm  
 18 suffered by the Plaintiffs "but no other person", in your  
 19 words. It calculated that harm, and it awarded damages  
 20 for that harm, but not a penny more.  
 21       Then, and only then, the Plaintiffs chose to use  
 22 the money for the benefit of their communities, but they  
 23 didn't have to do that. The Court commended them for it  
 24 in its Judgment, but it said they didn't have to do it  
 25 because it was their money for their harm, again your

11:50 1 language, "but no other person." And that's the  
 2 distinction between Delfina and Lago Agrio: Individual  
 3 harm findings and a damages amount linked only to that  
 4 individual harm. If Lago Agrio were an individual case,  
 5 then the \$9.5 billion in damages, just like the 11 million  
 6 in Delfina, would be linked to harm to the 48 named  
 7 Plaintiffs and no other person. But as we've seen, it's  
 8 not so linked.  
 9       And we can look a little deeper into how the  
 10 Delfina Plaintiffs has acted on their own behalves in that  
 11 case, while the Lago Agrio Plaintiffs acted on behalf of  
 12 the diffuse community interests, another distinguishing  
 13 factor. You see the citation from Page 5 of Delfina.  
 14 "Nowhere in the complaint is it stated that the Party  
 15 bringing the complaint does so as the representative of,  
 16 nor on behalf of, the public interest." They're doing it  
 17 for themselves. Contrast that with Section 6 of the Lago  
 18 Agrio Complaint, filed in the Plaintiffs "capacity as  
 19 members of the affected communities and in safeguard of  
 20 their recognized collective rights." So, representative  
 21 capacity, collective rights, no assignment of their  
 22 individual interests to any other person or entity, the  
 23 essence of a diffuse-rights case.  
 24       And, finally, we can look at the type of evidence  
 25 that supported the respective harm findings in Delfina as

11:52 1 opposed to Lago Agrio. On the left, from Page 28 of  
 2 Delfina, you see that personal individualized evidence, a  
 3 detailed examination of each resident, mainly their  
 4 "psychological health." A report from a doctor that  
 5 "contains a detailed diagnosis and prognosis of the  
 6 illnesses suffered" by all of those residents for whom she  
 7 is, in fact, their "treating physician". So,  
 8 individualized findings. That's what makes an  
 9 individual-rights case.  
 10       Look at Page 138 of Lago Agrio, we have seen this  
 11 earlier: "Proof has not been presented of the existence  
 12 of harm to the health of specific persons. "No medical  
 13 certificates have been submitted. No evidence in the  
 14 entire Judgment showing that individualized harm,  
 15 generalized findings, and that's what makes a  
 16 diffuse-rights case.  
 17       So, that's the distinction between Delfina and  
 18 Lago Agrio. Just like with Delfina, you recognize the  
 19 importance of individualized findings in your comparison  
 20 in your Track 1B Decision to the common law public  
 21 nuisance case, and I'm pulling an excerpt from  
 22 Paragraph 178, and here you're quoting in the italicized  
 23 language the Leo case from New York, which says that, "in  
 24 the absence of special damage," it's usually a "public  
 25 authority" that corrects a public nuisance. But "one who



11:53 1 suffers damage or injury beyond the general inconvenience  
 2 to the public at large may recover for nuisance damages"  
 3 or get an injunction.  
 4       And then here is the standard for whether you get  
 5 to do that or not: If there is some injury "peculiar" to  
 6 a Plaintiff, a private action premised on a public  
 7 nuisance may be maintained, and the Leo Court goes on to  
 8 explain that in that case it was proved because the  
 9 peculiar injury was to the commercial interests of  
 10 commercial fishermen. So, there has to be injury peculiar  
 11 to a Plaintiff beyond the harm done to them as members of  
 12 the communities at large. An individual injury, for  
 13 example, beyond harm to public health, so there has to be,  
 14 to go back to the standard that you set up in your Track 1  
 15 Award, there has to be personal harm.  
 16       So, what this all adds up to is that the Judgment  
 17 ignored the Releases by purporting to vindicate only  
 18 diffuse rights. And we actually know why it did that, and  
 19 the reason is because once the Aguinda Case was dismissed  
 20 in New York, with no class action available in Ecuador,  
 21 this was the only way for Donziger and his fellow RICO  
 22 conspirators to get big money. They had to file a diffuse  
 23 case because it was the only way that they could represent  
 24 more than just the named Plaintiffs. And we see this from  
 25 Plaintiffs' lawyer Cristobal Bonifaz's argument to the New

11:55 1 York Court in 1999 opposing the Aguinda dismissal: "What  
 2 purpose will it serve for us to take 73 Plaintiffs, go to  
 3 Ecuador, file suits, even if we were able to succeed  
 4 because what are we going to get fixed? Plots of land,  
 5 which are 8 acres apiece." In other words, the  
 6 individuals' plots of land. "That is all we can seek in  
 7 Ecuador." That's all they can seek. That's all they  
 8 could have sought, and that's all that they could seek in  
 9 Ecuador. No class action. Just individual damages for  
 10 any named Plaintiffs.  
 11       Or what they did, in fact, seek and what they  
 12 did, in fact, get in the Lago Agrio Judgment, which was a  
 13 diffuse-rights judgment for the community, ignoring the  
 14 Releases.  
 15       Now, I'd like to close on the Releases by  
 16 pointing you to an Ecuador Court decision that perhaps  
 17 best reveals the absurdity in Ecuador's attempt to  
 18 convince you that the Lago Agrio Judgment vindicates  
 19 individual rights. You recall from their briefing they  
 20 say it does so because it does it through Civil Code  
 21 claims, Articles 2214 and Article 5236.  
 22       What you see on the screen is an excerpt from an  
 23 appellate opinion signed by Judge Zambrano in the Red  
 24 Amazónica case. Now, as you know, the Lago Agrio case was  
 25 heard under what's called the summary verbal procedure.

11:56 1 In this case, the Red Amazónica case tells us that only  
 2 environmental harm cases under the EMA--in other words,  
 3 only diffuse cases and only diffuse claims--may be heard  
 4 under that summary verbal procedure.  
 5       Look at the quotes from Red Amazónica. "There  
 6 has been an improper joinder of environmental and civil  
 7 actions." "Only environmental claims may be considered  
 8 because only environmental claims may be heard in summary  
 9 verbal proceedings." "Environmental action protects a  
 10 common good;" in other words, it's diffuse. "An action to  
 11 recover damages seeks to protect an individual's property  
 12 which, though important, cannot be compared to a good that  
 13 belongs to everyone." In other words, it is individual.  
 14 It cannot be compared to a diffuse good. "No claim  
 15 connected to the compensation of purely civil damages can  
 16 be considered in the resolution of this case." It's  
 17 contrary to law, it's a violation of law to allow an  
 18 environmental action for the purpose of claiming ordinary  
 19 civil compensation.  
 20       So, Mr. President and Members of the Tribunal,  
 21 this is Judge Zambrano clearly saying that individual  
 22 actions under the Civil Code, actions for personal harm  
 23 can't be heard the way that the Lago Agrio Case  
 24 indisputably was heard. This is all the proof that you  
 25 need, and you've seen an overwhelming amount of it

11:58 1 already, but this is all the proof that you need that Lago  
 2 Agrio is in no way an individual-rights Judgment.  
 3 Legally, it couldn't be because of the way that it was  
 4 handled.  
 5       And if Ecuador wants to convince you otherwise,  
 6 they have a simple way to do so. They can show us. They  
 7 can show us the individual harm findings, they can show us  
 8 the individualized damages findings, but they can't do  
 9 that because they're just not there, and that's why you've  
 10 seen the courts disclaim their being there.  
 11       The second legal absurdity is that the Judgment  
 12 ignores the basic tort element of causation. And this one  
 13 is simple and it's pretty obvious because the Ecuadorian  
 14 courts actually couldn't keep their own story straight on  
 15 this issue.  
 16       First, the Judgment pretended to consider  
 17 Petroecuador's responsibility. We see that the  
 18 Clarification Order Page 8, "no pit constructed by  
 19 Petroecuador or spill caused by that company is covered by  
 20 the Judgment." That sounds good. "The damage caused by  
 21 Petroecuador has not been considered, using a time-based  
 22 approach that divides liability", and then attributes it  
 23 to the Operator at the time.  
 24       But if you look at the Judgment, you quickly  
 25 realize that this simply isn't true. There are no

11:59 1 causation findings as to Petroecuador versus TexPet's  
 2 liability. There is no time-based approach, and Ecuador  
 3 can't point to you where the Judgment employs that  
 4 time-based approach.  
 5 But you don't have to take my word for it because  
 6 the Cassation Decision actually admits and celebrates the  
 7 Judgment's refusal to perform a causation analysis with  
 8 respect to this issue. Page 117 of the Cassation  
 9 Decision, "the Court of Appeals was not responsible" "for  
 10 analyzing Petroecuador's liability", much less to  
 11 attribute some damage to Chevron and other to  
 12 Petroecuador," violate due process and even worse.  
 13 So, that time-based approach that we were assured  
 14 was done, it wasn't. To do it apparently would have  
 15 violated due process or perhaps worse. You don't get more  
 16 absurd than this type of so-called "judicial reasoning."  
 17 To attribute harm to a particular tortfeasor somehow  
 18 violates due process. Amazing. And then the National  
 19 Court of Justice ignores the Clarification Order that we  
 20 just saw pretending to do just that.  
 21 So, why does the Judgment ignore causation in  
 22 this respect? The same reason as with the Releases:  
 23 Money. Look at the yellow shaded area in the midst of  
 24 Petroecuador's solo operations on the timeline of  
 25 operations in the Concession Area. That's where the

12:00 1 judicial inspections took place. That's where all the  
 2 alleged evidence of environmental contamination in this  
 3 place came from. That's when it was collected. During a  
 4 period of time well over a decade after TexPet had ceased  
 5 operating.  
 6 So, the Plaintiffs' lawyers are getting money for  
 7 what Petroecuador presumptively caused, and then, of  
 8 course, Petroecuador and the State on the flip side get to  
 9 push their liability for what they presumptively caused to  
 10 Chevron. And again, you don't have to take my word for it  
 11 because that was the deal that they made. Mr. Bishop  
 12 referenced this earlier this morning: The beginning of  
 13 their conspiracy. Look at what the Attorney General of  
 14 Ecuador requested in this waiver of rights document, that  
 15 "the compensation sought" in the Aguinda Case "be paid  
 16 exclusively by Texaco." And then the Plaintiffs accepted  
 17 that. They said, "we hereby expressly waive the right to  
 18 file any claim against [the State], Petroecuador, its  
 19 affiliates" or any public sector institution. In other  
 20 words, I scratch your back, and you scratch mine.  
 21 And the Plaintiffs' lawyers knew what they were  
 22 doing. They knew that Petroecuador was responsible for  
 23 harm in this Concession Area. You see on the screen an  
 24 excerpt from an e-mail from former Plaintiffs'  
 25 environmental expert David Russell, and he's reporting on

12:02 1 a conversation that he had with Steve Donziger, and  
 2 Mr. Donziger apparently told him "the analysis and  
 3 reporting of GRO and BTEX data is self-defeating except to  
 4 show that the contamination is much more recent than we  
 5 would desire"--that's interesting phraseology--"and that  
 6 would lead to an argument that the contamination is by  
 7 Petroecuador rather than Texaco."  
 8 So, two things here: This is exactly the point  
 9 that I was making with the timeline of operations on the  
 10 previous slide. If you test in 2004, when Petroecuador  
 11 has been operating alone for over a decade, then any harm  
 12 that you'll find is presumptively Petroecuador harm.  
 13 And if you want to legitimately attribute it to  
 14 TexPet, you have to show causation, but as you saw, the  
 15 Judgment absurdly doesn't even purport to do that.  
 16 Third legal absurdity. It also ignores  
 17 principles of corporate separateness. Now, both Parties  
 18 agree that the legal standard for veil-piercing under  
 19 Ecuadorian law is abuse of the corporate form. In the  
 20 Lago Agrio Case, the courts pierced three different levels  
 21 of corporate separateness, from TexPet up to Texaco, over  
 22 to Chevron, and from the Judgment debtor Chevron down to  
 23 its worldwide subsidiaries in the execution orders issued  
 24 by the Ecuadorian enforcement courts purporting to enforce  
 25 the Judgment. So, we should expect to see three recent

12:03 1 sets of reasoned findings of abuse of the corporate  
 2 form--that's a particular standard--one for each of these  
 3 veils that the courts pierce.  
 4 But again, we see none of that in the Judgment.  
 5 And I encourage you to read it. You won't find any of  
 6 this. No evidence of reasoning or findings of that  
 7 particular agreed standard, abuse of the corporate form.  
 8 There is no debate that that's what you have to find, but  
 9 the evidence just isn't there, so the findings aren't  
 10 there.  
 11 And I want to emphasize that this isn't an  
 12 instance where we simply disagree with the Court having  
 13 done this reasoning the way it did it. We're saying it's  
 14 not there. They didn't make the findings to apply this  
 15 standard that they agree is the standard, and so it's a  
 16 juridical impossibility. It's not legal reasoning.  
 17 And the reason for this is actually twofold: For  
 18 the first two veils to get to Texaco and to get to  
 19 Chevron, the Plaintiffs just messed up. They sued the  
 20 wrong party, and they had to try to fix it in the Judgment  
 21 that they wrote, and so you see Donziger's diary saying  
 22 this goes back to Alberto Wray's errors, suing the wrong  
 23 party in the complaint.  
 24 And for the last veil, to get to the worldwide  
 25 subsidiaries, well, the money against the Judgment debtor

12:05 1 Chevron Corporation is located where Chevron Corporation  
 2 is located, which is the United States. But as you know  
 3 from the RICO case, there is an injunction from preventing  
 4 the enforcement of that Judgment. And so, where are the  
 5 Lago Agrio Plaintiffs' lawyers going outside the United  
 6 States to try to get money? Argentina, Brazil, Canada.  
 7 But neither the Operator TexPet nor its parent Texaco, nor  
 8 the actual Judgment debtor Chevron is present in any of  
 9 these three jurisdictions, and so that's why the courts  
 10 had to pierce that third veil to the worldwide subs. They  
 11 had to write a judgment without being able to point to any  
 12 evidence of abuse piercing these three different levels of  
 13 corporate separateness.  
 14 So, you have seen that the Plaintiffs bought and  
 15 paid for a judgment that ignores the Releases, ignores a  
 16 key element of causation and ignores corporate  
 17 separateness. Professor Paulsson will explain a bit later  
 18 how doing that constitutes a denial of justice, just like  
 19 the fraud that Mr. Bishop discussed with you constitutes a  
 20 denial of justice, but first let me turn the floor over to  
 21 Ms. Renfroe to discuss the environmental issues.  
 22 Thank you, Mr. President.  
 23 PRESIDENT VEEDER: Just one moment, maybe one  
 24 question from the Tribunal.  
 25 ARBITRATOR LOWE: Just a question of

12:06 1 clarification. You said that the Judgment was not based on  
 2 individual claims. Is it your position that the  
 3 7th May 2003 Complaint did not include individual  
 4 complaints, or do you regard that as a separate matter?  
 5 MR. CORIELL: It is our position, and it continues  
 6 to be our position that the Complaint did not include  
 7 individual claims. A lot of the same evidence that you  
 8 have seen from the statements of the Plaintiffs indicates  
 9 that. It is, however, a separate matter because regardless  
 10 of whether the Claim is articulated in individual  
 11 complaints in the Complaint, the Judgment does not  
 12 vindicate any, and that can be easily seen by what the  
 13 courts say about it, and by looking at the substance of the  
 14 harm findings in the Judgment.  
 15 ARBITRATOR LOWE: And that is something to which  
 16 you might come back in the closing, I imagine, the  
 17 relationship between the Complaint and the decision in the  
 18 light of our decision on Track 1B?  
 19 MR. CORIELL: We will do so, thank you.  
 20 PRESIDENT VEEDER: Thank you.  
 21 Ms. Renfroe.  
 22 MS. RENFROE: Thank you, Members of the Tribunal.  
 23 Now that Mr. Coriell has addressed the legal  
 24 absurdities in the Judgment, I am going to address the  
 25 factual absurdities in three parts: First, the Settlement

12:07 1 Agreement itself, because it indeed resolves all  
 2 environmental issues, any Judgment is an absurdity.  
 3 The second part I will address is the fact that  
 4 the damage awards in the Judgment are grounded in fraud,  
 5 not science and, therefore, in and of themselves represent  
 6 a denial of justice.  
 7 And then my third point will address why  
 8 Ecuador's new environmental experts in this arbitration  
 9 case, why their ex post work does nothing to resuscitate  
 10 this fraudulent judgment.  
 11 So, let me begin with the Settlement Agreement,  
 12 which, as I say, and as we have demonstrated, resolves all  
 13 environmental issues concerning diffuse rights.  
 14 I take you back first to the Settlement Agreement  
 15 itself agreed by the Parties in 1995; and, in that  
 16 critical instrument, the Parties agreed on a process to  
 17 evaluate the environmental extent of the Consortium's  
 18 operations, they agreed on the critical remediation  
 19 techniques that would be used; and, perhaps most important  
 20 for this controversy, they agreed on the precise areas  
 21 within the former Concession Area that TexPet was to  
 22 address, and you can find those areas listed in the  
 23 annexes at the back of the Settlement Agreement.  
 24 Then in the more detailed Remedial Action Plan,  
 25 or RAP as we sometimes call it, the Parties provided the

12:09 1 specific items for remedial work that TexPet was to  
 2 accomplish; and, so between these two instruments, they  
 3 provide the Tribunal the critical framework you need to  
 4 evaluate any environmental claim and any environmental  
 5 evidence.  
 6 Looking at these two instruments more carefully  
 7 and in more detail, what we see from them is that  
 8 everything not expressly allocated to TexPet for  
 9 remediation in the tables at the back of the Remedial  
 10 Action Plan remained the responsibility of Petroecuador  
 11 and Ecuador to address. This is a very, very, critical  
 12 point to realize about the core part of the Parties'  
 13 agreement, and that is: Number one, the Parties did not  
 14 agree to require TexPet to remediate the entire Concession  
 15 Area. To the contrary, they agreed only that TexPet was  
 16 required to remediate certain features at certain sites.  
 17 And so, when we look at the Remedial Action Plan, we see  
 18 that only certain features were assigned to TexPet at 157  
 19 sites. The balance of those sites remained the  
 20 responsibility of Petroecuador.  
 21 Likewise, we see from these two critical  
 22 instruments that 187 sites were not assigned for any  
 23 responsibility to TexPet whatsoever, again remaining the  
 24 responsibility of Petroecuador.  
 25 Now, this division or allocation of

12:11 1 responsibilities for remedial work made perfect sense when  
 2 you think about the fact that Petroecuador was, indeed,  
 3 the majority partner of the Consortium, and between it and  
 4 Ecuador having collected over \$22 billion over the life of  
 5 the Consortium, while TexPet earned approximately  
 6 \$500 million.

7 And then a very second important practical reason  
 8 also explains this division of remediation  
 9 responsibilities, and that is that Petroecuador was  
 10 continuing to operate this Concession Area throughout the  
 11 time that TexPet was doing its remediation.

12 So, the key takeaway, the key framework for the  
 13 Tribunal is that there was no one site that was allocated  
 14 to TexPet in its entirety, and certainly not the entire  
 15 Concession Area. And so, what we get with this framework  
 16 is the distinction between the RAP areas specifically  
 17 listed in the back of the Remedial Action Plan--and when I  
 18 say RAP areas, I mean those RAP items that TexPet was  
 19 supposed to take care of--and everything else is a non-RAP  
 20 area or non-RAP feature.

21 Let me illustrate this distinction with a little  
 22 more detail.

23 On this slide, on the left, I'm so showing you a  
 24 drawing of the Lago Six well platform. The wellhead  
 25 itself is in the middle of this yellow platform. And then

12:12 1 when you look at Table 3.1 from the Remedial Action Plan,  
 2 you will find that only one out of the two pits at this  
 3 site, Pit 1, was assigned to TexPet for remediation. The  
 4 other pit, Pit Number 2 was not assigned to TexPet for  
 5 remediation, nor was anything else surrounding the  
 6 platform.

7 So, what we take away from looking at this  
 8 Remedial Action Plan table, is that there was a single pit  
 9 allocated to TexPet with a balance remaining  
 10 Petroecuador's responsibility.

11 And so, this illustrates my point and the  
 12 framework for the Tribunal to use of this RAP versus  
 13 non-RAP distinction.

14 Now, further proof that it was never the  
 15 Agreement of the Parties that TexPet was supposed to  
 16 remediate either the entire Concession or even an entire  
 17 site, further proof of that can be found in the language  
 18 of the Settlement Agreement itself. When you look at  
 19 Section 5.1 of the Settlement Agreement, you will see that  
 20 in 1995, when that Agreement was signed, the Government of  
 21 Ecuador and Petroecuador released TexPet at that time for  
 22 all non-RAP liabilities. And then upon completion of  
 23 TexPet's remediation work, which has been documented in  
 24 great detail in the Woodward Clyde 2000 Report, upon  
 25 completion of that work, then the Government of Ecuador

12:14 1 and Petroecuador released TexPet for the so-called "RAP  
 2 liabilities."

3 So, these two documents again confirm that the  
 4 Parties' agreement was only that TexPet was to remediate  
 5 certain discrete portions of the Concession Area.

6 Further evidence confirming this as the agreement  
 7 of the Parties can be found in the testimony of two senior  
 8 ranking Ecuadorian environmental officials. On the top, I  
 9 have summarized the testimony of Manuel Muñoz, who was  
 10 then the Director of DINAPA, the environmental arm of  
 11 Ecuador's Ministry of Energy and Mines.

12 In 2006, he told Ecuador's Congress: "Texaco has  
 13 completed the remediation of the pits that were their  
 14 responsibility; this was 33 percent of the total." But in  
 15 the intervening decades, Petroecuador had done little.  
 16 And then again, before this Tribunal in 2012, Giovanni  
 17 Rosania Schiavone, who at that time was the Undersecretary  
 18 of Environmental Protection for the Ministry of Energy and  
 19 Mines, he told this Tribunal, as Mr. Bishop mentioned  
 20 earlier, he insisted that the "technical work and the  
 21 environmental work was done well," and they accepted,  
 22 meaning the Government of Ecuador accepted, that "the  
 23 environmental problem" in the areas assigned to TexPet had  
 24 been corrected.

25 There is no question that at the time that

12:15 1 Ecuador and Petroecuador executed the Final Release that I  
 2 showed you a moment ago, they were fully aware that TexPet  
 3 had not remediated the entire Concession Area nor had  
 4 remediated even an entire site. They knew that and that's  
 5 because that was the agreement of the Parties. That is  
 6 specific items as identified in the Remedial Action Plan  
 7 schedules, those are the only items assigned to TexPet.

8 Now, notwithstanding this irrefutable evidence of  
 9 what the Parties agreement was, now in this arbitration  
 10 case, for purposes of justifying this fraudulent Judgment,  
 11 we find that the Government of Ecuador has taken a  
 12 completely opposite position in asserting and complaining  
 13 that TexPet did not remediate the entire Concession Area  
 14 or even remediate an entire site. But, Members of the  
 15 Tribunal, as I have just shown you, that was never the  
 16 agreement of the Parties, and the evidence is irrefutable  
 17 on that point.

18 Now, in this arbitration case, instead what we  
 19 see from the Government of Ecuador and its experts is a  
 20 litany of complaints about TexPet's work, not  
 21 coincidentally the very same complaints that were urged  
 22 against Chevron in the Lago Case, and I have summarized  
 23 those complaints on the left-hand side of the slide.  
 24 Again, the Settlement Agreement and Remedial Action Plan  
 25 give you the framework you need to consider these.

12:17 1 Let me give you an example, you perhaps have read  
 2 about the complaint we now hear from Ecuador and its  
 3 Experts that TexPet closed pits before June of 1990 when  
 4 it handed over operations to Petroecuador, and that those  
 5 are somehow now hidden pits, and they complain that TexPet  
 6 did not remediate those pits.  
 7 Members of the Tribunal, you have only to look at  
 8 Section 3.1.2 of the Remedial Action Plan and you will see  
 9 that the Parties recognized that category of pits and made  
 10 specific provision for what was to be done with those.  
 11 And I quote here. The Remedial Action Plan says: "Sites  
 12 with pits closed prior to 1990 were investigated for any  
 13 visible soil contamination." Two such pits were found.  
 14 And they were added to the TexPet remediation program.  
 15 So, it cannot be said that those pits closed by TexPet  
 16 before June of 1990 were hidden. The Parties were fully  
 17 aware of them and reached agreement on how to deal with  
 18 them.  
 19 A second example illustrates my point, that the  
 20 Settlement Agreement and RAP are your framework. That is  
 21 now the complaint we hear that TexPet's work was  
 22 inadequate because it used composite sampling to evaluate  
 23 soils and sludges. Once again, the Remedial Action Plan,  
 24 Section 2.4.3, you will find that the Parties expressly  
 25 agreed on the use of composite sampling.

12:18 1 And a third example makes my point. The  
 2 complaint now that TexPet's remediation of pits was  
 3 inadequate and that the TCLP procedure and the criteria of  
 4 a thousand parts per million was an ineffective measure of  
 5 the efficacy of TexPet's remediation of the pits. But if  
 6 you look at the Remedial Action Plan, Section 2.4.4, once  
 7 again, Members of the Tribunal, you will see this is what  
 8 the Parties agreed to.  
 9 And so too as you go down the rest of the list of  
 10 complaints, every one of those complaints is answered in  
 11 full by the Settlement Agreement and the Remedial Action  
 12 Plan that was the agreement of the Parties. And so that  
 13 is why I say the Judgment in any amount whatsoever is a  
 14 complete absurdity.  
 15 But now, this brings me to my second point, which  
 16 is the fact that the damages awards in the Judgment are  
 17 grounded in fraud and not any valid scientific data. The  
 18 evidence shows us that to be the case, and let me  
 19 illustrate that.  
 20 But let me first make this point: Claimants are  
 21 not here quibbling over an erroneous environmental finding  
 22 or two in the Judgment. Instead, our position is that the  
 23 evidence of the damages awarded in the Judgment and the  
 24 lack of evidence to support those damage awards, is so  
 25 overwhelming and those damage awards, on their face, are

12:20 1 so unreasonable that they amount to a denial of justice.  
 2 Now, Mr. Bishop showed you a little while ago in  
 3 very, very graphic detail how the Plaintiffs accomplished  
 4 their fraudulent Judgment, and I'm now going to show you  
 5 why they resorted to fraud over science.  
 6 We have only to look at the private confidential  
 7 communications of the Plaintiffs' lead environmental  
 8 Expert, David Russell, which I have summarized on this  
 9 slide. In his e-mail communications to Steven Donziger  
 10 spanning the Years 2004 to 2006, he's telling Donziger,  
 11 "Texaco may be right when they say the remediation is  
 12 performing as designed. From the data I have seen so far,  
 13 we are not finding any of the highly carcinogenic  
 14 compounds one would hope to see when investigating the oil  
 15 pits." And, third, "I have seen no data which would  
 16 indicate there is any significant surface or groundwater  
 17 contamination caused by petroleum sources."  
 18 Now, this is Mr. Russell's candid assessment of  
 19 the lack of data, notwithstanding the fact that the  
 20 judicial inspection process has been under way for some  
 21 two or three years.  
 22 Now, when he could not provide Mr. Donziger the  
 23 evidence that Mr. Donziger wanted to support a substantial  
 24 Judgment, Donziger replaced them with the Stratus Group.  
 25 And on this snapshot from the crude outtake that

12:22 1 Mr. Bishop played for you early, I have captured some of  
 2 the key findings in a confidential conversation that Ann  
 3 Maest of Stratus had with Steven Donziger, and you can  
 4 listen to this discussion yourself when you listen to this  
 5 Crude outtake, but for now, the key point to take from  
 6 this is Ann Maest tells Steven Donziger: "We have no  
 7 evidence of groundwater contamination, and right now all  
 8 of the reports are saying it's just at the pits and the  
 9 stations," referring to the production stations, "and  
 10 nothing has spread anywhere at all."  
 11 That is the testimony--pardon me--that is the  
 12 confidential assessment conveyed by Ann Maest of Stratus  
 13 to Steven Donziger in a private lunch before the Judgment  
 14 was issued.  
 15 Now, in response to this candid assessment by a  
 16 second team of environmental experts that the data doesn't  
 17 exist to support a substantial Judgment, Steven Donziger  
 18 told his expert team the following which, and again you  
 19 can listen to and you did hear earlier from the Crude  
 20 outtake that Mr. Bishop played you, he told them: "Hold  
 21 on a second, this is Ecuador. You can say what you want,  
 22 and we can get money for it because at the end of the day,  
 23 this is all for the Court, just a bunch of smoke and  
 24 mirrors and bullshit. It really is."  
 25 Well, Members of the Tribunal, eventually when

12:24 1 the technical basis for the Lago Plaintiffs' case was  
 2 indeed revealed to be just a bunch of smoke and mirrors,  
 3 those environmental experts who had told Steven Donziger  
 4 privately, confidentially before the Judgment was issued,  
 5 there was no data to support a significant Judgment, they  
 6 reaffirmed under oath and told and stated under oath  
 7 exactly what they had told him before the Judgment was  
 8 issued.

9 As to the \$5.4 billion soil remediation Award in  
 10 the Judgment, David Russell declared under oath: "I had  
 11 seen no evidence of any widespread contamination, and the  
 12 idea that the cleanup of the oil pits would require  
 13 billions of dollars is nonsense. I am confident that the  
 14 damages number in the Judgment has no basis in fact." The  
 15 sworn testimony of David Russell, which is in this record.

16 The damage awards for groundwater remediation and  
 17 potable water remediation in the hundreds of millions of  
 18 dollars are equally lacking in any scientific basis.  
 19 According to the sworn testimony of Stratus Expert  
 20 Doug Beltman and again, the testimony of David Russell.

21 Turning now to whether there is any basis for the  
 22 health-related awards in the Judgment. Again, in the  
 23 billions of dollars, a \$1.4 billion healthcare Award as to  
 24 that and the Awards for excess cancer claims of  
 25 \$800 million, you again have the sworn testimony of Lago

12:25 1 Plaintiff environmental experts who have said, in the case  
 2 of Dr. Charles Calmbacher, he never found that any of the  
 3 sites that he inspected had contamination to such an  
 4 extent that it would endanger human health. And Doug  
 5 Beltman concurred. He had never seen any scientific data  
 6 that would show any adverse health effects caused by  
 7 contamination--contamination from Petroleum Operations in  
 8 the Oriente.

9 Now, Members of the Tribunal, these candid  
 10 assessments of the lack of data to prove widespread  
 11 contamination and human health risks from the Lago  
 12 Plaintiffs' experts themselves is perfectly consistent  
 13 with the findings of the Chevron experts from the Lago  
 14 Case, many of whom are now experts in this arbitration  
 15 case.

16 And for the convenience of the Tribunal, I have  
 17 summarized who those experts are and their critical  
 18 findings on this slide.

19 Most important and collectively, they establish  
 20 that there is no legitimate scientific basis for the  
 21 Judgment or any of the damage awards in the Judgment.  
 22 What they do tell us is that TexPet performed the Remedial  
 23 Action Plan, but that Petroecuador has yet to complete its  
 24 share of the remediation work. And for that reason, we  
 25 will find that there are areas within the former

12:27 1 Concession Area that are impacted around the oilfield  
 2 facilities, the well platforms because Petroecuador, while  
 3 it has done some remedial work, it has not completed all  
 4 of it.

5 But even as to those limited impacts, we still  
 6 find that there is no drinking water contamination based  
 7 on legitimate data as concluded by these experts. There  
 8 is no human health risk.

9 But what has happened in the last 25 years and  
 10 has been documented in the record that Claimants have  
 11 provided is that Petroecuador has operated these oilfields  
 12 for the last 25 years and has expanded them dramatically  
 13 with the effect that the conditions in the Concession Area  
 14 have irrevocably changed from the time when TexPet handed  
 15 over operations in 1990.

16 Now, this brings me to my third point, which is  
 17 the fact that Ecuador's new environmental Experts in this  
 18 arbitration case cannot justify in a post hoc fashion the  
 19 Judgment. I say that because their work is flawed at many  
 20 levels and for many reasons, the key important ones of  
 21 which I have summarized on this slide, and I will go  
 22 through these points now briefly.

23 First, there is the fiction that the Ecuador  
 24 Experts support the Lago Judgment, according to the  
 25 Memorials from the Republic of Ecuador. Members of the

12:29 1 Tribunal, respectfully, that is simply not the case. On  
 2 this slide I quote from the LBG Report where they say:  
 3 "The Judgment's assessment of damages was reasonable," and  
 4 yet in the four reports that they have issued and I have  
 5 put on this slide, not one of those Reports do they offer  
 6 any endorsement of any of the damage awards in the  
 7 Judgment. Not one of those reports and not one of the  
 8 damage awards do they support.

9 Now, they dodge this issue by saying, well,  
 10 quantum is reserved for Track 3, but Members of the  
 11 Tribunal, this is not about quantum. This is about  
 12 Claimants' case, which has now been fully established,  
 13 that the amount of these Judgments--the damages in the  
 14 Judgment, the damage awards themselves, are so excessive  
 15 and unreasonable that they constitute a denial of justice,  
 16 and that's the case that has been established by Claimants  
 17 and their Experts, and that issue is completely unanswered  
 18 by Ecuador's new Experts in this arbitration case.

19 A second major flaw in the work of Ecuador's  
 20 Environmental Experts is that they completely ignore the  
 21 Settlement Agreement and Remedial Action Plan by their own  
 22 admission, claiming it to be irrelevant. They ignore that  
 23 critical framework that should be considered in assessing  
 24 whose activities caused a particular impact.

25 Third key flaw in their work is that they also

12:30 1 ignore the operations and environmental impacts of  
 2 Petroecuador, admitting as they say in this excerpt from  
 3 their Report they've made no effort to try and allocate  
 4 pollution liability between TexPet and Petroecuador.  
 5 But, Members of the Tribunal, as you know,  
 6 Petroecuador has, indeed, operated these oil fields for  
 7 the last 25 years with great effect. I am going to show  
 8 you now an image or a screenshot from Claimant's mapping  
 9 tool, C-2444. And I would ask to draw your attention to  
 10 the screen.  
 11 In green, you see the green icons represent the  
 12 well platforms that were constructed by the Consortium  
 13 through 1990. Now, if you watch the screen, you will see  
 14 the new red--the red icons represent the new wells that  
 15 had been constructed by Petroecuador and/or Ecuador's  
 16 State-owned oil companies since 1990. And as you can see  
 17 with your own eyes, the operations of Petroecuador in the  
 18 last 25 years have overwhelmed those of TexPet.  
 19 Now, taking this point and going from a high  
 20 level to the facts on the ground, what do we know about  
 21 Petroecuador's operations? Well, we know that  
 22 Petroecuador has operated nearly every single facility  
 23 that TexPet ever operated, almost all the well platforms  
 24 and, indeed, every production station. We also know from  
 25 its own publicly available information that Petroecuador

12:34 1 I have provided for you the key fact, and that is whether  
 2 Petroecuador has operated these 13 sites or in any way,  
 3 form or fashion touched them. And the truth is, Members  
 4 of the Tribunal, when you look at the record evidence that  
 5 is in this case, we find that Petroecuador has had some  
 6 touch, some operation, some activity, at every one of  
 7 these 13 sites. So they can in no way be classified as  
 8 TexPet only sites.  
 9 And then when we look at the question of where  
 10 were the samples taken? Were they taken from areas that  
 11 TexPet remediated, those RAP areas, or were they taken  
 12 from areas that TexPet was not responsible for remediating  
 13 those non-RAP areas? Well, from these 13 sites, LBG,  
 14 Ecuador's Expert, sampled in 32 areas, and of those 32  
 15 areas, 28 of them are non-RAP areas, for which TexPet had  
 16 no remediation responsibility whatsoever.  
 17 So, this limited dataset tells us absolutely  
 18 nothing about the remediation work of TexPet. If it tells  
 19 us anything at all, it's simply about areas within the  
 20 Concession Area that Petroecuador has yet to address.  
 21 Moving then on to the next major problem with the  
 22 Ecuador expert's new work to try and make their case of  
 23 widespread contamination and human health risk, they have  
 24 to resort to extreme measures in terms of sampling  
 25 protocols and protocols for how human health risk is

12:32 1 has spilled over 125,000 barrels of oil throughout the  
 2 Concession Area just through the Year 2009. And on an  
 3 annual basis, it conducts over 338 well workovers at the  
 4 platforms which create opportunities for spills on and off  
 5 the platforms.  
 6 So, faced with this overwhelming record of  
 7 impacts by Petroecuador, Ecuador's new experts purported  
 8 to collect new samples from areas that they characterized  
 9 as "TexPet only." But this exercise on their part is  
 10 flawed for many reasons and deserves no weight by the  
 11 Tribunal.  
 12 Some of the problems with this recently acquired  
 13 data are listed here, perhaps the most important of which  
 14 is that it was never available to the Lago Court. This is  
 15 again evidence outside of the Lago record now being  
 16 offered to justify in a post hoc fashion the validity of  
 17 the Lago Judgment. It simply fails. But even to the  
 18 extent that the Tribunal were to consider this data, it's  
 19 very problematic because of the manner in which it was  
 20 collected. It's a very limited and biased data set. And  
 21 notwithstanding how it's been characterized by Ecuador and  
 22 its Experts from TexPet-only areas, the opposite is true.  
 23 On this slide, I have listed the 13 sites where  
 24 Ecuador's Expert LBG took new samples and the areas where  
 25 they sampled at each site. And then in the third column,

12:36 1 calculated. There are many problems with their work, and  
 2 I've summarize just a few here on this slide. But I leave  
 3 you with this point of common sense: Does it really make  
 4 sense that new experts coming to this Concession Area, 25  
 5 years after TexPet left it, that they could possibly find  
 6 data to prove wide spread contamination and human health  
 7 risk when the Lago Plaintiffs' multiple groups of Experts  
 8 couldn't do that? It makes no sense. And when you put a  
 9 microscope to the work done by the Ecuador's experts new  
 10 work, you find it will not withstand scientific scrutiny.  
 11 The last point on this slide is the one I want to  
 12 go to next. And that is the critical question, the  
 13 important question of human health risk.  
 14 Although Ecuador's expert, Dr. Harlee Strauss,  
 15 purports to calculate human health risk, I want to explain  
 16 to the Tribunal that when you evaluate the epidemiologic  
 17 evidence between exposure to petroleum compounds in the  
 18 Oriente and adverse human health effects, when you do it  
 19 using valid and widely accepted scientific protocols, as  
 20 Claimant's epidemiologist, Dr. Moolgavkar, has done, you  
 21 find there is no causal relationship between exposure to  
 22 conditions in the Oriente and adverse human health  
 23 effects.  
 24 I would note that Dr. Moolgavkar is the only  
 25 expert who has actually done his study and published it.

12:37 1 It's been subject to peer review. And then when you take  
 2 the judicial inspection data from the Lago Case and you  
 3 apply it to a quantitative risk assessment Protocol, as  
 4 Claimants' risk assessment and toxicologist expert,  
 5 Dr. Tom McHugh, has done, you will also find from a  
 6 quantitative perspective, there is no adverse human health  
 7 effects to people in the Oriente based on the data that  
 8 was collected during the Lago Case.

9 Now, contrary to these findings by these two  
 10 highly qualified experts, Ecuador offers the testimony of  
 11 Dr. Harlee Strauss and they characterize her opinions has  
 12 having established "widespread human health risk from  
 13 TexPet's operations." But, Members of the Tribunal, the  
 14 facts are, when we give a critical evaluation to her work,  
 15 we see just the opposite. If anything, she confirms the  
 16 absence of human health risk for these reasons: First,  
 17 she admits in her reports that she has no proof of any  
 18 actual cancer or non-cancer health impacts to any person,  
 19 any family or any neighborhood in the Oriente in the  
 20 former Concession Area.

21 So, at most, what she is able to do is calculate  
 22 a theoretical health risk, and she does that based only on  
 23 the recently acquired data that LBG collected. And even  
 24 then, only at limited pockets of nine sites--nine of 344  
 25 Concession sites--there are many problems and flaws with

12:39 1 her calculations, as you will be hearing in the coming  
 2 weeks. But even those calculations are very limited and  
 3 depart from widely accepted methods.

4 But even if the Tribunal were to give them any  
 5 weight at all, they are based only on data from non-RAP  
 6 areas. She does not calculate a human health risk from  
 7 any area, any RAP area, that TexPet remediated.

8 Now, her findings of an absence of health risk  
 9 based on the quantitative data actually correspond  
 10 perfectly with the opinion of her colleague Dr. Grandiean,  
 11 Ecuador's epidemiologist, who in his very first report  
 12 after assessing the epidemiologic evidence, he too had to  
 13 confess and acknowledge an absence of evidence to support  
 14 any association between exposure to conditions in the  
 15 Oriente and adverse health effects, though he urged the  
 16 Tribunal to set aside that absence of evidence.

17 But Members of the Tribunal, as you know from  
 18 your own experience, your own common sense, an absence of  
 19 evidence is no evidence at all to support the health  
 20 awards in the Judgment. And in a broader sense, that  
 21 absence of evidence that we find from Ecuador's health  
 22 related Experts characterizes the weight of the evidence  
 23 that was in the Lago record about the fact that there is a  
 24 lack of human health risk proven from exposure to  
 25 conditions in the Oriente and actual adverse health

12:41 1 effects.

2 What I have summarized for you on this last slide  
 3 and given you an enlarged copy of, are the expert reports  
 4 that came from multiple sources and that were available in  
 5 the Lago Case except for the new reports that had been  
 6 submitted in this BIT arbitration.

7 You don't have to take Chevron's word for it.  
 8 You don't have to rely only on the Chevron experts. What  
 9 you find is a body of expert reports, many of which were  
 10 placed in the Lago record and which come from the Lago  
 11 Plaintiffs' experts themselves, which come from the  
 12 Sacha 53 settling experts appointed by the Court, and  
 13 which even come from some of Ecuador's own environmental  
 14 investigation agencies. When you look at all of their  
 15 work and you see that it's--I've organized their reports  
 16 according to these key findings, we find an absence of  
 17 evidence to support any claim of widespread contamination  
 18 or human health risk, and for those reasons we can see  
 19 that the damages awarded in the Judgment have no  
 20 scientific basis and represent a denial of justice.

21 And with that, I will hand it over to my  
 22 colleague, Mr. Paulsson, who will further discuss the  
 23 denial of justice and the violation of the Bilateral  
 24 Investment Treaty.

25 PRESIDENT VEEDER: Thank you very much.

12:42 1 Mr. Paulsson.

2 MR. PAULSSON: Members of the Tribunal, let's try  
 3 to put this concatenation of outrages into some kind of a  
 4 conceptual framework that shows us where all this will  
 5 lead. I will seek to deal, in sequence, with three aspects  
 6 of denial of justice: the legal standard, the ripeness of  
 7 Chevron's claim and its merits.

8 I will also remind you of Ecuador's breaches of  
 9 specific provisions of the BIT.

10 As shown by the evidence summarized this morning,  
 11 the meltdown of the rule of law in Ecuador has left a  
 12 depressing wasteland saturated with the five types of  
 13 poison listed on the slide. What is the applicable  
 14 international law standard? Many formulations seeking to  
 15 define denial of justice were quoted in my Reports filed  
 16 earlier in this case. I should pause to note that in  
 17 light of the Tribunal's invitation that I join Counsel  
 18 table, those reports are obviously not evidence and, as  
 19 was confirmed in the Claimants' letter of June the 2nd,  
 20 2014, are not being cited as evidence, but, of course, the  
 21 Claimants continue to rely on the Legal Authorities  
 22 referred to.

23 One general formulation is that of the  
 24 International Court of Justice in Barcelona Traction.  
 25 Denial of justice occurs in the case of such acts as



12:43 1 corruption, threats, unwarrantable delays, flagrant abuse  
 2 of judicial procedure, a Judgment dictated by the  
 3 Executives or so manifestly unjust that no court which was  
 4 both competent and honest could have given it.  
 5 It seems particularly useful, though, to consider  
 6 formulations that pertain to the specific manifestations  
 7 of denial of justice in this case: First, bias against  
 8 foreign litigants. In his well-known treatise on the  
 9 diplomatic rights of citizens abroad, Edwin Borchard wrote  
 10 that customary international law guarantees aliens "fair  
 11 courts, readily open to aliens, administering justice  
 12 honestly, impartially, without bias or political control."  
 13 A second type of denial of justice, very  
 14 pertinent here, is the refusal to address and correct  
 15 evidence of malfeasance. The proposition that this is an  
 16 international delict has venerable antecedents. To take  
 17 just one example, in 1886, the Commissioner in Coles and  
 18 Crosswell found that a Haitian Court denied justice when it  
 19 refused to annul a conviction for theft that resulted from  
 20 a corrupt process.  
 21 Closer to us in time, the European Court of Human  
 22 Rights has consistently found countries to be in breach of  
 23 the European Convention if their Appellate Courts do not  
 24 have the power to correct First Instance Decisions tainted  
 25 by bias. I refer you to the Kingsley case, whereas here

12:45 1 complaint is made of a lack of impartiality in the  
 2 first-instances court, the reviewing Court must not only  
 3 consider the complaint, but have the ability to quash the  
 4 impugned decision. That should certainly ring a bell with  
 5 anyone familiar with the record in this case.  
 6 A third type of denial of justice: Improper  
 7 influence by the Executive Branch. You have some  
 8 citations on this slide, I hope. Note that one single  
 9 letter evidencing undue influence was enough to condemn  
 10 the Respondent in Petrobart versus the Kyrgyz Republic.  
 11 Compare that with President Correa's constant and  
 12 relentless public diatribes against Chevron and his  
 13 emphatic resolute, triumphant endorsement of the Lago  
 14 Agrio Judgment.  
 15 And, finally, a fourth type of denial of justice:  
 16 The egregious misapplication of law, the legal absurdities  
 17 discussed by Mr. Coriell, or an outcome manifestly  
 18 inconsistent with the evidence before the Court, the  
 19 factual absurdities discussed by Ms. Renfroe.  
 20 Flawed legal analysis and factual findings can,  
 21 to use Fitzmaurice's words, evidence a decision which no  
 22 honest and competent Court could possibly have given. And  
 23 as held in the case of the Oriente, a decision given in  
 24 direct opposition to so strong a preponderance of the  
 25 evidence of testimony cannot be entitled to respect. It

12:46 1 indicates strongly a pre-determination on the part of the  
 2 Judge. I now turn to ripeness.  
 3 Despite the numerous and gross violations of due  
 4 process embodied in the Lago Agrio Judgment, despite the  
 5 failure of Ecuador's higher courts to correct or even  
 6 consider them, and despite the ongoing efforts of the  
 7 Correa administration to have the Judgment enforced abroad  
 8 as a matter of declared highest policy priority, Ecuador  
 9 insists that Chevron has yet to suffer any cognizable  
 10 injury and that further remedies remain to be pursued  
 11 within Ecuador. It's preposterous. The refusal of the  
 12 higher courts to consider the evidence of fraud is itself a  
 13 freestanding denial of justice. It's grotesque to present  
 14 it as a justification for now sending Chevron on a wild  
 15 goose chase under something called the Collusion  
 16 Prosecution Act.  
 17 The denial of justice here was consummated when  
 18 the Appellate Court in willful disregard of your Interim  
 19 Measures Awards affirmed and certified the Judgment as  
 20 enforceable in Ecuador and, more to the point, abroad.  
 21 This proposition is at the heart of the case.  
 22 As Sir Hersch Lauterpacht wrote in his Separate  
 23 Opinion in the Norwegian Loans Case, the requirement of  
 24 exhaustion of remedies is not a purely technical or rigid  
 25 rule. It is a rule which international tribunals have

12:48 1 applied with a considerable degree of elasticity. The  
 2 inquiry is inherently contextual. May I, therefore, ask  
 3 you to put yourself in the Chevron's position on the  
 4 3rd of January 2012. That was the day when the Appellate  
 5 Court in question, namely the Provincial Court of Justice  
 6 of Sucumbios, wholeheartedly affirmed Judge Zambrano's  
 7 Judgment.  
 8 Let us engage in a mental exercise. You're  
 9 Chevron, 11 months ago you had been ordered to pay billions  
 10 of dollars on the basis of the say-so of a dishonest man  
 11 wearing the robes of a judge, an opaque and interminable  
 12 Judgment with not the slightest demonstration of exactly  
 13 how the preposterously successful Plaintiffs had proven any  
 14 damage whatsoever as a matter of elementary causation. Let  
 15 alone how this added up to such a breathtaking amount.  
 16 You might have thought that this robed judge would  
 17 be disavowed by any responsible public authority. The  
 18 purpose of the exhaustion of remedies rule is to give the  
 19 State in question the opportunity to disown the aberration  
 20 and to nullify its effect on the victim. Frighteningly  
 21 while statements by the President of the country would have  
 22 made you nervous, particularly given the many reports of  
 23 neutral international observers to the effect that the  
 24 judiciary is an instrument of executive dictats. But  
 25 today, on the 3rd of January 2012, is the opportunity for

12:50 1 Ecuador as a subject of international law to come to its  
 2 senses through its appellate jurisdiction. Here is the  
 3 test that matters: Does the rule of law obtain in Ecuador?  
 4 I'll ask for your worst fears to come to reality, the  
 5 Judgment is blithely affirmed in its entirety, every jot  
 6 and tittle. Ecuador has no intention of disowning it.  
 7 From the President who uses Texaco as his whipping  
 8 boy on his weekly basis, to every single official who has  
 9 had the occasion to consider the iniquity of the Lago Agrio  
 10 Judgment but instead lauded it, Ecuador has plainly  
 11 indicated that there will be no remedy for Chevron.  
 12 This process of ratification starts with the  
 13 appellate Judgment, so let me remind you of a few of its  
 14 depressing elements.  
 15 First, the Appellate Court did not purport to  
 16 reassess the evidence independently as a court of appeal,  
 17 but instead deferred to the ostensible sound judgment, sana  
 18 critica, of Zambrano in all material respects. Let me  
 19 quote from Page 12. Article 115 of the Code of Civil  
 20 Procedures states that evidence must be assessed as a whole  
 21 pursuant to the rules of a sound judicial Judgment. In the  
 22 present case, the trial court has complied with the  
 23 provision just mentioned.  
 24 And now, Page 8. In the division's estimation,  
 25 what the trial judge did in the appeal Judgment was exactly

12:51 1 this: Consider the evidence as a whole and not just the  
 2 documentary evidence that the Defendant demands, and  
 3 establish the facts in an indisputable and conclusive  
 4 manner.  
 5 More from Page 12: It is the collection of  
 6 information coming from various sources that undoubtedly  
 7 has created in the trial judge the conviction of the  
 8 existence of damage, allowing him at the same time to have  
 9 a minimal margin of error in applying the interpretation  
 10 method of sound discretion to assess scientific evidence.  
 11 And moving over to Page 13: The appeal Judgment  
 12 proposed the detailed appraisal of all the body of evidence  
 13 and finds the existence of environmental damages legally  
 14 proved. The division considers the lower court's appraisal  
 15 in this part to be coherent and of good legal logical  
 16 judgment because it stems from the body of evidence  
 17 presented in the trial to which the trial court referred  
 18 precisely.  
 19 In sum, the Appellate Court deferred to the  
 20 ghostwritten Judgment on all counts. You will search in  
 21 vain in the Appellate Judgment for words like, for example,  
 22 "soil" or "water" for any weighing of the evidence, for any  
 23 justification of the billions awarded in damages except  
 24 assertion. The appeals judges might have just as well  
 25 written this: The deed is done. Let's not get involved.

12:53 1 Or, as the French say, courage, fuyons!  
 2 Second, the Appellate Court stated that it had no  
 3 competence to consider Chevron's evidence of fraud in the  
 4 procurement of that Judgment, although it provided no  
 5 explanation for this apparent paralysis. That's the bell I  
 6 hope I rang when I referred to the European Court of Human  
 7 Rights Judgment a few moments ago.  
 8 But the Plaintiffs were not satisfied with the  
 9 Appellate Court acting as Pontius Pilate. They wanted to  
 10 act as a subservient accessory. So, they asked the Court  
 11 for a clarification to explain that when it said we have no  
 12 competence, it actually meant that it had, in fact,  
 13 considered and rejected the evidence of fraud. All right.  
 14 Thank you very much, responded the Appellate Court. That's  
 15 exactly what we meant to say. And so the clarification  
 16 order transformed no competence into the obedient finding  
 17 that, yes, such allegations have been considered, but no  
 18 reliable evidence of any crime has been found.  
 19 This all speaks for itself, except to note that  
 20 the Appellate Court's contradictory ipse dixit was too  
 21 outrageous even for the National Court of Justice, which  
 22 preferred the lesser outrage--but still an outrage--of  
 23 evasion. When it got ahold of the case, it ruled that the  
 24 Court reviewing Zambrano's bombshell of a judgment after  
 25 all did not have the authority to consider whether it was

12:54 1 fraudulent, and that was dispositive.  
 2 The assertion of impotence from both the Appellate  
 3 Court and the National Court of Justice are on the slides.  
 4 At this moment, your Tribunal enters center stage.  
 5 You had already heard the Parties on the issue of  
 6 whether irreparable harm would arise if Ecuador allowed the  
 7 tainted Judgment to set sail around the world.  
 8 On the 16th of February, 2012, you issued the  
 9 second Award on Interim Measures. In the fact of the  
 10 Appellate Decision, this decision strengthened your earlier  
 11 directive, moving from ordering Ecuador to take all  
 12 measures at its disposal to prevent enforcement, now for it  
 13 to take all measures necessary--necessary--to suspend or  
 14 cause to be suspended the enforcement and recognition  
 15 within and without Ecuador of the Judgments. This imposed  
 16 an obligation of result.  
 17 What did the judges of the Sucumbios Court do?  
 18 The very next day, February 17th, the Provincial Court of  
 19 Justice of Sucumbios declared the Judgment to be  
 20 enforceable. On March 1st, the Court attempted to justify  
 21 its recalcitrance on the odd and unexplained ground that  
 22 its immediate enforcement was required by human rights  
 23 principles, an argument that popped up, it seems, like a  
 24 Jack-in-the-Box. I quote: "The members of the division  
 25 have no obligation to assume this responsibility under

12:56 1 orders from a commercial arbitration panel who do not  
 2 consider the conflict of international obligations they  
 3 generate by ordering measures that restrict human rights."  
 4 Two days later, on March 3rd, Correa publicly  
 5 condemned the Tribunal's Second Interim Award. He said  
 6 this: "And now a United Nations arbitration center,  
 7 invoking the Bilateral Investment Treaty dated 1997, is  
 8 trying to stay the sentence. They're setting in motion the  
 9 UN itself to carry out a judicial monstrosity according to  
 10 their interests. This is very serious, fellow countrymen.  
 11 very serious."  
 12 Correa elaborated his meaning in a July 2013  
 13 speech to ALBA. Referring to your Interim Measures Award,  
 14 he said: "This is outrageous. This is intolerable. These  
 15 are the mechanisms of a new empire, the empire of capital,  
 16 the new imperialism, or a double standard of boundless  
 17 hypocrisy, using these international forums, arbitrations  
 18 completely biased, corrupt arbitrators, to try and force  
 19 our countries into submission."  
 20 I've tried in vain to understand on what basis  
 21 Correa could declare urbi et orbi that Messrs. Veeder,  
 22 Grigera Naón and Lowe are corrupt arbitrators. The only  
 23 answer seems to be that he is the President and has the  
 24 power to designate the guilty without explanation. I  
 25 shudder to think what he makes of advocates who are not

12:59 1 one hand, a routine first-instance Judgment which has been  
 2 decided in disregard of an alien's right to due process but  
 3 which has attracted no attention at all by higher national  
 4 authorities of any stripe, and, on the other hand, an  
 5 instance of denial of justice which the Head of State hails  
 6 as the most important judgment in the history of his  
 7 country?  
 8 The difference becomes even starker when the  
 9 Judgment is dutifully affirmed on appeal without any  
 10 consideration of the evidence that it was procured by  
 11 fraud. When that Judgment is certified as enforceable in  
 12 contravention of a binding order of an international  
 13 tribunal and when the effective enforcement of that  
 14 judgment around the world has been declared a matter of  
 15 priority governmental policy, why are not the unequivocal  
 16 statements of the Head of State in a country with a  
 17 subjugated judiciary a sufficient and conclusive indication  
 18 of the State's lack of interest in any opportunity to  
 19 correct a Judgment of which it is, to the contrary, very  
 20 proud?  
 21 Why is it not decisive that the head of State  
 22 disaffirms any intention to countenance reconsideration?  
 23 Exporting the Judgment outside Ecuador was  
 24 certainly a dispositive event. Ecuador's courts have no  
 25 jurisdiction beyond the country's borders. They cannot

12:57 1 convinced by his rhetoric.  
 2 All of this confirms the existence of a  
 3 consummated delict. Professor Fawcett wrote in the British  
 4 Yearbook in 1954: "The exhaustion of local remedies is  
 5 necessary to establish beyond doubt that the wrongful act  
 6 or denial of justice complained of is the deliberate act of  
 7 the State, and that it is willing to leave the wrong  
 8 unrighted."  
 9 Ask yourself the question: When has the State as  
 10 a system, as an institution, made clear that it has no  
 11 interest in correcting the outlandish denial of justice in  
 12 progress? It is an uncontestable fact that Ecuador has  
 13 never signified anything but a constant, explicit, indeed,  
 14 militant refusal to acknowledge or correct the wrongdoing.  
 15 And this comes from the Head of State, again and again,  
 16 ever more stridently. Praising the Zambrano Judgment as  
 17 the most important in the nation's history. Branding  
 18 lawyers who advised Chevron of its rights as vende patrias.  
 19 When is enough enough? When does a State lose the occasion  
 20 international law gives it to undo a denial of justice?  
 21 When is a denial of justice a deliberate act of the State,  
 22 as Fawcett put it? When--what does one need more once the  
 23 head of State has spoken and plainly articulated his  
 24 contempt for international legal obligations?  
 25 Isn't there a world of difference between, on the

01:00 1 reverse a foreign court's decision to freeze assets or to  
 2 enforce the Lago Agrio Judgment.  
 3 And so, your Tribunal recognized that Chevron  
 4 faced irreparable harm when--when--the Ecuadorian judiciary  
 5 declared the Judgment to be enforceable. You recognized  
 6 this when you granted Interim Measures to prevent that  
 7 eventuality. And this is what you wrote: There are  
 8 increasingly grave risks that enforcement and execution of  
 9 the Lago Agrio Judgment against the First Claimant with its  
 10 subsidiary companies will imperil to a very significant  
 11 extent the overall fairness and the efficacy of these  
 12 arbitration proceedings.  
 13 The Declaration of the Judgment's enforceability  
 14 did two things: It exacerbated the injury to Chevron and  
 15 it rendered the Ecuadorian system powerless to correct it.  
 16 With the remaining avenues of recourse rendered  
 17 ineffective, Ecuador attracted international  
 18 responsibility.  
 19 Gentlemen, as of this moment, there is no room  
 20 left for the exhaustion of Ecuadorian remedies. The  
 21 \$9 billion Judgment has been set loose like noxious spores  
 22 and it is no longer within Ecuador's power to contain them.  
 23 To use the words of the Ambatielos Tribunal,  
 24 "Remedies which could not rectify the situation cannot be  
 25 relied upon by the Defendant State as precluding an

01:01 1 international action."  
 2 Now, Ecuador's inconsistent versions about what  
 3 additional recourse should have been pursued are quite  
 4 revealing. Let me explain. After the Appellate Court's  
 5 decision of January 3, 2012, Chevron filed a cassation  
 6 petition to the National Court of Justice. In February  
 7 of 2013, while cassation was pending, Ecuador, in its  
 8 Track 2 Counter-Memorial on the Merits, confirmed that this  
 9 was the proper course, and that Chevron could have its due  
 10 process complaints heard by that National Court of Justice  
 11 and subsequently the Constitutional Court.  
 12 This is what Ecuador told you. There are two  
 13 effective remedies available to Chevron that it has failed  
 14 to exhaust: Appeal to the National Court of Justice, which  
 15 is currently pending. If that is denied, also an  
 16 extraordinary action before the Constitutional Court. Like  
 17 the National Court of Justice, the Constitutional Court can  
 18 overturn the Lago Agrio Judgment. That's what they told  
 19 you.  
 20 But the National Court of Justice, in its decision  
 21 later that year affirming the merits of this Judgment,  
 22 contrary to what Ecuador told you, stated that it did not  
 23 have the authority to address fraud and, thus, affirmed  
 24 without any inquiry into the Judgment's bona fides and thus  
 25 disregarded the dossiers presented by Chevron. So much for

01:03 1 that remedy.  
 2 Now what did Ecuador do in these proceedings? It  
 3 instantly backtracked. In its Track 2 Rejoinder, having  
 4 never so much as whispered of it before, Ecuador proclaimed  
 5 that the only possible recourse for judicial fraud all  
 6 along had been something called a Collusion Prosecution Act  
 7 claim, a separate and collateral action against Zambrano  
 8 himself. How amazing is that? Would Ecuador's counsel  
 9 with a straight face say that you haven't exhausted  
 10 recourse against, let us say, Barclay's Bank, until you  
 11 have brought a personal tort action against the Branch  
 12 Manager who executed your purchase of the shares that went  
 13 down? For that matter, do they see no irony in faulting  
 14 Chevron for pursuing the very recourse that they once  
 15 insisted was the proper path?  
 16 The CPA, the Collusion Prosecution Act, was first  
 17 brought on stage as a deus ex machina by the National Court  
 18 of Justice in an attempt to justify its claimed paralysis.  
 19 It was an afterthought, a fig leaf. As a purported remedy,  
 20 it fails at several levels.  
 21 For one thing, although Ecuador seems to posit a  
 22 CPA claim against Zambrano, this would not address the full  
 23 measure of the delict, which goes well beyond the  
 24 ghostwritten Judgment itself. Consider the falsified  
 25 Calmbacher Report. The Cabrera fraud. The Government's

01:04 1 anti-Chevron extortion campaign. With different actors  
 2 involved in the separate facets of this expansive fraud,  
 3 Chevron would need to bring not one but several independent  
 4 actions under the CPA.  
 5 Ecuador's 11th-hour remedy thus stands athwart  
 6 international law which does not require Claimants to  
 7 pursue oblique and collateral avenues of relief. Something  
 8 as serious as fraud in the Judgment must, in any  
 9 functioning system, be a central issue on direct appeal, if  
 10 not the central issue.  
 11 The refusal of the appellate and cassation courts  
 12 to consider Chevron's evidence of fraud cannot be  
 13 reconciled moreover with Ecuador's lex specialis promise to  
 14 provide effective means for the vindication of rights as  
 15 set forth in Article II(7) of the BIT.  
 16 Both Parties agree furthermore that the doctrine  
 17 of ultima ratio applies here, meaning that actions under  
 18 the CPA are available only where there is no other  
 19 potential recourse. As explained by Dr. Coronel, one of  
 20 the experts on Ecuadorian law whom Ecuador has not chosen  
 21 to call here, the Appellate Court had--he's very clear on  
 22 this--the Appellate Court had the constitutional power and  
 23 duty to consider the evidence of fraud presented by  
 24 Chevron.  
 25 In its Rejoinder, Chevron does not dispute the

01:06 1 import of constitutional commands such as the right to a  
 2 fair and transparent proceeding. It instead attempts to  
 3 delineate a point of procedure and a footnote, Footnote  
 4 116: If evidence of the fraud is contained within the case  
 5 record itself, the Appellate Court, it says, can consider  
 6 it. If instead the evidence of fraud is extrinsic to the  
 7 case record, the only recourse is the CPA.  
 8 In other words, Ecuador concedes that Chevron  
 9 would have satisfied the exhaustion requirements with its  
 10 direct appeal if only the proof of malfeasance here were  
 11 contained in the record of the case itself.  
 12 What type of system is this? The fraudulent  
 13 Judgment does not speak its name. The guilty party doesn't  
 14 produce evidence of the fraud because it wants the fraud to  
 15 be successful. The innocent party does not produce it  
 16 because the fraud is secret, and it is ignorant of it. At  
 17 least in theory, furthermore, the Constitution of Ecuador  
 18 is supreme and must be applied directly, not subordinated  
 19 to rules of procedure. This is just double speak. Ecuador  
 20 is unable to cite any authority or any examples of this  
 21 esoteric distinction.  
 22 Let us nonetheless accept arguendo Ecuador's  
 23 unattractive assumption that its judicial system positively  
 24 prevents appellate courts, as a matter of procedure, from  
 25 considering whether the judgment under review was corrupt,

01:07 1 procured by fraud. Even under this dubious hypothesis, it  
 2 is undisputed by Ecuador that the CPA Court could  
 3 not--cannot--stay enforcement of the underlying judgment  
 4 during its review. Page 39 of the Rejoinder. That makes  
 5 this already implausible remedy perfectly pointless.  
 6 Chevron, please recall, did try to stay  
 7 enforcement. But its entreaties were rejected by both the  
 8 Appellate Court and the National Court of Justice. Without  
 9 a stay, the CPA is not a remedy. It's a detour, and a  
 10 lengthy one at that.  
 11 Ecuador concedes that it typically takes almost a  
 12 year-and-a-half just to get a first instance judgment under  
 13 the CPA--Page 40 of the Rejoinder. That would be followed  
 14 by several more years of appeals which, in this case, would  
 15 go to the very same appellate courts, appellate and  
 16 cassation courts, that emphatically affirmed the  
 17 multi-billion dollar Judgment in the first place without  
 18 showing any interest in the proof of its corrupt origin.  
 19 Ecuador's suggestion of sending Chevron down the  
 20 CPA rabbit hole is perfidious. It would serve to tie the  
 21 hands of this Tribunal for several years while President  
 22 Correa continues his campaign to promote the Judgment's  
 23 enforcement abroad. International law is not so amemic.  
 24 Recall here that in addition to pursuing recourse  
 25 before the National Court of Justice and the Constitutional

01:09 1 Court, as Ecuador once recommended, Chevron transmitted  
 2 evidence of fraud to the Office of the Prosecutor General  
 3 as it became available. As Mr. Bishop recounted, while  
 4 Chevron has been accused by the Prosecutor General of  
 5 malicious--of making reckless and malicious accusations, no  
 6 action has been taken against any of the Ecuadorians  
 7 implicated by the evidence.  
 8 For the most part, the Prosecutor General has been  
 9 content to simply ignore the evidence presented to him.  
 10 But in September 2013, he took the unusual step of actually  
 11 rejecting and returning three boxes of Judgment  
 12 ghostwriting evidence, stating, as if it were an  
 13 explanation, that the case in question is a civil  
 14 proceeding in which the Prosecutor General office does not  
 15 participate. No interest in criminal activity. That's  
 16 Exhibit C-2305.  
 17 The official investigations of the Office of the  
 18 Prosecutor General does continue to languish, going nowhere  
 19 slowly. This is an exercise in hypocrisy. There are, in  
 20 short, no effective remedies in Ecuador for the injuries  
 21 Chevron has suffered and may suffer as a result of  
 22 Ecuador's breach of the Tribunal's Interim Awards. And  
 23 this, of course, assumes that Chevron is running on a dry  
 24 race track when it steps into an Ecuadorian court room, as  
 25 to which I hardly need say anything at all.

01:10 1 As has been well documented in this arbitration,  
 2 after ten years of repeated restructurings and removals,  
 3 the judiciary is now securely under the thumb of the  
 4 President. Although Ecuador attempts to spin the  
 5 successive reorganizations as progressive reform, they have  
 6 only further destabilized the judiciary and allowed for  
 7 greater political intervention through various removals and  
 8 appointments. Recall the statistics: Two-thirds of the  
 9 Ecuadorian judiciary sanctioned by either removal,  
 10 suspension, fines or reprimands in the course of 18 months  
 11 in the Years 2011 and 2012.  
 12 You may have heard the proverb, perhaps unfairly  
 13 attributed to the Chinese, but certainly an ultimate  
 14 manifestation of Machiavellian thought: Kill one, warn a  
 15 hundred. Judges know full well the personal and  
 16 professional risks they would be taking if they were to  
 17 rule against the Government's interests. This is doubtless  
 18 what Donziger told his friends--that the trial and  
 19 appellate judges hearing the Lago Agrio Case don't have to  
 20 be intelligent enough to understand the law, just as long  
 21 as they understand the politics.  
 22 The politics here were not difficult to  
 23 understand. Correa publicly called Chevron an enemy of the  
 24 nation. Chevron must be held liable, with a sanction to be  
 25 imposed in the hands of the courts. Enforcement of the

01:12 1 Judgment is today a matter of first priority for the  
 2 Government, and Ecuador's efforts to coerce Chevron into an  
 3 inequitable settlement continue unabated.  
 4 Earlier this month, April 8th, Correa tweeted to  
 5 an article from the Plaintiffs' NGO--that's Amazon  
 6 Watch--and wrote "the world should know Chevron, corrupt  
 7 and corrupting company."  
 8 Given the turmoil in the judiciary over the past  
 9 11 years and the direct political interference in the Lago  
 10 Agrio Case, it is risible--it is risible--for Ecuador to be  
 11 speaking of a presumption of regularity. It was precisely  
 12 the institutional weakness and corruption of the judiciary  
 13 that allowed the conspiracy between Plaintiffs and the  
 14 Correa Administration to flourish.  
 15 But the denial of justice and its consummation  
 16 does not require you to issue sweeping criticisms of  
 17 Ecuador's entire judicial system, however deserved they may  
 18 or may not be. It is more than enough to observe what the  
 19 courts have done in this case and how the highest  
 20 authorities of State have applauded their misdeeds in this  
 21 case. And how both the courts and the head of State have  
 22 shown their contempt for your Tribunal and for  
 23 international law.  
 24 Finally, some brief observations on the merits.  
 25 The details of this massive denial of justice have been set

01:13 1 out in the Memorials. I need not say very much at all,  
 2 particularly in wake of the presentations this morning.  
 3 You see key references on the following slide. Your  
 4 Tribunal also has the benefit of the decision issued by the  
 5 RICO court in New York. After conducting a seven-week  
 6 trial, Judge Kaplan meticulously documented the evidence  
 7 that led him to conclude that the decision in the Lago  
 8 Agrio Case was obtained by corrupt means.  
 9 It is noteworthy that Judge Kaplan's conclusion  
 10 was reached primarily on the strength of evidence obtained  
 11 outside of Ecuador, mostly through U.S. discovery  
 12 proceedings. That is hardly surprising but noteworthy. It  
 13 is not surprising because of Ecuador's refusal to  
 14 investigate the fraud in Ecuador. It's offered various  
 15 changing and contradictory reasons for stonewalling Chevron  
 16 in its effort to obtain relevant evidence in Ecuador. The  
 17 stance of the appellate jurisdictions has hovered over  
 18 these proceedings like something Lewis Carroll might call  
 19 the "Cheshire" remedy. You are told it's there, but when  
 20 you approach it, there is no remedy, only its mocking  
 21 smile.  
 22 Ultimately, unable to respond to the evidence that  
 23 Chevron has gathered elsewhere, Ecuador's courts sat stone  
 24 dumb. Ecuador's counsel today nitpicked feebly at the  
 25 margins of select portions of the overwhelming evidence

01:15 1 against them, but the fact is that this fraud was so big  
 2 that Chevron has remarkably been able to prove it through  
 3 evidence obtained almost exclusively outside Ecuador.  
 4 The federal judge in North Carolina who granted  
 5 Chevron the discovery into the fraud that was flatly denied  
 6 in Ecuador said that this Court must believe that the  
 7 concept of fraud is universal, and that what has blatantly  
 8 occurred in this matter would in fact be considered fraud  
 9 by any court.  
 10 Across the Atlantic, the Court in Gibraltar that  
 11 heard the case against the Plaintiffs' offshore funders  
 12 in 2014 refused to give res judicata effect to the  
 13 Ecuadorian Appellate Judgment on which Respondent places so  
 14 much reliance here, explaining that, I quote, "if the  
 15 Appeal Courts in Ecuador had anything before it like the  
 16 evidence which has been put before me, it is, indeed,  
 17 surprising on the face of it that at the least a rehearing  
 18 was not ordered. It would be difficult to have confidence  
 19 in an Appeal Court which made the findings which it did and  
 20 upheld the First Instance Decision if the Claimants'  
 21 allegations are correct."  
 22 Our written materials show that the Ecuadorian  
 23 Constitution obliged the appellate and cassation  
 24 courts--you see it on the slide--obliged the appellate and  
 25 cassation courts to address Chevron's allegations of fraud

01:16 1 and corruption. But even if the Ecuadorian Constitution  
 2 had been silent on this subject, and even if its Code of  
 3 Civil Procedure like none other in the known universe  
 4 obliges its judges to hear no evil, see no evil, speak no  
 5 evil, there has still been a denial of justice. A judicial  
 6 system that is incapable of addressing prima facie evidence  
 7 of judicial fraud falls below international standards.  
 8 That is not a legitimate appeals process. It violates any  
 9 conception of due process.  
 10 I pause to note Ecuador's remarkable assertion  
 11 that the actions of Cabrera and Zambrano cannot be  
 12 attributed to it. This ignores that all of their  
 13 malfeasance was performed in their official capacities,  
 14 Cabrera as an auxiliary of the Court, Zambrano as the  
 15 Presiding Judge.  
 16 In all events, as explained in the papers, Ecuador  
 17 is an undeniably responsible for the Judgment, that is the  
 18 sum product of their acts and omissions.  
 19 Ecuador's challenge to this Tribunal's  
 20 jurisdiction over the denial-of-justice claims is equally  
 21 frivolous. There is jurisdiction under Article VI(a)(1  
 22 (a)(3) of the BIT because the denial-of-justice claims  
 23 concerns litigation arising out of and relating to the  
 24 investment and the relevant investment agreements. That is  
 25 the 1973 Concession, the 1995 Settlement that this Tribunal

01:17 1 has held are inextricably linked.  
 2 Ecuador furthermore cannot be permitted to blow  
 3 hot and cold on Chevron's status. Having held Chevron  
 4 liable for TexPet's alleged activities under the '73  
 5 Concession on an alter ego theory, it cannot now be heard  
 6 to deny Chevron the benefits of international law attached  
 7 to that investment.  
 8 In addition to constituting a denial of justice,  
 9 Ecuador's conduct also violates other provisions of the  
 10 BIT, including effective means, Fair and Equitable  
 11 Treatment, full protection and security, arbitrary  
 12 treatment and non-discrimination. You have the relevant  
 13 pleadings--the citations to the pleadings on the slide.  
 14 Now, a discussion of the merits would be  
 15 incomplete without saying a few words about remedies.  
 16 A combination of three distinct remedies is  
 17 necessary and appropriate to address the uniquely grave  
 18 circumstances in which Chevron finds itself today.  
 19 First, because it is a denial of justice, the Lago  
 20 Agrio Judgment must be declared a nullity under customary  
 21 international law.  
 22 Second, Ecuador must be instructed to take all  
 23 measures necessary to prevent enforcement of the fraudulent  
 24 judgment in Ecuador or abroad.  
 25 Third, Chevron is entitled to the damages

01:19 1 traceable to Ecuador's breaches of international law in an  
 2 amount to be determined in Track 3.  
 3 Of the three requests, the first is by far the  
 4 most important. As a result of Ecuador's willful breach of  
 5 the Tribunal's Interim Measures Awards, Chevron now faces  
 6 the threat of multiple enforcement actions around the  
 7 world. The remedy must be tailored to this reality:  
 8 Ecuador has made clear enough through its statements and  
 9 actions on this and other arbitrations that it will not  
 10 comply with international law obligations. One must  
 11 therefore be realistic about the value of an injunction or  
 12 of a monetary Award.  
 13 You've already heard about these three remedies in  
 14 the Track 1B Hearing and Mr. Kehoe will in all likelihood  
 15 have more to say about them at the conclusion of this  
 16 Hearing. It's basically a legal argument which does not  
 17 depend in any measure on the testimonial evidence, so it  
 18 naturally seems to belong in the closing arguments.  
 19 But I wish to give notice that when we get there I  
 20 will also ask for the opportunity to say a few words about  
 21 Ecuador's remarkable effort to tempt you to conduct your  
 22 own retrial of the Lago Agrio Case pursuant to what they  
 23 present as their offset theory.  
 24 There is no precedent for such an outlandish  
 25 event, and that is hardly surprising. It would add to the

01:21 1 Crawford said on behalf of Chevron at a Hearing on Interim  
 2 Measures held here in Washington in February 2012. This is  
 3 what he said:  
 4 If Ecuador had actually applied its constitutional  
 5 values much flaunted during the course of this litigation,  
 6 we wouldn't be in this situation. If Chevron had had the  
 7 constitutional rights to an impartial and independent judge  
 8 providing due process, we wouldn't be here. The same is  
 9 true if the various responsible branches had investigated  
 10 and prosecuted the bribery and fraud in connection with the  
 11 Cabrera Report and the Judgment and thereby protected  
 12 Chevron's rights as a litigant. It's precisely because  
 13 Ecuador has constantly ignored its own Constitution, laws  
 14 and procedures, as well as the BIT and international law,  
 15 that we have been forced to bring this case.  
 16 As Mr. Pate has repeatedly told this Tribunal in  
 17 his various appearances before you, Chevron has no desire  
 18 for conflict with any sovereign, nor can I imagine is this  
 19 Tribunal anxious to find a sovereign in breach of its  
 20 obligations under international law. But as Professor  
 21 Crawford explained, Ecuador's conduct has left no choice.  
 22 The evidence here is overwhelming and the task at hand is  
 23 clear. If international law is to maintain its force and  
 24 relevance, the travesty of the Lago Agrio Litigation must  
 25 be condemned and sanctioned in the strongest possible

01:20 1 requirement of exhaustion of remedies, the need for the  
 2 International Court or Tribunal to engage in a hypothetical  
 3 reconsideration of the merits imagining how the case  
 4 against the foreigner would come out if one eliminated the  
 5 unfair elements.  
 6 This would mean the denials of justice could be  
 7 consummated without cost. Most victims do not mount  
 8 international cases anyway, and if a victim did and won,  
 9 all that would happen is that the case starts over again.  
 10 So much is wrong with this theory that it would  
 11 take more time than I have to deal with it in any detail.  
 12 I will simply make one quick observation right now because  
 13 it takes the problem off the table instantly: The argument  
 14 in these proceedings is not ripe. The offset theory could  
 15 apply only with respect to the Claimants' request for  
 16 monetary damages.  
 17 Of course, the prospects of Ecuador paying  
 18 billions of dollars in compensation are bleak. Who could  
 19 believe that Ecuador will compensate future harm that it  
 20 now refuses to prevent? It's clear as day, isn't it?  
 21 Through its offset theory, Ecuador is prematurely seeking a  
 22 reduction in damages that it never intends to pay, but  
 23 quantum has been reserved for Track 3.  
 24 To conclude our presentations, I find it  
 25 impossible to improve upon what Professor--now Judge--James

01:23 1 terms.  
 2 The narrative of this case is that of a massive  
 3 effort to shift liability from Petroecuador to Chevron, to  
 4 ignore settlement agreements, legal requirements, basic  
 5 notions of justice and fairness, all so that the State  
 6 could shirk its own cleanup obligations and so that  
 7 unscrupulous lawyers and their funders, aiders and abettors  
 8 could make a lot of money. So, they procured the Lago  
 9 Agrio Judgment.  
 10 The crime against the indigenous population may be  
 11 real and it may be tragic, but that crime is the  
 12 indifference of a government in far-off Quito, happy to act  
 13 on the principle that the subsoil hydrocarbons belong to  
 14 the State and not to the local populations, with the result  
 15 that very little of the riches paid to the coffers of the  
 16 central government from the sale of output of the  
 17 wealth--from the wells operated by Texaco, an amount which  
 18 is nearly 50 times greater than the income to Texaco  
 19 itself, ever made its way back to the impoverished Oriente.  
 20 Now a scapegoat with deep pockets has been found,  
 21 but this is a case where lawyers don't deserve their title,  
 22 where supposedly independent officers of the court are for  
 23 sale, and where so-called "judges" have no shame. What  
 24 they gave birth to in this case cannot be called a judgment  
 25 at all. It's a fraud masquerading as one.

01:24 1 And if it were allowed to stand, to play that role  
 2 as a court judgment in enforcement courts around the world,  
 3 then the U.S.-Ecuador BIT would no longer serve as a  
 4 mechanism for investment protection. Because if the BIT  
 5 cannot stop a State from destroying the value of an  
 6 investment through bribery and ghostwriting and pressure  
 7 tactics and manipulation of the judiciary, and if all this  
 8 can be shielded from the usual consequences simply because  
 9 it was accomplished partially through judicial acts, then a  
 10 State cannot not be held to its promises not to engage in  
 11 extortionate behavior of this kind. And the cost of  
 12 investment would inevitably rise, to the disadvantage of  
 13 the poor who will ultimately suffer from the erosion of the  
 14 rule of law and the drying up of foreign investment.  
 15 Is international law an illusion? Today,  
 16 gentlemen, you are its guardians.  
 17 Thank you. That concludes the Claimants' opening  
 18 presentations.  
 19 ARBITRATOR LOWE: If I can ask a question for  
 20 clarification, and you said that the denial of justice was  
 21 consummated when the Appellate Court affirmed and ratified  
 22 the Judgment as enforceable in Ecuador. And should we  
 23 understand that as meaning that, prior to the date of the  
 24 Court Judgment, January 2012, there was no denial of  
 25 justice?

01:26 1 MR. PAULSSON: Of course there was. Hence the  
 2 inquiry into whether or not there is a possibility of  
 3 reversing it. There was a denial of justice both in the  
 4 Lago Agrio Judgment and in the conduct of the State itself  
 5 in seeking to procure judgments in the conditions that I've  
 6 talked about.  
 7 ARBITRATOR LOWE: It's perhaps a point that I at  
 8 least would welcome a little more being said on when we  
 9 come to the closings, but the question of the dates at  
 10 which the breaches of the Treaty are said to have taken  
 11 place. In the light of the fact that the Notice of  
 12 Arbitration was put in in September 2009 is, I think, a  
 13 technical-legal question where I'd appreciate some guidance  
 14 from the Parties.  
 15 MR. PAULSSON: Thank you. It's noted.  
 16 PRESIDENT VEEDER: We have now come to the end of  
 17 the Claimants' opening oral submissions. We will now break  
 18 for lunch. We shall be back at 2:30 to hear the  
 19 Respondent's opening oral submissions.  
 20 (Whereupon, at 1:28 p.m., the Hearing was  
 21 adjourned until 2:30 p.m., the same day.)  
 22  
 23  
 24  
 25

1 AFTERNOON SESSION  
 2 PRESIDENT VEEDER: Let's resume.  
 3 The Respondent has the floor for its opening oral  
 4 submissions.  
 5 OPENING STATEMENT BY COUNSEL FOR RESPONDENT  
 6 MR. BLOOM: Thank you.  
 7 The Honorable Attorney General of Ecuador.  
 8 ATTORNEY GENERAL GARCÍA CARRIÓN: Thank you,  
 9 Mr. President, Members of the Tribunal.  
 10 I address you in my capacity as Attorney General  
 11 of the Republic of Ecuador, on behalf of my country, in  
 12 order to submit the Republic's arguments.  
 13 For years, my country has been portrayed by  
 14 Chevron both in this arbitration as well as in other  
 15 judicial actions related to the environmental damages in  
 16 the Ecuadorian Amazon in a manner that has no relation to  
 17 reality. The Ecuador described by Claimants within the  
 18 different scenarios of the judicial disputes and as part  
 19 of their public relations campaign is an Ecuador that only  
 20 exists in Chevron's imagination.  
 21 The truth of the matter is that Ecuador's courts  
 22 have always been available to Claimants as they have been  
 23 for any national or foreign investor, and Claimants have  
 24 availed themselves of such right, once and again not only  
 25 with respect to the environmental case, but also with

02:30 1 respect to other cases--with results which have been  
 2 favorable to Claimants.  
 3 Claimants cannot ignore their many legal  
 4 victories in Ecuador when simultaneously comparing  
 5 accusations of fraud and corruption in every single legal  
 6 defeat. At present Claimants still have a pending  
 7 extraordinary action for protection before the Ecuadorian  
 8 Constitutional Court.  
 9 And while Claimants paint Ecuador's judiciary  
 10 with a broad brush, a study made in 2014, sponsored by the  
 11 United States AID and carried out by the Latin American  
 12 Public Opinion Project found that Ecuador actually now  
 13 ranks first in South America and fifth in all of the  
 14 Americas when it comes to citizens' trust in the national  
 15 government's capacity to enforce the rule of law.  
 16 Grouping Ecuador with the United States and Canada, the  
 17 study observed, and here I quote, "that a pattern stems  
 18 out of Ecuador, consistently registering among the  
 19 region's highest levels of trust."  
 20 Notwithstanding the above, Claimants described  
 21 the judicial system in Ecuador in a manner not consistent  
 22 with reality and the existing studies using political  
 23 actors opposed to the Government as if they were impartial  
 24 legal experts; the same way as Claimants seek to portray  
 25 the distorted image of Ecuador, their description of the



02:31 1 environmental disaster in the Oriente bears little  
 2 resemblance to fact.  
 3 LBG Expert Reports submitted by Ecuador in this  
 4 arbitral proceeding showed the existence of substantial  
 5 contamination in the Ecuadorian Oriente. Notwithstanding  
 6 their claims to the contrary, an extensive portion of that  
 7 contamination is directly attributable to TexPet and  
 8 Chevron. The information obtained by the Republic's legal  
 9 representation in the 1782 actions in the United States of  
 10 America, including the written and audiovisual Registries  
 11 of the Claimants' pre-inspection of the contamination area  
 12 demonstrates Chevron's conduct both as a party to the  
 13 litigation, as well as their exploration exploitation  
 14 practices. Suffice for now to recall the existence of  
 15 thousands of pages and numerous hours of videos made  
 16 available to this Tribunal that demonstrate how Chevron  
 17 implemented a plan aimed at hiding from the Court the  
 18 environmental pollution caused by TexPet and Chevron.  
 19 Honorable Members of the Tribunal, there is an  
 20 obvious reason why Claimants opposed a site visit for so  
 21 many years. Claimants do not want this Tribunal to  
 22 evidence the reality of the contamination caused by TexPet  
 23 in the Oriente in Ecuador. The Tribunal should have the  
 24 opportunity to observe that which served as the basis for  
 25 the Ecuadorian Court's decision in the Lago Agrio

02:33 1 Litigation. The refutable evidence of the damage caused  
 2 by the Claimants, which is still visible in the region,  
 3 will be verified in the site visit scheduled for June this  
 4 year.  
 5 In 2009, when these arbitral proceedings were  
 6 initiated against the Republic, Claimants' arguments were  
 7 different, but they have mutated in such a form that their  
 8 initial claims are now unrecognizable, evidencing that  
 9 their arbitral claim was filed prematurely.  
 10 In the course of these proceedings, Claimants  
 11 have incorporated arguments about the standard of  
 12 protection and effective means, the purported  
 13 ghostwriting, and in general the denial-of-justice claims  
 14 regarding decisions that had not been issued to their  
 15 initial claim of breach of the Settlement Agreement.  
 16 Claimants now submit to this Tribunal  
 17 Mr. Guerra's testimony, who comfortably lives in the  
 18 United States at Chevron's expense, and request that this  
 19 Tribunal grounds its decision on the testimony of a person  
 20 that recognizes having changed his version of the facts in  
 21 several occasions and in whom Claimants have tried to use  
 22 as their star witness without any type of shame due to the  
 23 conditions under which he is being protected by the  
 24 Claimants. Ecuador has had to defend themselves for a  
 25 very long time during this arbitration as a result of a

02:35 1 private litigation between Chevron and the Lago Agrio  
 2 Plaintiffs, but it was TexPet and Chevron, however, who  
 3 dragged Ecuador to this dispute to which it is not a  
 4 party, and now pretending to have this dispute in  
 5 connection with public statements by Ecuadorian  
 6 authorities that have nothing to do with the  
 7 administration of justice is just another maneuver by the  
 8 Claimants that are ignoring the efforts in making any  
 9 efforts to have a negative impact on the name of Ecuador.  
 10 In the midst of all of the noise and all of the  
 11 incriminations and unfair accusations by Chevron against  
 12 Ecuador, it is all too easy to forget the fact that there  
 13 are real victims whose rights may be harmed in a  
 14 proceeding to which they are not a party, the same way as  
 15 their right to obtain reparation in the courts of the  
 16 United States was frustrated. The reality is that Chevron  
 17 and TexPet do not want that the real injured parties be  
 18 heard at all.  
 19 As we have stated repeatedly and you will hear  
 20 now, the Republic has many concerns about these  
 21 proceedings. We believe it is clear that there can be no  
 22 jurisdiction over an alleged investment dispute involving  
 23 Chevron because Chevron never invested in Ecuador. As  
 24 this Tribunal correctly found, Chevron is not a party to  
 25 an investment agreement.

02:36 1 We believe that it is equally clear under  
 2 international law that Claimants' claims are deficient  
 3 because Chevron has chosen not to exhaust the remedies  
 4 available to them in Ecuador filing the Request for  
 5 Arbitration prematurely. There can be no serious doubt  
 6 that Ecuador's collusion prosecution action act is  
 7 specifically designed to offer redress for any legal  
 8 adjudication that is the product of fraud.  
 9 The Republic of Ecuador has appeared before this  
 10 Tribunal during these last six years despite its Objection  
 11 to Jurisdiction in the hope that the Tribunal finally  
 12 reaches a decision that objectively applies the principles  
 13 under international and Ecuadorian law.  
 14 I now give the floor to Mr. Bloom, who will  
 15 continue with the Republic of Ecuador's argument, and I  
 16 thank you, Mr. President and Members of the Tribunal.  
 17 PRESIDENT VEEDER: Mr. Bloom.  
 18 MR. BLOOM: Thank you.  
 19 You may remember about five years ago, in May of  
 20 2010, when this Tribunal convened the initial procedural  
 21 meeting in this case, it combined that procedural meeting  
 22 with what turned out to be the first of many successive  
 23 interim-measures hearings. We had no idea back then what  
 24 we were in store for.  
 25 From the very beginning, Ecuador found itself in

02:38 1 the difficult position of constantly responding on each  
2 occasion quite quickly to allegedly newfound evidence that  
3 Claimants contended required on each occasion your  
4 immediate attention or else they would face imminent and  
5 dire consequences.

6 At the same time Claimants were in the midst of  
7 amassing quite literally millions of documents, both  
8 through their investigators and through their respective  
9 1782 actions around the United States, about 35 or 40 in  
10 all. We, at least, were on a carousel of sorts, a  
11 carousel that was moving much too fast. As a practical, I  
12 think as we all know, it is far easier and certainly  
13 faster to make allegations than it is to consider and  
14 settle upon a reasonable fact investigation, to conduct  
15 that fact investigation with the resources available, and  
16 given the time afforded. But notwithstanding Claimants'  
17 repeated assertions that it would suffer dire consequences  
18 if the Lago Agrio Judgment were to become enforceable, to  
19 this day, it has paid not out a single dollar in any  
20 enforcement action to the indigenous Plaintiffs, nor is  
21 there even today a reasonable prospect that it will have  
22 to do so in the imminent future.

23 But by driving the arbitral processes, as they  
24 did, by articulating their narrative with a certainty that  
25 was mirrored today, Claimants sought to prompt the

02:39 1 Tribunal to take measures based on this Tribunal's  
2 understandable sense of justice perhaps just a bit more  
3 than, say, on principles of international law. But the  
4 facts are not as Claimants present, and they never were.

5 Weeks before this arbitration was filed, on  
6 August 31, 2009, Chevron went public in an extraordinary  
7 way to publicize their bombshell allegation that it had  
8 videotaped evidence of a bribery scheme implicating the  
9 then-Presiding Judge, Judge Núñez. You may recall that it  
10 took time, a lot of time, time for us to subpoena  
11 documents, subpoena witnesses, subpoena Mr. Borja for us  
12 to establish that the two alleged good samaritans who  
13 conducted the operation were, in fact, a Chevron  
14 contractor named Diego Borja and a convicted drug felon by  
15 the name of Wayne Hansen. We later learn that Borja  
16 availed himself of Chevron's unique witness protection  
17 program and received more than two million dollars in  
18 benefits.

19 Things are not always as they seem. He himself  
20 was quoted as saying there was no bribery, and a U.S.  
21 Federal District Court Judge, then a Magistrate, likewise  
22 found that the tapes he reviewed contained no evidence  
23 that Judge Núñez was bribed. And I refer you to our  
24 Track 2 Counter-Memorial at Appendix C.

25 So, too, Claimants once argued that the

02:41 1 indigenous Plaintiffs never even authorized the  
2 environmental lawsuit, only to later drop that argument  
3 when the Plaintiffs all reaffirmed that they, in fact, had  
4 authorized that lawsuit and reaffirmed their commitment to  
5 the case publicly.

6 And you may also recall Claimants repeatedly  
7 declared that the Government of Ecuador, directly and  
8 indirectly, inserted itself into the decision-making  
9 processes of the Lago Agrio court, but now we learned from  
10 their star witness, from Mr. Guerra in a recorded  
11 conversation that he had with Chevron's investigators,  
12 that the Government of Ecuador, in fact, never interfered.  
13 In his words, "They never butted in. Never."

14 Now, we will spend the better part of the next  
15 several weeks deconstructing the Claimants' case. Simply,  
16 their allegations are not backed up by the very evidence  
17 they cite oftentimes out of context, but we'll have that  
18 opportunity.

19 The Claimants' claims fail in the first instance  
20 as a matter of law. We on this side of the room represent  
21 a sovereign, and if this system of BITs is to flourish and  
22 I would submit even to survive, the law must be applied in  
23 accordance with the intent of the Contracting Parties,  
24 here the Republic of Ecuador and the United States;  
25 otherwise, the credibility of the BIT system itself is

02:43 1 damaged because, frankly, we lose the buy-in, the  
2 confidence of the respective States.

3 But while the law must be applied consistently,  
4 Claimants time and again have asked this Tribunal to apply  
5 legal principles differently in this case than every other  
6 treaty case. Time and again, Claimants seek novel  
7 exceptions to bedrock international legal principles.  
8 They ask you to grant treaty rights to Chevron and assert  
9 jurisdiction over Chevron's claims, even though Chevron  
10 never invested even a single dollar in Ecuador. In so  
11 arguing, Claimants are asking this Tribunal to go where no  
12 Tribunal has before gone.

13 Claimants likewise ask this Tribunal to disregard  
14 principles of exhaustion, for example, on the basis that  
15 the Lago Agrio Judgment as currently enforceable,  
16 notwithstanding that has never been an exception divined  
17 by any Arbitral Tribunal and notwithstanding that they  
18 alone had the power to stay the Judgment about which they  
19 now complain. And when everything else fails, they argue  
20 for futility, which is their catch-all, their catch-all  
21 defense.

22 Five years ago, when I first appeared before you,  
23 I noted that the indigenous Plaintiffs, Ecuadorean  
24 citizens, had by then been seeking to have their day in  
25 Court for the better part of 17 years. The clock

02:45 1 continues to run, and we are now at 22 years and counting.  
 2 According to media coverage of yesterday's RICO  
 3 proceeding, it sounds like that Court had some of the same  
 4 concerns: 22 years and counting. And whatever else might  
 5 be said about the underlying litigation, it is about  
 6 contamination. There is a tragedy that has unfolded and  
 7 that is still unfolding.

8 Precisely because of this proceeding, the  
 9 Attorney General's Office and outside counsel and our  
 10 experts have spent substantial time trudging along in the  
 11 rainforest, and you know what? The Lago Agrio Court got  
 12 it right, and we're going to show that in part during this  
 13 Hearing and in Ecuador. There is widespread  
 14 contamination.

15 And I think our experts will tell you that the  
 16 more they studied, the more they saw, the more they  
 17 reviewed Chevron's own data and all of the available data,  
 18 the more they recognized exactly how bad the situation is.  
 19 That's what the Lago Agrio Case is about.

20 And if you recall, we provided Witness Statements  
 21 from a couple of residents of the Oriente. Chevron did  
 22 not call them to testify. They do not want this case to  
 23 have anything to do with their plight. Claimants are,  
 24 instead, using this proceeding--and make no mistake about  
 25 it--as an insurance policy so that it will never be held

02:46 1 to account for the contamination for which they are truly  
 2 responsible. But if justice is to be served, this  
 3 Tribunal cannot ignore the contamination for which  
 4 Claimants are responsible. Today and over the next couple  
 5 of weeks, you will hear from new voices on this side, some  
 6 from Winston, some from our distinguished colleagues from  
 7 Dechert, and the office of the Attorney General.

8 Let me briefly just take you through what we  
 9 anticipate our presentation to be. Part one, we're going  
 10 to be dealing with the jurisdictional issues over  
 11 Chevron's claims. And it is a point to note that this was  
 12 an issue that took about 30 seconds of Claimants'  
 13 presentation. They hurried up through the law, we would  
 14 submit, because they want their rather tainted narrative  
 15 to drive the law in this case.

16 After we deal with the lack of jurisdiction over  
 17 Chevron, we're going to turn to the failure to exhaust  
 18 local remedies. At that point, we will ask for a break.  
 19 We have Part 3 which--I'm sorry, after Part 3, we will ask  
 20 for a break. Part three we're going to deal with the lack  
 21 of any viable treaty claims. Then we will ask for a  
 22 break. In the last session, we're going to deal with  
 23 specifically the factual predicates alleged by Chevron to  
 24 constitute their alleged denial of justice, and that's  
 25 going to have several parts.

02:48 1 This is in your slide packet, so you will be able  
 2 to follow along. I will note that we will also present a  
 3 response to Mr. Wade as it relates to Track 2, and I  
 4 suspect that we will begin with that in our second  
 5 session. On that Note, I'd like to turn the floor over to  
 6 my colleague, Mr. Silva Romero.

7 MR. SILVA ROMERO: Thank you, Mr. Bloom,  
 8 Mr. President, Members of the Tribunal. I shall now  
 9 address Ecuador's jurisdictional argument.

10 Put simply, Ecuador has been forced to defend  
 11 itself against a massive and very costly lawsuit before an  
 12 international investment--and I say "investment"  
 13 twice--Tribunal, despite the fact that the Tribunal, we  
 14 say, has no jurisdiction over TexPet's and Chevron's  
 15 claims.

16 As Mr. Bloom just said, Claimants didn't say a  
 17 single meaningful word on jurisdiction this morning  
 18 because they want you to forget what an investment  
 19 arbitration is made for. We shall see what they say  
 20 during their Closing Arguments at the end of these  
 21 hearings. And we will see if they make new arguments.

22 Because as you have noticed, Members of the  
 23 Tribunal, in a familiar pattern, every time Ecuador  
 24 responds to one of Chevron's arguments, including  
 25 jurisdictional arguments, another one shows up. In the

02:50 1 interest of time, however, I will address only Chevron's  
 2 own claims as direct investor, and I refer to Ecuador's  
 3 written submissions for all other jurisdictional  
 4 arguments.

5 My presentation today, Members of the Tribunal,  
 6 will establish that Chevron has never had any investment  
 7 or Investment Agreement in Ecuador with any relationship  
 8 to its denial-of-justice claim. With respect to Chevron's  
 9 denial-of-justice claim, the central facts are very clear:

10 First, Chevron has never contributed anything of  
 11 value to Ecuador's economy, much less participated in the  
 12 oil concession that was the source of the Lago Agrio  
 13 Litigation, as you can see, for instance, at  
 14 Paragraph 4.25 of the Tribunal's Third Interim Award on  
 15 jurisdiction.

16 Second, Ecuador's consent to investment  
 17 arbitration extends, as you know, only to claims arising  
 18 from investments of economic value and from investment  
 19 agreements.

20 From these very two simple propositions, it  
 21 follows, Members of the Tribunal, that you don't have  
 22 jurisdiction *ratione materiae* over Chevron's  
 23 denial-of-justice claims.

24 Now, before addressing Ecuador's objections to  
 25 jurisdiction in relation to Chevron, I will briefly refer

02:52 1 to the Tribunal's Third Interim Award on jurisdiction. In  
 2 that award, the Tribunal made a narrow finding in  
 3 Chevron's favor. It decided that TexPet itself is an  
 4 indirect investment of Chevron's covered by the Treaty,  
 5 which means that Chevron can bring indirect claims with  
 6 respect to Ecuador's treatment of TexPet. This narrow  
 7 finding, however, has, we submit, no consequences for  
 8 Chevron's denial-of-justice claim. The Award explicitly  
 9 excluded the Lago Agrio Litigation and related claims from  
 10 the scope of its conclusion about jurisdiction.

11 As you can see on the screen, "The Tribunal  
 12 reserved for the future any Final Decision in regard to  
 13 the Respondent's jurisdictional objection to Chevron's own  
 14 claims as a direct investor." This is Paragraph 4.27.

15 Similarly, although the Tribunal later found that  
 16 Chevron was a Releasee under Ecuadorian law, it didn't  
 17 decide whether Chevron had a covered Investment Agreement  
 18 that could support jurisdiction for its Lago Agrio claims  
 19 and related claims under the Treaty. In short, the  
 20 Tribunal decided to postpone until now all of the most  
 21 important questions regarding jurisdiction in this case.

22 For these questions, contrary to what Claimants  
 23 alleged in their last written submissions, the prima facie  
 24 standard that Chevron enjoyed during the jurisdictional  
 25 phase of the arbitration does not apply anymore. As this

02:54 1 Tribunal announced in its Third Interim Award on  
 2 jurisdiction, Chevron now bears the full burden of proving  
 3 its claim of jurisdiction, and faces, we submit, an  
 4 insurmountable task.

5 Turning now to Ecuador's Objection to  
 6 Jurisdiction, I will advance two very simple propositions.  
 7 I will begin my presentation by explaining why Chevron has  
 8 no investment agreement that could possibly generate  
 9 jurisdiction in the circumstances. I will then make clear  
 10 why Chevron has no investment relevant to the Lago Agrio  
 11 Litigation and to its related denial-of-justice claim.

12 Turning to my first proposition, Chevron has no  
 13 investment agreement. To begin, Chevron contends that the  
 14 Settlement Agreement is an investment agreement conferring  
 15 the Tribunal with jurisdiction over its denial-of-justice  
 16 claim. We say that it is not for two different reasons:

17 First, for there to be jurisdiction under Article  
 18 VI of the Treaty, Chevron not only must be entitled to  
 19 certain contractual rights under the Settlement Agreement,  
 20 but also the Settlement Agreement must be an Investment  
 21 Agreement. Contrary to what Claimants imply, this  
 22 question wasn't settled by the finding that Chevron was a  
 23 Releasee. As the Tribunal indicated in its recent  
 24 decision on Track 1B, "the Respondent strongly denies all  
 25 claims for denial of justice on the merits and also

02:56 1 disputes the Tribunal's jurisdiction to decide any such  
 2 claims in this arbitration. Those parts of the Parties'  
 3 dispute cannot be decided, even indirectly, by the  
 4 Tribunal in this Track 1B".

5 Even if the Tribunal found that Chevron was a  
 6 Releasee, the Tribunal also found that the 1995 Settlement  
 7 Agreement, by itself, was not an investment agreement. It  
 8 found specifically that it is only when that 1995  
 9 Settlement is considered along with the 1973 Concession  
 10 Agreement that it forms part of an investment agreement.  
 11 This is Paragraph 4.36 of the Third Interim Award on  
 12 jurisdiction.

13 The Tribunal also found that Chevron was not a  
 14 party to any Concession Agreement. This is Paragraph 4.38  
 15 of the Third Interim Award on jurisdiction.

16 As a consequence, Chevron has failed to establish  
 17 that it is a party to any Investment Agreement.

18 Second point, and ex abundante cautela, Chevron's  
 19 argument rests on the premise that the Lago Agrio  
 20 Litigation concerned only the limited diffuse claims  
 21 released by the 1995 Settlement Agreement. Chevron has no  
 22 choice but to make this assumption because the Tribunal  
 23 decided in its First Partial Award on Track 1 that the  
 24 Release is limited to the right to be free from such  
 25 diffuse claims. This is Paragraph 112 of that award.

02:58 1 However, the recent Track 1B Decision has proven  
 2 Chevron wrong on this very issue. The Tribunal decided  
 3 that, and I quote here, Paragraph 183 of the Decision:  
 4 "The Lago Agrio complaint, as originally filed, does  
 5 include individual claims and cannot be read (as the  
 6 Claimants assert and the Respondent denies) as leading  
 7 'exclusively' or 'only diffuse claims.'" As the Tribunal  
 8 will determine, the Lago Agrio claims have nothing to do  
 9 with Chevron's right to be free from those limited diffuse  
 10 claims defined under Article 19.2 of the 1998 Ecuadorian  
 11 Constitution that were released. Therefore, Chevron  
 12 presents no dispute arising out of, or relating to, the  
 13 1995 Settlement Agreement as required under Article  
 14 VI(1)(a) of the Treaty.

15 Aside from having no investment agreement, and I  
 16 come here to my second proposition, Chevron has no  
 17 relevant investment in the circumstances. According to  
 18 the Claimants--and this first quote is quite  
 19 remarkable--its investment here is, and I quote, "The 1973  
 20 Concession Agreement, the amounts invested and the oil  
 21 operations and activities in Ecuador, all agreements with  
 22 Ecuador and Petroecuador, including the Settlement  
 23 Agreements, and the rights and interests associated with  
 24 the Lago Agrio Litigation, including both substantive and  
 25 procedural rights."

03:00 1 Members of the Tribunal, that is not a  
 2 description of an investment. It is a list of vaguely  
 3 related items designed only to confuse. In fact, this  
 4 very list that you can read on the screen does not even  
 5 distinguish between the two Claimants TexPet and Chevron.  
 6 When Chevron goes on to connect its  
 7 denial-of-justice claim to the BIT's standards, it becomes  
 8 patently clear that even the Claimants know that the  
 9 Tribunal has no jurisdiction, and you can see this from  
 10 the second quotation on the slide.  
 11 A more rigorous analysis is required to cut, as  
 12 the Tribunal put it, this Gordian knot. I will explain  
 13 first why Chevron has no relevant investment of its own  
 14 for the purpose of granting the Tribunal jurisdiction on  
 15 its own denial-of-justice claim; second, why Chevron's  
 16 investment in TexPet is of no help; third, why Chevron's  
 17 other attempts to manufacture an investment are similarly  
 18 untenable; and, lastly, why the so-called "amalgamation"  
 19 of Chevron and Texaco is of no help to Chevron's  
 20 ill-founded claims.  
 21 First, Chevron, Members of the Tribunal, did not  
 22 contribute directly, indirectly, or otherwise to the oil  
 23 production and economic activity that took place under the  
 24 1973 Concession Agreement. The facts speak plainly. As  
 25 the Tribunal acknowledged, Chevron acquired its interests

03:01 1 in TexPet in 2001, while TexPet's Concession ended in  
 2 1992, years earlier. Chevron was not the indirect owner  
 3 of TexPet at the time of any economic activity in Lago  
 4 Agrio. Its indirect investment in TexPet is not a direct  
 5 investment in the oil concession.  
 6 Chevron did not contribute resources in the  
 7 Ecuadorian territory that benefited the local economy as  
 8 the Tribunal, for instance, in GEA Group and Occidental I  
 9 have required. How could Chevron be an investor? It  
 10 simply was not on the scene at the times when it would  
 11 have been possible to make an economic contribution.  
 12 Second point, Chevron argues that it has a  
 13 covered indirect investment in TexPet, a fact that the  
 14 Tribunal recognized, as I said, in the Third Interim Award  
 15 on jurisdiction. However, Chevron goes on to claim that  
 16 these indirect investment suffices for jurisdiction over  
 17 its denial-of-justice claim because it says it has a right  
 18 to limited liability protected by the investment treaty.  
 19 This is simply incorrect. As you can see on the screen,  
 20 the Tribunal found that its decision that TexPet was a  
 21 covered indirect investment did not resolve the question  
 22 of whether it had jurisdiction over Chevron's claims  
 23 regarding the Lago Agrio Litigation. And we say that it  
 24 has no jurisdiction--the Tribunal has no jurisdiction--for  
 25 the following two reasons:

03:03 1 First reason, a right to limited liability under  
 2 U.S. law--or under Ecuadorian law, for that matter--is not  
 3 an investment treaty right regarding an investment in  
 4 Ecuador. This argument confuses national and  
 5 international law. It might be true that U.S. law and  
 6 Ecuadorian law establish rights to limited liability, but  
 7 investment treaties establish their own set of rights, and  
 8 only breaches of those treaty rights grant jurisdiction.  
 9 There is no clause in the U.S.-Ecuador BIT that  
 10 establishes or guarantees a right to limited liability in  
 11 an investment. Limited liability is not a right conferred  
 12 or created by this Treaty as required under Article  
 13 VI(1)(c) of the Treaty.  
 14 Second reason, the Lago Agrio Litigation could  
 15 not have affected Chevron's rights with respect to TexPet  
 16 because it bore no consequences for TexPet. TexPet was  
 17 not a party to that very litigation. The litigation  
 18 affected only Chevron. It could not have affected any  
 19 right with respect to the investment conferred or created  
 20 by the Treaty or by any other source of legal rights for  
 21 that matter as required by Article VI(1)(c) of the Treaty.  
 22 I come to my third point: Chevron also claims  
 23 that it was entitled to all procedural rights and  
 24 substantive legal defenses of TexPet which they say formed  
 25 part of Chevron's protected investment under the BIT. It

03:05 1 simply attempts to cobble together an investment from such  
 2 rights, as well as its rights as a Releasee and its right  
 3 to limited liability, and to pass them off as an adequate  
 4 basis for jurisdiction. However, this argument  
 5 misunderstands the nature of the covered direct  
 6 investment. Investment tribunals like Occidental I and  
 7 GEA Group have consistently found that without any  
 8 contribution to or relevant economic activity within the  
 9 host State's territory, there is no covered investment,  
 10 and not just any commitment of resources in the territory  
 11 of the host State will make it.  
 12 As opposing counsel has recognized, that  
 13 commitment must typically contribute to the development of  
 14 the State.  
 15 For all of these reasons, a legal right is not by  
 16 itself an investment. Again, those sorts of legal rights  
 17 simply do not involve any economic contribution or any  
 18 economic activity at all. It made simply no sense to say  
 19 that they are "investments."  
 20 Fourth and last point, contrary to what Claimants  
 21 allege, the so-called "amalgamation" of Chevron and Texaco  
 22 does not extend the Tribunal's jurisdiction. Compulsory  
 23 jurisdiction or jurisdiction out of fairness  
 24 considerations is foreign to international law and  
 25 arbitral practice. A tribunal has jurisdiction over a

03:07 1 claim only in virtue of a State consent. The purported  
2 amalgamation does not change the scope of Ecuador's  
3 consent to investment arbitration for three reasons:  
4 First reason, investor status matters.  
5 International investment arbitration protects only  
6 investors regarding their investments, not just any  
7 foreign national regarding any complaint. As explained,  
8 Ecuador extends that privilege only to the investors who  
9 have contributed to its economy. This fundamental fact  
10 doesn't change when foreign nationals allege that they  
11 have suffered a denial of justice.  
12 Second, privity also matters. As is typical of  
13 investment treaties, the U.S.-Ecuador BIT grants  
14 jurisdiction only to those Parties that have their own  
15 investment or Investment Agreement. It does not provide  
16 for a transfer of jurisdiction separately from a covered  
17 investment or Investment Agreement absent language in the  
18 Treaty to the contrary.  
19 And, third, and above all, legal systems matter.  
20 There is an important legal difference between liability  
21 under municipal law and jurisdiction under international  
22 law. The so-called "amalgamation" of Chevron and Texaco  
23 or TexPet under Ecuadorian law for liability determination  
24 does not imply that amalgamation under international law  
25 is proper when this Tribunal determines jurisdiction. The

03:09 1 liability analysis determines whether corporate  
2 formalities or corporate separateness are observed at the  
3 time of Judgment, while the jurisdictional analysis  
4 determines whether the Claimant established an investment.  
5 Although my colleague, Mr. Leonard, will explain  
6 further the details, it is sufficient for the time being  
7 to stress that Chevron depleted Texaco and TexPet of  
8 resources in an attempt to escape liability in the Lago  
9 Agrio Litigation. It now asserts those same actions  
10 against the nemo auditur principle as the basis for  
11 jurisdiction in the current arbitration. However, what  
12 matters for jurisdiction is the relationship of Chevron to  
13 Texaco and TexPet while the oil concession, the only  
14 possible investment was ongoing, not the relationship at  
15 the time of the Lago Agrio Judgment.  
16 So, investor status matters, privity matters, and  
17 legal systems matter. All three explain why this Tribunal  
18 cannot amalgamate Chevron with Texaco or TexPet when  
19 determining whether it has jurisdiction.  
20 Let me summarize our main conclusions on this  
21 jurisdictional point:  
22 First, as this Tribunal all but explicitly  
23 decided, Chevron's claims are unrelated to a covered  
24 investment agreement. The Tribunal already decided that  
25 Chevron was not a party to any concession agreement and

03:11 1 that, without a concession agreement, the 1995 Settlement  
2 Agreement was not an investment agreement.  
3 Second, Chevron cannot be considered a direct  
4 investor. The oil Concession ended in 1992 while Chevron  
5 acquired TexPet in 2001.  
6 Third, Chevron's claims regarding the Lago Agrio  
7 Litigation are not related to its indirect investment in  
8 TexPet itself for jurisdiction to exist on that basis.  
9 The Claims do not concern alleged breaches of rights with  
10 respect to TexPet because TexPet was not involved in and  
11 was not affected by that litigation.  
12 And, fourth, and last, the municipal Court's  
13 so-called "amalgamation" of Chevron with Texaco or TexPet  
14 is irrelevant to jurisdiction because jurisdiction for  
15 international arbitration depends only on State consent.  
16 The scope of a State consent to jurisdiction does not  
17 change based on a municipal Court's legal analysis on  
18 liability.  
19 In sum, Ecuador has already defended this  
20 arbitration, Members of the Tribunal, at great length and  
21 great expense, despite the Tribunal's lack of  
22 jurisdiction. It is now time to recognize that Ecuador  
23 has simply not consented to this investment arbitration.  
24 With that, Members of the Tribunal, I conclude my  
25 submission, and with your permission, I hand over the

03:12 1 floor to Dra. Blanca Gómez de la Torre.  
2 PRESIDENT VEEDER: Thank you very much.  
3 Just before you disappeared, on you Slide 12 you  
4 have a reference to the GEA Group Case. I didn't catch  
5 the exhibit number. If you had it easily available, it  
6 would be useful to write it in. If not, we can come back  
7 to it.  
8 MS. SILVER: RLA-648, Mr. President.  
9 PRESIDENT VEEDER: Good. Thank you very much.  
10 Please.  
11 MS. GÓMEZ de la TORRE: Thank you, Mr. President,  
12 Members of the Tribunal.  
13 I will devote the next 14 minutes to the issue of  
14 exhaustion of local remedies and Claimants' failure to  
15 comply with this rule. I will address some aspects of the  
16 Republic's case as they touch upon matters of Ecuadorian  
17 law and will then turn the floor to my esteemed colleagues  
18 to address the subject upon an international law  
19 perspective.  
20 There really is no dispute that exhaustion of  
21 local remedies is a substantive element of a Claim for  
22 Denial of Justice. No claims based on denial of justice  
23 can be brought without prior exhaustion of local remedies.  
24 In the words of Claimants' own counsel, "there can be no  
25 denial before exhaustion." To put it more precisely, the

03:14 1 offending State must be given a reasonable opportunity to  
 2 correct actions which otherwise would ripen into delicts.  
 3       There is also no dispute that it is for the  
 4 Respondent merely to prove that the particular procedural  
 5 remedy was available than it is for the Plaintiff to  
 6 adduce the evidence and prove that the particular  
 7 procedural remedy was ineffective.  
 8       The Republic has satisfied its burden of showing  
 9 that the Ecuadorian legal system provides Chevron with  
 10 remedies specifically intended to redress exactly the  
 11 claims which Claimants have brought before this Tribunal.  
 12 I will address this premise and will let Professor Mayer  
 13 speak about Claimants' inability to show that those  
 14 remedies are ineffective.  
 15       Specifically, Claimants asserted two basis for  
 16 their denial-of-justice claim: First, arguments regarding  
 17 an alleged legal error in the Lago Agrio Judgment; and,  
 18 second, their unsupported claim on judicial fraud.  
 19       On my first point, there are two reasons why  
 20 Claimants' claims failed: Claimants have yet to exhaust  
 21 remedies available to Chevron in Ecuador. Even if  
 22 Claimants were somehow relieved from the strictures of  
 23 exhaustion-of-remedies rule, their claims are held to a  
 24 high evidentiary standard, which Claimants cannot meet.  
 25       I will let Mr. Leonard address the Tribunal on

03:16 1 the frivolous nature of Claimants' allegations of legal  
 2 and procedural error. I will simply state here that  
 3 Claimants' claims predicated upon alleged legal error in  
 4 the Lago Agrio proceedings are premature and not ripe for  
 5 adjudication by this Tribunal.  
 6       Chevron filed an extraordinary action for  
 7 protection with the Constitutional Court on  
 8 December 23, 2013. Chevron presented the Constitutional  
 9 Court with substantially the same issues Claimants raised  
 10 in this arbitral proceeding. There is no dispute that the  
 11 Constitutional Court offers an effective remedy for  
 12 Chevron's claims relating to the legal basis for the Lago  
 13 Agrio Judgment. In fact, should the Constitutional Court  
 14 find that the Lago Agrio Court, the Appellate Court or the  
 15 National Court violated Chevron's constitutional right, it  
 16 has the power to invalidate the underlying decision and  
 17 remand the case to the corresponding Court to continue  
 18 from the point where the violation occurred until a  
 19 decision is reached. Chevron's pending constitutional  
 20 action itself is evidence that Claimants have yet to  
 21 exhaust available domestic remedies in respect of their  
 22 claims of legal and procedural error. Such failure is  
 23 fatal to Claimants' claims here. There is no reason or  
 24 basis to exempt Claimants from the rule of exhaustion.  
 25       I now turn to my second point: Chevron's

03:17 1 argument on judicial fraud, which is the Claimants'  
 2 principal basis for their denial-of-justice claim,  
 3 specifically the alleged ghostwriting of the Judgment.  
 4       The National Court dismissed Chevron's claims of  
 5 procedural fraud noting correctly that, first, the  
 6 Appellate Court do not have original jurisdiction over  
 7 such claims, but Chevron nonetheless has a clear remedy  
 8 under the Collusion Prosecution Act, which I will refer to  
 9 as CPA.  
 10       Chevron may file a CPA action until  
 11 February 14, 2016, when the limitations period will run.  
 12 But Chevron has thus far chosen to ignore this remedy.  
 13 There is no dispute about that. Also beyond dispute is  
 14 the fact that under the CPA quoted by the National Court,  
 15 an action may be brought by an aggrieved party alleging  
 16 that a proceeding has been tainted by fraud. And should  
 17 the aggrieved party succeed in proving its claims, the  
 18 judge shall issue all necessary measures to void or  
 19 invalidate the collusive proceeding and to restore the  
 20 things prior to the collusion and obtain a judgment for  
 21 damages.  
 22       Claimants' attorneys know this all too well. One  
 23 of Chevron's lead counsel, while serving as a Supreme  
 24 Court Justice, confirmed that an action under the CPA is  
 25 an effective remedy to address allegations of corruption

03:19 1 or collusion in legal proceedings. In Claimants' letter  
 2 to the Tribunal on December 2, 2013, they declare: If  
 3 this Tribunal concludes that Claimants fail to exhaust  
 4 local remedies, then it can rule accordingly. And that is  
 5 precisely what I ask this Tribunal to do.  
 6       These are the very remedies that Claimants have  
 7 sought from this Tribunal in their request for  
 8 nullification of the Lago Agrio Judgment. There is no  
 9 dispute that CPA action is an available local remedy that  
 10 would permit Claimants to address and, if supported by  
 11 persuasive evidence, obtain effective redress for  
 12 Chevron's claims of fraud and ghostwriting of the Lago  
 13 Agrio Judgment.  
 14       Now Claimants cannot afford to concede this point  
 15 and have tried their level best to evade the  
 16 exhaustion-of-remedies rule. Claimants first argue that  
 17 the exhaustion-of-remedies rule does not apply to Chevron.  
 18 Alternatively, Claimants contend that even if the rule  
 19 applied to Chevron, the CPA is not available to it.  
 20       Third and finally, Claimants speculate that, even  
 21 if the CPA were an available remedy, it would have proved  
 22 or would prove inviolate now or any time before the  
 23 statute of limitations run ineffective or futile.  
 24       Each of Claimants' arguments fails either as a  
 25 matter of international law or as a matter of Ecuadorian

03:21 1 law. I will briefly refer to Claimants' contention that  
 2 the CPA is not available to Chevron.  
 3 First, the CPA is available to any person who has  
 4 suffered harm in any way by an act of collusion including  
 5 the deprivation of property rights or of other rights that  
 6 are legally due to such person.  
 7 Chevron's own Expert, Dr. Coronel, expressly  
 8 disclaims Claimants' theory that the CPA action is only  
 9 available for real estate transactions. In a somewhat  
 10 hidden footnote in his Expert Report of May 7, 2014, in  
 11 Dr. Coronel's own words: "The text of law currently in  
 12 force leaves open the possibility for the action for  
 13 collusion to be filed as well when other types of rights  
 14 are affected." Claimants' contention that the CPA is only  
 15 available for real estate transactions finds no basis in  
 16 the statute or Ecuadorian legal practice and must be  
 17 dismissed. If nothing else, Claimants' own Expert  
 18 testimony should put this matter to rest. In fact, after  
 19 they appeared to be in agreement, as they have dropped  
 20 this frivolous argument.  
 21 Second, CPA Article 5 makes clear that, pending  
 22 appeals do not bar litigants from also filing a CPA  
 23 action. It expressly establishes that the judge shall  
 24 request the record of the proceeding where the collusion  
 25 allegedly played a role, as well as that of the associated

03:23 1 proceedings, if any. And if the requested proceedings are  
 2 ongoing, for example, on appeal, the judge hearing the CPA  
 3 action shall order copies of the record in the underlying  
 4 case.  
 5 There is no merit to Claimants' contention  
 6 otherwise. At least for the following reasons.  
 7 Neither the Appellate Court nor the National  
 8 Court afforded Chevron a forum to obtain judicial review  
 9 of Chevron's purported evidence of fraud and corruption  
 10 since they had no competence to rule upon those materials.  
 11 The reason is a simple one: Chevron's allegations  
 12 necessitate the production of evidence outside the trial  
 13 court record. But the applicable rules of procedure do  
 14 not allow for the production of any evidence at the  
 15 appellate or cassation levels. Applicable Rules of  
 16 Procedure are crystal clear. Article 838 of the Code of  
 17 Civil Procedures precludes the submission of any evidence  
 18 at the appellate level in oral summary proceedings. For  
 19 the record, RLA-198.  
 20 And Article 15 of the Law of Cassation excludes  
 21 the possibility of submitting new evidence on cassation.  
 22 RLA-558. Claimants' Expert, Dr. Coronel, attempts a way  
 23 around this legal provisions by suggesting that a  
 24 distinction needs to be made between (a) evidence  
 25 pertaining to the merits of the dispute; and (b) evidence

03:25 1 of fraud in the procurement of the Judgment. Dr. Coronel  
 2 suggests that, while the former is precluded by procedural  
 3 rules, there is no impediment for the production of the  
 4 latter, and thus Chevron's evidence of fraud should have  
 5 been admitted and ruled upon by the Court of Appeals.  
 6 But Ecuadorian law makes no such distinction. It  
 7 thus comes as no surprise that Dr. Coronel offers not one  
 8 authority or judicial precedent in support of his  
 9 fabricated theory. Nor does applicable procedure allow  
 10 for the introduction of new evidence at the Constitutional  
 11 Court level. The Court has explained as much in multiple  
 12 occasions and in ambiguous terms, the alleged violation of  
 13 a constitutional right must instead be clear, direct,  
 14 manifest, obvious, and evident from the trial court  
 15 record. For example, these cases can be found in the  
 16 Respondent's submission and Legal Expert Report. Here is  
 17 one of them.  
 18 The Constitutional Court may examine only the  
 19 records of the proceedings before the trial court. The  
 20 Court of Appeals and the National Court. Again,  
 21 Dr. Coronel purports to know better and offers another  
 22 fabricated excuse in aid of Claimants' position.  
 23 Specifically, Dr. Coronel asserts that the prohibition  
 24 against submission of new evidence before the  
 25 Constitutional Court was lifted with the enactment of the

03:27 1 Statute known as the Organic Law on Judicial Guarantees  
 2 and Constitutional Oversight in 2009. From that point on,  
 3 he submits, new evidence is allowed, and the Court's  
 4 judicial determinations to the contrary are no longer  
 5 relevant.  
 6 In support, Dr. Coronel points to some provisions  
 7 of general application to all proceedings before the  
 8 Constitutional Court. I will not address here those  
 9 provisions because Dr. Andrade's Second Supplemental  
 10 Foreign Law Report at Paragraphs 43, 44, and 45 puts the  
 11 matter to rest.  
 12 In his response, Dr. Andrade explains that, in  
 13 addition to laying out rules of general application for  
 14 all proceedings before the Constitutional Court, the  
 15 Organic Law of Jurisdictional Guarantees and  
 16 Constitutional Control, for the record RLA-459, contains  
 17 rules of a special application to the extraordinary action  
 18 of protection. And under Ecuadorian law, rules of a  
 19 special application prevail over those of general  
 20 application.  
 21 And as expressly stated by the Constitutional  
 22 Court on multiple occasions, after the enactment of this  
 23 Statute, the rules of procedure specifically applicable to  
 24 extraordinary actions of protection do not permit the  
 25 production of new evidence.



03:28 1 By conflating rules applicable to different  
2 proceedings, Dr. Coronel creates another one of his legal  
3 fictions, underscoring once again the misleading nature of  
4 his testimony.  
5 Mr. President, Members of the Tribunal, under  
6 Ecuadorian Law, filing and pursuing a complaint under the  
7 CPA is the only correct procedure for Chevron to air its  
8 allegations of fraud and corruption. Claimants'  
9 contentions otherwise have no basis in Ecuadorian law, and  
10 Chevron has chosen not to pursue this remedy, although it  
11 is still available. Which, as a matter of international  
12 law bars their fraud and corruption claims in this forum  
13 and is, thus, fatal to their denial-of-justice claim.  
14 Mr. President, this concludes my presentation;  
15 and, with that, I'm now turning the floor to Professor  
16 Mayer. Thank you.  
17 PRESIDENT VEEDER: Thank you.  
18 Professor Mayer.  
19 PROFESSOR MAYER: Mr. President, Members of the  
20 Tribunal, in addition to its objections as to the  
21 availability of the recourses under Ecuadorian law, which  
22 Dra. Gómez de la Torre has just refuted, Chevron raises two  
23 objections as to the conformity of these recourses,  
24 particularly the CPA action with the requirements of  
25 international law.

03:30 1 The first of these objections is purely formal  
2 and will not call for a long rebuttal.  
3 According to Chevron, the CPA action would not  
4 constitute a suitable recourse with regard to the  
5 requirement of exhaustion of local remedies because it is  
6 not a vertical recourse such as an ordinary appeal or a  
7 cassation appeal. However, Chevron does not mention any  
8 authority for this proposition.  
9 What international law demands is that the  
10 recourse otherwise available constitutes an effective  
11 remedy, and if that requirement is satisfied, why should  
12 there be an additional and purely formalistic requirement?  
13 Either the CPA action can provide an effective remedy or  
14 it cannot.  
15 And as I will show under international law and as  
16 Dra. Gómez de la Torre has shown under Ecuadorian law, a  
17 CPA action could have been effective or could still be  
18 effective. And that suffices: the recourse that should  
19 have been tried.  
20 The second objection, on which I will spend the  
21 rest of the time allocated to me, around 30 minutes, is  
22 that the recourse which Chevron has chosen not to use is  
23 futile. It is indisputable that no satisfaction--if no  
24 satisfaction can be obtained through the exercise of a  
25 given recourse, it would be absurd to require that it be

03:32 1 exercised, and international law is perfectly clear in  
2 that respect. But why should a CPA action be futile in  
3 this case? Chevron invokes two distinct arguments:  
4 First, there would be no reasonable hope that the  
5 Court seized of the CPA action would have decided in favor  
6 of Chevron.  
7 And, second, the fact that the Judgment rendered  
8 by the Ecuadorian Court is enforceable, would render even  
9 a favorable outcome of the CPA action ineffective.  
10 Before addressing these two arguments, I would  
11 recall Ecuador's position as to how the futility argument  
12 should work in international law, in the light of  
13 precedents and doctrinal opinions.  
14 There are two distinct issues: the burden of  
15 proof and the standard of proof.  
16 First, the burden of proof. Contrary to what  
17 Chevron contends, authors are unanimous in saying that it  
18 is for the self-styled victim of the denial of justice to  
19 prove that using a certain available recourse would have  
20 been futile.  
21 The Special Rapporteur on Diplomatic Protection  
22 in the International Law Commission, Professor Dugard,  
23 explains the following in his Third Report. "The  
24 Respondent State will be required to prove that local  
25 remedies are available, while the burden of proof will be

03:34 1 on the Claimant State to show that such remedies are  
2 ineffective or futile." He refers here to the Claimant  
3 State because he has--he envisages the Diplomatic  
4 Protection, but, of course, that applies to any Claimant  
5 victim and in particular an investor.  
6 Professor Paulsson has quoted the very same  
7 passage of Professor Dugard's Report that I just read,  
8 obviously approvingly. After the quotation, he mentioned:  
9 "The relevance in terms of denial of justice is direct and  
10 evident, and what goes for the Claimant State in espousal  
11 cases also goes for any other Claimant."  
12 However, Chevron, or Claimants in their Track 2  
13 Reply Memorial relied for the opposite view on the Opinion  
14 of Sir Fawcett. That's what they say: "It is Ecuador,  
15 not Claimants, that bears the burden of proving that its  
16 so-called "remedies" are available and effective, and  
17 would, in fact, offer any real relief." And in the  
18 footnote, they refer to J.E.S. Fawcett, The exhaustion of  
19 Local remedies: substance or procedure.  
20 But, in fact, if one goes to the very article by  
21 Sir Fawcett, what he says is: "The burden of proof rests  
22 upon the Respondent State to show that local remedies were  
23 available"--that's the reference that was made in the  
24 Claimants' Memorial--but then it continues: "If it  
25 discharges his burden, the burden of proof falls on the

03:36 1 Claimant State (here investor) to show that the local  
 2 remedies indicated were not in the circumstances of the  
 3 case effective." Therefore, all authorities agree the  
 4 burden of proof of effectiveness rests on the Claimant.  
 5 Now, what about the standard of proof? Here  
 6 there is no unanimity. There are various views on this  
 7 issue. According to some decisions and some authors, the  
 8 self-styled victim should make the futility obvious. The  
 9 criterion is obvious futility.  
 10 For instance, in the Finnish Shipowners  
 11 arbitration, the arbitrator said or comes to the  
 12 conclusion that "the appealable points of law obviously  
 13 would have been insufficient to reverse the decision of  
 14 the Arbitration Board," and commenting upon that case,  
 15 Professor Amerasinghe said: "The Finnish Ships  
 16 arbitration made it clear that the test is obvious  
 17 futility of manifest ineffectiveness."  
 18 In the Ambatielos Case, it was held that it is  
 19 essential that such remedies, if they had been resorted  
 20 to, would have proved to be obviously futile.  
 21 Professor Amerasinghe not only opted for a  
 22 certain standard, but explains why that standard is the  
 23 right one and must be extremely high, and he ties that to  
 24 the idea of sovereignty: "The sovereignty of the host or  
 25 Respondent State requires that it be given a fair

03:38 1 opportunity of doing justice through its own system, and  
 2 there seems in the past to have been a general tendency to  
 3 recognize only those limitations which are really  
 4 necessary."  
 5 Now, it is true that there are other views and  
 6 then some decisions and authors adopted a different  
 7 standard. A remedy would not need to be pursued in the  
 8 absence of a reasonable possibility of effective redress.  
 9 Although gallons of ink have been spent in favor of one or  
 10 the other standard, practically the difference seems to be  
 11 minimal, and I focus here on the second standard, the one  
 12 on which the Claimants rely:  
 13 First, no reasonable possibility of effective  
 14 redress is not equivalent to the existence of a reasonable  
 15 doubt as to the effectiveness of a remedy. A reasonable  
 16 doubt does not suffice, and there is unanimity on that  
 17 point.  
 18 Second, when can it be said that there is no  
 19 reasonable possibility of effective redress? It is, in  
 20 fact, a very high standard. If the word "reasonable" had  
 21 not been used, simply no possibility, that would have  
 22 meant that there would be not the slightest chance for the  
 23 Claimant to obtain redress. The action would be doomed to  
 24 failure.  
 25 Now, there is the word "reasonable," and that

03:40 1 word introduces the idea that there might be a tiny chance  
 2 of success, but so tiny that it would not be reasonable to  
 3 even try.  
 4 I say "tiny," not "small." If there is a small  
 5 chance of success of redress, it is reasonable to try it  
 6 when you have been sentenced to pay billions of dollars if  
 7 you have a small chance to win in a new recourse, you  
 8 certainly must not miss it. And not only do you owe it to  
 9 yourself, but you owe it to the State because, accusing  
 10 the State of denial of justice without having tried  
 11 anything would be unfair. It would be unfair to the State  
 12 for the Claimant to say: "Your judicial system must be  
 13 declared guilty of denial of justice, although I did not  
 14 try a certain recourse. I didn't because I found my  
 15 chances of effective redress to be small, and I had good  
 16 reasons to find them small. I might have obtained  
 17 redress. It was not impossible, but it's so much more  
 18 simple not to try and to consider that denial of justice  
 19 is already established," and that is unfair to the State.  
 20 I will now show that Chevron does not establish  
 21 that--supposing, of course, there has been collusion--its  
 22 chances of winning a CPA action would have been tiny;  
 23 therefore, whether the standard is obvious futility or no  
 24 reasonable possibility of effective redress, Chevron  
 25 should have introduced a CPA action.

03:42 1 I come now to the Claimant's first futility  
 2 argument. According to them, the available remedies are  
 3 futile because there would be no hope of success before  
 4 the Ecuadorian courts.  
 5 Chevron's argument here is that the whole system  
 6 of justice, every court, every judge in Ecuador is partial  
 7 or corrupt and in addition, that an investor's action is  
 8 doomed to fail because there are pressures by and even  
 9 threats by the Government. Although the burden of proof  
 10 does not rest on Ecuador, Ecuador has shown in these  
 11 proceedings that this description of its judicial system  
 12 is contradicted first by the assessment of that system by  
 13 independent organizations and, second, by actual decisions  
 14 rendered in favor of Texaco or Chevron.  
 15 During the past eight years, Ecuador had made an  
 16 impressive series of reforms, including, among others, the  
 17 ratification of a new Constitution which recognizes the  
 18 separation of powers doctrine and judicial independence,  
 19 the establishment of a Constitutional Court, the reform of  
 20 the Organic Code of the Judiciary, the introduction of a  
 21 merit-based selection process for appointing all judges.  
 22 And these reforms have been praised by, inter alia, the  
 23 General Secretary of the United States, the Special  
 24 Rapporteur of the United Nations on the Independence of  
 25 Judges and Lawyers, the Carter Center and the European

03:44 1 Union.  
 2 Well, of course, what is important is how the  
 3 system works in practice, but for that, also, we have  
 4 available an objective assessment. USAID, the United  
 5 States Agency for International Development, has made a  
 6 study in 2014 which concludes, in terms of trust in  
 7 justice system, that among 25 countries of North America,  
 8 Central and South America, Canada is first, Ecuador is  
 9 sixth, and the United States only eighth. Then indicting  
 10 Ecuador's judicial system would be tantamount to indicting  
 11 the judicial systems of almost all the States in the  
 12 Americas, including the United States.  
 13 Also, even Claimants' Experts have praised the  
 14 impartiality of Ecuadorian courts in cases involving  
 15 foreigners. Dr. Alejandro Ponce Martínez in his  
 16 supplemental Affidavit in 2000 wrote: "Multinational and  
 17 oil companies are generally treated by the Ecuadorian  
 18 Court in equal conditions to national companies or  
 19 individuals."  
 20 Dr. Jose Perez-Arteta wrote: "Ecuador's courts  
 21 have adjudicated, and continue to adjudicate, many cases  
 22 involving all companies in an impartial and fair manner."  
 23 Even more revealing, Claimants themselves have  
 24 more than once won their cases against the Government in  
 25 various Ecuadorian courts. In 2000, Texaco and other oil

03:46 1 companies have gone before the Supreme Court against the  
 2 Government. In 2002, Texaco prevailed in three cases  
 3 before the Superior Court of Quito. The Supreme Court  
 4 Judgment was--or is R-812, and these three cases are R-809  
 5 to R-811.  
 6 In 2007, Texaco received a 1.5 million U.S.  
 7 dollars Court Judgment against the Government. That's a  
 8 Judgment of the first Civil Court of Pichincha, R-816. In  
 9 2008, an Appellate Court reversed the dismissal of another  
 10 multimillion dollar Texaco case against the Government,  
 11 and that's R-808.  
 12 A distinct accusation is that Ecuadorian justice  
 13 is not independent from the Government. In specific  
 14 instances such as the Lago Agrio Case, President Correa or  
 15 a high governmental personality would exercise a pressure  
 16 on judges, even threaten them if they did not issue the  
 17 desired Judgment. These are unproven accusations. You  
 18 must not only accuse, you must prove the truth of what you  
 19 accuse the person of. And as Mr. Bloom reminded us in his  
 20 presentation, even Mr. Guerra, in circumstances in which  
 21 it was clear that he was not lying, said that there had  
 22 been no interference by the Government in the Lago Agrio  
 23 Case.  
 24 As to public statements by Ecuador's President or  
 25 other officials against Claimants in relation with the

03:48 1 Lago Agrio Case, what counts after all with regard to the  
 2 futility argument is whether Ecuadorian courts are  
 3 influenced by these statements or not. And by their  
 4 Judgments, they have proved that they remain independent.  
 5 One notorious example is the dismissal of the criminal  
 6 charges brought in 2011: dismissed by the National Court  
 7 of Justice of criminal charges brought in relation with  
 8 the Lago Agrio Case against two of Claimants' attorneys.  
 9 So, why wouldn't a court seized of a CPA action  
 10 show the same impartiality and independence?  
 11 I now come to the second aspect of the futility  
 12 argument. According to Claimants, the available remedies  
 13 are futility also because the Lago Agrio Judgments are  
 14 already enforceable. There are two aspects in that  
 15 argument:  
 16 First, enforceability in itself would have made  
 17 further recourses futile; and, second, Ecuador would have  
 18 violated international law by disobeying the Tribunal's  
 19 Order to stay enforcement of the Lago Agrio Judgment.  
 20 First aspect, according to Claimants, because the  
 21 Lago Agrio Judgment is enforceable, no further remedy is  
 22 to be sought, it would necessarily be futile. In his  
 23 first Opinion, Jan Paulsson, as Expert--as he then  
 24 was--says that he's not aware of any other case with a  
 25 factual pattern matching the present one, a Judgment that

03:50 1 is enforceable and which its beneficiaries try to enforce  
 2 in other countries. I'm wondering whether the reason for  
 3 that lack of precedent may not be that no one had yet had  
 4 the strange idea to pretend that because the Judgment is  
 5 already enforceable, no further remedy is to be exhausted.  
 6 At least from Jan Paulsson's remark, it results there is  
 7 no basis under international law for the proposition that  
 8 exhaustion of remedy does not apply when a judgment is  
 9 enforceable.  
 10 The only exception to the obligation to exercise  
 11 local recourses is when a recourse would not constitute an  
 12 effective remedy. Effectiveness is the only logical  
 13 requirement.  
 14 And it is true that in some situations there is  
 15 no possibility of redress when a first instance or appeal  
 16 judgment has been enforced, and the Claimants give an  
 17 example. The European Commission on Human Rights has held  
 18 that if an order to extradite or expel a foreigner has  
 19 been made, a court action that would not suspend the Order  
 20 does not need to be exhausted. But that is obvious,  
 21 because if you are expelled or, in particular, extradited,  
 22 the harm is beyond repair, and the setting aside of the  
 23 Order does not constitute an efficient remedy.  
 24 But the situation here is completely different.  
 25 The question is: Do the enforceability and the ensuing

03:52 1 attempts to enforce the Lago Agrio Judgment in various  
 2 countries constitute an unrepairable harm. And the answer  
 3 is no for two reasons: First, the respective duration of  
 4 a CPA action and of enforcement proceedings. Chevron  
 5 could have started a CPA action in 2011. A statistical  
 6 review of court practice in Ecuador reveals that CPA  
 7 judgments, on average, issue approximately 17 months from  
 8 the date of commencement of the proceedings. In other  
 9 words, assuming that the Court seized of the CPA action  
 10 had found that there had been denial of justice in the  
 11 Lago Agrio Judgment already today any attempt to enforce  
 12 the Judgment in any country would necessarily fail.

13 It's true that according to Chevron a CPA action  
 14 would have taken, in fact, years. But first, that's  
 15 contrary to the statistics I have mentioned, and, second,  
 16 since Chevron did not start a CPA action, it cannot prove  
 17 how long it would have taken to obtain a judgment, and the  
 18 burden of proof rests on the Claimants.

19 In addition, the Lago Agrio Plaintiffs are not  
 20 close to enforcing the Lago Agrio Judgment against  
 21 Chevron. One has here to distinguish enforcement in  
 22 Ecuador and enforcement abroad.

23 In Ecuador, the Plaintiffs have attached certain  
 24 trademarks concerning the lubricant business. But these  
 25 trademarks have no value because, in the framework of the

03:53 1 sale of the lubricant business to Swiss Oil, Chevron has  
 2 consented a royalty-free license to Swiss Oil. And no one  
 3 else at Swiss Oil--than Swiss Oil--can be interested in  
 4 these trademarks. For that reason, no transfer of the  
 5 trademarks to the Plaintiffs have occurred--has  
 6 occurred--and if, even if someday it did, these trademarks  
 7 have no value.

8 Abroad--abroad--Plaintiffs have started actions  
 9 for recognition of the Judgment in Canada, Brazil, and  
 10 Argentina. They have obtained no success yet and no  
 11 success is to be expected before years, for several  
 12 reasons: First, if really Chevron--as Chevron contends,  
 13 there has been a denial of justice, and Chevron can  
 14 convince the courts in these countries, then Plaintiffs'  
 15 motion for recognition will be denied.

16 Secondly, even if Chevron does not convince these  
 17 courts, the undisputed Expert Report submitted by Ecuador  
 18 for the three countries show that enforcement proceedings  
 19 with the various levels of appeal that are open would  
 20 demand a period of several years before any money could be  
 21 collected. These Reports have been drafted by George  
 22 Pollock for Canada, Marcelo Rufino for Argentina, and  
 23 Juliera Anginoni for Brazil.

24 Therefore, it is even more certain that had  
 25 Chevron started a CPA action in 2011 or even later or even

03:55 1 now, it would not have completed its actions for  
 2 enforcement before the CPA action would have been  
 3 adjudicated. It would be for Chevron to prove the  
 4 opposite. And it's an impossible proof, first because you  
 5 cannot prove what is false, and, second, because the only  
 6 way to know for certain would have been for Chevron to  
 7 start the CPA action.

8 The second reason for not following Chevron is  
 9 that even if the Lago Agrio Judgment was enforced before  
 10 the hypothetical successful CPA action was completed, the  
 11 money would have to be given back to Chevron. As the  
 12 Tribunal knows, the Lago Agrio Court ordered the  
 13 Plaintiffs to establish a commercial Trust with the Amazon  
 14 Defense Front as beneficiary. If a CPA Court annulled the  
 15 Lago Agrio Judgment, the trust would be forced to give  
 16 back the money, which it would not have had time to spend.

17 Now, Chevron also blames Ecuador for not having  
 18 stayed the enforcement of the Judgment contrary to what  
 19 the Tribunal has ordered. Three remarks:

20 First, the argument is not relevant, since the  
 21 attempts to enforce would have failed in case of a  
 22 successful CPA action and the enforceability could have  
 23 caused no harm to Chevron if it had chosen to start a CPA  
 24 action.

25 Second, the reason why the Judgment is

03:57 1 enforceable is not that there has been any special action  
 2 by the State to make to it enforceable. It is enforceable  
 3 by the operation of the law, as is normal in all civil law  
 4 countries when you have had an appeal. It's, in fact,  
 5 Chevron which could have stayed the enforceability by  
 6 posting a bond, but it did not post a bond, and it did not  
 7 even request the Court to fix the amount of a bond. And  
 8 such a bond in Ecuador, as has been shown in these  
 9 proceedings, generally represents between 1 percent and  
 10 5 percent of the amounts at stake.

11 And, third, there was no other way under  
 12 Ecuadorian law to stay the enforceability. Here, we have  
 13 to respectfully disagree with the Tribunal's statements in  
 14 its Fourth Interim Award that, I quote: "Ecuador could  
 15 not be excused for the failure to fulfill through any of  
 16 its branches the obligation to stay the  
 17 enforceability"--this obligation created by the Tribunal  
 18 itself.

19 The Court of Appeals had to decide in the context  
 20 of a dispute between two private parties: Chevron on one  
 21 side and the Plaintiffs on the other side.

22 The Plaintiffs benefited of an enforceable  
 23 Judgment. There was no way for the Court, under  
 24 Ecuadorian law which it has to apply, to deprive the  
 25 Plaintiffs of the enforceability of their Judgment. In

03:59 1 addition, that would have meant violating Article 25 of  
 2 the American Convention on Human Rights, to which Ecuador  
 3 is a party, as the Court of Appeals noted.  
 4 We have on the Slide two extracts of the  
 5 decision: "Article 25 of the American Convention on Human  
 6 Rights imposes on Ecuador (as a member State) the  
 7 obligation to guarantee the right of access to justice,  
 8 that is, an effective judicial protection, which  
 9 necessarily includes the guarantee of the enforcement of a  
 10 judgment, since the absence of enforcement would render it  
 11 entirely ineffective."  
 12 Second quotation: "This Chamber determined that,  
 13 in the event we were to act outside the boundaries of the  
 14 law, as requested by Chevron, and take special measures to  
 15 'prevent the enforcement of the Judgment,' this Court  
 16 would be allowing the perpetration of a violation to the  
 17 human rights obligations of Ecuador."  
 18 I leave aside the questions whether, one, an  
 19 international tribunal has the power to create an  
 20 obligation that would bind a State under international  
 21 law, and, second, whether a tribunal has the power to  
 22 interfere with the internal functioning of the  
 23 institutions of the State.  
 24 To conclude, for all these reasons, Chevron  
 25 should have exhausted local remedies, particularly the CPA

04:01 1 recourse, and having failed to do that, its  
 2 denial-of-justice claim is not ripe. These recourses, and  
 3 particularly the CPA action, is in no way futile. Chevron  
 4 has not established that the Court which would have been  
 5 seized would not have been independent and impartial, and  
 6 it has not established that there would have been a risk  
 7 of enforcement in Ecuador or abroad before the CPA action  
 8 would have been completed.  
 9 I'm now turning the floor to Ricardo Ugarte, who  
 10 will deal with another aspect of the exhaustion of  
 11 remedies.  
 12 MR. UGARTE: Thank you, Professor Mayer.  
 13 Members of the Tribunal, I will briefly expand  
 14 upon the doctrine of exhaustion and its specific  
 15 application to the ghostwriting allegations.  
 16 During other parts of this Opening Statement, my  
 17 colleagues will highlight how the vast weight of evidence  
 18 demonstrates that the ghostwriting allegations are simply  
 19 false, but those claims fail for an additional reason:  
 20 All of the Claims filed before this Tribunal that arise  
 21 from those ghostwriting allegations failed by virtue of  
 22 the doctrine of exhaustion. I will demonstrate this by  
 23 first describing the timing of Claimants' ghostwriting  
 24 allegations and, second, by demonstrating that Chevron had  
 25 numerous effective procedural remedies available to them

04:03 1 to address precisely these types of allegations before the  
 2 Judgment was ever issued.  
 3 So, first, let's discuss the timing of Claimants'  
 4 allegations.  
 5 On the slide before you, you will see a timeline  
 6 of the ghostwriting allegations. As you see, the slide is  
 7 presented in two colors to separate fact from fiction. In  
 8 blue are the undisputed facts. In red are Claimants'  
 9 unproven allegations that derive from affidavits that  
 10 Chevron submitted as evidence in the RICO litigation, and  
 11 the exhibit numbers to those sworn affidavits are  
 12 referenced in the timeline.  
 13 I would like to briefly run through this timeline  
 14 with you.  
 15 First, in October 2009, according to Chevron,  
 16 Dr. Guerra allegedly advises Chevron that he could fix the  
 17 entire case for Chevron through Judge Zambrano. Shortly  
 18 thereafter, in February 2010, Judge Zambrano steps down as  
 19 judge of the Lago Agrio Litigation when Judge Ordoñez is  
 20 elected President of the Court.  
 21 Next, in August 2010, Chevron successfully  
 22 recuses Judge Ordoñez, thereby reinstating Zambrano as the  
 23 Presiding Judge of the Lago Agrio Case as of October 2010.  
 24 Next, in October 2010, according to Chevron, Chevron was  
 25 allegedly tipped off to information that supposedly led

04:05 1 Chevron's attorneys, including its lead trial attorney,  
 2 Mr. Callejas, to understand that Judge Zambrano was sure  
 3 to reach an agreement with Plaintiffs to issue the  
 4 Judgment in their favor.  
 5 A few months later, on February 14, 2011, Judge  
 6 Zambrano nevertheless proceeds to issue the Judgment.  
 7 As you can see from the allegations referenced in  
 8 red in this timeline, on Chevron's own allegations,  
 9 Chevron says it was aware of the ghostwriting allegations  
 10 well before the Judgment was issued. And if you accept,  
 11 assuming arguendo, the ghostwriting allegations, you  
 12 cannot cherry-pick. You have to accept the entire  
 13 ghostwriting case, including the sworn evidence that  
 14 Chevron presented to Judge Kaplan about what they say they  
 15 knew about the purported ghostwriting scheme in  
 16 October 2010. This pre-Judgment knowledge by Chevron is  
 17 sufficient to shut the door on these allegations and all  
 18 the international claims that derive from them.  
 19 By no later than October of 2010, if Chevron  
 20 wanted to hold the entire State of Ecuador accountable  
 21 under international law for these allegations, Chevron was  
 22 duty-bound under the doctrine of exhaustion to pursue the  
 23 procedural remedies that the Ecuadorian judicial system  
 24 put in place for Chevron to address such matters at the  
 25 trial level, and the Legal Authorities for this

04:06 1 proposition are set forth in our Track 2 Supplemental  
 2 Counter-Memorial of November 2014 at Pages 116 through  
 3 118.  
 4 I want to highlight two of these authorities very  
 5 briefly.  
 6 First, the Appeals Chamber of the United Nations  
 7 held in the Dilalic case that "a Party should not be  
 8 permitted to refrain from making an objection to a matter  
 9 which was apparent during the course of the trial to raise  
 10 it only in the event of an adverse finding against the  
 11 Party."  
 12 Or, as Professor Paulsson put it, "the exhaustion  
 13 rule requires not only the pursuit of appeals, but also,  
 14 while the earlier proceedings were in progress, that the  
 15 complainant availed himself of existing procedural  
 16 mechanisms."  
 17 But Chevron ran afoul of these Basic Principles  
 18 of international law. Chevron by-passed all available  
 19 procedural remedies and refrained from making any  
 20 objection to a matter which they say was apparent to them  
 21 while the trial proceedings were in progress. It is  
 22 uncontested that Chevron failed to report its views to any  
 23 Ecuadorian judicial authorities during the months prior to  
 24 the issuance of the Judgment.  
 25 Now, Ecuador has refuted the ghostwriting

04:08 1 allegations on the merits and does not believe in the  
 2 ghostwriting fairy tale for one minute, nor should this  
 3 Tribunal. But if Chevron did, then Claimants needed to  
 4 come forward to test and address these allegations during  
 5 the trial proceedings by bringing a motion to recuse Judge  
 6 Zambrano or by seeking to remove him by an application  
 7 with the Judicial Council, or by reporting this  
 8 information to the local bar authorities. But Chevron did  
 9 none of these things at that time.  
 10 It is uncontested that Chevron failed to use any  
 11 of these available and effective remedies in Ecuador  
 12 during the Lago Agrio Trial court proceedings during the  
 13 critical months before the Judgment was issued.  
 14 The existence of these remedies and the relevant  
 15 code provisions under Ecuadorian law that make clear that  
 16 these remedies were available to Chevron are cited in our  
 17 Track 2 Supplemental Rejoinder on March 17, 2015, at  
 18 Paragraphs 89 and 97.  
 19 Claimants do not contest that these procedural  
 20 remedies, such as recusal motions, were available to them  
 21 during the trial court proceedings. Rather, Claimants'  
 22 claim that these remedies were futile because President  
 23 Correa allegedly controlled the judiciary. But that  
 24 assertion is pure speculation and is contradicted  
 25 and--excuse me, is contradicted by the evidence of the

04:09 1 successful recusal motions that Chevron itself brought  
 2 during the Lago Agrio Litigation.  
 3 Recall from the timeline that we just reviewed  
 4 that Chevron, in fact, had just successfully recused Judge  
 5 Ordoñez, and Chevron had no hesitation in bringing a  
 6 motion to recuse Judge Ordoñez on the grounds of being  
 7 biased. Chevron's application for recusal, as you can see  
 8 from the next slide, was based on allegations of undue  
 9 delay and bias by Judge Ordoñez.  
 10 The fact is that Ecuador's Executive Branch has  
 11 never prevented Ecuadorian judges from being recused as  
 12 evidenced by the fact that Chevron successfully removed  
 13 judges in the Lago Agrio Litigation itself, so Chevron  
 14 cannot establish that these remedies were futile.  
 15 Furthermore, it is uncontested that Claimants did  
 16 not whisper a word of this fairy tale to even this  
 17 Tribunal until after the Judgment was issued. Just as  
 18 Chevron could have pursued municipal remedies in Ecuador  
 19 before the Judgment was issued, Claimants could have  
 20 sought Interim Measures from this Tribunal to prevent the  
 21 harm of which they now complain.  
 22 Remember that Claimants say that Zambrano was  
 23 shopping around the Judgment to both the Plaintiffs and  
 24 Chevron. They never alleged that Zambrano was acting on  
 25 orders from higher authorities. Ecuador and this Tribunal

04:11 1 were kept in the dark during the pre-Judgment period of  
 2 the knowledge that Chevron says they possessed. Instead,  
 3 the--Chevron saved these allegations for Judge Kaplan.  
 4 Chevron first surfaced these allegations within 24 hours  
 5 of the Judgment being issued. At R-1320, Chevron had  
 6 filed a pleading in the RICO case in which they said  
 7 "Chevron suspects that Judge Zambrano received secret  
 8 assistance drafting the Judgment, and anticipates  
 9 requesting discovery on this issue shortly."  
 10 Members of the Tribunal, Chevron wants you to  
 11 hold Ecuador's entire judicial system accountable for the  
 12 ghostwriting allegations under principles of customary  
 13 international law and under the Treaty. But under  
 14 international law, Chevron cannot ask this Tribunal to  
 15 help Chevron when they did not help themselves at the  
 16 trial court level.  
 17 Ecuador is responsible for the final product of  
 18 its judicial system, but what Ecuador is not responsible  
 19 for is Chevron's deliberate and strategic decision to  
 20 bypass effective procedural remedies that were available  
 21 during the trial court level that would have addressed the  
 22 ghostwriting allegations then and there.  
 23 For these reasons, Ecuador would submit that  
 24 Claimants failed to satisfy a critical substantive element  
 25 of their denial-of-justice claims. Indeed, as my next

04:13 1 presentation will make it clear, when Chevron chose to  
 2 bypass effective procedural remedies to address the  
 3 ghostwriting allegations at the trial level, they also  
 4 forfeited their right to bring any treaty claims based on  
 5 those allegations.

6 And with that, Ecuador concludes its oral  
 7 submissions on certain legal aspects of the  
 8 denial-of-justice claim, and I would like to say next a  
 9 few words about the most prominent legal flaw in  
 10 Claimants' treaty claims.

11 With respect to Claimants' treaty claims, later  
 12 this afternoon my colleagues will highlight the  
 13 fundamental flaws in both Claimants' evidence and their  
 14 due process allegations. I will focus on another  
 15 important difference that divides the Parties: That is  
 16 whether the requirement to exhaust local remedies  
 17 constitutes a substantive element that Claimants must  
 18 satisfy to establish the specific treaty breaches that  
 19 Claimants have pled before this Tribunal.

20 Ecuador submits that the doctrine of exhaustion  
 21 of local remedies applies with full force to defeat all of  
 22 Claimants' treaty claims. This is clear for two reasons:

23 First, all of Claimants' treaty claims ultimately  
 24 depend on how Ecuador's judicial system conducted itself  
 25 in the Lago Agrio Litigation.

04:14 1 Second, investment treaty jurisprudence makes  
 2 clear that when an investment treaty claim arises out of  
 3 judicial conduct, exhaustion of local remedies constitutes  
 4 a substantive element that the investor must satisfy.

5 So, let's begin with an analysis of Claimants'  
 6 allegations. Ecuador submits that each Treaty breach that  
 7 Claimants have asserted requires this Tribunal to find  
 8 that somehow that the Ecuadorian judicial system violated  
 9 the substantive standards of the Treaty. Every single  
 10 allegation involves either just the judiciary or hybrid  
 11 allegations that allege that somehow Ecuador's Executive  
 12 interfered with the judiciary's handling of the Lago Agrio  
 13 proceedings.

14 What I am contending can be put another way:  
 15 Would the Claimants have filed this treaty arbitration but  
 16 for the existence of the Lago Agrio Litigation? Of course  
 17 not. The allegations underpinning their treaty claims are  
 18 intimately focused on that litigation and the way the  
 19 Ecuadorian judicial system acted in that litigation.

20 Indeed, this Tribunal, at Paragraph 5 of its  
 21 March 2015 decision, found that, "it has become  
 22 increasingly clear during this arbitration that the  
 23 Claimants' principal claim under the USA-Ecuador BIT is  
 24 made against the Respondent for multiple denials of  
 25 justice within the Ecuadorian legal system."

04:16 1 The characterization of Claimants' case is fully  
 2 supported by Section 13 of Claimants' January 2015  
 3 Memorial, where you will find Claimants' latest iteration  
 4 of their Request for Relief. As you can see from the  
 5 highlighted portions of the slide before you, the Lago  
 6 Agrio Judgment appears in every single one of their  
 7 requests for declaratory and injunctive relief. Even in  
 8 Claimants' request for damages, the sole basis for  
 9 indemnification concerns the Judgment issued by the  
 10 Ecuadorian courts.

11 In other words, while they accuse Ecuador's  
 12 Executive of interfering with the judiciary or their  
 13 purported rights under the Settlement Agreement, there is  
 14 no basis upon which the actions of Ecuador's non-judicial  
 15 organs caused Claimants an independent harm or damage.  
 16 Every treaty claim and claim for relief ultimately stems  
 17 from the results of the Lago Agrio Litigation and the  
 18 judiciary's handling thereof.

19 Now, this is an important determination because  
 20 if the crux of Claimants' allegations concern the conduct  
 21 of the Ecuadorian judicial system, then this Tribunal  
 22 cannot allow Claimants to circumvent the requirement of  
 23 exhaustion of local remedies.

24 Now, I would like to briefly turn to the law on  
 25 the applicability of exhaustion of treaty claims based on

04:17 1 judicial conduct.

2 First, in his comprehensive treatise on the  
 3 subject, Professor Paulsson states: "To repeat, States  
 4 may, and do, enter into treaties that provide for direct  
 5 access by foreigners to international tribunals without  
 6 first having to exhaust local remedies. Such waivers give  
 7 foreigners the assurance that internationally wrongful  
 8 conduct will not be swept under the rug indefinitely.

9 In the particular case of denial of justice,  
 10 however, claims will not succeed unless the victim has  
 11 indeed exhausted municipal remedies, or unless there is an  
 12 explicit waiver of a type yet to be invented. This is  
 13 neither a paradox nor an aberration, for it is in the very  
 14 nature of the delict that a State is judged by the final  
 15 product--or at least a sufficiently final product--of its  
 16 administration of justice."

17 Likewise, numerous investment tribunals have  
 18 expressly held that when an investment treaty claim is  
 19 premised upon the judicial action of the host State, the  
 20 claim cannot succeed unless the Claimant has exhausted all  
 21 effective available remedies.

22 This was the holding by the Arbitral Tribunal in  
 23 the well-known and highly instructive case of Loewen  
 24 versus the United States. As you can see from the  
 25 following slide, in that case, the Tribunal dismissed

04:18 1 Loewen's investment treaty claims because Loewen had  
 2 failed to prove that it had exhausted the available  
 3 remedies under U.S. municipal law. Nor can Claimants  
 4 avoid the same fate as the investor in Loewen simply  
 5 because Loewen's treaty claims arose under NAFTA.  
 6 The point is simply that when assessing an act of  
 7 the judiciary, the law imposes a systemic obligation on  
 8 the host State, not a requirement that every judge or  
 9 lower court be infallible. Indeed, there are numerous  
 10 non-NAFTA decisions that support Ecuador's position. For  
 11 example, in the Jan de Nul arbitration, the Claimants  
 12 there also implored the Tribunal to jettison the  
 13 requirement of exhaustion and evaluate Egypt's judicial  
 14 system as part of the supposedly broader  
 15 fair-and-equitable-treatment standard. The Tribunal  
 16 categorically rejected that argument.  
 17 As you can see, the Tribunal held that, where a  
 18 judgment lies at the core of the treaty claim, the  
 19 relevant standards to trigger State responsibility for its  
 20 judiciary are the standards of denial of justice,  
 21 including the requirement of exhaustion of local remedies.  
 22 The Tribunal found that the investor could simply not  
 23 circumvent the requirement of exhaustion by dressing up  
 24 its denial-of-justice claims as treaty claims just as  
 25 Claimants seek to do here.

04:20 1 There is also the matter of Pantechniki versus  
 2 Albania arising under the Greek Albania BIT. In that  
 3 case, Professor Jan Paulsson, acting as a Sole Arbitrator,  
 4 analyzed the denial-of-justice claim in the context of a  
 5 Fair and Equitable Treatment provision that was  
 6 incorporated in the Treaty by agreement of the Parties.  
 7 Professor Paulsson rejected the investor's claim without  
 8 hesitation because it was based on the Claimants'  
 9 purported mistreatment at the hands of Albania's lower and  
 10 appellate courts, and yet the Claimant has failed to  
 11 pursue his appeal to the top Court in that country.  
 12 In a quote that is fitting here, Professor  
 13 Paulsson stated: "Denial of justice does not arise until  
 14 a reasonable opportunity to correct aberrant judicial  
 15 conduct has been given to the system as a whole."  
 16 And as with denial of justice claims under  
 17 customary international law, there is no hard-and-fast  
 18 rule regarding direct versus indirect remedies when  
 19 assessing which remedies must be exhausted to establish a  
 20 treaty claim. The issue of directness is not the  
 21 determining issue. The test is whether or not the local  
 22 remedy is effective to address the harm complained of,  
 23 period.  
 24 Thus, for example, Claimants cannot argue that  
 25 the CPA is not an effective remedy on the basis that they

04:21 1 consider it to be indirect. Indeed, the remedy that the  
 2 Claimant in the Loewen Case failed to pursue was far more  
 3 indirect than the ones available to Chevron here.  
 4 Loewen's mortal sin was failing to petition the  
 5 U.S. Federal Supreme Court to strike down a bond  
 6 requirement imposed by the Mississippi State Courts which  
 7 Loewen could not afford to pay to stay the enforcement of  
 8 the State Court's judgment. That remedy is far more  
 9 indirect than the effective remedies which Chevron has  
 10 available here.  
 11 Again, all effective municipal remedies must be  
 12 pursued, and whether a so-called "indirect remedy" is  
 13 effective or not is a determination that must perforce be  
 14 made by an investment tribunal on a case-by-case basis  
 15 just as Professor Paulsson indicated when he was the sole  
 16 arbitrator in Pantechniki, as you can see from the bottom  
 17 of the slide that is before you.  
 18 The finding that the requirement of exhaustion  
 19 applies to all those treaty claims that arise from the  
 20 judicial conduct of the host State, as held in Loewen, Jan  
 21 de Nul, Pantechniki and others, applies here with full  
 22 force. Like the investment treaties at issue in those  
 23 cases, there is nothing in the express language of the BIT  
 24 between the U.S. and Ecuador that expressly derogates from  
 25 the requirement that local remedies must be exhausted when

04:23 1 judicial action is the basis of the Treaty breach.  
 2 It would be unprecedented for this Tribunal to  
 3 find that the U.S. and Ecuador implicitly or tacitly  
 4 agreed to jettison or waive this well-established  
 5 principle of international law when the Treaty breach is  
 6 based on judicial conduct. Such a waiver would have  
 7 necessarily been explicit or express, and no such waiver  
 8 exists in the present Treaty.  
 9 Indeed, the cases to have interpreted the  
 10 U.S.-Ecuador BIT in evaluating claims arising out of  
 11 judicial conduct support Ecuador's position here. For  
 12 example, even the Commercial Cases Award upon which  
 13 Claimants so heavily rely noted the importance of general  
 14 principles of customary international law in interpreting  
 15 the U.S.-Ecuador Treaty.  
 16 The Commercial Cases Tribunal, in its Partial  
 17 Award, found that the effective-means standard contained  
 18 in Article II(7) and general denial-of-justice principles  
 19 were inextricably linked. The Tribunal on that case  
 20 stated "given the related genesis of the two standards,  
 21 the interpretation and application of Article II(7) is  
 22 informed by the law on denial of justice."  
 23 While the Commercial Cases Tribunal ultimately  
 24 rejected a strict exhaustion of local-remedies standard  
 25 without explaining what "strict" means in this context,



04:24 1 that Tribunal nevertheless still found that the Claimants  
2 in that case must have adequately utilized the means made  
3 available to them to assert claims and enforce rights in  
4 Ecuador in order to prove a breach of the BIT.

5 Similarly, in Duke versus Ecuador, the Tribunal  
6 in examining the judiciary's conduct also found that  
7 Article II(7) "seeks to implement and form part of the  
8 more general guarantee against denial of justice."

9 It then proceeded to determine whether the  
10 investors' failure to pursue local remedies was justified.  
11 In other words, all of these cases found that the  
12 investors' exhaustion of adequate and effective local  
13 remedies was required to prove their treaty claims.

14 Claimants also rely heavily on the Petrobart  
15 versus Kyrgyz Republic Case and the White Industries Award  
16 as the only examples Claimants have been able to find  
17 where Claimants allege that the Tribunal appeared to relax  
18 the exhaustion requirement.

19 Claimants' interpretation of those Awards is  
20 simply incorrect. Neither of those two decisions  
21 expressly discards the exhaustion requirement when  
22 analyzing the conduct of the judiciary. In Petrobart, the  
23 Tribunal focused on the conduct of the Executive Branch in  
24 imposing liability under the Treaty. There, the Executive  
25 Branch stripped the assets of a State-owned company

04:27 1 test does not apply under this Treaty, particularly when  
2 treaty claims are founded upon judicial conduct. But if  
3 the Tribunal is minded to disagree, then Ecuador submits  
4 that the only legitimate expectations that Chevron could  
5 have reasonably had here was that Ecuador's judicial  
6 system would comply within the bounds of well-established  
7 principles of international law which includes the  
8 requirement of exhaustion.

9 Finally, the White Industries Award is of no  
10 moment here for another reason. That case involves a  
11 systemic undue delay in a court system, an issue which can  
12 indeed constitute an exception to the exhaustion  
13 requirement, if proven. Chevron's case here has nothing  
14 to do with a systemic delay by Ecuador's judicial system.

15 In conclusion, Members of the Tribunal, Ecuador  
16 would submit that this Tribunal should uphold the  
17 applicability of the exhaustion requirement as a  
18 substantive element of Claimants' treaty claims because  
19 they are all intimately founded upon the conduct of  
20 Ecuador's judicial system. Claimants' clear and  
21 deliberate failure to exhaust local remedies means they  
22 have failed to satisfy a critical substantive element  
23 concerning each and every one of their treaty claims.

24 And on that, Ecuador concludes its submission for  
25 this part of its Opening Statement.

04:25 1 leaving that company insolvent and unable to satisfy the  
2 debts owed to the Claimants. And in contrast to the  
3 situation here, the Kyrgyz Republic never argued that  
4 there were any further remedies to exhaust in their  
5 courts.

6 Nor is there an Investment Treaty Award that  
7 applies the legitimate expectations tests so broadly as to  
8 constitute a waiver of the exhaustion requirement when the  
9 treaty claims at issue are based upon judicial conduct.

10 There is not a single case that stands for that  
11 proposition. The closest case to do that was the White  
12 Industries decision that Claimants rely upon, but even  
13 that case never held that the exhaustion requirement did  
14 not apply as a general matter to treaty claims based on  
15 judicial conduct.

16 As we'll be seeing from the next slide, the White  
17 Industries Tribunal simply never reached the issue of  
18 exhaustion on the one claim that was assessed under the  
19 legitimate expectations test. It didn't have to because  
20 it was easier for the Tribunal to simply show how  
21 ill-suited a test that relies on specific assurances is,  
22 when it is clear that no State's judicial system gives  
23 unambiguous and specific assurances to a specific investor  
24 or unidentifiable group.

25 Ecuador submits that the legitimate expectations

04:28 1 PRESIDENT VEEDER: Thank you very much. I think  
2 that was the time when you were indicating we might have a  
3 mid-afternoon break.

4 MR. BLOOM: Exactly.

5 PRESIDENT VEEDER: Well, let's break now for 15  
6 minutes. We'll come back at quarter to 5:00. Thank you.  
7 (Brief recess.)

8 PRESIDENT VEEDER: Let's resume.

9 MR. BLOOM: Mr. President and Members of the  
10 Tribunal, we now turn to our final session. Having covered  
11 this morning jurisdiction, exhaustion, and Treaty, we now  
12 turn to the denial-of-justice issues.

13 Claimants contend that the Court's application of  
14 Ecuadorian law represented a legal absurdity, and  
15 Claimants also contend that the Court's resolution of  
16 certain other Ecuadorian legal issues represented a denial  
17 of due process. In truth, and in fact, the Ecuadorian  
18 legal issues raised by Claimants relate to ordinary and  
19 oftentimes mundane matters of Ecuadorian law, the  
20 resolution of which were hardly extraordinary. In each  
21 instance, the Court's resolution of these issues was  
22 appropriate and proper, and well within the ambit of the  
23 juridically possible.

24 Mr. Leonard will address these issues.

25 At the conclusion of that, he will then respond

04:48 1 to Mr. Coriell's presentation regarding the implications  
 2 of the Track 1B Decision of March 12, 2015. At that  
 3 point, Mr. Leonard will hand the microphone over to  
 4 Mr. Ewing and to Ms. Silver. They will address and  
 5 respond to the Claimants' factual absurdities argument.  
 6 Mr. Ewing will address the issues relating to  
 7 contamination in the Oriente, while Ms. Silver will  
 8 address the health concerns.

9 Finally, we'll respond to Claimants' claims of  
 10 corruption, and in this regard you'll be hearing from  
 11 Mr. Ewing, my colleague, Mr. Goldstein and me. And with  
 12 that, I'll turn the fining phone over to Mr. Leonard.

13 MR. LEONARD: Thank you, Mr. Bloom.

14 Mr. President, Members of the Tribunal, always a  
 15 pleasure to appear before you.

16 The topic that I'm about to address, is not as  
 17 pleasant, but the good news is that my presentation should  
 18 take no more than 20 minutes, so please bear with me while  
 19 I address Claimants' allegations of legal error and due  
 20 process violations in the Lago Agrio Litigation.

21 I must admit to a certain level of reluctance in  
 22 addressing this topic. That Claimants' arguments are  
 23 meritless as a matter of municipal law seems almost  
 24 besides the point. What is most objectionable about these  
 25 aspects of Claimants' case is that their arguments do not

04:50 1 belong in these proceedings. They are appellate-type  
 2 arguments that ought to be raised and were, in fact,  
 3 raised before the courts of competent jurisdiction over  
 4 those matters. This is not one of those courts. With all  
 5 the respect that is due to this Tribunal, you do not sit  
 6 here as a supra-national court of appeal and should  
 7 decline the Claimants' invitation to do so. There is  
 8 extensive authority against the possibility of  
 9 international tribunals substituting their Judgment for  
 10 that of a municipal Court. I do not intend to address any  
 11 of that today, and will simply refer the Tribunal to the  
 12 Republic's submissions on this subject, but I do want the  
 13 record to be clear about the Republic's objection in this  
 14 respect.

15 It is respectfully submitted that unless you find  
 16 that Mr. Fajardo wrote the Judgment, a hypothesis that you  
 17 will find is wholly unsupported by the evidence, you must  
 18 refrain from engaging in any exercise intended to  
 19 second-guess the findings of Ecuador's courts on these  
 20 same issues that Claimants have now put before you. An  
 21 international tribunal may substitute its Judgment for  
 22 that of a municipal Court only in the most extreme and  
 23 unusual circumstances. Such circumstances are not present  
 24 here.

25 Claimants were required to overcome the generally

04:51 1 accepted presumption in favor of the judicial process by  
 2 means of clear and convincing evidence of highly egregious  
 3 conduct. Claimants have utterly failed to meet their  
 4 burden, and their bid to turn these proceedings into an  
 5 additional layer of appeal is without basis in  
 6 international law and must be rejected.

7 Now, turning to Claimants' specific complaints,  
 8 they include the following eight allegations.

9 First, the causation analysis in the Lago Agrio  
 10 judgment is substantively absurd; second, the Judgment  
 11 improperly amalgamates TexPet, Texaco, and Chevron; third,  
 12 the Judgment Awards extra petita damages to the  
 13 Plaintiffs; four, it improperly joins claims under the  
 14 oral summary proceedings; five, it allows for the  
 15 retroactive application of the EMA; six, the Court  
 16 improperly allowed the Plaintiffs to withdraw their  
 17 earlier request for the production of certain judicial  
 18 inspections; seven, the Court improperly appointed Cabrera  
 19 as a global expert;

20 And, eight, the Court purportedly refused to  
 21 consider Chevron's essential error petitions.

22 While examining these issues, the Tribunal will  
 23 find that some of Claimants' arguments are clever ones,  
 24 but will also conclude that not one of them is supported  
 25 by Ecuadorian law or by the facts on which it prefers to

04:53 1 rely.

2 For example, as to the first of Claimants'  
 3 complaints, Dr. Coronel and Dr. Barros argue that the  
 4 Judgment does not establish a causal connection between  
 5 TexPet's operations and the alleged harm at issue. This  
 6 assertion is factually incorrect. Starting at Part 6 of  
 7 the Judgment under the heading "Civil Liability, the basis  
 8 of the allegation," and concluding at Part 10, the Court  
 9 engages in an extensive discussion about the evidence of  
 10 widespread contamination in the former Concession Area and  
 11 the causal nexus between such contamination and TexPet's  
 12 operations.

13 Claimants themselves quote the Judgment's  
 14 introduction to the relevant causation analysis in their  
 15 most recent submission. At Paragraph 141 of their  
 16 Supplemental Reply in Track 2, Claimants quote the  
 17 following language from the Judgment, which you can see on  
 18 the screen, and I quote: "As has been explained, the  
 19 strict-liability regime favors the victim of the harm, who  
 20 must only prove the harm and the resulting causal nexus in  
 21 order for his action for harm to succeed. In view of the  
 22 foregoing, what truly needs to be analyzed is causation."

23 Part 7 through 10 of the Judgment described the  
 24 Court's analysis and its findings that the record shows  
 25 sufficient evidence of pollution arising from TexPet's

04:54 1 operations as well as a credible threat of contingent harm  
 2 to those exposed to the contaminated lands and waters.  
 3 Claimants also rely, albeit for different  
 4 purpose, on the Court of Appeals examination of the lower  
 5 court's causation analysis, and I quote from Page 13 of  
 6 the appellate Decision in Lago Agrio; this language can  
 7 also be found at Paragraph 142 of Claimants' Track 2  
 8 Supplemental Rejoinder. You have the language on the  
 9 screen, and I quote: "The division considers that the  
 10 analysis of Civil Liability, clear in the lower Judgment,  
 11 is the appropriate one. The analysis of the relationship  
 12 between damage and cause in the Ecuadorian Amazon is sound  
 13 and derives from the examination of the items of evidence  
 14 that exist in the record. Then, the damages to the  
 15 environment are legally proved and considering the causal  
 16 relationship between the result of damage, and the action  
 17 of the operations of the then TexPet, the division does  
 18 not find reasons to modify what was ordered in the lower  
 19 court's Judgment."  
 20 The factual predicate of Claimants' complaint is  
 21 just lacking, so Claimants resort to misdirection and  
 22 argue through their experts that the Court's analysis is  
 23 not based on the, "technically applicable evidence," for  
 24 determining the causation between an event and a  
 25 particular harm.

04:56 1 Now, this argument is most intriguing. What is  
 2 the technically applicable evidence really is anybody's  
 3 guess. Dr. Coronel maintains that in his expert  
 4 testimony, while another one of Claimants' Experts,  
 5 Dr. Wright, asserts that judicial expectations are it.  
 6 Dr. Andrade shed some light on this nonsense and explained  
 7 that establishing causation in cases of strict liability  
 8 is not particularly complex where the alleged harm is a  
 9 natural consequence of the risky activity at issue. The  
 10 presence in a rainforest of crude oil chemicals and heavy  
 11 metals used in drilling and extraction of hydrocarbons is  
 12 a natural consequence of hydrocarbon activities. It  
 13 cannot be attributed, for example, to the farming  
 14 activities of native inhabitants of the area.  
 15 The law of torts in Ecuador adopted an objective  
 16 or strict-liability regime in cases involving risky  
 17 activities such as this one. Technically, this regime  
 18 adopts a rebuttable presumption of liability for any and  
 19 all harm that is a natural consequence of such activity.  
 20 This presumption can be reversed only if the Defendant can  
 21 break the causal link between the risky activity and the  
 22 alleged harm. This can be done on three grounds, each  
 23 showing that the harm is a product of either one, force  
 24 majeure; two, the exclusive fault of a third party; or,  
 25 three, the exclusive fault of the victim.

04:57 1 The record evidence shows that Chevron was simply  
 2 not in a position to meet this burden. Thirty years of  
 3 oil drilling and extraction operations using arcane  
 4 techniques such as unlined pits to this charged crude and  
 5 drilling mud containing heavy metals and chemicals or  
 6 discharging billions of gallons of toxic production waters  
 7 resulted in widespread and extensive contamination, and  
 8 the Court found this. The Court's analysis in Chapter 7  
 9 through 10 of the Judgment finds this causal link between  
 10 TexPet's activities, and the existing contamination has  
 11 been sufficiently established. That's Point 1.  
 12 There is another aspect to Claimants' argument:  
 13 Claimants complained that Petroecuador's activities  
 14 contributed to the pollution that is being imputed to  
 15 Chevron. And make two different allegations on this  
 16 basis:  
 17 First, Claimants argue that the courts should  
 18 have made every possible effort to determine which  
 19 percentage of the harm was attributable to Petroecuador  
 20 and factor that percentage into its final determination on  
 21 damages. For example, in Claimants' view, the Court  
 22 should have determined how much of the contamination that  
 23 is migrating from TexPet's unlined pits originated in any  
 24 discharge that Petroecuador may have dumped into those  
 25 pits.

04:59 1 But that is not the law in Ecuador. The laws in  
 2 Ecuador impose joint and several liability on all joint  
 3 and consecutive tortfeasors, subject, of course, to the  
 4 Defendant's right to seek contribution from the other  
 5 tortfeasors. It is not the Plaintiffs' burden to allocate  
 6 percentages of liability among possible joint tortfeasors,  
 7 nor is it the Court's to do so, a burden, that if real,  
 8 would indirectly inure to the detriment of the Plaintiff.  
 9 Quite on the contrary, it is the Plaintiffs'  
 10 prerogative to seek full damages from anyone, some or all  
 11 of the joint tortfeasors. Petroecuador's alleged  
 12 contribution to the pollution derived from TexPet's  
 13 operations does not prevent the entry of a judgment  
 14 against Chevron.  
 15 Second, Claimants assert that the Court found  
 16 Chevron liable for contamination, which Chevron allegedly  
 17 proved was exclusively attributable to Petroecuador. But  
 18 this contention is belied by the Judgment's express  
 19 representations that harm exclusively attributable to  
 20 Petroecuador was not being considered in the Judgment. To  
 21 make this claim, Claimants rely not on their scientific  
 22 experts or on any concrete evidence otherwise in this  
 23 record. Claimants rely, instead on the bare assertions of  
 24 their legal experts, Dr. Coronel and Dr. Barros neither of  
 25 which proffers any evidence to support their assertions.

05:00 1 There simply is no basis on this record to conclude that  
 2 the Court erred in imputing to Chevron liability for  
 3 conduct only attributable to Petroecuador.  
 4 Claimants' next argument challenges the Court's  
 5 determination to pierce the corporate veils separating  
 6 TexPet from Texaco and Texaco from Chevron as, and I  
 7 quote, "so deeply flawed that it could only have been the  
 8 product of bias or corruption."  
 9 Claimants do not dispute that it was within the  
 10 Lago Agrio Court's competence and discretion to pierce the  
 11 corporate veil of these companies. Both Parties agree  
 12 that this mechanism is available to any court confronted  
 13 with the alleged abuse of the corporate form. Claimants  
 14 simply disagree with the analysis and ultimate conclusions  
 15 of the Ecuadorian courts on this topic. The Republic  
 16 offered a detailed analysis of the elements that Ecuador's  
 17 courts considered while examining this matter. I will not  
 18 embark on this same level of analysis today. I trust the  
 19 Tribunal has reviewed or will review the Republic's  
 20 submissions in due course. I will simply make two  
 21 somewhat general points:  
 22 First, Claimants have put before this Tribunal  
 23 claims on arguments that have already failed and been  
 24 rejected by courts in Claimants' home country. Delaware  
 25 courts, the courts of the state where Chevron is

05:01 1 incorporated, have articulated several factors that, if  
 2 present, give rise to a presumption that a corporation is  
 3 operating a subsidiary as its alter ego. In those cases  
 4 courts have disregarded the formal corporate separateness  
 5 of the corporation and its subsidiary. Those factors  
 6 include:  
 7 One, whether the corporation was solvent or  
 8 undercapitalized;  
 9 Two, whether the Shareholder siphoned corporate  
 10 funds;  
 11 Three, whether there is identity of corporate  
 12 officers and Directors;  
 13 And, four, generally, whether the corporation  
 14 simply functioned as a facade for the dominant  
 15 Shareholder.  
 16 All of these factors are present in the case of  
 17 Chevron and Texaco. While Texaco was a viable and well  
 18 capitalized operation throughout the duration, entire  
 19 duration of the '73 Concession, the record shows that  
 20 after the merger, Chevron turned Texaco into an empty  
 21 shell. For example, we know that Chevron acquired all of  
 22 Texaco's capital stock and remains Texaco's only  
 23 Shareholder. Texaco transfers all of its money daily to  
 24 one of Chevron's corporate accounts. Texaco thus requires  
 25 financing from Chevron for any number of purposes.

05:03 1 Chevron's Treasury Department handles all wire transfers  
 2 for Texaco. Chevron pays Texaco's U.S. liabilities, tax  
 3 liabilities. After the merger, Chevron sold Texaco's  
 4 former headquarters in New York and moved all operations  
 5 to its own California facility. Since then, Chevron and  
 6 Texaco have shared at least 15 officers and Directors.  
 7 And, finally, Chevron designates Texaco as a  
 8 non-operating company with no ongoing commercial  
 9 enterprises.  
 10 These facts are undisputed.  
 11 Now, presented with these facts, a jury in a  
 12 Mississippi state Court trial recently concluded that  
 13 Texaco is Chevron's alter ego, that Texaco is Chevron's  
 14 alter ego, justifying the Court's piercing of the  
 15 corporate veil between them. Chevron later lost its  
 16 appeal to intermediate appellate court. I refer to the  
 17 Decision in the Simon v. Texaco case, which the Republic  
 18 discussed at large in written submissions starting with  
 19 its Track 2 Counter-Memorial in February of 2013.  
 20 Second, the Lago Agrio Court considered similar  
 21 factors--similar factors--and in its discretion concluded  
 22 that they warranted a finding that Texaco was Chevron's  
 23 instrumentality and that upholding their corporate  
 24 effectiveness would perfect an abuse of the corporate form  
 25 to the detriment of third parties, here the Plaintiffs.

05:04 1 Claimants naturally disagree, and it is quite  
 2 possible that the Tribunal too might have reasons to  
 3 disagree with the reasoning and the ultimate conclusion of  
 4 Ecuador's courts. Reasonable minds can disagree. But  
 5 this is not a retrial, nor is it an appellate proceeding  
 6 before a court of competent jurisdiction. This Tribunal's  
 7 limited jurisdiction is not vested with discretion to  
 8 substitute its Judgment for that of Ecuadorian courts  
 9 absent clear and convincing evidence of egregious  
 10 misapplication of the law.  
 11 That is not the case here. The Ecuador court's  
 12 decision to pierce the corporate veil between Chevron and  
 13 Texaco mirrors the analysis employed by not one but two  
 14 U.S. courts that reached the same conclusion regarding the  
 15 same corporate entities on the basis of the same facts. I  
 16 submit to you that those facts more than sufficiently  
 17 support the Ecuadorian Court's findings, but at a minimum,  
 18 the fact that both the first instance and appellate courts  
 19 of Mississippi found it appropriate to pierce the  
 20 corporate veil of these companies speaks at least to the  
 21 reasonableness of the decision of the Ecuadorian courts to  
 22 do the same and place that decision comfortably within the  
 23 ambit of the juridically possible.  
 24 Similar evidence supports Ecuador's Court's  
 25 decision to disregard the corporate separateness between

05:06 1 Texaco and TexPet. I just spoke of Texaco and Chevron.  
 2 Now, I'm going to address the evidence justifying the  
 3 piercing of the corporate veils between Texaco and TexPet.  
 4 And the Lago Agrio Record shows that, first,  
 5 Texaco considered TexPet as its Ecuadorian division, not a  
 6 separate entity. Routine administration matters such as  
 7 tenders for catering, cleaning, and entertainment services  
 8 were handled and authorized by Texaco. The Court made the  
 9 same observation with respect to daily operations such as  
 10 contracting equipment and personnel.  
 11 And just as the case of Chevron and Texaco,  
 12 TexPet and Texaco also had overlapping officers and  
 13 Directors. As a trial court noted, "Both the important  
 14 decisions as well as the trivial ones passed through  
 15 various levels of Executives and decision-making bodies of  
 16 Texaco, Inc., to the extent that the subsidiary depended  
 17 on the parent company to contract a simple catering  
 18 service."  
 19 Again, these factors are substantially similar to  
 20 those upon which U.S. courts concluded that Texaco was  
 21 Chevron's alter ego. Claimants cannot indict the  
 22 Ecuadorian Court's Decision to disregard TexPet's and  
 23 Texaco's corporate separateness as egregious or offensive  
 24 to the most basic sense of justice without simultaneously  
 25 indicting the wrong judicial system.

05:07 1 Claimants' extra petita damages are equally  
 2 without basis, and I will not address them in the interest  
 3 of time. Claimants' other allegations of legal error are  
 4 similarly without basis in law or in fact. For example,  
 5 Claimants complained that the Courts in Ecuador  
 6 retroactively applied the EMA. The contention is  
 7 predicated on the premise that the EMA Article 43 created  
 8 new substantive rights concerning the diffuse claims. The  
 9 plain language of Article 43 shows this premise to be  
 10 false and reiterated decisions of Ecuador's highest court  
 11 confirm the procedural nature of this relation.  
 12 As the National Court explained, the Civil Code  
 13 determines the substantive rights underpinning the  
 14 Plaintiffs' claims, and Article 43 establishes the  
 15 applicable procedure.  
 16 Claimants' next contention that the Court  
 17 improperly allowed Plaintiffs' claims under tort  
 18 provisions of the Civil Code to be heard in oral summary  
 19 proceedings is also belied by the express mandate  
 20 contained in Article 43, that all claims in tort for  
 21 damages originating in environmental contamination be  
 22 heard in oral summary proceedings. Lest there be any  
 23 doubt, the Republic and its Expert presented evidence of  
 24 other decisions that confronted and rejected substantially  
 25 the same argument that Claimants advanced in these

05:09 1 proceedings. This shows that Claimants are not the only  
 2 ones to have made this argument, but also shows that the  
 3 same argument has been rejected every time that it has  
 4 been raised.  
 5 Moving on, Claimants' claims of due-process  
 6 violations fare no better. There are complaints about the  
 7 Plaintiffs' withdrawal of their earlier request for a  
 8 certain number of judicial inspections or the allegedly  
 9 improper procedure for appointing Cabrera as a global  
 10 expert, and the Court's handling of Chevron's repetitive  
 11 essential error petitions are fabrications only  
 12 facilitated by Claimants' Experts' willingness to  
 13 misrepresent applicable rules of civil procedure and the  
 14 relevant facts. I expect that Claimants will address the  
 15 minutiae of each of these allegations during their  
 16 examination of Dr. Andrade, and, therefore, intend to  
 17 expand on these issues when I address the Tribunal again a  
 18 few weeks from today in Closing Argument.  
 19 This concludes this segment of my original  
 20 submission. With your permission, I would like to devote  
 21 some time now to address Mr. Coriell's presentation of  
 22 this morning on Track 1 issues.  
 23 And I will also take the opportunity to touch  
 24 upon certain aspects of the Tribunal's recent decisions on  
 25 those issues.

05:10 1 While the Republic appreciates, really  
 2 appreciates, the hard work of this Tribunal and, of  
 3 course, the result of that analysis, we remain concerned  
 4 about the direction that the Tribunal appears to be taking  
 5 in respect of the nature of the Claims at issue in the  
 6 Lago Agrio Litigation. We have always been candid with  
 7 this Tribunal and intend to continue that practice for the  
 8 duration of these proceedings and beyond. We recognize  
 9 the challenges inherent to the task of interpreting the  
 10 laws of a legal system that is foreign to the majority of  
 11 this Tribunal, and it is with candor that I tell you that  
 12 we do recognize this Tribunal's discernible efforts to  
 13 understand these issues and to find the path to the  
 14 correct answer to the questions before it.  
 15 But Claimants have succeeded in creating a legal  
 16 fiction by importing into a civil law system legal  
 17 constructs developed in common law and which really have  
 18 no place of recognition in Ecuador's legal system.  
 19 Claimants have spent enormous resources to square a  
 20 circle, and in the process have made this Tribunal's task  
 21 a daunting one. The Republic continues to regret that in  
 22 its final and First Partial Award, the Tribunal took a  
 23 stab at interpreting some aspects of Ecuadorian law and  
 24 came out on the opposite extreme of what Courts in Ecuador  
 25 have established on those same issues.

05:12 1 Certain aspects of the Tribunal's recent decision  
 2 on Track 1 raised concerns that the Tribunal may continue  
 3 to misunderstand relevant aspects of Ecuador's legal  
 4 system, which may lead in turn to critical decisions that  
 5 may not have a sound basis in Ecuadorian law.  
 6 For example, in its most recent decision, the  
 7 Tribunal adopted definitions of what it considers to be  
 8 individual claims and diffuse claims to, "denote  
 9 categories of Claims that the Tribunal has identified as  
 10 relevant to its legal analysis of the Parties' respective  
 11 cases in this decision." This language appears at  
 12 Paragraph 157 of the decision.  
 13 At Paragraph 156, the Tribunal adopts the  
 14 following definition of a diffuse claim, and I quote:  
 15 "Under Ecuadorian law, a diffuse claim may belong to a  
 16 community of indeterminate people with the remedy  
 17 indivisible, and it is not an individual claim." But,  
 18 Mr. President, with utmost respect, I wonder what might be  
 19 the source of this definition. This definition is  
 20 prefaced by the phrase "under Ecuadorian law," but there  
 21 is no statute on the record or elsewhere, really, that  
 22 might contain any of the elements of this definition.  
 23 There is no precedent in the history of Ecuador's  
 24 jurisprudence from which one could derive those elements,  
 25 nor is there academic support for it.

05:13 1 Mr. President, this definition simply does not  
 2 comport with Ecuadorian law. This is not Ecuadorian law.  
 3 And allow me to illustrate the danger of having  
 4 to create definitions to accommodate Claimants' legal  
 5 arguments. At Paragraph 164 of the Decision, you identify  
 6 certain claims raised in the Lago Agrio Complaint that,  
 7 under the proposed definition of individual and diffuse  
 8 claims, "could be read as including something other than  
 9 individual claims." And you list there the popular action  
 10 under Article 2236 of the Civil Code. You will recall  
 11 that the National Court confirmed in its decision that  
 12 Article 2236 of the Civil Code is one of the primary bases  
 13 for relief, the relief sought in the complaint and granted  
 14 in the Judgment, and I will turn to that in a few minutes.  
 15 Under the Tribunal's proposed definition of  
 16 diffuse claims, Claimants would argue that any claim under  
 17 this provision, Article 2236, by a member of an  
 18 indeterminate class would necessarily be a diffuse one;  
 19 that is, that it would not be an individual claim.  
 20 The jurists of ancient Rome who gave birth to  
 21 this popular action would respectfully beg to differ.  
 22 Think of the Year 1861, 19th century, when the drafters of  
 23 Ecuador's Civil Code adopted the same popular action as  
 24 well as the one we find in Article 990 of the same code.  
 25 There was no concept of diffuse rights back then. The

05:15 1 legal community began developing the notion of diffuse  
 2 rights more than a century and a half later. How could  
 3 one assert that Article 2236 was nonetheless enacted as a  
 4 mechanism to assert only diffuse claims? Note that the  
 5 Civil Code lays out the rights of the individuals and that  
 6 individuals have been afforded standing to file a popular  
 7 action under this provision for more than 150 years. Any  
 8 determination that these provisions falls within the  
 9 Tribunal's definition of a diffuse claims or in other  
 10 words that it is not an individual claim would be an  
 11 error.  
 12 But I submit to you that the real issue is not  
 13 whether an action under Article 2236 is a diffuse one.  
 14 Bear with me here. That is not the point. The real issue  
 15 is whether an individual's right to bring a popular action  
 16 under this provision falls within the scope of the Release  
 17 contained in the 1995 Settlement Agreement. It is not,  
 18 and it could not, for a number of reasons.  
 19 To elaborate on this point, I would like to focus  
 20 on the nature and purpose of the popular action under  
 21 Article 2236. Let's call it a 2236 action. And to  
 22 understand this 2236 action, we must first take a step  
 23 back and revisit Ecuadorian tort law more generally.  
 24 Though you may recall that the three primary tort  
 25 provisions of the Civil Code are Articles 2214, 2229, and

05:17 1 2236. Articles 2214 and 2229 embodied the traditional  
 2 notions of tort law; that is, anyone who causes harm to  
 3 another is liable to that other person for such harm.  
 4 That's liability for discrete harm, harm that has already  
 5 occurred, giving rise to what we know as a cow claim.  
 6 Let's call that a 2214 action. To be clear, this action  
 7 represents what we know as a cow claim to which  
 8 Mr. Coriell referred to this morning as a claim for  
 9 individualized harm.  
 10 But tort law in Ecuador has two components.  
 11 While we have on the one hand these 2214 actions focusing  
 12 on harm that has already occurred, we also have on the  
 13 other hand actions in tort to prevent the occurrence of  
 14 prospective harm. Article 2236 embodies this latter form.  
 15 It is a tort mechanism afforded to individuals to pursue a  
 16 claim in tort to prevent the occurrence of harm by causing  
 17 or forcing the tortfeasor to remove that which creates the  
 18 risk of prospective harm. That action is pursued in the  
 19 form of these popular action, and this component of  
 20 Ecuadorian tort law is of critical importance to  
 21 understand the Lago Agrio Litigation. Claimants have done  
 22 their level best to conceal the second component and offer  
 23 a rigid binary approach. Either you have a class action  
 24 or you have a 2214 action. There is nothing in between.  
 25 And as everyone agrees, Ecuador does not have a class

05:18 1 action, but that contention is absolutely wrong. It's  
 2 incomplete. It ignores the popular action under  
 3 Article 2236 which, as we've stated several times, is akin  
 4 to a class action, but it's not a class action. There are  
 5 substantial differences.

6 Think of it this way: If existing contamination  
 7 of the environment has already caused the final injury to,  
 8 say, a thousand people, the affected residents have the  
 9 right to seek reparation from the tortfeasor under article  
 10 2214, as our cow claim. Now, if the contamination raises  
 11 also the specter of harm in the future, harm to their  
 12 lives, harm to their health, their property, any one of  
 13 those people affected by the threat of harm may assert a  
 14 popular action under Article 2236 to cause the tortfeasor  
 15 to remove the contamination that is creating a threat of  
 16 contingent harm. To what? To their individual rights to  
 17 their persons. This is not a cow claim. This is not a  
 18 claim for compensation of reparation of harm that has  
 19 already occurred. This is a claim to prevent that harm  
 20 from occurring to exactly the same rights, but it's  
 21 prospective in nature.

22 In both instances, the Plaintiffs would seek to  
 23 vindicate their individual rights, but it is to protect  
 24 their health, their family, their livestock, their  
 25 property. They're not seeking to vindicate any esoteric

05:20 1 kind of right to the environment or a right of the  
 2 environment to be clean from contamination. This is to  
 3 protect themselves.

4 Now, under Article 2236, anyone has standing to  
 5 bring this kind of action, unless the threat of harm  
 6 affects a finite or determinate universe of people, in  
 7 which case only a member of such class has standing to  
 8 bring such popular action. And you will recall that  
 9 Professor Douglas used the example of a person who lives  
 10 by the river, any stream of water. He's not the only one.  
 11 He has neighbors, there are many people. And upstream  
 12 there is a company, a plant that is about to start or has  
 13 already started dripping highly toxic material into that  
 14 water stream contaminating the water stream from which  
 15 these neighbors take water to drink, to bathe, to feed  
 16 their cattle. One of the members of that class decides to  
 17 file a popular action under Article 2236 to force that  
 18 plant to remedy the problem, to prevent that toxic  
 19 materials from keeping dripping into the water.

20 But if that person does the same thing that the  
 21 Lago Agrio Plaintiffs did, that person will also invoke  
 22 Article 2214 to force that person to remediate the harm  
 23 that has already occurred.

24 So, for the action under 2236 is intended to  
 25 prevent that plant from continuing the pollution of the

05:22 1 waters. Now, this is only one neighbor that files the  
 2 claim, and that neighbor does have standing under the  
 3 plain language of Article 2236.

4 Now, because it's a popular action, that neighbor  
 5 is, in a sense, acting on behalf of the entire community  
 6 of neighbors, but there is a distinction to be made. That  
 7 person is not asserting their own--the neighbors'  
 8 individual rights to property or to life or to health.  
 9 This is a procedural right. This is a right to file a  
 10 popular action, to have the plant remove that which is  
 11 causing a threat of harm. This toxic waste will result in  
 12 sickness and death and in problems to the property of all  
 13 these neighbors.

14 Now, if this person succeeds, the benefit of this  
 15 action, the reparation will benefit himself, but by  
 16 definition will also benefit the entire members of the  
 17 class. This person settles a claim in exchange for an all  
 18 expenses paid vacation to Disney World, then anyone else,  
 19 all the neighbors continue to be exposed to a threat of  
 20 harm, and everyone has standing to file this claim.

21 This is the nature, the basic nature, of an  
 22 action, a popular action, under 2236 of the Civil Code.  
 23 Now, this right of action is a civil right. This is not  
 24 the government's right, so even if a governmental entity  
 25 could also assert claims under this provision, what is

05:20 1 kind of right to the environment or a right of the  
 2 environment to be clean from contamination. This is to  
 3 protect themselves.

4 Now, under Article 2236, anyone has standing to  
 5 bring this kind of action, unless the threat of harm  
 6 affects a finite or determinate universe of people, in  
 7 which case only a member of such class has standing to  
 8 bring such popular action. And you will recall that  
 9 Professor Douglas used the example of a person who lives  
 10 by the river, any stream of water. He's not the only one.  
 11 He has neighbors, there are many people. And upstream  
 12 there is a company, a plant that is about to start or has  
 13 already started dripping highly toxic material into that  
 14 water stream contaminating the water stream from which  
 15 these neighbors take water to drink, to bathe, to feed  
 16 their cattle. One of the members of that class decides to  
 17 file a popular action under Article 2236 to force that  
 18 plant to remedy the problem, to prevent that toxic  
 19 materials from keeping dripping into the water.

20 But if that person does the same thing that the  
 21 Lago Agrio Plaintiffs did, that person will also invoke  
 22 Article 2214 to force that person to remediate the harm  
 23 that has already occurred.

24 So, for the action under 2236 is intended to  
 25 prevent that plant from continuing the pollution of the

05:23 1 clear is that there is no authority for the proposition  
 2 that the Government can or could ever dispose of any  
 3 person's right under that provision by way of a  
 4 settlement. You may recall that the Civil Code explicitly  
 5 forecloses any possibility that a party may settle rights  
 6 belonging to others. You may also recall that  
 7 Articles--well, these Articles on the screen,  
 8 Articles 2349 and 2354 embodied this notion.

9 So, no matter how you qualify an action under  
 10 2236, be it individuals or diffuse or otherwise, what is  
 11 important is that neither Petroecuador nor the Ministry of  
 12 Energy of Ecuador could have settled claims that any  
 13 person in Ecuador has a right to pursue under Article 2236  
 14 since the enactment of a Civil Code in 1861, and we know  
 15 that any attempt to do so would have rendered the  
 16 Agreement null and void by virtue of these provisions that  
 17 you have in front of you. Such right of action under  
 18 Article 2236 is not within the scope of the 1995  
 19 Settlement Agreement.

20 You may also recall that, up until recently  
 21 before this arbitration called for a need to veer off-road  
 22 and speak from the other side of the mouth, Claimants'  
 23 Experts admitted and represented to a Federal Court in New  
 24 York that claims brought under Article 2236 would not be  
 25 barred by the 1995 Settlement Agreement. Indeed, not one,

05:25 1 not two or three, but five of Claimants' Experts testified  
 2 under oath to that effect. You must be familiar with the  
 3 statement on the screen. I will not read the whole of it,  
 4 but the conclusion you see is: "Therefore, the  
 5 possibility of bringing those claims is not affected by  
 6 the 1995 Settlement Agreement."  
 7 Mr. Reis Veiga, Texaco's lead negotiator of the  
 8 1995 Settlement Agreement, he, too, admitted in  
 9 cross-examination that he agreed with this statement. He  
 10 had made the same representations to the inhabitants of  
 11 the former Concession Area on multiple occasions prior to  
 12 the formal execution of the Settlement Agreement.  
 13 As interpreted by this Tribunal, the Release does  
 14 not extend to, "claims made by third persons acting  
 15 independently of the Respondent and asserting rights  
 16 separate and different from the rights of the Respondent."  
 17 This is at Page 81 of the Tribunal's First Partial Award.  
 18 At Page 112, the Tribunal clarifies further that  
 19 the Release precludes only, "diffuse claims against  
 20 Chevron under Article 19.2 of the Constitution made by the  
 21 Respondent"--that's clear--"and also by any individual not  
 22 claiming personal harm actual or threatened." I submit to  
 23 you that this action, the right of action under  
 24 Article 2236 is no doubt a mechanism to assert rights,  
 25 "separate and apart or different from the rights of the

05:26 1 Respondent."  
 2 Mr. President, Members of the Tribunal, it is  
 3 with the most respect that I urge you to resist the  
 4 temptation of revisiting these issues de novo. The Lago  
 5 Agrio Court, the Court of Appeals in Ecuador's highest  
 6 court all rejected as baseless Claimants' contention that  
 7 the Claims at issue in the Lago Agrio Litigation had been  
 8 settled by Petroecuador and the Government under the 1995  
 9 Settlement Agreement. There are powerful reasons why  
 10 those who preceded us in development of international law  
 11 uniformly rejected the possibility that international  
 12 tribunals substitute their Judgment for that of municipal  
 13 courts interpreting their own municipal laws. The  
 14 likelihood of error is chief among them.  
 15 The same broad equitable relief that Plaintiffs  
 16 requested in Aguinda was requested in the Lago Agrio  
 17 Complaint and granted by the Lago Agrio Court under  
 18 Articles 2236 of the Civil Code and EMA Article 43. One  
 19 might read the Tribunal's characterization of the Aguinda  
 20 claim as one limited to cow claims based on the most  
 21 recent decision. I do not believe that that would  
 22 possibly be the case, but in the interest of caution, I  
 23 will respectfully refer the Tribunal to the Republic's  
 24 submission describing the nature, scope, and extent of the  
 25 Aguinda Complaint as seeking extensive remediation of the

05:28 1 environment in a former Concession Area.  
 2 The slide on the screen has a reference to each  
 3 one, each opportunity where the Republic addressed this  
 4 issue.  
 5 But I do wish to address Mr. Coriell's reliance  
 6 on the Republic's statement explaining that the Aguinda  
 7 Plaintiffs dropped their personal injury claims. And,  
 8 indeed, they did. There is no inconsistency in the  
 9 Republic's case here. We stand by that statement, but  
 10 also need to make clear that those personal-injury claims  
 11 refer to their cow claims, their claims for reparation or  
 12 compensation for their individualized harm. Discrete,  
 13 past harm. Mr. Coriell emphasized the fact that  
 14 Plaintiffs did not offer evidence of personalized harm in  
 15 Lago Agrio, nor did they seek compensation for any  
 16 personalized harm suffered. That would be a 2214 type of  
 17 action.  
 18 And Mr. Coriell is correct: The Lago Agrio  
 19 Litigation is not a 2214 type of case. You may have  
 20 noticed that no money will ever flow to the pockets of the  
 21 Plaintiffs. Rather, all funds have been ordered to flow  
 22 into a trust fund which sole purpose is to fund the  
 23 remedial works necessary to remove the contamination that  
 24 is posing raising a threat of harm to which each of the  
 25 Plaintiffs is exposed.

05:30 1 The Lago Agrio Litigation is a 2236-type case.  
 2 It's a case about the removal of that which is causing a  
 3 threat of harm to the inhabitants of the former Concession  
 4 Area. This popular action entitles anyone in that area to  
 5 assert this popular action precisely for the purpose of  
 6 obtaining the removal of the threat.  
 7 I also wish to address Mr. Coriell's reliance on  
 8 the Aguinda Decision. Mr. Coriell argued this morning  
 9 that Ecuador relies on the Delfina Decision as its last  
 10 resort, but this is an error. Claimants misread the  
 11 Decision and misrepresent the relevance to its case, to  
 12 this case.  
 13 To be clear, the Republic invoked Delfina for a  
 14 limited purpose: To show that Claimants' contention that,  
 15 in 1995, no individual could assert a claim under  
 16 Article 19.2 was false. Delfina, one of the legal bases  
 17 for Delfina is 19.2, and that's the reason why the  
 18 Republic initially brought the Tribunal's attention to  
 19 that case.  
 20 In its Track 1 Decision the Tribunal somewhat  
 21 rendered--or rendered this decision somewhat irrelevant by  
 22 carving out from its decision the right of an individual  
 23 to file a claim under 19.2 to the extent that the Claimant  
 24 asserted or alleged personal harm. That's exactly what  
 25 happened in Delfina. We can no longer rely on Delfina.



05:31 1 That the relevance of that case is relative at best.  
 2 Now, Delfina was a 2214 type of claim. It was  
 3 not a 2236 action. It wasn't a class action. It was not  
 4 a diffuse claim. It was a 2214 type of claim. And your  
 5 recent decision reflects your understanding of that fact.  
 6 Delfina sought compensation for individualized injuries  
 7 and sought monetary compensation for those injuries,  
 8 although at the end of the day, it chose to apply those  
 9 funds to Public Works instead of putting it in their own  
 10 pockets.  
 11 Now, we also drew a parallel between Delfina and  
 12 Lago Agrio simply because the factual predicate of both  
 13 cases was very similar. There was environmental  
 14 contamination affecting the neighbors of a particular  
 15 area. In one case, Delfina, 2214-type action, the  
 16 neighbors chose to pursue or seek remediation, reparation  
 17 for the harm, historical harm, that had already occurred.  
 18 Monetary compensation for that harm. In Lago Agrio, the  
 19 existence of environmental contamination is a factual  
 20 predicate for a 2236 action. That environmental  
 21 contamination poses the threat of multiple different kinds  
 22 of harm, and my colleagues will address that in a few  
 23 minutes.  
 24 In essence, it establishes a factual predicate  
 25 for that claim, and the claim seeks an order from the

05:33 1 Court instructing the tortfeasor to remove that threat of  
 2 harm, in this case by way of environmental remediation.  
 3 Mr. President, this concludes my submission to  
 4 this issue. I have already exceeded the time that I had  
 5 allotted for this. We will have an opportunity to address  
 6 this matter in closing again, but given the possibility of  
 7 confusion, it is also very possible that Post-Hearing  
 8 Memorials may be warranted in this case. I'm sure that we  
 9 will have ample time to discuss that. So, with that, I  
 10 will turn the floor to my colleagues, Greg Ewing and  
 11 Nicole Silver.  
 12 PRESIDENT VEEDER: Thank you.  
 13 MR. EWING: Good afternoon, Members of the  
 14 Tribunal.  
 15 When I started working on this case,  
 16 environmental issues were a bit of a mystery. As a human  
 17 being it was obvious to me why the people of Ecuador would  
 18 not want oil in their backyards and in their water. But  
 19 at the same time I read the reports written by Mr. Connor,  
 20 Dr. Hinchee and the rest of the Claimants' team and I  
 21 thought I must be missing something.  
 22 As we heard this morning there was and is no  
 23 problem in the Ecuadorian Oriente as a result of TexPet's  
 24 oil operations from 1972 to 1992. So, as any good lawyer  
 25 does, I dove into the details to figure out the truth. I

05:34 1 would like to take about 15 minutes to 20 minutes this  
 2 afternoon to talk you through some of what we have found.  
 3 Put most simply, our analysis of the Lago Agria  
 4 record and our own experts' sampling has shown a very  
 5 straightforward truth. TexPet caused environmental  
 6 contamination that continues to exist in the Oriente and  
 7 negatively impacts its residents. I will be primarily  
 8 discussing the first two pieces of this conclusion, and my  
 9 colleague, Nicole Silver, will be discussing the third.  
 10 In the third week of this arbitration, you will  
 11 also hear from the Republic's Experts Dr. Ed Garvey and  
 12 Mr. Ken Goldstein of LBG and Dr. Harlee Strauss on these  
 13 same topics.  
 14 But to start, I would like to take you back to  
 15 the beginning of TexPet's time in Ecuador. When Texaco  
 16 entered the Oriente in the late 1960s, the area was mostly  
 17 untouched rainforest. Lago Agrio 1 was the first well  
 18 drilled by TexPet. Marketable quantities of oil were  
 19 found. Immediately after completing this well, TexPet  
 20 moved to drill Lago Agrio 2. Lago Agrio 2 is a well that  
 21 the Republic's Experts have done some analysis on, and a  
 22 well which we will be showing you during the site visit.  
 23 So it will serve as my first example. But I want to make  
 24 sure we don't get lost in my examples. TexPet operated at  
 25 least 344 sites throughout the Concession. My examples

05:36 1 today are just that: Examples. We have found similar  
 2 conditions at almost every site we visited. The judicial  
 3 inspections during the trial show the same. This is not  
 4 surprising, though, since TexPet's practices were the same  
 5 throughout the Concession. All of the examples I will be  
 6 showing you today are the direct result of TexPet's  
 7 practices. Keeping that in mind, let's look back at my  
 8 example.  
 9 This is an aerial view of Lago Agrio 2 in 1976,  
 10 the earliest date on which we have a clear picture of the  
 11 well. There are two pits here. You may be having a hard  
 12 time seeing them, and you may be thinking this is a lot  
 13 like those "Where's Wally" games or, as they're called  
 14 here in the States, "Where's Waldo?" Searching for pits  
 15 brings us to two of my first points.  
 16 First, TexPet did not keep records of at least  
 17 five main facts about each well site. The number of pits  
 18 dug, the location and dimensions of those pits, what they  
 19 put in those earthen pits, how and when those earthen pits  
 20 were closed, spills that escaped public attention. This  
 21 poor recordkeeping forces all of us to attempt to piece  
 22 together the history of each and every one of these sites.  
 23 For instance, we know where many pits are from the aerial  
 24 photographs, but there are surely many more still hidden.  
 25 The second point is that piecing together the

05:37 1 history of these sites is a significant effort that  
 2 requires looking at many different pieces of evidence.  
 3 The Parties in the Lago Agrio Litigation recognized this,  
 4 and presented the Court with aerial photographs like this  
 5 one, witness accounts, historical documents and over 100  
 6 Expert Reports interpreting it all.  
 7 And on top of that, the Lago Agrio Court visited  
 8 over 50 of these sites to see them firsthand. Looking  
 9 back at the aerial photo of Lago Agrio 2 in 1976, we first  
 10 identify the platform. I've outlined it for easy viewing.  
 11 And I'll tell you, Chevron's internal documents took some  
 12 of the fun out of this "where is the pit" game by telling  
 13 us where Chevron thinks the pits are. So, I have cheated  
 14 and highlighted them for you. One is immediately  
 15 northwest of the platform. This pit was the focus of  
 16 LBG's investigation of Lago Agrio 2 in 2013 and 2014, and  
 17 it's one pit that we know is still causing problems for  
 18 the residents and continues to threaten them with future  
 19 problems.  
 20 The second pit that you can see further to the  
 21 north of Lago Agrio 2 is most likely a test pit. Test  
 22 pits were used by TexPet to test the output of a newly  
 23 drilled well, hence the name.  
 24 We know very little about this smaller pit at  
 25 Lago Agrio 2 because Chevron has ignored it in all of its

05:39 1 investigations, probably because, as LBG found too, it is  
 2 now difficult to get to.  
 3 So, I will shift our focus to Shushufindi 34,  
 4 another site which LBG investigated and another site which  
 5 we will show you during the site visit to give you a  
 6 clearer view of a test pit.  
 7 At this site, you can see the platform and one  
 8 large pit immediately to the east of the platform. This  
 9 unlined earthen pit called a cuttings pit or a reserve pit  
 10 was most likely where TexPet dumped the dirt and rock from  
 11 drilling. But when the drill hit oil, that oil filled  
 12 this pit. And that is most likely why this pit is  
 13 midnight black in these photos. I want to direct your  
 14 attention to the smaller pit to the north. This is the  
 15 formerly hidden pit that LBG found in 2014 during its  
 16 investigation of the site. This is most likely a test pit  
 17 that TexPet used to test the wells' oil production volume.  
 18 According to an internal TexPet memorandum, as soon as a  
 19 well was drilled, TexPet would dig a small deep slush pit  
 20 for well tests, like this one we were just showing you.  
 21 They would then connect the newly drilled well to a pipe  
 22 that emptied in this pit. TexPet would then open up the  
 23 valves for a period of time and let the oil flow into this  
 24 test pit. The engineers would measure how much oil came  
 25 out during this time period and could then calculate the

05:40 1 well's flow rate. Once the test was done, according to  
 2 the memo, these pits were filled in and the location  
 3 graded over.  
 4 As you can see from this one test data drilling  
 5 report from Lago Agrio 16, TexPet engineers opened the  
 6 well to flow into a test pit for 12 hours and during that  
 7 time 300 barrels of oil, which equates to over  
 8 47,000 liters of crude oil, went into a pit that was then  
 9 simply covered with dirt.  
 10 But how do we know that TexPet just left this oil  
 11 in the pits? Well, in 1996, when Woodward-Clyde came to  
 12 the Oriente as part of the RAP, they pumped over 34,000  
 13 barrels of liquid oil out of the pits they remediated.  
 14 We also know TexPet left oil in their pits  
 15 because we can still see liquid crude in and around pits  
 16 like those at Shushufindi 34, and when we sample in and  
 17 around other pits throughout the Concession.  
 18 I've now walked through how bad the pits  
 19 themselves are, were and are in the Oriente, but I would  
 20 like to walk through something that is probably much  
 21 worse. These pits did not actually contain the oil that  
 22 TexPet put into them. TexPet constructed their platforms  
 23 on high ground with the pits generally downhill. Then  
 24 many times the pit walls collapsed releasing the oil to  
 25 the surrounding environment. In other cases, the oil

05:42 1 would simply flow over the top of the pits' walls. As one  
 2 example of this, at Aguatico 2, a site operated by TexPet  
 3 only, there was a pit that was filled with oil and water.  
 4 Obviously, we're in the rainforest so, it rains a lot.  
 5 And when it rains, that rain fills the pit. [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED] In addition to overtopping the pits'  
 10 walls, oil contamination leaked out of the pits through the  
 11 ground. The contaminated water and crude mixture then  
 12 flowed into nearby wetlands and streams.  
 13 To see an example of this, I will turn to  
 14 Aguatico 6. You can see in the aerial image the large  
 15 amount of rainforest that was cleared to prepare this  
 16 site. According to Chevron, there are at least seven pits  
 17 here. In 1993, when environmental auditors came to  
 18 inspect Aguatico 6, they found that these pits had seeped  
 19 and had contaminated the wetland. LBG went to Aguatico 6  
 20 in 2014 and found that the problem is still there, and  
 21 that it is huge. We will show you this site during the  
 22 site visit.  
 23 All of what I have told you has brought us to the  
 24 first conclusion we have drawn from analyzing the data in  
 25 the Lago Agrio Litigation and LBG's more recent

05:44 1 investigations. TexPet caused contamination in the  
 2 Oriente that continues to exist in the Oriente and  
 3 negatively impacts its residents.  
 4 Let me quickly address some of Claimants' main  
 5 responses to what I have just shown you. This morning,  
 6 Claimants relied on statements by David Russell and  
 7 Douglas Beltman, supposedly proving there is no  
 8 contamination in the Oriente, and refer to Slide 149 and  
 9 153.  
 10 First, we have responded to these exact e-mails  
 11 and statements numerous times in our Memorials, but  
 12 Claimants have not yet responded to them and still do not  
 13 address any of our arguments today.  
 14 Second, the first two of Russell's e-mails which  
 15 Claimants cite, come either 1) before the labs had  
 16 completed a single JI report, or 2) after only four of the  
 17 54 had been completed, and the third was a part of  
 18 Russell's cease and desist letter when relations had  
 19 already deteriorated. Moreover, these general e-mails are  
 20 directly contradicted by e-mails addressing their actual  
 21 preliminary findings. For instance, in October 2004,  
 22 Russell says, and I quote: "The bottom line is, that even  
 23 by conservative standards, we are finding PAH  
 24 concentrations in the soils as much as 200 times  
 25 permissible exposure limits." And that's R-1303.

05:45 1 And, third, Claimants rely on Douglas Beltman's  
 2 statement disavowing his work on Cabrera to show that  
 3 there is no contamination in the Oriente anywhere. Not  
 4 only is this larger conclusion not in Beltman's statement,  
 5 but Beltman testified that Chevron drafted that  
 6 declaration, and he was forced to sign it.  
 7 To give just two citations, please see the  
 8 Respondent's Track 2 Supplemental Counter-Memorial from  
 9 November 7th, 2014, at Paragraphs 471 to 474, or  
 10 Respondent's Track 2 Rejoinder at Paragraphs 62 to 63, and  
 11 the attached Annex A.  
 12 But Claimants also look at all of what I have  
 13 just said and say, but oil in the environment weathers,  
 14 what Claimants describe as turning to asphalt over a  
 15 period of months. So, if this oil is still liquid now, it  
 16 must not be TexPet's oil. To be clear, we do not disagree  
 17 that oil exposed to air, nutrients, bacteria will weather  
 18 and slowly turn to a more solid state. As these pictures  
 19 show, we will see some of this weathered oil at  
 20 Aguarico 6, for instance. But if the oil is not exposed  
 21 to air and nutrients, weathering is largely arrested, and  
 22 the oil will remain as it came out of the ground, a  
 23 liquid. Dr. Short, the Respondent's petroleum chemistry  
 24 Expert, testified to this, but Claimants chose not to call  
 25 him, and how do we know that TexPet oil is not exposed to

05:47 1 air or nutrients? Well, we found buried pits. When we  
 2 look at aerial imagery of a site like Shushufindi 34, for  
 3 instance, we can see the pit we were discussing earlier is  
 4 there in 1976 and then it is covered over in 1985. And  
 5 when LBG found the pit in 2014, it was still covered over.  
 6 Again, this is a common sequence of events.  
 7 During LBG's investigation in 2013 and 2014, they  
 8 found liquid crude oil in the pit areas and in the  
 9 groundwater monitoring wells they installed around the  
 10 pits. Covering a pit like we saw at Shushufindi 34 is a  
 11 very effective way to remove oxygen, and without oxygen,  
 12 weathering all but stops. This is exactly what Dr. Short  
 13 found. What Claimants want you to do is to look at one  
 14 data point, oil that all of the Parties are finding is  
 15 liquid, and then blindly conclude that since it is liquid,  
 16 it must be recent. But that conclusion just does not  
 17 comport with the facts.  
 18 There is a lot more evidence that demonstrates  
 19 that TexPet's contamination continues to exist in the  
 20 Oriente, and that it negatively impacts its residents, but  
 21 I want to move on to my next point:  
 22 Chevron knows this contamination exists and  
 23 actively sought to hide and minimize that fact from the  
 24 Lago Agrio Court and now from you.  
 25 First, you have read extensively about the

05:49 1 pre-inspections in our Memorials, a pre-inspection in and  
 2 of itself is not necessarily a bad thing. We are  
 3 obviously conducting them before this Tribunal's site  
 4 visit. What makes Chevron's pre-inspections bad is that  
 5 they were secret, unauthorized, and used to skew the  
 6 results presented to the Lago Agrio Court. In their  
 7 pre-inspections, Chevron sent their Experts out to the  
 8 well sites to find where contamination was so that they  
 9 could avoid it during the actual judicial inspections. We  
 10 now know much more about these pre-inspections and how  
 11 Chevron used them, but getting this information was not  
 12 easy. It required filing numerous 1782 discovery  
 13 proceedings, and Chevron resisted them at every turn, but  
 14 piece by piece the truth has come out. Based on these  
 15 1782s, we can look in on some of these interactions  
 16 because some were caught on tape. In this video that I'm  
 17 about to show you, Rene Bernier, a Chevron representative,  
 18 is looking at sample cores taken near Shushufindi 21.  
 19 There are a couple of key points I would like you to  
 20 notice.  
 21 First, Chevron was out trying to find clean  
 22 locations;  
 23 Two, contamination had spread further than they  
 24 expected;  
 25 And, three, the contamination they found was at

05:50 1 depth. It wasn't on the surface.  
 2 (Video played.)  
 3 MR. EWING: You will hear much more about these  
 4 PIs over the next three weeks, so I will leave it there and  
 5 move to my third point.  
 6 You by now are very familiar with the fact that  
 7 LBG investigated a few sites in 2013 and 2014, but I want  
 8 to start from the beginning of their involvement in this  
 9 case. We retained LBG in 2013 to analyze the data in the  
 10 Lago Agrio Court record. Chevron had made allegations  
 11 against the Lago Agrio Plaintiffs' data, so we asked LBG  
 12 to review only Chevron data to assess whether Chevron's  
 13 data alone was adequate to conclude that the Lago Agrio  
 14 Judgment was reasonable. Using only Chevron's data, LBG  
 15 came to numerous conclusions, but one is primary. The  
 16 Judgment's finding that contamination exists is  
 17 reasonable.  
 18 Now, Claimants said this morning during their  
 19 presentation on pollution in the Oriente that LBG's  
 20 conclusion was not adequate because it did not provide a  
 21 specific dollar value. But Claimants have never alleged  
 22 that the damages Award was just too high. They have  
 23 always said it should have been zero. The question is  
 24 whether the Judgment's damages were reasonable. LBG  
 25 answered that question. They are.

05:53 1 As part of understanding Chevron's data, LBG has  
 2 also come to a few more conclusions:  
 3 First, as I discussed a few minutes ago, Chevron  
 4 used the results from their PIs to avoid certain soil  
 5 sampling locations during the judicial inspections. LBG  
 6 found that Chevron at times sampled at different depths or  
 7 at different locations altogether when a pre-inspection  
 8 result came back contaminated. LBG analyzed Chevron's  
 9 pre-inspections and judicial inspections and found that  
 10 Chevron did not randomly select its judicial inspection  
 11 locations.  
 12 Second, LBG's Dr. Garvey will explain to you that  
 13 he took Chevron samples and calculated the amount of crude  
 14 oil in the soil in and around TexPet's former pits. Dr.  
 15 Garvey's calculation that there are approximately  
 16 3.4 million-barrels of crude oil, the equivalent of  
 17 540 million-liters, make the Oriente contamination  
 18 equivalent to six Exxon Valdez spills, or three quarters  
 19 of BP's Deepwater Horizon.  
 20 Now, Chevron takes issue with our  
 21 characterization of the Oriente environmental  
 22 contamination as unprecedented, and maybe they are right.  
 23 This much oil has been spilled before. The difference is,  
 24 BP and Exxon and similar others have paid billions of  
 25 dollars for their environmental damage. BP, for instance,

05:54 1 has set aside \$43 billion to remediate and settle  
 2 anticipated individual claims. Chevron wants you to  
 3 believe that the 40 million--that's million, not  
 4 40 billion that BP is paying--is adequate that it paid to  
 5 clean up a few sites in the 1990s should erase its  
 6 liability to all of the individuals harmed. That is  
 7 unprecedented.  
 8 Third, produced water is water that comes up with  
 9 oil from deep underground. The water is extremely salty  
 10 and contains emulsified oil and significant concentrations  
 11 of metals. From 1972 to 1992, TexPet admits to having  
 12 simply released this water through pits into the  
 13 environment. LBG estimated that TexPet released between  
 14 306,000 and 1.2 million-kilograms of oil.  
 15 Fourth, Chevron has admitted that it sought out  
 16 clean samples during the judicial inspections to delineate  
 17 the sites. We will talk more about the effectiveness and  
 18 meaning of Chevron's delineation strategy, but for now I  
 19 want to point out a corollary point. By loading the  
 20 record with known clean samples, Chevron skewed all of the  
 21 percentages so it can make claims like 100 percent of  
 22 groundwater samples are clean or 90 percent of samples are  
 23 below relevant thresholds. These claims make it sound  
 24 like the Concession Area must be clean. But they actually  
 25 only show that Chevron understands statistics and how to

05:56 1 skew them.  
 2 The real question isn't what the total samples  
 3 taken show. It is what do the samples show where  
 4 contamination is expected or, as Mr. Bernier alluded to in  
 5 the earlier video, what do the samples show from locations  
 6 where contamination wasn't expected, yet was still found.  
 7 Before I cede the floor, I want to discuss one  
 8 final topic that will lead you to the presentation  
 9 Ms. Silver will make next.  
 10 TexPet has caused contamination that continues to  
 11 exist in the Oriente. When I was at Lago Agrio 2 in 2014,  
 12 it had been raining for a few hours, typical for the  
 13 rainforest, and we found oily water dripping from the pipe  
 14 TexPet left in the side of the pit. As you will see when  
 15 you visit, this occurs directly above the stream and  
 16 marshland that is so highly contaminated. And here is the  
 17 problem, if it isn't obvious. The people who live at Lago  
 18 Agrio 2 come into contact with that contamination in that  
 19 stream and marshland on a daily basis.  
 20 Similarly, at Shushufindi 55, the cows drink out  
 21 of the contaminated stream.  
 22 At Lago Agrio 16, the people drink the water,  
 23 bathe in the water, wash their clothes in the water. As I  
 24 said at the beginning, these sites are just examples.  
 25 There are plenty more from LBG's reports, Chevron's

05:57 1 pre-inspections, the judicial inspections, and interviews  
 2 with local residents.  
 3 Having started with TexPet's historic operations,  
 4 having shown that contamination still exists, and now  
 5 having briefly discussed how people in the environment  
 6 continue to come into contact with TexPet's contamination,  
 7 I hand the floor to Ms. Silver to explain the health  
 8 effects this contamination causes.  
 9 MS. SILVER: You have just heard from my  
 10 colleague, Mr. Ewing, about how TexPet's practices  
 11 devastated the environment in the Oriente Region of  
 12 Ecuador, but TexPet has done more than harm the  
 13 environment. Its practices have put at risk tens of  
 14 thousands of people who continue even to this day to be  
 15 exposed to the toxic chemicals in the crude oil that TexPet  
 16 left behind. The health risks that the Oriente residents  
 17 face are real, and they are substantial.  
 18 Claimants seek to sanitize for the Tribunal the  
 19 risks of contamination, making this a battle between the  
 20 Experts, and Claimants' Experts would like you to believe  
 21 that the oil TexPet left in the soil, sediment and water  
 22 is harmless. It is not.  
 23 Despite what Claimants suggest, it is not the  
 24 same as the petroleum that can be found in products like  
 25 Hershey's Chocolate or Johnson's Baby Oil. There is not

05:59 1 one single person in this room who would spread crude oil  
 2 on a child as if it were baby oil. There is not one  
 3 person in this room who would eat a petroleum bar or drink  
 4 a glass of crude. Why not? Because contaminants in crude  
 5 are toxic and carcinogenic. The adverse effects from  
 6 exposure to crude oil are well documented, including by  
 7 the petroleum industry itself. Toxicology data as well as  
 8 occupational and epidemiology studies of people who have  
 9 been exposed to oil in similar settings, consistently  
 10 document increased risks of respiratory problems,  
 11 dermatitis, skin cancer, decreased immune function and  
 12 neurological problems. These ailments are, of course, the  
 13 same ones reflected in reports of Concession Area  
 14 residents who have been exposed to TexPet oil.  
 15 That crude oil is harmful to human health, should  
 16 not be a controversial statement. Yet in this  
 17 arbitration, Claimants have taken the position that crude  
 18 oil is not harmful to humans. Claimants' Expert,  
 19 Dr. Moolgavkar, has testified that no epidemiological  
 20 study has confirmed a causal link between petroleum and  
 21 cancer or other non-cancer causes of death. Perhaps  
 22 realizing that this is an untenable position, Claimants  
 23 have backpedaled some in their recent pleadings, claiming  
 24 that regardless of whether crude is toxic, the people  
 25 living in the Oriente are not currently exposed to oil or

06:01 1 at least not in quantities sufficient to cause them harm.  
 2 Claimants now argue that the Republic's Experts  
 3 rely on junk science because neither the Plaintiffs nor we  
 4 have shown that any particular individual has actually  
 5 been exposed to crude at a level high enough to cause  
 6 toxicological harm. And, indeed, Mr. Coriell is correct.  
 7 The Lago Agrio Case does not seek to address personal  
 8 injury claims or health harms specific to any one person.  
 9 But as you have heard from my colleague, Mr. Leonard,  
 10 individual in this context, in the context of Ecuadorian  
 11 law has to do with individual rights, not harms.  
 12 That the Judgment at times refers to public  
 13 health, does not mean that the rights at issue in the Lago  
 14 Agrio Case are diffuse ones or, indeed, that they are the  
 15 same as the diffuse rights that Claimants allege were  
 16 settled under the 1995 Settlement Agreement. Thus,  
 17 whether any particularized harm has been shown is not the  
 18 question before this Tribunal. Nor was it the question  
 19 before the Lago Agrio Court.  
 20 The Lago Agrio Court did not Award health-related  
 21 damages based on past or existing injury to any specific  
 22 person or persons. Instead, it recognized the obvious  
 23 risk to the Plaintiffs, and it was on this basis that the  
 24 Court granted an Award sufficient to pay for the medical  
 25 monitoring of those put at risk by exposure to TexPet's

06:02 1 contamination.  
 2 Therefore, the only questions we must ask here  
 3 are did TexPet expose the Oriente people to health risks?  
 4 Did the Ecuadorian Court reasonably find that TexPet's  
 5 contamination has resulted or could at some future point  
 6 pose an increased risk of harm to a maximally exposed  
 7 hypothetical person. The answer to these questions is, of  
 8 course, a resounding yes.  
 9 The Republic's Expert, Dr. Strauss, has performed  
 10 several risk assessments that show that cleanup is  
 11 required because people who have been or may at some  
 12 future point be exposed through a variety of pathways to  
 13 unsafe concentrations of chemicals in the sediment,  
 14 streams, groundwater and soil at specific locations in the  
 15 Oriente. The residents at these sites come into contact  
 16 with oil on a daily basis. They ingest contaminated water  
 17 when drinking and cooking and they repeatedly touch  
 18 contaminated water, sediment and soil when farming,  
 19 bathing, swimming, doing laundry, and playing.  
 20 Dr. Strauss' risk assessments show that exposure  
 21 at all of these sites is sufficient to result in increased  
 22 risks of adverse health effects both non-cancerous and  
 23 cancerous, requiring that further investigation and  
 24 cleanup be performed. Claimants dispute the usefulness of  
 25 Dr. Strauss' risk assessments, arguing that they do not

06:04 1 show that oil actually caused adverse health effects to  
 2 specific individuals. But to be clear, and however  
 3 Claimants wish to mischaracterize the purpose of her work,  
 4 Dr. Strauss' risk assessments were never conducted to  
 5 establish historical harm to any one person.  
 6 Dr. Strauss' task, instead, was forward-looking  
 7 to determine whether TexPet's contamination presently  
 8 results or could in the future result in health risks to  
 9 the people, risks sufficient to warrant the cleanup  
 10 ordered by the Judgment.  
 11 Due to time constraints and the vastness of the  
 12 area, Dr. Strauss could not conduct a comprehensive risk  
 13 assessment at all of the former TexPet sites in the  
 14 Concession Area. She did, however, investigate nine sites  
 15 at the former Concession Area and at every single one of  
 16 them she found elevated risks of cancer and non-cancer  
 17 health problems. There is no reason to believe that what  
 18 she found at these sites wouldn't be replicated at most  
 19 all of the 344 TexPet-operated sites spread across the  
 20 Consortium.  
 21 You will hear from Dr. Strauss later in these  
 22 proceedings, and she will explain what the purpose and  
 23 results of her human health risk assessments are.  
 24 Of course, Dr. Strauss is not the Republic's only  
 25 health Expert. Our other health Experts established that

06:05 1 a causal link to exposure to petroleum and cancer likely  
 2 exists in the Oriente. But Claimants have elected not to  
 3 question Dr. Laffon and Dr. Grandjean about their  
 4 findings. Their conclusions, therefore, stand  
 5 un-rebutted.  
 6 In her Expert Report, Dr. Laffon demonstrates  
 7 that exposure to oil leads to an increased risk of cancer.  
 8 Her earlier studies relating to the Prestige oil spill off  
 9 the coast of Spain, found that those who helped to clean  
 10 up the oil experienced significant damage to their DNA,  
 11 which in turn has been shown to increase a person's risk  
 12 of developing cancer. Crude oil contains many genotoxic  
 13 chemicals, chemicals that are capable of damaging a  
 14 person's genetic material or DNA. Studies have shown that  
 15 there is no permissible safe level of exposure to these  
 16 genotoxic chemicals. In other words, there is no amount  
 17 of exposure that does not entail some risk.  
 18 Dr. Laffon's Prestige studies, which were not  
 19 performed in connection with any litigation, showed  
 20 lasting damage to human DNA after only several months of  
 21 exposure. The DNA damage was still present two years  
 22 after exposure to the Prestige oil had ended but not  
 23 detectable after seven, though the subjects continued to  
 24 experience immunological alterations. Of course, unlike  
 25 the cleanup workers involved in the Prestige study, the

06:07 1 Oriente residents have been ingesting and touching  
 2 TexPet's oil on a daily basis for decades, and they are  
 3 still exposed to it today.  
 4 Claimants have also elected not to call the  
 5 Republic's epidemiologist. Dr. Grandjean has shown that  
 6 cancer deaths associated with exposure to TexPet's oil are  
 7 likely significantly underestimated in all of the studies  
 8 done to date. In his Expert Reports, Dr. Grandjean shows  
 9 that Dr. Moolgavkar's epidemiology study of cancer deaths  
 10 in the Oriente suffers from serious shortcomings and is  
 11 wholly uninformative.  
 12 Dr. Moolgavkar's study certainly does not prove  
 13 that there is no causal association between petroleum  
 14 exposure and cancer as even he has admitted in other  
 15 contexts. Dr. Grandjean explains that Dr. Moolgavkar  
 16 interpreted uncertainties in his own data to conclude that  
 17 exposure to petroleum in the Oriente did not cause cancer,  
 18 but gaps in data cannot be used to prove that no  
 19 association exists. Instead, such gaps typically mask or  
 20 underestimate health hazards. Absence of evidence is not  
 21 evidence of absence.  
 22 Moreover, the study design chosen by  
 23 Dr. Moolgavkar generated skewed data that minimized  
 24 findings of cancer mortality. For example, Dr. Moolgavkar  
 25 based his findings on death certificates but in the

06:08 1 Oriente, they are inherently unreliable and cannot be used  
 2 to show that there is no increased incidents of cancer  
 3 among the populations living in the oil-producing areas.  
 4 As a matter of practice in Ecuador, the cause of  
 5 death is not put on any death certificate unless it is  
 6 medically certified, and in the Oriente only about half  
 7 were prior to 2005.  
 8 Additionally, Dr. Moolgavkar's classification of  
 9 the exposed population is misleading because he  
 10 incorporates categories of people who have never been  
 11 exposed to TexPet's contamination. By including people  
 12 who live in cities removed from the contamination,  
 13 Dr. Moolgavkar, perhaps deliberately but definitely  
 14 systematically, dilutes the overall data and minimizes  
 15 findings of cancer mortality.  
 16 In conclusion, all of the Republic's health  
 17 experts agree that crude oil is a hazardous substance and  
 18 that exposure to it increases the risk of developing  
 19 serious health problems which require monitoring and  
 20 treatment. This should not be a controversial  
 21 proposition.  
 22 The Republic's experts' collective conclusion  
 23 supports the Judgment's findings. Proof of specific  
 24 causation or injury is not required to order remediation  
 25 or to set aside funds for medical monitoring and

06:10 1 treatment. The damages awarded for healthcare-related  
 2 costs did not compensate any one individual for the harm  
 3 she or he suffered. Rather, they recognize that the  
 4 people who have been and continue to be exposed to TexPet  
 5 oil are at risk of suffering adverse health consequences  
 6 including diseases as serious and fatal as cancer.  
 7 Impacts from exposure can be mitigated only through  
 8 monitoring, treatment, and remediation.  
 9 Nothing you have heard or will hear from  
 10 Claimants today or over the course of this Hearing can  
 11 show that the Judgment's Award for damages was  
 12 unreasonable. To be sure, Claimants are not simply  
 13 arguing that healthcare-related damages are too high.  
 14 On the contrary, according to Claimants, any  
 15 amount for damages for healthcare costs or excess cancer  
 16 would be excessive. In their world view, crude oil poses  
 17 no health risks at all, and not a single person living in  
 18 the Concession Area has been harmed or can suffer harm in  
 19 the future from exposure to oil.  
 20 But Claimants are gravely mistaken. The evidence  
 21 shows that those who have been exposed to oil will require  
 22 some form of treatment and monitoring of their health.  
 23 This is exactly what Dr. Laffon recommended be done after  
 24 the Prestige oil spill. And following the Deepwater  
 25 Horizon spill, BP set up a multi-billion dollar settlement

06:11 1 fund in part to compensate the many coastal residents and  
 2 clean-up workers who said they were made ill or were  
 3 injured as a result of exposure to oil. The Judgment  
 4 damages are no different.  
 5 Claimants are not comfortable talking about the  
 6 Oriente's indigenous population, but TexPet has put their  
 7 futures at risk. Although the Oriente residents are not  
 8 part of these proceedings, they are real people who  
 9 continue to face real danger from TexPet's contamination  
 10 absent remediation. During this proceeding we will show  
 11 that Claimants created this risk and that they should bear  
 12 the burden of mitigating it.  
 13 And with that, I turn the presentation back to  
 14 Mr. Bloom.  
 15 PRESIDENT VEEDER: Thank you.  
 16 MR. BLOOM: So now we turn to the final part of  
 17 our presentation, the last 50 minutes or so, which  
 18 addresses Claimants' allegations of State corruption. As I  
 19 noted earlier, Claimants have over the years made a number  
 20 of allegations that they later dropped. In some instances,  
 21 when it has suited their purposes, they appear to leave  
 22 their allegations in for atmospherics but literally never  
 23 address the evidence that has been offered by the Republic.  
 24 The presentation this morning included many, many  
 25 allegations, and it appears that they are hoping something

06:13 1 will stick. Before we turn to the specific allegation of  
 2 ghostwriting, I want to clear out some of that underbrush,  
 3 some of the odds and ends of their allegations.  
 4 Specifically, let's take [audio disruption] the  
 5 case of Charles Calmbacher. Claimants' allegations in  
 6 short is that Steven Donziger changed his own Expert's  
 7 report at the last minute without his Expert's consent.  
 8 First, there is no allegation of State conduct.  
 9 Dr. Calmbacher is not a State actor. The Plaintiffs are  
 10 not State actors.  
 11 And even Claimants do not allege that the Lago  
 12 Agrio Court ever considered Dr. Calmbacher's report in  
 13 reaching its verdict. The Judgment is quite explicit on  
 14 this point, and it is on the screen. That should probably  
 15 end the discussion as it relates to Dr. Calmbacher, but  
 16 with your indulgence, I want to dwell on Claimants'  
 17 allegation for just a little bit longer because I think it  
 18 illustrates the point that we have repeatedly noted,  
 19 whereby Claimants begin with its conclusion and yet work  
 20 backwards.  
 21 It is, in fact, a common tactic, most especially,  
 22 I would say, in the case of prosecutors to seek out  
 23 possible witnesses who may be hostile to your adversary.  
 24 As the old adage goes, the enemy of my enemy is my friend,  
 25 even though he may be a little bit less than credible.

06:15 1 Here, Claimants solicited the services of Dr. Calmbacher  
 2 who was already embroiled in a heated dispute in  
 3 litigation with Mr. Donziger over non-payment, and in an  
 4 e-mail dated July 28th, 2005 to Steven Donziger,  
 5 Dr. Calmbacher threatened Donziger: "I have not been paid  
 6 for work," he said. "Please simply pay up. Don't start a  
 7 war. Wars have no rules, and people can suffer  
 8 irreparable, professional, psychological, and physical  
 9 damage as a result. You don't want that."  
 10 I was going to go on with a number of additional  
 11 slides as it relates to Calmbacher, but I will skip over  
 12 them in the interest of time. Suffice it to say, however,  
 13 that not only are Dr. Calmbacher's allegations not  
 14 corroborated, but his own contemporaneous e-mails  
 15 repeatedly contradict his sworn deposition testimony. I  
 16 will not, however, go through all of the examples now.  
 17 And, of course, Claimants have long relied on  
 18 their allegation that the Cabrera Report was drafted by  
 19 the Plaintiffs' paid experts. But in doing so, the  
 20 Claimants conflate the Plaintiffs with the Republic of  
 21 Ecuador, and I really want to be clear: We represent the  
 22 Republic of Ecuador. We do not represent Stephen  
 23 Donziger, and we do not represent the Plaintiffs.  
 24 It may be a strategically understandable tactic,  
 25 but it is also clearly error for them to conflate the

06:16 1 Plaintiffs with the Republic.  
 2 And first under Ecuadorian law, any fraudulent  
 3 activity on behalf of an expert can never be attributed to  
 4 the Court and, hence, the State, because court-appointed  
 5 experts are not public servants or agents of the Court.  
 6 This too has been briefed most recently in our  
 7 Supplemental Counter-Memorial at Pages 86 to 88 and our  
 8 Supplemental Rejoinder beginning at 113.  
 9 Second, even Judge Kaplan in his decision found  
 10 that the Lago Agrio Court was misled. It too was a  
 11 victim.  
 12 And then, three, it is up to the Court to accept  
 13 or reject the opinions expressed by any expert, including  
 14 a court-appointed expert. Where is the State conduct  
 15 where the Court itself expressly declines to rely on the  
 16 Cabrera Report? And the Claimants know this, which is the  
 17 reason why they scratch and claw and try to find some hook  
 18 and infer and intuit and try to find something in the  
 19 Judgment that they can say, ah-ha, this must come from  
 20 Mr. Cabrera's Report.  
 21 But, first, Claimants speculate--these are the  
 22 three grounds that the Claimants rely on. First, they  
 23 speculate that the theories or categories of damages  
 24 adopted by the Court must have come from the Cabrera  
 25 Report. Even Judge Kaplan rejected that contention,

06:18 1 noting that the Cabrera Report identified only seven  
 2 categories of damages, and he also found that it was much  
 3 more likely that the categories of damages would have come  
 4 from the Plaintiffs' alegato.  
 5 Second, Claimants contend that the Court  
 6 indirectly relied on Mr. Cabrera by relying on the  
 7 Plaintiffs' supplemental experts who themselves allegedly  
 8 relied on Cabrera, but as these experts have repeatedly  
 9 testified, they either did not rely on Cabrera at all or,  
 10 when they did, they independently verified the information  
 11 on which basis they were relying from Mr. Cabrera, and I  
 12 would refer you respectively to Track 2 Counter-Memorial  
 13 Appendix E at Paragraphs 60 to 62, and the testimony cited  
 14 therein. And for his part Judge Kaplan also rejected this  
 15 theory.  
 16 Finally, Claimants speculate that Judge--I'm  
 17 sorry, that Mr. Cabrera's Report is the only record source  
 18 to the Court's finding that 880 pits required remediation.  
 19 To be clear, Mr. Cabrera's Annex H-1 identified 916, not  
 20 880--916 pits. Claimants try to back into the 880 number  
 21 by adding and subtracting different categories, but that  
 22 takes their speculation to a new level. Even their  
 23 experts disagree as to how they got to the number and what  
 24 should be excluded and included, and I'll simply refer  
 25 this Tribunal to our Supplemental Counter-Memorial at

06:20 1 Track 2 at Pages 78 to 82.  
 2 What else have Claimants relied on? They now are  
 3 relying on, and I guess they have for some time, on  
 4 political statements made by Mr. Correa in which he offers  
 5 support and sympathy to the Plaintiffs. But where should  
 6 his sympathies lie? You may recall a year ago I offered  
 7 many statements of President Obama in sympathy with the  
 8 victims of the Gulf Oil spill. You may recall a number of  
 9 quotes where he says, "and BP will pay. And BP will pay."  
 10 Of course, there is sympathy to one's own citizens.  
 11 And I will add, in this case, Chevron has not  
 12 done much to make--to make people and make its own  
 13 supporters proud of the company. I refer you to the about  
 14 20-page introduction in our Supplemental Counter-Memorial  
 15 where we went through a number of acts by Chevron--and I'm  
 16 not passing Judgment on the company outside of the acts as  
 17 it related to this specific case, but you will recall  
 18 their purchase of Mr. Borja, its contractor. Mr. Borja  
 19 himself said that after he met with Chevron, that's when  
 20 he went back to Ecuador and did a fourth video.  
 21 There were pressure tactics employed by Chevron.  
 22 They quote to Mr. Beltman's Witness Statement. They don't  
 23 talk about the pressure brought on him or his testimony in  
 24 deposition in which he said that every paragraph of his  
 25 Witness Statement was edited by Chevron's lawyers. And

06:22 1 that was a condition of a settlement with Chevron.  
 2 You have the preliminary inspections where they  
 3 clearly were trying to hide evidence of contamination.  
 4 You have their failure to take any company responsibility  
 5 for facts. They have taken extreme positions, including  
 6 in this arbitration, as to the issues of contamination. I  
 7 would submit that they have not done themselves proud.  
 8 And there are also institutional and personal  
 9 factors when you look at the real world and Mr. Correa's  
 10 comments. He's responding to a very aggressive public  
 11 relations campaign that has gone on for years, much of it  
 12 personally directed to him. When you attack someone, he  
 13 will respond.  
 14 And Claimants--Claimants, in addition to relying  
 15 on these statements, have invoked this morning the fact  
 16 that there was a criminal investigation, including of two  
 17 of their attorneys. But let's be clear that criminal  
 18 investigation was of 12 people, only two of whom are  
 19 associated with the Claimants, and it was for making false  
 20 representations as it relates to the remediation.  
 21 Two, even if Claimants' claim were otherwise  
 22 accurate, Ecuador's system of justice self-corrected when  
 23 the case was dismissed over the prosecutor's objections.  
 24 That is, it's the same court and courts that they now wind  
 25 up attacking.



06:24 1 Three, Claimants have never responded to  
 2 Ecuador's Annex B of Respondent's Track 2 Counter-Memorial  
 3 where we explained in detail the regularity of the  
 4 criminal justice system as it related to the criminal  
 5 prosecution.  
 6 And, four, whatever the Lago Agrio Plaintiffs'  
 7 motives may have been, there is nothing to impugn the  
 8 integrity of the Prosecutor General.  
 9 And, five, we will show you evidence of  
 10 contamination and ultimately of the false representations  
 11 as it related to the remediation.  
 12 We submit that this evidence--I'm sorry--we  
 13 submit that this case really--their denial-of-justice  
 14 claim really comes down at the end of the day to their  
 15 allegation of ghostwriting. There was approximately  
 16 year-and-a-half after this arbitration was commenced that  
 17 the Lago Agrio Judgment was issued. And, at that time,  
 18 Claimants, literally within hours, claimed that the  
 19 Plaintiffs ghostwrote that judgment. Having taken that  
 20 position immediately upon its issuance, Claimants then  
 21 sought to back up their claims, twisting and contorting  
 22 every piece available so it would fit their narrative.  
 23 And, in reality, I submit that's what this arbitration has  
 24 become.  
 25 Now, I will note at the outset that this Tribunal

06:26 1 is now in a far better position than Judge Kaplan ever was  
 2 to resolve the competing allegations. One, over our  
 3 protestations, Mr. Zambrano's hard drives are parts of  
 4 this record, and you will hear substantial testimony and  
 5 argument on that.  
 6 Two, the Plaintiffs' lawyers were parachuted in  
 7 to conduct that trial about a month, I think, maybe two  
 8 months before that trial. They didn't know the evidence.  
 9 They didn't even know that the evidence--that was in the  
 10 possession of their own clients.  
 11 Three, of course, Ecuador is a different party.  
 12 We don't have to defend and we are not defending the  
 13 conduct of the Plaintiffs, and I want to make that clear.  
 14 We're defending the conduct of the Republic of Ecuador.  
 15 We submit that the record here--and you'll see it over the  
 16 next few weeks--affirmatively establishes that the  
 17 Plaintiffs did not draft the Judgment, no matter what the  
 18 Claimants' evidentiary burden is. But in this instance,  
 19 of course, Claimants bear an exceedingly heavy burden in  
 20 proving State corruption by clear and convincing evidence  
 21 to leave no doubt in this Tribunal's mind.  
 22 And before I turn the floor over to my  
 23 colleagues, I wanted to address the issue of the presence  
 24 of Mr. Guerra.  
 25 When Claimants first introduced Mr. Guerra to this

06:27 1 Tribunal, it was with much fanfare. We know, because  
 2 Mr. Guerra testified to it, that Claimants' counsel worked  
 3 with him to prepare his successive declarations. Chevron  
 4 also included in its submission his forensic evidence; that  
 5 is, from his computers--bank records, shipping records, his  
 6 diary. He was to be their breakthrough witness, much like  
 7 Diego Borja was supposed to be their breakthrough witness  
 8 in 2009.  
 9 But a funny thing happened along the way. This  
 10 Tribunal wound up affording us time on the eve of the  
 11 Track 2 Hearing in January of 2014, and Claimants' evidence  
 12 is not what it has ever been made out to be. We will  
 13 explore that in depth over the next few days.  
 14 But for purposes here, it is sufficient to note  
 15 what Claimants and Mr. Guerra already admit: That  
 16 Claimants have paid him in financial benefits an inordinate  
 17 sum. \$18,000 in cash in Quito. \$10,000 for a 10-page  
 18 document. \$12,000 every month. Housing. A computer.  
 19 Hundreds of thousands, if not millions of dollars, in  
 20 payments for his lawyers, his immigration lawyer, the  
 21 immigration lawyer for his son. Criminal counsel. His own  
 22 personal counsel. Tax counsel.  
 23 And we have recently learned that Chevron has  
 24 agreed to pay all of his taxes and all of these financial  
 25 benefits for Tax Year 2013 and 2014. These tax payments

06:29 1 alone are likely to be in the hundreds of thousands of  
 2 dollars.  
 3 The Respondent moved to strike this Witness from  
 4 this Hearing candidly because we do not believe any witness  
 5 who gets paid gobs of money should be allowed to testify.  
 6 And we believe this not only because the Witness is  
 7 inherently unreliable, is inherently tainted, but because  
 8 the issue extends well beyond this little proceeding.  
 9 Allowing a witness to testify under such circumstances  
 10 suggests to lawyers everywhere that they can pay witnesses  
 11 whatever the justification. And I don't mean to get into a  
 12 dispute with Chevron over the ethics of this. To their  
 13 credit, they went out and they paid money to legal  
 14 ethicists who blessed this transaction. For us, it is a  
 15 bigger issue.  
 16 Nor is it sufficient, I would add, for the  
 17 Claimants to say that the payments to Mr. Guerra merely go  
 18 to the weight of the evidence, not to its admissibility.  
 19 Not when the Witness has been prepared 53 times as of a  
 20 year-and-a-half ago, four to six hours a day. Not where  
 21 his every statement has been choreographed, his every  
 22 facial expression has been choreographed, his every  
 23 mannerism has been choreographed.  
 24 At bottom, he is an admitted liar who is receiving  
 25 a substantial payment for his cooperation and who continues

06:31 1 to have every incentive to help his benefactor. Given the  
 2 Tribunal's determination to hear from him, we will, of  
 3 course, avail ourselves of our right of cross-examination,  
 4 but we do object to his presence for the reasons just  
 5 noted.

6 I will now turn the floor over to my colleague,  
 7 Mr. Ewing, who will now discuss the forensic evidence  
 8 before this Tribunal, and then we will conclude our  
 9 discussion of Claimants' denial-of-justice allegations with  
 10 my colleague Mr. Goldstein.

11 PRESIDENT VEEDER: Thank you.

12 Mr. Ewing.

13 MR. EWING: As Mr. Bloom just indicated, I will be  
 14 taking a few minutes today to talk through what we have  
 15 found as a result of the forensic analysis of  
 16 Mr. Zambrano's hard drives. I'm going to start with the  
 17 objective facts that both Parties' Experts found and what  
 18 those facts tell us. And then I'm going to walk through  
 19 some of the speculative objections Claimants make to try to  
 20 avoid the import and muddy the meaning of those facts.

21 I think you will find throughout the next three  
 22 weeks that this dichotomy is a theme to what we will be  
 23 presenting to you. We have said in our pleadings numerous  
 24 times that Claimants' arguments do not match what their  
 25 Experts say or what the evidence shows. We have tried to

06:32 1 give you examples of that disparity over the last few  
 2 years but will now try to show you exactly what we mean.

3 And let me give you a quick example from this  
 4 morning.

5 Slide 44 from the Claimants purports to show that  
 6 forensic analysis of Guerra's computer indicates that  
 7 Guerra, the green pictures, has Draft Orders that were  
 8 last saved on Mr. Guerra's computer at the various points  
 9 of time. What they don't tell you is that Mr. Lynch's  
 10 Report actually found that Mr. Guerra doesn't have any of  
 11 these Draft Orders or there is no forensic evidence that  
 12 he has any of these Draft Orders until July 23rd, 2010,  
 13 approximately here in the timeline.

14 But let's jump to the specifics of this case. As  
 15 you know, we believe that the forensic analysis clearly  
 16 shows that the Lago Agrio Judgment was created on  
 17 Mr. Zambrano's computer when he took the bench at the  
 18 beginning of his second term, and the Judgment was edited  
 19 and saved hundreds of times on Mr. Zambrano's computer  
 20 between then and when it was issued on February 14, 2011.  
 21 And, as one would expect, for a document drafted over  
 22 almost five months, the snapshots we have of that document  
 23 during the drafting period have increasing amounts of  
 24 text. But let me show you what I mean, and not just tell  
 25 you.

06:34 1 Computer forensics allows us to piece together  
 2 some of the history of a file. Using forensics, we can  
 3 piece together information about when the Judgment file  
 4 was created, when, where, by whom it was completed and  
 5 submitted, and some information about what happened in  
 6 between.

7 The first place we can look is on Zambrano's  
 8 computers themselves. The filesystem, Microsoft Windows,  
 9 and Microsoft Word stored data about their files. It's  
 10 called metadata. And I will start with the filesystem  
 11 metadata.

12 This chart contains the filesystem metadata as  
 13 reported by Claimants' Expert Mr. Lynch. Document 15 on  
 14 this list is the file that contained the Lago Agrio  
 15 Judgment on Mr. Zambrano's computer. Incidentally, this  
 16 is the only place anywhere that anyone has found the Lago  
 17 Agrio Judgment before it was published. The rest of the  
 18 files here are snapshots recovered by Mr. Lynch of that  
 19 final Judgment. Each of these files is a snapshot of what  
 20 the Lago Agrio Judgment looked like at that moment.

21 Now, I've highlighted the create date. I've  
 22 highlighted the filesystem metadata for the Lago Agrio.  
 23 In this row, it should be on Document 15. This is the  
 24 date when this file, the Lago Agrio Judgment, was created:  
 25 October 11th--in the bottom right you'll see this--October

06:35 1 11th, 2010, at 7:46 p.m.

2 Before Document 15 on this list you will see we  
 3 have four earlier snapshots of the Judgment. We know when  
 4 these snapshots were taken based on their last written  
 5 dates. The first document, Document 12, has a last  
 6 written date of December 28th, 2010. And here is one of  
 7 the details I want to emphasize: The create date that we  
 8 were just looking at was set on October 11th, 2010, when  
 9 the Providencias.docx file was actually created for the  
 10 first time on Mr. Zambrano's computer. This snapshot of  
 11 Providencias.docx that we are looking at, Document 12, is  
 12 from December 28th, 2010. The point here is that some  
 13 metadata is set in a file when that file is created, and  
 14 it's generally never changed.

15 Now, as you'd expect, create date is one such  
 16 field. Last written date, on the other hand, is generally  
 17 updated every time a file is saved. So, for instance,  
 18 each time a Word document is saved, the last written date  
 19 is generally updated.

20 Now, I would like to jump over to the application  
 21 metadata. This is the metadata maintained by Microsoft  
 22 Word. This table from Mr. Lynch's Report is the  
 23 application data from the snapshots of Providencias.docx  
 24 as recovered by Mr. Lynch. If you look at this table, you  
 25 see it contains overlapping but slightly different

06:37 1 information. We now see the last saved by and author  
 2 names, for instance.  
 3 But first let's look at what's familiar or  
 4 similar: The file created field. You will see that the  
 5 first three snapshots all have a file created date of  
 6 October 11th, 2010, at 7:46 p.m. This is the same date we  
 7 saw with the earliest filesystem create date and confirms  
 8 that both the operating system and the application,  
 9 Microsoft Word, think that the Providencias.docx file was  
 10 created on Mr. Zambrano's computer on October 11th, 2010.  
 11 The next thing you will see here is the last  
 12 saved by date. These are the dates when these snapshots  
 13 were last saved. There are three key dates:  
 14 December 21st, December 28th, and March 4th. These are  
 15 the dates when these snapshots were last saved.  
 16 You will notice the December 28th date is the  
 17 same as from some of the filesystem metadata we saw  
 18 earlier, but that the December 21st date was not in the  
 19 filesystem metadata. And this is the second point I want  
 20 to make.  
 21 Forensic data is not always complete, so while we  
 22 can piece together the story, we don't have every single  
 23 detail.  
 24 Next, I want to point out the number of revisions  
 25 and edit time. The number of revisions, as you see in the

06:39 1 slide, is a counter of the number of times the document  
 2 was saved. So, based on the first line, we now know that  
 3 between October 11th, 2010, when the Providencias.docx  
 4 file was created, and December 21st, 2010, the Judgment  
 5 file was saved 286 times.  
 6 We can also do some math and calculate that  
 7 between December 21st and December 28th, the file was most  
 8 likely saved an additional 29 times.  
 9 Total edit time shows us that between October  
 10 11th and December 21st, 2010, the Judgment file was edited  
 11 for 2,107 minutes. As with revisions, we can do the math  
 12 and calculate that between December 21st and  
 13 December 28th, the file was most likely edited for an  
 14 additional 1,046 minutes.  
 15 In addition to looking at the metadata, Mr. Lynch  
 16 compared the text in each of these snapshots with the  
 17 final Lago Agrio Judgment. You can see in the far right  
 18 column on Mr. Lynch's table the percentages. This table  
 19 means that the December 21 snapshot of the Judgment has  
 20 42 percent of the text of the final Judgment, according to  
 21 Mr. Lynch's calculations. And the December 28th snapshot  
 22 has 66 percent. And that by March 4th, when the  
 23 Clarification Order was issued, Providencias document has  
 24 99 percent of the Judgment.  
 25 We will discuss this with Mr. Lynch next week,

06:40 1 but I submit to you that you will likely see that that  
 2 99 percent is substantively 100 percent, not 99 percent.  
 3 But like I said, we will take up Mr. Lynch's calculations  
 4 or percentages next week.  
 5 I would like to turn away from Zambrano's  
 6 computer forensics for a moment, and look at another data  
 7 point indicating that Mr. Zambrano wrote the Judgment.  
 8 Mr. Lynch says that "there is no evidence that the  
 9 Ecuadorian Judgment was uploaded from either of the  
 10 Zambrano computers."  
 11 But Mr. Lynch makes that assertion based on  
 12 incomplete information. Sometime before Mr. Zambrano's  
 13 second term in the Lago Agrio Case, the Ecuadorian  
 14 Judiciary Council started to implement a system whereby  
 15 the courts uploaded Orders to a database. We requested  
 16 all log entries from the SATJE system, the name of this  
 17 system. Claimants' counsel requested logs based on what  
 18 turned out to be incorrect assumptions. The information  
 19 you can see now is the most relevant information from the  
 20 complete SATJE logs for this case, of the Lago Agrio Case.  
 21 There are 32 columns. I have just shown you seven--or  
 22 six. The Exhibit 4 to Mr. Racich's March 16th, 2015  
 23 Report has the remainder if you would like to see them.  
 24 On the left, you can see the official date and  
 25 time of the Providencia and the log-in name for the person

06:42 1 who uploaded the Judgment. In this entry, it appears that  
 2 ZambranoN, presumably Nicolás Zambrano, uploaded the  
 3 Judgment. Next, you see the system date, which appears to  
 4 be the date and time when the log entry was created.  
 5 Here, it is February 14th, 2011, at 9:15 a.m.  
 6 Next is the last modification date, which is also  
 7 February 14th, 2011, at 9:15 a.m. And finally, you see  
 8 the machine from which the Judgment was uploaded, cnjs,  
 9 and a few other letters and numbers, which is  
 10 Mr. Zambrano's old computer. These two last entries are  
 11 the most important for this dating exercise as they show  
 12 that the Judgment was uploaded 38 minutes after it was  
 13 officially published in print.  
 14 So, now let's put all this together.  
 15 Judge Zambrano retook the bench in October 2010.  
 16 As we saw earlier, the Judgment file was created at about  
 17 the same time. The next snapshot we saw was  
 18 December 21st, and that snapshot contained 42 percent of  
 19 the Judgment, according to Mr. Lynch. The next snapshot  
 20 Mr. Lynch found was from December 28th, 2010, and it  
 21 contained 66 percent of the Judgment.  
 22 Now, we know that the Judgment was complete on  
 23 February 14th, 2011, because the Parties all received it  
 24 that day. But we also know that it was completed and  
 25 uploaded by Mr. Zambrano from his computer that same

06:43 1 morning from the SATJE logs. The presumption of  
 2 regularity, i.e., the presumption that the judge wrote the  
 3 Judgment as expected in the normal course, is fully  
 4 supported by the forensic data, and nothing more should  
 5 need be said.

6 Before I hand the floor to Mr. Goldstein, I want  
 7 to briefly address three of Claimants' arguments from this  
 8 morning that to them to prove that Zambrano did not write  
 9 the Judgment.

10 First, Claimants point out that we don't have a  
 11 stand-alone file dated February 14th, 2011, that contains  
 12 only the Judgment. Mr. Lynch has said that he thinks  
 13 Mr. Zambrano should have created a backup copy or should  
 14 have saved the final copy as a new final version of the  
 15 document. And I'm not here to comment on what best  
 16 practices are, and I do advise that everyone backs up  
 17 their data, but I don't think that that is what we are  
 18 here to judge.

19 What we should look at is Mr. Zambrano's past  
 20 practice, and we see that in another file he created for  
 21 this case, CasoTexaco.doc, in that file, Mr. Zambrano  
 22 seems to have all of the other Orders he drafted and  
 23 issued in this case from October 21st, 2009, until  
 24 February 18th, 2010. Ten of them. And again, that may  
 25 not be the way that Mr. Lynch would organize his files or

06:45 1 that I would organize my files, but that seems the way  
 2 Mr. Zambrano's work and organized his files. So, the fact  
 3 that the Providencias.docx has three Orders in it, the  
 4 final Judgment, a Procedural Order on February 21st, 2011,  
 5 and the March 4th, 2011, Clarification, is absolutely  
 6 consistent with Mr. Zambrano's practice.

7 But what does Mr. Zambrano's practice mean in  
 8 forensic context? It means that although Mr. Zambrano had  
 9 the complete Judgment on his computer on February 14th,  
 10 2011, as we can see from the SATJE logs, that when  
 11 Mr. Zambrano wrote the February 21st, 2011, order and then  
 12 the March 4th, 2011, Clarification Order in the same file,  
 13 he overwrote the last written dates in the metadata.

14 Second, Claimants point to the fact that Zambrano  
 15 had two computers--what we call, with the very technical  
 16 names, the old computer and the new computer. Claimants  
 17 then point to Mr. Zambrano's testimony at the RICO trial  
 18 that he wrote the Judgment on the new computer.

19 First off, we know that Mr. Zambrano didn't get  
 20 the new computer until December 7th, 2010, but that he  
 21 started work on the Judgment in October on the old  
 22 computer. But from Mr. Zambrano's perspective, he worked  
 23 on the Judgment for almost three months with Ms. Calva  
 24 using the old computer and he was using the new computer,  
 25 it is understandable that he would testify that he used

06:46 1 the new computer the whole time as it was the most recent  
 2 and longest computer that he used drafting the Judgment.

3 It cannot be a denial of justice that a judge  
 4 doesn't remember that he received a new computer partway  
 5 through his drafting process. Nor can it be a denial of  
 6 justice that Mr. Zambrano used the new computer to access  
 7 the old computer across the network, which we know that he  
 8 did. Or that he had Ms. Calva typing his dictations on  
 9 the old computer.

10 As with Mr. Zambrano's use of a single file to  
 11 write multiple different Providencias, I'm not here, and I  
 12 don't think any of us are here, to judge his working  
 13 style. That Mr. Zambrano prefers to dictate, a practice I  
 14 can't imagine despite Mr. Bloom's insistence that it is  
 15 much easier and preferable even to him, cannot be a denial  
 16 of justice. We will get into some of the more technical  
 17 differences next week as to why this new computer/old  
 18 computer distinction is a red herring, so I will leave  
 19 that for now.

20 Third, the Claimants make much hay over the speed  
 21 at which Mr. Zambrano typed the Judgment. Claimants point  
 22 to a one-week period where the Judgment increases at an  
 23 average rate of 17 pages per day, but neither Party  
 24 contests that Mr. Zambrano may have used his own notes to  
 25 type those pages. Yes, Claimants speculate that

06:48 1 Mr. Zambrano must have copied those pages from the Lago  
 2 Agrio Plaintiffs, but there is simply no forensic evidence  
 3 that this actually happened.

4 But maybe more importantly, I don't think we are  
 5 hear to judge Mr. Zambrano's typing speed either. Surely,  
 6 having a fast typist can't be a denial of justice. But  
 7 let's put this in perspective: Mr. Zambrano wrote a  
 8 188-page Judgment, single-space Judgment, in 126 days.

9 Judge Kaplan, Claimants' handpicked judge for the  
 10 RICO proceedings, wrote an 485-page Judgment and an  
 11 85-page Appendix--that's total of 570 pages--and he did  
 12 that in 98 days.

13 To make this comparison fair, let's double space  
 14 Mr. Zambrano's Judgment and make it--it's 376 pages.

15 So, over the almost five months that Mr. Zambrano  
 16 wrote, he averaged 2.98 pages per day. In contrast, over  
 17 the time Judge Kaplan was working, he averaged 5.8 pages  
 18 per day. If Mr. Zambrano's typing speed is a denial of  
 19 justice, then Judge Kaplan's is a double denial of  
 20 justice, if such a thing existed.

21 But you understand my point. Typing speed is not  
 22 a denial of justice. That is a summary of what we found  
 23 in our forensic analysis of Mr. Zambrano's computers. All  
 24 of the forensic evidence supports the presumption of  
 25 regularity. The forensic evidence supports the conclusion

06:49 1 that Mr. Zambrano wrote the Lago Agrio Judgment in the  
2 normal course. After you have heard from the Experts on  
3 these issues, we will revisit them in closing, but I  
4 expect you will find what I have talked and walked you  
5 through today to be true. I have now reached the end of  
6 my allotted time and hand the floor to Mr. Goldstein.

7 PRESIDENT VEEDER: Before we proceed any further,  
8 how much longer do the Respondents need? Because I think  
9 you have run out of time.

10 MR. GOLDSTEIN: Mr. President, I anticipate under  
11 20 minutes.

12 COURT REPORTER: Could we take a short break?

13 PRESIDENT VEEDER: I think we need a five-minute  
14 break, and I think you need to reconsider your position.

15 You had four hours. That expired five minutes ago. If  
16 it's 20 minutes for you, how many minutes after you?

17 MR. BLOOM: Mr. President, if I can address that,  
18 he is the last presenter, so it's only 15 to 20 minutes to  
19 go. I will note that in our last Hearing the Claimants had  
20 gone on, I think it was, an extra 30 minutes--we can  
21 check--we indulged them, although we then got a little bit  
22 more at closing. So, it certainly asks for the same  
23 courtesy that we extended the Claimants--

24 PRESIDENT VEEDER: Not for us. It's really, as  
25 you well know, for the interpreters and the shorthand

06:50 1 writers. It's been a very, very long day, and we need to  
2 finish the oral opening submissions today. It doesn't make  
3 much sense to hold it over till tomorrow morning, and I  
4 think we did count on both sides sticking to their four  
5 hours. But we have got to have a break for the shorthand  
6 writers. Let's have 15 minutes' break, and then we'll come  
7 back and see where we stand.

8 (Brief recess.)

9 PRESIDENT VEEDER: Let's resume.

10 The Respondents have the floor, but let's be as  
11 efficient as we can and get this long day finished as soon  
12 as practical.

13 MR. GOLDSTEIN: Thank you.

14 Let's begin our final discussion of what remains  
15 of Claimants' ghostwriting case by addressing the elephant  
16 in the Claimants' living room. Despite their  
17 unprecedented access to the Plaintiffs' attorneys' files,  
18 despite pursuing tens of Section 1782 discovery actions,  
19 and despite their unprecedented and purchased access to  
20 Guerra and his documents, despite their immense resources,  
21 Claimants have found no draft of the Lago Agrio Judgment  
22 anywhere other than Judge Zambrano's computers. They  
23 found no evidence that the Plaintiffs ever compiled the  
24 draft judgment. They found no e-mail transmitting a draft  
25 judgment from the Plaintiffs to the Court. Even alone,

07:05 1 but especially in contrast to the openness with which the  
2 Plaintiffs' attorneys discussed their communications with  
3 Mr. Cabrera, the utter lack of any evidence supporting  
4 Claimants' ghostwriting charge is telling. There is no  
5 evidence of ghostwriting because the Plaintiffs did not  
6 ghostwrite the Judgment. And, in fact, there is  
7 persuasive affirmative evidence that the Plaintiffs did  
8 not ghostwrite Judgment.

9 Our discussion of this evidence has to begin with  
10 e-mails that Claimants long ignored, contemporaneous  
11 e-mails among the Plaintiffs' counsel in the months before  
12 February 2011 indicating that they had absolutely no idea  
13 when or in whose favor the Judgment would issue. I would  
14 like to highlight just a few of them.

15 On December 17th, 2010, 56 days before the  
16 Judgment issued, Pablo Fajardo explains to the rest of the  
17 team "that the judge can issue a writ for judgment at any  
18 time, any day." He stresses that the Plaintiffs must have  
19 their legal argument ready because Judge Zambrano was  
20 "very firm and exercises a great deal of authority."

21 This e-mail, by the way, in which Fajardo  
22 characterized Judge Zambrano as firm and exercising a  
23 great deal of authority is consistent with how even Guerra  
24 says Zambrano first received Fajardo. He threw him out of  
25 his office, "destroy[ing] him," "never talked" to him, and

07:06 1 never [even] gave him a chance."

2 By December 31, 2010, the Judgment still had not  
3 issued, and Mr. Fajardo reached out again to Mr. Donziger,  
4 saying that, "no one knows when the Judge may issue his  
5 Judgment; he could do so within two weeks, or within many  
6 months or even years." Here too no awareness as to when  
7 the Judgment would actually issue; and, in fact, it did  
8 not issue two weeks, many months or even years later.

9 Finally, on January 8th, 2011, after Chevron had  
10 filed its alegato, its final brief, Mr. Fajardo sent two  
11 further e-mails. He worried first that the judge "could  
12 be convinced by Chevron's theory." He explained that "the  
13 one who strikes first has greater success." The obvious  
14 inference from these e-mails is that Fajardo's concerned  
15 that Chevron would have an advantage with respect to the  
16 Judgment because it filed its final brief first.

17 Claimants now parrot Judge Kaplan's speculation  
18 in the RICO decision that these e-mails should not be  
19 taken at face value but instead demonstrated a calculated  
20 coverup. That speculation, in turn, is based on Judge  
21 Kaplan's unprompted surmise that the e-mails before him  
22 went to recipients, including U.S. lawyers from the  
23 then-Patton Boggs law firm, who would not necessarily have  
24 known about a judgment-ghostwriting scheme. Judge  
25 Kaplan's conclusion was wrong, which is not entirely

07:08 1 surprising given that he reached it sua sponte.  
 2 For one thing, each e-mail that Claimant showed  
 3 you on their Slide 76 this morning was sent before the  
 4 Plaintiffs and Zambrano would have even agreed to a bribe,  
 5 according to Claimants' own case. Moreover, at least one  
 6 e-mail that neither Judge Kaplan nor Claimants address  
 7 included only people who would have known of a scheme if  
 8 there was one. On December 21, 2010, Fajardo e-mails  
 9 Donziger and Juan Pablo Sáenz reminding them that the  
 10 Plaintiffs must present the alegato. Obviously, Donziger  
 11 would have been complicit in any scheme.  
 12 And despite Claimants' implicit dismissal of  
 13 Sáenz as a junior rather than as a core member, to use  
 14 Judge Kaplan's words, of the Plaintiff's legal team, he  
 15 too would have known. After all, according to Claimants,  
 16 it was Sáenz's job to coordinate Plaintiffs' alleged  
 17 payments to Guerra during the same time period. They  
 18 trusted him.  
 19 Indeed, Claimants recognized that these e-mails  
 20 contradict their theory of a judgment-ghostwriting scheme.  
 21 For example, they included the December 31 and January 8th  
 22 e-mails that we just discussed on the so-called "judgment  
 23 fraud timeline" that they submitted to the RICO Court.  
 24 But after realizing that these e-mails, in fact,  
 25 undermined their case, Claimants removed them from the

07:10 1 51 percent.  
 2 On this front, however, it is helpful to keep in  
 3 mind a few things about Judge Zambrano. He and his family  
 4 have not been relocated to the United States by a party to  
 5 this arbitration. His taxes are not being paid by a party  
 6 to this arbitration. And neither his RICO deposition nor  
 7 trial testimony were the result of preparation or coaching  
 8 by a party to this arbitration.  
 9 Judge Zambrano is not Guerra. He was a cold  
 10 witness whose recollections were not always correct but  
 11 whose mistakes such as testifying that he drafted the  
 12 entire Judgment on his new computer even though he began  
 13 drafting it before he received that computer were  
 14 understandable. This is particularly so, given that he  
 15 was asked about details from almost three years earlier.  
 16 Claimants are left, then, arguing that the  
 17 Judgment must have been ghostwritten because it contains  
 18 excerpts from the Plaintiffs' unfiled work product. In  
 19 other words, Claimants seek to persuade this Tribunal that  
 20 it should win this arbitration based on fewer than ten  
 21 pieces of evidence. There may be 100,000 or more pieces  
 22 of evidence out there. Claimants simply ignore the rest.  
 23 Moreover, Claimants' argument assumes without  
 24 proving that the Lago Agrio Record exists today in full  
 25 and is fully searchable such that one can definitively say

07:09 1 timeline they submitted to this Tribunal. This is another  
 2 example of Claimants' preference for working backward from  
 3 their pre-determined conclusion, discarding along the way  
 4 evidence that undercuts that conclusion.  
 5 Between these e-mails and the forensics that my  
 6 colleague Mr. Ewing discussed, the affirmative  
 7 contemporaneous evidence contradicts Claimants'  
 8 ghostwriting narrative. So, where does that leave the  
 9 Claimants' case?  
 10 Well, they have one expert, Professor McMenamin,  
 11 who claims to have analyzed the Judgment and concluded  
 12 that Judge Zambrano did not author it, but on what is that  
 13 opinion based? It's based on the same pseudoscience we  
 14 have seen before from an earlier expert of Claimants,  
 15 Professor Turrell. But whom did Professor Turrell accuse  
 16 as the likely ghostwriter? She accused an attorney who  
 17 later went to work for one of Chevron's own law firms.  
 18 Unsurprisingly, we haven't heard from Professor Turrell  
 19 since. This too demonstrates Claimants' penchant for  
 20 simply ignoring unfavorable evidence.  
 21 Claimants also place much stock in what they  
 22 claim was Judge Zambrano's deliberately false testimony  
 23 during the RICO trial, as you heard this morning, and they  
 24 find it fundamentally important that Zambrano now works as  
 25 a contractor for a company of which Petroecuador owns

07:11 1 which documents are or are not in it. And it assumes  
 2 further that certain of the Plaintiffs' documents were  
 3 never lawfully filed with the Court, despite persuasive  
 4 contemporaneous evidence that they were. Both assumptions  
 5 are wrong.  
 6 To begin, it is undisputed that the Lago Agrio  
 7 Record, including the copy examined by Claimants' expert  
 8 Professor Juola, is incomplete. Examples of deficiencies  
 9 in the record abound. For example, on October 14th, 2010,  
 10 in less than an hour, Chevron filed 39 separate motions  
 11 challenging a single court order. This summary lists  
 12 them. Five days later, the Lago Agrio Court issued this  
 13 order addressing all 39 motions, yet only 35 of Chevron's  
 14 motions actually appear in the official record. As you  
 15 can see, Cuerdo 1989, ends with Chevron's 35th motion  
 16 filed at 5:44 p.m., and the next Cuerdo, 1990, begins with  
 17 the Court's Order addressing all 39 motions.  
 18 Claimants have failed to reconcile their claim to  
 19 have searched the entire record with this plain example of  
 20 documents that undisputedly were filed but yet cannot be  
 21 found in any copy of the record. The Republic has raised  
 22 this particular example in at least three filings with no  
 23 response from Claimants. Once again, we see them ignoring  
 24 unfavorable evidence.  
 25 Additionally, both Parties submitted many, many

07:13 1 documents along with CDs and DVDs at the various judicial  
 2 inspections. [REDACTED]  
 [REDACTED]. Given the conditions under which those  
 5 inspections occurred, it is hardly surprising that some of  
 6 the evidence was not properly docketed.  
 7 I will pass over my next example of a record  
 8 deficiency in the interest of time and say that, finally,  
 9 we know of at least one instance in which a document was  
 10 misplaced initially but later found. The record contains  
 11 this acknowledgment by Court Secretary Lilibiana Suárez in  
 12 May of 2008, that she had just discovered a brief that was  
 13 filed six-and-a-half months earlier, in November of 2007.  
 14 Undoubtedly, there are more examples. These are  
 15 just some of the more obvious ones. It is quite  
 16 impossible under these circumstances for any person to  
 17 know the universe of the lawfully submitted documents, yet  
 18 Claimants press ahead with their pre-determined  
 19 conclusion, brushing aside any evidence calling into  
 20 question the basis for that conclusion.  
 21 As the Tribunal will recall, Claimants fought  
 22 viciously for the Lago Agrio Litigation to go forward in  
 23 Ecuador rather than in U.S. Federal Court in New York.  
 24 They won that battle, knowing that it would leave them  
 25 without an electronic docketing and filing system and with

07:14 1 courts unaccustomed to a case that would grow to be 2,000  
 2 times the size of the typical Ecuadorian lawsuit.  
 3 Claimants should not now be heard to complain about the  
 4 unsurprising reality that the length and complexity of the  
 5 Lago Agrio Litigation resulted in documents not being  
 6 properly docketed.  
 7 Nevertheless, the cornerstone of Claimants'  
 8 ghostwriting case remains their allegation that the  
 9 Judgment contains excerpts from the Plaintiffs' so-called  
 10 "unfiled work product." This is a classic example of the  
 11 conclusion-first approach. It tracks the following  
 12 premise: If a particular document did not turn up during  
 13 Claimants' partial review of the record, but some of its  
 14 text appears in the Judgment, then the Plaintiffs must  
 15 have ghostwritten the Judgment. Of course, this premise  
 16 is flawed given what we just discussed regarding the  
 17 incompleteness of the record itself.  
 18 And let's take a step back. Claimants' case is  
 19 premised on a presumption that defies common sense. It  
 20 presumes that the Plaintiffs would have drafted the  
 21 Judgment relying on documents that they knew were not in  
 22 the record. The reason this is nonsensical is that  
 23 Donziger was served with Chevron's Section 1782 discovery  
 24 subpoena on August 9 of 2010, as you can see on this  
 25 slide. This was a full six months before the Judgment

07:15 1 issued. Indeed, as you saw on Slide 74 this morning of  
 2 Claimants' opening presentation, Chevron had filed at  
 3 least five 1782 actions by October 2010.  
 4 So, the Claimants would have this Tribunal believe  
 5 that the Plaintiffs ghostwrote the Judgment during Judge  
 6 Zambrano's second term which began after Donziger and the  
 7 Plaintiffs were on notice that all of their documents would  
 8 be turned over to Chevron and, therefore, that the  
 9 Plaintiffs' use in a judgment of any unfiled documents  
 10 could easily be traced back to them.  
 11 In fact, the Plaintiffs knew specifically that  
 12 Chevron could and would make this connection, having  
 13 previously challenged Cabrera's use of the Plaintiffs'  
 14 allegedly unfiled work product before the Lago Agrio Court.  
 15 Yet, Claimants say Plaintiffs did so anyway with billions  
 16 on the line. Here, too, we see Claimants simply ignoring  
 17 context that undermines their theory.  
 18 To be clear, the Republic does not dispute the  
 19 text from some of the Plaintiffs' documents appears in the  
 20 Judgment as Claimants have identified. Rather, the dispute  
 21 is over whether Claimants have proved that these documents  
 22 were never filed with and, thus, not properly relied on by  
 23 the Lago Agrio Court. Claimants assuredly have not proved  
 24 this. Instead, they ignore persuasive evidence that these  
 25 documents were, in fact, filed. Let's look briefly at just

07:17 1 one of the documents in question: Fusion Memo.  
 2 The Tribunal will recall that the Fusion Memo  
 3 discusses Chevron's merger with Texaco. Not only did the  
 4 Plaintiffs argue the legal effect of that merger to the  
 5 Lago Agrio Court at the June 2008 judicial inspection at  
 6 Aguatico, but the oral argument tracks the Fusión Memo's  
 7 structure almost identically. This makes sense considering  
 8 that previous contemporaneous e-mail correspondence between  
 9 Plaintiffs' counsel reveals their intention to file the  
 10 memo and its accompanying exhibits at that judicial  
 11 inspection. Numerous pleadings discuss these e-mails. In  
 12 the interest of time I will not get into them here.  
 13 And, in fact, the Lago Agrio Record reflects the  
 14 submission of the memo's exhibits, as this page  
 15 demonstrates. It is, therefore, likely an administrative  
 16 error that the record also does not reflect the memo  
 17 itself. In fact, we know that the Court's docketing  
 18 process was rife with errors on the very day on which the  
 19 Fusión Memo's exhibits appear. Some pages, like this  
 20 middle one on this slide, are unnumbered. Other pages are  
 21 out of order, and mistakenly alternate with pages that  
 22 should have been appeared roughly 60,000 pages earlier. We  
 23 see the record jump on this slide from a page starting with  
 24 153,000 to one starting with 92,000 and then back up to  
 25 153,000.

07:18 1 In response, Claimants say, whatever the  
 2 Plaintiffs' original intentions, they must have changed  
 3 their minds. They decided not to file the Fusi3n Memo or  
 4 other documents. This is nothing more an attempt to wish  
 5 away unfavorable evidence.

6 Mr. President, Members of the Tribunal, we  
 7 respectfully submit that Claimants' assertion not only  
 8 fails to carry their burden of proof, but more  
 9 fundamentally it cannot be squared with the evidence.  
 10 There are no e-mails saying the Plaintiffs changed their  
 11 mind, and there is no further discussion amongst  
 12 Plaintiffs' counsel of these documents at all after the  
 13 dates on which they were most likely filed. To side with  
 14 Claimants, one would need to, as they do, assume the very  
 15 conclusion they have the burden of proving.

16 To be sure, Claimants have their theory of the  
 17 case, and they bob and weave through the evidence trying to  
 18 create a narrative that is not inconsistent with it. We  
 19 will show over the next several days that, despite those  
 20 efforts, Claimants' narrative is inconsistent with the  
 21 evidence. We will address many of Claimants' points and  
 22 contentions through witness examinations. We have not  
 23 tried to address them all in the limited time we have for  
 24 this opening presentation. For now, it suffices to say  
 25 that, even if Plaintiffs--Claimants were able to construct

CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

  
 DAVID A. KASDAN

07:20 1 a story not inconsistent with the evidence, that is not  
 2 tantamount to proving their case. It is speculation at  
 3 every turn. It ignores a wealth of evidence, and it  
 4 contorts other evidence, and it does not prove their case  
 5 even by a preponderance, much less does it carry their  
 6 substantially heavier burden.

7 Mr. President, Members of the Tribunal, thank you.  
 8 This concludes the Republic's opening presentation.

9 PRESIDENT VEEDER: Thanks very much. We will  
 10 start again at 9:00 tomorrow.

11 We have certain housekeeping matters we need to  
 12 address at that time, but the first witness will be  
 13 Mr. Lynch. So, until tomorrow, we stand adjourned.

14 MR. BLOOM: May I just inquire, are we starting at  
 15 9 or 9:30? The Order said 9:30. Do you want to begin  
 16 earlier tomorrow?

17 PRESIDENT VEEDER: I think we should start at  
 18 9:00.

19 (Whereupon, at 7:20 p.m., the Hearing was  
 20 adjourned until 9:00 a.m. the following day.)

21  
 22  
 23  
 24  
 25



IN THE MATTER OF AN ARBITRATION BEFORE A TRIBUNAL  
 CONSTITUTED  
 IN ACCORDANCE WITH THE TREATY BETWEEN THE U.S.A. AND THE  
 REPUBLIC OF ECUADOR CONCERNING THE ENCOURAGEMENT AND  
 RECIPROCAL PROTECTION OF INVESTMENT, SIGNED AUGUST 27, 1993  
 (THE "TREATY")

and

THE UNCITRAL ARBITRATION RULES 1976

- - - - -x  
 In the Matter of Arbitration :  
 Between: :  
 :  
 CHEVRON CORPORATION (U.S.A.), :  
 TEXACO PETROLEUM COMPANY (U.S.A.), :  
 :  
 Claimants, : PCA Case No.  
 : 2009-23  
 and :  
 :  
 THE REPUBLIC OF ECUADOR, :  
 :  
 Respondent. :  
 - - - - -x Volume 2

TRACK 2 HEARING

Wednesday, April 22, 2015

The World Bank  
 700 18th Street, N.W.  
 J Building  
 Conference Room JB1-080  
 Washington, D.C. 20003

The Hearing in the above-entitled matter convened  
 at 9:00 a.m. before:

- MR. V.V. VEEDER, Q.C., President
- DR. HORACIO GRIGERA NAÓN, Arbitrator
- PROFESSOR VAUGHAN LOWE, Q.C., Arbitrator

## Registry, Permanent Court of Arbitration:

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MR. RAYMUNDO TREVES

MS. NAYA PESSOA

## Additional Secretary:

MS. JESSICA WELLS

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1 PROCEEDINGS  
2 PRESIDENT VEEDER: Good morning, ladies and  
3 gentlemen. We'll start Day 2 of this Hearing in Track 2.  
4 There are certain housekeeping matters the  
5 Tribunal would like to raise with the Parties, which is why  
6 we started early today. There are five matters. I'll go  
7 through them because we want to make sure that if they're  
8 not moot, we need to address them as soon as practicable.  
9

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10:14 1 states.  
 2 Q. Okay. Can you explain to the Tribunal, what is  
 3 forensic linguistics.  
 4 A. Forensic linguistics means the application of the  
 5 science of linguistics, the scientific analysis of  
 6 language, to issues of the law, especially when the  
 7 evidence itself is language.  
 8 Q. Okay. Now, can you tell us your educational  
 9 background in linguistics.  
 10 A. I graduated Columbia College with honors and  
 11 admission into Phi Beta Kappa. I then continued to  
 12 Columbia Graduate School, and I earned three advanced  
 13 degrees in linguistics including a Ph.D.  
 14 During my time at Columbia I was a faculty fellow,  
 15 and I was awarded a Fulbright fellowship for my doctoral  
 16 dissertation research.  
 17 Q. Now, are you currently a professor of linguistics?  
 18 A. Yes. I'm a tenured--what's called a full  
 19 Professor at Hofstra University in the New York area. I  
 20 have been there for 25 years. I have developed some 26  
 21 courses in linguistics during my time there, and I also  
 22 developed a program, a graduate program in forensic  
 23 linguistics. As chief architect of this, I applied to the  
 24 New York State Department of Education for certification,  
 25 and they granted us the ability to confer degrees.

10:15 1 Q. Are you also the Director of a forensics institute  
 2 at Hofstra?  
 3 A. Yes, and another organization as well. I'm the  
 4 Director of the Institute for Forensic Linguistics, Threat  
 5 Assessment, and Strategic Analysis, which is the special  
 6 projects and research arm of our graduate program, and I  
 7 also am the Director of the Forensic Linguistics Capital  
 8 Case Innocence Project, a joint venture with the law school  
 9 in which we re-examine language evidence that may have  
 10 wrongly put people on death row.  
 11 Q. Now, are you a member of any editorial board that  
 12 relates to linguistics?  
 13 A. I sit on the Board of the Oxford University Press  
 14 scholarly series language and law.  
 15 Q. Now, have you ever used your linguistics expertise  
 16 in working with the FBI?  
 17 A. Yes. I was hired by the FBI, specifically the  
 18 Behavioral Analysis Unit, the BAU, at Quantico to help  
 19 train their agents, other agents of the U.S. Government,  
 20 and also allied country--agents of allied countries. I  
 21 trained them in forensic linguistic techniques, enhanced  
 22 threat assessment techniques.  
 23 And I also was hired by them to assess and attempt  
 24 to improve their database. It's called the CTAD, the  
 25 Communicated Threat Assessment Database, and it's the

10:17 1 repository of all criminally oriented communications that  
 2 pass through the hands of the FBI.  
 3 Q. Now, have you ever used your linguistics expertise  
 4 in working with British law enforcement authorities?  
 5 A. Yes, I was hired by the U.K. Government to come to  
 6 London and train a variety of their special law enforcement  
 7 units in forensic linguistic investigation, threat  
 8 assessment, et cetera, techniques.  
 9 Q. Now, I understand you have a PowerPoint to use in  
 10 illustrating your testimony today; is that correct?  
 11 A. That's correct.  
 12 Q. And I think we've handed out a flat version of the  
 13 PowerPoint.  
 14 Now, what were you asked to do for Chevron in this  
 15 case?  
 16 A. I was asked to render an opinion about whether the  
 17 Sentencia Judgment was plagiarized, directly copied in part  
 18 or in whole from various documents that were identified to  
 19 me as unfiled Lago Agrio Plaintiff documents.  
 20 Q. And what methodology did you use in going about  
 21 this task?  
 22 A. In a case like this, which is essentially, it is  
 23 an authorship case, one identifies overlap between the two  
 24 documents or sets of documents, and then one analyzes the  
 25 overlap, the common wording and patterns that you find to

10:19 1 see whether they support on the one hand a hypothesis of  
 2 direct copying with common authorship, which here would be  
 3 direct copying, which would constitute, as I understand it,  
 4 plagiarism or whether that kind of hypothesis is not  
 5 supported, and what we would find on the other hand is a  
 6 compendium of set phrases, well-known set phrases or sheer  
 7 chance. We're always trying to account for why we find the  
 8 exact same thing in different sets of document. This type  
 9 of analysis informed by sociolinguistic variation theory  
 10 which for the past 50 years has been a very, very robust  
 11 inquiry into actual language behavior founded by William  
 12 Labov, my professor at Columbia, actually.  
 13 And also corpus linguistics, which has analyzed  
 14 through computational means, very, very large databases of  
 15 language to see, among other things, what elements occur  
 16 more than you would expect statistically. So, these  
 17 recurring multi-word strings--for example, "once upon a  
 18 time," or "I think that," these are called "lexical  
 19 bundles" or "word bundles."  
 20 And the research on this shows what indeed are set  
 21 phrases in a particular language in a particular register,  
 22 a text type of language.  
 23 So, what we find across the board in the languages  
 24 and the topics that have been studied is we find many  
 25 three- and four-word bundles, far fewer five- and six-word

10:20 1 bundles, and then beyond that, few, if any, recurring  
 2 lexical bundles. So anything over, say, seven or eight  
 3 words must be analyzed very carefully to see whether it  
 4 constitutes support for the common authorship plagiarism  
 5 theory or something else.  
 6 For example, you can have reoccurring phrases like  
 7 the, "Chief Justice of the Supreme Court of the United  
 8 States," or something. That may not actually qualify as a  
 9 lexical bundle, it may not happen enough, but upon analysis  
 10 by hand, you would see that that in and of itself is not  
 11 evidence of plagiarism.  
 12 But in this case we didn't really have to--I  
 13 didn't have to think about too much of seven- or eight- or  
 14 nine-word bundles that are identical in both sets of  
 15 documents because we find identical word strings of 20  
 16 words, of 40 words, of 150 words absolutely identical in  
 17 that overlap in the common language that we find between  
 18 the documents that I am told are on file and the Judgment  
 19 Sentencia.  
 20 Q. Dr. Leonard, what conclusions have you reached in  
 21 this case?  
 22 A. I conclude that the hypothesis that it tries to  
 23 explain--that explains the non-random distribution of the  
 24 data as we always do in science and linguistics, the  
 25 non-random distribution of the data is best explained by

10:22 1 the hypothesis of direct copying and not by random chance  
 2 or set phrase.  
 3 Q. Is it that the Judgment is copied in whole or in  
 4 part from some of the Plaintiffs' documents? Is that--  
 5 A. Precisely.  
 6 Q. Now, did you find certain indicia of plagiarism in  
 7 the course of your analysis?  
 8 A. Yes, I did.  
 9 Q. What indicia of plagiarism did you find?  
 10 A. Well, here are five categories that I have  
 11 organized the indicia into. So, one we have identical or  
 12 nearly identical word strings. And as I said, we have up  
 13 to quite a high number.  
 14 Identical idiosyncratic references and mistakes.  
 15 When we do an authorship case, we look for idiosyncrasies  
 16 that we match in both sets of documents.  
 17 Here we also have identical unique word choices as  
 18 we'll see and identical series of orthographic errors, and  
 19 finally identical out of order numerical sequences.  
 20 Q. Now, I notice that one of your categories is  
 21 orthographic errors. What is an orthographic error?  
 22 A. That means in terms of writing systems, so that  
 23 could be a misspelling or accent mark or punctuation.  
 24 Q. Okay. You noted five indicia of plagiarism here.  
 25 Do you need all of those indicia in order to be able to

10:23 1 find plagiarism?  
 2 A. No, not at all.  
 3 Q. How many examples would you need to find  
 4 plagiarism?  
 5 A. Depending on the example, just one.  
 6 Q. Now, is it significant in this case that you found  
 7 five or so indicia of plagiarism?  
 8 A. Quite, because we find an overall pattern that  
 9 reinforces the superior ability of the hypothesis of common  
 10 authorship. We have a depth and breadth of indicia that  
 11 all work together to form that as the conclusion.  
 12 Q. Okay. Now, with respect to your first category of  
 13 identical or nearly identical word strings, can you provide  
 14 examples of that to the Tribunal.  
 15 A. Yes. Here is Page 20 of the Sentencia Judgment,  
 16 and what we are looking at is in the highlight. The  
 17 highlighting indicates exact identity correspondences  
 18 between the Judgment and documents that I am told are  
 19 unfiled. Here, we have the Fusión Memo.  
 20 So, every single aspect of what is highlighted is  
 21 the same in the Fusión Memo, punctuation, spelling, spacing  
 22 the order of the words.  
 23 Q. So, in other words, the highlighted portions of  
 24 Page 20 of the Judgment were taken directly from the Fusión  
 25 Memo? Is that the--

10:25 1 A. Well, the Fusión Memo predates the Judgment.  
 2 These are identical. The common authorship is clearly the  
 3 superior hypothesis, so yes.  
 4 Q. Okay.  
 5 A. Here is Page 21 of the Sentencia Judgment, and we  
 6 see these absolute identity correspondences between the  
 7 Judgment and Fusión Memo. Now it's Fusión Memo Page 5,  
 8 Page 6, Page 10, Page 11.  
 9 Q. When you used words "identity correspondences," do  
 10 you simply mean that the words and symbols are the same  
 11 between the two documents?  
 12 A. Yes, precisely the same.  
 13 Q. The ones that are highlighted?  
 14 A. Yes, that's correct.  
 15 Q. I'm sorry. Go on.  
 16 A. Here is Page 24 of the Sentencia Judgment, and we  
 17 see again quite a number of words, punctuation, spacing,  
 18 symbols identical to the documents identified to me as  
 19 file.  
 20 Q. And this--in the highlighted portions on this  
 21 Page 24 of the Judgment are taken from the Fusión Memo? Is  
 22 that--  
 23 A. From the Fusión Memo and also the--some of it  
 24 occurs in the Draft Alegato.  
 25 Q. Okay. Now, referring you to your 2013 report, do

10:26 1 you have other examples of your first category?  
 2 A. Yes. Here is Example 2 from my report. We see  
 3 now in more detail what the words are. Here we have the  
 4 unfiled Fusión Memo, Page 6, and here we have the Judgment,  
 5 Page 21. Again, the highlights, although of course now  
 6 they're in red, are precise identity correspondences  
 7 between the two documents. As I said, we look for overlap.  
 8 We attempt to explain the overlap.  
 9 How is the overlap explainable? By set phrase, by  
 10 random chance, which here would mean that two different  
 11 authors independently came up with exactly the same 150  
 12 words or direct copying.  
 13 Q. Now, would this example by itself be sufficient to  
 14 find that the Judgment plagiarizes in part from the Fusión  
 15 Memo?  
 16 A. That this part of the Judgment, yes.  
 17 And there is more in this example, too. Notice at  
 18 the bottom we have Footnote 13. The Fusión Memo uses  
 19 footnotes. The Judgment does not use footnotes.  
 20 Therefore, to incorporate the same information, the  
 21 information, the citations from the footnote are placed  
 22 into the body of the text, and that's what we see happening  
 23 there.  
 24 Q. Now, do you have another example of the first  
 25 category from the Fusión Memo?

10:28 1 A. Yes.  
 2 This is an interesting example, too, because it  
 3 demonstrates a movement of words within the documents that  
 4 I have had identified to me as unfiled. So, we see the  
 5 unfiled Fusión Memo--remember, the Fusión Memo was an  
 6 appendix, an annex to the unfiled Draft Alegato, so there  
 7 is more information about various topics in the Fusión  
 8 Memo, and that's what we see here, quite more wording, and  
 9 only part of it gets copied into the Draft Alegato. That's  
 10 2007, and the Draft Alegato was 2010.  
 11 Now, we see the filed Final Alegato, and we see  
 12 that only a few words overlap, and we can be fairly sure  
 13 that this is the place in the Final Alegato where these  
 14 topics are discussed because we see Declaration de Robert  
 15 Bischoff, "Sietos Paroles Contra Agro de TexPet," similar  
 16 concepts and some few words.  
 17 However, now comes the Judgment Sentencia, and we  
 18 see the wording there coming not from the filed Final  
 19 Alegato, but from the unfiled Fusión Memo.  
 20 Q. Now, I notice that in the Judgment there are a few  
 21 interstitial words that are not copied directly from the  
 22 Fusión Memo. Are those of any significance to your  
 23 conclusions?  
 24 A. You mean like the "sino que a" and "mientras que,"  
 25 et cetera?

10:30 1 Q. Yes.  
 2 A. No, they're not, because what we're looking for  
 3 here is support of one hypothesis or the other, so the  
 4 hundred words of identity correspondence are what is of  
 5 import here, and the few other words do not weaken that  
 6 hypothesis as the best explainer of a hundred words that we  
 7 find in the Fusión Memo and the Judgment.  
 8 Q. Now, did you find that other--the Plaintiffs'  
 9 documents were copied or plagiarized in the Judgment?  
 10 A. Yes. Here is an example from the Clapp Report,  
 11 and we have some 43 words, I--I think it's 34 in the first  
 12 string and nine in the second string. So, again we have  
 13 identity correspondences, here is the overlap, and then  
 14 what are the better--which is the better hypothesis.  
 15 Again, the hypothesis that instantly explains this  
 16 distribution of data is through direct copying from common  
 17 authorship.  
 18 Q. Okay. Now, did you find any examples of copying  
 19 from the Plaintiffs' documents that resulted in the  
 20 mistakes in the Judgment?  
 21 A. Yes. Again, this is an interesting example.  
 22 Now, in the left-hand column we see the unfiled  
 23 January Index Summary. In the next, the unfiled June Index  
 24 summary; the next, the Judgment itself, and finally on the  
 25 right, we see the Record.

10:32 1 What is in the Record here is the testimony of a  
 2 witness. What is bolded is going to be copied into the  
 3 unfiled January index, but it's going to be copied out of  
 4 order, so "muestras e tomoran al azar" becomes the last  
 5 part of the paragraph, let's call it, in the unfiled  
 6 January Index Summary. "Me contrató el Frente" becomes the  
 7 first sentence of this paragraph, and now the other  
 8 overlaps get copied in, and then some more information gets  
 9 put in, "y por eso seguramente se," et cetera.  
 10 It is precisely this with a couple of minor  
 11 mistakes corrected that gets put into the unfiled June  
 12 Index Summary, and then this exact wording gets put into  
 13 the Judgment, and now with quotation marks around the first  
 14 part of it, which in error indicates that this is the  
 15 direct verbatim testimony of this Witness. And if you  
 16 compare now back to where we began the Record and the  
 17 Judgment, you see that one is based on the other, but  
 18 having come through the January and the June Index  
 19 Summaries.  
 20 Q. So, the exact quote, what is quoted here in the  
 21 Judgment, is that an exact quote from what's in the Record?  
 22 A. No, not at all. It contains some of the same  
 23 phrases but in different order.  
 24 Q. Okay. Now, I would like to direct your attention  
 25 to the Fajardo Trust e-mail of June 18, 2009, for a moment.



10:34 1 Did you reach any conclusion whether the Judgment  
2 copies from that document?  
3 A. Yes. There are parts of the Fajardo Trust e-mail  
4 that are copied into the Judgment.  
5 Q. Okay. What's the basis for that conclusion? Can  
6 you illustrate that.  
7 A. Yes. Well, first, let's talk about what the Trust  
8 e-mail is. This is an e-mail sent by Pablo Fajardo to  
9 three recipients, one of whom was Mr. Donziger, and its  
10 subject is fideicomiso, which means trust. He says  
11 "Colegas, denle un ojaso," colleagues, friends, cast an eye  
12 on this decision. I think that it will fully serve us.  
13 Signed "Bebe," presumably Mr. Fajardo. Underneath that we  
14 have a block of text that begins "Estimado Pablo," Esteemed  
15 or Dear Pablo. So, clearly this is a correspondent of Mr.  
16 Fajardo's, and he says, the text that I have transcribed is  
17 the specific one about trusts, and then talks about that.  
18 Now, we see some of the language written by  
19 Mr. Fajardo's correspondent copied directly into the  
20 Judgment.  
21 Underneath, we have a transcription with some  
22 errors, as we will see, of the Supreme Court Judgment, and  
23 that also gets copied directly into the Judgment.  
24 Q. You say of the Supreme Court Judgment. Is that  
25 from the CONELEC case?

10:36 1 A. Yes, it's from the Andrade versus CONELEC case.  
2 Q. Okay.  
3 A. Now, interesting idiosyncrasy we find in both  
4 documents is two citations of cases, one right after the  
5 other, but with different formats. So, here we have the  
6 Andrade contra CONELEC case, and then at the bottom of the  
7 top box there is a semicolon, the Spanish word and, "y,"  
8 comma, and then a partial citation.  
9 Now, this is a case called the Delfina Torres  
10 Viuda de Concha case, but the word "Concha" doesn't appear.  
11 It's a different kind of citation than the one in the  
12 CONELEC case. Yet now we must explain how do these  
13 idiosyncratic series because we're citing the CONELEC case  
14 and then we're citing the Contra case and this odd  
15 incomplete or I should say incomplete citation of the  
16 Contra case. How did they wind up in the same documents?  
17 Which is the superior hypothesis? Again, clearly direct  
18 copying.  
19 Q. Let me make sure I understand this. These  
20 citations that pop up here, those are--am I correct that  
21 those are from the first part of the e-mail?  
22 A. That's correct.  
23 Q. So, this is not from a quotation of the CONELEC  
24 case itself?  
25 A. No, it is not.

10:37 1 Q. Okay. And you have a citation formed to the  
2 Andrade case first; is that correct?  
3 A. Correct.  
4 Q. And do you see in that citation form a reference  
5 to the Official Register? In the first citation form for  
6 Andrade?  
7 A. Well, it says the decisions of the Supreme Court.  
8 It doesn't have the R-O, Registro Oficio that we have in  
9 the second one.  
10 Q. Okay. And then after Andrade versus CONELEC, you  
11 have a semicolon and then you have this other citation. Is  
12 that what you're pointing out?  
13 A. That's correct.  
14 Q. And this other citation that has the R-O, the  
15 official Registry, that is which case?  
16 A. The Concha case.  
17 Q. But we don't see a name of that case?  
18 A. That was my point.  
19 Q. All right.  
20 Did you find any other indicia of plagiarism in  
21 this e-mail or from this e-mail into the Judgment?  
22 A. Yes, now we're going to look at that  
23 which--Fajardo's correspondent. It says that he is quoting  
24 the Supreme Court decision, and he says "tengo escrito," I  
25 have written the decision, but he gets it a little bit

10:39 1 wrong, and it is precisely these errors that wind up in the  
2 Sentencia Judgment.  
3 The first difference is where the Registro Oficio  
4 has Sentencia. He writes "condena," which is more like the  
5 English word sentence, but anyway it is "condena" that  
6 winds in the Judgment.  
7 And "el presente caso" becomes "la presente  
8 sentencia," and that is what winds up in the Judgment.  
9 "Con," with, becomes "a través de," via, through,  
10 and that is what winds up in the Judgment.  
11 Q. So, you see certain identical words used in the  
12 Trust e-mail of Fajardo and in the Judgment that you don't  
13 find in the official Registry discussion of the case; is  
14 that correct?  
15 A. Right. So, if the Judgment had been taken  
16 directly from the Registro Oficio, it would not have  
17 "condena sentencia a través de," it would have "sentencia  
18 caso" and "con."  
19 Q. Okay. Now, another of your indicia of plagiarism  
20 was identical mistakes. Can you give us an illustration of  
21 that?  
22 A. Yes. Here are four of them. On the left column  
23 we have the unfiled Index Summary, the middle of the  
24 Judgment, and on the right the Record.  
25 These first three are miscitation to Foja numbers.

10:40 1 As is obvious, we see 1-3 is a miscitation. The actual  
 2 Foja citation should be 03. And that's what's in the  
 3 Record. So we have both the unfiled Index Summary and then  
 4 the Judgment.  
 5 So, in all of these, the Judgment tracks the  
 6 unfiled document, not the Record. 614, 614, but it should  
 7 be 612, 4103, 4103, but it should be 4105.  
 8 And then finally, another orthographic error, in a  
 9 series of discussions about environmental, which is  
 10 ambiental in Spanish, there is a mistaken spelling, an  
 11 accent mark is put on to ambientales which would make it  
 12 pronounced "ambientáles," and that's simply not a Spanish  
 13 word, but we find that word again in the Judgment just like  
 14 the unfiled Index Summary, but the Record has the word  
 15 correctly. And this is in exactly the same sentence in the  
 16 whole series of discussion of ambientales.  
 17 Q. So, the illustration you're giving here is of  
 18 mistakes made in the Index Summary that got copied into the  
 19 Judgment as compared to the Record?  
 20 A. I don't see any other explanation.  
 21 Q. Now, another of the categories you gave is out of  
 22 order numerical sequences. Can you give us an example of  
 23 that?  
 24 A. Yes. And this is an example that has both that  
 25 and then another interesting datum.

10:42 1 Here is the unfiled fusion memo on the left and  
 2 the Judgment on the right, so we have a good overlap in the  
 3 first place, but now we also see at the bottom of the  
 4 left-hand column the Foja number 6964 is given out of  
 5 order. It's in between 58 and 59, and this out of order  
 6 numeration is copied directly into the Judgment, or the  
 7 alternative hypothesis is that just by accident, by random  
 8 chance, the Judgment copied the same exact misnumeration, I  
 9 mean, generated the exact same misnumeration.  
 10 And this is interesting in another way, too. If  
 11 it you look at the period at the bottom of the left-hand  
 12 column, you see that it makes sense as the end of a  
 13 footnote, but that period gets copied into the Judgment at  
 14 the end of 6974 where it was in the Fusión Memo.  
 15 So, again, the analyst is left to explain how did  
 16 that period get there? This period now is totally spurious  
 17 and creates a sentence fragment on either side of it.  
 18 Again, impossible to explain for someone  
 19 generating this string of words to put a period for no good  
 20 reason in between in the middle of a sentence.  
 21 Q. Dr. Leonard, one of Ecuador's Memorial tries to  
 22 characterize your opinion by saying, and I quote it, "one  
 23 accent mark plus two commas does not equal the Plaintiffs'  
 24 ghostwriting a 188-page Judgment."  
 25 A. One accent mark plus two commas does not equal the

10:44 1 ghostwriting of 188 Sentencia.  
 2 Q. That seems to be what they're saying.  
 3 Is that a fair characterization of what your  
 4 opinion is based on?  
 5 A. I don't think so. We've just seen in these few  
 6 slides an incredible range of, as I said before, depth and  
 7 breadth of indicia.  
 8 And we haven't even exhausted all the examples in  
 9 my Report let alone in the attachment to my Report, so we  
 10 have very, very long word strings that are identical. We  
 11 have a series of idiosyncratic mistakes, we have things  
 12 like this period. I think it's a gross  
 13 mischaracterization.  
 14 Q. In your Report itself and in Exhibit 4 to your  
 15 Report, how many examples do you give?  
 16 A. Thirty-eight.  
 17 Q. Thirty-eight.  
 18 Now, in your experience, how does the evidence in  
 19 this case compare to others you have worked on?  
 20 A. The evidence in this case is overwhelming.  
 21 Q. Thank you, Dr. Leonard.  
 22 MR. BISHOP: I pass the Witness, Mr. President.  
 23 PRESIDENT VEEDER: Thank you very much.  
 24 There will now be questions from the Respondent.  
 25 MR. BLOOM: Thank you. We will pass out the

10:45 1 Witness binder and some slides.  
 2 CROSS-EXAMINATION  
 3 BY MR. BLOOM:  
 4 Q. Good morning, Dr. Leonard. How are you?  
 5 A. Good morning.  
 6 Q. I'm Eric Bloom, and I will have the opportunity  
 7 this morning to ask you some questions.  
 8 You should now have, I hope, a witness binder that  
 9 we've provided. Have we yet provided you a witness binder?  
 10 A. No.  
 11 Q. It will be a very quick examination without a  
 12 witness binder.  
 13 (Laughter.)  
 14 MR. BISHOP: Are you also handing out a copy of  
 15 the slides to the Witness? I don't believe it's been  
 16 handed to him.  
 17 (Pause.)  
 18 BY MR. BLOOM:  
 19 Q. All right. Dr. Leonard, I would ask you, if you  
 20 will, to rely on the binder of documents we just gave you  
 21 and you can put the bound set of exhibits that you had for  
 22 your presentation aside for now.  
 23 And just some prefatory questions, for purposes of  
 24 this arbitration, you prepared two reports; correct?  
 25 A. Yes. I presume so. 2012 and 2013.

10:48 1 Q. That's right. And it's not a memory test, so feel  
 2 free to rely on what I'm showing you now.  
 3 If you take a look at Tab 1, that ought to be your  
 4 First Report, which was dated January 5, 2012.  
 5 A. Yes.  
 6 Q. And then Tab 2 was your Second Report, May 24,  
 7 2013; is that correct?  
 8 A. Yes.  
 9 Q. And if during the course of the examination you  
 10 need to refer to them, feel comfortable to.  
 11 And I understand that you had a Third Report that  
 12 was in your earlier presentation. That was a report that  
 13 you submitted to the New York Court; correct?  
 14 A. That could be.  
 15 Q. And just for the record, that has been submitted  
 16 to the arbitration as well, so all three of the reports--  
 17 A. That is what I had understood, right.  
 18 Q. So, all three are part of the arbitral record.  
 19 Now, with respect to the two reports that we have  
 20 as Tab 1 and Tab 2--that is, your 2012 and 2013  
 21 report--could you explain what the differences are between  
 22 the two. Essentially, you added stuff to the Second  
 23 Report; correct?  
 24 And perhaps just to be a little clearer in my  
 25 question, your 2013 report contains all of the information

10:49 1 in your earlier report, does it not?  
 2 A. Yes, plus extra examples.  
 3 Q. So, we can rely on that report for purposes of the  
 4 questions; that is, Tab 2?  
 5 A. All right.  
 6 Q. Now, before we move on to your Report, could you  
 7 tell me whether you met with Claimants' attorneys to  
 8 prepare for your testimony today?  
 9 A. I met with Claimants' attorneys.  
 10 Q. Can you tell us on how many occasions?  
 11 A. I can't recall exactly.  
 12 Q. Could you perhaps give us an estimate as to the  
 13 number of hours you worked with them to prepare for your  
 14 testimony today?  
 15 A. I really don't have a good number in mind.  
 16 Q. Are we talking dozens, or are we talking single  
 17 digits?  
 18 A. Dozens.  
 19 Q. Okay. So, now, let's turn to your Report at Tab 2  
 20 so that we could all better understand both what you are  
 21 offering opinions on and what you're not offering opinions  
 22 on.  
 23 In your Report, you offer a definition for the  
 24 word "plagiarism." Isn't that right?  
 25 A. I cite a dictionary, correct.

10:50 1 Q. At Page 3?  
 2 A. That's correct.  
 3 Q. And can you tell us what that definition is.  
 4 A. Plagiarism is generally defined as, "the practice  
 5 of taking someone else's work or ideas and passing them off  
 6 as one's own." Oxford Online Dictionary. "This includes  
 7 submitting work written entirely or in part by another  
 8 author and representing it as one's own, regardless of  
 9 whether consent has been obtained from the earlier author."  
 10 Q. And you're adopting that definition, are you not?  
 11 A. It's a bare-bones definition, yes, that seems to  
 12 work here, yes.  
 13 Q. Okay. And you're not a lawyer, are you?  
 14 A. I am not.  
 15 Q. But you've testified, as you said, a number of  
 16 times in courts?  
 17 A. I have.  
 18 Q. And you're generally familiar with the fact that,  
 19 in Court, both sides in the case have an opportunity to  
 20 present both written and oral submissions to a court on any  
 21 issue before the Court?  
 22 A. That's really beyond my area of expertise.  
 23 Q. Well, having testified as a witness before the  
 24 Court, sometimes I presume the Court agreed with you and  
 25 sometimes the Court did not; correct?

10:52 1 A. Is that a follow-up on the same question?  
 2 Q. Yes.  
 3 A. I don't understand. Could you clarify it?  
 4 Q. Sure.  
 5 I'm asking you, based on your own personal  
 6 experience, has the Court ever in a written decision made  
 7 findings based on your testimony or written work?  
 8 A. Yes.  
 9 Q. Are there times when your opinions were not  
 10 adopted by a court of law?  
 11 A. Not that I'm aware of.  
 12 Q. And though you use the word "plagiarism" in your  
 13 Report, I take it that you're not suggesting that a court  
 14 or a tribunal has to identify in every paragraph of its  
 15 decision the source of its conclusions?  
 16 A. Would you repeat that?  
 17 Q. Certainly.  
 18 You're not suggesting in your Report or by your  
 19 testimony today that a court has some kind of requirement  
 20 to identify in every paragraph of its decision the source  
 21 of each of its conclusions?  
 22 A. I've had it represented to me that in the present  
 23 matter, the Sentencia Judgment was not supposed to have  
 24 copied from what has been identified to me as unfiled work  
 25 document. Therefore, if it was not supposed to have been

10:53 1 done, then it's plagiarism. So, I really have no opinion  
2 on what you're saying.  
3 Q. Okay. Yeah, I was just going to say, I'm not  
4 asking you what was represented to you--  
5 A. But that is what I'm acting upon, not my great  
6 knowledge of what judges are or not supposed to do in  
7 various courts.  
8 And as you may know, as an expert witness,  
9 sometimes I don't even know what the lawyers are doing in  
10 terms of written and other submissions.  
11 Q. Right. So, you're not offering any opinion here  
12 today as to the role of a court and whether a court has to  
13 attribute to one party or another every proposition in the  
14 Court's decision; isn't that correct?  
15 A. That's correct. And a court is fairly  
16 non-specific anyway.  
17 Q. Well, are you offering any opinion as to whether  
18 any court has to source every proposition of law and every  
19 proposition of fact in its decisions, based on your  
20 expertise?  
21 A. It's beyond my area of expertise.  
22 Q. Now, your Report concludes that a number of  
23 lines--and you just went through this this morning--that  
24 were issued in the February 14, 2011 Sentencia, were  
25 passages from certain documents that you identified in your

10:55 1 Report. And again, I'm trying to understand the reach of  
2 your Report.  
3 You're not offering any opinions as to what  
4 documents were actually lawfully provided to the Lago Agrio  
5 Court; am I understanding that correctly?  
6 A. That is not in my area of expertise.  
7 Q. And you're, therefore, not offering any opinions  
8 on whether the Plaintiffs' documents you're comparing the  
9 Sentencia to were, in fact, lawfully provided to the Lago  
10 Agrio Court?  
11 A. That is outside, again, of my scope.  
12 Q. And if these Plaintiffs' documents were provided  
13 lawfully to the Court, your opinions would actually have no  
14 relevance to the arbitration; am I understanding correctly?  
15 A. My opinions--  
16 Q. Outside--I'm sorry.  
17 MR. BISHOP: Excuse me, but I have to object to  
18 that because--  
19 MR. BLOOM: I will withdraw it. My apologies.  
20 BY MR. BLOOM:  
21 Q. Based on your personal experience, are you  
22 knowledgeable that courts at least in the United States  
23 sometimes adopt verbatim parts of proposed Orders or  
24 proposed Findings of Fact or proposed Conclusions of Law in  
25 their own respective decisions with or without attribution?

10:56 1 A. That's a very lengthy question. Would you give  
2 that to me again?  
3 Q. Sure.  
4 Are you personally aware from your own experience  
5 whether some courts, including courts in the United States,  
6 sometimes adopt verbatim parts of submissions by the  
7 Parties in the Court's decisions?  
8 A. With great respect, I'm not here to testify about  
9 my personal observations, hit and misses they might be in  
10 courts in the United States.  
11 Q. Could you please answer the question?  
12 A. Am I personally aware that sometimes--it would not  
13 surprise me.  
14 Q. Okay. Now, I've read your Report several times,  
15 and I found no place in which you specifically conclude  
16 that the Lago Agrio Plaintiffs or their counsel actually  
17 authored the decision.  
18 A. I'm sorry, I didn't hear that.  
19 Q. I have not found anywhere in the report that we  
20 have in your binder as Tab 2 in which you conclude that the  
21 Lago Agrio Plaintiffs or their counsel actually authored  
22 the Sentencia; am I correct?  
23 A. My findings are that material from what has been  
24 identified to me as unfiled documents was copied directly  
25 into the Sentencia Judgment, if that answers your question.

10:58 1 Q. It does.  
2 Would you agree with me that hypothetically, if  
3 the Plaintiffs' work product had been lawfully provided to  
4 the Lago Agrio Court, your conclusion would still be the  
5 same in your Report?  
6 A. My conclusion of copying would still remain the  
7 same, certainly. Is that the conclusion that you're asking  
8 me about?  
9 Q. Yes.  
10 A. (Witness nods.)  
11 Q. Your task, as you state at Page 12, was to  
12 determine whether the facts supported the hypothesis that  
13 "co-occurrence of language was due to common authorships."  
14 Or alternatively whether the co-occurrence of language was  
15 explainable by random chance; correct?  
16 A. You're leaving some words out.  
17 Q. Yes. But am I understanding the gist of it? Am I  
18 leaving anything out that's material?  
19 A. Well, Hypothesis 1 is co-occurrence of language  
20 due to common authorship. This suggests that the  
21 co-occurrence strings were plagiaristically copied from one  
22 document to the other and Hypothesis 2 includes both random  
23 chance and set phrases, which you had omitted.  
24 Q. So, let's me ask the question again, and feel free  
25 to rephrase it because I'm not trying to be tricky here.

10:59 1 Essentially what you want to know is whether or  
2 not the copying was by--whether the fact that you've got  
3 identical word strings are there by chance. That's what  
4 you're essentially trying to determine.  
5 A. Whether they were copied from one document to the  
6 other or is a better hypothesis chance or set phrases.  
7 Q. Right. And at the end of the day you concluded  
8 that the word strings were not there by chance?  
9 A. I concluded that the superior hypothesis is to  
10 explain all the data that I've already shown today and  
11 everything else, superior hypothesis is direct copying and  
12 not random chance or set phrases.  
13 Q. And, therefore, that whoever wrote the decision  
14 relied on the documents found in the Plaintiffs' files?  
15 A. That the author of the documents found in the  
16 files that I have identified and were identified to me as  
17 unfiled work product, there was one author to both of those  
18 documents. So, the parts of the documents--the parts of  
19 the Sentencia that I say were copied in from the unfiled  
20 work documents, that would have one author, if that again  
21 answers your question.  
22 Q. Let me ask you a follow-up, then.  
23 If, for example, I provide to the Tribunal and  
24 Claimants provide to the Tribunal a CD or via e-mail  
25 proposed findings for the Tribunal to adopt, and the

11:01 1 Tribunal thereafter issues a decision, the extent to  
2 which--strike that.  
3 If the Tribunal were to rely on our respective  
4 electronic submissions and cut and paste and the Tribunal  
5 issues its decision with some of the underlying work  
6 product that the Parties provided to it, would that still  
7 be your conclusion that there is only one author?  
8 A. Could you ask a rather shorter version of that and  
9 then perhaps a follow-up?  
10 Q. Why don't we take this one step at a time; and,  
11 after every part of this, I will ask you whether you  
12 understand the hypothetical. I appreciate it's a long  
13 hypothetical.  
14 The first part of this is: Let's assume that the  
15 Tribunal asks both Mr. Bishop and counsel for Ecuador to  
16 submit proposed Findings of Fact and Conclusions of Law.  
17 Do you understand that part of the hypothetical?  
18 A. I believe so.  
19 Q. And let's assume that the Tribunal is considering  
20 our respective electronic submissions in reaching its  
21 decision. Do you understand that part of the hypothetical?  
22 A. Yes.  
23 Q. Let's further assume that the Members of the  
24 Tribunal sometime thereafter issue a 200-page decision. Do  
25 you understand that part of the hypothetical?

11:03 1 A. I do.  
2 Q. And let's assume that the Tribunal adopts parts of  
3 what Ecuador has said and parts of what the Claimants have  
4 said. Do you understand that part of the hypothetical?  
5 A. Yes.  
6 Q. So, the final 200-page decision actually contains  
7 documents submitted by the Parties. Do you understand that  
8 part of the hypothetical?  
9 A. Verbatim?  
10 Q. Verbatim, yes.  
11 A. So, parts of what winds up as a decision contains  
12 parts of documents written by somebody else.  
13 Q. Yes.  
14 A. And your question is?  
15 Q. Whether that decision has been authored by one  
16 person.  
17 A. Well, the very premise is that you are Ecuador and  
18 the other side is not, and there are submissions from those  
19 people, so--but each part of that would have a common  
20 author. So, let's say the first page you wrote and it  
21 winds up in a judgment, the common author would be you.  
22 And the second page someone else writes and it's copied  
23 verbatim and wholesale the way we find, and the common  
24 author would be the writer of that commonly authored--the  
25 common author of that page.

11:04 1 Q. Would you say in that hypothetical that the  
2 Tribunal did not offer the decision?  
3 A. I'm sorry, would you repeat? I could not hear.  
4 Q. In that hypothetical that I think you confirm now  
5 that you understand, would it be your conclusion that the  
6 Tribunal authored that decision?  
7 A. You just told me that you authored it, and someone  
8 from the other side authored it.  
9 Q. But the hypothetical--  
10 A. That's the hypothetical you're giving me, that you  
11 authored it and Mr. Bishop authored it, so now you're  
12 asking me whether somebody else authored it.  
13 Q. What I asked you--  
14 A. This is some hypothetical.  
15 (Overlapping speakers.)  
16 Q. Please listen carefully. It's a 200-page decision  
17 by the Tribunal, a few pages of which the Tribunal lifted  
18 from our electronic submission. Let's say only one page of  
19 which they adopted from Mr. Bishop, the other 190-some  
20 pages are all original work from the Tribunal. In your  
21 opinion, would the Tribunal's decision have been authored  
22 by the Tribunal?  
23 A. By definition of "author"--and, of course, this is  
24 where we're getting into I think what you're  
25 intimating--the word "author" here I'm using very

11:05 1 precisely. I'm saying the actual person who put pen to  
2 paper or typed, that is the person who is the author;  
3 therefore, in that situation, you would be the author or  
4 Mr. Bishop or whatever your hypothetical was, of those  
5 parts, you would be the original author and a common author  
6 of those parts and your original document. Whether they  
7 are allowed to do this and, therefore, would be said to  
8 have authored it because they are issuing it in their name,  
9 is a different meaning of authorship than I am using, which  
10 is a very, very precise one, whoever did it first.  
11 Q. Would you agree with me under that lengthy  
12 hypothetical that the 190 pages of original work would be  
13 authored exclusively by the Tribunal?  
14 A. You're telling me that it was?  
15 Q. Yes.  
16 In that hypothetical I just gave you.  
17 A. So, you're asking me if I will agree to the  
18 statement that you just made in a hypothetical.  
19 Q. Yes.  
20 A. And that hypothetical is 100--other pages are  
21 written not by you, not by Mr. Bishop, it is written only  
22 by the Tribunal, was it written by the Tribunal?  
23 Q. Yes.  
24 A. Yes.  
25 Q. Okay. And then with respect to the pages that the

11:07 1 Tribunal adopted, in a loose sense it is the author,  
2 they're simply adopting it from other people, but more  
3 precisely to use your words, the original authors would be  
4 the Claimants and Respondents; correct?  
5 A. If I understand your hypothetical.  
6 Q. And a last question on this hypothetical. And in  
7 which case, the Tribunal would have relied upon and  
8 excerpted the materials the Parties provided to it; isn't  
9 that correct?  
10 A. Those are technical terms that I actually do not  
11 pretend to understand perfectly, "relied upon."  
12 Q. You don't understand the definition of "relied  
13 upon"?  
14 A. Maybe if you give it to me.  
15 Q. No, if you don't understand it, we will move on.  
16 A. It's a technical term as I understand it, and I'm  
17 wary of technical terms.  
18 Q. Is the word "excerpted materials" a technical  
19 term?  
20 A. No. If you mean "directly" excerpted. "Excerpt"  
21 again is vague and could mean many things.  
22 Q. And to be clear, based on your work--  
23 A. Yes.  
24 Q. --you cannot exclude the possibility that the  
25 judge had access to the documents you say were authored by

11:08 1 the Plaintiffs; is that correct?  
2 A. I didn't say the documents were authored by the  
3 Plaintiffs. I said they were Lago Agrio Plaintiffs'  
4 unfiled work product. I presume that means the same, but  
5 just to be clear--and also I'm not saying that from  
6 personal experience. That is what is represented to me.  
7 So, now ask me the question again, please.  
8 Q. The question is: You cannot exclude the  
9 possibility, for example, that Judge Zambrano had a copy of  
10 the Fusión Memo, can you, based on your work?  
11 A. Whoever wrote the Sentencia had a copy of the  
12 Fusión Memo because parts of it are copied wholesale into  
13 the Judgment.  
14 Q. And you're not excluding the possibility that  
15 Judge Zambrano had the Fusión Memo?  
16 A. I have no idea.  
17 Q. And to be clear, you've performed no investigation  
18 to determine whether or not the so-called "Plaintiffs"  
19 unfiled work product" might have been distributed to the  
20 Court Clerk during the judicial site inspections. That was  
21 outside of your job description, was it not?  
22 A. It's outside of my analysis.  
23 Q. And I take it you also have no reason to disagree  
24 with Dr. Juola--well, first off, did you read Dr. Juola's  
25 Report in this case?

11:10 1 A. Yes.  
2 Q. You don't have any reason to disagree with  
3 Dr. Juola that some of the scanned photocopies of the trial  
4 record were not of sufficient quality to be OCR'ed, isn't  
5 that correct?  
6 A. I don't actually recall the detail of what  
7 Dr. Juola said about that. I accept his final conclusions  
8 in this.  
9 Q. And you don't know whether the Fusión Memo was  
10 among the scanned photocopies of the trial record that was  
11 of such poor quality that it could not be OCR'ed?  
12 A. Again, I'm relying on--I'm accepting the  
13 conclusions of Dr. Juola. And no one seems to have come  
14 forth and shown us the Fusión Memo somewhere in the Record,  
15 which is another reason that I'm happy to rely on it.  
16 Q. You were here yesterday for the Opening?  
17 A. Only for a minute.  
18 Q. Were you lucky enough to avoid our presentation in  
19 the evening?  
20 A. Is that a trick--yes, I was.  
21 (Laughter.)  
22 Q. Now, are you aware that--and we will put this on  
23 the screen--that the Lago Agrio Court itself ruled on 39  
24 Chevron motions filed on October 14, 2010, and that's a  
25 slide, and this will be, with apologies, a long premise to

11:11 1 my next question. But on October 14, Chevron--I'm  
2 sorry--yes, on October 14, Chevron filed 39 documents, and  
3 the Court ruled on the 39 documents, and I will represent  
4 to you that the evidence reflects that only 35 of those  
5 motions are in the Record, so that we know that there are  
6 at least four motions that are not in the Record.

7 So, I guess what I'm asking you is whether you  
8 know that Dr. Juola did not and could not have OCR'ed or  
9 reviewed the entirety of the Lago Agrio Record?

10 A. That's a question? Where is the question?

11 Q. Are you aware of the fact that Dr. Juola did not  
12 have the entirety of the Lago Agrio Record?

13 A. This is again outside of my scope, and I  
14 respectfully say that I'm not going to comment on things  
15 that are totally outside of my scope.

16 Q. Did you perform any linguistic analysis to  
17 determine to what extent, if at all, the Sentencia copied  
18 documents submitted by Chevron?

19 A. Would you repeat that?

20 Q. Did you perform any analysis at all to determine  
21 whether the Sentencia included submissions or excerpts of  
22 submissions made by Chevron?

23 A. No.

24 Q. So, you don't know whether the Court lifted word  
25 strings from Chevron's pleadings; correct?

11:13 1 A. That's correct. I don't know.

2 Q. Okay. With that, let's focus our attention a  
3 little bit on the Fusión Memo.

4 Dr. Leonard, in your report, you ordinarily have  
5 referred to the Fusión Memo as the unfiled Fusión Memo;  
6 correct?

7 A. That's correct.

8 Q. At the bottom of Page 7 of your report at Tab 2  
9 you state: "I referenced the following documents that  
10 pre-date the Sentencia that, to the best of my knowledge,  
11 were not filed in the Lago Agrio Litigation." And if you  
12 look at the first bullet point on Page 8, that's where you  
13 refer to it for the first time, I think, as the unfiled  
14 Fusión Memo.

15 A. That is an accurate quote.

16 Q. And then you use that same term on Page 14. Feel  
17 free to verify that, and it's in your heading. You refer  
18 to again the "unfiled Fusión Memo."

19 A. That's correct.

20 Q. At Page 16 at the top, again in the heading, you  
21 refer to it as the unfiled Fusión Memo?

22 A. Yes.

23 Q. And we can go on and on, can't we? That's how you  
24 refer to it every time in this Report?

25 A. Yes.

11:15 1 Q. Let me show you now Exhibit C-1641, which is at  
2 Tab 13 of your witness binder. This is a  
3 November 15, 2000, e-mail chain between Steven Donziger and  
4 Juan Pablo Sáenz, and there's in this e-mail, there's a  
5 reference as to what the Plaintiffs want to file to the  
6 Lago Agrio Court, and the Plaintiffs' lawyer responds as to  
7 what they will be filing. It is "this document," referring  
8 to the merger or Fusión Memo, along with all of the  
9 attached documents it mentions.

10 Now, you've actually read the Fusión Memo, have  
11 you not?

12 A. Yes.

13 Q. You had to to perform your analysis; correct?

14 A. Yes.

15 Q. And this e-mail at least shows that at this point  
16 in time the Plaintiffs had every intention of submitting  
17 the memo; correct?

18 MR. BISHOP: I object. He's asking the Witness to  
19 speculate as to what was the intention of the Plaintiffs  
20 from reading their e-mail, which he probably hasn't seen  
21 before.

22 MR. BLOOM: Well, Mr. President, he has referred  
23 to this document as the unfiled--

24 PRESIDENT VEEDER: Well, he's explained he's taken  
25 that from the Claimants, I don't think he's taken it from

11:17 1 this Witness.

2 BY MR. BLOOM:

3 Q. Okay. So, am I correct that when you say  
4 "unfiled," you have no information that it was not filed,  
5 correct? Other than what you were told?

6 A. I've said repeatedly that I am accepting the  
7 Opinion of Dr. Juola and others that these documents were  
8 not filed.

9 Q. Right. Let me put it my way, if I may, sir.

10 You have not performed any work that has led you  
11 to reach the conclusion that the Fusión Memo was unfiled.  
12 You're simply relying on others; correct?

13 A. Yes, but I feel compelled to point out that no one  
14 has come forward and said "here it is, and it's in the  
15 Record," and it's been years.

16 Q. Well--

17 MR. BLOOM: And with that, I think he's now opened  
18 the door for me to ask these questions.

19 PRESIDENT VEEDER: I think the door is open, but  
20 it's up to you. I mean, the door is open, but you made  
21 your points, and you don't need to take it any further.

22 MR. BLOOM: I won't take it too long. How about  
23 that?

24 BY MR. BLOOM:

25 Q. I want to take you to the next slide, sir, and

11:18 1 here the Plaintiffs' lawyer, Steven Donziger, asked his  
 2 colleague: "Please send me the lists of documents we are  
 3 planning to submit on the question of Fusión at the  
 4 inspection, and let's get on the phone to talk about it."  
 5 My first question is: While you just testified  
 6 that no one has shown you where in the Record the Fusión  
 7 Memo is, have you been shown any of these e-mails  
 8 suggesting that the Plaintiffs had every intention of  
 9 filing it?  
 10 A. I believe I read this e-mail somewhere, and--was  
 11 that the question?  
 12 Q. Yes.  
 13 Okay. So, let's turn to the bottom of this slide  
 14 where there's an e-mail listed at Tab 14, if you want to  
 15 see the underlying document. It's in the Record as C-1638.  
 16 And there's a response: "Hey, Steve, the documents to be  
 17 submitted are a bunch of Chevron press releases calling the  
 18 operation a merger over and over again, as well as the  
 19 documents Chevron presented to its stockholders prior to  
 20 the merger, we are also submitting three FTC documents  
 21 where--although it's written as were--the Chevron/Texaco  
 22 merger is all over the place. This document could be  
 23 presented in one of Chevron's upcoming inspections. If  
 24 these inspections don't take place, we can try presenting  
 25 it as an informe de derecho or something on that line."

11:20 1 Did you also read this document in your  
 2 preparation for the Report or for today?  
 3 A. I don't think so.  
 4 Q. Let's turn to Tab 15, next slide. For the record,  
 5 this is C-1460. It's an e-mail from Steven Donziger dated  
 6 June 9, 2008, at 9:12 a.m.  
 7 Do you see that, sir?  
 8 A. This is the new slide?  
 9 Q. Correct.  
 10 I will give you a moment to read it. I will read  
 11 it out loud.  
 12 A. And it's at Tab 15?  
 13 Q. It's at Tab 15, correct.  
 14 Mr. Donziger says: "Please send me every document  
 15 you are submitting, every court case, everything, even if  
 16 it's fifty things. You should have a cover memo anyway  
 17 listing everything you are submitting."  
 18 Do you see that?  
 19 A. Yes.  
 20 Q. Were you shown this document before?  
 21 A. I don't recall.  
 22 Q. When you reached--when you decided to use the term  
 23 "unfiled work product," were you aware of these documents?  
 24 A. I don't recall.  
 25 Q. So, let me ask you this, Dr. Leonard--you don't

11:22 1 know whether or not the Fusión Memo was in fact submitted  
 2 to the Lago Agrio Court during the Aguarico 2 judicial site  
 3 inspection process, do you?  
 4 A. No.  
 5 Q. Okay. Let's turn to what you refer to in your  
 6 Report as the Fajardo Trust e-mail, and you presented on  
 7 that this morning. It is at Tab 21. I want to introduce  
 8 C-997. I will give you a moment to get there. Are you  
 9 there, sir, Tab 21?  
 10 A. Yes.  
 11 Q. You are. Now, you also represented in your Report  
 12 that this e-mail is also on file; isn't that correct? That  
 13 is--I'm sorry, let's be more specific.  
 14 You represented in your Report the Fajardo Trust  
 15 e-mail, as you refer to it, is also "unfiled;" correct?  
 16 A. Unfiled.  
 17 Q. And throughout your report at Tab 2 you called it  
 18 unfiled; correct?  
 19 A. Yes.  
 20 Q. I could take you to pages if you have any doubts.  
 21 You're comfortable saying you refer to it as unfiled?  
 22 A. Yes.  
 23 Q. Yes.  
 24 And that is again because you are presuming that  
 25 the language contained in the e-mail is nowhere found in

11:24 1 the Lago Agrio Record; correct?  
 2 A. I'm presuming it's unfiled.  
 3 Q. And you're presuming that based on what?  
 4 A. As I've said before, I am accepting the  
 5 representation by Dr. Juola and others.  
 6 Q. So, it's not based on your work or your analysis  
 7 at all?  
 8 A. What isn't based on my work or my analysis?  
 9 Q. Your conclusion that the Fajardo Trust e-mail is  
 10 not in the Lago Agrio Record.  
 11 A. Correct.  
 12 Q. Now, in your Report, you found that portions of  
 13 the Judgment in the Fajardo Trust e-mail contained matching  
 14 or similar word strings; correct?  
 15 A. Identical or virtually identical word strings and  
 16 other things, yes.  
 17 Q. And feel free again to look at your Report. The  
 18 language is at Page 30, if you want to reference that at  
 19 all.  
 20 Again, these aren't trick questions.  
 21 Now, in your analysis, did you find overlapping  
 22 any whole sentences in full between the Fajardo Trust  
 23 e-mail and the Judgment?  
 24 A. Would you hold on for a moment?  
 25 Q. Take your time.



11:25 1 A. Thank you.  
 2 (Witness reviews document.)  
 3 A. I'm there.  
 4 Q. Very good.  
 5 Doctor, did you find overlapping whole sentences  
 6 in full between the Fajardo Trust e-mail and the Judgment?  
 7 A. I found an independent clause.  
 8 Q. And as a Doctor of Linguistics, an independent  
 9 clause is not a whole sentence; is it not?  
 10 A. Well, that's what a sentence is, it has a noun and  
 11 a verb and can stand by itself.  
 12 Q. It could stand by itself, and I don't want to  
 13 argue with a Doctor of Linguistics, so you'll tell me if  
 14 I've been teaching my kids wrong, but if I have two  
 15 independent clauses, for example, but there is only one  
 16 period, technically that's not--I'm sorry--that's a whole  
 17 sentence; is it correct?  
 18 A. So, you're saying you have an independent clause,  
 19 an independent clause and a period?  
 20 Q. Correct.  
 21 A. Yes, that's typically taken to be one sentence.  
 22 Q. And if I take part of it, even though it could be  
 23 standing alone, that's not a whole sentence, is it?  
 24 A. No, it simply has all the components it would  
 25 need, had there been a period.

11:27 1 Q. My children will be happy to hear that.  
 2 And if Claimants represent in their written  
 3 submission that the Judgment actually copies whole  
 4 sentences, plural, in full from the Fajardo Trust e-mail,  
 5 that would not be correct, would it?  
 6 A. It's not accurate.  
 7 Q. And they're citing to your Report of that  
 8 proposition would be misplaced; correct?  
 9 A. It would be a slight misinterpretation, yes.  
 10 Q. Now, let's turn to Example 10 of your Report? I  
 11 believe that's at Page 32.  
 12 A. It is.  
 13 Q. Okay. Example 10 shows the overlap between the  
 14 Fajardo Trust e-mail, the Judgment and a third source;  
 15 correct?  
 16 A. (In Spanish)? We're looking at my Example 10;  
 17 correct?  
 18 Q. Correct.  
 19 And what is that third source?  
 20 A. The Official Registry.  
 21 Q. And you're also comparing it to the CONELEC  
 22 Decision, are you not?  
 23 A. Comparing what to the CONELEC Decision?  
 24 Q. Excerpts of the Fajardo Trust e-mail.  
 25 A. Yes. This is the part of the Registro Oficio that

11:29 1 discusses the CONELEC.  
 2 Q. Now, to be clear, the CONELEC Decision is cited  
 3 elsewhere in the Judgment, is it not?  
 4 A. Well, it's cited earlier on in the Fajardo Trust  
 5 e-mail.  
 6 Q. That's not my question. My question is: The  
 7 CONELEC Decision is cited elsewhere in the Judgment, is it  
 8 not?  
 9 A. I don't recall.  
 10 Q. Let's put up Slide 29.  
 11 How is your Spanish, sir?  
 12 A. I have some facility. I studied it in college. I  
 13 ran a business in Puerto Rico in Spanish. But it's been a  
 14 very long time.  
 15 Q. Your pronunciation has impressed me as a  
 16 non-speaker.  
 17 A. Oh, thank you.  
 18 Q. So, you have this here on Slide 29 that it's cited  
 19 for example at Page 173 from the Sentencia. Had you  
 20 reviewed the Sentencia to determine whether or not the  
 21 CONELEC decision was cited outside of the context that you  
 22 found it referenced in the Fajardo Trust e-mail?  
 23 A. Repeat that?  
 24 Q. I just want to know whether you knew that this  
 25 citation to the CONELEC case was in the Sentencia.

11:30 1 A. I don't recall.  
 2 Q. Now, the text from the CONELEC case, you have  
 3 said, accounts for virtually all of the linguistic overlap  
 4 between the Judgment and the Fajardo Trust e-mail as shown  
 5 in your example ten; correct?  
 6 A. Repeat that, please?  
 7 Q. The text from the CONELEC case accounts for  
 8 virtually all of the linguistic overlap between the  
 9 Judgment and the Fajardo Trust e-mail as shown in your  
 10 example ten. Would you please confirm that?  
 11 A. Yes. But there is another example as well, yeah.  
 12 Q. But it's--most of the overlap is attributable to  
 13 the CONELEC case?  
 14 A. The overlap, just talking about the overlap in  
 15 example ten now?  
 16 Q. Yes.  
 17 A. Yes.  
 18 Q. And the Judgment actually cites the CONELEC in the  
 19 very section that you address in example ten; correct?  
 20 A. Repeat that?  
 21 Q. The Judgment actually cites to the CONELEC case in  
 22 the very section that you address in example ten.  
 23 A. Yes, Page 186.  
 24 Q. So, to summarize, the matching or similar word  
 25 string that you address in example ten of your Report comes

11:32 1 from CONELEC, an Ecuadorian Supreme Court case that was  
 2 relied upon elsewhere in the Judgment and was specifically  
 3 cited to in the very section of the Sentencia in which you  
 4 found this overlap.  
 5 A. Yes. I see that my heading to example ten is  
 6 misleading. The import of this example is not that we have  
 7 endless word strings identical as we see in so many other  
 8 examples, but here we have the actual filed documents and  
 9 the unfiled--or what I'm told is unfiled--and the  
 10 Sentencia, and the slight idiosyncratic misquotations are  
 11 what appear in the Sentencia. So, it's true that the  
 12 overlap is here, and most of it--virtually all of it,  
 13 that's the whole point--is attributable to the official  
 14 Registry.  
 15 Q. Okay. Now, let's address those idiosyncratic  
 16 changes, and the new vocabulary word that I learned this  
 17 morning that Mr. Bishop asked you about. I have a side bar  
 18 later on that.  
 19 According to your Report, the Fajardo Trust e-mail  
 20 purports--and I'm quoting now at Page 31--purports to give  
 21 a transcription of language in the CONELEC case; correct?  
 22 A. Correct.  
 23 Q. And given this, the overlap between the Fajardo  
 24 Trust e-mail and the Judgment, by itself anyway, isn't  
 25 terribly surprising, putting aside these idiosyncratic

11:33 1 differences?  
 2 A. You mean if we didn't know about the Fajardo Trust  
 3 e-mail?  
 4 Q. If you didn't know about the Fajardo Trust e-mail  
 5 and the idiosyncratic errors, as you would refer to them?  
 6 A. And, I'm sorry, what's the question again?  
 7 Q. We can move on.  
 8 In your Report, you note that the Fajardo Trust  
 9 e-mail contains "three misquotations"; correct?  
 10 A. Correct.  
 11 Q. You look to, for example, the substitution of  
 12 "condena" for "sentencia"; correct?  
 13 A. "Condena," right.  
 14 Q. I'm sorry?  
 15 A. Condena, yes.  
 16 Q. Okay. The substitution of "la presente sentencia"  
 17 for "el presente caso."  
 18 A. Correct.  
 19 Q. And three, the substitution of "a través de" for  
 20 "con."  
 21 A. Correct.  
 22 Q. And apologies to all my Spanish-speaking friends.  
 23 Isn't it true that each of these words or phrases  
 24 means essentially the same as the alleged substitution?  
 25 A. Not exactly, but they're in the same ballpark.

11:34 1 But condena is a negative, it's something that is found  
 2 against you, whereas in Spanish sentencia is not  
 3 necessarily. In English, sentence is something that has  
 4 been found against you, so to speak.  
 5 Also, sentencia and caso are not really identical,  
 6 but you can see how if somebody is writing something--you  
 7 see, when we write things and when we use language, we  
 8 don't actually pay attention to the words. We're paying  
 9 attention to the meaning that we hope is underlying the  
 10 words. This is why people are always having discussions  
 11 with their significant others. You said this, and I will  
 12 say, no, I didn't say that. No, I heard you, I wish I had  
 13 a recording. It's because what we're listening for is the  
 14 meaning.  
 15 So, when someone is typing, unless you are a  
 16 perfect touch typist, you're getting the meaning in your  
 17 head, you think you have the words, but then when you type  
 18 it, you make it a little bit different, and this is a  
 19 well-known phenomenon.  
 20 So, la presente sentencia and el presente caso are  
 21 not really exactly the same, but I see how somebody might  
 22 use it. And then a través de and con are very close.  
 23 Q. Okay. So, let's talk about condena and sentencia,  
 24 since you just opined on that at some length.  
 25 Did Judge Zambrano use the word condena elsewhere

11:36 1 in the opinion?  
 2 A. I believe so.  
 3 Q. Do you know how many times?  
 4 A. No.  
 5 Q. Let's me show you a few examples. We have one at  
 6 Page 171, 178, 179, again at 179, at 180, 184.  
 7 You would agree that this is a term that the  
 8 author of the opinion used many times?  
 9 A. The author of the opinion? Didn't you say--  
 10 Q. The author of the Sentencia.  
 11 A. Okay. The author of the Sentencia knows the word  
 12 condena. Is this what you're saying?  
 13 Q. Used the word condena.  
 14 A. Yes.  
 15 Q. In fact, the word was used four times on the very  
 16 page of the Judgment at issue in your Report as well as  
 17 another instance on the following page. Did you consider  
 18 that in forming your opinions?  
 19 A. I don't recall, but it does not apply because it's  
 20 the unique word choice that maps the unfiled work product  
 21 that is of interest to us here.  
 22 As I said, that Judge Zambrano or whoever wrote  
 23 the Sentencia knows the word condena and condenado is not  
 24 surprising or particularly informative here.  
 25 Q. Out of curiosity, in forming your opinions, did

11:37 1 you even look specifically to determine whether or not the  
 2 Sentencia had used the word condena throughout the  
 3 Sentencia?  
 4 A. No.  
 5 Q. Let me ask you something else. Would you agree  
 6 with me that the Judgment, in fact, includes words and  
 7 phrases, when paraphrasing the CONELEC Judgment, that do  
 8 not appear in the Fajardo Trust e-mail?  
 9 A. I don't know.  
 10 Q. Let's take a look at Slide 33. You will see the  
 11 inclusion of the additional phrases, like "considerando  
 12 que."  
 13 Do you see that? Do you see that?  
 14 A. Oh, oh, I see what you're saying. Sorry.  
 15 Go back to where you began this.  
 16 Q. Would you agree with me that the Judgment, in  
 17 fact, includes words and phrases, when paraphrasing the  
 18 CONELEC Judgment, that do not appear anywhere in the  
 19 Fajardo Trust e-mail?  
 20 A. I'm not sure I accept your "when paraphrasing the  
 21 Judgment."  
 22 Q. You can use your own words. When excerpting or  
 23 using the Judgment.  
 24 A. Well, there is a--let's just say that there is not  
 25 an absolute identity correspondence between the Fajardo

11:39 1 Trust e-mail and the Sentencia, as we have seen throughout  
 2 in the presumed copying examples.  
 3 Q. Okay. And I'm going to ask you to just, you know,  
 4 listen carefully to my questions and if you can confine  
 5 yourself to answering the questions being asked.  
 6 Do you also see the phrase--and again with  
 7 apologies for my Spanish--"derechos de los demandantes y de  
 8 los afectados"? Do you see that, too?  
 9 A. Yes.  
 10 Q. And those words do not appear in the Fajardo Trust  
 11 e-mail; correct?  
 12 A. That's correct. That's why they're not  
 13 highlighted.  
 14 Q. And doesn't the Sentencia share at least one  
 15 similarity with the published CONELEC Judgment that is not  
 16 found in the same passage from the Fajardo Trust e-mail?  
 17 A. I seem to recall, yes, it's a capital letter as  
 18 opposed to a small letter.  
 19 Q. Right. It would be the capitalization of the "J"  
 20 in "judicial efectiva"?  
 21 A. Um-hmm, correct.  
 22 Q. So, to be clear, that capital J is found in the  
 23 CONELEC Decision; correct?  
 24 A. It is.  
 25 Q. And it's found in the Sentencia; is that correct?

11:40 1 A. Correct.  
 2 Q. But it's not found in the Fajardo Trust e-mail?  
 3 A. Yes, that one letter, that's very true, or shall I  
 4 say the form of that letter, because the letter itself is  
 5 found.  
 6 Q. And I think you've already testified that the  
 7 words a través de and con are very similar. They both mean  
 8 through or with, do they not?  
 9 A. Well, in this context, I believe they're rather  
 10 close. Of course, with and through have very different  
 11 meanings, but here they're essentially the same.  
 12 Q. With and through mean something very different for  
 13 a doctor of linguistics.  
 14 A. Well, for anybody. And that's why we have  
 15 different words that survive.  
 16 Q. And would you also agree that la presente  
 17 sentencia implies saying the present judgment?  
 18 A. Repeat that, please.  
 19 Q. The term la presente sentencia is another way of  
 20 saying the present judgment?  
 21 A. It means the present sentencia, opinion, judgment,  
 22 yes.  
 23 Q. Very similar to el presente caso, which means the  
 24 present case?  
 25 A. Well, I'm not sure. Judgment and case mean two

11:42 1 different things.  
 2 Q. So, in your expert opinion, the word case is  
 3 different than judgment in this context?  
 4 A. Well, my expert opinion on this example is, not to  
 5 repeat myself too many times, that the changes from the  
 6 Registro Oficio are tracked perfectly by the unfiled work  
 7 document, or what I'm told is, and the Sentencia.  
 8 Q. Are you offering an expert opinion on whether or  
 9 not the word case and judgment are similar in the context  
 10 here?  
 11 A. No. The point is that I did research and found  
 12 that they were close enough to be reasonable that it might  
 13 have--it might be that someone would misquote to those  
 14 words.  
 15 Q. Now, I take it you have not done any analysis of  
 16 any publicly available documents, like legal treatises, to  
 17 determine whether there might be another source?  
 18 A. I did not.  
 19 Q. And you cannot rule out the possibility that both  
 20 Mr. Fajardo and the Court relied on a third party's  
 21 description of the CONELEC case?  
 22 A. I don't know.  
 23 Q. Let's turn briefly to the January and June Index  
 24 Summaries.  
 25 Could you explain your conclusion regarding what

11:43 1 you call the overlap between the January and June Index  
 2 Summaries in Judge Zambrano's Decision?  
 3 A. Do you want to direct me to a specific place?  
 4 Q. Sure. Tab 24 is the January index. For the  
 5 record, that's C-1800.  
 6 A. Yes.  
 7 Q. And could you briefly explain, when you have a  
 8 moment and you are where you want to be, if you could  
 9 briefly explain your conclusion?  
 10 A. Yes. There are a number of examples in my Report  
 11 and appendix that show again mistakes, perhaps, or other  
 12 wording that tracks--that the Sentencia uses to--that  
 13 tracks with the unfiled, supposedly, Index Summaries  
 14 instead of the correct citations or whatever in the  
 15 Registro Oficio or in the Record.  
 16 Q. Thank you, Doctor.  
 17 And the January and June indices are two versions  
 18 of the same index; right?  
 19 A. The June seems to be a later version of the  
 20 January.  
 21 Q. And generally speaking, what are these indices of?  
 22 A. These are mapping out the evidence in the Record.  
 23 Q. Do you know who prepared the index?  
 24 A. No.  
 25 Q. Do you have any information whether, in fact, it

11:45 1 might have been the Court or the clerk versus the  
 2 Plaintiffs?  
 3 A. I understood they were unfiled.  
 4 Q. And what do you mean by the term "unfiled" in this  
 5 context?  
 6 A. The unfiled work product of the Plaintiffs.  
 7 Q. Well, it's an index of documents submitted to the  
 8 Court; isn't that right?  
 9 A. It's an index of documents. It's not the  
 10 documents. And that's why when there are miscitations, we  
 11 know that because, in the Record, we can look it up and see  
 12 what the actual citations are.  
 13 Q. Do you disregard the possibility that the Court  
 14 clerk may have maintained his or her own index of the  
 15 documents?  
 16 A. I have no knowledge of that.  
 17 Q. Doctor, you also concluded that Judge Zambrano  
 18 relied on data from the Selva Viva Database; isn't that  
 19 right?  
 20 A. No.  
 21 Q. You did represent in your Report that the relevant  
 22 Selva Viva data was unfiled; correct?  
 23 A. You--I just said no to your question. I didn't  
 24 assume anything about Judge Zambrano.  
 25 Q. And I, therefore, asked you a second question.

11:47 1 A. I see. And what was that? I'm sorry.  
 2 Q. Do you need the second question again?  
 3 A. I did not. Yes, please.  
 4 Q. You represented in your Report that the relevant  
 5 Selva Viva data were unfiled; correct?  
 6 A. By "relevant," do you mean the ones that I  
 7 reproduce from the Younger Report?  
 8 Q. Yes.  
 9 A. Yes. Unfiled.  
 10 Q. But as a preliminary matter, you don't contest the  
 11 fact that the Court has sampling results from the Selva  
 12 Viva Record as part of the Official Record; correct?  
 13 A. Are those what I refer to as Lab Results?  
 14 Q. Yes.  
 15 A. In, for example, Page 36 of my Report?  
 16 Q. I think my questions--the intent of my question  
 17 is, I think, pretty basic. You refer to certain references  
 18 in the Sentencia that you say are unfiled; correct? I'm  
 19 trying to do this in smaller chunks for you.  
 20 A. Let me remind you that I'm relying on the Younger  
 21 Report here.  
 22 Q. Now, you used the following examples that were  
 23 found in the Judgment: That there was an "sv"  
 24 nomenclature. You know what I'm referring to; correct?  
 25 A. Yes.

11:49 1 Q. After the data, there will be a little "s" and a  
 2 little "v"; correct?  
 3 A. Yes.  
 4 Q. Now, as a preliminary matter, you agree with me, I  
 5 presume, that the Court indisputably had some sampling  
 6 results of the Selva Viva Record that was part of the  
 7 Official Record.  
 8 A. Well, I believe these are the ones that  
 9 Mr. Younger cites as not matching the ones that are in the  
 10 Selva Viva Data Compilation and the Sentencia.  
 11 Q. Right. So, you're not--that's what I'm  
 12 saying--so, you're not disagreeing with me that the Selva  
 13 Viva Database, or parts of it, were lawfully provided as  
 14 part of the Record?  
 15 A. I have no idea. I'm just reading what I see in  
 16 Mr. Younger's report.  
 17 Q. Do you understand that at the judicial site  
 18 inspections the Parties and their experts had an  
 19 opportunity to specifically discuss the site inspection  
 20 data?  
 21 A. I have no direct knowledge of site inspections.  
 22 Q. Do you have any indirect knowledge of the site  
 23 inspections as you were preparing your Reports?  
 24 A. What would that mean?  
 25 Q. Your answer just said that you had no direct

11:51 1 knowledge, and that suggests that you might have had  
 2 indirect knowledge. So, I'm asking you what knowledge did  
 3 you have of the site inspections as you were preparing your  
 4 opinions in this case.  
 5 A. None of my opinions rely on site inspections.  
 6 Q. What is the basis for your conclusion that the  
 7 Selva Viva data, in relevant part, were not lawfully  
 8 provided to the Court?  
 9 A. As I said, I'm relying on the Younger report and  
 10 showing that his findings are congruent with my findings.  
 11 No more. And no less.  
 12 Q. Okay. But then, to be clear, you're relying on  
 13 someone else. Your own work is not establishing--strike  
 14 that. Let me put it this way: Your work--the analysis you  
 15 performed--does not establish that the Selva Viva data, in  
 16 relevant part, were not submitted to the Lago Agrio Court?  
 17 A. I have no opinion on that.  
 18 Q. You said that the--in your Report, you said that  
 19 the Clapp Report was also unfiled; correct?  
 20 A. In the same way that I said the other things were  
 21 unfiled.  
 22 Q. So, based on your own work and your own knowledge,  
 23 you don't have an opinion, one way or another, as to  
 24 whether the Clapp Report was lawfully submitted to the Lago  
 25 Agrio Court by the Plaintiffs; isn't that correct?

11:53 1 A. I'm accepting the opinions of Dr. Juola and others  
 2 as to what was and what was not "in the record."  
 3 Q. Okay. Dr. Leonard, you note in your Report that  
 4 the authors Biber, Johansson, Leech, Conrad and Finegan set  
 5 the bar for three- and four-word strings as those that  
 6 occur more than 20 times per million words and across five  
 7 different authors; is that correct?  
 8 A. What was the beginning of that? I cite that? I  
 9 state that?  
 10 Q. Yeah. We can turn to your Second Report?  
 11 A. I cite that. I state that.  
 12 Q. And you adopt that; correct?  
 13 A. Adopt it?  
 14 Q. This is your position, is it not, as well?  
 15 A. I'm using their research.  
 16 Q. You're using their research, and are you disputing  
 17 their findings?  
 18 A. No.  
 19 Q. You're adopting their findings to make your  
 20 opinions, are you not?  
 21 A. I'm--if that's what you want to call it, I'm using  
 22 their findings to inform my opinions.  
 23 Q. And three- or four-word strings are work strings  
 24 like "I don't know," "I don't think so," that are common.  
 25 A. Yes.

11:54 1 Q. And these are lexical or word bundles; correct?  
 2 A. That's correct.  
 3 Q. And they're essentially words that are--that  
 4 commonly go together in speech or in writing.  
 5 A. That's correct.  
 6 Q. And so, you conclude that if a writer were to use  
 7 a well-established lexical bundle that a prior writer also  
 8 used, it would not necessarily constitute a case of  
 9 plagiarism; is that accurate?  
 10 A. That's correct.  
 11 Q. And then five- or six-word strings become less  
 12 frequent; isn't that right?  
 13 A. They are less frequent.  
 14 Q. And then Biber et al. found that strings of seven  
 15 or more words are much less common; correct?  
 16 A. Yes, to the point of not occurring.  
 17 Q. In fact, you've said that Biber's research, and  
 18 I'm quoting--and it's on Slide 32--  
 19 A. 52?  
 20 Q. I'm sorry, Slide 52--indicates that with strings  
 21 of seven, eight or more words, the number of reoccurring  
 22 lexical bundles falls off quickly from five or six words;  
 23 that's what Biber et al. said; correct?  
 24 A. Right. Biber, by the way, but...  
 25 Q. Biber?

11:56 1 A. Yeah. Um-hmm.  
 2 Q. Don't tell him I mispronounced his name.  
 3 A. I'll try not to.  
 4 Q. And you reached the following conclusion--and it's  
 5 on Slide 53, and it's at Page 5 of your Report at Tab 2:  
 6 "Therefore," you say, "when longer strings of words are  
 7 found to be exactly or near exactly the same as in another  
 8 prior text, especially when there are multiple occurrence  
 9 of it in a matching text, this increases the likelihood of  
 10 such co-occurrence being held to constitute plagiarism  
 11 rather than being explainable by chance or as an instance  
 12 of a set phrase."  
 13 Now, isn't this conclusion a true statement based  
 14 on statistical principles?  
 15 A. Isn't which statement? The one you just quoted  
 16 from me?  
 17 Q. Yes.  
 18 A. It's an inference I'm making from a highly  
 19 computational study.  
 20 Q. Isn't Biber's conclusion based on a statistical  
 21 analysis?  
 22 A. In what sense are you using "statistical"?  
 23 Q. Well, the more words that are put together, the  
 24 less frequently it's likely that they will be replicated  
 25 elsewhere; isn't that correct, as a general matter?

11:57 1 A. Is that a statistical statement?  
 2 Q. I'm asking you. Yes.  
 3 A. No, you used the word "statistical" and you're  
 4 asking me to agree to a statement. Therefore, I'm trying  
 5 to find out what you think I should mean by statistical.  
 6 Q. I'm asking you whether or not that is based on  
 7 statistics?  
 8 A. What is? Biber's statements about five- and  
 9 six-word bundles, seven- and eight-word bundles, three- and  
 10 four-word bundles?  
 11 Q. Yes.  
 12 A. But statistics in the sense of what? I mean,  
 13 doing a statistical test of it?  
 14 Q. Let me ask it this way: As a general proposition,  
 15 sir, when an unusual event keeps repeating itself, the  
 16 likelihood that the occurrence is purely by chance  
 17 diminishes; is that right?  
 18 A. Repeat that.  
 19 Q. As a general proposition, when an unusual event  
 20 keeps repeating itself, the likelihood that the occurrence  
 21 is purely by chance diminishes?  
 22 A. If it's by definition an unlikely event, and now  
 23 it is becoming likely, the inference is what?  
 24 Q. You don't understand the question?  
 25 A. No.

11:59 1 Q. Okay. Do you have any conclusion as to the  
 2 statistical likelihood of a person repeating a lexical  
 3 bundle of 90 words that are identical to a lexical bundle  
 4 used by a person by random chance?  
 5 A. Based on Biber's research, for example, and I  
 6 don't know how you wanted to use statistics, but let me  
 7 point out that multi-word strings that co-occur usually do  
 8 so in violation of what you would statistically assume  
 9 simply by taking a bag of words and just arranging it. So,  
 10 I don't think that co-occurs more often than any other just  
 11 four random words. So, that's statistical.  
 12 So, Biber says that we do not have recurring word  
 13 strings of ten per million words that once you get much  
 14 above seven words.  
 15 So, now you asked me about a recurring word string  
 16 of how many words? 150 words?  
 17 Q. Sure.  
 18 A. Okay. And you're asking me what the statistical  
 19 probability or the probability--let's stop using the word  
 20 "statistic"--is for that to co-occur by chance in two  
 21 different documents written totally independently by two  
 22 different people?  
 23 Q. (Counsel nods.)  
 24 A. I don't know, but I would opine probably it is  
 25 vanishingly small.

12:01 1 Q. And as a general proposition, all other things  
 2 being equal, the more--the longer the word string, the more  
 3 unlikely it becomes. Would you agree with that?  
 4 A. The more likely it, "it" being--  
 5 Q. The co-occurring--  
 6 A. The co-occurring just--  
 7 Q. Being by chance?  
 8 A. Yes.  
 9 Q. Let me take a different example.  
 10 Let's say my daughter--we will make this my older  
 11 daughter, oldest daughter--has a child and names the child  
 12 Tomás, the name of my colleague. It might be by chance  
 13 that I'm naming the child after my colleague. It might not  
 14 be; correct? Expanding on the hypothetical, but if I  
 15 name--she names--she has triplets and she names them Tomás  
 16 and Doak and unusual names from this Tribunal or from this  
 17 proceeding, that becomes less by chance; would you agree  
 18 with that as a general proposition?  
 19 A. It depends on what you consider an uncommon or  
 20 unlikely name.  
 21 Q. Now, the chances that the Lago Agrio Court relied  
 22 on and quoted from the documents not properly before it  
 23 increases with the more examples you're able to find; isn't  
 24 that the case?  
 25 A. Would you repeat that?

12:02 1 Q. Mr. Bishop asked you some prefatory questions this  
 2 morning. Do you recall his questions?  
 3 A. Which question?  
 4 Q. Well, he asked you a question about one accent  
 5 plus two commas does not equal the ghostwriting of the  
 6 Judgment, and your answer was, well, it's a whole lot more  
 7 than one accent plus two commas; correct?  
 8 A. Yes.  
 9 Q. And your point there is, you had many examples of  
 10 these co-occurrences, and that factored into your  
 11 decision-making; isn't that also correct? In fact, you  
 12 were asked by Mr. Bishop to compare this case to other  
 13 cases, and you did based on the amount of lexical bundles  
 14 or the number of lexical bundles.  
 15 A. The number of lexical bundles?  
 16 Q. That were duplicated in the Sentencia versus what  
 17 you refer to as the unfiled work product.  
 18 A. 150-word string is not a lexical bundle. "Lexical  
 19 bundle" is a technical term, and it means something that  
 20 co-occurs--that recurs--in a specific text type. Five to  
 21 six words is 20 times--ten times per million words, three  
 22 to four 20 times per million words. So, 150-word string is  
 23 not a lexical bundle, unless you want to use some other  
 24 made-up--I mean, "lexical" means word, "bundle" could mean  
 25 a string, I guess, of any length, but the technical term by

12:04 1 Biber that you kept asking me about, 150-word, there is no  
2 such thing.  
3 Q. Can you answer the question I asked you?  
4 A. I'm trying.  
5 Q. Do you recall being asked by Mr. Bishop this  
6 morning to compare the overlap--  
7 A. Yes.  
8 Q. --between the Sentencia and the so-called "unfiled  
9 work product"? Do you remember that line of questions?  
10 A. Yes. You then characterized 150 words.  
11 Q. My question was whether you recall it, and I'm  
12 trying to get answers.  
13 A. I recall it.  
14 Q. Okay. So, now let's go to the next step.  
15 Do you recall Mr. Bishop asking you why, in your  
16 opinion, the evidence was more overwhelming here than  
17 elsewhere? Do you recall that?  
18 A. I do.  
19 Q. Do you recall the fact that you specifically  
20 relied upon the extent of the overlap as one factor between  
21 the Sentencia and the so-called "unfiled work product"?  
22 A. Yes.  
23 Q. And if the Tribunal were to conclude that the  
24 Fusi3n Memo had been lawfully submitted to the Court during  
25 a judicial inspection openly and transparently, there would

12:05 1 be one fewer example of an unfiled document relied on by  
2 the Court; isn't that correct?  
3 A. If a document that is now considered to be unfiled  
4 is filed, then that will change the--not the copying  
5 aspect, but presumably--well, I don't really know about the  
6 plagiarism aspect. Is that what you're asking me about?  
7 Q. Well, it would be--all I asked was--that would, of  
8 course, be one fewer example of an unfiled document;  
9 correct? If it's--if you've learned--  
10 A. Oh, yes, sorry. So, if we have six documents that  
11 are unfiled, and we take away one, we have five. Correct.  
12 Q. And if the Tribunal were to conclude that the  
13 Clapp Memo had been submitted to the Court during a  
14 judicial site inspection openly and transparently, there  
15 would again be one fewer example of an unfiled document  
16 relied on by the Court?  
17 A. In that hypothetical, yes.  
18 Q. And the fewer examples of unfiled work product  
19 being used by the Court would impact your analysis?  
20 A. Well, remember, we have an overabundance of  
21 evidence pointing a specific direction, so--  
22 Q. My question wasn't whether it would affect your  
23 conclusion. My question was whether it would affect your  
24 analysis. You would certainly take into account, would you  
25 not, that some of these documents were lawfully filed, if

12:07 1 that's what we discovered?  
2 A. My analysis is of common authorship, so, it would  
3 have no effect.  
4 MR. BLOOM: No further questions.  
5 PRESIDENT VEEDER: Thank you very much.  
6 There will now be some questions from the  
7 Claimants.  
8 MR. BISHOP: Mr. President, I wonder if we could  
9 take a very short break.  
10 PRESIDENT VEEDER: Of course we could.  
11 MR. BISHOP: For comfort reasons.  
12 PRESIDENT VEEDER: Again, I just want some idea of  
13 how long you might be in your redirect.  
14 MR. BISHOP: I don't expect to be very long at  
15 all. I would just like to--  
16 PRESIDENT VEEDER: Let's take 15 minutes.  
17 MR. BISHOP: Okay.  
18 PRESIDENT VEEDER: So, we will come back here at  
19 25 past 12:00.  
20 Please don't talk about the case, Dr. Leonard, to  
21 anybody away from the Tribunal.  
22 THE WITNESS: I understand.  
23 (Brief recess.)  
24 MR. BISHOP: This is going to be short redirect,  
25 Mr. President: I have no questions.

12:34 1 So, thank you.  
2 PRESIDENT VEEDER: Dr. Leonard, the Tribunal also  
3 have no questions. We thank you for coming to assist the  
4 Tribunal as an expert witness, and you may leave the table.  
5 THE WITNESS: Thank you very much.  
6 (Witness steps down.)  
7 PRESIDENT VEEDER: Shall we move on to the next  
8 witness?  
9 MR. BISHOP: I think it would be appropriate to  
10 take our lunch break now, and that's what we would prefer,  
11 if that would be all right for the Tribunal.  
12 PRESIDENT VEEDER: For the Respondent, is that  
13 convenient?  
14 MR. BLOOM: I will defer. Obviously, I would like  
15 to move as quickly as possible, but we will come back in an  
16 hour.  
17 PRESIDENT VEEDER: Come back at 20 past 1:00, so  
18 we will just have the usual hour's break.  
19 MR. BLOOM: I will defer.  
20 PRESIDENT VEEDER: Let's do that. Let's adjourn  
21 and come back at 20 past 1:00.  
22 MR. BISHOP: Thank you.  
23 (Whereupon, at 12:20 p.m., the Hearing was  
24 adjourned until 1:20 a.m., the same day.)  
25

1 AFTERNOON SESSION  
 2 PATRICK JUOLA, CLAIMANTS' WITNESS, CALLED  
 3 PRESIDENT VEEDER: Let's resume.  
 4 Before we move on to the next witness, do we need  
 5 to address anything arising from this morning in regard to  
 6 Dr. Lynch?  
 7 MS. MOUAWAD: As I understand it, we have shared  
 8 with Respondent's counsel the text that Mr. Lynch would  
 9 testify to, and I believe that we are consulting with them.  
 10 PRESIDENT VEEDER: Thank you very much.  
 11 MR. EWING: That is correct. I've passed it on to  
 12 our experts to figure out what we need to do from here, and  
 13 we'll get back to you as soon as we know more.  
 14 PRESIDENT VEEDER: Thank you.  
 15 We move on to our next witness, Mr. Juola. Thank  
 16 you for coming to be an expert witness in these  
 17 proceedings.  
 18 You will see a form of words on the Declaration  
 19 before you; and if you will, could you state your full name  
 20 and then give the Declaration in that writing.  
 21 THE WITNESS: My name is Patrick Juola, and I  
 22 solemnly declare upon my honor and conscience that I shall  
 23 speak the truth, the whole truth, and nothing but the  
 24 truth, and that my statement will be in accordance with my  
 25 sincere belief.

01:20 1 PRESIDENT VEEDER: Thank you very much.  
 2 We'll have questions first from the Claimants.  
 3 MS. MOUAWAD: Thank you, Mr. Chairman.  
 4 DIRECT EXAMINATION  
 5 BY MS. MOUAWAD:  
 6 Q. Dr. Juola, good afternoon.  
 7 A. Good afternoon.  
 8 Q. Now, you have given four expert reports that have  
 9 been filed in this case; correct?  
 10 A. That is correct.  
 11 Q. And I've put those reports in front of you in the  
 12 notebook jobbing and that's also been passed out to the  
 13 Members of the Tribunal and to Respondent's counsel. Do  
 14 you have any corrections to these Reports?  
 15 A. I do not.  
 16 Q. Do you affirm that the opinions in your reports  
 17 represent your sincere and genuine beliefs?  
 18 A. I do.  
 19 Q. Now, Dr. Juola, what educational and professional  
 20 qualifications do you have to render the opinions in your  
 21 Reports?  
 22 A. Well, I am a professor of computer science at  
 23 Duquesne University in Pittsburgh, Pennsylvania. Prior to  
 24 that, I was a postdoctoral researcher in experimental  
 25 psychology at the University of Oxford in the United

01:21 1 Kingdom.  
 2 Prior to that, I was a graduate student at the  
 3 University of Colorado at Boulder in the computer science  
 4 department, where I completed a Ph.D. thesis in  
 5 computational linguistics and received a degree in  
 6 cognitive science as well.  
 7 I also run a small start-up consulting company  
 8 called Juola and Associates that specialize in text  
 9 analysis for, among other things, forensic purposes  
 10 providing text classification and analytic technology for  
 11 the benefit of the judiciary--well, for the benefit of the  
 12 justice system generally.  
 13 I am an active participant in the relevant  
 14 political--in the relevant professional organizations, and  
 15 I have approximately 50 publications in the area of  
 16 artificial intelligence and computational linguistics and  
 17 forensic linguistics.  
 18 Q. And what is computational linguistics?  
 19 A. Computational linguistics is the study of human  
 20 languages performed by or with the aid of a computer.  
 21 Q. So, what were you asked to do for Chevron in this  
 22 case?  
 23 A. Well, as you will recall from this morning's  
 24 testimony, there were a number of lexical overlaps  
 25 identified by Dr. Leonard, among others, that had been

01:22 1 shared between the Judgment in the Lago Agrio Case and  
 2 various documents that were believed not to have been filed  
 3 in the Court Record.  
 4 I was tasked with determining whether, in fact,  
 5 these passages had any source in the Court Record from  
 6 which they could have derived. Less formally I was asked  
 7 to compare these passages to the Court Record and find  
 8 them, if possible.  
 9 Q. And on Slide 3, are these the documents, the  
 10 Plaintiffs' work-product documents from which the  
 11 overlapping text that you searched for in the Court Record  
 12 came from?  
 13 A. Those are the eight documents.  
 14 Q. And what conclusions did you reach?  
 15 A. I reached the conclusions that those documents  
 16 were not in the Court Record.  
 17 Q. Okay. So, Dr. Juola, I'd like to break it down  
 18 and walk through each one of your Reports. Let's start  
 19 with your first report which is dated December 20, 2011,  
 20 and was submitted as Exhibit C-1007.  
 21 What were you asked to do in this First Report?  
 22 A. I was asked to determine whether the overlapping  
 23 texts between the Judgment and the Plaintiffs' work-product  
 24 documents that had been identified in a number of expert  
 25 reports, a report by Dr. Leonard, a report by Dr. Turrell



01:24 1 and a report by Mr. Younger could be found in the more than  
2 216,000-page Court Record.  
3 Q. And what were the Plaintiffs' work-product  
4 documents that were at issue in your First Report?  
5 A. There were four of them. There was the Fusión  
6 Memo, there were the index summaries, there was the Draft  
7 Alegato, and there was the Selva Viva Database.  
8 Q. When you say Lago Agrio Court Record, what do you  
9 mean in the context of your First Report?  
10 A. In the context of this Report, my understanding is  
11 that the Record in the Lago Agrio Case is kept on paper  
12 down in Ecuador. As part of their procedures, this record  
13 was photocopied and converted into electronic image files  
14 as well as files containing the text of the documents, and  
15 this was what I received.  
16 Q. Is this what you referred to in your December 2011  
17 report as the entire Court Record?  
18 A. It is.  
19 Q. Who gave you a copy of the Court Record on--who  
20 gave you a copy of the Court Record?  
21 A. I received it from counsel for Chevron.  
22 Q. And which counsel is that?  
23 A. That would be Gibson Dunn & Crutcher.  
24 Q. How do you know that the copy of the Court Record  
25 that Gibson Dunn gave you is, in fact, or was, in fact, the

01:25 1 Lago Agrio Court Record?  
2 A. It was so represented to me.  
3 Q. Did you independently verify that what you were  
4 told was the Court Record was, in fact, the entire Court  
5 Record?  
6 A. I did not.  
7 Q. Why not?  
8 A. The services that Juola and Associates provide  
9 focus on computational text analysis, and so it wasn't  
10 within the scope of what we do.  
11 Q. Is this something that you would typically do?  
12 A. No, it is not.  
13 Q. So, what conclusion did you reach in your First  
14 Report of December 2011?  
15 A. That the passages in question were not in the  
16 Court Record.  
17 Q. You then submitted a Second Report dated  
18 January 27, 2013, and that was submitted in this  
19 arbitration as Exhibit C-1635.  
20 What were you asked to do in your Second Report?  
21 A. There had been some additional documents that had  
22 come to light in the intervening period and also some  
23 additional overlaps that had been identified, so we were  
24 asked to again search the Court Record after reviewing  
25 these new reports of Dr. Leonard and Mr. Younger and

01:26 1 determine whether any of the overlapping texts identified  
2 in these Reports could be found in the more than  
3 216,000-and page Court Record.  
4 Q. So, what were the Plaintiffs' work-product  
5 documents that were at issue in your Second Report?  
6 A. Well, there was the original four that had been  
7 addressed in the First Report. There were also added to  
8 that the Clapp Report and the Fajardo Trust e-mail.  
9 Q. What conclusion did you reach in your Second  
10 Report?  
11 A. I reached the conclusion that the overlaps cited  
12 by Dr. Leonard and Mr. Younger were not in the Court  
13 Record.  
14 Q. Your January 2013 report also examines the quality  
15 of the OCR process that was applied to the TIFF images?  
16 A. That is correct.  
17 Q. Well, first of all, what is OCR process?  
18 A. OCR is an acronym for optical character  
19 recognition. It's basically the process by which a  
20 computer will look at the little blobs of ink on a  
21 photocopy or the little ones and zeros in an image file and  
22 say this blob in conjunction with that blob and that third  
23 blob together look like it's a C, so I'm going to convert  
24 that into the machine-readable letter C.  
25 Q. Okay. And so, what was the scope of your work

01:28 1 with respect to the OCR quality and assessing the OCR  
2 quality?  
3 A. The criticism had been raised that, because OCR  
4 can produce errors, we might have missed some matches that  
5 were actually in the Court Record, so we ran some  
6 experiments to determine whether or not this was, in fact,  
7 a realistic possibility whether we could have missed any of  
8 the matches.  
9 Q. Why didn't you perform these quality checks with  
10 your First Report of December 2011?  
11 A. Well, to some extent, we had, and that's actually  
12 alluded to briefly in one sentence in my first report, but  
13 the criticism had been raised, so we felt it was  
14 appropriate to address it more formally using more  
15 statistics.  
16 And, frankly, we didn't think it was necessary on  
17 the basis of our original analysis and on the basis of the  
18 full analysis that we performed for this. I confirmed that  
19 it was not, in fact, necessary for the first one. The OCR  
20 was extremely high quality overall, and the overlapping  
21 texts are still not in the Record.  
22 Q. You then submitted a Third Report dated June 3rd,  
23 2013. What were you asked to do in your Third Report?  
24 A. Well, again, some--it transpired that there were  
25 some documents that were part of the Court Record that had

01:29 1 not been part of the paper Court Record. They had actually  
 2 been stored as a set of 69 CDs, and so I was asked to  
 3 examine the same set of overlaps as the previous report  
 4 against the documents contained in the 69 CDs.  
 5 Q. So, were the Plaintiffs' work-product documents at  
 6 issue in this Report the same ones as in the Second Report?  
 7 A. That is correct. They're the same ones as the  
 8 Second Report.  
 9 Q. Okay. And who gave you a copy of the CDs, the  
 10 content of the CDs?  
 11 A. Again, that was counsel for Chevron.  
 12 Q. Is it your understanding that these 69 CDs are  
 13 also part of the Lago Agrio Court Record?  
 14 A. That is my understanding.  
 15 Q. Is this what you referred to in your June 2013  
 16 report as the augmented record?  
 17 A. That is correct.  
 18 Q. Does the existence of the 69 CDs have any impact  
 19 on the conclusions that you reached in your Second Report  
 20 and in your First Report?  
 21 A. It does not. My First Report and Second Report  
 22 concluded that they were not in the Record paper Record,  
 23 the overlaps were not in the paper record, and the overlaps  
 24 are still not in the paper record. In addition in this  
 25 report, I concluded that the overlaps are not in the

01:30 1 extended record of the CDs, so they're not in either part  
 2 of the Record, so they're still not in the Record.  
 3 Q. Okay. You then prepared a Fourth Report dated  
 4 August 12, 2014. What were you asked to do in that report?  
 5 A. Again, some new documents had come to life--to  
 6 light, excuse me. There were two legal memoranda that  
 7 seemed to share certain legal assertions and also legal  
 8 citations with a temporary file and ultimately with the  
 9 Judgment, and I was asked to examine whether these legal  
 10 memoranda--these legal memoranda could have been found in  
 11 the Court Record, and also whether these assertions and  
 12 citations could be found in the Court Record from which the  
 13 author of the Judgment might have drawn them.  
 14 Q. And what were the memoranda that you were  
 15 examining in your Fourth Report?  
 16 A. One of them was called the Erion memo and the  
 17 other was called the Moodie Memo.  
 18 Q. And what did you conclude?  
 19 A. That these were not in the Court Record, nor were  
 20 the assertions nor were the citations.  
 21 Q. Dr. Juola, for these four reports, did you use the  
 22 same general approach, analytical approach?  
 23 A. I did.  
 24 Q. Can you describe to us your general approach? How  
 25 did you go about comparing the overlapping texts identified

01:32 1 by the other experts to the Court Record?  
 2 A. Well, the first thing that was necessary was to  
 3 normalize all of the texts--this is the procedure that we  
 4 followed from the beginning specifically to remove the  
 5 effect of OCR errors that might introduce minor changes  
 6 into the text.  
 7 So, for example, one of the easiest ways for a  
 8 text to change is for a stray bit of dirt to appear on a  
 9 document and then be misread as a period, a comma, an  
 10 accent mark, something like this.  
 11 So, our first step was to strip out of the of the  
 12 documents the accent marks, the diacritical marks and the  
 13 punctuation marks, leaving only the actual letter forms.  
 14 The second step was similarly to take all of the  
 15 capital letters and reduce them down to the lower  
 16 case--their lower case equivalent. So, I ended up with a  
 17 normalized form. This normalized form is a conservative  
 18 method of text analysis to reduce any impact that the OCR  
 19 process would have on the final outcome.  
 20 Q. And just to be clear, this was something that you  
 21 did with your First Report as well, your very first report;  
 22 is that correct?  
 23 A. That is correct. We did this with the First  
 24 Report.  
 25 Q. And why do you call this a "conservative" measure?

01:33 1 A. Because it will make sure that we are more likely  
 2 to catch genuine matches at the expense of possibly finding  
 3 a match where there is not one because there was actually a  
 4 real difference in punctuation, for example.  
 5 Q. Okay. So, once you have the overlapping text  
 6 stripped of punctuation marks and accent marks and  
 7 capitalization, what did you do with it?  
 8 A. What we did with it then was we broke it down into  
 9 five word chunks. These are formally called 5-grams. So,  
 10 for example, in this passage which is an actual passage  
 11 taken from Leonard's first example, the first 5-gram is, as  
 12 you see, and then there is another 5-gram immediately  
 13 following it and another immediately following it and so  
 14 on. And then once we have broken all of the passages down  
 15 into their component 5-grams and all of the documents in  
 16 the Court Record down into their component 5-grams, we  
 17 compared to see whether any 5-grams were shared across any  
 18 of these documents and, if so, where they were shared.  
 19 Q. Now, when you say you compared to all 5-grams in  
 20 the Court Record, how many 5-grams does that represent in  
 21 the Record of 216,000 and some pages?  
 22 A. Oh, millions.  
 23 Q. Okay. So, then you compare--why did you choose  
 24 5-grams and not 7-grams or 8-grams?  
 25 A. Well, as Dr. Leonard testified earlier, there is

01:35 1 always a certain degree of linguistic overlap that is to be  
 2 expected either by chance or from what he termed "lexical  
 3 bundles," so lexical overlaps starts to be interesting  
 4 about when it hits the seven-character level.  
 5 So, again this was a conservative procedure. We  
 6 were looking for all overlaps of five words or more,  
 7 knowing that most of the overlaps that we found that were  
 8 only five words long would not be interesting, but if it we  
 9 found several five word overlaps in a row, as in for  
 10 example, in this passage here, if we found all five of  
 11 these, we would then stitch them together to make an  
 12 overlapping--to make a 9-gram overlap representing the fact  
 13 that this is a nine-word phrase comprised of several  
 14 five-word phrases and nine words--nine words is likely to  
 15 be a significant and interesting overlap.  
 16 Q. And just to clarify, when you are referring to  
 17 "grams," that refers to words, not characters; correct?  
 18 A. In this context, it is referring to words.  
 19 Q. Okay. And did you find any 9-gram overlaps  
 20 between the Court Record and the passages identified by the  
 21 other Experts?  
 22 A. We found no significant 9-grams in the--between  
 23 the overlaps and the Court Record.  
 24 Q. Did you find any overlaps between the Court Record  
 25 and the passages identified by the Experts that were longer

01:38 1 with the only way you could get a shorter overlap being  
 2 with a longer overlap on the other page.  
 3 So, we would see at least one 20-gram and another  
 4 up to 20-gram if this were overlapping.  
 5 And, of course, this is only an excerpt from  
 6 Example 1. In Example 1, what we really had was about 90  
 7 words of overlaps, so we would have seen a 45-gram and  
 8 another 45-gram if that passage existed somewhere in the  
 9 Record.  
 10 Q. Did you find any 45-grams or any significant  
 11 45-gram overlaps in your analysis of the Court Record?  
 12 A. I did not.  
 13 Q. In your Expert Opinion, could the phrases  
 14 identified by Dr. Leonard and the other Experts be  
 15 explained by a source document in the Court Record?  
 16 A. They could not.  
 17 Q. Now, I want to go back and talk about the Court  
 18 Record that you received. In what format did you received  
 19 the 216,000 page Court Record that you used for your  
 20 analysis?  
 21 A. We actually received the Court Record in two  
 22 different formats. As I testified earlier, my  
 23 understanding is the original is kept on paper. The first  
 24 step in producing the electronic copy was to make TIFF  
 25 images, document images which are essentially photographs

01:36 1 than 9-grams?  
 2 A. We found no significant shared overlaps between  
 3 the Court Record and the relevant passages that were longer  
 4 than nine words, either.  
 5 Q. So, given your process of breaking down the entire  
 6 Court Record and the overlaps and successive 5-grams, would  
 7 it make a difference or would it impact your reading of the  
 8 Court Record if the pages of the Lago Agrio Record were  
 9 misnumbered or unnumbered?  
 10 A. It would not.  
 11 Q. Would it impact your reading of the Court Record  
 12 if the pages of the Lago Agrio Record were out of sequence?  
 13 A. It would not.  
 14 Q. Could you elaborate on that?  
 15 A. Certainly. Let's imagine for a moment that this  
 16 passage were actually found somewhere in the Court Record,  
 17 but it were found across two pages, and these two pages had  
 18 for whatever reason become misfiled so they were widely  
 19 separated.  
 20 Well, in this case, this is a passage of about 40  
 21 words taken from a large passage of about 90 words. But  
 22 just focusing on these 40 words, at least 20 of them have  
 23 to be on one page, so there would be an at least  
 24 20-word--20-gram that would have been found. And then on  
 25 the other page, there would be up to a 20-word overlap,

01:39 1 of the relevant page. But then in order to facilitate  
 2 computer analysis, these were converted to a readable text  
 3 version, like a .txt file, via a process called optical  
 4 character recognition. So we received both the TIFF images  
 5 and the text versions of these TIFF images.  
 6 Q. You told us earlier that as part of your Second  
 7 Report of January 2013, you ran some analysis to assess the  
 8 quality of the OCR process that converted the TIFF images  
 9 into readable text. How many analyses did you do?  
 10 A. We ran three additional analyses in all.  
 11 Q. Would you tell us about the first one, please?  
 12 A. Certainly.  
 13 The first one was just an assessment on a document  
 14 by document basis to determine whether each document  
 15 contained a reasonable representation of Spanish text and,  
 16 therefore, a faithful representation of the actual contents  
 17 of the document.  
 18 So, to do this, we took each document in its  
 19 textual format, and we compared that against a corpus that  
 20 we had developed based on high quality, well curated  
 21 documents from public sources. For example, we took the  
 22 entire Wikipedia corpus in Spanish, we took the UN Multex  
 23 corpus, the Spanish section, which is essentially all of  
 24 the documents produced by the UN over a particular period  
 25 in their Spanish versions, and we took the Google Books

01:41 1 N-gram database for Spanish, which is essentially all of  
2 the Spanish documents that have been read by Google Books  
3 in the process of their compiling of this.  
4 So, we had this huge corpus that was a relatively  
5 faithful representation of the vocabulary and syntax of  
6 Spanish as collected by everyone who has been writing  
7 Spanish over quite an extended period of time and  
8 publishing it in one of these fora.  
9 Q. And what did you do with that information? Once  
10 you had the Spanish corpus, how did you use it to assess  
11 the quality of the OCR?  
12 A. Well, we did what amounts to a frequency analysis  
13 between each document and the Spanish corpus. Some words  
14 in Spanish, for example, are very frequent, some words are  
15 less frequent, some words are very rare, and some things  
16 that aren't words at all are, of course, even rarer.  
17 So, the question is, in this particular document,  
18 do the common Spanish words appear commonly, do the rare  
19 Spanish words appear rarely, do the non-words appear  
20 extremely rarely? Does the frequency of words or the  
21 frequency of characters or the frequency of word pairs--we  
22 actually ran several different analyses to determine this.  
23 Do they match with the expected distribution as measured  
24 from this corpus of billions of words of Spanish as  
25 collected by these public sources.

01:42 1 Q. So, what did you find as a result of this  
2 analysis?  
3 A. We actually found that the overall quality of the  
4 OCR was quite good. About 98.5 percent of these documents  
5 contained what we considered to be high quality Spanish.  
6 They were Spanish of the quality that you see in the Google  
7 Books N-grams or the UN documents or Wikipedia, so about  
8 98.5 percent of these documents were good, which was a much  
9 higher percentage than we would have expected or than  
10 statistical theory would have led us to believe was the  
11 case.  
12 Of course, this leaves about 1.5 percent that did  
13 not contain good Spanish, and we reserved these 1.5 percent  
14 non-Spanish documents for another analysis.  
15 Q. What do you mean by non-Spanish documents?  
16 A. Well, I mean documents that did not contain  
17 Spanish. That is to say, the text extracted by the  
18 computer did not match Spanish text. This did not  
19 necessarily mean that they were badly OCR'ed Spanish  
20 documents. For example, if you look at Sample 1, Sample 1  
21 is actually a relatively clean document that would have  
22 OCR'ed relatively well, but the document itself is in  
23 English; so, if you look at the text extracted from it, it  
24 does not contain the common words that we expect to contain  
25 commonly in Spanish, and instead contains words that rarely

01:44 1 appear in Spanish like "the."  
2 So, this would have been a non-Spanish text  
3 because it was not in Spanish, but because it was in  
4 English.  
5 Another example of a non-Spanish text would have  
6 been Document Number 2. Now, this one would have been more  
7 difficult to OCR because it's in tabular format and it's  
8 got all of these lines which will introduce errors, but  
9 beyond that, this is not Spanish text. This is a table,  
10 and so it lacks verbs, it lacks articles, it lacks the  
11 ordinary structure of what we would expect to see in a  
12 Spanish document, so this was also thrown up as a  
13 non-Spanish document.  
14 This example is a handwritten form, now, this is  
15 actually a Spanish document, but it is handwritten.  
16 Handwriting is something that does not OCR very well.  
17 Handwriting analysis is a very difficult problem for  
18 computers, but on the other hand, this is not the sort of  
19 document that would contain, for example, the Fajardo Trust  
20 e-mail because the Fajardo Trust e-mail would not have been  
21 written by hand.  
22 Again, this is a non-Spanish document because the  
23 OCR that ran on it did not produce something that the  
24 computer considered to be similar to Spanish.  
25 And, finally, Example 4 is an example of a

01:45 1 non-Spanish document because this is basically a  
2 non-textual document. This is a map or an aerial  
3 photograph. This is a diagram, and there is very little  
4 text in it. What there are, are there are random blobs  
5 that the computer will say, well, this blob and this blob  
6 and this blob together kind of look like a "C," so I'm  
7 going to assume it's a "C."  
8 Q. So, just to be clear, is this what you refer to,  
9 this kind of image, once it's OCR'ed, is that what you  
10 refer to in your Report as something that would produce  
11 gobbledygook?  
12 A. Exactly.  
13 Q. So, tell us exactly in your words what you mean by  
14 "gobbledygook"?  
15 A. Gobbledygook is text that, when you look at it,  
16 does not bear any relationship to any known human language.  
17 It doesn't have recognizable words. It usually doesn't  
18 have recognizable words at all. Most of the time it's just  
19 random collections of punctuation marks and similar  
20 symbols.  
21 Q. Can you show us an example?  
22 A. Certainly, I'd be happy to.  
23 This is an example of gobbledygook. If you look  
24 at the document on the left, that is the OCR extracted from  
25 the document--sorry, that is the text extracted via OCR

01:46 1 from the document on the right, and specifically the area  
2 described within the red box. And you can see that much of  
3 that text is not English, it's not Spanish, it's not any  
4 language at all.

5 Q. Are the Plaintiffs' work-product documents that  
6 you were looking for in the Court Record the types of  
7 documents that would produce something like what we see on  
8 the left of the screen?

9 A. No. The Plaintiffs' work-product documents under  
10 discussion are all essentially machine-written born digital  
11 documents that would typeset very cleanly. They did not  
12 contain large amounts of diagrams. In most cases, they  
13 didn't have any diagrams at all, so, they would have OCR'ed  
14 extremely cleanly and they would have produced--they would  
15 not have produced gobbledygook.

16 Q. Did you do any further analysis on that  
17 1.5 percent of non-Spanish text documents?

18 A. I did.

19 Q. What did you do?

20 A. I actually did--undertook a manual review of each  
21 of the page images associated with those documents. So,  
22 for every document that had--that had non-Spanish OCR, I  
23 actually looked at the original TIFF images. I looked at  
24 the document image to see whether that particular page  
25 could be a source for the passages identified in Leonard's

01:49 1 OCR process, and what you will actually notice is that the  
2 section that is handwritten does not OCR well, but you can  
3 actually see, for example, at the very bottom of the--at  
4 the very bottom of the red box and also at the very bottom  
5 of the window on the left, you can see that the parts of  
6 the document that are actually typeset generally OCR well.  
7 Now, while this is not always the case--for example, you  
8 can have, like, a stamp, one of the stamps on it that will  
9 produce localized errors in general. You will find that  
10 these--you will find that the typeset parts of documents  
11 still OCR well, even when there are parts of a specific  
12 page that do not OCR well.

13 Another example of that would be in the next  
14 slide, if I remember correctly. This is the aerial  
15 photograph which, of course, does not OCR well at all. And  
16 you can see that on the left, it doesn't really produce  
17 text except when it's analyzing actual parts of the image  
18 that have text. So, it very clearly and correctly  
19 identifies the title of this image. It very clearly and  
20 correctly identifies the Number 17 at the bottom, and it  
21 even clearly and mostly correctly identifies that little  
22 strip of words at the bottom of the image describing where  
23 it came--where and when it came from.

24 Q. Now, if there is an image that also has text just  
25 like what we're looking at now, where it's a hybrid page,

01:48 1 Report.

2 Q. How many documents does that 1.5 percent  
3 represent?

4 A. How many documents? About 50. I actually did,  
5 again, a conservative procedure, and I ended up looking at  
6 about 150 documents, so about three times as many were  
7 actually within that 1.5 percent.

8 Q. And did you do the manual review all yourself?

9 A. I did. I did a complete manual review of those  
10 documents by myself, but in addition there was an  
11 additional manual review done by a member of my staff, so  
12 we had at least two pairs of eyeballs look at every  
13 document image within this 1.5 percent.

14 Q. And just to be clear, what you are looking at in  
15 your manual review is the original TIFF image, not the OCR  
16 text readable that's been--none of the text readable  
17 version that was produced by the OCR?

18 A. That is correct. We looked at the original TIFF  
19 image.

20 Q. Can we take a look at an example from your list?  
21 I think you listed--documents that you manually reviewed  
22 are listed in Appendix B of your January 2013 report. So,  
23 I'd like to turn your attention to what's on the screen, if  
24 you can describe to the Tribunal what we are looking at.

25 A. Well, what you are looking at is the outcome of an

01:51 1 for example, it would have a chart and text on it, is it  
2 your opinion that your computer would have read the text in  
3 its initial review of the Court Record?

4 A. It is, because as you can see, the text gets  
5 extracted accurately, so the computer would have seen  
6 the--would have seen the Number 00000017 in the initial  
7 review because that Number 17 was correctly picked up.

8 Q. Did you do any further analysis on the  
9 98.5 percent that you identified as Spanish text?

10 A. I did.

11 Q. What did you do?

12 A. Well, taking seriously the criticism that there  
13 might be OCR errors and that these OCR errors might have  
14 hidden the relevant passages in question, we did an  
15 experiment to determine how high a level of OCR errors  
16 would be necessary to mask these passages.

17 So, we looked specifically at measuring the level  
18 of OCR necessary to hide these within the OCR images that  
19 we saw.

20 Now, to put things in perspective, all OCR has  
21 errors. This is inevitable. Good OCR will have an error  
22 rate of approximately 1 percent, which is to say one  
23 character out of about 100 will be misread. Bad OCR will  
24 have an error rate of about 5 to 10 percent, sometimes as  
25 high as 20 percent OCR, but these--this is the kind of

01:52 1 stuff that we would be looking about if we're talking  
 2 typically about bad OCR.  
 3 In order to mask the relevant passages, our tests  
 4 showed that we would have needed an OCR error rate of  
 5 between 50 and 60 percent, so almost three times what would  
 6 constitute a bad OCR would be necessary for our  
 7 computational analysis to have missed this.  
 8 Q. And is that a plausible percentage in terms of bad  
 9 OCR?  
 10 A. I do not consider 50 percent to be a plausible  
 11 percentage for bad OCR.  
 12 Q. So, what did these three analyses that you did on  
 13 the quality of the OCR lead you to conclude?  
 14 A. Well, they led me to two specific conclusions.  
 15 The first is that, as I said earlier, the OCR applied to  
 16 the documents in the Lago Agrio Court Record is of  
 17 generally extremely high quality. And the second  
 18 conclusion is, again, support of the previous three, which  
 19 is that the Lago Agrio Plaintiffs' work product cannot be  
 20 found in the Lago Agrio Court Record.  
 21 Q. And Dr. Juola, you were in the room this morning  
 22 when Dr. Leonard testified; correct?  
 23 A. I was.  
 24 Q. Do you remember the back and forth between  
 25 Mr. Bloom and Dr. Leonard about the 39 motions that Chevron

01:54 1 filed? Do you remember that part of the testimony?  
 2 A. I do.  
 3 Q. If we could pull that up. It's Exhibit R-182, and  
 4 it was on Page 4 of Dr. Leonard's Cross-Examination Bundle.  
 5 Just bear with us.  
 6 And do you remember that Mr. Bloom represented to  
 7 Dr. Leonard that the four motions at the bottom, the last  
 8 four, the one filed at 5:45, 5:46, 5:47 and 5:48, were not  
 9 found in the Court Record? Do you remember that?  
 10 A. I remember him making a statement to that effect.  
 11 Q. Okay. So, I would like to take you to some of  
 12 documents on the Record that you reviewed, Dr. Juola, and  
 13 that's Exhibit R-1545, which is the Court Record that you  
 14 received from Gibson Dunn, which was produced to  
 15 Respondent, and that Respondent put in the Record a week or  
 16 two ago. So, this first document is TEMPS0003303, and I  
 17 would like to draw your attention to the top of the page  
 18 where it says the name Adolfo Callejas.  
 19 Do you see that?  
 20 A. I do.  
 21 MR. BLOOM: Do we have a copy of these exhibits?  
 22 MS. MOUAWAD: It's in--I don't have a copy. I  
 23 didn't have a chance to make a copy. But we're happy to  
 24 get one printed out for you.  
 25 PRESIDENT VEEDER: Just stop a second. What is

01:55 1 the Witness going to be shown?  
 2 MS. MOUAWAD: I'm going to show him just the last  
 3 page which has the Record date and stamp on the--  
 4 PRESIDENT VEEDER: Does the Respondent have this?  
 5 Do we have this?  
 6 MS. MOUAWAD: It's an exhibit that they put in the  
 7 Record.  
 8 PRESIDENT VEEDER: Oh, it's their exhibit?  
 9 MS. MOUAWAD: Yes.  
 10 PRESIDENT VEEDER: So, we're getting back to  
 11 R-1945?  
 12 MS. MOUAWAD: Yeah, this is what we're looking at.  
 13 PRESIDENT VEEDER: Okay. Thank you.  
 14 MS. MOUAWAD: It's within that, I'm sorry.  
 15 It's--there are two different cites to it. One is--it's  
 16 TEMP--sorry, TEMPS0003303. That's the name of the file  
 17 within R-1545.  
 18 It also appears separately as Exhibit R-1544.  
 19 Which I'll explain in a minute.  
 20 BY MS. MOUAWAD:  
 21 Q. So I would like to turn your attention to the last  
 22 page, and specifically to the Court stamp. You'll see that  
 23 the date says the 14th of October 2010 at 17:45, which is  
 24 5:45 p.m., correct? Do you see that language?  
 25 A. Yes, I do.

01:56 1 Q. Okay. And this is something that was from  
 2 your--the Court Record that you received. That document  
 3 was on the Court Record that you received and reviewed.  
 4 A. Yes.  
 5 Q. All right. So, I would like to take you now to  
 6 still R-1545, and within it the file name is TEMPS0003306.  
 7 And again, on the first line, do you see the same Adolfo  
 8 Callejas?  
 9 A. I do.  
 10 Q. Which I represent to you is the name of Chevron's  
 11 Ecuadorian counsel.  
 12 If we could go to the last page, again to the  
 13 Court stamp, do you see the date as being the 14th of  
 14 October 2010? Do you see that on the screen?  
 15 A. I do.  
 16 Q. And the time stamp is 5:46, 17:46; correct?  
 17 A. I do.  
 18 Q. And again, this is one of the documents that was  
 19 in your hard drive that you reviewed?  
 20 A. It is.  
 21 Q. All right. I would like to pull up TEMPS0003308,  
 22 which is still--it's a file within R-1545. Again, the  
 23 first line, Adolfo Callejas. Do you see that?  
 24 A. I see that.  
 25 Q. And if we could turn to the last page, the Court

01:57 1 stamp will say the date is the 14th of October 2010, and  
 2 the time stamp is 17:47; correct?  
 3 A. I see that.  
 4 Q. And again, the TEMP file is one of the files that  
 5 was on the Court Record that you reviewed?  
 6 A. That is correct.  
 7 Q. The last one that I'd like to turn your attention  
 8 to is TEMPS0003312. And if we look at this document,  
 9 again, it's from R-1545. The first line, Adolfo Callejas.  
 10 Do you see that language?  
 11 A. I do.  
 12 Q. And you--as I've already told you, this is  
 13 Chevron's counsel down in Ecuador.  
 14 If we could take a look at the signature--sorry,  
 15 at the Court stamp at the bottom of the page, it's a  
 16 one-page document, you see the language that it's  
 17 October 14, 2010, time stamp of 17:48, which is 5:48 p.m.?  
 18 A. I see that.  
 19 Q. And again, this is a TEMP file from R-1545 that  
 20 was part of the Record that you reviewed?  
 21 A. That is correct.  
 22 Q. Okay. And just for purposes of the Record, in our  
 23 case, I would point out that these motions are found in  
 24 Cuerpo 1990, which Respondent put in the Record as Exhibit  
 25 R-1544. They submitted the entire Cuerpo, and so I will

01:59 1 just draw your attention to that.  
 2 And with that, I have no further questions, and I  
 3 pass the Witness.  
 4 PRESIDENT VEEDER: Just before we start with  
 5 questions from the Respondent, it might be useful if we had  
 6 hard copies, paper copies, of the documents to which you  
 7 just referred.  
 8 MS. MOUAWAD: We will get those done. Thank you.  
 9 PRESIDENT VEEDER: Let's take 15 minutes break.  
 10 We ask you to not discuss the case away from the Tribunal.  
 11 THE WITNESS: Of course. Thank you very much.  
 12 (Brief recess.)  
 13 PRESIDENT VEEDER: Let's resume. There will now  
 14 be questions from the Respondent.  
 15 CROSS-EXAMINATION  
 16 BY MR. BLOOM:  
 17 Q. Good afternoon, Doctor.  
 18 A. Good afternoon.  
 19 Q. And I will compliment counsel for allowing me to  
 20 skip many of my prefatory questions. It will probably save  
 21 30 minutes as a result.  
 22 There are two pieces or two parts of this  
 23 examination. The first part we should be able to run right  
 24 through as a result.  
 25 You state your conclusion in the first paragraph

02:11 1 of your Report as Tab 1, at Page 1 of the Witness binder,  
 2 which is identified for the record as C-1007, as, and I'm  
 3 quoting--and it's on the screen--"Having analyzed the Court  
 4 Record in the Lago Agrio Case, I conclude, to a reasonable  
 5 degree of scientific certainty, that the vast majority of  
 6 the overlapping text and data in the Judgment and the LAPs'  
 7 work-product documents does not exist in the trial court  
 8 record of the Lago Agrio Court (sic)."  
 9 And I think counsel has established that when you  
 10 used the term, "trial record," here, you're referring to  
 11 only the official Court Record as provided to you by  
 12 Chevron's attorneys; is that correct?  
 13 A. That is correct.  
 14 Q. And as a result, when you say, "certain documents  
 15 are not in the trial record," you mean they were not found  
 16 in the trial record as provided to you?  
 17 A. That is also correct.  
 18 Q. And you, like Dr. Leonard, were not tasked with  
 19 investigating whether the Parties lawfully filed documents  
 20 with the Court that might be missing from the Record;  
 21 correct?  
 22 A. That is correct.  
 23 Q. In fact, in the last set of questions that you  
 24 just received from my colleague, you identified four  
 25 documents from a different cuerpo than where those

02:13 1 documents should have been had; correct?  
 2 A. Now you're asking me to go beyond my expertise. I  
 3 don't know where they should have been.  
 4 Q. In any event, you're not offering any opinions on  
 5 whether the Parties submitted documents to the Court that  
 6 are not in the official Court Record?  
 7 A. No, I am not. I'm only testifying to what I  
 8 analyzed.  
 9 Q. And you also answered some questions--you also  
 10 answered some questions regarding pages out of order;  
 11 correct?  
 12 A. That is correct.  
 13 Q. And you said, even if there were pages out of  
 14 order, it would not affect your conclusions; correct?  
 15 A. That is correct, assuming that passages were of  
 16 sufficiently large size, which the example under discussion  
 17 was.  
 18 Q. But your personal involvement in reviewing these  
 19 many documents, you personally saw that there were a lot of  
 20 errors in pagination; correct?  
 21 A. I'm sorry, can you rephrase that?  
 22 Q. You do recognize, however, that the page numbers  
 23 are not always sequential; correct?  
 24 A. I did not pay attention to that, so I can't say I  
 25 particularly noticed it. As I testified earlier, the page

02:15 1 numbering was largely irrelevant.  
 2 Q. So, let me just show you at Slide 7, if you look  
 3 at the page numbers or numbers Foja numbers at the top here  
 4 our Page 1 begins with 153,000, Page 2 is 92,000, Page 3 is  
 5 back to 153,000, Page 4 back to 92,000, and then some, then  
 6 it goes on and on. You don't dispute the fact that the  
 7 page numbering is substantially or materially incorrect;  
 8 correct?  
 9 A. I might dispute seven errors above 200,000 as  
 10 substantial.  
 11 Q. Do you want us to start going through more  
 12 examples? I mean, at what point do you think they become  
 13 substantial?  
 14 A. Substantial is a legal term, so you would be  
 15 better off answering that than I, perhaps.  
 16 Q. I'm not sure it's a legal term, so let me ask you,  
 17 sir: Do you dispute that there were a number of page--that  
 18 there were a number of mistakes in the numbering of these  
 19 documents?  
 20 A. I do not dispute that.  
 21 Q. Are you aware of the fact that there were  
 22 instances where the Lago Agrio Court Record was not  
 23 numbered at all?  
 24 A. Again, I'm not aware of that.  
 25 Q. And we have a Slide 8 where we have certain

02:16 1 examples, and if you look at, for example, the second or  
 2 the middle column, you don't see a Foja number in the  
 3 140,000's, do you?  
 4 A. I do not.  
 5 Q. And you don't know whether there may have been  
 6 dozens or even hundreds of documents submitted to the  
 7 Parties that never made its way into the official Court  
 8 Record? That's not something you looked at?  
 9 A. That is not something I analyzed.  
 10 Q. Okay. So, now let's turn to the second piece of  
 11 this examination, which I hate to say will be a little bit  
 12 longer than the first piece, which is your effort to review  
 13 the documents that actually made it into the trial record  
 14 that Chevron provided to you. If we could turn to  
 15 Slide 17. This is a quote from your Report found at Tab 1.  
 16 If you want to turn to Page 3 of your Declaration, the  
 17 second sentence, and I have it on the screen, if that's  
 18 easier for you, sir.  
 19 Beginning, G D.C., and that's referring to whom?  
 20 A. That is referring to Gibson Dunn & Crutcher,  
 21 attorneys for Chevron.  
 22 Q. Thank you.  
 23 So, you represent that the Gibson Dunn law firm,  
 24 Chevron's attorneys, "has informed me that the version of  
 25 the Record I reviewed is from a photocopy of the official

02:18 1 version maintained by the Provincial Court of Justice of  
 2 Sucumbíos. I was also told that this photocopy was  
 3 prepared by the Clerk of Court of The Provincial Court of  
 4 Justice of Sucumbíos per normal Court procedures, stamped  
 5 with a court seal on each page to indicate authenticity of  
 6 the copy, and delivered to Chevron in installments as  
 7 requested by the company's Ecuadorian trial counsel over  
 8 the course of the lower court trial."  
 9 Those are your words. You wrote those words;  
 10 correct?  
 11 A. I wrote those words based on information received  
 12 from GDC, of course.  
 13 Q. And then you went on to say: "I'm informed that  
 14 Chevron maintains its photocopied version of the Record in  
 15 Quito, but also scanned the copies, creating PDFs, which  
 16 were delivered to U.S. counsel. I understand that the PDFs  
 17 were then converted to single page TIFF format and uploaded  
 18 to an electronic platform, at which point the files were  
 19 subjected to an automatic optical character recognition OCR  
 20 process," and those are also your words; correct?  
 21 A. Those are my words, yes.  
 22 Q. Now, you obviously used a lot of passive tense, so  
 23 I want to ask you a few questions regarding who did what.  
 24 Do you know when Chevron received its photocopies  
 25 of the trial Court Record?

02:20 1 A. I wrote that they were delivered in installments,  
 2 so it would presumably be at several different times.  
 3 Q. Do you know? Was the information ever provided to  
 4 you on what dates they received the Court Records?  
 5 A. That information was not provided to me.  
 6 Q. Do you know how many installments?  
 7 A. I do not.  
 8 Q. Once Chevron received anything from the Court, do  
 9 you know if they immediately put it on an electronic  
 10 platform?  
 11 A. I do not.  
 12 Q. So, it's possible that certain documents may have  
 13 stayed in the Court for some period of time and then went  
 14 to Chevron for some period of time before it was ever  
 15 uploaded onto an electronic platform? You don't have any  
 16 information one way or the other on this?  
 17 A. I have no information one way or another on this.  
 18 Q. And you would agree with me, would you not, that  
 19 the age of the document and the conditions in which it was  
 20 kept for months or years could have the potential of  
 21 affecting the accuracy of the OCR version of the document?  
 22 A. In general, keeping documents for months or a  
 23 small number of years will not have a significant effect,  
 24 depending on the storage conditions. But since I have no  
 25 knowledge of the storage conditions, it is possible.



02:21 1 Q. What kind of storage conditions could adversely  
2 affect the quality of the document to be OCR'ed?  
3 A. Well, for example, if you're keeping it in a  
4 shower and running water over it on a regular basis, then  
5 that would very quickly reduce the quality. If you are  
6 keeping it in an un-air-conditioned room in a humid  
7 climate--in a humid climate, excuse me, that would reduce  
8 the quality much more slowly. If you're keeping it in an  
9 air-conditioned storage facility like they have at the  
10 Library of Congress, there would be no perceptible  
11 degradation over an extremely long amount of time.  
12 Q. Now, you also say--and it's in this excerpt that I  
13 just gave you--this photocopy was prepared by the Clerk of  
14 Court of the Provincial Court of Justice of Sucumbios per  
15 normal Court procedures stamped with the Court Seal.  
16 How do you know that the photocopy was prepared  
17 with normal Court procedures?  
18 A. It was so represented to me by Gibson Dunn.  
19 Q. Let me ask you: What other conditions in which a  
20 document could be stored could affect the quality of the  
21 OCR review? You said more humid conditions versus an  
22 air-conditioned facility could adversely affect the  
23 quality. What other conditions?  
24 A. Well, I'm not really a specialist in archiving  
25 techniques, so this isn't really my area of expertise.

02:23 1 Q. Let me just press you a little bit on that, if I  
2 may.  
3 You are an expert on OCR, correct?  
4 A. I have not been offered to the Court as an expert  
5 on OCR in this case. I'm not sure what you mean by, "an  
6 expert." I believe I know more than the average person by  
7 virtue of a computer science degree.  
8 Q. Have you ever been qualified as an expert in OCR  
9 in any court?  
10 A. I have not.  
11 Q. But you conducted an OCR analysis for purposes of  
12 this case, did you not?  
13 A. I have, and I have also published peer-reviewed  
14 papers on OCR quality.  
15 Q. But you're not offering any opinions as to how  
16 storage conditions could adversely affect the quality of a  
17 document for purposes of conducting an OCR?  
18 A. I am not.  
19 Q. Now, you also stated in your Report on the  
20 same--on the previous slide that you were informed that  
21 Chevron also scanned the copies creating PDFs which were  
22 delivered to U.S. counsel, so we know these documents were  
23 first photocopied and then later scanned; correct?  
24 A. That is my understanding.  
25 Q. Where were they scanned? Were they scanned in

02:25 1 Quito?  
2 A. I don't know.  
3 Q. Who scanned them?  
4 A. I don't know.  
5 Q. Who delivered them to U.S. counsel?  
6 A. I don't know.  
7 Q. Do you know who was responsible to ensure the  
8 delivery of the product to U.S. counsel?  
9 A. I don't know.  
10 Q. Do you know to whom they were sent in the U.S.?  
11 A. I don't know.  
12 Q. Or how they were delivered?  
13 A. I don't know.  
14 Q. Were the conditions--do you know, for example,  
15 whether a thumb drive was sent by plane or whether this was  
16 all sent electronically to U.S. counsel?  
17 A. I don't know.  
18 Q. Now, you also state that you "understand" that the  
19 PDFs were then converted to single page TIFF format and  
20 uploaded to an electronic platform, at which point the  
21 files were subjected to an automatic optical character  
22 recognition process.  
23 So, just to be clear, but I think we are, you  
24 didn't actually go to the Provincial Court of Justice to  
25 conduct any of this review?

02:26 1 A. No, I did not.  
2 Q. You did it all from the comfort of the United  
3 States?  
4 A. Yes. Again, this is the service that we provide,  
5 and our expertise is on the document analysis, not the  
6 document processing.  
7 Q. Right. So, you didn't scan the documents?  
8 A. I did not scan the documents, nor did anyone under  
9 my supervision.  
10 Q. Nor did you or anyone under your supervision  
11 convert the PDFs to a single page TIFF format?  
12 A. No.  
13 Q. And you did not or anyone under your supervision  
14 upload the TIFF images to an electronic platform?  
15 A. Well, actually we did do that, but not as part of  
16 this. We received them on a hard drive and uploaded them  
17 to our own electronic platform for analysis.  
18 Q. And your Declaration does not specify which OCR  
19 engine was used to recognize the text?  
20 A. It does not.  
21 Q. And what was the OCR engine that you used?  
22 A. I'm sorry?  
23 Q. Can you tell us what the OCR engine was?  
24 A. I cannot.  
25 Q. Who did it?

02:27 1 A. I don't know.  
 2 Q. Do you know whether it was the same person or a  
 3 different person who converted the photocopies to PDFs and  
 4 the PDFs to TIFF format?  
 5 A. I don't.  
 6 Q. Do you know what controls were in place to ensure  
 7 that no mistakes were made prior to the time of you  
 8 receiving all of this data?  
 9 A. I do not.  
 10 Q. In fact, you don't know if any controls were ever  
 11 put into place, do you?  
 12 A. I only know about the controls that were in place  
 13 at the final stage when the document--when the hard drive  
 14 were delivered to us, and there were controls in place at  
 15 that point.  
 16 Q. I just to want make sure I understand.  
 17 After you received the data, you put into place  
 18 certain controls; correct?  
 19 A. No. Certain controls were put in place at GDC  
 20 prior to shipping the data to us.  
 21 Q. And you know that how?  
 22 A. Because we received the data with those controls  
 23 intact.  
 24 Q. I see.  
 25 Do you know when those controls were put into

02:28 1 place prior to your receipt of the data?  
 2 A. I do not.  
 3 Q. You don't know whether they were put into place a  
 4 week before or months before?  
 5 A. I don't know.  
 6 Q. And what were the controls specifically put into  
 7 place, please?  
 8 A. The document that we received consisted of  
 9 a--sorry, the documents, plural, that we received consisted  
 10 of a large number of files which were stored on a TrueCrypt  
 11 platform and encrypted. This has two effects. The first  
 12 effect is that by encrypting the data, that makes it  
 13 unlikely to the point of impossible that any unauthorized  
 14 third party will be able to read it, but as a side effect  
 15 that also institutes error correction or at least error  
 16 detection if there is a hardware failure on the hard drive,  
 17 for example, or if the hard drive is hit with a sphere  
 18 cosmic ray, this will produce an error in reconstructing  
 19 the data, and the drive as received will be unreadable.  
 20 Since the drive that we received was not unreadable, this  
 21 meant that the data was not corrupted in transit.  
 22 Q. But you would agree with me that even after they  
 23 were encrypted they could still be modified?  
 24 A. I'm sorry?  
 25 Q. The documents that were encrypted, they could

02:30 1 still be modified even after they're encrypted; isn't that  
 2 correct?  
 3 A. I don't believe that's possible. I'd like to know  
 4 more of the scenario you have in mind.  
 5 Q. Can I ask you, how were you able to access the  
 6 documents after they were encrypted? Did you have the  
 7 encryption key?  
 8 A. Yes, we had the encryption key which was sent  
 9 separately from the hard drive.  
 10 Q. And then what did you do?  
 11 A. We used the encryption key to decrypt the drive to  
 12 upload the files onto our own platform.  
 13 Q. So, am I correct that your testimony is while it  
 14 was encrypted that the documents could not be modified  
 15 neither before, although before and after they could be  
 16 modified?  
 17 A. I'm not understanding what you're asking.  
 18 Q. Would you agree with me that while the documents  
 19 were encrypted, they could not be modified?  
 20 A. Yes, I believe I testified to that effect.  
 21 Q. But prior to the time of encryption, they could be  
 22 modified?  
 23 A. Yes, that is true.  
 24 Q. And after they were--after the encryption was  
 25 unlocked, theoretically, they could have been modified.

02:31 1 A. After the encryption was unlocked, they were under  
 2 our control.  
 3 Q. So, to some extent, the correctness of your  
 4 conclusions is, in fact, dependent on other people having  
 5 done what they say and having done it properly; isn't that  
 6 right?  
 7 A. That is correct.  
 8 Q. Okay. Now, if you take a look at your second--at  
 9 Tab 2--and we have it on the slide--this was your Third  
 10 Report in this proceeding, June 2013? I'm sorry,  
 11 January 27, 2013.  
 12 A. I believe this is my Second Report and not my  
 13 Third Report.  
 14 Q. Okay. And it's just to be clear--okay,  
 15 January 27, 2013.  
 16 And this Declaration or Report was filed more than  
 17 a year after your previous one; correct?  
 18 A. That is correct.  
 19 Q. And I want to direct your attention to  
 20 Paragraph 45 at Page 7. And we should have a slide on  
 21 this. You said: "We have been informed that criticism has  
 22 been raised specifically by a report authored by  
 23 Dr. Fateman, of the Record search we performed based on  
 24 machine-generated (OCR) image files of the Court Record of  
 25 the Lago Agrio matter; specifically that the images were of

02:33 1 sufficiently poor quality that the text could not be  
 2 reliably inferred from them, and therefore the text we  
 3 analyzed did not accurately reflect the contents of the  
 4 Court Record."  
 5 My first question is: Who is Dr. Fateman?  
 6 A. I believe Dr. Fateman is a Professor Emeritus at  
 7 one of the California schools. I forget which one exactly.  
 8 Q. And do you know when or why he had occasion to  
 9 offer criticism of any of your opinions?  
 10 A. I'm not fully understanding the question.  
 11 Q. Do you know whom he represents or who he submitted  
 12 this on behalf of?  
 13 A. Not specifically, no.  
 14 Q. So let me take you to Tab 15, slide--there is no  
 15 slide, okay. So Tab 15, it's R-655, my understanding is he  
 16 was an expert for the Lago Agrio Plaintiffs. At Paragraph  
 17 7, he said, "The aspect of the case that I have been asked  
 18 to review is whether OCR, followed by computer search, is  
 19 capable of determining whether materials claimed to be on  
 20 file in the lower court records were filed or otherwise  
 21 incorporated in the filed materials."  
 22 Could I have you read out loud at Slide 22 your  
 23 response to this at Paragraph 46 of your Report.  
 24 A. The section that you've highlighted?  
 25 Q. If you can begin with the words, "we acknowledge.

02:35 1 A. "We acknowledge that the text files received were  
 2 in many cases quite poor, but also point out that in many  
 3 cases the 'text' files were not in fact files or text, but  
 4 apparent gobbledygook produced, for example, by submitting  
 5 a scanned photograph to an OCR. Our original analysis as  
 6 described above attempted to mitigate this problem by using  
 7 fuzzy matching at both the word and character level (as  
 8 described above) to unify the effects of common errors  
 9 (such as the misreading of diacritical remarks).  
 10 Nevertheless, it is still possible that a particularly bad  
 11 document could produce nothing but gibberish that is  
 12 impossible to process successfully by computer or even to  
 13 read by humans."  
 14 Q. So, here is the first time that you acknowledged  
 15 in this case that text files received in many cases were  
 16 quite poor. You didn't mention that in your earlier  
 17 reports; correct?  
 18 A. I mentioned in the earlier reports that we applied  
 19 error correcting technologies to mitigate the effect of OCR  
 20 errors.  
 21 I can find the passage for you, if you would like.  
 22 Q. No. The only question is, the tools you used were  
 23 the respective analyses that you testified to when  
 24 Ms. Mouawad asked you questions; correct?  
 25 A. That is not correct.

02:37 1 Q. Then could you please expand what you're referring  
 2 to.  
 3 A. The initial analyses--the initial techniques we  
 4 applied were applied at the very beginning in the  
 5 normalization procedure as described in that particular  
 6 paragraph to unify the effects of common errors and,  
 7 therefore, eliminate them from the analysis stream. So,  
 8 the idea is if we can correct errors at the start, then the  
 9 output will be more robust and more correct.  
 10 Q. Okay. What did you do then specifically as a  
 11 result to achieve--what did you do at the beginning to  
 12 better ensure better quality at the end?  
 13 A. We, as I testified on direct, we went through the  
 14 text files, stripping out the punctuation and the  
 15 diacritical marks and doing case unification to eliminate  
 16 the more common types of errors that will be produced under  
 17 OCR.  
 18 Q. Very good. Thank you.  
 19 Then also in Paragraph 46 you acknowledge it's  
 20 still possible that a particularly bad document could  
 21 produce nothing but gibberish that is impossible to process  
 22 successfully by computer or even to read by humans; is that  
 23 correct?  
 24 A. That is what I wrote.  
 25 Q. And in response to this criticism at Paragraph 51

02:38 1 of your Report, you and a colleague of yours manually  
 2 examined a list of documents that you identified as being  
 3 of particularly low quality OCR?  
 4 A. That's actually a poor phrasing.  
 5 OCR is a process, and what was of particularly low  
 6 quality in this instance and that would lead to a document  
 7 being placed on this list is not a poor quality--is not a  
 8 poor process but a poor result--that is to say a result  
 9 that did not match the expectations of normal Spanish, as I  
 10 testified earlier.  
 11 So, a better description would be that we had  
 12 identified it as being particularly unrepresentative of  
 13 Spanish, according to word distributions.  
 14 Q. In either event, there is still a chance that the  
 15 results will be of poor quality in some instances?  
 16 A. That is correct.  
 17 Q. And at Paragraph 78 of the same report, you note  
 18 that you "personally examined by hand the primary  
 19 candidates for OCR errors."  
 20 A. That is correct.  
 21 Q. And when did you do this? Before or after  
 22 Mr. Fateman criticized your Report?  
 23 A. We did the full hand examination after we received  
 24 Fateman's criticism.  
 25 Q. Why didn't you do it before?

02:40 1 A. Because we had done a preliminary analysis, and we  
 2 felt that our error-correcting procedures would be adequate  
 3 to allow us to do a reliable and robust analysis. Having  
 4 then been criticized on that basis, we did a more formal  
 5 analysis, and we confirmed as a result of that analysis  
 6 that we had done an initially reliable and robust analysis.  
 7 Q. And how did you determine which were "the primary  
 8 candidates" for the OCR review?  
 9 A. Those are the documents that differed--that  
 10 differed significantly from the distribution of words  
 11 expected in Spanish.  
 12 Q. In other words, it was based on a statistical  
 13 analysis comparing the documents to the Spanish corpus?  
 14 A. That is correct.  
 15 Q. I see. And then these were the documents you  
 16 characterized in Paragraph 48 as "particularly egregious"  
 17 or in Paragraph 50 as "unsearchable" or Paragraph 55  
 18 "completely unreadable." Or are we talking apples to  
 19 oranges here?  
 20 A. We're talking apples to oranges here. In  
 21 Paragraph 48, we're attempting to identify if there are any  
 22 particular egregious documents that may require hand  
 23 examination, so we examined a much larger pool of documents  
 24 on the off-chance that any of them might be some  
 25 particularly egregious documents.

02:43 1 A. That is correct.  
 2 Q. Now, in Appendix B of your Second Report, you list  
 3 the documents that you called "bad" that you and your  
 4 colleague reviewed by hand; is that correct?  
 5 A. That is correct.  
 6 Q. Would you agree that some of these were actually  
 7 really poor OCR quality, or no?  
 8 A. A relative few of them were, yes.  
 9 Q. If you hand-reviewed 100,000 pages or about, why  
 10 didn't you just review the entire record by hand?  
 11 A. When we set out to do this, it wasn't obvious that  
 12 the documents that were the worst were also going to be  
 13 among the longest, but as it turns out, a lot of the  
 14 documents that we were reviewing were almost collections of  
 15 other documents that had been attached as appendices to  
 16 further things, so I ended up reviewing the same image over  
 17 and over and over again.  
 18 Q. How long did it take you to review 100,000 pages  
 19 or so?  
 20 A. Approximately four or five months.  
 21 Q. Can you explain exactly how you reviewed these  
 22 documents by hand? Did you have a certain specific method?  
 23 A. I can.  
 24 I identified specific passages of proper nouns,  
 25 because proper nouns are easy to spot in page images,

02:41 1 Similarly, it is possible that the tiny minority  
 2 of documents that were completely unreadable, that doesn't  
 3 mean that every document we examined by hand was completely  
 4 unreadable. The majority of documents that we examined by  
 5 hand were, in fact, quite readable, but in the wrong  
 6 language and/or they were documents that were completely  
 7 unreadable because they couldn't be read. They weren't  
 8 text, they were photographs, and it's difficult to read a  
 9 photograph.  
 10 Q. Now, some of the documents that you hand-reviewed  
 11 were quite lengthy, were they not?  
 12 A. That is correct.  
 13 Q. Approximately how many pages of the Record did you  
 14 hand-review?  
 15 A. We ended up hand-reviewing about 100,000 pages of  
 16 the Record.  
 17 Q. 100,000 were primary candidates for OCR error?  
 18 A. No, about 1.5 percent of the documents were  
 19 primary candidates for OCR error, and those documents  
 20 contained about 100,000 pages. But we did not do a page by  
 21 page search to identify which pages were candidates for OCR  
 22 error.  
 23 Q. It was all based on the statistical analysis  
 24 comparing the characters and the respective documents to  
 25 the Spanish corpus?

02:44 1 corresponding to each of Leonard's Examples 1 through 4,  
 2 which are the major lengthy passages that indicate linkage  
 3 between the unfiled work product and the Judgment.  
 4 I then flipped through each of the TIFF images,  
 5 manually looking for this passage--looking for this passage  
 6 of proper nouns in the TIFF image. In most cases this is a  
 7 decision that could be made instantly because when you're  
 8 looking at a photograph of a field, it's obvious that it  
 9 doesn't contain any proper nouns or when you're looking at  
 10 a document in English, it's obvious that it doesn't have  
 11 the Spanish passages. In some cases it took longer because  
 12 I was forced to scan the document looking for this  
 13 particular word pattern.  
 14 Q. What proper nouns were you looking for?  
 15 A. One of them was the combination TexPet y Texaco or  
 16 Texaco y TexPet. One of them was Bischoff. One of them  
 17 was Shields. They're listed in relevant Leonard examples.  
 18 Q. And how many N-grams that you were looking for  
 19 that you had found suspicious for purposes of this  
 20 assignment?  
 21 A. This analysis did not involve N-grams. This was  
 22 me looking at TIFF images. This was me and a staff member,  
 23 I should say more accurately.  
 24 Q. Other than looking for proper names, is there  
 25 anything else that you were looking for when you were doing

02:46 1 the manual search?  
 2 A. We were looking for proper names. If we found  
 3 these proper names, which, by and large we did not, we  
 4 would then go back and do a more detailed review of the  
 5 relevant passage.  
 6 Q. And if you found the proper name, what was the  
 7 next step?  
 8 A. We'd actually look--I would actually call up the  
 9 relevant passage, look at it, look at the TIFF image and  
 10 determine whether or not there was a match.  
 11 Q. And how many relevant passages were there?  
 12 A. What are you asking?  
 13 Q. How many relevant passages were you looking for  
 14 when you were doing your hand-review?  
 15 A. Four, one from each of Leonard's Examples 1  
 16 through 4.  
 17 Q. And those are the only four that you were looking  
 18 for?  
 19 A. In the manual review, yes.  
 20 Q. And if you found a proper noun that came from one  
 21 of the passages, did you go through and examine whether it  
 22 matched any of the four passages that you were looking to  
 23 seek--to see if whether there was a mirror image?  
 24 A. That is correct.  
 25 Q. And having spent so much time looking at them, do

02:48 1 you know those four passages now by heart?  
 2 A. I'm afraid not.  
 3 Q. Did you have them written down right next to you?  
 4 A. I did.  
 5 Q. It's a little bit like one of those word searches  
 6 where you're looking for letters--  
 7 A. Or "Where's Waldo."  
 8 Q. And it's made more difficult, is it not, by the  
 9 fact that you're not fluent in Spanish?  
 10 A. That's why we chose the procedure that we did,  
 11 although I'm not fluent in Spanish, I am fluent in the  
 12 alphabet in which Spanish is written. And so, by  
 13 identifying these capital letters, which also stand out  
 14 really well in running text, I can very quickly find these  
 15 phrases.  
 16 So, although I could not necessarily tell you the  
 17 meaning of any passage in which the name "Shields" appears,  
 18 I can definitely tell you that the name "Shields" appears  
 19 in this passage, and it is or is not identical to this  
 20 other passage in which the name "Shields" appears.  
 21 Q. And to be clear, you have a limited understanding  
 22 of Spanish; correct?  
 23 A. I do have a limited understanding of Spanish.  
 24 Q. So, when you found the proper noun like Texaco or  
 25 TexPet, you then had to look at the surrounding words to

02:49 1 see whether it mirrored Spanish passages; correct?  
 2 A. That is correct, but this particular analysis can  
 3 be done simply by checking that the characters are  
 4 identical. You don't--one does not need an understanding  
 5 of the Spanish language to determine that these two letters  
 6 are or are not the same.  
 7 Q. So, just for fun, here is a word search in  
 8 Spanish. Would this not be any more difficult because it's  
 9 in Spanish, certainly you can still look for odd letters  
 10 like Z or Q, but would you not agree with me it's more  
 11 challenging when it's not your native language?  
 12 A. Well, this is definitely much more challenging  
 13 than the task I undertook. First of all, all of these  
 14 documents--all of these letters are capital letters, so I  
 15 don't have the advantage of only being able to look for  
 16 capital letters because they're all capital letters.  
 17 Second of all, they're written in many, many  
 18 orientations instead of being written in the ordinary left  
 19 to right as Spanish is.  
 20 Third, these things are deliberately designed  
 21 to--by the puzzle designers to have false combinations so  
 22 that you may or may not go down garden paths.  
 23 So I would consider this to be a much more  
 24 difficult task than the one that I was asked to do for  
 25 Chevron.

02:50 1 Q. I want to nonetheless return to the question that  
 2 I just asked you that I'm not entirely sure you answered.  
 3 Would you not agree with me that a hand review in a  
 4 language other than your native language is still more  
 5 difficult than doing a hand review in your native language,  
 6 or is it your testimony that they are equally easy?  
 7 A. Well, since you phrased the question in that  
 8 direct manner, no, I would actually say it's easier to do  
 9 the hand review in a language that is not your native  
 10 language because you do not get as distracted by reading  
 11 the document since you're just looking for patterns. There  
 12 is an automatic activation of words that you recognize and  
 13 understand that can actually slow down processing of simple  
 14 lexical pattern recognition.  
 15 If you're familiar with the Stroop effect, it's a  
 16 well-known psychological phenomenon. It takes longer to  
 17 read the word--it takes longer to identify the letter--the  
 18 color of an ink in which a word is read--excuse me. It  
 19 takes longer to identify the color of ink in which a word  
 20 is written if the word is itself a color word. So, if I  
 21 write the word "red" in green ink, you will have a harder  
 22 time naming the word "green" because it conflicts with your  
 23 understanding of the word "red." This would not be the  
 24 case if I wrote a word in Japanese in green ink. If you  
 25 don't know any Japanese, you will just see some random

02:52 1 scribbles in green ink, and you will be able to say, oh,  
 2 yes, that's green ink.  
 3 So, in direct answer to your question, no, it's  
 4 actually easier in Spanish to do this kind of manual  
 5 review.  
 6 Q. Let's talk a little bit about the specifics of the  
 7 OCR process, okay, Doctor?  
 8 A. Okay.  
 9 Q. Would you agree with me that for purposes of OCR  
 10 each text has its own peculiarities?  
 11 A. Yes, I will agree.  
 12 Q. And that there are a number of well-known scanning  
 13 errors that tend to be reoccurring?  
 14 A. I will agree with that.  
 15 Q. For example, you've already identified that  
 16 punctuation is oftentimes a problem?  
 17 A. Correct.  
 18 Q. If you did not correct for it, periods oftentimes  
 19 would be confused with other punctuation marks?  
 20 A. That is correct.  
 21 Q. And it was in recognition of these errors that you  
 22 stripped punctuation marks out from the document before you  
 23 began the process?  
 24 A. That is correct.  
 25 Q. Would you also agree that there are oftentimes a

02:53 1 number of extra spaces in the electronic text?  
 2 A. I would.  
 3 Q. Were you able to do anything to resolve that  
 4 issue?  
 5 A. Yes. We were. That's one of the reasons that we  
 6 used the word N-grams. We defined a word for purposes of  
 7 this analysis as a maximum non-blank sequence of  
 8 characters. So, when we collected a word 5-gram, this  
 9 would have been five character clusters separated by a  
 10 non-zero but unbounded amount of white space.  
 11 So, technically speaking, had there been a  
 12 document, a section of a document where there was one word  
 13 in isolation on a page, another word in isolation on the  
 14 following page and so on for five pages, those five words  
 15 would have collectively made a single 5-gram.  
 16 Q. Would you agree with me that the numeral "1", the  
 17 lower case--and the lower case "l" are all routinely  
 18 confused in OCR?  
 19 A. I will.  
 20 Q. What you about the lower case "N"? Would you  
 21 agree with me that that is oftentimes mistaken by the OCR?  
 22 A. Yes, I would.  
 23 Q. How would that be mistaken?  
 24 A. Hmm?  
 25 Q. How would it sometimes be mistaken, an "R" and an

02:54 1 "I?"  
 2 A. "R" is a possibility, "I" is a possibility, "O" is  
 3 also a possibility.  
 4 I've also seen it confused with an "M" if there is  
 5 extraneous black material on the page.  
 6 I think it's actually fair to say that any  
 7 character could under the right circumstances be confused  
 8 with any other character.  
 9 Q. But the ones I'm identifying, do these tends to be  
 10 the most reoccurring ones?  
 11 A. They are common, yes.  
 12 Q. Lower case "M" is sometimes an "R" and an "N" in  
 13 the OCR version?  
 14 A. That is correct.  
 15 Q. And sometimes an "M" will come out as an "N" and a  
 16 lower case "I?"  
 17 A. That is correct.  
 18 Q. And would you agree with me that the letters "H"  
 19 and "B" are sometimes confused?  
 20 A. I believe that's rarer, but it's not unheard of.  
 21 Q. And the letters "E" and "C" are sometimes misread?  
 22 A. Yes.  
 23 Q. That's a relatively common error, is it not? One  
 24 of the more common errors?  
 25 A. Actually, in my experience, "O" and "C" are more

02:56 1 common than "E" and "C."  
 2 Q. To the extent "E" and "C" would be an error, then  
 3 you might have the word ear, E-A R, misidentified as car,  
 4 C-A R; correct?  
 5 A. That is correct.  
 6 Q. And the word eat, E-A T, could wind up looking  
 7 like cat, C-A-T?  
 8 A. Also correct.  
 9 Q. And the word "he" could get confused with the word  
 10 "be?"  
 11 A. That is correct.  
 12 Q. And the word "bear" might get confused with the  
 13 word "hear?"  
 14 A. That is correct.  
 15 Q. And the word "heard" could get confused with the  
 16 word "beard?" The "H" and the "B" get transposed?  
 17 A. That's heard as in listened to, not herd as in a  
 18 collection of deer?  
 19 Q. Right.  
 20 So, in all of these cases, not only would OCR be  
 21 wrong but spellcheck would not catch the error; correct?  
 22 A. That is correct.  
 23 Q. Can you--  
 24 A. Actually, may I amend that?  
 25 Q. I'm sorry?

02:57 1 A. Actually, may I amend that?  
 2 Q. You may.  
 3 A. There are rather sophisticated--there are rather  
 4 sophisticated spellcheckers out there that are actually not  
 5 only spelling checkers but also grammar checkers. So, for  
 6 example, "heard" versus "beard," that would possibly be  
 7 picked up even by Microsoft Word as using a noun in a spot  
 8 where a verb would be expected or vice versa. So,  
 9 depending on how exact you are being about spell-checking,  
 10 certainly what ordinary people say--mean by spell-checking  
 11 meaning I pushed the button on Microsoft Word, some of  
 12 those would be caught.  
 13 Q. Did you use any software like that to see whether  
 14 there were any changes in the words that would make it  
 15 grammatically incorrect and therefore identify an error  
 16 like that?  
 17 A. We did not.  
 18 Q. Can you tell me the maximum number of OCR errors  
 19 you found on any given page of the Lago Agrio Court Record?  
 20 A. I cannot.  
 21 Q. Did you do any statistical analysis to determine  
 22 the average number of errors on a given page of the Lago  
 23 Agrio Court Record?  
 24 A. Our analysis was not by page but by document.  
 25 Q. I take it you would agree with me that, on an

02:58 1 average page of text, it would be most unusual not to find  
 2 at least a couple of OCR errors; correct?  
 3 A. On a document--on an ordinary typeset document  
 4 with a reasonable font, et cetera, yes.  
 5 Q. What happens to an OCR--the OCR version with  
 6 respect to a page that's been folded?  
 7 A. That depends on the quality of the engine.  
 8 Q. Can you tell me what the possibilities are?  
 9 A. Well, in the best case, absolutely nothing will  
 10 happen to it, and it will just be processed as normally.  
 11 In the worst case, the fold will persist when the  
 12 document is scanned as a necessary precursor, which will  
 13 typically produce a black line across the page that can  
 14 interfere with the optical character recognition process.  
 15 Actually, if I may amend that, I suppose an even  
 16 worse scenario is where you fold it in half and then you  
 17 ran the folded paper through the scanner without unfolding  
 18 it at which point you'll get nothing because you would be  
 19 looking at half of the backside of the page.  
 20 Q. And of course, if it's folded in such a way  
 21 that--where the characters cannot be visually seen, I  
 22 assume the OCR version of that will come out as gibberish?  
 23 A. Not necessarily. I mean, when you say it's been  
 24 folded in such a way as the characters cannot be seen--  
 25 Q. If I fold a page like this, such that I am

03:00 1 covering up text, would the OCR version show what's  
 2 underneath here?  
 3 A. It would not show what's underneath.  
 4 Q. What happens if there is a crease? Would that  
 5 affect the OCR?  
 6 A. No, the crease may show up as a dark line.  
 7 Q. And what is the effect of a dark line?  
 8 A. The dark line would be spurious noise on the image  
 9 which would make it more difficult to recognize the  
 10 characters and, therefore, increase the error rate.  
 11 Q. What if the text is slanted?  
 12 A. Slanting--  
 13 Q. Would that have an effect?  
 14 A. Slanting text very rarely has an effect. We  
 15 solved that problem in the Eighties.  
 16 Q. Okay, sir, I would like to walk you through some  
 17 of the documents from your hard drive that has been marked  
 18 in the Record as 1545 and I'm now turning to the second  
 19 binder, which says Part II.  
 20 Now, just so the record is clear, we have selected  
 21 a handful of the documents on your hard drive, and at least  
 22 we began just by trying to correlate these documents to  
 23 documents one party or the other independently submitted to  
 24 the Tribunal.  
 25 So, all of these documents are on the hard drive

03:02 1 at R-1545, but I will go ahead and identify the CL number  
 2 for you. And to the extent they relate to a document  
 3 already in the Record, I will try to be clear and identify  
 4 what that document is.  
 5 MR. BLOOM: And just so that the Tribunal  
 6 understands, the CL number is the Cuerpos number, and then  
 7 the number following the dash is the sheet or the page  
 8 number of the Record.  
 9 BY MR. BLOOM:  
 10 Q. Now, the Judgment is at CL2065-0216338, so the  
 11 Cuerpos where the Judgment is found is in 2065, and then  
 12 the Judgment is at the page number after the dash. You  
 13 understand that, do you not?  
 14 A. It is at the page number after the dash and the  
 15 subsequent pages because the Judgment is more than one  
 16 page.  
 17 Q. Right. And you understood that; correct?  
 18 A. I did.  
 19 Q. Okay. So, I'm going to ask you to turn to the  
 20 first tab in this binder?  
 21 MR. BLOOM: And at this point, both for the  
 22 Witness and counsel and the Tribunal, I personally think it  
 23 will be a lot easier focusing on the documents in the  
 24 binder than it will be the slide.  
 25 BY MR. BLOOM:

03:03 1 Q. Now, let me ask you to turn to the third paragraph  
2 here, and you will see the date of 25 of October of 2003 is  
3 there. Do you see that, in Spanish?  
4 ARBITRATOR GRIGERA NAÓN: Twenty-nine.  
5 MR. BLOOM: Okay. 29, your eyesight is better  
6 than mine.  
7 ARBITRATOR GRIGERA NAÓN: You need glasses.  
8 MR. BLOOM: Yes, I need glasses.  
9 BY MR. BLOOM:  
10 Q. Yes, October 29, 2003. Do you see that, sir?  
11 A. I see that date.  
12 Q. And then it says "a las 17H55"--45 or 55? 55, he  
13 needs glasses and he's got glasses. He needs new glasses.  
14 Do you see that, sir? I'm going to ask you to  
15 stick with me on Tab 1, and on Tab 1 it says 17H55.  
16 Do you see that?  
17 A. I see that.  
18 Q. And if you haven't already peeked, can you guess  
19 what that says on the OCR copy?  
20 A. I'm afraid I've already peeked.  
21 Q. Okay. Let's stick there, but thank you for that.  
22 We will get to the next tab in just a moment.  
23 If you go to the previous paragraph that begins  
24 "mediante," and if you look at the third line, you will see  
25 about two-thirds down that first line the word, I don't

03:05 1 know if I'm pronouncing it correctly, "sitios," or "sitios"  
2 for the word "sites," S-I-T-I-O-S.  
3 Do you see that?  
4 A. I do.  
5 Q. If you haven't already peeked, do you know how  
6 that would look on the OCR version?  
7 A. The "T-I" combination looks particularly fragile,  
8 so, it would not surprise me to see it turn into an "N".  
9 Q. How about in the first paragraph, the name Maria  
10 Aguinda, a good proper noun, and focusing specifically on  
11 Aguinda.  
12 A. Okay.  
13 Q. How do you think that would turn out in the OCR  
14 version?  
15 A. I don't know.  
16 Q. And then, well, it's going to turn out, maybe, to  
17 be a silly question but for my own edification, in the  
18 second line there's the word "daños," with a tilde above  
19 the "N."  
20 A. I see that.  
21 Q. How do you think that will look like in the OCR?  
22 Will that tilde still be there?  
23 A. If you recall, tildes and other diacritical marks  
24 are fragile and one of the more common candidates for OCR  
25 errors.

03:06 1 Q. The reason why I was asking about that, in your  
2 earlier presentation you indicated, I believe, that you  
3 stripped out the accents.  
4 A. I may have been misunderstood. I stripped out the  
5 diacritical marks.  
6 Q. And that would not include the tildes?  
7 A. That would include the tildes.  
8 Q. That would.  
9 A. Diacritical marks are a technical--are a term of  
10 art in typography for all the little stuff that gets  
11 sprinkled on top of words or underneath words--so tildes,  
12 umlauts, accents, the little tails at the bottom of the  
13 French "C".  
14 Q. And if you hadn't done that, am I correct that  
15 the--not only would the tilde not be in the OCR version but  
16 the "N" might not be in the OCR version? If you had not  
17 corrected for that?  
18 A. I'm not following.  
19 Q. The word "señor"--  
20 A. Um-hmm.  
21 Q. --has a tilde over the "N".  
22 A. That is correct.  
23 Q. And my understanding is if you do a typical OCR  
24 version, the "N" will not be there at all because there is  
25 a tilde above it.

03:07 1 A. It depends on the OCR engine you use.  
2 Q. And by correcting the way you did with the OCR  
3 version have both the "N" and the tilde?  
4 A. Sometimes we had both the "N" and the tilde and we  
5 made appropriate corrections, sometimes we only had the "N"  
6 and we made appropriate corrections.  
7 Q. And I'm sorry for belaboring this, because I'm not  
8 sure it's very important. If you would take them all out,  
9 I would think that the "N" would be there and the tilde  
10 would not be. So, I'm confused why, and I'll tell  
11 you--this isn't a trick--that the tilde and the "N" are  
12 there. I just need to understand why is the tilde and the  
13 "N" on the OCR version?  
14 A. I'm sorry? Why did the--you're asking why the OCR  
15 got it right?  
16 Q. Yes.  
17 A. I don't know what the OCR version is, but getting  
18 it right is what OCRs are supposed to do. So, I would hope  
19 that the OCR would get it right.  
20 Let me back up: OCR engines are typically tuned  
21 to a specific language, so they are aware of the sort of  
22 things that you are likely to see.  
23 Q. I guess what I'm representing is I saw other  
24 instances where the "N" is just gone through the OCR  
25 process. On this particular exhibit--and if you want to



03:08 1 peek, you can peek but, you know, at that word--daños does  
 2 have the tilde. And if you had stripped it out, I did not  
 3 think it would be part of the OCR version.  
 4 A. Oh, no, you misunderstood. Allow me to clarify.  
 5 We took the text that had been produced by the OCR version,  
 6 so, essentially, the stuff that was contained in Tab 2, and  
 7 then we made the appropriate corrections to this prior to  
 8 processing. We did not make any changes to the TIFF  
 9 images, nor did we make any changes to the text files that  
 10 you hold in your hand. These are as we received them from  
 11 Chevron, but we stripped the things out prior to  
 12 processing, so we had our own normalized versions.  
 13 Q. Okay. I appreciate that. That helps me.  
 14 Okay. Let me ask you to turn, again, back to  
 15 Tab 1. Under Roman numeral two--  
 16 A. Um-hmm.  
 17 Q. You'll see the first four lines are a little  
 18 lighter than the next five lines.  
 19 A. That is correct.  
 20 Q. Okay. What would the effect be of the lighter  
 21 lines versus the darker lines without peeking at Tab 2?  
 22 A. The effect would probably be a higher error rate  
 23 for those particular four lines.  
 24 Q. And you can check at your Appendix B, but if you  
 25 can just confirm for me, this is not a document you

03:12 1 A. Actually, I didn't think I said it was going to be  
 2 a little bit greater. I think I just said greater.  
 3 Q. Okay. And I will represent to the Tribunal, and  
 4 to you, I personally find it easier when I do this to take  
 5 these out, but defer to you however best you want to do it.  
 6 So, these four lines, if you go to the  
 7 fourth paragraph of Tab 2, the last few words are "perforo  
 8 y contruyo el mejor numero de," and those are the last  
 9 words on Line 4 of Tab 1 on that same paragraph that are  
 10 readable, and then you would agree with me that the  
 11 entirety of the next five lines are erased?  
 12 A. I would.  
 13 Q. I'm sorry?  
 14 A. I would agree with that.  
 15 Q. And because they were erased, they were entirely  
 16 unsearchable through the OCR review; correct?  
 17 A. What do you mean by the OCR review?  
 18 Q. You would not have been able to find the word  
 19 strings or the sentences that are in the fourth paragraph  
 20 of Tab 1 on the fifth through ninth lines in the OCR  
 21 version?  
 22 A. I would not have. On the other hand, this is also  
 23 a relatively small section of the document. If we were  
 24 dealing with the passage, for example, from Leonard's  
 25 Example 1, which is 90 words long or Leonard's Example 2,

03:10 1 manually reviewed?  
 2 A. If you want to simply represent it to me that it  
 3 is, I will accept that representation.  
 4 Q. That is my representation, but never accept a  
 5 lawyer's word for it.  
 6 It's also Tab 65 in the same binder, if that's  
 7 easier for you. Right? The very last tab.  
 8 And the Cuerpo and page number are on the screen.  
 9 A. The issue is, is this the initial page of the  
 10 document?  
 11 Q. Is this document--was this document manually  
 12 reviewed by you or someone under your supervision?  
 13 A. Is this the initial page of the document?  
 14 Q. Yes, it is.  
 15 A. Is this document, in fact, 92442?  
 16 Q. Yes.  
 17 A. And not a subset of 92440?  
 18 Q. Yes. This is the first page.  
 19 A. This was not on my list of manual review.  
 20 Q. Okay. Now, given the darkness, you said that the  
 21 error rate of these four or five lines is likely to be a  
 22 little bit greater than the first four lines; correct?  
 23 A. That is correct.  
 24 Q. Okay. Now, sir, if I could have you turn to  
 25 Tab 2--

03:13 1 which is 150 words long, a minor localized issue like this  
 2 would not have prevented us from finding it.  
 3 Q. Can you tell me how many character errors there  
 4 are on these five lines, even approximately?  
 5 A. Approximately? 200.  
 6 Q. So, you're assuming fewer than 40 characters on a  
 7 line?  
 8 A. Hmm?  
 9 Q. You were assuming fewer than 40 characters and  
 10 spaces on a line?  
 11 A. Well, there's four complete lines, so I'm assuming  
 12 about 50 to 60 characters in a line and an incomplete fifth  
 13 line.  
 14 Q. And then if you could walk up on Tab 2 to the  
 15 first paragraph, do you see how Maria Aguinda came out?  
 16 The "A" looks like a one and a back slash?  
 17 A. That is correct.  
 18 Q. If you look at the second paragraph, the word  
 19 sitios--S-I-T-I-O-S--comes out S-I-T-L-O-S; correct?  
 20 A. Correct.  
 21 Q. The next paragraph, the time, 17H55, comes across  
 22 as 171-155; is that correct?  
 23 A. That is correct.  
 24 Q. If you could turn with me to Tab 3, which again  
 25 comes from your hard drive R-1545, and this is

03:15 1 CL1338-0123454, which correlates to a document that the  
 2 Claimants put into the Record at C-189.  
 3 Now, sir, with respect to the very first paragraph  
 4 after the caption, the paragraph beginning "Pablo Fajardo  
 5 Mendoza," approximately how many errors do you believe the  
 6 OCR copy will reflect? Simply on that first line?  
 7 A. Simply on that first line? 30 to 40.  
 8 Q. Well, again, I'm going to take this out because  
 9 we're going to be spending a lot of time on this document,  
 10 or some time.  
 11 If I can ask you to turn to Tab 4 which is the OCR  
 12 version that came from your hard drive, you will first see  
 13 that there is what looks like a quotation mark after Pablo  
 14 Fajardo Mendoza's name.  
 15 Do you see that?  
 16 A. I do.  
 17 Q. And that really should not be there; correct?  
 18 A. As I said, punctuation marks are fragile.  
 19 Q. And you see on the very first line, after Pablo  
 20 Fajardo Mendoza's name, that there are words entirely  
 21 missing from the OCR text. The original begins  
 22 "Procurador," and then there are one, two, three, four,  
 23 five, six, seven or eight words that are missing?  
 24 A. That is correct.  
 25 Q. None of the letters of any of those words are

03:18 1 there; correct?  
 2 A. That is correct.  
 3 Q. Do you know why that is?  
 4 A. Again, it looks like we have a certain degree of  
 5 salt-and-pepper noise on the image.  
 6 Q. What do you mean by "salt-and-pepper noise?"  
 7 That's what people used to call my hair, and now it's just  
 8 white, but...  
 9 A. I sympathize, sir.  
 10 (Laughter.)  
 11 A. I mean the little dots. It looks like somebody  
 12 put a whole bunch of very small dots approximately one  
 13 pixel in size.  
 14 Q. Then if you turn back to the original document at  
 15 Tab 3, you will see at the very top of the document "Señor  
 16 Presidente" is this caption. It's in bold.  
 17 Do you see that?  
 18 A. I do.  
 19 Q. And if you turn to and compare that to Tab 4,  
 20 again you've got words entirely missing, do you not?  
 21 "Justicia de nueva" are entirely missing.  
 22 A. That is correct.  
 23 Q. You also have what I'm referring to as the heading  
 24 or the caption transposed with the first substantive  
 25 paragraph of Tab 3.

03:19 1 Do you see that too?  
 2 A. I'm sorry, I didn't understand.  
 3 Q. The first document, meaning Tab 3, begins: "Señor  
 4 Presidente."  
 5 Oh, I'm sorry. I'm reading it incorrectly. My  
 6 error, not yours.  
 7 Let's take a look at the first page of Tab 3, the  
 8 penultimate paragraph beginning with "considerando."  
 9 A. Okay.  
 10 Q. And let me ask you to match that up with that same  
 11 paragraph in Tab 5. The they both begin "considerando que  
 12 para la evacuación de," and then can you read the rest of  
 13 that paragraph for me in Tab 4.  
 14 And we do have the OCR version of this paragraph  
 15 on the screen, if that's any help.  
 16 A. "Considerando de para la evacuación," and at that  
 17 point it turns into a localized high error rate related to  
 18 additional salt-and-pepper noise on this particular page.  
 19 Q. So, most of that paragraph is, in fact,  
 20 unreadable; correct?  
 21 A. Most of that specific paragraph is unreadable,  
 22 although it comes back--you can see, you get "participación  
 23 de un Perito; y," and so, basically anything that appeared  
 24 on the left side of the page is fine, anything that  
 25 appeared on the right side of the page is obscured by

03:21 1 salt-and-pepper noise, which, again, is an argument in  
 2 favor of use of the N-grams because we will pick up, for  
 3 example, "participación de un Perito; y" as a match and  
 4 then can investigate further.  
 5 Q. But you won't be able to pick up anything that's  
 6 not there; correct?  
 7 A. True, but when we're dealing with--when we're  
 8 dealing with passages such as Leonard's Example 2, which is  
 9 150 words long, we can find the bits of it that are not  
 10 obscured, which is the reason for doing the lowered N-grams  
 11 in the first place.  
 12 Q. And if the passage at issue does not use the last  
 13 several words that are there, you would not be able to find  
 14 the relevant passage?  
 15 A. If the passage at issue does not use any of the  
 16 words because we're looking for every 5-gram in that, so  
 17 you would need to wipe out an entire 150-word passage,  
 18 which you can see in this is not typically what  
 19 happens--what's happened. Even in a case where there are  
 20 localized errors, they are localized errors, and you get  
 21 some degree of readability, which can be--which can be  
 22 zeroed in on by the use of the N-grams. That's basically  
 23 why we did the N-gram approach in the first place, because  
 24 we knew we were looking for long passages that would be  
 25 unlikely to be masked by localized noise.

03:22 1 Q. Let me ask you to turn to Tab 5, and let's begin  
2 with what I call the caption, Señor Presidente--and I would  
3 suggest for this again taking it out if it's easier for  
4 you, but we're going to be going back and forth a lot with  
5 this one, so, again, whatever is your pleasure, Doctor.

6 So, here, if you're looking at the caption, Señor  
7 Presidente, am I correct again that there are missing  
8 words?

9 A. That is correct.

10 Q. What words do you see that are missing?

11 A. Well, I can't vouch for the validity of "señor,"  
12 because there is a binding hole, but "superior" has a  
13 missing space before it, and the "I" has become an  
14 exclamation point, and then "justicia de" has been lost in  
15 a combination of the salt-and-pepper noise and possibly the  
16 handwriting.

17 Q. And then if you look at the next paragraph of the  
18 original, beginning with "Dr. Adolfo Callejas Ribadeneira,"  
19 you will also see words missing entirely, do you not?

20 A. That is correct.

21 Q. And what words are missing?

22 A. "Callejas" appears to be misspelled, and again the  
23 words covered by the salt-and-pepper noise did not come  
24 through.

25 Q. How many words are missing here?

03:26 1 Q. The third paragraph, "me refiero a su."

2 A. Um-hmm.

3 Q. And if you take that to the very end of the line  
4 and disregarding any errors there, it's the next paragraph.  
5 Can you match that up with the OCR version?

6 A. There is a section in the middle where it says (in  
7 Spanish), and so there is actually--there is actually a  
8 substantial section that emerges from the noise. So,  
9 again, this is an example of a localized error that  
10 wouldn't mask as many as 150 words.

11 Q. And there are also a lot of missing words, are  
12 there not?

13 A. There are a lot of missing words in this case,  
14 depending on what you consider "a lot" to be, there are  
15 certainly missing words.

16 Q. There are more missing words than accurate words  
17 in the OCR version as to this paragraph; correct?

18 A. As to this paragraph, I would have to count. It  
19 looks about the same to me.

20 Q. Okay. And then if you continue on in this page,  
21 it begins with, after that indented quote, it says, "al  
22 respecto manifesto."

23 Do you see that? Or "manifiesto?"

24 A. I do.

25 Q. And then there is a Number 1, and then a Roman

03:24 1 A. It looks like four words on the first line.

2 Q. Anything on the second?

3 A. Looks like seven.

4 Q. And here the caption that begins "Señor  
5 Presidente" actually has been transposed with the first  
6 substantive paragraph beginning with Dr. Callejas' name?

7 A. That is correct.

8 Q. Out of curiosity, why did that happen?

9 A. I'm not sure. Possibly it has to do with the  
10 handwritten annotation in the upper right corner.

11 Documents are usually segmented prior to  
12 processing, and so because of the way this segmentation  
13 works and the degree to which the initials drop down, the  
14 computer might have believed that these were actually two  
15 side by side paragraphs instead of one above another, and  
16 arranged them--and arranged the output as appropriate. You  
17 can--this would be the correct thing to do, for example, in  
18 a document in a columnar format where you had Column 1 and  
19 Column 2 that should be processed separately instead of  
20 reading the lines across.

21 Q. Now, if I can refer you to the next paragraph  
22 beginning "me refiero." Do you see that in the original?

23 A. Just a second.

24 Q. Certainly.

25 A. Beginning "me refiero." Yes.

03:27 1 numeral II?

2 A. Yes.

3 Q. And how did the Roman numeral two indented  
4 paragraph come out? Do we have a number of missing words  
5 and mistakes in this paragraph as well? Yeah, it's on the  
6 screen, if that would help.

7 A. No, I can't agree with that characterization. I  
8 don't think there are that many missing words.

9 Q. Okay. Let me ask you another question, sir. You  
10 see the seal on the bottom right-hand corner, do you not?

11 A. I do.

12 Q. Now, you said earlier, and I read your language,  
13 you said that all the documents from the Court Record have  
14 the seal; correct? That's in your Report.

15 A. That is in my Report.

16 Q. And did you see a number of the documents that did  
17 not have the seal?

18 A. I did not notice any documents in the course of my  
19 manual review that did not have the seal.

20 Q. Were you looking for that?

21 A. I was not.

22 Q. How does the seal affect the OCR process?

23 A. It's another example of the sort of localized  
24 noise that will cause localized errors in the OCR.

25 Q. Let me ask you to turn to the fourth side of this

03:29 1 page; and, at the top, the page number ends in 968.  
 2 A. Yes, I see it.  
 3 Q. Can you tell us what that correlates to in the OCR  
 4 version?  
 5 A. The 968?  
 6 Q. Yes. I'm sorry.  
 7 If you turn to that page, turn to Number 7,  
 8 beginning with "otros antecedentes a los que."  
 9 A. If you will give me a moment.  
 10 There appears to be with a section beginning with  
 11 a one and a comma and the phrase "otros antecedentes a  
 12 los."  
 13 Q. And I'm looking for the one and the comma. Can  
 14 you be a little more specific where we can find this?  
 15 A. This would be the fourth side, about a third of  
 16 the way down the page, immediately--in the seventh  
 17 paragraph.  
 18 Q. And can you go ahead and read the language under  
 19 that. Under Number 1.  
 20 A. "La parte," probably "pertinente del escrito  
 21 presentado por la parte actora el 29 de Octubre del 2003 a  
 22 las 171145 que," probably "textualmente dice."  
 23 Quote--and at this point the original goes into an  
 24 unusual script which is slightly more difficult to read,  
 25 but you can see that it's pulling out some--

03:33 1 Q. Let's turn back--well, actually, you know what?  
 2 Let's take a break now.  
 3 PRESIDENT VEEDER: Let's do that.  
 4 MR. BLOOM: And then I will finish up. Thank you.  
 5 PRESIDENT VEEDER: Yes. You were about to say  
 6 something.  
 7 MS. MOUAWAD: I just wanted to ask whether we  
 8 could get a sense of how much longer we will be going after  
 9 the break, or you can tell us after the break.  
 10 MR. BLOOM: I'm guessing about an hour 15.  
 11 MS. MOUAWAD: Okay.  
 12 MR. BLOOM: It might be less.  
 13 PRESIDENT VEEDER: We'll come back at ten to 5:00.  
 14 I'm sorry, that's a bit of a long break. Ten to 4:00.  
 15 (Brief recess.)  
 16 PRESIDENT VEEDER: Let's resume.  
 17 We have more questions from the Respondent.  
 18 BY MR. BLOOM:  
 19 Q. Dr. Juola, if you can stick with the same  
 20 document, and you can look at either Tab 5 or 6, maybe we  
 21 will begin with Tab 5, and on the second page that is the  
 22 back of the first page, you will see a Number 2 beginning  
 23 with "esto."  
 24 Do you see that? Or "esta."  
 25 A. I do see that.

03:31 1 Q. And on the original document, sir--  
 2 A. Um-hmm.  
 3 Q. You will see under seven, little two, there are  
 4 underlined words. It goes on for about five lines.  
 5 Do you see that?  
 6 A. I do.  
 7 Q. Beginning with an "esta"?  
 8 A. Yes, I see that.  
 9 Q. Can you match that up to anything in the OCR  
 10 version?  
 11 A. Give me a moment, please.  
 12 (Pause.)  
 13 PRESIDENT VEEDER: Mr. Bloom, we do need a break.  
 14 If this is a convenient time?  
 15 MR. BLOOM: Why don't we just finish this  
 16 document.  
 17 PRESIDENT VEEDER: Up to you. Finish the  
 18 document, and we will have a 15-minute break.  
 19 MR. BLOOM: Okay. Thank you.  
 20 THE WITNESS: There is some--what looks like OCR  
 21 errors between the phrase "peritos" and "Director del  
 22 Instituto," where there is actually substantial structure  
 23 in the noise. It is not what I would considered  
 24 gobbledygook, but I will certainly acknowledge that it's  
 25 not textbook Spanish, either.

03:51 1 Q. And under that we have--we have a quote,  
 2 "Presidencia de la Corte."  
 3 Do you see that?  
 4 A. I do.  
 5 Q. And the first couple of lines are kind of there,  
 6 but then we have a lot more difficulty in the OCR version  
 7 at Tab 6.  
 8 Would you agree with me?  
 9 A. I agree.  
 10 Q. It's a high error rate for this quote; correct?  
 11 A. For this quote, yes.  
 12 Sorry, can you hear me?  
 13 I apologize, I have a lot of papers in front of  
 14 me.  
 15 Q. And then if I can ask you to turn to the fifth  
 16 page where there are Paragraph Numbers 8, 9, and 10, and if  
 17 you look at the last two lines and compare them to the OCR  
 18 version, you're going to have a most difficult time  
 19 comparing them to the OCR version. In fact, can you tell  
 20 us where we can find it in the OCR version?  
 21 A. No, it's not there at all.  
 22 Q. It's not there at all. And then if you turn to  
 23 the next page, the back of that page, Page--it's the sixth  
 24 side, Paragraph 12, and you will see towards the bottom of  
 25 the page, it seems to get a little darker for about the

03:53 1 last eight lines or so.  
 2 Can you direct our attention to where it is in the  
 3 OCR version?  
 4 A. Give me a moment, please.  
 5 Q. Certainly.  
 6 A. The last three lines did you say?  
 7 Q. No, I'd say about one, two, three, four, five,  
 8 six--the last seven lines of Paragraph 12 seem to be  
 9 slightly darker than the first number of lines in  
 10 Paragraph 12, beginning with I believe, "aprobo,"  
 11 A-P-R-O-B-O.  
 12 Do you see that?  
 13 A. I do.  
 14 Q. And if you turn to the sixth page or side of  
 15 Tab 6, you'll see Paragraph 13, so this language, these  
 16 last seven lines ought to be there.  
 17 Do you find them there at all?  
 18 A. I do not.  
 19 Q. So, just to be clear, the entirety of all seven  
 20 lines are missing from the OCR version; correct?  
 21 A. Yes, this appears to be another example of a  
 22 localized OCR error.  
 23 Q. Let me ask you to turn to the penultimate page of  
 24 the original "petición C."  
 25 Do you see that?

03:55 1 A. I do see "petición C."  
 2 Q. Okay. And then I'm going to ask you to turn to  
 3 the OCR version on the last page. Again, you'll see  
 4 "petición C."  
 5 A. I do.  
 6 Q. And you'll see at the bottom of the--well, you'll  
 7 see the last couple of words of the second line; it says,  
 8 "en la que." This is on the OCR version, second line.  
 9 A. It's, I'm sorry, on the OCR version, yes, "en la  
 10 que," on the second line.  
 11 Q. Okay. And then it tries to pick it up after some  
 12 spurious notations; correct?  
 13 A. Yes.  
 14 Q. But there is a healthy error rate on this line  
 15 too; correct?  
 16 A. Yes, there is, there is an elevated error rate.  
 17 Q. And then as we go through this paragraph we begin  
 18 to lose not only characters, but words and lines; isn't  
 19 that correct?  
 20 A. That is correct. This is another example of  
 21 isolated OCR error due to salt-and-pepper noise. I think  
 22 Payton may have called that "speckling" in his Report.  
 23 Q. I'll represent to you that this document was not  
 24 hand-reviewed by you, but again I want to give you the  
 25 opportunity to please double-check, if you would like.

03:56 1 A. It was not. On the other hand, it actually does  
 2 not appear to be the sort of document that would have  
 3 required it because the N-grams would have picked up  
 4 snippets from the relevant sections.  
 5 Q. Well, we're going to get to that a little bit  
 6 later, again, as to how you chose what should be reviewed,  
 7 so trust me, sir, we will certainly get to that.  
 8 If we could turn to the next tab, Tab 8. And  
 9 Tab 7. Tab 7 is the original, Tab 8 is the OCR version.  
 10 You would agree that, on the first page, you have  
 11 "señor" incorrectly spelled in the OCR version?  
 12 A. That is correct.  
 13 Q. And Justicia de Nueva Loja has some problems  
 14 presumably because there is a line through the V and the A  
 15 of Nueva; am I correct?  
 16 A. And the initials immediately above.  
 17 Q. And at the bottom of the page you will agree with  
 18 me that this Court Seal adversely affected the OCR which is  
 19 at the bottom of the first page of the OCR version, Tab 8.  
 20 A. Yes, I agree.  
 21 Q. You'll see a lot of spurious marks and a high  
 22 error rate on those lines where the--where the Court Seal  
 23 is; correct?  
 24 A. That is correct.  
 25 Q. Okay. Now, we're going to turn to Numbers 9 and

03:58 1 10, and this will be just be very quick. I just want you  
 2 to confirm for me the existence of the Court Seal at the  
 3 bottom right-hand side of Tab 9?  
 4 A. I'm sorry, you asked me to confirm the existence  
 5 of the Court Seal at the bottom right-hand of Tab 9?  
 6 Q. Correct.  
 7 A. Yes, it is there.  
 8 Q. And what was the effect of the OCR version?  
 9 A. I'm sorry, did you say the effect of the OCR  
 10 version?  
 11 Q. But now I'll correct it.  
 12 (Laughter.)  
 13 Q. What is the effect of the Court Seal on the OCR  
 14 version?  
 15 A. It produces a localized error--set of localized  
 16 errors.  
 17 Q. There is also an extraneous line perhaps initials  
 18 on the lower left, and would that have any effect on the  
 19 OCR version?  
 20 A. It's not clear whether that had an effect or not.  
 21 The letter "E" in "estas" has disappeared, which might be  
 22 an effect.  
 23 Q. How about the word above "estas"?  
 24 A. Yes, it appears to have knocked out everything  
 25 except the "O" in the word above the "estas."

04:00 1 Q. Let's turn to Tabs 11 and 12.  
 2 MR. BLOOM: For the record, that's CL0847-0093031,  
 3 which corresponds to our R-479, and this is a multi-page  
 4 document.  
 5 I'm not going to ask you about the first page,  
 6 back or front of Tab 11. I do, however, have a few  
 7 questions about the next page, which, in the original,  
 8 begins "informe que presente el Señor Mayo."  
 9 BY MR. BLOOM:  
 10 Q. Do you see that in the original?  
 11 A. I do. I do.  
 12 Q. Can you tell me how that four-line heading comes  
 13 out in the OCR version?  
 14 A. It does not appear to be there.  
 15 Q. Okay. Now, do you see the first "antecedentes"?  
 16 A. I do.  
 17 Q. And you see something that resembles that, do you  
 18 not?  
 19 A. I do.  
 20 Q. What about Desarrollo? Do you see that word?  
 21 A. I see something very close to that word.  
 22 Q. And then what about for the rest of that page?  
 23 Are you able to match up the words or the sentences or the  
 24 paragraphs?  
 25 A. There are some phrases that I believe I can match

04:03 1 up.  
 2 Q. Well, there are 35 to 40 lines on the original  
 3 under that heading.  
 4 Do you see that?  
 5 A. I do.  
 6 Q. And it carries over onto the next page, so there  
 7 are a total of about 45 lines, and now that's been  
 8 remarkably reduced to about a dozen lines; correct?  
 9 A. That is correct.  
 10 Q. So, there are an awful lot of words missing in  
 11 their entirety in this OCR version; correct?  
 12 A. That is correct.  
 13 Q. And sentences that are missing entirely; correct?  
 14 A. That is correct.  
 15 Q. And then if you continue in the original, you will  
 16 see a section called "reservado." I'm able to say that  
 17 word. Kind of.  
 18 A. Yes, I see that.  
 19 Q. I see in the OCR version towards the bottom of the  
 20 third page the word, "reservado."  
 21 Do you see that?  
 22 A. Yes.  
 23 Q. In the original, there are about 20 to 25 lines.  
 24 Do you see that?  
 25 A. That is correct.

04:04 1 Q. And it's all missing, isn't it?  
 2 A. It is.  
 3 Q. Approximately how many words do you estimate are  
 4 missing here?  
 5 A. Let's see. That's single-spaced, but it's got  
 6 extremely wide margins.  
 7 At a guess, 300.  
 8 Q. As a matter of fact, in the OCR version you see  
 9 "reservado" followed by what word?  
 10 A. Two words?  
 11 Q. The word after "reservado" is identified in the  
 12 OCR version. Can you tell me what word follows.  
 13 A. There was a word immediately after it which begins  
 14 with a 15 and a period.  
 15 Q. Okay.  
 16 A. And then immediately after that, there is another  
 17 word.  
 18 Q. And then in the original--can you tell me what  
 19 that word is?  
 20 A. My bet is that it is "recomendación."  
 21 Q. And in the original, how many sentences should  
 22 have been in between the title of "reservado" and the  
 23 recommendation?  
 24 A. Probably about 4 or 5 hundred.  
 25 Q. And that's all missing?

04:06 1 A. Was that a question?  
 2 Q. Yes.  
 3 A. Yes, it's all missing.  
 4 Q. We're going to skip a couple so we could move this  
 5 examination along, so if I could ask you to turn to Tab 15,  
 6 and Tab 15 correlates to our document that the Claimants  
 7 put into the record as C-664--I'm sorry, 644.  
 8 And if you look at the original--I guess the first  
 9 question is, do you see a Court Seal on this first page?  
 10 A. I see some lines, but not a Court Seal.  
 11 Q. How about the second page?  
 12 A. No.  
 13 Q. And the third page?  
 14 A. No.  
 15 Q. And the fourth page?  
 16 A. No.  
 17 Q. And the fifth page?  
 18 A. Yes.  
 19 Q. And in this instance it's not a little Court Seal,  
 20 is it?  
 21 A. I have actually two copies--two Court Seals.  
 22 Q. Fair enough.  
 23 The little Court Seal at the bottom right-hand  
 24 side of the page cuts through, in part, three lines;  
 25 correct?

04:08 1 A. Possibly a fourth.  
 2 Q. And the big seal cuts through approximately how  
 3 many lines?  
 4 A. About 25.  
 5 Q. And the big seal has what looks like words around  
 6 it; correct?  
 7 A. That is correct.  
 8 Q. And it also looks like it has a picture in the  
 9 middle. Can you make that out?  
 10 A. I can--I can see the picture.  
 11 Q. Would you agree with me that the picture and the  
 12 lines and the seal and the words all have an adverse effect  
 13 on the readability in the normal course in during the--of  
 14 the OCR version?  
 15 A. I would.  
 16 Q. Now, the first page of this document, at least to  
 17 me, to the naked eye to someone who might be a little bit  
 18 less familiar with the page looks pretty readable. What  
 19 about to your eyes?  
 20 A. There is a higher level than I would have expected  
 21 of individual character errors, but most of the words seem  
 22 to be recoverable.  
 23 Q. How high of an error rate do you think we have  
 24 here in terms of character errors?  
 25 A. At a guess, that would be somewhere--in this

04:12 1 Court Seal is somewhere on that first page, although it's  
 2 not as dark as the one we saw previously?  
 3 A. It is extremely faint, and it has mostly  
 4 degenerated into intermittent speckling.  
 5 Q. By the way, do you know why it would have  
 6 degenerated? Would that be because it's multiple copies?  
 7 Would it be because the seal when it was placed may have  
 8 not been pressed hard enough?  
 9 A. I don't know why.  
 10 Q. Do you believe that even these extraneous lines  
 11 might have an effect on the OCR version?  
 12 A. It's possible, yes.  
 13 Q. Then if you turn to the second page, you don't see  
 14 the little Court Seal there at all, do you?  
 15 A. I do not.  
 16 Q. And then if you turn to the next page, you do see  
 17 the Court Seal?  
 18 A. I do.  
 19 Q. If you turn to the next page, there is no Court  
 20 Seal again?  
 21 A. That is correct.  
 22 Q. And then if I ask you turn to Tab 18, which is the  
 23 OCR version, would you characterize this as a high-quality  
 24 OCR version of the document?  
 25 A. I would not.

04:10 1 particular paragraph? Around 10 percent.  
 2 Q. In this particular paragraph, it seems like in  
 3 Ecuador they write in just one paragraph, so I'm not sure  
 4 what you're referring to?  
 5 A. I'm sorry, on this particular page.  
 6 Q. I see.  
 7 A. Okay. This particular section to which you drew  
 8 my attention. This document appears to be one huge  
 9 paragraph, I agree.  
 10 Q. Can you just tell me how you estimated your  
 11 10 percent?  
 12 A. Looked at some words and kind of counted the  
 13 number of changes, probably closer to 20 percent on further  
 14 inspection because there is--I'm not sure how the spaces  
 15 were processed. Most of the short words appeared to have  
 16 passed through fine, but the longer words.  
 17 We get typically one or two in an eight or nine  
 18 word thing.  
 19 Q. Sir, if you could take a look at Page 17. And  
 20 this correlates to R-538, the CL number is 1495-0159416.  
 21 First question is, you see the Court Seal at the  
 22 bottom right-hand corner?  
 23 A. One moment, please.  
 24 Okay. Yes, I do.  
 25 Q. Can you tell that it looks like the great big

04:13 1 Q. Would you care to estimate the error rate here?  
 2 A. This is probably closer to 40 percent.  
 3 Q. In fact, the OCR version is about two and a half  
 4 pages, is it not?  
 5 A. Two and a half double pages, five page sides.  
 6 Q. When you referred to error rate right now, are you  
 7 referring or including text that's missing entirely?  
 8 A. No, I was not.  
 9 Q. So, when you were referring to error rate, you  
 10 were referring to the characters that are mistaken from one  
 11 version to the next; correct?  
 12 A. That is correct, in the estimates I just gave you.  
 13 Q. And then in addition to that, we have missing  
 14 words; is that correct?  
 15 A. Can you show me some missing words in this  
 16 example?  
 17 Q. I suspect we could have some fun with this.  
 18 Well, I think the low-hanging fruit here would be  
 19 certainly--  
 20 (Cellphone rings.)  
 21 Q. Do you see on the very first line in the original  
 22 the month of November is there in Spanish?  
 23 A. I do.  
 24 Q. Do you see that in the OCR version?  
 25 A. I do not see it in the form of the word

04:15 1 "November," but I believe that, in fact, the section that  
 2 says tilde, tilde, EMP, tilde, comma, comma, comma, D is  
 3 actually the word November.  
 4 Q. Would that be an N-gram?  
 5 A. Depending on context, it could be, although it  
 6 would be a character N-gram, not a word N-gram.  
 7 Q. Is that an N-gram that was used here?  
 8 A. Hmm?  
 9 Q. Was that an N-gram used here?  
 10 A. I'm not understanding the question.  
 11 Q. Was that N-gram specifically searched for?  
 12 A. That was not part of anything for which I  
 13 searched.  
 14 Q. And I'm not going through the OCR version, but  
 15 would you agree with me that the words in the bottom  
 16 right-hand part of the first page are likely absent in  
 17 their entirety, if for no other reason because of the Court  
 18 Seal?  
 19 A. I don't think I can agree with that without  
 20 looking at this document further.  
 21 Q. Let's turn to 19 and 20, sir, and Tab 19 again  
 22 comes from your hard drive identified as CL1587. That is  
 23 from Cuerpo 1587-0168517. This is a document that the  
 24 Respondent had put into the Record as R-689.  
 25 And, sir, on the first page again you see this

04:17 1 great big seal, do you not?  
 2 A. I'm sorry, did you say Tabs 19 and 20?  
 3 Q. Yes, sir.  
 4 A. Yes, I do.  
 5 Q. And this is a little darker than the faded one we  
 6 saw a few moments ago; correct?  
 7 A. It is.  
 8 Q. Can you tell us by looking at the OCR version at  
 9 Tab 20 what the effect was of this Seal?  
 10 A. It introduced a lot of errors.  
 11 Q. And even above the Seal, it's very difficult to  
 12 make out some of the words.  
 13 Can you explain that for me, because again this  
 14 looks like to the naked eye as someone who doesn't do this,  
 15 this looks like a very readable copy?  
 16 A. Actually, there is still a fair amount of  
 17 salt-and-pepper noise on this one.  
 18 If you'll look, a lot of the individual characters  
 19 look like they have been badly scanned through a dot  
 20 matrix, and there are little white flecks in a lot of the  
 21 characters.  
 22 Q. You're raising something I'm just curious about as  
 23 someone who doesn't do this. Is this based on scanning or  
 24 is it based on the quality of the document?  
 25 Let me rephrase that because you look confused as

04:19 1 to what I'm asking.  
 2 The OCR version is not very readable to somebody  
 3 like me, and my question to you is, are all of the spurious  
 4 characters on the OCR version due to, for example, the  
 5 darkness of the original or could it be due to some kind of  
 6 scanning error?  
 7 A. Scanners are in general fairly reliable. They're  
 8 essentially cameras, so if you imagine taking--getting a  
 9 digital camera and taking a picture, it is rare that the  
 10 camera does not faithfully reproduce what you see.  
 11 Q. But if you take a picture of a picture of a  
 12 picture of a picture and you're talking fifth or sixth  
 13 generation, that would start affecting the quality?  
 14 A. That would have an effect on the quality.  
 15 Q. So, you don't believe it's a scanning issue. You  
 16 believe it's an issue of the document itself?  
 17 A. It could be an issue of the document itself. It  
 18 could also be an image of how the document was processed  
 19 electronically prior to being entered into the paper  
 20 record. There are a number of potential sources for how  
 21 this document could have gotten the way it did. It could  
 22 also simply have been printed on a bad--old model printer  
 23 that did not print very well.  
 24 Q. And again, you had nothing to do with this  
 25 scanning; correct?

04:21 1 A. I had nothing to do with the scanning.  
 2 Q. Or the printing?  
 3 A. Or the printing.  
 4 Q. And what would you estimate the error rate is on  
 5 this first page?  
 6 A. I couldn't really come up with an estimate off the  
 7 top of my head. I would need to sit and count.  
 8 Q. But would you agree that putting the quality of  
 9 the document aside, the presence of these two Court Seals  
 10 would cause a number of words to be missing in their  
 11 entirety?  
 12 A. That is possible.  
 13 Q. And even putting aside the Court Seal, if you were  
 14 to look at second line, which again to the naked eye looks  
 15 pretty good, after "Nueva Loja," which I'm not even sure  
 16 that's there, do you see the rest of the line?  
 17 A. Um-hmm, I do.  
 18 Q. Where do you see it? Where is the version?  
 19 A. No, I'm sorry. I misunderstood your question. I  
 20 thought you were drawing my attention to a certain section  
 21 of the--  
 22 Q. I think you interpreted my question as the  
 23 original document. So, let me ask it again so the Record  
 24 is clear.  
 25 On the second line of the original document, it



04:22 1 begins with the words "Nuevo Loja."  
 2 Am I correct that every word on the rest of that  
 3 line is missing?  
 4 A. It's not clear whether the words are missing or  
 5 masked by a high degree of noise.  
 6 Q. How does it come out on the OCR version?  
 7 A. It comes out as a collection of apparently random  
 8 characters.  
 9 Q. Can you tell us what those characters are for that  
 10 one line?  
 11 A. Yes. There is the word "Nueva," the letter--lower  
 12 case "R," a capital "O," a capital "U" with an acute  
 13 accent, a back slash, a--what looks like an em-dash, a  
 14 tilde, a closing square bracket, the letter "Q," an upside  
 15 down exclamation point, another em-dash, a keyboard  
 16 apostrophe, and octothorp, the letter "I," another keyboard  
 17 apostrophe, the letter "O"--  
 18 Q. I think we can stop there. Thank you, Doctor.  
 19 If you turn to the back of that page, there is no  
 20 Court Seal there at all; correct?  
 21 A. I see no Court Seal.  
 22 Q. And then on the final page, again, you see the big  
 23 Court Seal?  
 24 A. I do.  
 25 Q. And on the second page there is not a big Court

04:25 1 Q. Next page you have no Seal, big or little?  
 2 A. That is correct.  
 3 Q. Next page they make up for it and give you both  
 4 the big and little Seal; correct?  
 5 A. Correct.  
 6 Q. Now, without even looking at the OCR version,  
 7 unless it's too late, do you want to hazard a guess as to  
 8 how reliable the OCR process was here?  
 9 A. Not--again, we have a lot of speckling or  
 10 salt-and-pepper noise, and, of course, the Seals to which  
 11 you drew my attention, so it could be acceptable or it  
 12 could be bad.  
 13 Q. Sir, if you could look at Tab 22, and you can't  
 14 compare the original with this OCR version, can you?  
 15 A. It looks like it extracted a total of seven words  
 16 from the document.  
 17 Q. So, we essentially have a blank page; correct?  
 18 A. Yes.  
 19 Q. Would you tell us what the error rate in your view  
 20 would be here?  
 21 A. Nearly 100 percent.  
 22 Q. Well, you said a few moments ago that you didn't  
 23 focus on missing words, missing sentences?  
 24 A. I'm sorry, you asked me for an estimate of the  
 25 error rate in those specific passages. For the reports

04:24 1 Seal or a little Seal.  
 2 A. That is correct.  
 3 Q. Okay, so, let's now turn to--we're going to go to  
 4 21 and 22. This is CL1760-0185866, which correlates to a  
 5 document the Respondent put into this record as R-1489.  
 6 Sir, again, do you see that great big Seal on the  
 7 first page of the document?  
 8 A. I do.  
 9 Q. And can you remind the Tribunal what the effects  
 10 could be on the OCR version as a result of this great big  
 11 Seal?  
 12 A. The great big Seal could produce errors.  
 13 Q. And a Seal of this size and of this darkness has  
 14 the potential of creating a lot of errors; correct?  
 15 A. Possibly, yes.  
 16 Q. And on the next page there is no Seal?  
 17 A. That is correct.  
 18 Q. And the page after that you've got another great  
 19 big Seal?  
 20 A. That is correct.  
 21 Q. Next page you don't have any Seal at all, big or  
 22 little?  
 23 A. That is correct.  
 24 Q. Next page you've got a great big Seal?  
 25 A. Again, correct.

04:27 1 that I gave, it was a more formal definition of error rate  
 2 related to Levenshtein distance, which is somewhat  
 3 technical, but it relates to missed characters, inserted  
 4 characters or deleted characters, so it includes all three  
 5 kinds of errors under the rubric of calculating error rate.  
 6 Q. So, employing the analysis that you used in your  
 7 report, what would the error rate be as it relates to Tabs  
 8 21 to 22?  
 9 A. Nearly 100 percent.  
 10 Q. You would have had this whole thing deemed an  
 11 error?  
 12 A. I beg your pardon?  
 13 Q. You would have considered 100 percent error?  
 14 A. For this particular document, the error rate would  
 15 be nearly 100 percent.  
 16 Q. Employing the analysis that you used?  
 17 A. Yes.  
 18 Q. Could you explain why?  
 19 A. Well, there are approximately, call it 30  
 20 characters on this page that were correctly detected, and,  
 21 so if I deleted everything on the page except for the first  
 22 "E" and then I deleted everything from that point to the  
 23 first "S" and then everything on the page to the first "C"  
 24 and similarly, I would essentially be deleting all of the  
 25 document except for about 30 characters.

04:28 1 Q. Could you confirm with me that you did not hand  
 2 review this document?  
 3 A. I did not. I did not.  
 4 Q. Okay. Let's now turn to Tab 23. Again, it's got  
 5 the big Seal on the first page.  
 6 A. Yes.  
 7 Q. Nothing on the second?  
 8 A. That is correct.  
 9 Q. In fact, every other page has a Seal and every  
 10 other page has no Seal; is that correct?  
 11 A. Every other page has two Seals. It's got the big  
 12 one and the little one.  
 13 Q. Okay. Now, if you look at the OCR version, do you  
 14 want to try to match up the text where the Seal is on the  
 15 first page?  
 16 (Pause.)  
 17 Q. You're having difficulty finding it, sir?  
 18 A. I am.  
 19 Q. Could you estimate the error rate on this page?  
 20 A. Not quickly.  
 21 Q. Let me ask you to turn to Tab 27 just for a  
 22 moment, but not 28 quite yet.  
 23 A. I'm sorry, Tab 27?  
 24 Q. Tab 27. Thank you, sir.  
 25 And Tab 27 is a fairly short document. It's only

04:32 1 two paragraphs, but this is a little bit slanted; correct?  
 2 A. That is correct.  
 3 Q. And I'm sorry, would the fact that it's slanted at  
 4 all have an effect on the OCR, without looking?  
 5 A. It would not.  
 6 Q. Okay. And I think you testified earlier that that  
 7 problem was solved in the Eighties?  
 8 A. Yes, I did.  
 9 Q. Is it that the OCR software now is just better  
 10 software than back in the Eighties?  
 11 A. We are better at blocking documents, which is to  
 12 say that we recognize regions of the documents that contain  
 13 text. And then once the regions have been identified, they  
 14 will be normalized to a local set of axis so the text is  
 15 analyzed as though it were horizontal.  
 16 Q. And then if you--and I should just for the record  
 17 say that this is CL0951-0104226.  
 18 If you do turn the tab to Tab 28, you will see  
 19 that there is very little text there. And we have this one  
 20 on the screen.  
 21 A. That is correct. Although I don't believe it's  
 22 the slanting that is the issue.  
 23 Q. I was just going to ask you that. You think it's  
 24 the quality of the image itself?  
 25 A. As you will notice, there is a lot of

04:33 1 salt-and-pepper noise on this thing. It is probably  
 2 significant that the areas where there are no  
 3 salt-and-pepper noises, that noise is the date, the  
 4 salutation and the signature block.  
 5 Q. Walk with me, if you would, to Tab 29. This is  
 6 also slanted.  
 7 MR. BLOOM: For the record, it's  
 8 Cuerpos 951-0104227.  
 9 BY MR. BLOOM:  
 10 Q. And does this have a lot of salt and pepper?  
 11 A. It does.  
 12 Q. And if you turn to Tab 30, you would agree with me  
 13 that it's mostly--the document is mostly gone; correct?  
 14 A. Correct.  
 15 Q. If I can walk you to document or Tab 31, which is  
 16 CL Cuerpos 1144-0124242, you would agree with me that the  
 17 quality of this document is not particularly good?  
 18 A. I would.  
 19 Q. And if you turn to Tab 32, you would agree with me  
 20 that it came out largely as--what was the technical word  
 21 you used? Gobbledygook?  
 22 A. Yes.  
 23 Q. What's the difference between gobbledygook and  
 24 gibberish?  
 25 A. I'm not sure there is one.

04:34 1 Q. Okay.  
 2 If I can ask you to turn to 33, Tab 33, which for  
 3 the record is Cuerpos 1144-0124254, you will see another  
 4 document that is not particularly strong in terms of its  
 5 quality?  
 6 A. That is correct.  
 7 Q. And if you look at Tab 34, you will see the OCR  
 8 version, and it's not surprisingly of poor quality;  
 9 correct?  
 10 A. That is not good--that is not a good  
 11 representation of the document.  
 12 Q. And what would you say is the error rate?  
 13 A. High.  
 14 Q. And when you say "high," you're talking in the 50,  
 15 60 percent range?  
 16 A. Probably higher than that for this document.  
 17 Q. If you turn to document 35, which is  
 18 Cuerpos 1144-0124255, you would agree with me that the  
 19 quality of this document is not very good?  
 20 A. Agreed.  
 21 Q. Maybe slightly better than the previous document.  
 22 But if you look at the OCR version at Tab 36, you would  
 23 agree with me that most of the language is gone entirely;  
 24 correct?  
 25 A. Correct.

04:36 1 Q. And, therefore, not searchable?  
 2 A. Correct.  
 3 Q. It's not usable for your purposes?  
 4 A. Correct.  
 5 Q. And the error rate would be approximately what?  
 6 A. Approximately 100 percent again.  
 7 Q. And then if we turn to documents behind Tab 37,  
 8 and again, this is an image from your hard drive, it comes  
 9 from Cuerpos 1145-0124328, you would agree with me, I take  
 10 it, that the quality of this document is not very good?  
 11 A. Agreed.  
 12 Q. And if you look behind Tab 38 you would agree with  
 13 me that almost all of the document is missing?  
 14 A. Agreed.  
 15 Q. And if you turn with me to Tab 39, which is  
 16 Cuerpos 1146-0124378, you would agree with me that the  
 17 quality of this document is not very good?  
 18 A. I would agree.  
 19 Q. Would that include the backside of the document?  
 20 A. That would, although I think the backside is  
 21 marginally higher quality than the front.  
 22 Q. And if you look behind Tab 40, you will see how it  
 23 came out in the OCR version, and you would agree with me  
 24 that that has an exceedingly high error rate, probably in  
 25 the 90 percent or more range?

04:37 1 A. I would agree.  
 2 Q. If you look at Number 41, Tab 41, which for the  
 3 record is Cuerpos 1469-0156739, here the document appears  
 4 to be of relatively good quality at least again to my naked  
 5 eye, but I know I need glasses.  
 6 A. No, I would concur with that.  
 7 Q. But if you look at the OCR version at 42, most of  
 8 the text is gone. Do you have any explanation for this?  
 9 A. Actually, my explanation would be that the person  
 10 who did the scanning only scanned one side of it, but  
 11 that's merely speculation, of course.  
 12 Q. So, you think that might be a scanning error--an  
 13 error committed by somebody else?  
 14 A. Yes, that one looks like human error.  
 15 Q. And as a result, an entire page was missing?  
 16 A. That is correct.  
 17 Q. Now, we had the TIFF image because we provided  
 18 that to you in Tab 41, so would that change your opinion as  
 19 to whether or not it was merely a scanning error?  
 20 A. It's not clear the process--it's not clear to me  
 21 the process by which the TIFF images were selected for  
 22 scanning, for OCR. If they were selected on a page by page  
 23 basis, they may have not clicked on the correct page.  
 24 Q. The bottom line is you don't know why we have a  
 25 blank OCR version; correct?

04:39 1 A. The bottom line is I don't know.  
 2 Q. If you look at Tab 43, you have a document that  
 3 has the big Seal on it?  
 4 A. That is correct.  
 5 Q. Otherwise a relatively clean version?  
 6 A. Well, it's got a lot of Seals and it's got some  
 7 strange signature over the signature block.  
 8 Q. And then if you look at Tab 44, this document is  
 9 largely blank; correct?  
 10 A. Correct.  
 11 Q. And, therefore, again, we have a high error rate;  
 12 correct?  
 13 A. Correct.  
 14 Q. If I can take you to Tab 45, which, for the  
 15 record, is Cuerpos 0605-0067022.  
 16 And is this document of fairly good quality?  
 17 A. I would say moderate.  
 18 Q. And then if you look at the OCR version behind  
 19 Tab 46, we're missing most of the document, are we not?  
 20 A. Apparently.  
 21 Q. And you would agree with me that the error rate is  
 22 quite high with respect to this document?  
 23 A. I would.  
 24 Q. If we can turn to Tab 47, you would agree with me  
 25 that the quality of this document--strike that.

04:40 1 For the record, the document is  
 2 Cuerpos 1145-0124322. You would agree with me that the  
 3 quality of this document is not very high?  
 4 A. Agreed.  
 5 Q. And, in fact, when you look at the OCR version, it  
 6 is missing entirely lines and sentences, is it not?  
 7 A. It is.  
 8 Q. And, therefore, we have a high error rate again?  
 9 A. Agreed.  
 10 Q. If you look at the document behind Tab 49, we're  
 11 looking at Cuerpos 814-008936.  
 12 And is this of moderate quality or less than  
 13 moderate quality?  
 14 A. I would say less than moderate.  
 15 Q. And, in fact, you can look document--behind  
 16 Tab 50, most of the document is gone?  
 17 A. That is correct.  
 18 Q. And, in fact, we have a high error rate, do we  
 19 not?  
 20 A. Yes. Most of the document is missing.  
 21 Q. Okay. You would agree with me that the same is  
 22 true of the next document which is Cuerpos 1227-0132498,  
 23 that the OCR version has eliminated most of the document?  
 24 A. Agreed.  
 25 Q. Let's turn to Tab 53, which is Cuerpos

04:42 1 1482-0158130. And this is of moderate quality except for  
 2 the fact you got a great big seal. Would you agree with  
 3 me?  
 4 A. I would. Well, a great big seal, two little seals  
 5 and a huge signature block.  
 6 Q. And in any event, the OCR version found behind  
 7 Tab 54 wipes out most all of the documents; correct?  
 8 A. Because they're behind most of the--behind the  
 9 great big seal, possibly.  
 10 Q. And, therefore, the error rate is very high on  
 11 this page.  
 12 A. Granted.  
 13 Q. Close to 100 percent?  
 14 A. Yes.  
 15 Q. If you turn to the document behind Tab 55, which  
 16 is Cuerpos 410-0046213, how would you describe the quality  
 17 of this document?  
 18 A. Overall not good. There is a lot of  
 19 salt-and-pepper noise on the top half, and the characters  
 20 are not well-defined even on the lower half where there  
 21 isn't as much salt-and-pepper noise.  
 22 Q. And if you look at the document behind Tab 56, it  
 23 came out as a blank. Do you know why that is?  
 24 A. I do not.  
 25 Q. If you turn with me to the document behind Tab 57,

04:45 1 A. That would possibly produce errors.  
 2 Q. And if you turn the page it produced a blank  
 3 document.  
 4 Do you know why it produced a blank document?  
 5 Would it be because of those shaded areas?  
 6 A. Probably not because of those shaded areas because  
 7 the shaded areas don't cover things like the salutation,  
 8 for example.  
 9 Q. So, do you have any other hypothesis as to why  
 10 that turned out blank?  
 11 A. As a hypothesis, human error.  
 12 Q. And then if you turn to Page--I'm sorry, Tab 63,  
 13 we have a very lengthy document.  
 14 Do you see that?  
 15 A. I do.  
 16 Q. It's about 25 pages.  
 17 And how would you characterize the quality of this  
 18 25-page document as you flip through it?  
 19 A. The textual sections are not good, and then when  
 20 we get to the list at the end of the tables, it's still not  
 21 good, made worse by the fact that the text itself is no  
 22 longer usefully Spanish.  
 23 Q. And then if you turn the page, that's the OCR  
 24 version?  
 25 A. Yes. It appears to be a blank page.

04:43 1 at CL1133-0123011. It's a one-page document, I think you  
 2 will agree, of less-than-terrific quality?  
 3 A. That is correct.  
 4 Q. And if you look at the document behind Tab 58, you  
 5 will see it came out entirely blank through the OCR  
 6 process.  
 7 Do you see that?  
 8 A. That is correct. I see that.  
 9 Q. And the error rate would, therefore, be what?  
 10 A. 100 percent. All characters deleted.  
 11 Q. And if you turn with me to Tab 59, a document  
 12 comes from Cuerpos 1145-0124291. This document is not of  
 13 good quality?  
 14 A. No, it is not.  
 15 Q. It's a two-page--or two-sided document; do you  
 16 agree?  
 17 A. Agreed.  
 18 Q. And the OCR process yielded blank pages; correct?  
 19 A. That is correct.  
 20 Q. If we turn to the document behind Tab 61, that's  
 21 CL1483-0158180.  
 22 A. That is correct.  
 23 Q. You will see a document that has some dark images?  
 24 A. That is correct.  
 25 Q. And how would that affect the OCR?

04:46 1 Q. So, what was the error rate here?  
 2 A. A hundred percent.  
 3 Q. Twenty-five pages gone?  
 4 A. Twenty-five pages gone.  
 5 Q. Not searchable?  
 6 A. Not searchable.  
 7 Q. And you would not disagree with me--well, strike  
 8 that.  
 9 Do you want to accept my representation that none  
 10 of these documents were hand-reviewed, or would you like to  
 11 take the time here?  
 12 A. I will accept your representation.  
 13 Q. Okay. Now, did you know, prior to today, that the  
 14 OCR process sometimes yielded blank pages altogether?  
 15 A. Yes, I did.  
 16 Q. That wasn't in your Report, was it?  
 17 A. It was not.  
 18 Q. You chose not to note it in your Report; correct?  
 19 A. It did not seem relevant.  
 20 Q. And you, in fact, hand-reviewed some pages--not  
 21 the document--some documents--not the ones we showed  
 22 you--where you knew that they were blank; correct?  
 23 A. Yes, I believe so.  
 24 Q. In fact, many of the hundred thousand pages that  
 25 you tried to hand-review were ones that were blank, blank

04:47 1 when you did the OCR review?  
 2 A. I wouldn't say "many."  
 3 Q. Approximately how many?  
 4 A. A relative handful.  
 5 Q. Including some of the largest documents; correct?  
 6 A. I'm sorry?  
 7 Q. Including some of the longest documents; correct?  
 8 A. I'm sorry, are we doing statistics on the basis of  
 9 the documents now instead of pages? Yeah, I could not  
 10 estimate how many documents had been blank.  
 11 Q. I mean, based on my--  
 12 A. No, let me--  
 13 Q. Please, go ahead.  
 14 A. Give me a moment to think.  
 15 Q. Certainly.  
 16 A. My best recollection is maybe five of them.  
 17 Q. I mean, honestly, I was trying to determine how  
 18 you determined which documents to hand-review. And I guess  
 19 what I noticed is that many of those that were completely  
 20 blank, that might be 1,000 pages, were some of the  
 21 documents you hand-reviewed. So, my question to you is:  
 22 Was that a basis for you to do a hand-review, a lengthy  
 23 document that you knew to be blank?  
 24 A. It was not.  
 25 Q. Now, in Paragraph 50 of your 2013 Report, you

04:49 1 stated that you conducted five separate analyses of the  
 2 quality of the Court Record compared with the controlled  
 3 Cuerpos.  
 4 Do I understand that correctly?  
 5 A. Paragraph 50, you said?  
 6 Q. Paragraph five-zero.  
 7 A. Yes.  
 8 That is correct.  
 9 Q. And you explain this at a little greater length in  
 10 your Appendix A at Pages 13--I'm sorry, at paragraph--or  
 11 Pages 13 and 14, so if you want to turn to your Report, you  
 12 should certainly feel free to.  
 13 So, if you turn to the Appendix A at Paragraph 92,  
 14 you state here that using one of your quality-control  
 15 analyses that you would expect an error rate of not more  
 16 than 4 percent, right?  
 17 A. I'm sorry, which paragraph is this from?  
 18 Q. Ninety-two.  
 19 A. That is correct.  
 20 Q. And 4 percent of 216,000 pages is what?  
 21 A. It's not relevant because 4 percent of the  
 22 documents, not 4 percent of the pages.  
 23 Q. But you don't know whether the 4 percent of  
 24 documents where there are error approximate or don't  
 25 approximate 4 percent of the pages. It might be a higher

04:51 1 percentage or lower percentage, no?  
 2 A. That is correct.  
 3 Q. So, if you could still answer my question then,  
 4 4 percent of 216,000 pages would be how many pages?  
 5 A. 4 percent of 216,000 pages would be about 10,000  
 6 pages.  
 7 Q. And if we turn to your Paragraph 88, you determine  
 8 there, and I quote: "We can estimate that no more than  
 9 10 percent of the documents contained in the Court Record  
 10 were unusually difficult to analyze".  
 11 A. That is correct.  
 12 Q. Ten percent of 216,000 pages is how much?  
 13 A. It's still not relevant.  
 14 Q. I'm asking you how much.  
 15 A. Ten percent of 200,000 pages is 20,000 pages.  
 16 Q. Now, to be clear, differences in documents that  
 17 are not more than even a single deviation could at least  
 18 theoretically cause the OCR review to miss a word string or  
 19 an N-gram you're looking for.  
 20 A. I'm sorry, is that a quotation?  
 21 Q. No.  
 22 A. I'm sorry, can you repeat the question?  
 23 Q. I'm asking you.  
 24 A. Can you repeat the question?  
 25 Q. Differences in documents that are not more than

04:52 1 even a single deviation from the Spanish corpus could still  
 2 cause the OCR review to miss an N-gram, at least  
 3 theoretically?  
 4 A. At least theoretically, but the probability of  
 5 that happening is low.  
 6 Q. Now, to be clear, you never determined the error  
 7 rate by directly comparing the OCR version to the original  
 8 version; correct?  
 9 A. I did not.  
 10 Q. You, instead, compared the OCR version to the  
 11 Spanish corpus; correct?  
 12 A. That is correct.  
 13 Q. And what you're looking for are, among other  
 14 things, one, whether the letters A through Z were  
 15 replicated in the same approximate percentages as the  
 16 Spanish corpus. Would that be a component of hat you're  
 17 looking for?  
 18 A. I don't believe that letters was one of our  
 19 components.  
 20 Q. Okay. You're looking to see whether the letters  
 21 follow one another in the same approximate percentages as  
 22 the Spanish corpus?  
 23 A. That is correct.  
 24 Q. So, this exercise is premised on the assumption  
 25 that statistically significant differences between

04:53 1 character strings--my term--I don't think you used  
 2 that--character strings in the OCR version of the Lago  
 3 Record and the Spanish corpus might indicate a problem?  
 4 A. That is correct.  
 5 Q. Or, in other words, if the Spanish corpus will  
 6 withdraw that.  
 7 Now, if an entire paragraph is illegible to the  
 8 OCR software, the error rate on that page, according to  
 9 your quantitative analysis, should not be affected by the  
 10 loss of an entire sentence, should it? That is, if the  
 11 letters are random? Not well put. Let's go back to the  
 12 initial question.  
 13 If an entire paragraph is illegible to the OCR  
 14 software, the error rate on that page, according to your  
 15 quantitative analysis, should not be affected by the loss  
 16 of the entire paragraph?  
 17 A. What do you mean by illegible and/or loss?  
 18 Q. That no part of that paragraph is replicated in  
 19 the OCR version.  
 20 A. Thank you.  
 21 If a paragraph is missing from the document in  
 22 question, then we will have a smaller document which is,  
 23 therefore, less subject to the law of large numbers, which  
 24 is, therefore, more likely to display wild variations from  
 25 the established statistics. So, it would be slightly more

04:57 1 A. Yeah, I'm assuming that the--I'm assuming that the  
 2 words are generally of the same length. So, what you would  
 3 be talking about is you would be talking about deletion  
 4 errors that affect 75/300ths of the page.  
 5 Q. How does the OCR version know that there are  
 6 deletions? Because you're comparing it to the Spanish  
 7 curpos.  
 8 A. I'm sorry? Oh, you asked me what the error rate  
 9 was.  
 10 Q. I'm asking you what the error rate was  
 11 using--maybe this is where we had a disconnect--using the  
 12 analysis that you used in your Report. When you say that  
 13 90 percent--you have a 90 percent error-free rate--you  
 14 determined that by comparing the document--I thought you  
 15 were comparing the document, the OCR version, to the  
 16 Spanish corpus. Am I correct or incorrect on that?  
 17 A. I am comparing it but I'm not comparing it using  
 18 an error rate.  
 19 Q. So, what are you doing?  
 20 A. I'm doing a frequency analysis, as I testified on  
 21 direct.  
 22 Q. And if you deleted 75 of the 300 words, you are  
 23 still comparing the remaining 325 words to the Spanish  
 24 curpos; correct? 225 words to the Spanish curpos.  
 25 A. Two hundred twenty five. Yes. Yes.

04:55 1 likely to show high error rates.  
 2 Q. But as you said, only slightly more; correct?  
 3 A. It would depend on how much of the document had  
 4 been not read. If we are talking about a two-paragraph  
 5 document and we lose half of it, that would display  
 6 substantially more effect than if we were talking about a  
 7 200-paragraph document and lost one paragraph.  
 8 Q. Let's assume that the remainder of the document  
 9 other than this missing paragraph is otherwise perfect.  
 10 What would your error rate be? In other words, you have a  
 11 perfect document other than the fact it's missing a  
 12 paragraph.  
 13 A. How long is the document in question?  
 14 Q. A one-page document.  
 15 A. How many--how many characters are on this page,  
 16 how many characters are in the--how many characters are in  
 17 the missing paragraph?  
 18 Q. If I have a document that's, let's say, 300 words,  
 19 and it's missing 75 words.  
 20 A. Thank you.  
 21 Q. And the remainder of the document is otherwise  
 22 perfect, there are no other errors other than the missing  
 23 75 words, what would the error rate be?  
 24 A. Approximately 25 percent.  
 25 Q. Can you explain the analysis?

04:58 1 Q. And if those 225 words line up without errors,  
 2 then you would actually have a zero percent error rate,  
 3 would you not? Or would your error rate, using this  
 4 analysis, take into consideration the fact that we're  
 5 missing 75 words?  
 6 A. It would take into account the fact that with only  
 7 225 words there would be more missing words and more words  
 8 that occurred at a higher frequency, so we would have  
 9 greater difference.  
 10 Q. Okay. So, let's--we have a 25 page document.  
 11 Let's say we have 5,000 words, and it's missing an entire  
 12 page. The other 24 pages are all perfect; is that going to  
 13 substantially increase the error rate under your analysis  
 14 that you deployed for purposes of your Report in your  
 15 opinion?  
 16 A. I don't know. I haven't looked at that specific  
 17 situation.  
 18 Q. Now, let me ask you another question that we were  
 19 curious about. The files on your drive starting with  
 20 T-E-M-P, TEMP files, are not official documents; right?  
 21 A. My understanding is that they were.  
 22 Q. If they have--if they're TEMP and there are no  
 23 seals, no Foja numbers, do you have an understanding  
 24 whether they came from Chevron--in other words, were they  
 25 Chevron copies, versus the official Court Record copies?

05:00 1 A. I represented that what I was given--I was  
 2 represented--they represented to me that what I received  
 3 was the Court Record.  
 4 Q. I mean, I'll just ask you, to take very--and I  
 5 think your answer is going to be you don't know--but if I  
 6 could just ask you to turn to Tab 63. There is no Court  
 7 Seal on this document?  
 8 A. There is no Court Seal.  
 9 Q. And you don't know whether--other than what was  
 10 represented to you, you have no idea about this document;  
 11 correct?  
 12 A. Correct.  
 13 Q. Did you receive the TEMP files at the same time  
 14 that you received all the other documents?  
 15 A. I don't recall. I believe so, because I believe  
 16 they were on the same hard drive.  
 17 Q. Now, when you executed your original Declaration  
 18 in this case, you had been operating on the assumption that  
 19 you had searched the entire lower--this is a quote now from  
 20 your December 20th Report that "you searched the entire  
 21 lower court Lago Agrio Court Record for potential sources  
 22 that may have served to provide the text and data cited by  
 23 the experts in this case."  
 24 Did you write those words yourself?  
 25 A. I did.

05:02 1 Q. But you would agree with me that the OCR process  
 2 did not accurately identify some of those documents; isn't  
 3 that also correct?  
 4 A. They did not represent it with 100 percent  
 5 accuracy, which we knew going in because that's what OCR  
 6 does, and that's why we applied the error of robust  
 7 techniques.  
 8 Q. Would you agree with me that there are more  
 9 documents--we can hand out more binders--do you--would you  
 10 agree with me that there are going to be more documents  
 11 that--where the OCR version also came out blank other than  
 12 what we showed you here today? It would not surprise you,  
 13 would it?  
 14 A. It would not surprise me to learn that.  
 15 Q. Let me just ask you one more question: You'd  
 16 represented that you had the entire record, but there seems  
 17 to be missing certain of the CL documents, the Cuerpos.  
 18 Is it your--or can you explain why some of these  
 19 documents would be--might be missing from your hard drive?  
 20 A. I cannot.  
 21 MR. BLOOM: Okay. I'll pass the Witness.  
 22 PRESIDENT VEEDER: Thank you very much.  
 23 We will have some questions from the Claimants no  
 24 doubt, but how long do you think you will be?  
 25 MS. MOUAWAD: I shouldn't take more than ten

05:04 1 minutes, but I would appreciate a short break if I may.  
 2 PRESIDENT VEEDER: How short is short?  
 3 MS. MOUAWAD: Not even ten minutes.  
 4 PRESIDENT VEEDER: Let's take ten minutes.  
 5 (Brief recess.)  
 6 PRESIDENT VEEDER: Let's resume.  
 7 REDIRECT EXAMINATION  
 8 BY MS. MOUAWAD:  
 9 Q. Good afternoon, Dr. Juola.  
 10 A. Good afternoon.  
 11 Q. Mr. Bloom showed you some OCR pages that were  
 12 blank. Do you remember that?  
 13 A. He did.  
 14 Q. And he also showed you the TIFF images--well, on  
 15 the slides that were next to it, but I think you had the  
 16 hard copy to look at as well; correct?  
 17 A. That is correct.  
 18 Q. Were any of the TIFF images that you looked at in  
 19 the past two hours with Mr. Bloom the Fusión Memo?  
 20 A. They were not.  
 21 Q. Were any of those TIFF images the Draft Alegato?  
 22 A. They were not. They were not even similar to the  
 23 Fusión Memo or the Draft Alegato.  
 24 Q. Were any of those TIFF images an e-mail from Pablo  
 25 Fajardo?

05:14 1 A. They were not.  
 2 Q. Now, Mr. Bloom also asked you about TEMP files on  
 3 the hard drive that you received and whether or not you  
 4 knew they were in the Record, so I want to take you back to  
 5 what we looked at in your direct examination, and  
 6 specifically I'd like to pull up R-1545, TEMPS0003303. If  
 7 you could pull that up.  
 8 MS. MOUAWAD: I think the Tribunal Members have  
 9 gotten a copy. Maybe that's an easier way to do that.  
 10 (Pause.)  
 11 PRESIDENT VEEDER: Could we ask if the Respondent  
 12 have hard copies, too?  
 13 MS. MOUAWAD: So, now we've got it sorted out.  
 14 BY MS. MOUAWAD:  
 15 Q. This is what we looked at in your direct  
 16 examination. As I said, in the record it is R-1545,  
 17 TEMPS0003303.  
 18 Do you remember that document that we looked at as  
 19 one of the Chevron motions that was filed?  
 20 A. I remember looking at it with you this morning.  
 21 Q. Okay. And let's take a look again at the last  
 22 page of that document, and that has a court stamp; correct?  
 23 On the last page, where we looked at the date and the time  
 24 earlier?  
 25 A. We looked at the date and the time. That's

05:16 1 not--that is, of course, not the same Court stamp that has  
 2 been shown to me extensively during cross.  
 3 Q. Right. So, let's take a look at R-1544, which is  
 4 specifically the Page Cuerpo 1990, the entire Cuerpo that  
 5 was submitted by Respondent, and you'll see at the top of  
 6 the page it has the page, the Foja number which is 208915.  
 7 Do you see that?  
 8 A. I do.  
 9 Q. And that's the except same document that I just  
 10 showed you, except that it's one that's marked with the  
 11 page number from the Court Record. I will make that  
 12 representation to you.  
 13 If you could look at the third page, that  
 14 also--you'll recognize that has the stamp that we just  
 15 looked at and the time of 1745.  
 16 A. Although it appears to be a different stamp.  
 17 Q. Right.  
 18 A. It's in a slightly different location than the  
 19 stamp that I have.  
 20 Q. Right. It's still marked 1745; correct?  
 21 A. It's still marked 1745.  
 22 Q. And it has an official page number in the Cuerpo?  
 23 A. It does.  
 24 Q. Mr. Bloom also spent some time showing you  
 25 examples of localized errors.

05:17 1 Do you remember that?  
 2 A. I do.  
 3 Q. And when he asked you about that, you mentioned  
 4 that your methodology of breaking down the Court Record in  
 5 successive 5-grams mitigated against that risk. Can you  
 6 explain to us what you meant by that.  
 7 A. Yes. This is more or less the same argument that  
 8 I made on direct when you asked me about pages being out of  
 9 sequence. If we assumed that there is a 150-page--sorry, a  
 10 150-word passage somewhere on a page but somebody has put a  
 11 Court stamp on it or somebody has spilled coffee on it or  
 12 somebody has signed across a particular passage or even  
 13 somebody has put a crease across the document, that will  
 14 produce localized errors that will cause local issues with  
 15 the OCR. It will knock out, for example, in the case of a  
 16 single line maybe ten to 12 words.  
 17 However, if it you knock out ten words from the  
 18 exact middle of a 150-page passage, that will still leave a  
 19 70--sorry, 150-word passage, you knock out ten words from  
 20 the middle of that 150-word passage you will still have 70  
 21 words above it and 70 words below it which would still be  
 22 searchable and could still be found by the methodology that  
 23 we used.  
 24 In fact, you could have knocked out every other  
 25 line in that passage, and that would still have created a

05:19 1 number of overlapping approximately ten-word passages with  
 2 each of the successive lines, so there would still have  
 3 been enough material in that, again in Example 2 of Leonard  
 4 to find the relevant passage, even if every other line in  
 5 the document had been knocked out.  
 6 MS. MOUAWAD: I have no further questions.  
 7 PRESIDENT VEEDER: Thank you very much. The  
 8 Tribunal has no questions. We've come to the end of your  
 9 testimony.  
 10 THE WITNESS: Thank you very much.  
 11 PRESIDENT VEEDER: Thank you for coming to assist  
 12 the Tribunal, and you may leave the table.  
 13 (Witness steps down.)  
 14 PRESIDENT VEEDER: It's 20 past 5:00. We don't  
 15 suggest we start with the next witness now. We prefer to  
 16 start clean tomorrow.  
 17 We seem to be doing quite well on time, so shall  
 18 we start at 9:30 tomorrow?  
 19 We ask the Claimants first.  
 20 MR. BISHOP: That would be fine for the Claimants,  
 21 yes.  
 22 PRESIDENT VEEDER: And the Respondent?  
 23 MR. BLOOM: At your pleasure.  
 24 PRESIDENT VEEDER: Well, it's your pleasure, too.  
 25 MR. BLOOM: You want to start at 8:00 a.m. or

05:20 1 10:00 a.m.  
 2 PRESIDENT VEEDER: We don't to want fall behind,  
 3 we may have to adjust the time forward, but for the moment  
 4 we think 9:30, and tomorrow is obviously going to be a long  
 5 day, as will probably be the following day.  
 6 MR. BLOOM: Yes.  
 7 PRESIDENT VEEDER: 9:30 a.m. tomorrow, and we will  
 8 think about the housekeeping overnight and we'll come back  
 9 to you at some appropriate time tomorrow. Until tomorrow.  
 10 Thank you.  
 11 MR. BLOOM: Thank you.  
 12 (Whereupon, at 5:20 p.m., the Hearing was  
 13 adjourned until 9:30 a.m. the following day.)  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25



## CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

  
DAVID A. KASDAN

IN THE MATTER OF AN ARBITRATION BEFORE A TRIBUNAL  
CONSTITUTED  
IN ACCORDANCE WITH THE TREATY BETWEEN THE U.S.A. AND THE  
REPUBLIC OF ECUADOR CONCERNING THE ENCOURAGEMENT AND  
RECIPROCAL PROTECTION OF INVESTMENT, SIGNED AUGUST 27, 1993  
(THE "TREATY")

and

THE UNCITRAL ARBITRATION RULES 1976

- - - - -x  
 In the Matter of Arbitration :  
 Between: :  
 :  
 CHEVRON CORPORATION (U.S.A.), :  
 TEXACO PETROLEUM COMPANY (U.S.A.), :  
 :  
 Claimants, : PCA Case No.  
 : 2009-23  
 and :  
 :  
 THE REPUBLIC OF ECUADOR, :  
 :  
 Respondent. :  
 - - - - -x Volume 3

TRACK 2 HEARING

Thursday, April 23, 2015

The World Bank  
700 18th Street, N.W.  
J Building  
Conference Room JB1-080  
Washington, D.C. 20003

The Hearing in the above-entitled matter convened  
at 9:30 a.m. before:

MR. V.V. VEEDER, Q.C., President

DR. HORACIO GRIGERA NAÓN, Arbitrator

PROFESSOR VAUGHAN LOWE, Q.C., Arbitrator

## Registry, Permanent Court of Arbitration:

MR. MARTIN DOE, Secretary to the Tribunal

MR. RAYMUNDO TREVES

MS. NAYA PESSOA

## Additional Secretary:

MS. JESSICA WELLS

## Court Reporters:

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1 P R O C E E D I N G S  
2 PRESIDENT VEEDER: Good morning, ladies and  
3 gentlemen. We'll start Day 3 of this Track 2 or Phase II  
4 Hearing. We have certain housekeeping matters, and we'll  
5 keep them until. We'll proceed immediately with the next  
6 witness, unless there are certain matters that need to be  
7 raised by the other side at this stage.  
8 We ask the Claimants first.  
9 MR. BISHOP: There are none from the Claimants.  
10 PRESIDENT VEEDER: And from the Respondent?  
11 MR. BLOOM: There are none at this time.  
12 PRESIDENT VEEDER: Thank you.  
13 ALBERTO GUERRA BASTIDAS, CLAIMANTS' WITNESS, CALLED  
14 PRESIDENT VEEDER: I'm address addressing you in  
15 English, but I understand that you're following me in  
16 Spanish through the headphones; is that correct?  
17 THE INTERPRETER: He may be in the wrong channel.  
18 MR. KEHOE: I can't hear the Spanish either,  
19 Mr. Veeder.  
20 THE INTERPRETER: He may be in the wrong channel.  
21 I think Mr. Guerra can't hear me for some reason,  
22 Mr. President.  
23 Can you hear me, Mr. President?  
24 PRESIDENT VEEDER: Let's try it again with the  
25 interpreters.

C O N T E N T S

PAGE

WITNESSES:

ALBERTO GUERRA BASTIDAS

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Cross-examination by Mr. Bloom 604

09:31 1 (Pause.)  
2 THE INTERPRETER: Can you hear me, Mr. President?  
3 The Witness may be on the wrong channel.  
4 PRESIDENT VEEDER: Let's try again.  
5 I'm addressing you in if English through the  
6 interpreters. Can you hear what I'm saying as interpreted  
7 into Spanish?  
8 (Pause.)  
9 PRESIDENT VEEDER: I think we've now fixed it.  
10 Can you hear what I'm saying as interpreted into Spanish?  
11 THE WITNESS: Yes, I do.  
12 ARBITRATOR GRIGERA NAÓN: Can you ask him to come  
13 closer to the microphone.  
14 PRESIDENT VEEDER: Thank you for that. Are there  
15 any technical difficulties on the Claimants' side?  
16 MR. KEHOE: Not that I can see right now.  
17 PRESIDENT VEEDER: I think we're resolving them on  
18 the Respondent's side.  
19 MR. LEONARD: Could I ask the translators to  
20 speak.  
21 PRESIDENT VEEDER: Put your microphone on.  
22 MR. LEONARD: Could I ask the interpreters to  
23 speak so we could hear them on channel two.  
24 THE INTERPRETER: Maybe we should get the  
25 technician, Mr. President, just to help us out.

09:33 1 PRESIDENT VEEDER: I think we're going to be okay.  
 2 MR. LEONARD: We all have two.  
 3 PRESIDENT VEEDER: Okay. If not, we can call the  
 4 technician. It's up to you.  
 5 THE INTERPRETER: Mr. Leonard, can you hear the  
 6 Spanish now?  
 7 MR. LEONARD: Let's proceed. I have the screen in  
 8 front of me. I can manage.  
 9 (Pause.)  
 10 MR. LEONARD: Could we test it one more time,  
 11 please.  
 12 THE INTERPRETER: Now the English.  
 13 What about the English? Can you hear the English?  
 14 Channel one.  
 15 (Pause.)  
 16 THE INTERPRETER: English, can you hear the  
 17 English now? All right. Thank you.  
 18 PRESIDENT VEEDER: Let's proceed. We seemed to  
 19 have resolved the technical difficulties.  
 20 Could I ask you to look at the piece of paper  
 21 which is on your left side on the table, and you will there  
 22 find a form of words in Spanish. It's a single sheet of  
 23 paper. Would you pick it up.  
 24 And if you will, I will ask you to state your full  
 25 name and then to read the Declaration in the Spanish

09:37 1 with questions from the Claimants.  
 2 MR. KEHOE: Thank you, Mr. President.  
 3 DIRECT EXAMINATION  
 4 BY MR. KEHOE:  
 5 Q. Mr. Guerra, I have a few questions for you, but  
 6 first there is a binder in front of you with four  
 7 Declarations. Would you look at each of them briefly,  
 8 please, and tell us whether they're your Declarations and  
 9 your signature on the last page of each one.  
 10 Since we're limited in time, I'm going to help the  
 11 Witness find the pages, if that's not a problem.  
 12 PRESIDENT VEEDER: Not at all.  
 13 THE WITNESS: Yes, these are my signatures.  
 14 Q. Sir, when you signed these declarations, did you  
 15 state the facts truthfully and to the best of your ability  
 16 and memory at the time that you signed them?  
 17 A. Yes, that is correct, I did.  
 18 Q. Sir, what country were you born in?  
 19 A. I was born in Ecuador.  
 20 Q. Until recently, have you lived in any country  
 21 other than Ecuador?  
 22 A. I did not. I have lived in Ecuador.  
 23 Q. Yes, until recent--well, can you reside in Ecuador  
 24 now?  
 25 A. I cannot.

09:35 1 language.  
 2 THE WITNESS: Yes, with pleasure, Mr. President.  
 3 I'm Alberto Guerra Bastidas, and I solemnly  
 4 declare upon my honor and conscience that I shall speak the  
 5 truth, the whole truth, and nothing but the truth.  
 6 PRESIDENT VEEDER: Thank you.  
 7 We have certain rules about the way in which you  
 8 will be questioned, first of all, of course, by the  
 9 Claimants, and then by the Respondent, and then by the  
 10 Claimants again, and possibly by the Tribunal.  
 11 Because you're giving evidence in Spanish, it will  
 12 be translated into English, and some of the questions will  
 13 be in English will be translated into English; it's very  
 14 important that the lawyers who question you and you do not  
 15 overspeak. There has to be a pause between each question  
 16 and each answer, not only for the shorthand recorders  
 17 because they can't record two people speaking at the same  
 18 time, but also we need a pause to allow the interpreters to  
 19 complete their interpretation, so we ask all the lawyers  
 20 who ask questions, and we ask you, too, just to pause  
 21 between the question ending and your answer beginning.  
 22 Do you understand what I'm saying?  
 23 THE WITNESS: Yes, sir, I understand.  
 24 PRESIDENT VEEDER: If there's any problem, please  
 25 signal to us, and we will try to resolve them, but we start

09:40 1 Q. And why is that?  
 2 A. The circumstances do not allow for that to happen.  
 3 I consider that my liberty and my life are at risk in my  
 4 country at the moment because I have facilitated the truth  
 5 in connection with the history of the Chevron Judgment.  
 6 Q. And what country do you live in now, sir?  
 7 A. I live in the United States of America.  
 8 Q. Do most of the your family and friends still live  
 9 in Ecuador?  
 10 A. That is correct, yes.  
 11 Q. What was your profession when you lived in  
 12 Ecuador?  
 13 A. I was a lawyer, have been a lawyer, and I have all  
 14 worked as a lawyer.  
 15 Q. And you had a job as a lawyer in Ecuador?  
 16 A. Yes.  
 17 Q. Were you able to support yourself and your family  
 18 through your profession in Ecuador?  
 19 A. Yes.  
 20 Q. If you, sir, had kept quiet, had not facilitated  
 21 the truth that you just testified to, could you have  
 22 continued to support yourself and your family in Ecuador?  
 23 A. That is correct, yes.  
 24 Q. Are you in a position to practice your profession  
 25 here in the United States of America?

09:41 1 A. I am not, not--in no way possible.  
 2 Q. Do you speak any English?  
 3 A. I do not, sir.  
 4 Q. Mr. Guerra, I'm just going to take a few moments  
 5 to review some of the facts that you say facilitated the  
 6 truth coming to light in this case.  
 7 Did you have a meeting with anyone in September or  
 8 October 2010, at the Honey Honey restaurant in Quito?  
 9 A. I did. At that time I met with Mr. Steven  
 10 Donziger, with Pablo Fajardo, Luis Yanza, who represented  
 11 the Plaintiffs against Chevron in Ecuador.  
 12 Q. What did you say to them at that meeting?  
 13 A. Specifically at that meeting, I conveyed a message  
 14 from Judge Nicolas Zambrano related to the fact that he  
 15 would accept for them to prepare the draft Judgment in the  
 16 Chevron Case, in exchange of the sum of at least \$500,000.  
 17 Q. What did they say in response to that, and who  
 18 said it?  
 19 A. Specifically, and mainly, Mr. Steven Donziger  
 20 stated that at that time, unfortunately, they did not have  
 21 the money to conduct negotiations or to provide a specific  
 22 offer.  
 23 Q. Did you report that back to Mr. Zambrano?  
 24 A. I did, yes.  
 25 Immediately, and then later on, he told me that he

09:43 1 had reached an agreement, a personal agreement, with  
 2 Chevron's representatives, and that money was going to be  
 3 received, but later on, after the Judgment was to be  
 4 enforced.  
 5 Q. Sir, you just said Chevron's representatives. Did  
 6 you mean the Lago Agrio Plaintiffs' representatives?  
 7 A. I am referring to the lawyers that were the  
 8 attorneys of record of the Plaintiffs against Chevron.  
 9 Q. Before the Lago Agrio Court issued the Judgment,  
 10 did Mr. Zambrano give you a draft of it to review and  
 11 comment on?  
 12 A. Yes, that is correct. That is how the facts  
 13 transpired.  
 14 Q. And when doing this, did he tell you how he came  
 15 into possession of it?  
 16 A. Expressly, he indicated to me that Pablo Fajardo  
 17 was the one who gave the document to him.  
 18 Q. Mr. Guerra, do you know how Chevron learned of  
 19 these facts that you and I just reviewed on your direct  
 20 examination?  
 21 A. Of course. These events I commented myself to  
 22 Chevron's representatives.  
 23 Q. When did you do that?  
 24 A. I commented this issue to them approximately  
 25 between June and July 2012.

09:45 1 Q. One last thing before I hand you over for  
 2 cross-examination, Mr. Guerra.  
 3 You met with the lawyers for Chevron about 53  
 4 times during the period of 14 months from September 2012 to  
 5 November 2013; is that right?  
 6 A. That is correct, the number of meetings is correct  
 7 because I have a habit of writing relevant  
 8 information--including that relevant information in my  
 9 personal diary.  
 10 I would like to clarify the fact that those  
 11 meetings were due to a number of factors, many factors,  
 12 such as issues related to immigration, the situation of my  
 13 children, issues that had to do with leasing of housing,  
 14 looking at documents, also my provision of certain  
 15 documents--well, a large number of issues and matters.  
 16 Q. Has anyone choreographed your every statement for  
 17 testimony?  
 18 A. No, no one has done so in any way whatsoever.  
 19 Q. Has anyone choreographed your every facial  
 20 expression and mannerism for testimony?  
 21 A. By Chevron's lawyers or the individuals that I  
 22 have met with, I have never observed or seen that kind of  
 23 attitude.  
 24 MR. KEHOE: Mr. President, I tender the Witness  
 25 for cross-examination.

09:47 1 PRESIDENT VEEDER: Thank you very much.  
 2 There will now be questions from the Respondent.  
 3 Before we proceed, is technically everything  
 4 working? I'm asking the Respondents first.  
 5 MR. BLOOM: Yes.  
 6 PRESIDENT VEEDER: Thank you.  
 7 MR. BLOOM: We will hand up some documents.  
 8 (Pause.)  
 9 PRESIDENT VEEDER: Just one further matter,  
 10 Mr. Bloom, at some stage we're going to need a break for  
 11 the shorthand writers, the interpreters, for the witness,  
 12 for counsel, for the Tribunal. You decide when that best  
 13 comes during the course of your cross-examination this  
 14 morning.  
 15 MR. BLOOM: Certainly. Do you want to give me an  
 16 estimate as to how long you would like to go before we  
 17 break? Because what I'll do is, at the end of a line of  
 18 questions around that time, I'll suggest a break, and I  
 19 could get some guidance.  
 20 PRESIDENT VEEDER: Between an hour and a quarter  
 21 and an hour and three quarters from now.  
 22 MR. BLOOM: Approximately 11:00?  
 23 PRESIDENT VEEDER: Yes.  
 24 MR. BLOOM: Thank you.  
 25 CROSS-EXAMINATION

09:50 1 BY MR. BLOOM:  
 2 Q. Good morning, Mr. Guerra.  
 3 A. Good morning to you, sir.  
 4 Q. I would like to begin with some housekeeping  
 5 matters. We have provided you with two binders. You now  
 6 have two binders in front of you?  
 7 A. Yes, I do. You're referring to the ones that I'm  
 8 touching right now; right?  
 9 Q. That is correct.  
 10 The bigger binder--  
 11 (Overlapping interpretation.)  
 12 Q. The bigger binder should have a series of  
 13 statements that you have made. I'd like to walk briefly  
 14 with you through that binder so that you understand what is  
 15 there in the event you want to refer to it. Do you  
 16 understand?  
 17 A. Yes, I do. I understand.  
 18 Q. At Tab 1 reflects a May 6, 2012, telephone  
 19 discussion that you had with an unidentified representative  
 20 of Chevron. Feel free to take a look at Tab 1, but can you  
 21 confirm that that meeting or that conversation was, in  
 22 fact, recorded and that the transcript is at Tab 1?  
 23 A. Yes, sir, I'm looking at it.  
 24 Q. Very well.  
 25 And then at Tab 2 should be the transcript of a

09:51 1 May 24, 2012, telephone discussion you had with Chevron's  
 2 unidentified representative.  
 3 Do you recall having a conversation with this  
 4 representative?  
 5 A. Yes, I do. I remember.  
 6 Q. And Tab 2 is a transcript of this conversation, is  
 7 it not?  
 8 A. Yes, sir, that is correct.  
 9 MR. BLOOM: For the record, Tab 1 is R-1214; Tab 2  
 10 is R-1334.  
 11 BY MR. BLOOM:  
 12 Q. And then, sir, on May 29, 2012, you had three  
 13 additional telephone calls with this same identified agent.  
 14 Do you recall that?  
 15 A. Yes, I do remember this. I remember having talked  
 16 to him personally and telephonically with Chevron's  
 17 representatives and with the individuals that you've  
 18 identified as unidentified.  
 19 Q. Very well. Thank you.  
 20 And if you can take a look at the documents behind  
 21 Tabs 3, 4, and 5 which are marked as exhibits in this  
 22 arbitration as R-1335, R-1336, and R-1337, and if you can  
 23 confirm that these are transcripts of these conversations  
 24 that you just testified that you recall?  
 25 A. Yes, I remember this. That's correct.

09:53 1 Q. And then on June 4th, 2012, you had three more  
 2 telephone calls with the same individual. Do you recall  
 3 that?  
 4 A. Are you referring to which document? Where is it?  
 5 What's the tab number?  
 6 Q. If you refer to Tabs 6, 7, and 8, which, for the  
 7 record are exhibits in this arbitration at 1338, 1341, and  
 8 1342, for these transcripts of conversations that you had  
 9 with the same unidentified Chevron representative.  
 10 A. Yes, sir, that's correct, I remember.  
 11 Q. And then on June 5, you had two more telephone  
 12 conversations, this time with an attorney from Chevron  
 13 named Andres Rivero and a Chevron investigator named Yohir  
 14 Akerman. Those transcripts should be behind Tabs 9 and 10  
 15 which are exhibits in this arbitration as R-1343 and  
 16 R-1344.  
 17 Can you confirm that those are transcripts of your  
 18 conversations on June 5?  
 19 A. Yes, sir, they are.  
 20 Q. And then behind Tab 11 is Exhibit R-1213, which is  
 21 a transcript of a June 25, 2012, interview that you had  
 22 with the same Chevron attorney, Mr. Rivero. Do you recall  
 23 that conversation, and can you confirm that that Transcript  
 24 is at Tab 11?  
 25 A. Yes, sir. I'm looking at it, and I recognize it.

09:55 1 MR. BLOOM: And, for the record, that exhibit is  
 2 R-1213.  
 3 BY MR. BLOOM:  
 4 Q. And then, sir, you had a further interview with  
 5 Mr. Rivero and Mr. Akerman on July 13, 2012. I believe you  
 6 will find that Transcript behind Tab Number 12, which is  
 7 Exhibit 1345. Can you confirm that, please?  
 8 A. Yes, sir, that is correct.  
 9 Q. And you recall that conversation as well?  
 10 A. In general terms I do, but details--well, I would  
 11 have to read it.  
 12 Q. I understand.  
 13 And then if you look behind Tab 13 is our Exhibit  
 14 R-1346 which should reflect a July 31, 2012 interview by  
 15 Mr. Rivero and Mr. Akerman. Could you take a moment and  
 16 confirm that that document is, in fact, a transcript of  
 17 that conversation?  
 18 A. Yes, sir, that is correct.  
 19 Q. And then behind Tab 14 we have Claimants'  
 20 Exhibit 1616a, and this is a declaration you were just  
 21 asked about in direct examination. It's your Declaration  
 22 of November 17, 2012, on Chevron's behalf filed both in the  
 23 New York Action and in this arbitration. Can you confirm  
 24 that that is your Declaration?  
 25 A. Yes, sir, it is.

09:57 1 Q. And then if I may take you to Tab 15, which for  
 2 the record is Claimants' Exhibit 1648. Am I correct, sir,  
 3 that the document at Tab 15 is a supplemental Declaration  
 4 dated January 13, 2013, that you signed?  
 5 A. You are correct, sir. I did sign that document.  
 6 Q. Thank you, sir.  
 7 And then if you can take a look behind  
 8 exhibit--I'm sorry, behind Tab 16, which is R-1331, and can  
 9 you confirm that this is a second supplemental Declaration,  
 10 this one dated April 11, 2013, signed by you?  
 11 A. Yes. That statement was signed by myself.  
 12 Q. And then you offered a witness statement on  
 13 October 9, 2013, that you provided to Chevron's counsel for  
 14 Chevron to submit in the New York Action. That document  
 15 should be behind Tab 17. It is marked as Claimants'  
 16 Exhibit 2358. Can you please confirm that that is the  
 17 Witness Statement that was submitted to the New York  
 18 Action?  
 19 A. Yes, sir, that is correct.  
 20 Q. And then do you recall being deposed by counsel  
 21 for the Lago Agrio Plaintiffs for that New York Action on  
 22 May 2, 2013?  
 23 A. Yes, I do remember.  
 24 Q. And you were under oath that day, were you not?  
 25 A. Yes.

09:59 1 Q. You swore to tell the truth?  
 2 A. Yes.  
 3 Q. And you have never objected to the accuracy of the  
 4 Transcript of that deposition, have you?  
 5 A. Would you repeat your question?  
 6 THE INTERPRETER: Would you please repeat your  
 7 question, says the Witness?  
 8 BY MR. BLOOM:  
 9 Q. Certainly. The official Transcript is behind  
 10 Tab 18 at R-906. Under the U.S. Rules of Evidence, a  
 11 witness who has been deposed has an opportunity to correct  
 12 mistakes in a deposition Transcript.  
 13 Did you ever seek to correct mistakes made in the  
 14 deposition Transcript that is at Tab 18?  
 15 A. No, unfortunately, I do not speak English. When I  
 16 read documents sometimes in connections with depositions  
 17 and answers to questions, I did notice that there was some  
 18 difference in the way that I said the things as to what was  
 19 transcribed after the interpretation or translation, but I  
 20 have not done what you have suggested--I did not do what  
 21 you said I could have done.  
 22 Q. At that deposition, you were represented by  
 23 counsel, were you not?  
 24 A. Yes.  
 25 Q. And are you aware of any corrections made to the

10:01 1 Transcript by your counsel on your behalf?  
 2 A. I am not aware of any.  
 3 Q. And then let me represent to you, sir, that  
 4 Tab 19, which has been marked as Claimants' Exhibit 1978,  
 5 is a transcript of your testimony in the New York Action  
 6 from October 23 to October 25.  
 7 Let me ask you, sir, do you recall testifying in  
 8 the New York Action?  
 9 A. I do remember, yes, offering my testimony under  
 10 oath for the RICO Case as stated in the document at Tab 19  
 11 identified as C-1978.  
 12 Q. And then finally, sir, at Tab 20, which has been  
 13 marked as Respondent's Exhibit 907 is a transcript of a  
 14 deposition by you by one of my colleagues on  
 15 November 5, 2013, in New York.  
 16 Do you recall being deposed for purposes of these  
 17 arbitral proceedings?  
 18 A. Yes, sir, I do remember that.  
 19 Q. And you provided testimony that day also under  
 20 oath, did you not?  
 21 A. That is correct.  
 22 Q. And again, your answers were recorded by a Court  
 23 Reporter; correct?  
 24 A. Yes.  
 25 Q. And would you confirm for me that neither you nor

10:03 1 your counsel sought to correct any errors in the  
 2 Transcript?  
 3 A. I cannot give you any certainty whether the  
 4 counsel did anything in that regard, but I can tell you  
 5 that, in general, at the end of my deposition, be it  
 6 Mr. Clayman, the counsel or any other attorney with Gibson  
 7 Dunn, the representing law firm, I was asked to clarify  
 8 certain answers that I had offered given certain questions.  
 9 Q. And you availed yourself of that opportunity and  
 10 clarified, did you not?  
 11 A. That is correct, yes.  
 12 COURT REPORTER: Can you repeat that?  
 13 THE WITNESS: That is correct. I did so. I  
 14 answered the questions that were meant to clarify the  
 15 Transcript.  
 16 BY MR. BLOOM:  
 17 Q. And so that the Record is clear, after that  
 18 deposition, you never sought to correct the Transcript;  
 19 isn't that correct?  
 20 A. Honestly, I don't know what you are referring to.  
 21 But it's true, I have not participated in any act to  
 22 correct the contents of the translations.  
 23 Q. Now, I provided you this binder for your reference  
 24 in the event you needed it during the course of your  
 25 examination. As I have said to other witnesses, this is



10:06 1 not a memory test so, if you need those documents, please  
 2 let me know, okay?  
 3 A. I will do so.  
 4 Q. So, now, I want to discuss your relationship with  
 5 Chevron's legal representatives. As you were asked in  
 6 direct exam by Mr. Kehoe, you, in fact, met with lawyers  
 7 from Chevron on 53 occasions during the 14-month period of  
 8 September 2012 through November 5, 2013; isn't that  
 9 correct?  
 10 A. I should tell you that there is a mismatch in  
 11 connection with the time--I don't know if it is my mistake  
 12 or a mistake in the interpretation. I was referring to the  
 13 meetings that I had starting in November 2012 to  
 14 November--yes, 2013, yes. 2013.  
 15 Q. But to be clear, it began in November 2012 rather  
 16 than September 2012?  
 17 A. That is correct.  
 18 Q. Sir, over that 12-month period, you had 53  
 19 meetings, and am I correct that your meetings generally  
 20 lasted on each occasion from four to six hours?  
 21 A. Not exactly.  
 22 I should tell you that, out of the 53 meetings,  
 23 most of them were the meetings that I held with them  
 24 initially in Chicago, later on in New York, then in Miami  
 25 because of migration issues and I had endless meetings that

10:11 1 answer is not the truth. But, the question you are  
 2 referring to specifically refers to my meetings with Gibson  
 3 Dunn lawyers to prepare depositions, statements, or any  
 4 interventions that I needed to have before U.S.  
 5 authorities.  
 6 There are some other sorts of meetings that I also  
 7 had with Gibson Dunn lawyers, and they were never intended  
 8 for that, so my answer is correct, sir.  
 9 Q. Could you identify the names of the lawyers from  
 10 the law firm of Gibson Dunn with whom you met?  
 11 A. Yes. I basically held meetings with  
 12 Mr. Randy Mastro, Mr. Avi Weitzman as representatives of  
 13 Gibson. I only met with them or mainly with them, there  
 14 were others but the last names were sort of difficult to  
 15 remember for me, so I wouldn't be able to tell you the  
 16 names--the last names--are English names.  
 17 Q. Were there members of the King & Spalding legal  
 18 team?  
 19 MR. KEHOE: I have an objection. The line of  
 20 questioning began with the meetings over a period of 14  
 21 months. Now the Witness is being asked questions about  
 22 meetings over three months and now he's being asked  
 23 questions about meetings with King & Spalding. I would  
 24 just request that counsel be more specific when he's asking  
 25 about particular time frames and particular meetings

10:08 1 sometimes dealt with reviewing documents or submitting  
 2 documents to the migration attorneys, signing documents  
 3 that had to do with the asylum process. Also, I visited  
 4 the migration offices in Florida, and I had several  
 5 processes like these, so it is not accurate for me to say  
 6 that these meetings lasted as long as for as hours, as you  
 7 are saying.  
 8 Q. Sir--and I understand that you don't speak English  
 9 so, I will be asking the Court Reporter to translate some  
 10 of your prior deposition testimony, but I want to confirm  
 11 again that at both of your depositions you swore to tell  
 12 the truth, the whole truth, nothing but the truth; isn't  
 13 that correct?  
 14 A. That is correct.  
 15 Q. And I will represent that at Page--at Tab 19 in  
 16 that deposition of October 24, 2013, Page 1049, Line 24,  
 17 you were asked: "When you come for three or four days a  
 18 week, do you meet with the Gibson Dunn attorneys?"  
 19 Your answer was: "Yes."  
 20 "For how many hours a day?"  
 21 Your answer was: "Between four and six hours a  
 22 day."  
 23 That was your testimony on October 24, 2013.  
 24 Do you dispute your prior testimony?  
 25 A. At no time am I saying that the content of that

10:13 1 because it's confusing to me, so it must be confusing to  
 2 the Witness.  
 3 MR. BLOOM: I will clarify.  
 4 BY MR. BLOOM:  
 5 Q. At any time, can you tell me what lawyers from  
 6 Gibson--sorry, from King & Spalding you had met with?  
 7 A. For the purposes of preparing for this commitment,  
 8 for this testimony, I met with King & Spalding lawyers, in  
 9 March and April. Their names are Ed Kehoe and Caline  
 10 Mouawad. They are the ones that I met with mainly. These  
 11 meetings, to clarify, have taken place approximately in  
 12 March six times, in April two or three times.  
 13 PRESIDENT VEEDER: Excuse me for intervening, you  
 14 said March and April. Of what year?  
 15 THE WITNESS: Yes, thank you, Mr. President. I  
 16 said last March and April, so I'm referring to the current  
 17 year 2015.  
 18 BY MR. BLOOM:  
 19 Q. Did you ever meet with King & Spalding lawyers for  
 20 any purpose before March of 2015?  
 21 A. No. No, I did not--I did not meet with King &  
 22 Spalding lawyers before these dates, but I should explain,  
 23 clarify that at some point when I held meetings with Gibson  
 24 Dunn lawyers, the lawyers that I just mentioned from King &  
 25 Spalding used to be--used to also attend those meetings,

10:15 1 but at no time did they talk to me on a personal or  
 2 professional basis.  
 3 Q. Just so that I'm clear, I believe what you're  
 4 saying is that, during at least some of the 53 meetings  
 5 that you had with the Gibson Dunn lawyers, King & Spalding  
 6 lawyers were present; is that accurate?  
 7 A. Yes, sir, that is correct.  
 8 Q. You've testified that you had 53 meetings with  
 9 Chevron's lawyers from November 2012 to November 2013. Can  
 10 you tell us how many meetings you've had with Chevron's  
 11 lawyers since November 2013?  
 12 A. I do not have the specific information regarding  
 13 your question, but in general terms, I counted 53 meetings  
 14 total with the participation of migration lawyers, my  
 15 personal lawyer, Mr. Clayman and some other people.  
 16 Q. Fifty-three times over what time period?  
 17 A. You said it a couple of minutes ago:  
 18 November 2012 to November 2013.  
 19 Q. It was a miscommunication. What I'm now asking  
 20 you is: How many meetings have you had with Chevron's  
 21 attorneys since November 5, 2013?  
 22 A. If you allow me to tell you that immediately after  
 23 the deposition in the RICO Case--  
 24 THE INTERPRETER: I was just waiting for him.  
 25 PRESIDENT VEEDER: If you could restart your

10:18 1 answer because we lost the interpretation.  
 2 THE WITNESS: Would you please repeat your  
 3 question?  
 4 BY MR. BLOOM:  
 5 Q. On how many occasions have you met with Chevron's  
 6 attorneys since November 5, 2013?  
 7 A. Up to when, sir? Can you please specify the date  
 8 between after November 5th and until when?  
 9 Q. Until today.  
 10 A. Based on my recollection, I did not have any other  
 11 meetings.  
 12 After my commitment to testify in New York before  
 13 Judge Kaplan, after that, I did not have any meetings with  
 14 Gibson Dunn lawyers. The ones immediately following were  
 15 King & Spalding lawyers as I just mentioned.  
 16 Q. You testified on direct that you have a habit of  
 17 writing down relevant information, including of meetings.  
 18 Are you still writing down the dates of meetings that you  
 19 have with attorneys?  
 20 A. Yes, I usually do that.  
 21 Q. Now, you previously recognized, sir, that some of  
 22 your statements found in that binder that we just went  
 23 through have not always been consistent. Would you agree  
 24 with me that your statements have not always been  
 25 consistent?

10:20 1 A. The statements--are you referring to the  
 2 discussions I've had with Chevron representatives, or are  
 3 you referring to my sworn statement?  
 4 Q. We went through 20 statements. Some were recorded  
 5 conversations with Chevron, some were deposition  
 6 transcripts, some were declarations, some were trial  
 7 transcripts. Is it your statement today that your  
 8 statements regarding the Lago Agrio Case have always been  
 9 consistent, that you have always told the same story the  
 10 same way every time?  
 11 A. The specific answer to your question is yes. And  
 12 if the Tribunal allows me, I would like to elaborate.  
 13 Certainly, the recorded conversations that I had  
 14 initially with Chevron representatives include some  
 15 inconsistencies, some discrepancies, but in the sworn  
 16 statements that I signed myself or ratified or  
 17 authenticated myself with my signature, those statements do  
 18 not include them any discrepancies or inconsistencies.  
 19 Q. As a prefatory matter and to be clear, you do not  
 20 claim to have had any involvement at all in the Court of  
 21 Appeals Decision in respect to the Lago Agrio Case; isn't  
 22 that correct?  
 23 A. Yes, sir.  
 24 Q. And you had no knowledge about the Court of  
 25 Appeals Decision-making process--isn't that

10:22 1 correct?--specifically as it relates to the Lago Agrio  
 2 Case.  
 3 A. Would you please restate your question, to better  
 4 understand it.  
 5 Q. I think your prior answer was sufficient.  
 6 Nor have you ever claimed to have had any  
 7 involvement at all in the National Court's Decision; is  
 8 that correct?  
 9 A. Of course, that is correct.  
 10 Q. In fact, you were in the United States at the time  
 11 that Decision was issued; right? In November of 2013?  
 12 A. Yes, I was already in the United States.  
 13 Q. And with respect to the underlying Lago Agrio  
 14 Case, am I correct that you understood that Chevron had  
 15 tried for years to slow down those proceedings?  
 16 A. I did have that understanding, and that was also  
 17 an understanding that was shared by the Plaintiffs.  
 18 Q. The Claimants recognized that they were trying to  
 19 slow down the Lago Agrio proceedings?  
 20 A. In the opinion of the Plaintiffs Chevron was  
 21 trying to extend the Lago Agrio process--proceeding. The  
 22 intention of the Plaintiffs was to continue with it in a  
 23 streamline fashion.  
 24 Q. When you refer to the word "Claimants," whom are  
 25 you referring to? And I ask this, sir, so that you

10:25 1 understand, for purposes of this arbitration, Chevron and  
 2 Texaco Petroleum are the Claimants, and it may be when you  
 3 are referring to "Claimants" that you are referring to  
 4 Chevron in this arbitration or you may be referring to--  
 5 (Pause.)  
 6 Q. --you may be referring to Chevron in this  
 7 proceeding or to the Plaintiffs in the Lago Agrio Case.  
 8 So, I need to know--rather than use the word  
 9 "Claimants," if you could be a little bit more specific.  
 10 So let me ask it this way: It was your  
 11 understanding that Chevron was trying to delay the  
 12 adjudication of the Lago Agrio Case; isn't that correct?  
 13 A. If you allow me, and to clarify this question,  
 14 when we are referring to Lago Agrio, I am referring to  
 15 Plaintiffs, and that those represented by Mr. Yanza,  
 16 Donziger, and Fajardo. And yes, in the opinion of both Mr.  
 17 Zambrano, at that time, as well as the Plaintiffs  
 18 represented by Mr. Fajardo and others, in their opinion,  
 19 Chevron was delaying, slowing down or was intending to slow  
 20 down that proceeding.  
 21 Q. And you agreed with the opinion that Chevron was  
 22 trying to slow down those proceedings; isn't that correct?  
 23 A. I shared the view and the intention of the  
 24 Plaintiffs represented by Fajardo and others, and clearly I  
 25 had the same opinion.

10:27 1 Q. And you believed that Chevron was trying to  
 2 generate as many legal issues as possible to help it  
 3 justify the existence of fundamental errors; correct?  
 4 A. Under Ecuadorian law, those are essential errors,  
 5 and I did share that opinion, yes.  
 6 Q. And when you spoke with Chevron's representatives  
 7 in your very first meeting in June of 2012, you, in fact,  
 8 told them that Chevron was playing games in the Lago Agrio  
 9 Case, did you not?  
 10 A. I told them what is stated in the recording. I do  
 11 not remember saying "playing games." I don't remember  
 12 saying that.  
 13 Q. You said: "The attorneys from Chevron would bitch  
 14 over everything, right? We call it 'generating incidents.'  
 15 They generated incidents about everything. They liked  
 16 nothing. Approved nothing. If there were two lines in a  
 17 court order containing ten lines--damn! They would say,  
 18 'we agree with half of this line and half of the other,  
 19 what it says. As for the rest, we oppose it because of  
 20 this, that, and the other.' Meaning, they created  
 21 incidents, but the whole issue was aimed at delaying.  
 22 Damn! I hope that, because of them, the trial will be  
 23 delayed 100 years. First point. And second point,  
 24 obviously, they were very interested in generating  
 25 incidents which, which would definitely cause the

10:29 1 justification, from their point of view, of the existence  
 2 of fundamental errors, right?"  
 3 That was your opinion in June of 2012, sir, was it  
 4 not?  
 5 A. Id you allow me, upon reading the document, that  
 6 confirms my earlier position in the sense that the  
 7 translation is not exactly exactas expressed in  
 8 Spanish--when, for example, you are saying fundamental  
 9 errors, I was saying that they are essential errors. Well,  
 10 but in any case, if you allow me, that confirms that indeed  
 11 I was informed of the daily process, precisely because to  
 12 be able to draft the rulings, the Court orders in the  
 13 Chevron case as asked by Mr. Zambrano, I needed to have the  
 14 statements by the Parties on a weekly basis or whenever it  
 15 was necessary to make an order statement.  
 16 So, because of this I was--that statement of mine  
 17 indeed is an appraisal, a position of mine because I  
 18 noticed that, that specific conduct by Chevron, just as I  
 19 also noticed the conduct to speed up the proceeding by the  
 20 representatives of the Plaintiffs against Chevron.  
 21 Q. Sir, my question was: That was your opinion in  
 22 June 2012? Is the answer yes, that was your opinion in  
 23 June 2012?  
 24 A. That is what I stated, and that was my opinion.  
 25 Q. And I'm going to ask you, sir, to listen very

10:32 1 carefully to my questions and to answer only my questions.  
 2 Your counsel will have an opportunity to ask you questions  
 3 on redirect.  
 4 Now, you also advised Chevron's representatives  
 5 that "the administration never influenced the process";  
 6 isn't that correct?  
 7 A. Yes.  
 8 Q. In fact, you also said that they never butted in.  
 9 Your quote was, "during this whole time, the administration  
 10 never butted in." That was your statement to Chevron's  
 11 representatives; is that correct?  
 12 A. That is correct. But that is my position. My  
 13 position is that the Government did not intervene.  
 14 Q. And you also stated that the Government never  
 15 sought to influence the process "during this whole time."  
 16 That was what you told Chevron; correct?  
 17 A. Yes.  
 18 Q. You also called the administration "idiots." You  
 19 said: "These guys are idiots, but the truth, the truth, I  
 20 attest, damn, they never got involved." That was also your  
 21 position and your understanding; correct?  
 22 A. Yes, that is the way in which I understood things.  
 23 Q. Now, you also said that there was a time, a long  
 24 time ago, that a prior Attorney General of Ecuador spoke to  
 25 you and thought that, if anything, the case should be shut

10:34 1 down. So, that wasn't on behalf of the Plaintiffs;  
 2 correct?  
 3 MR. KEHOE: Objection. That's a confusing  
 4 question. I don't understand it at all.  
 5 MR. BLOOM: I would like to see if the Witness  
 6 understands it.  
 7 MR. KEHOE: Okay.  
 8 THE WITNESS: Yes, I also talked about that  
 9 specific matter. I was talking about the Attorney General  
 10 of the State when I was the Presiding Judge of the Court of  
 11 Justice; and, consequently, I was the first judge in the  
 12 Chevron Case.  
 13 BY MR. BLOOM:  
 14 Q. So, no one in the administration, to your  
 15 knowledge, ever sought to intervene on behalf of the  
 16 Plaintiffs, but there was a single phone call back in about  
 17 2003 suggesting that maybe you dismiss the case on behalf  
 18 of Chevron; is that correct?  
 19 A. Yes.  
 20 Q. Before we get too specific as it relates to the  
 21 general allegations that are contained in your Declaration,  
 22 I want to address some general matters first about your  
 23 testimony regarding the Lago Agrio Case. Is that okay?  
 24 A. Yes, please.  
 25 Repeat your question or your statement.

10:36 1 Q. Am I correct, sir, that it is your testimony that  
 2 Judge Zambrano allowed the Lago Agrio Plaintiffs to draft  
 3 the Lago Agrio Judgment?  
 4 A. You are entirely correct.  
 5 Q. Would you also agree with me, however, that the  
 6 early drafts of the Lago Agrio Judgment have been found on  
 7 Judge Zambrano's computer? You don't disagree with that,  
 8 do you?  
 9 A. According to press releases, I know that those  
 10 documents, those drafts, were found in the computer that  
 11 Judge Zambrano used at the Court of Justice, not in his  
 12 personal computer.  
 13 Q. And would you also agree with me, sir, that no  
 14 draft of the Judgment has ever been found on your computer?  
 15 A. Yes, that is correct.  
 16 Q. And you have not provided any hard-copy draft of  
 17 the Judgment to Chevron or to this Tribunal?  
 18 A. That is correct.  
 19 Q. And you also have nothing in writing from Judge  
 20 Zambrano--no e-mail, no correspondence, no notes--in which  
 21 he tells you that someone other than Judge Zambrano himself  
 22 drafted the Judgment?  
 23 A. A specific document in that regard certainly does  
 24 not exist, but in that context, there are other pieces of  
 25 evidence, other indicia that lead us to that conclusion in

10:38 1 connection with who, indeed, in truth wrote that judgment.  
 2 Q. And, sir, we will deal with those other pieces of  
 3 evidence I think you're referring to during the course of  
 4 this examination. But what I was simply asking here is you  
 5 have nothing from Judge Zambrano himself, whether it's by  
 6 e-mail or by written correspondence, indicating that he was  
 7 letting someone else write the Sentencia; am I correct on  
 8 that?  
 9 A. Yes. As far as I know, there isn't.  
 10 Q. And nor do you have any written communication from  
 11 the Plaintiffs, from Mr. Donziger, from Mr. Fajardo,  
 12 whether by e-mail, whether by handwritten notes of any  
 13 kind, indicating that the Plaintiffs had written or  
 14 intended to draft any part of the Judgment?  
 15 A. I know that those pieces of evidence do not exist.  
 16 Q. Nor do you have any recorded conversations with  
 17 anybody--Judge Zambrano, Mr. Donziger, Mr. Fajardo, or any  
 18 of Plaintiffs' counsel--suggesting that the Plaintiffs and  
 19 Zambrano reached an agreement to let the Plaintiffs write  
 20 the Sentencia?  
 21 A. In that regard, I don't have any recording, but I  
 22 do have a real personal memory that Mr. Zambrano did say  
 23 that to me.  
 24 Q. I understand, and we'll talk about your  
 25 recollections. Again, I'm going to ask you to listen to

10:40 1 the questions. That question was limited to recorded  
 2 conversations.  
 3 A. Yes, there are no recorded conversations in my  
 4 possession in that regard.  
 5 Q. Do you have any documentary evidence showing that  
 6 Judge Zambrano ever received even a single dollar from  
 7 Plaintiffs' counsel?  
 8 A. I do not, sir. No.  
 9 Q. At no time--in 2009, 2010, 2011 or after--at no  
 10 time, do you have any evidence of any payment to Judge  
 11 Zambrano from Plaintiffs; correct?  
 12 A. I do not have any document, no.  
 13 Q. And while you say that you edited the draft  
 14 Sentencia, there is no electronic evidence that shows that  
 15 you actually edited the Lago Agrio Judgment, is there?  
 16 A. There isn't, because precisely the forensic  
 17 analysis of the computer that I worked on was not  
 18 conducted.  
 19 Q. And you haven't produced any handwritten edits  
 20 made by you to a draft of the Lago Agrio Judgment; am I  
 21 correct?  
 22 A. Yes, sir.  
 23 Q. Okay. Now, may we turn to your allegation that  
 24 Judge Zambrano paid you money to help him while he was a  
 25 judge. Could we just turn to that subject?

10:42 1 In your November 17th, 2012, Declaration--and if  
 2 you need to look at it, it is at Tab 14 at Paragraph 7, but  
 3 I will read it for you and have the Court Reporter or Court  
 4 Interpreter translate.  
 5 You say--and let me give you a moment to look at  
 6 it. And again, sir, it's Tab 14, Paragraph 7.  
 7 A. The document you are making reference to is in  
 8 English. If we could have a copy in Spanish.  
 9 Q. There should be a Spanish version for you. Can  
 10 you confirm that, sir?  
 11 MR. BLOOM: May we approach the Witness?  
 12 PRESIDENT VEEDER: Of course you may. And I think  
 13 he may need a permanent helper.  
 14 It is, in fact, in the Claimants' bundle. It's  
 15 the first document in the Direct-Examination Bundle. If  
 16 that could be found for him, we could move on. But I can't  
 17 see the Spanish in the Respondent's bundle. It seems to be  
 18 missing.  
 19 You mean it was there? I will look again. I'm  
 20 sorry.  
 21 (Comments off microphone.)  
 22 BY MR. BLOOM:  
 23 Q. Sir, you said: "After he was appointed judge of  
 24 the Sucumbíos Court, Mr. Zambrano and I reached a financial  
 25 agreement in which I would help him by writing writs and

10:46 1 BY MR. BLOOM:  
 2 Q. When you were first interviewed by Chevron in  
 3 June 2012, you said \$1,500 to \$2,000 a month; isn't that  
 4 right?  
 5 A. Yes, that is how I stated it.  
 6 Q. And you were specifically asked in the New York  
 7 trial about your representation that Judge Zambrano paid  
 8 you 1,500 to \$2,000 a month, were you not?  
 9 A. Yes, I remember that they did that.  
 10 Q. And you acknowledged then, and I will quote: "I  
 11 did tell them," meaning Chevron's representatives, "some  
 12 exaggerated things because it was my intention or for the  
 13 purpose of bettering or improving my position." That was  
 14 your testimony under oath, was it not?  
 15 A. Yes, sir, you are correct.  
 16 Q. And can you confirm for me that when you said "I  
 17 did tell them some exaggerated things," you were referring  
 18 to Chevron; correct?  
 19 A. Yes. Chevron's representatives.  
 20 Q. You knew your statement to them was an  
 21 exaggeration?  
 22 A. Of course. I stated this at some point in time  
 23 and I ratify it today. I did not know them. I did not  
 24 trust them. I was trying to improve my position vis-à-vis  
 25 a forward-looking negotiation, so I, in some cases,

10:45 1 rulings which Mr. Zambrano had to issue as judge in civil  
 2 cases assigned to him randomly, in exchange for  
 3 compensation, a payment 1,000 U.S. dollars per month  
 4 approximately, for this work. At that time I was dealing  
 5 with financial hardships after having been dismissed,  
 6 unjustifiably, from the Sucumbíos Court of Justice, and for  
 7 this reason I agreed to this arrangement."  
 8 Now, sir, to be clear, you did not always contend  
 9 that you received \$1,000 every month, did you?  
 10 A. I'm stating that that was the content of the  
 11 agreement, and I am indicating that the commitment on my  
 12 part was to write the rulings for him and to receive from  
 13 him \$1,000 a month on a permanent basis.  
 14 THE INTERPRETER: Mr. Bloom, this is the  
 15 interpreter speaking. When you are referring to the  
 16 paragraph, please indicate where you're reading, what line  
 17 or--it's difficult for me to find it otherwise.  
 18 Thank you.  
 19 PRESIDENT VEEDER: Mr. Bloom, just be careful,  
 20 because as you read it and as the statement says, it's  
 21 "\$1,000 per month, approximately."  
 22 MR. BLOOM: I said that.  
 23 PRESIDENT VEEDER: The first time you did, not the  
 24 second.  
 25 MR. BLOOM: Oh, okay.

10:48 1 exaggerated--possibly I lied in other cases--but that is  
 2 how the events transpired.  
 3 Q. You lied because you thought it would be to your  
 4 advantage to lie; correct?  
 5 A. I sought to be in a more important position after  
 6 an agreement was reached with Mr. Zambrano.  
 7 Q. Is it true, sir, that you have said a number of  
 8 things in this case that have not been true or that have  
 9 been exaggerations because you believed it was to your  
 10 advantage to do so?  
 11 A. Look, if you allow me, perhaps it's a genetic  
 12 thing in human beings or perhaps amongst Ecuadorians to try  
 13 to present a better image than what we really are vis-à-vis  
 14 individuals that we're just meeting for the first time.  
 15 And all the more so if they have the possibility of helping  
 16 us at some point in time or benefit us in some way.  
 17 Q. You say that this arrangement between Judge  
 18 Zambrano and you started after he was appointed judge of  
 19 the Sucumbios Court. That was when?  
 20 A. He was appointed judge of the Court in August  
 21 2008.  
 22 Q. And this arrangement continued until when?  
 23 A. Until the end of February 2012, when Judge  
 24 Zambrano was dismissed from his function.  
 25 Q. So, it lasted approximately three-and-a-half

10:50 1 years?  
 2 A. That is correct, yes.  
 3 Q. And if my math is correct, about 42 months?  
 4 A. Forty to 42 months, yes.  
 5 Q. Do you have evidence of 42 payments?  
 6 A. I do not.  
 7 The evidence of the payments are the ones that I  
 8 have provided to Chevron. And specifically the reason for  
 9 that is that, in most instances, Judge Zambrano gave me  
 10 cash.  
 11 Q. So, you have evidence of exactly six of the 42  
 12 payments; correct?  
 13 A. If you say so, possibly that's the case.  
 14 Q. And exactly how many months do we have payments of  
 15 exactly \$1,000 supported by the evidence that you provided  
 16 to Chevron that has since been provided to the Tribunal?  
 17 A. Could you please repeat the question.  
 18 Q. You said that there were 42--approximately 42  
 19 payments of approximately \$1,000. And my question to you,  
 20 sir, is, with respect to the evidence that you have  
 21 provided, how many times does that evidence support  
 22 payments of \$1,000?  
 23 A. As far as I can recall--as far as I can  
 24 recall--there is no evidence supporting payments of exactly  
 25 \$1,000, but other amounts, yes.

10:52 1 As in the specific case of February 2012, when  
 2 Judge Zambrano makes a \$2,000 deposit to me.  
 3 Q. So, we have a slide here that identifies the six  
 4 payments. On June 24, 2011, the payment was for \$300.  
 5 Would you me agree with me that that is considerably less  
 6 than \$1,000?  
 7 A. Yes. 300 is 300, and 1,000 is 1,000. I  
 8 understand the difference perfectly well.  
 9 Q. And on June 27th, 2011, there was another payment  
 10 that you've identified of \$300; is that correct?  
 11 A. Yes, sir.  
 12 Q. And that also is significantly less than \$1,000;  
 13 correct?  
 14 A. Yes, sir, it is.  
 15 Q. And on June 28th, 2011, you've offered evidence of  
 16 a payment of \$200, which is also significantly different  
 17 than \$1,000; correct?  
 18 A. Yes.  
 19 Q. And then on July 15, 2011, there was a payment of  
 20 \$500; correct?  
 21 A. Yes.  
 22 Q. And you would agree with me that there are also  
 23 payments or evidence of payments on October 14, 2011, and  
 24 February 24, 2012, of \$500 and \$2,000 respectively;  
 25 correct?

10:54 1 A. Yes, sir.  
 2 Q. And if you had actually received \$1,000 or so a  
 3 month for approximately 42 months you should have received  
 4 approximately \$42,000 from Judge Zambrano; would you agree  
 5 with me?  
 6 A. Yes. It is a mathematical thing.  
 7 Q. Now, let's look at these six dates again. The  
 8 Lago Agrio Judgment was issued on what day?  
 9 A. It was issued in February 2011.  
 10 Q. And the Clarification Order was issued when?  
 11 A. March of the same year.  
 12 Q. So, am I correct that each and every one of these  
 13 payments on the screen occurred at a time after Judge  
 14 Zambrano's role in the Lago Agrio Case had already ended?  
 15 A. The evidence shown on the table that I'm looking  
 16 at, yes, that's correct.  
 17 Q. All of these payments were made for the 12 months  
 18 after the Sentencia was issued; is that correct?  
 19 A. Yes.  
 20 MR. BLOOM: May I suggest we take our break now?  
 21 PRESIDENT VEEDER: Let's do that.  
 22 We're going to take a 15-minute break so that we  
 23 can all have a cup of coffee, including you. But what we  
 24 do ask is you don't discuss the case with anybody until you  
 25 come back before the Tribunal in 15 minutes' time. I'm

10:56 1 sure you will be looked after and a cup of coffee or a cup  
 2 of tea will no doubt be welcome. But please don't discuss  
 3 the case or your evidence.  
 4 MR. KEHOE: President Veeder, I was remiss at the  
 5 outset for not introducing Charles Clayman sitting behind  
 6 me. He's Mr. Guerra's attorney.  
 7 PRESIDENT VEEDER: Thank you very much. You're  
 8 welcome here and, again, if you want to intervene,  
 9 obviously, we'll hear your intervention at any stage.  
 10 So, 15 minutes, we will come back at quarter past  
 11 11:00.  
 12 (Brief recess.)  
 13 PRESIDENT VEEDER: Let's resume.  
 14 BY MR. BLOOM:  
 15 Q. Mr. Guerra, when we broke, we had this slide up  
 16 that identifies the six payments allegedly provided to you  
 17 by Mr. Zambrano, but this time I'd like us to take a closer  
 18 look at the evidence that you and the Claimants have  
 19 offered.  
 20 Now, three of the pieces of evidence we have are  
 21 your own handwritten notations; is that correct?  
 22 A. Yes, that is correct.  
 23 Q. And then other than your word, how do we know that  
 24 Judge Zambrano, in fact, gave you money on these dates?  
 25 A. If you allow me, for example, on February 24th,

11:16 1 2012, I remember that correctly, \$2,000, that went into the  
2 savings account that I had or have with the Pichincha Bank.  
3 This is a very old account. The deposit receipt was signed  
4 by Mr. Nicholas Zambrano, and I think that there is another  
5 one dated June 24th, 2011, those \$300 were also deposited  
6 by Mr. Nicholas Zambrano, and the deposit slip is also part  
7 of the Record.

8 Q. Let's look at the specific notations, the first  
9 relating to the alleged payment on July 15, and here you  
10 have a notation that \$500 was received from Nicolas. This  
11 is your notation; correct?

12 A. Yes, that is correct.

13 Q. And I will represent--we will get to the bank  
14 records separately, but at least focusing on this document,  
15 you would want us to take your word that this \$500 came  
16 from Nicolas Zambrano; correct?

17 A. I say that I received \$500 from Nicolas Zambrano.

18 Q. And if we take a look at the next slide, there's a  
19 reference to having received \$2,000 from a Nicolas on  
20 February 24, 2012; is that correct?

21 A. This is Nicolas Zambrano. I ratify that, and the  
22 date is correct, and the amount is also correct.

23 Q. By the way, sir, do you perchance know anybody  
24 else named Nicolas?

25 A. No.

11:20 1 Q. And even if there were payments from Judge  
2 Zambrano on these days, again different amounts other than  
3 the \$1,000, we don't know what the money was for based on  
4 your handwritten notations; isn't that correct?

5 A. I am saying in my sworn statement what the cause,  
6 the grounds and the reason, and this was because of the  
7 work I was conducting for his benefit.

8 Q. Right. So, we should relying on your word;  
9 correct?

10 A. That is what is also shown by the facts.

11 Q. Now, we also have bank records with respect to the  
12 three payments showing that you made deposits of \$300,  
13 \$300, and \$200 in June of 2011, again four months, five  
14 months after the Sentencia was issued.

15 Now, these bank records do not indicate where you  
16 got the money; isn't that right?

17 A. I understand that there is no specific information  
18 in that regard.

19 Q. Nor do the bank records show what any of this  
20 money was for; correct?

21 A. At one point I'd requested the bank to give me all  
22 of the information if possible, in connection with the  
23 operations of deposits and debits in the account, the  
24 moneys kept at that bank but there were in that account,  
25 but there were some problems, and they did not provide all

11:19 1 Q. Isn't your son-in-law's name Nicolas?

2 A. No, sir. My current son-in-law's name is Nick,  
3 it's not Nicolas. But, rather, Nick.

4 Q. Well, if we look at the next slide, which  
5 references a payment of \$500, this time you say it's from  
6 Nicolas Zambrano as distinguished from Nicolas; correct?

7 A. Yes. And what it says there, but the substance is  
8 the same. I am referring to the only Nicolas Augusto  
9 Zambrano Lozada that I know, and that was a former judge.

10 Q. There is no e-mail thanking Mr. Zambrano, is  
11 there?

12 A. There is no e-mail.

13 Q. No electronic communication at all regarding these  
14 payments; correct?

15 A. There is--it is what it is. What's there is  
16 there.

17 Q. And you didn't tell anyone else about these  
18 payments who has vouched for you; isn't that also right?

19 A. Back then I discussed it with Chevron's  
20 representative, and I also discussed this with my wife in  
21 particular about the income I had, and she was aware  
22 because she knew what it for and where it came from.

23 Q. And she did not offer a witness statement to these  
24 proceedings; isn't that right?

25 A. That is correct. She didn't do it.

11:22 1 of the information.

2 Q. And if--even if these funds had been from Judge  
3 Zambrano, based exclusively on the records you produced and  
4 which are in this record, the money could have been a loan  
5 to you; correct?

6 A. No, not at all. Judge Nicolas Zambrano did not  
7 loan me any money, not a single penny at no time.

8 Q. And we should take your word for that; correct?

9 A. That is correct.

10 Q. In fact, you considered yourself very good friends  
11 with Judge Zambrano over many years?

12 A. We had a good relation for about ten years.

13 Q. Now, sir, you were financially struggling in 2011,  
14 were you not?

15 A. Back then, I as anyone else, needed some financial  
16 resources to conclude with a housing project.

17 Q. And in 2012, you told Chevron's investigators that  
18 you had no savings; isn't that right?

19 A. That is correct.

20 Q. And that you could not afford airfare to the  
21 United States to visit your children who were then living  
22 in the United States?

23 A. That is correct.

24 Q. How much money did you have in the bank at that  
25 time? Did you have even a thousand dollars?

11:25 1 A. I do not remember.  
 2 Q. In fact, according to your July 2011 bank  
 3 statement, you had all of \$146 in your bank account; isn't  
 4 that correct?  
 5 A. If it's stated in the bank statement, it is  
 6 correct.  
 7 Q. Now, sir, are you aware that even Chevron's own  
 8 expert, Adam Torres, concluded that your claim of receiving  
 9 \$1,000 a month from Judge Zambrano, "is not entirely  
 10 consistent with statements made by Guerra during prior  
 11 recorded conversations"? Are you aware of that?  
 12 A. No, sir, I was not aware.  
 13 Q. Now, given that the February 24, 2012 payment,  
 14 according to your notation, took place an entire year after  
 15 Judge Zambrano's Lago Agrio Court Judgment was issued,  
 16 would you agree that that alleged payment was not related  
 17 to any work you allegedly did in connection with the  
 18 environmental case?  
 19 A. This last payment, as well as the previous one,  
 20 ones to that date and also the ones after March 2011 were  
 21 obviously payments made to me by Mr. Zambrano on a regular  
 22 basis for the work that I conducted drafting the rulings in  
 23 civil cases that he had been assigned to him through the  
 24 raffle system.  
 25 Q. Other than the Lago Agrio Case; correct?

11:27 1 A. Yes, the Lago Agrio Case concluded in March 2011  
 2 for Judge Zambrano.  
 3 Q. Just so that the record is clear, so that the  
 4 payments received beginning in June of 2011 going through  
 5 February of 2012 were unrelated to the Lago Agrio Case;  
 6 correct?  
 7 A. The payments that I received from Mr. Zambrano  
 8 starting in April 2011 to February 2012 had no connection  
 9 with the Chevron Case.  
 10 Q. Now, sir, you say that you used to send packages  
 11 to Judge Zambrano in relation to the Lago Agrio Case; isn't  
 12 that correct?  
 13 A. Yes, sir.  
 14 Q. And in your November 17, 2012 Declaration, you  
 15 stated, "another mechanism we would use, less frequently,  
 16 is that Mr. Zambrano would send me the documents in freight  
 17 packages on TAME airline, and I would return them in the  
 18 same manner, via shipment on the same airline, TAME." And  
 19 that's still your testimony; correct?  
 20 A. Yes, sir.  
 21 Q. Now, maybe you could help me understand something.  
 22 When a party makes a submission to the Court in Sucumbios,  
 23 does it file just one copy, or is a duplicate copy also  
 24 provided to the Judge?  
 25 A. Yes, well--when a party to a proceeding submits a

11:29 1 document or incorporates it into the case record, that  
 2 document is provided to the Secretary of the Court in its  
 3 original form, and in as many copies as there are parties.  
 4 If there are only two parties, there might be a need to  
 5 submit extra copies, so that even one of them is stamped,  
 6 with what we call a certificate of filing. This  
 7 documentation is provided to the Clerk so that the Clerk's  
 8 Office may enter this into the record or the proceeding,  
 9 and that's it. At no time does the Judge receive from the  
 10 Parties to the proceeding, from the counsel, or their  
 11 representatives any documents. That is done through the  
 12 Clerk's Office.  
 13 Q. So, how can the Judge resolve disputed issues if  
 14 he doesn't receive from the Party a duplicate copy of the  
 15 court submission?  
 16 A. Let me explain. Immediately after the litigant  
 17 submits to the Clerk's Office the corresponding document,  
 18 the Clerk's Office gives the litigant submitting the  
 19 document a receipt evidencing the receipt of the document.  
 20 The Clerk of that case has the obligation to include in  
 21 chronological order that document into the file, and then  
 22 it has to number each one of the pages of the file.  
 23 Once that was done, the original file is  
 24 physically submitted to the Judge of the case, so that the  
 25 Judge may rule as he or she deems fit, study the issue, and

11:32 1 make the decision that he or she sees fit.  
 2 Q. So, the Judge actually receives the original copy  
 3 when it's time for the Judge to rule on a matter?  
 4 A. Correct.  
 5 Q. And then the Judge is supposed to return it to the  
 6 Clerk?  
 7 A. Immediately thereafter, yes.  
 8 Q. Does a party who wants a copy of the submission  
 9 deemed official get the copy stamped by the Clerk?  
 10 A. Yes.  
 11 Yes, allow me please--allow me, it is necessary  
 12 for me to clarify this matter.  
 13 Once the Judge takes cognizance of the petition  
 14 evidenced in the latest writ presented by the litigant, the  
 15 Judge issues an order, the corresponding administrative  
 16 order via a procedural mechanism known as a decree in  
 17 Ecuador. This ruling--ruling is a general term--I'm using  
 18 the term "ruling" as a general term, Providencia in  
 19 Spanish, the decree specific--this Decree is used by the  
 20 Judge to notify the opposing party of the contents of the  
 21 document that the Judge is deciding on, and the Judge  
 22 issues decisions in connection with whatever it is that the  
 23 Party requested in the writ, in the documents.  
 24 For example, this needs to be sent to the Ministry  
 25 of Agriculture, whatever is relevant.



11:34 1 So that once the Clerk's Office notifies the  
2 contents of the Decree issued by the Judge, the opposing  
3 party gains knowledge of the decision by the Judge--aside  
4 from becoming aware of the judge's order--and it receives  
5 the original copy, so to speak, of the document submitted  
6 by the other Party.  
7 Q. And let me just stick with this subject just a  
8 little bit longer and allow my question to be just a little  
9 bit more precise.  
10 How does a party prove receipt of, let's say, a  
11 motion that it submits to a Court? Does it get back a copy  
12 of the motion with a receipt stamp on the submission?  
13 A. Yes. The Party receiving the document that has  
14 been submitted by the opposing party generally receives it  
15 with a certificate of submission that the Clerk's Office  
16 put on the document once the document was received.  
17 Q. And is that certificate of submission different  
18 from the stamp that is put on the official copy?  
19 A. No. Usually, everything is exactly the same.  
20 Q. We have seen stamps that are circular. When  
21 documents are filed before the Court, they appear to be the  
22 official copy. And then we have also seen stamps that are  
23 not in circles, indicating it's been received, and my  
24 question is whether or not there is a significance to those  
25 two different stamps. And perhaps I can show you after

11:36 1 lunch, if you have any questions.  
2 A. Look, unfortunately, up until the time when I was  
3 a judge in Ecuador, as far as I know, there was no  
4 administratively obligatory norm, talking about within the  
5 judiciary, whereby the shape of the seals was to be  
6 determined to the degree that especially in the Oriente  
7 Region in Ecuador, a region far away from the capital,  
8 oftentimes the Clerk or the Judge took money out of his or  
9 her own pocket to have a seal made. We're talking about  
10 places that are not very sophisticated. We're talking  
11 about ordinary seals that had a rubber base, and then the  
12 handle is made of wood.  
13 Later on, in the capital, in the large cities'  
14 courts, the clerks used seals that were a little bit more  
15 sophisticated, for example, numbering seals that were made  
16 of metal, and they were quite elegant. But the judiciary  
17 itself did not provide, at least to the Lago Agrio courts,  
18 not even seals. Everyone there had to do as best they  
19 could, but there were seals.  
20 PRESIDENT VEEDER: Mr. Bloom, let's come back to  
21 this after the lunch with the two examples you had in mind.  
22 We saw them yesterday.  
23 MR. BLOOM: I agree.  
24 BY MR. BLOOM:  
25 Q. Sir, coming back to the TAME shipments, you have

11:39 1 specifically testified that you sent Court documents,  
2 including Court files, relevant to the Lago Agrio Case  
3 through the airline carrier TAME; correct?  
4 A. Yes, that is correct.  
5 Q. So, I want to put on the screen the list of the  
6 TAME packages that Chevron has identified in this  
7 arbitration as coming from you, and I want to walk through  
8 these one at a time.  
9 Now, to be clear, you've identified 11 packages  
10 from you directly to Judge Zambrano through TAME, and we  
11 have the 11 on the screen. There were also other shipments  
12 that did not go to Judge Zambrano, and we will go through  
13 these too, but I believe these are the 11 that you've  
14 identified that went to Judge Zambrano.  
15 I would like to work from the bottom up, and  
16 you'll see on the slide before you one shipment of  
17 February 28, 2012.  
18 And other than your word, we don't know what you  
19 were sending to Judge Zambrano, whether you were sending  
20 books, a postcard, a thank you for lending him money, or  
21 whether you were paying him back for a loan, do we? All we  
22 know is you sent him something on February 28, 2012?  
23 A. On February 28, 2012, I sent him the originals or  
24 a number of files with the relevant judgments.  
25 What's more, at that date, for whatever reason, I

11:41 1 kept with me four or five cases that I was not able to send  
2 to him because I had not finished the relevant judgments.  
3 The cases I'm making reference to that I was not  
4 able to send on February 28 I delivered personally in early  
5 March to the Clerk of the Court at that time.  
6 Q. Now, I want to be crystal clear here. This  
7 shipment was made more than a year after the Sentencia was  
8 issued in Lago Agrio; correct? February 28, 2012?  
9 A. Correct.  
10 Q. And what you were sending to Judge Zambrano had  
11 nothing to do with the Lago Agrio Case; correct?  
12 A. No, but it did have to do with the work he  
13 performed as a judge in the civil cases.  
14 Q. And the October 3, 2011, shipment had nothing to  
15 do with the Lago Agrio Case; isn't that correct?  
16 A. Yes, not with the Chevron Case, but yes, with the  
17 court cases of Mr. Zambrano's.  
18 Q. And again, I understand that you'll have an  
19 opportunity when your counsel asks you questions, but I'd  
20 like you to confine your answers to the questions that I'm  
21 asking.  
22 You would agree with me, sir, that the shipment of  
23 September 27, 2011, didn't have anything to do with the  
24 Lago Agrio Case; isn't that right?  
25 A. Yes, sir.

11:43 1 Q. And the shipment of July 5, 2011, had nothing to  
 2 do with the Lago Agrio Case; isn't that also correct?  
 3 A. Yes, sir.  
 4 Q. And would you agree with me that the shipment of  
 5 May 30, 2011, had nothing to do with the Lago Agrio Case?  
 6 A. Correct.  
 7 Q. And the shipment of May 24, 2011, was postdated  
 8 the Sentencia by three months also had nothing to do with  
 9 the Lago Agrio Case; would you agree with me?  
 10 A. Yes, sir, that is correct, I agree.  
 11 Q. And on April 21, 2011, you would agree with me,  
 12 sir, that that shipment also had nothing to do with the  
 13 Lago Agrio Case?  
 14 A. That's correct.  
 15 Q. And then the March 8th, 2011, shipment similarly  
 16 had nothing to do with the Lago Agrio Case; isn't that also  
 17 correct?  
 18 A. Yes.  
 19 Q. Now, sir, as to the July 22, 2010, shipment, that  
 20 was an earlier package to Judge Zambrano. Do you see that  
 21 on the screen? The very first one?  
 22 A. July 22, 2010. I do see it.  
 23 Q. And you're not contending that that shipment had  
 24 anything to do with the Lago Agrio Case, did you?  
 25 A. I am not. I'm not maintaining that.

11:44 1 Q. In fact, Judge Zambrano was not the Presiding  
 2 Judge of the environmental case at the time of the  
 3 shipment; isn't that also right?  
 4 A. Your statement is correct.  
 5 Q. He first served as Presiding Judge from  
 6 October 2009 to March of 2010, so this July payment came  
 7 about four months after he had stopped serving his first  
 8 term; you would agree with me? I'm sorry, I misspoke.  
 9 He served first as Presiding Judge from  
 10 October 2009 to March 2010, so this July shipment came  
 11 about four months after he had stopped serving his first  
 12 term, would you agree with me?  
 13 A. Yes.  
 14 Q. And he began serving as Presiding Judge again  
 15 when? In October of 2011--I'm sorry, October 2010;  
 16 correct?  
 17 A. Correct.  
 18 Q. So, this package was sent almost three months  
 19 prior to him beginning his second term as Presiding Judge;  
 20 correct?  
 21 A. Yes, sir. Correct.  
 22 Q. Now, Mr. Guerra, can you confirm for me that there  
 23 was, however, one instance in which you offered evidence  
 24 that you sent a package directly to Judge Zambrano through  
 25 TAME while he served as the Presiding Judge of the

11:46 1 environmental case?  
 2 A. The documents--the shipments that I made to  
 3 Mr. Zambrano directly to his name or indirectly via third  
 4 parties are part of the list that I believe is included in  
 5 the proceedings. The list that was provided by TAME, the  
 6 airline company.  
 7 Q. This February 11, 2011, shipment could not have  
 8 been related to the Lago Agrio Case because that was only  
 9 three days before the Sentencia was issued, and you have  
 10 repeatedly testified under oath that your work on the  
 11 Judgment was allegedly completed a least a couple of weeks  
 12 prior to then; isn't that correct?  
 13 A. Yes, that is correct.  
 14 Q. So, you can confirm that none of the shipments  
 15 directly to Judge Zambrano for which Claimants have offered  
 16 the evidence in this arbitration relate to the Lago Agrio  
 17 Case specifically. Could you confirm that for me, sir?  
 18 A. It seems to me, if you allow me, I would like to  
 19 tell you that I think there are a couple of shipments that  
 20 are--  
 21 Q. I will certainly allow you to answer, but I  
 22 thought you just confirmed for me one by one under oath  
 23 that none of these shipments related to the Lago Agrio  
 24 Case. That was your testimony over the last ten minutes,  
 25 was it not?

11:48 1 PRESIDENT VEEDER: Can we just let the Witness  
 2 finish his answer because I wasn't quite clear that he went  
 3 as far as that.  
 4 Please complete the answer that you were beginning  
 5 to give.  
 6 THE WITNESS: Yes.  
 7 In order for me to better understand this, I'm  
 8 going to ask to be shown the document that TAME sent in  
 9 connection with the shipments.  
 10 MR. KEHOE: It is Attachment F, like "Frank," as  
 11 an attachment to the November 17, 2012, Declaration.  
 12 THE WITNESS: If you allow me, according to the  
 13 copy of the original document and the certification that  
 14 was provided to me at the date indicated here,  
 15 9 October 2012, by the Legal Directorate of TAME in the  
 16 City of Quito, in the first two boxes dated  
 17 November 19 2009 and November 29 2009, shipments of  
 18 documents that I made of documents to Mr. Zambrano, but  
 19 that, on instructions by Mr. Zambrano, I sent to Narcisa  
 20 Leon, who receives them and delivers them.  
 21 This one--I believe it's important that I mention  
 22 shipments in particular because at those dates I sent to  
 23 Mr. Zambrano documents related to rulings in connection  
 24 with the Chevron Case. This item, if you allow me, is  
 25 corroborated because, in the relevant rulings that I'm

11:51 1 making reference to, well, those were located in my  
2 computer and are dated one day before this shipment, and  
3 the rulings issued by Mr. Zambrano during the proceedings  
4 were issued one or two days immediately after this date.  
5 So, this confirms that I did send documents  
6 related to the Chevron Case to Mr. Zambrano, all this  
7 looking at it from a context, with all due respect.  
8 BY MR. BLOOM:  
9 Q. Sir, my question that was pending that you did not  
10 answer was relative to the 11 shipments made directly to  
11 Judge Zambrano. We will get to the other shipments.  
12 With respect to these 11 shipments directly to  
13 Judge Zambrano, you have confirmed that ten of them were  
14 made after the Sentencia was issued and had nothing to do  
15 with the Lago Agrio Case; isn't that correct?  
16 A. Yes, sir.  
17 Q. And you have testified that the July 22, 2010,  
18 shipment had nothing to do with the Lago Agrio Case and  
19 that Judge Zambrano was not even Presiding Judge at that  
20 time; would you agree with me, sir?  
21 A. Yes, that's correct.  
22 Q. And you also testified that the February 11  
23 shipment of 2011 also had nothing to do with the Lago Agrio  
24 Case. In fact, you've testified previously that all of  
25 your work as related to the case had ended weeks before;

11:53 1 isn't that also correct?  
2 A. Yes, sir.  
3 MR. BLOOM: And for the Tribunal's reference, at  
4 our Tab 27 is where we have the TAME records.  
5 BY MR. BLOOM:  
6 Q. Now, Mr. Guerra, you understand that Chevron  
7 claims to have found what it refers to as nine Draft Orders  
8 related to the Lago Agrio Case on your computer; correct?  
9 A. Yes, sir. I wrote those rulings.  
10 Q. Could you turn to Tab 41 of your binder.  
11 PRESIDENT VEEDER: Just help us with that number.  
12 MR. BLOOM: Forty-one.  
13 THE WITNESS: I cannot find that number.  
14 PRESIDENT VEEDER: Just wait a minute. We're all  
15 having trouble.  
16 MR. KEHOE: Eric, if it helps, they're Attachments  
17 Q through Y in the white binder that he has in front of him  
18 as declarations.  
19 MR. BLOOM: Thanks. Let's do that. That will be  
20 easier.  
21 BY MR. BLOOM:  
22 Q. Mr. Guerra, did you hear Mr. Kehoe?  
23 PRESIDENT VEEDER: Would you stay there and make  
24 sure that he's looking at the right tab. Tab Q.  
25 MS. BEES: Yes, he's there.

11:56 1 PRESIDENT VEEDER: Thank you very much.  
2 BY MR. BLOOM:  
3 Q. Sir, I'm going to ask you to read the dates of  
4 these nine Orders.  
5 A. Yes. The first one, if you allow me, the first  
6 one is dated 20 October 2009; November 20, 2009;  
7 December 1st, 2009; 7 December 2009.  
8 Q. May I ask you to stop for a moment because we're  
9 going to have a little bit of a difference.  
10 Let me offer up as Slide 26 the issuance dates of  
11 these nine Orders, and I will quickly read them into the  
12 record. They're October 21, 2009; November 23, 2009;  
13 November 30, 2009; December 7, 2009; December 14, 2009;  
14 January 5, 2010; January 19, 2010; February 2, 2010; and  
15 February 18, 2010.  
16 And again so that the record is clear, these are  
17 the dates of the nine Lago Agrio Orders that, according to  
18 Chevron, correlate to the nine Orders found on your hard  
19 drive.  
20 Now, I wanted to ask you, sir, some questions back  
21 to the TAME shipments.  
22 The October 21, 2009, Order was issued well before  
23 any of your TAME shipments to Mr. Zambrano; would you agree  
24 with me?  
25 A. Allow me to tell you that I didn't understand your

11:59 1 question because I am confused. The first ruling--here it  
2 says 20. Let's see. The first ruling says  
3 20 October 2009. That is what the contents of my computer  
4 indicate. But over there it says October 21st. Perhaps  
5 it's the same, but the date is different.  
6 In any case, from what I understand, this document  
7 was prepared in my computer on 20 October 2009 at 7:24. I  
8 don't know if it was a.m. or p.m.  
9 Q. My question is whether this shipment--strike that.  
10 We've gone through all of the shipments directly  
11 to Judge Zambrano. Again, we will get to the other  
12 shipments. In fact, can we show the slide of the shipments  
13 to Judge Zambrano. And you will see here the earliest  
14 shipment, of which you have produced evidence for this  
15 proceeding, to Judge Zambrano was July 22, 2010. That's  
16 the first evidence of any shipment directed to Judge  
17 Zambrano was July 22, 2010.  
18 Would you agree with me, sir, that what you call a  
19 "Draft Order" of October of 2009 well pre-dated your first  
20 shipment directly to Judge Zambrano?  
21 A. I agree.  
22 Q. Now, these are the dates that the Orders were  
23 actually issued. So the first shipment to Judge Zambrano  
24 of which you have evidence was July of 2010. The Order of  
25 October 21 was issued well before then; would you agree

12:02 1 with me?  
 2 MR. KEHOE: Objection. Mischaracterizes his  
 3 testimony. I didn't object previously because counsel said  
 4 "directly" each time. There was no evidence of a shipment  
 5 directly to Judge Zambrano. Here, he did not, and the  
 6 Witness has clearly testified that he would send them  
 7 indirectly through the intermediaries, and that's why I  
 8 object to that question.  
 9 PRESIDENT VEEDER: Mr. Bloom, can you rephrase the  
 10 question?  
 11 BY MR. BLOOM:  
 12 Q. And, sir, when I'm talking about shipments to  
 13 Judge Zambrano, I'm referring to shipments made directly to  
 14 Judge Zambrano. I want you to understand that.  
 15 Would you agree with me, sir, that the first  
 16 shipment of which you have evidence that went to Judge  
 17 Zambrano--and again, I mean directly to Judge  
 18 Zambrano--happened in July 2010, some nine months after  
 19 this October 21, 2009, Order was issued from the Lago Agrio  
 20 Court?  
 21 A. Yes, sir.  
 22 Q. In fact, there are a total of six Lago Agrio  
 23 Orders issued in 2009 that Chevron contends that you wrote,  
 24 but I want you to confirm for me that each of these six  
 25 Orders was issued well before any evidence of any shipments

12:04 1 made directly to Judge Zambrano?  
 2 A. The nine Orders--rather, the nine drafts or the  
 3 contents of nine rulings related to the procedural dispatch  
 4 of the Chevron case that were found in my computer were  
 5 drafted in my computer by myself and sent to Judge Zambrano  
 6 for him to sign and send to the Parties--for him to sign  
 7 and send to the Parties and serve on the parties as his  
 8 own. I should say that, of the nine rulings in my computer  
 9 also include three or four additional rulings that I  
 10 drafted in Lago Agrio on a computer that was given to me  
 11 back then by Mr. Pablo Fajardo. And if you allow me, I  
 12 would like to conclude this by indicating in the first  
 13 stage I sent these rulings to Mr. Zambrano through third  
 14 parties because that is what he requested me.  
 15 Q. Sir, do you remember my question?  
 16 A. Yes, yes. You--yes. You are trying to link the  
 17 time when these rulings were drafted to the time or the  
 18 moment when the documents were directly sent to  
 19 Mr. Zambrano, and clearly there are inconsistencies.  
 20 Q. Can you answer the question I asked, if you  
 21 remember it?  
 22 A. I consider that I have already answered your  
 23 question.  
 24 Q. I asked you a timing question. I asked you  
 25 whether the six Orders that were issued in 2009 pre-dated

12:06 1 any of the shipments made directly to Judge Zambrano which  
 2 began in July of 2010?  
 3 A. Yes, sir.  
 4 Q. In fact, all nine of these Lago Agrio Orders were  
 5 issued by the Court prior to the first shipment of which  
 6 you have offered evidence that went directly to Judge  
 7 Zambrano; isn't that also correct?  
 8 A. I understand that that is the case.  
 9 Q. So, none of the shipments that went directly to  
 10 Judge Zambrano contained any of these nine Orders; isn't  
 11 that correct?  
 12 A. These Orders or most of these Orders were given  
 13 personally by me to Mr. Zambrano.  
 14 Q. Now, you and Chevron have identified 12 additional  
 15 packages from you to people other than Judge Zambrano  
 16 through TAME; isn't that also correct?  
 17 A. Yes, sir.  
 18 Q. And three of them went not to Lago Agrio but to  
 19 Coca, which is a couple-of-hour car drive from Lago Agrio;  
 20 isn't that also right?  
 21 A. Some shipments were sent to Coca, but they are  
 22 unrelated to Lago Agrio.  
 23 Q. So, now we are down to nine TAME shipments to talk  
 24 about.  
 25 Now, you sent packages to Narcisa Leon, to Juan

12:08 1 Jurado, Pedro Moreira Colorado and Fernando Albán and  
 2 Orlando Daza; isn't that correct?  
 3 A. Yes, sir, that is correct.  
 4 Q. And, sir, you have alleged that only the packages  
 5 to Albán and Leon related to the Lago Agrio Case; would you  
 6 agree with me?  
 7 A. Yes, sir.  
 8 Q. What is your relationship to Mr. Albán?  
 9 A. We have been friends and colleagues for several  
 10 years.  
 11 Q. Are you related to him by blood or marriage  
 12 afinidad?  
 13 A. No, sir. If you're referring to Mr. Fernando  
 14 Albán, the answer is no.  
 15 Q. Do you have a professional relationship with  
 16 Mr. Albán?  
 17 A. Currently, I do not.  
 18 Q. But in the past, you have published articles and  
 19 books with him, have you not?  
 20 A. Yes.  
 21 Q. And you wrote, was it an article or a book (in  
 22 Spanish)?  
 23 A. As you said, yes.  
 24 Q. And another called "Procedural reality of the  
 25 Judgment's enforcement?"

12:11 1 A. Correct, yes.  
 2 Q. Have you ever given any seminars or presentations  
 3 with him?  
 4 A. No. With Mr. Albán, we wrote the legal book. We  
 5 promoted it and sold the books.  
 6 Q. Did you attend with him the "Seminario de derecho  
 7 procesal el penal con leyes y codigos"?  
 8 A. I recall attending some seminars and courses  
 9 on--the ones that were promoted by the Government, the  
 10 Judiciary, the office of the Attorney General, or the  
 11 Office of the Prosecutor General.  
 12 Q. Now, you have exactly seven--you have documentary  
 13 evidence of exactly seven TAME shipments to Mr. Albán, and  
 14 you will see them on the screen. And those shipments, sir,  
 15 were on what dates?  
 16 A. They are dated December 22, 2010, and up to  
 17 February 3rd, 2011.  
 18 Q. And am I correct, therefore, that each of the Lago  
 19 Agrio Orders found on your hard drive was issued by Judge  
 20 Zambrano many months prior to any of these shipments to  
 21 Dr. Albán?  
 22 A. The Chevron Judgment was issued on  
 23 February 14, 2011, and the rulings in that case or the  
 24 Decrees that allowed for the continuation of the proceeding  
 25 were issued around the dates stated in the rulings found in

12:13 1 my computer.  
 2 Q. Would you agree with me, sir, that each of these  
 3 shipments substantially postdated the issuance of the nine  
 4 Lago Agrio Orders found on your computer?  
 5 A. We would need to review one by one in connection  
 6 with the shipment and the date, but I can assert and assure  
 7 you that I personally handed the rulings to Judge Zambrano  
 8 because for the most part, that was our tradition.  
 9 Q. The first of the shipments to Mr. Albán was on  
 10 December 22, 2010; correct?  
 11 A. Yes, sir.  
 12 Q. If we can turn back to the slide of the nine Lago  
 13 Agrio Orders. Just a moment.  
 14 (Pause.)  
 15 Q. So, the last of the Orders that you say were found  
 16 on your computer is dated February 18, 2010, and that's  
 17 some ten months before your very first shipment of which  
 18 you have evidence that was sent directly to Fernando Albán;  
 19 would you agree with me, sir?  
 20 A. Excuse me, did you say February 18, 2010?  
 21 Q. Correct, was the date of the actual order.  
 22 A. Yes, I have it here. It says January 18th, 2010.  
 23 Q. So, that's 11 months before the first shipment  
 24 directly to Mr. Albán; isn't that correct?  
 25 A. It might be like that. But--if we take the first

12:17 1 ruling that I work on in the Chevron case, dated October  
 2 20, 2009, in which Judge Zambrano takes over the case, this  
 3 takes place, to me, October 20. From October 20, 2009 to  
 4 January--18 January 2010, well, maybe four or five months  
 5 went by.  
 6 I'm sorry if I misunderstood you.  
 7 Q. You can confirm, based on these dates, that none  
 8 of the shipments to Mr. Albán had anything to do with the  
 9 nine Lago Agrio Orders found on your hard drive; isn't that  
 10 correct?  
 11 A. I cannot confirm that, but I can tell you that I  
 12 sent documentation to Mr. Albán for him to provide this  
 13 information to Mr. Zambrano. And as part of that  
 14 documentation, I would send Chevron Case those times when it  
 15 was--when I received it, and the cases that belonged to  
 16 Mr. Zambrano as a judge.  
 17 Q. Is it your contention, sir, that you sent  
 18 something to Mr. Albán in December of 2010 for an Order  
 19 that was issued in January of 2010?  
 20 A. The dates are there. I don't want you to confuse  
 21 me, sir, with all due respect.  
 22 Q. The first shipment directly to Mr. Albán was in  
 23 December of 2010. That came close to a year after the nine  
 24 Lago Agrio Orders were issued.  
 25 My question to you, sir, is: Will you confirm for

12:19 1 us that the shipments directly to Mr. Albán did not relate  
 2 to the nine Lago Agrio Orders you say were found on your  
 3 hard drive?  
 4 A. I should say that I cannot answer expressly  
 5 because I do not remember, and I do not remember because  
 6 you confuse me with the dates.  
 7 Q. What are you confused about, sir? How can I help  
 8 you?  
 9 A. Would you please tell me one detail at a time?  
 10 Please do not include several assertions in your question.  
 11 Just one at a time.  
 12 Q. I'm comparing two things, so if you'll forgive me,  
 13 there are two details I would like to share with you, okay?  
 14 The first detail is the first of the shipments to Mr. Albán  
 15 was December of 2010. Do you understand that, sir?  
 16 A. Yes, sir, I do understand that.  
 17 Q. Are you ready for the second detail?  
 18 A. Yes, sir.  
 19 MR. KEHOE: Mr. Guerra, what are you looking for?  
 20 THE WITNESS: I'm looking for the certification,  
 21 TAME's certification.  
 22 If you allow me--would you please help me find it?  
 23 PRESIDENT VEEDER: Mr. Bloom, can you help him  
 24 with the reference. We need to take this slowly.  
 25 MR. BLOOM: It's Attachment F to the white binder.

12:21 1 THE WITNESS: This is Attachment F in the white  
2 binder.  
3 PRESIDENT VEEDER: Could somebody find it for the  
4 Witness. It will save time.  
5 MR. BLOOM: Or Tab 27 of Respondent's slides.  
6 MR. KEHOE: Mr. President, would it help if we had  
7 one of our attorneys sit next to Mr. Guerra and turn the  
8 binders?  
9 MR. BLOOM: We have no objection.  
10 PRESIDENT VEEDER: It's not right for the Witness  
11 to take time looking for documents.  
12 So, bring up another chair.  
13 MR. KEHOE: Okay.  
14 PRESIDENT VEEDER: Mr. Guerra, we're going to  
15 provide you with an assistant to help you find the right  
16 document. It's getting a bit dangerous because these  
17 bundles are very heavy.  
18 MR. KEHOE: Scoot over just a little. This is  
19 Elizabeth Silbert.  
20 BY MR. BLOOM:  
21 Q. So, Mr. Guerra, again, the two points that I would  
22 like you to focus on, the two dates, are as follows: The  
23 first is that the first of the TAME shipments directly to  
24 Fernando Albán was December of 2010. Can you confirm that  
25 now? You confirmed it earlier, but you wanted to look at

12:23 1 something right now.  
2 A. December 22nd, 2010, correct.  
3 Q. Then the second fact that I wanted you to focus on  
4 is the last of the nine Lago Agrio Orders found in your  
5 computer. We had February of 2010, you said January of  
6 2010, but in either event, you would agree with me that  
7 January or February of 2010 is ten or 11 months  
8 before--before--your first shipment to Mr. Albán; correct?  
9 A. I sent--I made the first shipment to Mr. Albán in  
10 December 2010--that is clear--and this is also ratified  
11 here by the document.  
12 As to the rulings that you're referring to, the  
13 dates are stated in the documents themselves. I cannot  
14 tell you directly whether Ruling 1, 2, 3, 7 or 9 were sent  
15 or not through TAME. What I can assure you is that all of  
16 these documents, without any exceptions, including the ones  
17 that I worked on Lago Agrio were used by Mr. Zambrano for  
18 the Chevron Case.  
19 Q. And, sir, you should feel free to look at the last  
20 of the nine Orders found on your computer, and if you could  
21 be kind enough to share with us the date of that.  
22 MR. BLOOM: I think he's looking at the Claimants'  
23 binder. That's why I don't know why he's using it.  
24 THE WITNESS: If you allow me, would you please  
25 tell me the tab in your binder?

12:26 1 MR. BLOOM: If we can take a five-minute break.  
2 We're going to give out another binder that I think might  
3 be helpful.  
4 PRESIDENT VEEDER: Let's take a five-minute break  
5 for that.  
6 Again, we ask that you not discuss this case,  
7 Mr. Guerra, during this five minutes away from the  
8 Tribunal.  
9 THE WITNESS: Yes, sir.  
10 (Brief recess.)  
11 PRESIDENT VEEDER: Let's resume.  
12 BY MR. BLOOM:  
13 Q. Sir, we just handed to you Tab 41, and I--which  
14 contains the nine Lago Agrio Orders, and I wanted to ask  
15 you, did you have time during this break to page through  
16 those Orders to look at the dates of those Orders?  
17 A. I was concerned with the first ruling that was  
18 delivered by you, 21 October 2009, in connection with the  
19 one that I have as the first one worked, drafted in my  
20 computer.  
21 Q. And there may be some confusion, sir, because the  
22 ones that were prepared on your computer are in the white  
23 binder provided by Chevron's counsel. The ones that are in  
24 the black binder were the Orders as they were issued. So,  
25 they might be different and the dates might be different.

12:38 1 But I really have only a couple of questions on this.  
2 Can you tell us or can you confirm for me that the  
3 last of the nine Lago Agrio Orders that correlated to your  
4 so-called "Draft Orders" was, in fact, issued in February  
5 of 2010?  
6 A. Yes, sir, that is what is evidenced here.  
7 Q. And that was approximately ten months before your  
8 first shipment of which you have offered evidence directly  
9 to Fernando Albán; is that correct?  
10 A. Yes, sir.  
11 Q. And as a result, we know that the seven shipments  
12 to Albán beginning in December of 2010 had nothing to do  
13 with the Lago Agrio Orders found on your computer; correct?  
14 A. That is your statement, yes.  
15 Q. Do you agree with my statement? I realize you  
16 contend that you performed other work for Judge Zambrano,  
17 but my question is very specific: Would you agree with me  
18 that the seven shipments to Mr. Albán beginning in December  
19 of 2010, that post-date by nearly a year the Lago Agrio  
20 Orders found on your computer, can you confirm for me that  
21 the shipments to Albán had nothing to do with the nine  
22 Orders found on your computer?  
23 A. If the dates that you're making reference to are  
24 correct, yes, that is correct, your statement is correct.  
25 Q. And you have never alleged that the shipments to

12:40 1 Juan Jurado had anything to do with the Lago Agrio Case;  
 2 correct?  
 3 A. What name did you say? Excuse me? Juan Jurado?  
 4 Q. Yes.  
 5 A. Yes. I maintained that the shipments sent to the  
 6 City of Coca have nothing to do with the Lago Agrio Case.  
 7 Q. Nor have you ever alleged that any of the  
 8 shipments to Pedro Moreira had anything to do with the Lago  
 9 Agrio Case; am I right?  
 10 A. Pedro Moreira. I cannot identify him. If they  
 11 were sent to Lago Agrio, it is possible that they had to do  
 12 with the case but if they were sent to the City of El Coca,  
 13 most certainly they did not have anything to do.  
 14 Q. So then, among all of the shipments of which you  
 15 have offered evidence, we are left with just two  
 16 unaccounted for packages, both of which went to Narcisa  
 17 Leon. But as before, there is no document or electronic  
 18 evidence or other contemporaneous evidence confirming that  
 19 the package contained--let me withdraw that.  
 20 As before, there is no documentary or electronic  
 21 evidence indicating what was in these packages other than  
 22 what you have indicated?  
 23 A. I sent documents to Ms. Narcisa Leon for them to  
 24 be delivered to Judge Zambrano. And, indeed, there is no  
 25 other evidence. You will understand that I was not able to

12:42 1 go to the TAME office and provide a detailed account  
 2 saying, okay, I'm sending ruling for the case 2020 of A  
 3 versus B. The only thing I said was documents are being  
 4 sent.  
 5 Q. So, there is no other evidence, is what you said?  
 6 A. Yes, sir.  
 7 Q. And you left the Court in 2008?  
 8 A. Yes.  
 9 Q. So, we don't know whether you're sending documents  
 10 back to the Court that you may have had in your house now  
 11 that you were no longer a judge, again, other than your  
 12 testimony, other than your word; correct?  
 13 A. When I left the Court--when I officially left the  
 14 Court in early February 2008, I recall that I formally  
 15 delivered all of the files that I had under me, and also  
 16 all of the property--computers, equipment--that I had.  
 17 By May 2008 and going forward, I didn't have to go  
 18 back to the Court or send documents that I owed the Court.  
 19 Q. Am I correct that neither Mr. Leon nor Mr. Albán  
 20 has ever corroborated your allegations? No one has stepped  
 21 forward with a declaration or a witness statement saying  
 22 that they acted as a messenger for you and Judge Zambrano?  
 23 A. I have no personal knowledge in that regard.  
 24 Q. Now, you've testified--sir, you provided to  
 25 Chevron all of the evidence that you had at your disposal

12:45 1 about your shipments to Judge Zambrano; am I correct? You  
 2 weren't holding anything back?  
 3 A. I didn't hold anything back. That documentation I  
 4 obtained officially from TAME.  
 5 Q. And you provided no other TAME records showing  
 6 deliveries to Judge Zambrano or Mr. Albán or Narcisa Leon.  
 7 You provided everything to us, did you not?  
 8 A. I provided everything that TAME certified to me.  
 9 Q. Sir, let's talk a little bit about your  
 10 travel--changing subjects--you have also offered testimony  
 11 affirming that you regularly traveled between Quito and  
 12 Lago Agrio to work on the Court rulings for the  
 13 environmental case; correct?  
 14 A. During Mr. Zambrano's second mandate, yes.  
 15 Q. And we have on the screen, and if your assistant  
 16 wants to turn to Paragraph 45--I'm sorry, Paragraph 44 of  
 17 his Witness Statement, that can be found at C-2358. It's  
 18 Tab 17 of our binder. It's also in the Claimants' binder.  
 19 We also have the relevant language on the screen.  
 20 Paragraph 44.  
 21 And I will just read it for the record, and then  
 22 we are going to discuss this for a little bit.  
 23 You wrote, and you affirmed under oath: "From  
 24 that point forward, a modus operandi regarding my role as  
 25 ghostwriter in the Chevron Case changed. Mr. Zambrano

12:47 1 advised me that we had to be more careful because the  
 2 attorneys for Chevron will be very attentive to any  
 3 irregularities. Because of that, there were times when I  
 4 traveled to Lago Agrio to work on the Court rulings for the  
 5 Chevron Case. I would regularly travel to Lago Agrio by  
 6 bus, and less frequently by plane on TAME. True and  
 7 accurate copies, certified by TAME, of TAME's records  
 8 reflecting my travel between Quito and Lago Agrio from 2009  
 9 through 2010 are marked as PX 1722 through PX 1726. Those  
 10 records reflect, for example, that I traveled via TAME from  
 11 Quito to Lago Agrio on August 4, 2010, returning to Quito  
 12 on August 6, 2010; and that I again traveled from Quito to  
 13 Lago Agrio on August 11, 2010, returning to Quito on  
 14 August 12, 2010." And then it goes on.  
 15 Now, sir, is it your testimony that you had no  
 16 reason to travel to Lago Agrio during this time other than  
 17 to help Judge Zambrano with the environmental case?  
 18 A. What period of time are you referring to? What  
 19 timeline are you referring to? Can you be more specific?  
 20 Q. In your Declaration, and the time that I'm  
 21 focusing on, is August of 2010, and my question to you is:  
 22 Did you have any reason to travel to Quito other than the  
 23 Lago Agrio Case? You had no family there?  
 24 A. My wife and my children, my family used to live in  
 25 Quito. When I traveled to Lago Agrio, I was doing it

12:49 1 regularly, and specifically because I was to assist  
 2 Mr. Zambrano in his own cases, and specifically in the  
 3 Chevron Case, this in the period of time that you're making  
 4 reference to.  
 5 Q. You had--okay, well, let's back up.  
 6 So, during this time period, you were helping  
 7 Mr. Zambrano in the Lago Agrio Case; correct?  
 8 A. Yes.  
 9 Q. In fact, you were a Claimant in several actions in  
 10 Lago Agrio in the 2009 and 2000 (sic) timeframe; isn't that  
 11 right?  
 12 THE INTERPRETER: Did you say 2009 and 2010, sir?  
 13 MR. BLOOM: Yes.  
 14 THE WITNESS: It seems to me that as a lawyer I  
 15 participated in one or two cases. Perhaps just the one.  
 16 BY MR. BLOOM:  
 17 Q. And you were also the subject of disciplinary  
 18 actions at the time; isn't that right?  
 19 A. No, sir, not at that period of time. I was no  
 20 longer a judge at that time and no disciplinary action was  
 21 current against me.  
 22 Q. So, focusing specifically with respect to these  
 23 trips, the first one is August 4. You declared that you  
 24 traveled from Quito to Lago Agrio and that you returned on  
 25 August 6, and you just testified that that related to work

12:51 1 on the Lago Agrio Case; am I correct?  
 2 A. At that date in August 2010, between August 4 and  
 3 August 6, 2010, Judge Zambrano was not the Judge of the  
 4 case. So, if I traveled during those dates, it wasn't for  
 5 me to provide assistance to the Chevron Case but possibly  
 6 to assist him in other matters that were--that had to do  
 7 with the cases that he also heard.  
 8 Q. The Presiding Judge in August of 2010 was Judge  
 9 Ordoñez; isn't that correct?  
 10 A. Yes.  
 11 Q. And Judge Zambrano did not resume the bench until  
 12 sometime in October, a couple of months after this travel;  
 13 isn't that also correct?  
 14 A. Yes, sir, that is correct.  
 15 Q. In fact, the motion to recuse Judge Ordoñez was  
 16 not filed until August 26th, sometime after your  
 17 August 4th travel; isn't that correct?  
 18 A. Yes, sir, that is correct.  
 19 Q. And also after your travel of August 11 to  
 20 August 12th?  
 21 A. Yes.  
 22 Q. In which case neither of those trips related to  
 23 the Lago Agrio Case; isn't that correct?  
 24 A. Yes, sir, that's correct.  
 25 Q. Do you have friends in the Lago Agrio area whom

12:53 1 you see when you--whom you would visit when you were in  
 2 Lago Agrio? Do you consider Mr. Albán a friend of yours  
 3 with whom you collaborated on a number of occasions?  
 4 A. I considered that he was a good friend, but I am  
 5 not an individual that does--goes on trips exclusively to  
 6 visit friends.  
 7 Q. Now, you have produced two deposit slips allegedly  
 8 signed by a Ximena Centeno; correct?  
 9 A. Yes, sir.  
 10 Q. But you claim never to have met anybody named  
 11 Ximena Centeno; isn't that also right?  
 12 A. That is correct, yes.  
 13 Q. Nor have you ever spoken to a Ms. Centeno?  
 14 A. That is correct, yes. I don't know her.  
 15 Q. And Pablo Fajardo never spoke to you about a  
 16 person named Ximena Centeno; isn't that also right?  
 17 A. That is correct, yes.  
 18 Q. Now, you believe she is associated with the  
 19 Plaintiffs, but that's based on information provided to you  
 20 from the Gibson Dunn law firm; isn't that right?  
 21 A. Yes, and also because, on the Web page of the  
 22 Internal Revenue Service of Ecuador, we see the fact that  
 23 she is an employee of Selva Viva, and Selva Viva is  
 24 connected with the Lago Agrio Plaintiffs.  
 25 Q. You have provided to Chevron, and Chevron has

12:55 1 provided to this Tribunal exactly two deposit slips with  
 2 her name on them; isn't that correct?  
 3 A. Those documents were provided to me by Banco de  
 4 Pichincha, once I requested them.  
 5 Q. And they were dated December 23, 2009, and  
 6 February 5, 2010; isn't that also right?  
 7 A. That is what the documents themselves evidence.  
 8 Q. And just to be clear, again, the Lago Agrio  
 9 Judgment was issued on February 14, 2011; correct?  
 10 A. Yes, sir.  
 11 Q. And you allegedly did not agree to cooperate with  
 12 Chevron until 2012; isn't that also right?  
 13 A. That is correct.  
 14 Q. And there is no evidence of any payments from  
 15 Ms. Centeno at all in 2012.  
 16 A. There is no evidence because at that date the  
 17 agreement had ended. My agreement with them was to receive  
 18 \$1,000 a month while I assisted in the preparation of the  
 19 rulings.  
 20 Q. Nor is there any evidence of any payments from  
 21 Ms. Centeno at all in 2011, the year the decision was  
 22 issued; correct?  
 23 A. There are none because the payments were made  
 24 personally by Mr. Fajardo to me in cash.  
 25 Q. So, there is no evidence of those payments other



12:57 1 than your word; correct?  
 2 A. Possibly in Mr. Fajardo's accounts that evidence  
 3 can be found.  
 4 Q. You're not aware of any other corroborating  
 5 evidence, are you?  
 6 A. No.  
 7 Q. Nor do you have any evidence of any payments from  
 8 Ms. Centeno or from anyone else associated with the--nor do  
 9 you have any evidence of any payments from Ms. Centeno or  
 10 from anyone else for the entirety of Mr. Zambrano's second  
 11 term as judge in the Lago Agrio Case?  
 12 A. The payments were made to me by Mr. Fajardo in  
 13 person.  
 14 Q. Again, I'm going to ask you to listen carefully to  
 15 the question.  
 16 Do you have any evidence of any payments from  
 17 Ms. Centeno or anyone else associated with the Plaintiffs  
 18 for the entirety of Mr. Zambrano's second term as a judge  
 19 in the Lago Agrio Case beginning in October of 2010  
 20 forward?  
 21 A. I do not. I don't know if that exists or if it  
 22 doesn't exist.  
 23 Q. And you have evidence of exactly two payments with  
 24 Ms. Centeno's name on them; correct?  
 25 A. In accordance with the evidence, yes.

12:59 1 Q. And both of those alleged payments would have  
 2 occurred well before you or Judge Zambrano allegedly  
 3 negotiated a deal to let the Plaintiffs draft the Judgment;  
 4 can you confirm that, please? You earlier confirmed that  
 5 the two payments by Ms. Centeno were December 23, 2009, and  
 6 February 5 in 2010, and both of those alleged payments  
 7 would have occurred well before you and Judge Zambrano  
 8 allegedly negotiated a deal with the Plaintiffs to let the  
 9 Plaintiffs draft the Judgment?  
 10 A. Your statement is correct, but I must say that  
 11 those payments have to do with the work I performed in  
 12 connection with the preparation of the rulings during the  
 13 first mandate of Mr. Zambrano.  
 14 And the last part of your question has to do with  
 15 the second mandate of Mr. Zambrano, so it's one year after  
 16 the payments by Mrs. or Ms. Centeno.  
 17 Q. And there is no evidence of any payments to you  
 18 during his second--during Judge Zambrano's second tenure;  
 19 isn't that correct?  
 20 A. I have said that the payments were done  
 21 personally, personally to me.  
 22 Q. I understand that. I'm asking you about the  
 23 physical evidence.  
 24 There is no physical evidence reflecting any  
 25 payments to you at all from the Plaintiffs during Judge

01:01 1 Zambrano's second term; can you please confirm that?  
 2 MR. KEHOE: Objection. For the third time can he  
 3 confirm that? This is getting repetitive.  
 4 MR. BLOOM: I'm obviously asking for an answer.  
 5 PRESIDENT VEEDER: I think you got it.  
 6 MR. KEHOE: Three times.  
 7 THE WITNESS: For the fourth time, and with all  
 8 due respect, I am saying that I did not have that physical  
 9 evidence. I don't know if anybody has it.  
 10 BY MR. BLOOM:  
 11 Q. And there is nothing on the deposit slips that had  
 12 Ms. Centeno's name written on it that indicate what these  
 13 payments were for; correct?  
 14 A. If you allow me, I should tell you that based on  
 15 the configuration of the bank document, the deposit slip  
 16 does not have any area where you can state the reason for  
 17 the deposit.  
 18 Q. And to be clear, the deposit slip indicated that  
 19 the money went into your bank account; correct?  
 20 A. Yes. The money went into the bank account, and  
 21 the bank states that. And I received it and spent it.  
 22 Q. And not the bank account of Judge Zambrano?  
 23 A. The values deposited by Ms. Centeno were sent to  
 24 myself, Alberto Guerra Bastidas.  
 25 Q. And there is no evidence that that money ever went

01:03 1 to Judge Zambrano; correct?  
 2 A. Honestly, I do not understand your question.  
 3 Q. Not one dollar--  
 4 A. Your question is very--it is very elusive. The  
 5 money deposited by Mrs. Zambrano goes into my account, and  
 6 I don't know if any other money deposited by Mrs. Zambrano,  
 7 Mrs. Centeno was deposited into Mr. Zambrano's account. If  
 8 you're referring to that, I'm not aware of it.  
 9 Q. So, the only person you know who received money  
 10 from the Plaintiffs is you?  
 11 A. Yes.  
 12 Q. Okay. Let's turn back to the general nature of  
 13 your allegations. You've claimed that Judge Zambrano  
 14 agreed to let the Plaintiffs prepare the Judgment for  
 15 \$500,000; correct?  
 16 A. Yes.  
 17 Q. And the money would come from the Plaintiffs to  
 18 Judge Zambrano?  
 19 A. That is what was indicated to me by Mr. Zambrano.  
 20 That was what he had negotiated with the representatives  
 21 those are the terms that Mr. Zambrano indicated to me that  
 22 he had negotiated with the representatives of the  
 23 Plaintiffs against Chevron.  
 24 Q. And it would be paid to him when?  
 25 A. Based on what Mr. Zambrano told me, the agreement

01:05 1 was that he would be paid once the Chevron Claimants  
 2 received the product of the Judgment when it was  
 3 implemented. From what Mr. Zambrano indicated, the  
 4 agreement was set so that he would be paid once they,  
 5 Chevron's Plaintiffs, received the product of the judgment,  
 6 upon enforcement.  
 7 Q. And you've testified that the money would be paid  
 8 to Judge Zambrano only after the Plaintiffs actually  
 9 recovered a money judgment from Chevron?  
 10 A. I said that because Mr. Zambrano personally  
 11 indicated to me that situation.  
 12 Q. And, of course, that meant necessarily that Judge  
 13 Zambrano would not be paid for a very long time; isn't that  
 14 right?  
 15 A. I didn't think about that back then.  
 16 Q. Well, you knew that there were layers of appellate  
 17 review in Ecuador; correct?  
 18 A. Of course.  
 19 Q. You know, the Court of Appeals and the National  
 20 Court; correct?  
 21 A. Yes.  
 22 Q. And now the Constitutional Court is reviewing the  
 23 Lago Agrio Sentencia; correct?  
 24 A. Yes, sir.  
 25 Q. Were you aware that this arbitration has been

01:06 1 pending since 2009?  
 2 A. No, I wasn't aware of that detail.  
 3 Q. And, of course, you recognized that there would  
 4 inevitably be enforcement actions to try to enforce the  
 5 Judgment?  
 6 A. I didn't think about that back then.  
 7 Q. But you did testify earlier that you knew Chevron  
 8 was trying to delay things as it related to the Lago Agrio  
 9 Case at least; correct?  
 10 A. I said that in connection with the first-instance  
 11 proceeding.  
 12 Q. And did you have reason to believe that Chevron  
 13 would try to expedite payment to the Plaintiffs after the  
 14 Sentencia was issued?  
 15 A. I didn't think about that. Or I didn't think  
 16 about it back then.  
 17 Q. So, it's your testimony, sir, that Judge Zambrano  
 18 accepted a bribe for some future uncertain date that might  
 19 never come to pass; correct?  
 20 A. I cannot forget that Mr. Zambrano asked me to  
 21 present--submit that proposal to the Plaintiffs against  
 22 Chevron and that's what I did. When we--when I had a  
 23 second meeting with Mr. Donziger and his friends at the  
 24 Honey Honey hotel in Quito, Mr. Zambrano later on told me  
 25 that he had reached that agreement. This is to allow them

01:08 1 to draft the Judgment, and that was the biggest concern  
 2 Mr. Zambrano had. He would not have known how to do it.  
 3 He had no experience with civil proceedings.  
 4 Q. And, of course, there would be no way for Judge  
 5 Zambrano to enforce in a court of law his alleged agreement  
 6 with the Plaintiffs if they chose not to pay him at this  
 7 uncertain date in the future; correct?  
 8 A. I cannot answer that specific question. I am not  
 9 aware of the agreement, the core elements, whether this was  
 10 only an oral agreement, or if it's in writing, or if  
 11 there's some document, some bill of exchange, a promissory  
 12 note signed by a third party, et cetera, et cetera. I  
 13 cannot give you any certainties in that regard.  
 14 MR. BLOOM: Members of the Tribunal, I come to at  
 15 the end of a line of questions, if you would like to break.  
 16 PRESIDENT VEEDER: Let's break now. It's ten past  
 17 1:00. We will come back at ten past 2:00.  
 18 Again, Mr. Guerra, we ask you not to discuss the  
 19 case away from the Tribunal or your testimony. Do you  
 20 understand that? Thank you.  
 21 THE WITNESS: Thank you.  
 22 (Whereupon, at 1:10 p.m., the Hearing was  
 23 adjourned until 2:10 p.m., the same day.)  
 24  
 25

1 AFTERNOON SESSION  
 2 (Discussion off the record.)  
 3 PRESIDENT VEEDER: Let's resume.  
 4 Mr. Guerra, we were just having a discussion with  
 5 counsel. We are not going to sit today beyond 6:00 p.m.,  
 6 but we may finish earlier, possibly at 5:30 p.m. But if at  
 7 any stage you want to break or you feel tired, let us know.  
 8 Let's proceed.  
 9 CONTINUED CROSS-EXAMINATION  
 10 MR. BLOOM: Thank you, Mr. President.  
 11 BY MR. BLOOM:  
 12 Q. Mr. Guerra, could you please tell us how much you  
 13 were making as an Ecuadorian judge at the time that your  
 14 employment there was terminated.  
 15 A. At the end of my tenure as a judge of the Superior  
 16 Court of Sucumbios--that was May 2008--I was making about  
 17 5,000 U.S. dollars a month.  
 18 Q. And am I correct that shortly before you were  
 19 removed as a judge, you had begun to build a new house; is  
 20 that right?  
 21 A. Yes.  
 22 Q. You worked with an architect; correct?  
 23 A. Yes.  
 24 Q. And how far did the construction of your new home  
 25 get? Was it completed?

02:20 1 A. No. When I was removed from my functions as a  
2 judge--that was in May 2008--the level of progress was  
3 about 15 to 20 percent in the construction of the house.  
4 Q. Can you describe the construction that was  
5 completed?  
6 A. Well, the structure, the house is on a lot that  
7 has 1,000 square meters in surface. It has two floors, two  
8 stories, with a total of 375 square meters in terms of the  
9 main house; and there is also an ancillary house next to  
10 the main house, and this is a small guest house of about 60  
11 square meters of construction.  
12 Q. And you were pleased with the construction that  
13 was done; correct?  
14 A. Back then I wasn't very satisfied, because when I  
15 lost my job, in the future I knew I would have problems  
16 continuing with the construction project that was already a  
17 little bit advanced.  
18 Q. And I believe you've already testified that you  
19 were terminated in 2008; is that correct?  
20 A. The Council of the Judiciary issued a resolution  
21 in May 2008 that was clearly a unilateral decision, and I  
22 was removed, terminated as a judge.  
23 Q. And the termination happened exactly in the middle  
24 of this construction; correct?  
25 A. It could be said that the construction had been

02:23 1 completed a third rather than 50 percent.  
2 Q. Then you've testified as a result that your  
3 removal obviously came at, quote, "precisely the worst time  
4 possible"; isn't that Yes. The impact is the same. I don't  
5 perceive correctly the term you use, but for me, it was a  
6 dismissal from my duties. That is what I understand, the  
7 term "rescission" or "recession", I understand it  
8 differently as a legal term. Here it would be a  
9 termination, termination of my duties due to a dismissal by  
10 the proper authorities; right?  
11 A. Yes. The impact is the same. I don't perceive  
12 correctly the term you use, but for me, it was a dismissal  
13 from my duties. That is what I understand, the term  
14 "rescission" or "recession", I understand it differently as  
15 a legal term. Here it would be a termination, termination  
16 of my duties due to a dismissal by the proper authorities.  
17 Q. And you stopped getting paid about \$5,000 a month  
18 when you were removed; correct?  
19 A. Yes.  
20 Q. And therefore you tried to get another job after  
21 your removal?  
22 A. Yes.  
23 Q. And you, in fact, worked as an attorney for the  
24 Municipality; is that also right?  
25 A. The job with the Municipality came about a couple

02:25 1 of years after I left my judicial office.  
2 Q. So you were removed in 2008, and your best  
3 estimate is you began working as a Municipality attorney in  
4 2010?  
5 A. I was removed from office in May 2008; and  
6 starting in July--rather, June 2008, I started to work for  
7 a company as an attorney for that insurance company in  
8 Quito.  
9 Q. And then after you worked for the insurance  
10 company, is that when you took on a job as an attorney for  
11 the Municipality?  
12 A. If you allow me, I worked for the insurance  
13 company. And later there was an opportunity to advise the  
14 National Congress with one of the Assembly members, and I  
15 worked for six to eight months there, and that was between  
16 November 2009 and August 2010. And I worked for the  
17 Municipality in 2012, between May, June--in May, June,  
18 July.  
19 Q. I want to make sure I understand this.  
20 After your removal, you began working for the  
21 insurance company; correct?  
22 A. Yes.  
23 Q. And then you worked for an Assembly member from  
24 November 2009 until August of 2010; is that right?  
25 A. Yes, it is correct.

02:27 1 Q. And then you said you worked for the Municipality  
2 from May until July of 2012; is that correct?  
3 A. Correct.  
4 Q. Were you receiving--did you have a job from  
5 August--or September 2010 until April 2012?  
6 A. I worked for the insurance company starting in  
7 June 2008 up to February--rather, December 2012. And I had  
8 some down times, and that was, for example, when I  
9 mentioned that I worked for the Assembly member and also  
10 for the Municipality.  
11 Q. That's clear. Thank you.  
12 Now, your salary as a Municipality attorney was  
13 just \$1,012 a month; isn't that right?  
14 A. Yes, sir; that is correct.  
15 Q. So that was about one-fifth of your salary as a  
16 judge at the time of your removal; is that correct?  
17 A. Yes, sir.  
18 Q. And your salary at the insurance company was, at  
19 its most, \$1,500 a month; correct?  
20 A. Yes, sir.  
21 Q. But towards the end, it was approximately only  
22 \$500 a month; is that also right?  
23 A. Yes, sir.  
24 Q. So the funds you were getting from the insurance  
25 company was something between 10 and 30 percent of what you

02:29 1 received as a judge?  
 2 A. Yes.  
 3 Q. Now, you accumulated a debt from all that  
 4 construction; isn't that right?  
 5 A. I kept--I practically continued the  
 6 construction--it took basically about five years total.  
 7 And I generally accumulated debt due to the work that was  
 8 being done little by little.  
 9 Q. And, sir, at the time of your removal as a judge,  
 10 you owed about \$20,000 for that construction. Would you  
 11 agree with me, sir?  
 12 A. I cannot confirm that. I cannot confirm that that  
 13 was the amount of the debt when I left the judicial  
 14 function. Later on the answer is yes.  
 15 Q. Meaning the debt--you can confirm later on that  
 16 you owed \$20,000?  
 17 A. The \$20,000 that your question I understand refers  
 18 to, I needed that money because I owed that amount by mid  
 19 or late 2012. This because of the expenses made through  
 20 the advances in the construction.  
 21 Q. So the construction continued to take place even  
 22 after your removal as a judge?  
 23 A. Yes.  
 24 Q. And so by the middle part of 2000--or 2012 or so,  
 25 you owed approximately \$20,000 for the ongoing

02:31 1 construction. Am I understanding correctly?  
 2 A. Yes.  
 3 Q. And you also advised Chevron's investigator that  
 4 you had no savings at that--in that time period in 2012;  
 5 isn't that also right?  
 6 A. Sir, I was talking about my own savings.  
 7 Q. So to be clear, from the time of your termination  
 8 in 2008 until you worked out an agreement with Chevron in  
 9 2012, you're making a living or earning wages that range  
 10 from about 10 percent to maybe 30 percent or a little bit  
 11 more of what you made as an Ecuadorian judge; is that  
 12 correct?  
 13 A. Yes, sir.  
 14 Q. And during all of this time, from 2000--from the  
 15 middle of 2012 through the time of you negotiating a deal  
 16 with Chevron, you continued to owe \$20,000 on the  
 17 construction of your new house; is that correct?  
 18 A. I owed approximately that amount of money, and I  
 19 needed more resources to finish the construction.  
 20 Q. How much more did you need?  
 21 A. I did not recall, but about 20- or \$30,000 more.  
 22 Q. Now, in 2009, when it became apparent that Judge  
 23 Zambrano was going to preside over the Lago Agrio Case for  
 24 the first time, it's your testimony that he asked you to  
 25 get in touch with the attorneys of Chevron; isn't that

02:33 1 right?  
 2 A. That is correct, sir. That is the case.  
 3 Q. And you say that the purpose was for you to try  
 4 and negotiate an agreement pursuant to which Chevron would  
 5 pay Judge Zambrano and pay you for issuing the final  
 6 Judgment in Chevron's favor. Would you agree with me, sir?  
 7 A. In part, yes. But I would like to clarify that  
 8 the purpose was to establish a connection between Chevron  
 9 and Judge Zambrano, for discussions to be had for  
 10 agreements to be made by both Parties, Chevron and Judge  
 11 Zambrano, in connection with relevant aspects of the  
 12 procedure of the case and also discussions related to the  
 13 possibility of a draft Judgment.  
 14 Q. When you refer to the possibility of a draft  
 15 Judgment, am I understanding correctly that what you mean  
 16 is that you are offering to assist Chevron in ensuring that  
 17 the Sentencia be issued in Chevron's favor?  
 18 A. The message, or the position, the intention and  
 19 the will of Mr. Zambrano that I conveyed to Chevron was  
 20 that a connection had to be made, friendships had to be  
 21 forged, a link had to exist for enough trust to exist.  
 22 And then from that moment on, when Mr. Zambrano  
 23 started to work as a judge in the case, from that point  
 24 forward work with a view toward a foreseeable future,  
 25 Chevron to draft the Judgment, of course obviously in their

02:36 1 favor.  
 2 Q. And what did you hope to get out of that?  
 3 A. Sincerely, if that situation ensued, I was hoping  
 4 to obtain a financial benefit of some sort myself.  
 5 Q. A bribe?  
 6 A. It pains me to say it. I recognize it: A bribe.  
 7 That is what it was--sought.  
 8 Q. You sought a bribe from Chevron; correct?  
 9 A. Mr. Zambrano was mainly who was looking for the  
 10 bribe, and I was going to take up a portion of that.  
 11 Q. So you sought, on your behalf and Judge Zambrano's  
 12 behalf, a bribe from Chevron?  
 13 A. Excuse me. I by myself was not able to seek that.  
 14 What I was doing ultimately was to be the spokesperson that  
 15 conveyed the intention of Mr. Zambrano to Chevron; and  
 16 obviously I understood if that situation was forged, then I  
 17 collaterally was going to obtain an economic benefit.  
 18 Q. So to be clear, you sought a bribe from Chevron to  
 19 benefit Mr. Zambrano and yourself; is that right?  
 20 A. Yes, sir.  
 21 Q. And, in fact, you have testified that you reached  
 22 out to a Mr. Racines about this proposal; isn't that  
 23 correct?  
 24 A. Yes.  
 25 Q. And could you tell the Members of the Tribunal who

02:38 1 Mr. Racines is?  
 2 A. Mr. Racines, his name is Alberto Racines. He has  
 3 a doctorate in jurisprudence; he is a lawyer. And he works  
 4 for the law firm of Mr. Adolfo Callejas, it is precisely  
 5 Adolfo Callejas' law firm in Ecuador--they are the lawyers  
 6 for Chevron in the Lago Agrio case.  
 7 Q. And you called Mr. Racines on his cell phone;  
 8 correct?  
 9 A. Yes, that is correct.  
 10 Q. And you've talked about a proposal with them, did  
 11 you not?  
 12 And you raised with Mr. Racines the possibility of  
 13 a proposal; correct?  
 14 A. Yes.  
 15 Q. And the proposal was that you would be a link  
 16 between Chevron and Mr. Zambrano for the purpose of  
 17 discussing or agreeing on certain important issues of the  
 18 Chevron Case and the Judgment; isn't that also right?  
 19 A. In the way you are stating it--well, not exactly.  
 20 What I maintained is that I was saying that I was the  
 21 spokesperson or the intermediary for that link to exist  
 22 between Chevron and Zambrano.  
 23 Q. Sir, you remember being asked questions about your  
 24 communications with Mr. Racines during the New York RICO  
 25 trial, do you not?

02:41 1 A. I do not recall that. Excuse me.  
 2 Q. I will represent to you that--for the Members of  
 3 the Tribunal and Counsel, Tab 19 of our binder, Page 916,  
 4 Line 20. The official transcript is in English, so I would  
 5 ask the court reporter--or the interpreter to translate.  
 6 But at Page 916, Line 20, you were asked, "What was that  
 7 proposal, sir, that you made to Mr. Racines?"  
 8 Your answer--and these are the precise words I  
 9 used in my question--"Specifically, the proposal was that I  
 10 would be a link between Chevron and Mr. Zambrano for the  
 11 purpose of discussing or agreeing on certain important  
 12 issues of the Chevron Case and the Judgment, if need be."  
 13 You do not deny that that was your testimony;  
 14 correct?  
 15 A. I do not deny that, no, sir.  
 16 MR. KEHOE: And I have an objection. To the  
 17 extent that that was an attempt at impeachment, that is  
 18 exactly what the Witness just testified to during  
 19 cross-examination as well.  
 20 MR. BLOOM: I think the record will speak for  
 21 itself.  
 22 BY MR. BLOOM:  
 23 Q. And Mr. Racines told you he had to consult with  
 24 his superiors; isn't that right?  
 25 A. Yes, sir.

02:43 1 Q. And you took that to mean he had to consult with  
 2 his client, Chevron; correct?  
 3 A. What I understood is, because that's how I  
 4 understood it, that he had to convey this suggestion or  
 5 this concern to Mr. Adolfo Callejas, who is the immediate  
 6 superior of Mr. Racines. Possibly Mr. Callejas had to talk  
 7 to a representative of Chevron, someone from Chevron  
 8 specifically. And then, later on, I was going to be given  
 9 the relevant answer. That was my understanding.  
 10 Q. In fact, you understood that, as a lawyer, he or  
 11 one of his colleagues would have had a duty to tell the  
 12 client, to tell Chevron; correct? And that was your  
 13 understanding?  
 14 A. Yes, sir, that is what I understood.  
 15 Q. And Mr. Racines eventually got back to you;  
 16 correct?  
 17 A. Yes, later on he did.  
 18 Q. But it was not a matter of hours, was it?  
 19 A. No, no, not at all. Not hours, no. A few days.  
 20 A few days, as far as I can recall.  
 21 Q. In fact, it took him weeks, not even days. Do you  
 22 believe it was days or weeks?  
 23 A. Well, I think that perhaps a couple of weeks  
 24 transpired. In other words, up to 15 days.  
 25 Q. So you understood from Mr. Racines--no.

02:45 1 He eventually did get back to you; correct?  
 2 Mr. Racines, he got back to you?  
 3 A. Yes. Eventually we did hold that conversation in  
 4 connection with the answer coming from Chevron. That was  
 5 my understanding through Mr. Racines.  
 6 Q. So several weeks after you made the proposal,  
 7 Chevron had a little time to think about it; Mr. Racines  
 8 reported back to you that Chevron declined your offer;  
 9 correct?  
 10 A. Yes. Specifically speaking, the proposal had been  
 11 declined.  
 12 Q. So Chevron knew that you were corrupt in 2009; is  
 13 that right?  
 14 A. I don't know about that matter specifically.  
 15 Q. Well, you proposed that you would go ahead and fix  
 16 the Decision with Mr. Zambrano in 2009 through your  
 17 communication with Mr. Racines. You agree with that?  
 18 A. I do, yes. We--we talked about that before, and I  
 19 said yes.  
 20 Q. Right. And you understand fixing a Decision is a  
 21 dishonest, illegal, and corrupt act, do you not?  
 22 A. I do, sir, yes. I understand.  
 23 Q. So when Chevron declined your offer in 2009, they  
 24 were declining your offer of corruption; correct?  
 25 A. In the words of Mr. Racines, Chevron said no, and

02:47 1 that is all; no.  
 2 Q. But Chevron knew that you were making a  
 3 solicitation for a bribe back in 2009.  
 4 A. I cannot tell you what Chevron knew or did not  
 5 know.  
 6 Q. Well, that's what you believed at the time from  
 7 Mr. Racines, isn't it? You believed that your proposal was  
 8 conveyed to Chevron?  
 9 A. Yes, that is my understanding, that Mr. Racines  
 10 conveyed this possibly in the way in which I indicated it  
 11 to him. My understanding is that, according to  
 12 Mr. Racines, Chevron declined the offer.  
 13 Now, the characterization of more corrupt--less  
 14 corrupt Guerra Zambrano, no mention was made of that.  
 15 Q. But assuming Mr. Racines communicated your  
 16 proposal to Chevron, that means that Chevron knew that you  
 17 personally were involved in an unlawful attempt to solicit  
 18 a bribe because it was you who personally made the offer to  
 19 Mr. Racines?  
 20 MR. KEHOE: I'm going to object to that question.  
 21 It starts with an assumption. This is a fact witness, not  
 22 an expert.  
 23 PRESIDENT VEEDER: I think you're stepping over  
 24 the line, Mr. Bloom. Let's stick to the facts.  
 25 BY MR. BLOOM:

02:49 1 Q. Your understanding at the time--and I think I'm  
 2 confirming your prior testimony, but it would serve as the  
 3 predicate of the next question.  
 4 Your understanding at the time was that your  
 5 proposal was made to Chevron; correct?  
 6 A. I was waiting for the answer that Mr. Alberto  
 7 Racines was going to provide to me. And when he did, my  
 8 understanding was that the source of that answer was  
 9 Chevron itself.  
 10 Q. Do you have a different understanding today?  
 11 A. No, in no way whatsoever.  
 12 Q. So based on that prior answer, you believed in  
 13 2009 that Chevron knew at that time that you made an  
 14 unlawful attempt to solicit a bribe.  
 15 A. At that time, Chevron did not know me and I did  
 16 not know Chevron via its representatives. I knew Chevron's  
 17 lawyers, the ones that I have indicated, and the lawyers  
 18 representing the opposing Parties--the opposing Party to  
 19 Chevron. And I've also cited them.  
 20 Q. At that time, sir, you were in debt by about  
 21 \$20,000--no. I strike that.  
 22 Were you in debt at all in 2009 as it related to  
 23 the construction?  
 24 A. I would not be able to assert that, but I was  
 25 constantly making small expenses, expenses that were

02:51 1 accumulating as we were moving forward with the  
 2 construction.  
 3 Q. And by the time that you reached out to  
 4 Mr. Racines in the last quarter of 2009, you had already  
 5 been removed as a judge; correct?  
 6 A. Yes.  
 7 Q. So you were no longer making your \$5000-a-month  
 8 salary at this time?  
 9 A. I did not have that revenue; that is correct.  
 10 Q. Your salary instead at that time that you made the  
 11 proposal was a mere fraction of what it once was?  
 12 A. At that time, apart from the \$1,500 that I earned  
 13 at the insurance company--well, that was added to other  
 14 revenue that was--that were smaller in nature because of  
 15 legal advice or legal fees that are provided to private  
 16 institutions or third parties; and I--I got that--that kind  
 17 of revenue.  
 18 Q. But you were still struggling financially given  
 19 the fact you didn't have your job as a judge and given the  
 20 construction; correct?  
 21 A. Well, mainly because of the construction, I  
 22 required higher income.  
 23 Q. Higher income than what you were actually  
 24 receiving at the time?  
 25 A. That was a construction pending, and I couldn't

02:53 1 really leave up that investment and leave it unfinished.  
 2 This would have been more serious economically speaking.  
 3 Q. So it was not only an issue of any debt incurred  
 4 already; you also were facing the prospect of trying to  
 5 finish the construction, which you knew would cost another  
 6 20- or \$30,000?  
 7 A. Possibly, yes.  
 8 Q. And meanwhile, Judge Zambrano did not attend that  
 9 meeting with Mr. Racines, did he?  
 10 A. No, he did not.  
 11 Q. Nor did Judge Zambrano, during this period of time  
 12 in 2009, himself talk to any representatives of Chevron, to  
 13 your knowledge, about the solicitation of a bribe; isn't  
 14 that also right?  
 15 A. I have no knowledge in connection with that  
 16 matter, but my understanding is that he did not.  
 17 Q. So when you testified that you reached out to  
 18 Chevron through Mr. Racines in 2009, there's no evidence to  
 19 support your claim that you were doing so on behalf of  
 20 Judge Zambrano, other than your word; correct?  
 21 MR. KEHOE: Mr. President, I'm going to object to  
 22 this. It's happened this morning, and it's happening now.  
 23 Counsel is asking the Witness if he knows whether or not  
 24 there's evidence in the record to support something one way  
 25 or the other. It's just not a proper question.

02:55 1 MR. BLOOM: I think it's clear, and I'll try to be  
 2 clear on my questions. But I--what I'm really asking is,  
 3 have you provided any evidence to Chevron--  
 4 PRESIDENT VEEDER: Well, that would be different--  
 5 MR. KEHOE: I'm fine with that.  
 6 PRESIDENT VEEDER: Stop, stop.  
 7 MR. KEHOE: Sorry.  
 8 PRESIDENT VEEDER: That would be a different  
 9 question, and that you can ask. Because I think the  
 10 broader question is really a question that you're asking of  
 11 the Claimants, which is not appropriate for this witness.  
 12 BY MR. BLOOM:  
 13 Q. When you testified that you reached out to Chevron  
 14 in 2009, you're not aware of any corroborating evidence to  
 15 support your claim that you were doing so on behalf of  
 16 Judge Zambrano, other than your word?  
 17 A. As Alberto Guerra, I wasn't able to go tell the  
 18 company, "Look, I guarantee that I am going to rule in your  
 19 favor in the Judgment." But I could say precisely what I  
 20 said to you, that I was going to be a link for a connection  
 21 to be established between Chevron and Zambrano for them to  
 22 agree in that situation.  
 23 Q. But you could have made that representation  
 24 whether or not you were, in fact, acting at the behest of  
 25 Mr. Zambrano. So let me ask you this question again, sir.

02:57 1 When you reached out to Mr. Racines to communicate  
 2 your proposal to Chevron in 2009, you're not aware of any  
 3 corroborating evidence to support your claim that you were  
 4 doing so on behalf of Judge Zambrano, other than your word?  
 5 A. When I reached out to Mr. Racines, I conveyed to  
 6 Mr. Racines the proposal, if you will, coming from  
 7 Mr. Zambrano. It wasn't my own.  
 8 And yes, as far as I know, I was unable to say to  
 9 Mr. Racines, "Look, allow me, I will record this contact to  
 10 have it in evidence."  
 11 But I do know that Mr. Racines, at some point in  
 12 time, gave a sworn statement somewhere, and somewhere in  
 13 these proceedings evidence of that must exist.  
 14 Q. In 2009, when you approached Mr. Racines, did you  
 15 provide him with any physical evidence that you were acting  
 16 on behalf of Judge Zambrano?  
 17 A. I did not.  
 18 Q. Have you provided any evidence to Chevron since to  
 19 show that when you approached Mr. Racines in 2009, that you  
 20 were acting on behalf of Mr. Zambrano at that time?  
 21 A. I did not.  
 22 Q. And Mr. Zambrano has never admitted, to your  
 23 knowledge, that you were acting on his behalf as it related  
 24 to your proposal to Chevron; isn't that also correct?  
 25 A. I have no personal knowledge of the decision of

02:59 1 Mr. Zambrano in that regard. I have not looked at his  
 2 statement or nothing of that nature. Mainly, no.  
 3 Q. And no Chevron representative has come forward, to  
 4 your knowledge, to say that they had a direct dialogue at  
 5 any time with Judge Zambrano. Is my understanding correct?  
 6 A. I am not able to state anything about situations  
 7 that I have no personal knowledge of in connection with  
 8 other individuals or institutions.  
 9 Q. And again, you have nothing in writing and no  
 10 recording of any communications with Mr. Zambrano  
 11 reflecting his authorization that you act on his behalf;  
 12 correct?  
 13 A. I do not, sir. Physically I do not.  
 14 Q. And in either event, you're not aware of Chevron  
 15 reporting to the Judicial Council your solicitation of a  
 16 bribe of Chevron; correct?  
 17 A. I have no knowledge of that, sir.  
 18 Q. And you're also not aware of Chevron reporting  
 19 Judge Zambrano to any governmental body in 2009. Is that  
 20 your understanding, sir?  
 21 A. That is my understanding. I have no knowledge of  
 22 that matter.  
 23 Q. And you are also unaware of any attempt by Chevron  
 24 to seek to recuse Judge Zambrano on the basis that he was  
 25 allegedly complicit in your solicitation of a bribe?

03:01 1 A. I do not know about that.  
 2 Q. And now to be clear on all of your statements,  
 3 your recorded conversations with Chevron and sworn  
 4 testimony, it is also true that you never, not once,  
 5 suggested that you were acting for the Government of the  
 6 Republic of Ecuador when you solicited a bribe; isn't that  
 7 correct?  
 8 MR. GUERRA: A bit louder because I did not hear  
 9 you clearly. A bit louder, please.  
 10 THE INTERPRETER: (No interpretation).  
 11 PRESIDENT VEEDER: Mr. Bloom, you might have to  
 12 ask that question again.  
 13 MR. BLOOM: Okay. Can we test the system?  
 14 (Pause.)  
 15 PRESIDENT VEEDER: Let's start again. Please put  
 16 the question again.  
 17 MR. BLOOM: Sure.  
 18 BY MR. BLOOM:  
 19 Q. To be clear, sir, in all of your statements,  
 20 including your recorded conversations with Chevron's  
 21 investigators and Chevron's attorneys and all of your  
 22 testimony, am I correct that, while you have alleged that  
 23 you solicited a bribe from Chevron at the request of Judge  
 24 Zambrano, you have never suggested that you did so on  
 25 behalf of the Republic of Ecuador; correct?

03:03 1 MR. KEHOE: I object to that question. And I  
 2 don't want to telegraph anything to the witness, but it's  
 3 obvious that the Judge is a Member of the Court, which is a  
 4 Member of the--an organ of the Government. So it's a  
 5 misleading question.  
 6 PRESIDENT VEEDER: Let me stop you there.  
 7 I think you're pushing against an open door. I  
 8 don't think--on the facts, if you're talking to this  
 9 witness as a fact witness, you need to pursue this much  
 10 further. But it's a matter for you. But I think we're  
 11 going to get the clear answer, and I'm not sure it's going  
 12 to help us any further than the material you've already  
 13 received.  
 14 MR. BLOOM: Okay.  
 15 BY MR. BLOOM:  
 16 Q. Sir--  
 17 A. Am I allowed to answer?  
 18 PRESIDENT VEEDER: No. The question has gone. So  
 19 we'll move on to the next question.  
 20 BY MR. BLOOM:  
 21 Q. Judge Zambrano's first term as Presiding Judge in  
 22 this case ended in the middle of March of 2010. Do you  
 23 recall that, sir?  
 24 A. Yes. March 4th.  
 25 Q. And he resumed his position as Presiding Judge

03:07 1 always rejected that possibility. Therefore, with due  
 2 respect, I wouldn't be able to say that that would have  
 3 been the case from the economic point of view.  
 4 Q. And, sir, I'm just asking you what your thinking  
 5 was at that time.  
 6 Am I correct that it is your testimony that you  
 7 and Mr. Zambrano wanted to reach out to Chevron because at  
 8 that time you believed, rightly or wrongly, that Chevron  
 9 had more money that it could pay and that you could get  
 10 paid more quickly than the Plaintiffs?  
 11 A. In essence, the answer is yes.  
 12 Q. And it's your testimony that you and Judge  
 13 Zambrano wanted to get as much money as you could; correct?  
 14 A. Yes.  
 15 Q. And you really didn't care who actually won the  
 16 case so long as it yielded a substantial financial benefit  
 17 to you; isn't that right?  
 18 A. Would you please restate your question?  
 19 Q. Certainly.  
 20 You really didn't care who actually won the case  
 21 so long as it yielded a substantial financial benefit to  
 22 you; isn't that right?  
 23 A. I was not the Judge in the case--the Presiding  
 24 Judge that could have had the moral, ethical and legal  
 25 commitment in connection with the result of the proceeding.

03:04 1 again on October 11, 2010. Does that sound right to you?  
 2 A. Yes, that is correct.  
 3 Q. And you say that you approached Chevron again  
 4 seeking a bribe at the beginning of Judge Zambrano's second  
 5 tenure; is that correct?  
 6 A. Yes, sir. That was the--that was my conduct on  
 7 behalf--or at the request of Judge Zambrano.  
 8 Q. And that was my next question.  
 9 You've testified that your second approach to  
 10 Chevron was also on behalf of Judge Zambrano; correct?  
 11 A. Yes, sir.  
 12 Q. And you've previously testified that you reached  
 13 out to Chevron on the assumption that Chevron could pay  
 14 more money than the Plaintiffs; isn't that right?  
 15 A. That was mainly the idea Mr. Zambrano had. And  
 16 that was also my idea, I supported it, I must be truthful,  
 17 but the aim was--it was understood that, if an agreement  
 18 was reached with Chevron in connection with the acceptance  
 19 and--and also the payment of a bribe, this was going to be  
 20 made effective immediately.  
 21 Q. So if you could consummate a deal with Chevron,  
 22 the idea was that you could get paid more money and get  
 23 paid more quickly. Is that a fair characterization?  
 24 A. That was not the situation. When we look at the  
 25 facts, no agreement was reached with Chevron. Chevron

03:09 1 Therefore, the final outcome was not something that  
 2 concerned me in connection with the impact of the result  
 3 back then.  
 4 Q. I wanted-- I'm sorry. I wanted to know what your  
 5 motive was--we've been talking about Mr. Zambrano, but I  
 6 want to know what your motive was.  
 7 PRESIDENT VEEDER: Mr. Bloom, I think he answered  
 8 that question: "Therefore, the final outcome was not  
 9 something that concerned me in connection with the impact  
 10 of the result," and he added "back then."  
 11 MR. BLOOM: I'm trying to get something,  
 12 Mr. President.  
 13 PRESIDENT VEEDER: Please, there's a certain  
 14 flexibility, which you can deploy.  
 15 MR. BLOOM: I'm happy to discuss when the witness  
 16 is not present.  
 17 PRESIDENT VEEDER: Please continue.  
 18 BY MR. BLOOM:  
 19 Q. Sir, if I may ask that again, I want to know what  
 20 your personal motive was. What was your personal motive in  
 21 involving yourself in this solicitation of a bribe?  
 22 A. I would like to say again that the bribe was not  
 23 requested on a personal basis. I wouldn't have been  
 24 capable of approaching Chevron without any backing and just  
 25 show up and say, "Look, I want money, and I offer nothing



03:11 1 in exchange."  
 2 My motive was to help my friend, Nicolas Zambrano,  
 3 so that he could have a good result in the--in addressing  
 4 the civil issues and also have some sort of economic  
 5 benefit for me.  
 6 Q. And that's all I was asking. You were looking for  
 7 an economic benefit for you as well; correct?  
 8 You wanted to help pay off any debt to complete  
 9 your house? Would that be accurate?  
 10 A. Yes. Somehow I also needed some income. The  
 11 regular income was not enough, and that was one of the  
 12 reasons why I was also acting as a ghostwriter to  
 13 Mr. Zambrano--and also as a paid ghostwriter, writing the  
 14 rulings on behalf of the Plaintiffs suing Chevron.  
 15 Q. And as in your solicitation back in 2009, there's  
 16 no physical evidence to corroborate your testimony that  
 17 your bribery solicitation in October of 2010 was on behalf  
 18 of Judge Zambrano. You want us to take your word for it;  
 19 correct?  
 20 A. I relate the facts just--I have related the facts  
 21 just as they happened. That is my truth. And if--whether  
 22 I am believed or not, it no longer--allow me, it is not  
 23 longer, not greatly a concern of mine. But that is the  
 24 truth.  
 25 Q. And you're not aware, sir, of any attempts by

03:13 1 Chevron after your second solicitation of a bribe to seek  
 2 the recusal of Judge Zambrano; is that correct?  
 3 A. I am not aware that may have happened.  
 4 Q. Do you recall the circumstances of Judge Zambrano  
 5 becoming Presiding Judge for the second time in October of  
 6 2010?  
 7 A. Yes, sir, I do remember that.  
 8 And if you allow me, I can elaborate on that.  
 9 Q. Please.  
 10 A. Mr. Leonardo Ordoñez Piña became the Presiding  
 11 Judge for the court of Sucumbios; and as a consequence, he  
 12 was also the Judge in the Chevron Case, and that was in  
 13 February 2010. Based--under the law in force at that time,  
 14 he had a two-year tenure, and he was going to be leading  
 15 the Chevron Case for two years, and also based on the law  
 16 up to January 2012.  
 17 In August 2010, Judge Leonardo Ordoñez neglected  
 18 issuing rulings in the proceeding and for that reason has  
 19 given grounds for his recusal. These grounds state  
 20 specifically: regarding not ruling in triple the time  
 21 provided by law. Chevron's attorneys took advantage of  
 22 this situation and it is they who proposed the recusal.  
 23 The recusal had to be presented before the Office of the  
 24 Courts--of the Clerk of the Court.  
 25 And as far as I know, that recusal writ was

03:15 1 received by the office of the clerk of the Court's  
 2 Presidency, and this was presented to Judge Ordoñez Peña.  
 3 Judge Ordoñez Peña I think kept that in the drawer of his  
 4 desk for almost a month and a half. And for that reason,  
 5 the whole thing was delayed after a month and a half.  
 6 Approximately a month and a half later, Judge  
 7 Ordoñez, due to the pressure exerted by Chevron lawyers and  
 8 also by the Plaintiffs' lawyers, returned the petition to  
 9 the Clerk's office and it is at that point that it is  
 10 transferred to the substitute judge, who is Nicolas  
 11 Zambrano, who had to rule over the Ordoñez recusal. Judge  
 12 Zambrano as the substitute president, at the end grants the  
 13 recusal and due to that reason, he becomes, in his capacity  
 14 of substitute president, the presiding judge for the rest  
 15 of the time, the two years that Judge Ordoñez purportedly  
 16 had to fulfill.  
 17 And then Judge Zambrano was going to be presiding  
 18 over the Chevron Case between October--for the second time,  
 19 between October 2010. And from the legal point of view, he  
 20 could have continued up to January 2012. That was going to  
 21 be the end of his tenure as the alternate or substitute  
 22 judge in the Chevron Case.  
 23 Q. Thank you.  
 24 So as I understand your testimony, Chevron took  
 25 advantage of Judge Ordoñez taking too much time in ruling

03:17 1 on certain motions, and that constituted grounds under  
 2 Ecuadorian law for recusal. Am I understanding that  
 3 correctly?  
 4 A. If you allow me, I wouldn't say that they took  
 5 advantage--advantage, but they benefited from the lack of  
 6 attention to the case provided by Judge Ordoñez.  
 7 Q. They had the legal right to seek Judge Ordoñez's  
 8 removal, because Judge Ordoñez was too slow in issuing  
 9 Providencias; is that correct?  
 10 A. If you allow me, the term you are--the term you're  
 11 using is not the right one. It's not to ask for the  
 12 removal of the judge. There is some other causes for the  
 13 removal of the judge. In this case, there is a lack of  
 14 competence or jurisdiction in connection with a specific  
 15 case, in particular because there has been a lack of timely  
 16 decision-making.  
 17 Q. Very well. And this is the same Chevron you  
 18 earlier testified this morning that was seeking to generate  
 19 incidents to delay the adjudication; isn't that right?  
 20 A. Yes. During the time I was the ghostwriter for  
 21 Mr. Zambrano and also after--upon noticing the contents of  
 22 the pleadings presented by Chevron, I did notice that that  
 23 was the intention of the Ecuadorian lawyers of Chevron.  
 24 That is to say, to create some confusion. Definitely, they  
 25 were trying, at any cost, to delay the regular process, the

03:20 1 regular proceeding.  
 2 Q. Would you agree with me, sir, that Judge Zambrano  
 3 became the Presiding Judge in October of 2010, for his  
 4 second tenure, only after and because Chevron successfully  
 5 filed a motion to recuse or replace or remove Judge  
 6 Ordoñez?  
 7 A. Yes, sir; that is correct.  
 8 Q. So if Chevron had not filed the motion, Judge  
 9 Ordoñez was in line to draft the Sentencia; correct?  
 10 A. I cannot offer you any certainties.  
 11 Q. Once Chevron filed the motion, did you understand  
 12 that Zambrano would take over as the Presiding Judge?  
 13 A. In connection with the presentation of the motion  
 14 by Chevron to recuse Judge Ordoñez--this is something that  
 15 I learned of from Mr. Zambrano. Let's not forget that back  
 16 then, my permanent domicile was in Quito. The case and the  
 17 domicile of the Judge were in Lago Agrio. This is, at  
 18 least, six hours away by car and 45 minutes by plane. The  
 19 distance was 45 minutes by plane.  
 20 And Mr. Zambrano and myself, knowing that the  
 21 motive for recusal was legitimate, that it was supported on  
 22 a valid motive, on a valid ground, I discussed this with  
 23 Mr. Zambrano, and we knew that Mr. Zambrano was going to  
 24 accept this request and that, in short, Mr. Zambrano was  
 25 going to become the Presiding Judge in the Chevron Case.

03:22 1 Q. So there were valid grounds to remove Judge  
 2 Ordoñez; correct?  
 3 A. Yes.  
 4 Q. And how did you know that it would be Judge  
 5 Zambrano, rather than another judge, who would succeed  
 6 Judge Ordoñez?  
 7 A. This has to do with the legal provisions. The  
 8 Presiding Judge has also an alternate judge. In the  
 9 absence of the presiding judge, the alternate judge is the  
 10 one who takes over. And so based on the law, it was Judge  
 11 Zambrano the one who would be taking over.  
 12 Q. So anyone who was knowledgeable of Ecuadorian law  
 13 should have known that, if the motion were granted, Judge  
 14 Zambrano would take over the case; correct?  
 15 A. Yes, sir.  
 16 Q. In which case, Chevron sought the removal of Judge  
 17 Ordoñez knowing that, if it were successful, that it would  
 18 result in Judge Zambrano taking over the case?  
 19 MR. KEHOE: Objection. The Witness doesn't know  
 20 what Chevron did or didn't know.  
 21 MR. BLOOM: I'll withdraw that.  
 22 BY MR. BLOOM:  
 23 Q. Now, sir, you're aware, are you not, that one of  
 24 Chevron's former contractors, Diego Borja, allegedly  
 25 offered a bribe to Judge Nuñez in 2009?

03:25 1 A. I learned about that at some point given some news  
 2 reports, where I think that this was--I noticed that when I  
 3 watched the videos that were published of the Internet.  
 4 Q. You saw those interviews--not those interviews.  
 5 You saw those videotapes?  
 6 A. Yes.  
 7 Q. Did you also learn through the Ecuadorian media  
 8 that Mr. Borja received a substantial financial benefit  
 9 from Chevron?  
 10 MR. KEHOE: I'm going to object to these  
 11 questions. To the extent that the Witness learned of  
 12 anything through the media, it seems to be somewhat  
 13 irrelevant to his direct examination or his  
 14 cross-examination.  
 15 PRESIDENT VEEDER: Mr. Bloom, where are you going?  
 16 MR. BLOOM: I'd rather not disclose it in front of  
 17 the Witness. I'm happy to do it if it's not being  
 18 translated.  
 19 MR. KEHOE: What we object to is I see the slides  
 20 that we're going through. If the Witness is going to be  
 21 asked questions about something that he's learned about  
 22 through the media--  
 23 PRESIDENT VEEDER: Stop, stop.  
 24 Interpreters, could you please stop interpreting  
 25 into Spanish.

03:26 1 So just give us the slide number to which you're  
 2 referring.  
 3 MR. KEHOE: I'm sorry.  
 4 MR. BLOOM: Fifty-two, Mr. President.  
 5 MR. KEHOE: I'm sorry--I'm sorry to interrupt.  
 6 This Witness is being--this Witness has been in the United  
 7 States I believe now for two and a half years. So I think  
 8 he understands enough English. Maybe we can ask him to  
 9 step into another room.  
 10 PRESIDENT VEEDER: Let's just take it slowly.  
 11 And if you have this document, Mr. Guerra, could  
 12 you-- he doesn't have the document. Just give me the slide  
 13 number.  
 14 MR. KEHOE: 52. For some reason, they put it on  
 15 the screen already.  
 16 PRESIDENT VEEDER: No. Stop there, and take it  
 17 off the screen.  
 18 MR. BLOOM: Take it off the screen. That's fine.  
 19 PRESIDENT VEEDER: Let's just see where you're  
 20 going. But you keep going. And if there's a problem, we  
 21 can come back to this.  
 22 MR. BLOOM: And we can do this also without  
 23 slides, if that will help accommodate Claimants.  
 24 PRESIDENT VEEDER: It might make it worse.  
 25 MR. KEHOE: I don't know. Let's just see.

03:28 1 PRESIDENT VEEDER: You take your own course for  
 2 the moment, and let's start the interpretation again.  
 3 BY MR. BLOOM:  
 4 Q. You're aware, if you saw those videotapes, that a  
 5 con--that Diego Borja was a contractor or former contractor  
 6 of Chevron?  
 7 A. I do not remember getting to that conclusion after  
 8 watching the videos, but this was a comment afterwards,  
 9 whether he was a contractor or former contractor with  
 10 Chevron.  
 11 Q. Are you aware, sir, that Mr. Borja received  
 12 substantial financial benefits from Chevron?  
 13 A. I understand he may have, but this is not  
 14 information I have. I haven't seen any documents.  
 15 Q. And what information did you receive? Was it  
 16 through the media?  
 17 A. Yes, through the media, on the Internet.  
 18 Q. Do you recall the nature of that information and  
 19 specifically whether the media reported and whether you  
 20 read that he received financial benefits from Chevron?  
 21 A. Specifically I do not recall. But it seems to me  
 22 that it was said that the individual who filmed these  
 23 videos was taken out of Ecuador and got asylum in the U.S.;  
 24 and, just like me, he lives in the U.S., and the  
 25 expenses--his expenses are somewhat covered by--somehow,

03:33 1 could help yourself financially?  
 2 MR. KEHOE: Objection; asked and just answered.  
 3 PRESIDENT VEEDER: You can continue.  
 4 BY MR. BLOOM:  
 5 Q. You may answer the question.  
 6 A. I must say that I decided to personally cooperate  
 7 with Chevron once that Mr. Zambrano decided definitively  
 8 not to cooperate with Chevron.  
 9 Q. And when you began cooperating with Chevron in  
 10 2012, you were hoping for a financial benefit for that  
 11 cooperation; isn't that right?  
 12 A. Yes. And Mr. Zambrano just the same.  
 13 Q. In your November 17th Declaration--and Ms. Bees  
 14 can find that for you at Paragraph 13. And that's Tab 17  
 15 from our binder, but it's--do you have that?  
 16 THE INTERPRETER: For the interpreter,  
 17 Paragraph 13. You said, sir, 13? Yeah.  
 18 MR. KEHOE: November 17th? Yeah. It's the first  
 19 tab on the-- it is there. It's behind the English version.  
 20 Which paragraph did you want?  
 21 MR. BLOOM: Thirteen.  
 22 MR. KEHOE: I'm sorry. You're looking-- you're  
 23 looking at two different things, Eric. You're asking him  
 24 about November 17th, and I believe they're looking at the  
 25 RICO October Declaration.

03:30 1 rather, covered by Chevron.  
 2 Q. At the time that you began to cooperate with  
 3 Chevron in 2012, you believed that if you ingratiated  
 4 yourself with the company, made yourself important to the  
 5 company, that maybe you could receive a financial benefit  
 6 also from the company?  
 7 A. With all due respect to the Tribunal and to  
 8 everyone present here, Mr. Zambrano and I believed that if  
 9 Chevron was told about the real circumstances that led to  
 10 the issuance of the Court Judgment at the trial level,  
 11 Chevron could pay a substantial--that is to say a  
 12 substantial amount of money. And I thought that a portion  
 13 of that amount was going to come into my pockets, and that  
 14 was the reason.  
 15 Q. And I think I'm asking a question that's different  
 16 than the one you think I'm asking. So I'd like to focus  
 17 your attention on the time period of 2012, after the  
 18 Sentencia was issued, at the time that you began to  
 19 cooperate with Chevron.  
 20 Are you with me so far?  
 21 A. I'm listening to you, yes.  
 22 Q. Thank you.  
 23 When you agreed to cooperate with Chevron, you  
 24 believed at that time that if you ingratiated yourself with  
 25 the company, if you made yourself important, then maybe you

03:35 1 (Pause.)  
 2 PRESIDENT VEEDER: Do we all have that now?  
 3 MR. BLOOM: Yes.  
 4 BY MR. BLOOM:  
 5 Q. So Mr. Guerra, in your November 17, 2012,  
 6 Declaration at Paragraph 13, you state that in the last  
 7 quarter of 2009, during his first term as Presiding Judge,  
 8 Mr. Zambrano asked you to have a meeting with Pablo Fajardo  
 9 because Mr. Zambrano "had reached an agreement with  
 10 Plaintiffs' representatives"; is that correct?  
 11 A. Yes, sir.  
 12 Q. And this agreement allegedly occurred shortly  
 13 after you had approached Chevron and solicited a bribe from  
 14 Chevron; correct?  
 15 A. It's after Chevron's refusal.  
 16 Q. And as with respect to the other proposals you've  
 17 made, you don't have a recording of a conversation with  
 18 Mr. Zambrano or any electronic or handwritten  
 19 correspondence from Judge Zambrano authorizing you to act  
 20 on his behalf; am I correct?  
 21 A. Yes. I don't have any, because I didn't concern  
 22 myself with that. I never thought that we were going to  
 23 come to these kinds of instances. I didn't ask for a  
 24 document. I didn't have a recording. I have no evidence  
 25 in that regard. But in the context, that evidence exists.

03:37 1 Q. And if I understand you correctly, when  
 2 Mr. Zambrano came back into the case in the last quarter of  
 3 2010, he already had a preexisting agreement with the  
 4 Plaintiffs to move this case along; is that right?  
 5 A. Yes.  
 6 Q. But it is also your testimony that notwithstanding  
 7 his alleged preexisting agreement with the Plaintiffs to  
 8 move this case along, Mr. Zambrano allegedly authorized you  
 9 to then solicit a bribe from Chevron?  
 10 A. Yes, that is correct. Your statement is correct.  
 11 Q. Now, you've never alleged in any of your  
 12 statements that you've ever had any information from any  
 13 source that the Plaintiffs paid Judge Zambrano any money  
 14 pursuant to this first agreement to move the case along;  
 15 isn't that right?  
 16 A. I have not stated that because I have no personal  
 17 knowledge of the fact that Judge Zambrano and the  
 18 Plaintiffs, in their agreement, included transfers of  
 19 money. In that regard, Mr. Zambrano didn't tell me whether  
 20 he received moneys for that purpose.  
 21 Q. Right. Judge Zambrano never told you that the  
 22 Plaintiffs paid him any money; correct?  
 23 A. As regards the issues of moving the case ahead,  
 24 Judge Zambrano at no time told me that he was going to  
 25 receive moneys from the Plaintiffs for such an agreement.

03:40 1 Q. And you've never testified that the Plaintiffs  
 2 ever represented to you that they paid any money to Judge  
 3 Zambrano; am I correct?  
 4 A. In that regard, I have not stated anything. If  
 5 Judge Zambrano didn't affirm nor did he deny that he  
 6 received money or that he didn't receive money in  
 7 connection with moving ahead the case on behalf of  
 8 Chevron's Plaintiffs, then I would not be able to make any  
 9 statement in that regard. I have no personal knowledge of  
 10 that.  
 11 Q. Nor have you ever testified that in exchange for  
 12 moving the case along, there was even a promise by the  
 13 Plaintiffs to pay Judge Zambrano any amount, isn't that  
 14 also; right?  
 15 A. I have not stated that, because I have no personal  
 16 knowledge of that, I repeat.  
 17 But I have stated that I received \$1,000 a month  
 18 by the Plaintiffs in order to move the process along in a  
 19 faster manner.  
 20 Q. So you're the only one who received money from the  
 21 Plaintiffs, to your knowledge?  
 22 A. I was the only one that was working in preparing  
 23 the rulings. There was no other lawyers--no other lawyer  
 24 providing assistance, working.  
 25 Q. So Judge Zambrano returns to the bench in October

03:42 1 of 2010, after Chevron has moved for the recusal of Judge  
 2 Ordoñez.  
 3 Now, at this time, Mr. Zambrano does not ask you  
 4 to immediately go back to the Plaintiffs; right? He asks  
 5 you, instead, to go back to Chevron?  
 6 A. Notwithstanding adverse situations, et cetera,  
 7 Mr. Zambrano, in his heart of hearts, felt that, at some  
 8 point in time, the Chevron thing could work. And far from  
 9 benefiting from an amount of money promised at a future  
 10 point in time, perhaps possibly he could receive firsthand  
 11 the moneys. That is why, given these circumstances, up to  
 12 a point he forces me or demands that I insist with my  
 13 friends, with Chevron, with the lawyers, to put forth the  
 14 specific proposal to allow them to draft the judgment in  
 15 exchange for an amount of money to be negotiated.  
 16 Q. And after Chevron declined, it's your testimony  
 17 that Mr. Zambrano allegedly authorized you to seek an  
 18 agreement with the Plaintiffs?  
 19 A. Yes; that is correct.  
 20 Q. And in the New York trial, you testified that  
 21 Mr. Zambrano came up with the proposal that you personally  
 22 transmitted to the Plaintiffs; correct?  
 23 A. Yes, sir.  
 24 Q. But again, you've got nothing to--no physical  
 25 evidence to corroborate your discussion with Mr. Zambrano;

03:44 1 correct?  
 2 A. But I do have them in connection with the proposal  
 3 that I made to Plaintiffs' representatives on behalf of  
 4 Zambrano when I said that I talked to Mr. Donziger. And I  
 5 know that Mr. Donziger accepts that he spoke to me--that he  
 6 spoke to me.  
 7 Q. And to be clear, I'm not talking about your  
 8 communications with Mr. Donziger with the Plaintiffs. I  
 9 just want to focus you for a moment on your discussions  
 10 with Mr. Zambrano. And I'm asking you, sir, whether you  
 11 have any physical evidence to corroborate that Mr. Zambrano  
 12 authorized you to have this conversation with the  
 13 Plaintiffs--any email, any correspondence.  
 14 A. With all due respect, I'm telling you I don't  
 15 because it's obvious. Zambrano was the Presiding Judge in  
 16 this case. And he, well, had given me a written order from  
 17 his computer to mine, or a letter with a signature, well,  
 18 had he done that--well, no person in his or her right mind  
 19 would do that. That's my understanding.  
 20 I don't have that in the terms that you want me to  
 21 state it. I don't have them.  
 22 Q. Now, you've previously testified that Mr. Zambrano  
 23 had a lot of trust in you; correct?  
 24 A. Yes, sir.  
 25 Q. You've said that, "he had enough confidence in me

03:46 1 that he trusted that I would do what was proper and  
 2 prudent."  
 3 Would you generally agree that that was your  
 4 testimony?  
 5 A. Yes, sir.  
 6 Q. And it was generally known in the community that  
 7 you were close to Mr. Zambrano; isn't that right?  
 8 A. The community knew that we had a very good  
 9 communication and a good friendship, yes, the Lago Agrio  
 10 legal community.  
 11 Q. And specifically that you were close to  
 12 Mr. Zambrano?  
 13 A. I don't know from your viewpoint what you mean to  
 14 say when you said that we were close to each other.  
 15 We had a good friendship, a good communication,  
 16 good understanding, and that is all. And there was trust,  
 17 so much so that he asked me to be his writer--to help him,  
 18 to be his ghostwriter, and I did it.  
 19 Q. Are you comfortable to represent that you were  
 20 close with Mr. Zambrano?  
 21 A. I don't feel as comfortable when you talk about  
 22 being close. Being close, it sounds to me that the matter  
 23 is a bit askew.  
 24 But I can tell you that we had a good friendship.  
 25 Q. And if you turn to your Declaration of

03:50 1 presume or believe that you were, in fact, close to Judge  
 2 Zambrano and was acting on his behalf; correct?  
 3 A. Look, the representatives of Chevron, at least the  
 4 lawyers--the Ecuadorian lawyers that represented Chevron  
 5 knew that I was the first judge in this case. And they  
 6 knew that I knew them; I was able to identify them, both  
 7 Chevron's lawyers and Plaintiffs' lawyers.  
 8 And when I came to them with the relevant  
 9 proposal, well, at no time--at no time was I asked to  
 10 justify the status that I was holding when I was discussing  
 11 this with them.  
 12 Q. If Chevron believed that you were close to  
 13 Mr. Zambrano, you believed that you had a better chance of  
 14 having Chevron agree to pay money; isn't that right?  
 15 MR. KEHOE: Objection. It's another hypothetical  
 16 as to what Chevron believed.  
 17 MR. BLOOM: No. I'm asking him what he understood  
 18 at the time.  
 19 BY MR. BLOOM:  
 20 Q. Did you understand at the time--  
 21 PRESIDENT VEEDER: I think it's a fair question.  
 22 It's his belief that's being queried.  
 23 Please proceed.  
 24 BY MR. BLOOM:  
 25 Q. Do you understand the question, sir?

03:48 1 November 17th, at least as translated, it has you saying,  
 2 not me--has you saying, "it was publicly known that I was  
 3 close to Mr. Zambrano."  
 4 MS. BEES: Which paragraph are you--  
 5 MR. BLOOM: I'm sorry. Paragraph 12.  
 6 BY MR. BLOOM:  
 7 Q. Sir--  
 8 A. I know that that is what it says.  
 9 Q. Those are your words, are they not?  
 10 A. Yes, sir.  
 11 Q. And you wanted Chevron to know that you were close  
 12 to Mr. Zambrano, did you not?  
 13 A. At that point in time, many lawyers in the legal  
 14 community of Lago Agrio--authorities, court employees,  
 15 other judges, and other individuals--knew that Mr. Zambrano  
 16 and I were very good friends, and we also had a  
 17 professional relationship.  
 18 Q. When you approached Chevron in 2009 and 2010, you  
 19 wanted Chevron to know that you were close to Mr. Zambrano,  
 20 didn't you?  
 21 A. When, at that time, I approached Chevron via  
 22 certain individuals, what I wanted was for Mr. Zambrano's  
 23 position to be accepted for him and I to obtain a financial  
 24 benefit at some point in time.  
 25 Q. In which case, the Chevron representatives had to

03:52 1 PRESIDENT VEEDER: Please ask it again.  
 2 THE WITNESS: Could you please repeat the  
 3 question?  
 4 BY MR. BLOOM:  
 5 Q. Yes. At the time that you solicited Chevron for  
 6 bribes, you understood that it was important, in order to  
 7 secure a bribe from Chevron, that Chevron, in fact,  
 8 believed that you were acting on behalf of Judge Zambrano?  
 9 A. When I approached Chevron in--on two occasions, in  
 10 2009 and in 2010, I did not expressly held [sic] that I was  
 11 looking for a specific amount of money on behalf of myself  
 12 or Ms.--on behalf of Mr. Zambrano.  
 13 What I said is that I had the authority--or,  
 14 rather, the authorization of Mr. Zambrano. I was looking  
 15 for the possibility, if they so chose, if they so want, to  
 16 establish a contact through me between them and Judge  
 17 Zambrano, so that for some benefit to be determined at some  
 18 point between them, certain goals be achieved.  
 19 Now, in connection with that specific offer in the  
 20 approximate terms that I'm expressing to the Tribunal, they  
 21 said that they had no intention of heeding that kind of  
 22 request.  
 23 Q. When you say "that kind of request," what are you  
 24 referring to?  
 25 A. To the request of establishing a link to reach a

03:54 1 certain objective, in 2009, to speed up the process,  
 2 preferably and, in 2010, to specifically draft the draft  
 3 Judgment.  
 4 Q. And you understood that if Chevron did not believe  
 5 that you were acting on Judge Zambrano's authorization,  
 6 that you would have no chance of securing a bribe from  
 7 Chevron; isn't that also right?  
 8 A. I do not know what Chevron believed. I cannot  
 9 speak to that.  
 10 Q. That's not my question. I want to focus on what  
 11 you believed.  
 12 At the time that you solicited a bribe, you  
 13 understood that if you could not persuade Chevron that you  
 14 were acting on behalf of Judge Zambrano and that you were  
 15 close with Judge Zambrano, that the prospects of securing a  
 16 bribe from Chevron would diminish markedly; isn't that  
 17 correct?  
 18 A. That is not correct.  
 19 If you allow me, I think you're interpreting my  
 20 answers in a manner that is not correct; you're  
 21 mischaracterizing it.  
 22 When I approached Chevron via third parties,  
 23 Mr. Racines and via John Doe 1 in the second case, I did  
 24 not say, "I come here on behalf of Mr. Zambrano to ask for  
 25 \$10 million," just talking about an amount of money.

03:56 1 I said, "I come here on behalf of Mr. Zambrano,  
 2 the judge of Chevron's case, to state to you, as the  
 3 Chevron company, the possibility that, if you so wish,  
 4 Judge Zambrano agrees to reach an agreement to establish a  
 5 contact, hold conversations, friendly discussions to allow  
 6 you eventually to draft a sentence as much as you like or  
 7 dislike. This in exchange for some benefit, some amount,  
 8 that is going to be determined in the future. And at an  
 9 opportune time, that may be agreed between the both of  
 10 you."  
 11 As you see, Counselor, I did not go there to say,  
 12 "I would like a bribe for Mr. Zambrano or for myself." I  
 13 was not there saying that I was seeking a bribe. I was  
 14 there just to establish a contact for that relationship to  
 15 exist. That is how things transpired.  
 16 PRESIDENT VEEDER: We're going to need a break.  
 17 Would this be a good time?  
 18 MR. BLOOM: I was just going to say that.  
 19 PRESIDENT VEEDER: Let's come back at 4:15.  
 20 Again, we ask you, please don't discuss the case away from  
 21 the Tribunal. Thank you.  
 22 (Brief recess.)  
 23 PRESIDENT VEEDER: Let's resume.  
 24 BY MR. BLOOM:  
 25 Q. Mr. Guerra, it's your testimony from the New York

04:17 1 RICO case that Mr. Zambrano had assured you that once he  
 2 had received the \$500,000 from the Plaintiffs, whether in  
 3 installments or lump-sum, he would share 20 percent with  
 4 you; correct?  
 5 A. Well, if you allow me, if one can be explicit or  
 6 implicit in regards to that of Mr. Zambrano, at no moment  
 7 did he tell me that he was going to share 20 percent with  
 8 me, but he said that I was going to receive a proper  
 9 benefit to be subtracted from the total amount.  
 10 Q. So, your testimony today is that he never assured  
 11 you that you would receive 20 percent of \$500,000?  
 12 A. That is correct.  
 13 Q. But your testimony in the RICO case was a little  
 14 bit different, was it not?  
 15 A. For some circumstance, an abrupt remark due to a  
 16 momentary situation of a mental nature, I got confused, and  
 17 I mentioned the 20 percent but there was no statement in  
 18 those terms.  
 19 Q. Was there or was there not a sworn statement by  
 20 you under oath that Mr. Zambrano, "had assured me that once  
 21 he had received the \$500,000, whether in installments or  
 22 lump-sum, he would share with me 20 percent"?  
 23 MR. KEHOE: Objection. The Witness just answered  
 24 the question. He said that he was confused, and he's  
 25 asking it a second time now.

04:19 1 MR. BLOOM: I was clarifying because the end of  
 2 his answer was there was no statement to that effect.  
 3 PRESIDENT VEEDER: Please proceed.  
 4 MR. BLOOM: It will need to be translated because  
 5 this is the official English transcript, so if I may ask  
 6 the interpreter to please interpret for the Witness the  
 7 answer as he provided under oath, and I will quote it:  
 8 "Mr. Zambrano had assured me that once he had received the  
 9 \$500,000, whether in installments or lump-sum, he would  
 10 share with me 20 percent."  
 11 BY MR. BLOOM:  
 12 Q. Sir, do you dispute that that was your sworn  
 13 testimony under oath in New York?  
 14 A. That was my sworn statement in New York, but what  
 15 I said is that, because of a circumstance, because of a  
 16 situation, I mentioned 20 percent when it wasn't true, and  
 17 I think that, as a gentleman, I should say the truth, and  
 18 we did not discuss--I did not discuss 20 percent with  
 19 Mr. Zambrano--but we did discuss that he would share with  
 20 me from what he received.  
 21 Q. Sir, I'm not going to ask you about all of the  
 22 financial benefits you received from Chevron. That's  
 23 largely in the record, but at this time I want to ask you  
 24 about the nature of some of your negotiations. Do you  
 25 understand?

04:21 1 A. Yes.  
 2 Q. Now, there came a time in 2012 when you met  
 3 Chevron's representatives in a hotel in Ecuador; is that  
 4 correct?  
 5 A. Yes, sir.  
 6 Q. And they approached you in 2012; right?  
 7 A. Yes, sir.  
 8 Q. And the purpose of this meeting was their  
 9 solicitation of you, of your cooperation with them; is that  
 10 also correct?  
 11 A. The purpose of that meeting, based on my  
 12 understanding, was to request my cooperation for me to be  
 13 the liaison with Mr. Zambrano.  
 14 Q. So, they were asking for you to cooperate and also  
 15 to ask you to cooperate by creating a connection with Judge  
 16 Zambrano; was that correct?  
 17 A. If you allow me, I would like to elaborate briefly  
 18 on your question.  
 19 Q. Sir: Chevron's representatives told you that they  
 20 had money with them; isn't that right?  
 21 A. At some point in time, yes.  
 22 Q. And they specifically told you that they had  
 23 \$20,000 in cash; is that right?  
 24 A. Yes, sir. That's what they said.  
 25 Q. Approximately the same amount of your construction

04:26 1 A. Upon reading the content of what Mr. Rivero said,  
 2 it is a little bit confusing because it is not precise,  
 3 straightforward, but this is another person who is speaking  
 4 and saying, yes, yes, we do have \$20,000 in our hand, so  
 5 that certainly led me to understand what they wanted, to  
 6 make the proposal, what was the proposal? That they had  
 7 \$20,000 to begin conversations or to talk about the  
 8 possibility of giving them to me.  
 9 Q. So, you understood that this would be a  
 10 negotiation; right?  
 11 A. Yes, because they had already told me that they  
 12 could buy my computer and the evidence that I had said I  
 13 had, and I had also already told them the issue,  
 14 specifically, in relation to the planners--with the  
 15 calendar, with the calendar that I always had at hand.  
 16 Q. And after Chevron told you that they had \$20,000  
 17 of cash with them, you responded by asking Chevron's  
 18 representatives to add a few zeros as your price as part of  
 19 your negotiation. Do you remember that?  
 20 A. Yes, I do remember that at some point regarding  
 21 this I've said that was a joke. And Ecuadorians sometimes  
 22 are playful, and we're not very serious as other people as  
 23 in other cultures. We're not dry.  
 24 Q. You stated several times that \$20,000 was very  
 25 little, or so little. Isn't that also right?

04:23 1 debt at that time?  
 2 A. It is possible that was the case.  
 3 Q. Possible, or likely?  
 4 A. Likely, and possible.  
 5 Back then the 20,000 as a debt advance--yeah, it  
 6 could have been that amount, a bit more, a bit less.  
 7 Q. Do you recall one attorney for Chevron,  
 8 Mr. Rivero, telling you, in fact, that he was an attorney  
 9 for Chevron?  
 10 A. Yes, I do remember that.  
 11 Q. And do you remind--I'm sorry. And do you remember  
 12 him telling you that he did not mind setting a starting  
 13 figure?  
 14 A. He may have said that.  
 15 Q. Do you recall him saying that?  
 16 A. I do not remember in those words. I need to look  
 17 at the translation into Spanish.  
 18 Q. We do have the translation in Spanish of this if  
 19 you want to see that, and that is at Tab 12 at 49.  
 20 While it's being looked for, let me represent to  
 21 you that the Transcript does say, "I'm an attorney. I  
 22 don't mind setting a starting figure, right? Starting.  
 23 Understand? Or what do you think?"  
 24 And my question to you, sir, is what does the term  
 25 "starting figure" mean to you?

04:28 1 A. I may have said that.  
 2 Q. You even counteroffered \$50,000 for your evidence;  
 3 isn't that also correct?  
 4 A. I thought that the Judgment draft would be- that's  
 5 what I remembered and I believed the draft judgment was  
 6 going to be in the computer.  
 7 Q. Let me ask the question again because I'm not sure  
 8 that you answered the question I asked.  
 9 When they offered you as a starting figure  
 10 \$20,000, you counteroffered \$50,000; am I correct?  
 11 A. Not exactly. They said that they had 20,000 and  
 12 also led me to believe that they would have that amount of  
 13 money and that they could initiate a negotiation with that  
 14 amount of money. Yes, at some point, I said, well, why  
 15 don't you add some zeroes to that amount, and then later on  
 16 I said, "I think it could be 50,000."  
 17 But to be candid, they said we can only give you  
 18 18, and I said, okay, I take them.  
 19 Q. So, you did suggest that perhaps they could make  
 20 the offer of \$50,000; correct?  
 21 A. Yes, I did.  
 22 Q. And you also argued to the investigators that you  
 23 met with that they probably have spent about \$50,000 in  
 24 hotels alone; correct?  
 25 A. I do not recall having done that. Possibly I did.

04:30 1 If it's in some of the transcripts, then I did it.  
 2 Q. So, you were trying to negotiate a better price  
 3 than the \$20,000 in cash that they brought with them; isn't  
 4 that right?  
 5 A. Possibly I intended to do that because I had the  
 6 mental assurance, if you will, that the draft judgment was  
 7 in my computer. Later on, hours later, on the same date,  
 8 when a technical person that was called by them reviewed  
 9 the computer and was unable to find to find the draft  
 10 Judgment, well, in the end I accepted: They said, "Look,  
 11 we can only give you \$18,000," and I accepted without  
 12 qualms, and I said okay, well, 20,000, they had and they  
 13 needed 2,000 to go back to their country to cover their  
 14 expenses, and I thought, well, I'm not going to leave them  
 15 without some pocket money that they can use to meet their  
 16 needs. That's okay. I have no issue with that, and I  
 17 received the 18,000.  
 18 Q. During this negotiation, the Chevron  
 19 representatives even showed you the money in the hotel, in  
 20 the safe, did they not?  
 21 A. I was shown it, yes.  
 22 Q. Did they offer to show you the money, or did you  
 23 ask to see it?  
 24 A. As far as I can recall, one of them took me by the  
 25 arm and said, "Look, look, look what's down there. We have

04:32 1 \$20,000 there." "Oh, okay very well, very well." That was  
 2 it. I didn't ask to see that. Specifically, one of them  
 3 was the one that led me to take a look at it. It was  
 4 inside a safe.  
 5 Q. And it was your understanding that they were  
 6 trying to use the cash to induce you to cooperate with  
 7 them; is that correct?  
 8 A. I understood at that point in time that the time  
 9 had come to make the decision to provide part of the  
 10 evidence I had, collect the money or not to do it.  
 11 Q. And they ultimately went to your house; correct?  
 12 A. Yes, they did.  
 13 Q. And they brought the cash with them, didn't they?  
 14 A. Yes, I understand--yes.  
 15 Q. And they paid you at that time the \$18,000 in cash  
 16 at your house; isn't that right?  
 17 A. Not at that time.  
 18 We arrived at my home at about 1:00 p.m. in the  
 19 afternoon, and I allowed myself to invite them to lunch.  
 20 After that, with my authorization, they reviewed the  
 21 contents--the contents of the computer. Later on, they  
 22 called an American man who was a computer technician, and I  
 23 also allowed him to come into my home and to revise my  
 24 computer.  
 25 And at the end, when the technical person said

04:34 1 that he did not find the draft Judgment, that he was unable  
 2 to find the draft Judgment, amongst other things, then at  
 3 around 5:00 or 6:00 p.m. that day, they told me, look, we  
 4 have \$18,000 to give you for this. We were unable to find  
 5 it. We were unable to find the main document. Had we been  
 6 able to find it, we would have been able to offer you a  
 7 larger amount, something like that, we have 18,000 for you,  
 8 and we're going to take the computer with us.  
 9 I agreed, and at the time, at the end of that day,  
 10 close to the nighttime, I received the \$18,000 that were  
 11 given to me. Earlier on, I had accepted to receive a  
 12 laptop computer that was going to replace the one that they  
 13 were going to take with them.  
 14 Q. So, you received the \$18,000 of cash the same day  
 15 that they came to your house, and within hours of coming to  
 16 your house; correct?  
 17 A. Yes, sir.  
 18 Q. And at that time did you discuss the value of what  
 19 you were giving to them?  
 20 A. Excuse me, could you repeat the question? I  
 21 wasn't--it wasn't clear, in my mind.  
 22 Q. I'll ask you a different question, then.  
 23 From your perspective, at the point that you gave  
 24 them your evidence, you understood that what you gave them  
 25 wasn't worth anything to you; correct?

04:36 1 A. It's an expression that I've used in one of the  
 2 statements, but I can say to you that this computer was  
 3 somewhat old, a bit oldish--that's what we say--and the  
 4 data, the information included in that computer, from my  
 5 viewpoint, was not beneficial to me, financially beneficial  
 6 to me. There were a number of other rulings, 100-some  
 7 rulings, from cases that I had prepared for Judge Zambrano  
 8 that had already been issued, so from that viewpoint, for  
 9 me at that point in time, the computer and the contents  
 10 thereof didn't have a lot of significance, economically  
 11 speaking. Other than practical. It was the only computer  
 12 at home. I had pictures of my family, things from my  
 13 grandchildren, et cetera.  
 14 Q. And because what you were giving them had no value  
 15 to you, you understood that they were essentially gifting  
 16 you the \$18,000 of cash; isn't that right?  
 17 A. At some point in time I did state it in that way,  
 18 but, given the explanation that I gave in my previous  
 19 answer, well, that also corresponds to this one.  
 20 Q. And you were hoping for still more money from  
 21 Chevron; wouldn't you agree?  
 22 A. At that date? No, sir.  
 23 Q. Well, you understood from the Chevron  
 24 representatives that you would get more money if you could  
 25 establish a connection with Judge Zambrano; isn't that



04:38 1 right?  
 2 A. Yes, sir.  
 3 Q. In fact, you don't dispute that you testified in  
 4 deposition under oath, and I quote, "I understood from the  
 5 representatives of Chevron that I would get more money once  
 6 I was able to establish a connection between them and  
 7 Mr. Zambrano"? You don't dispute that that was your sworn  
 8 testimony; correct, sir?  
 9 A. No, sir. I knew that because the representatives  
 10 of Chevron expressly told me that once I was able to  
 11 arrange a meeting between them and Zambrano, then there was  
 12 going to be a little bit of money, additional money for me,  
 13 some financial benefit, additional financial benefit.  
 14 Q. So, that became a goal of yours, didn't it?  
 15 A. Let us not forget, with all due respect, that in  
 16 all this mess, in all this matter, I got into it because of  
 17 the initial insinuation by Mr. Zambrano. I thought that  
 18 the specific physical evidence in connection with the  
 19 judgment was going to be given by Zambrano and not by  
 20 myself. I thought that Chevron's purpose--the purpose of  
 21 Chevron's representatives had to do with Mr. Zambrano and  
 22 not with myself.  
 23 Then, at the end, all my struggle, my actions, my  
 24 telephone calls, my work--all that was focused on  
 25 Mr. Zambrano, and Mr. Zambrano insisted and insisted in

04:42 1 a connection with Zambrano?  
 2 And the Chevron representatives made it clear to  
 3 you that they hoped that they could get your cooperation  
 4 for money; isn't that also right?  
 5 A. Yes, somewhat that's what they did, yes.  
 6 Q. In fact, they said to you--and I'm quoting--"the  
 7 Americans have a saying that I believe is good also. They  
 8 say 'money talks.'"  
 9 Do you remember Mr. Rivero saying that to you?  
 10 A. Yes. He made a reference in those terms somewhat,  
 11 yes, I do remember that.  
 12 Q. And you responded by saying: "There's a saying  
 13 here, and I think it's worldwide. It says: 'Money talks,  
 14 gold screams.'"  
 15 That's how you responded to him; isn't that right?  
 16 A. Yes, sir.  
 17 Q. Now, when Chevron's representatives said to you  
 18 that money talks, what did you think that meant?  
 19 A. I understood that they were assuring to me that  
 20 once I met the objective of linking them with Zambrano  
 21 which, in my understanding, was their wish, the wish that  
 22 they had, then I was going to receive an economic benefit.  
 23 Q. And what did you mean when you said that "money  
 24 talks" but "gold screams"?  
 25 A. I was seeking somehow to indicate to them that in

04:40 1 saying, how much am I going to get? And I said, you have  
 2 to meet with him, and they said, no, they need to tell you  
 3 how much they're going to give me, and that was the  
 4 dispute, and that is why things got delayed.  
 5 Perhaps from May until October, when Mr. Zambrano  
 6 finally says: "I'm no longer in, I'm going to exit this  
 7 issue definitively."  
 8 Q. And I'm going to ask you again, respectfully, to  
 9 listen to my question and to try to answer my question.  
 10 You have already acknowledged that, under oath,  
 11 that you understood that you would get more money from  
 12 Chevron once you were able to establish a connection  
 13 between Chevron and Mr. Zambrano. My question was: That  
 14 became a goal of yours. You had hoped to create a  
 15 connection between Chevron and Mr. Zambrano because you  
 16 expected to get more money if you did?  
 17 A. Yes, sir.  
 18 Q. In fact, as you sought the priority what would be  
 19 most valuable to Chevron and redound to your economic  
 20 benefit would, in fact, be for you to establish a link or a  
 21 connection between Chevron and Mr. Zambrano; would you  
 22 agree with me?  
 23 A. Yes, sir.  
 24 Q. In fact, you previously have testified that, at  
 25 that point, the priority for you was to establish a link or

04:45 1 Latin America that we also have expressions that are  
 2 somewhat similar to the American expressions that they  
 3 cited.  
 4 Q. Did you intend to convey to the Chevron  
 5 representatives that the more they gave you, gold compared  
 6 to just money, the more you were willing to cooperate with  
 7 them, the more you would give them what they wanted?  
 8 A. I did not, sir.  
 9 Q. And just to be clear, you were always looking to  
 10 maximize your negotiating position, were you not?  
 11 A. Somehow, yes, I was trying to improve my position  
 12 so that--ahead of a possible future negotiation.  
 13 Q. Can you recall how you tried to increase your  
 14 negotiating position with the Chevron representatives? For  
 15 example, if this will help you, can you remember things you  
 16 said or did with the purpose of increasing your leverage in  
 17 the negotiation?  
 18 A. Yes, some things--I must recognize that I did  
 19 exaggerate about them, yes.  
 20 If you allow me, when we are looking for a job,  
 21 you say, how much experience do you have, and in fact you  
 22 really don't have any experience, and you say, well, I have  
 23 ten years of experience really. It's a situation just like  
 24 that.  
 25 Q. And among the ways you tried to leverage your

04:47 1 position was to falsely tell the Chevron representatives  
2 that the Plaintiffs had offered you \$300,000; isn't that  
3 right?  
4 A. Yes, sir. I lied there. I recognize it. I  
5 wasn't truthful. That statement was never made by the  
6 representatives of the Plaintiffs.  
7 Q. But your intent was to improve your negotiating  
8 position, your leverage, with the Chevron representatives;  
9 correct?  
10 A. Yes, sir. Somehow that was it, yes.  
11 Q. And how did you believe lying to the Chevron  
12 representatives and falsely stating that the Plaintiffs had  
13 offered \$300,000 to you would give you more leverage with  
14 Chevron in your negotiations?  
15 A. That way--I possibly didn't think about it, I was  
16 careless, certainly I was hasty. They were asking  
17 questions in an abrupt manner, if you will. I never went  
18 ready to face that kind of answers, and they posed those  
19 questions. And I answered those questions without thinking  
20 duly thinking about my answers. I answered right away.  
21 And, obviously, I made mistakes. I know it.  
22 Possibly I thought that, in this specific case,  
23 well, if I said to them that I was going to get a benefit  
24 of \$300,000, and you, Chevron representative, can do  
25 something, well, perhaps you can give me double or would be

04:48 1 able to give me double. Perhaps that was it.  
2 Q. You wanted Chevron to outbid how much you  
3 represented the Plaintiffs were paying to you; is that  
4 correct?  
5 A. No, sir. I didn't want that. I didn't think  
6 about that. The only thing that I thought was to improve  
7 my position vis-à-vis further benefits that I could receive  
8 down the line.  
9 Q. In fact, in deposition, you testified that you  
10 made what you called a number of exaggerations; correct?  
11 A. Yes, sir. Yes.  
12 Q. You said: "A number of those things were  
13 exaggerated, well, they weren't very precise as to space  
14 and time." Do you remember that testimony generally, sir?  
15 A. Yes, I have stated that, and I know that that has  
16 been evidenced in documents, recordings related to these  
17 inconsistencies that were to be found in my answers.  
18 Q. And also in that same deposition, you testified  
19 under oath that you were "hoping that in the future I could  
20 obtain a larger benefit or earning." You don't dispute  
21 that testimony, do you?  
22 A. I do not dispute it.  
23 Q. And you saw your cooperation with Chevron as one  
24 way of making some money; isn't that correct?  
25 A. Truth be told, when I understood that I had to

04:51 1 specifically accept or not accept the challenge to speak  
2 the truth in connection with my intervention, well, that  
3 time was by mid-October 2012. Then I finally took the  
4 decision, and I said to myself, okay, I will either--either  
5 I speak the truth or I will forever hold my peace, and I  
6 decided to tell the truth to keep a clear conscience.  
7 Q. But you also just testified that you were in a  
8 negotiation, you were trying to leverage your position to  
9 make more money and that you were hoping to make more  
10 money.  
11 MR. KEHOE: Objection. We have confusing time  
12 frames. The question about hoping to make more money was  
13 in connection with the conversations he was having with the  
14 investigators, and then counsel went to the January  
15 Cooperation Agreement, and there is confusion.  
16 MR. BLOOM: I have not talked about the January  
17 Cooperation Agreement at all.  
18 MR. KEHOE: I believe you did, when you said an  
19 agreement with Chevron. That's certainly what I  
20 understood, and it's apparently what the Witness  
21 understood.  
22 PRESIDENT VEEDER: If you would specify the  
23 particular date, I think you can rephrase the question.  
24 BY MR. BLOOM:  
25 Q. To be clear, I'm still focused on your

04:52 1 conversations with the investigators.  
2 Now, you provided certain evidence and you got  
3 \$18,000, so you did reach some kind of agreement with the  
4 investigators in Ecuador in 2012; isn't that correct?  
5 A. Yes, sir.  
6 Q. And while you were talking to the investigators in  
7 Ecuador, you were trying to leverage your position. You've  
8 already testified to that; correct?  
9 A. In my initial discussions with representatives of  
10 Chevron in Quito, in Ecuador, I sought to improve my  
11 position. But then I ceased to do that when I understood  
12 that the dye had been cast, that the objective was  
13 Zambrano, and I stopped doing that even more when Zambrano  
14 told me on 14 October that he was no longer going to go.  
15 Q. You got \$18,000 in cash, promises or hopes of more  
16 money while you were talking to the investigators, and at  
17 this very time, you falsely said you were getting \$300,000  
18 from the Plaintiffs, and my question, in light of all of  
19 that which you have testified to, is you saw that by  
20 cooperating with Chevron, by giving Chevron what it wants,  
21 that that would be an avenue through which pursuant to  
22 which you could make money: "Money talks, gold screams."  
23 Can you confirm for us that you saw your cooperation with  
24 Chevron as a way of making money?  
25 A. I started conversations with Chevron's

04:54 1 representatives at the request of Mr. Zambrano. He wanted  
2 to know specifically how much Chevron was going to offer to  
3 Mr. Zambrano for expressing its truth in connection with  
4 the preparation of the Chevron Case Judgment, but he didn't  
5 want to do it personally. He wanted to do it through me,  
6 and possibly he wanted to receive the money, if that had  
7 been the case, not personally by through me. That's my  
8 understanding.

9 And these comings and goings, in these  
10 discussions, these gentlemen, of evidence that I gave to  
11 them, they gave me \$18,000, and I received it, yes. Then  
12 later on-- and they told that to me, and I understood,  
13 that perhaps other revenues could be given to me. Probably  
14 that would be the case once Chevron's representatives met  
15 or spoke with Mr. Zambrano.

16 When this never happened, when that possibility  
17 was forever closed, this happened by mid-October 2012,  
18 Chevron's representatives expressly told me that the  
19 purpose in those circumstances was myself.

20 And given those circumstances, in November of that  
21 year, I provided another set of documents, evidence, and I  
22 received an additional \$20,000 because at that point in  
23 time I asked them for that amount of money.

24 Q. I'm just going to ask this one more time, then I  
25 promise I will move on. You have my assurance, sir.

04:56 1 From June of 2012 to November 2012, when you were  
2 paid the 18,000, the subsequent 20,000, the period of time  
3 when you asked Chevron's representatives to add zeroes to  
4 their offer of \$20,000, to your counteroffer of \$50,000, to  
5 your misrepresentation that the Plaintiffs were paying you  
6 \$300,000, did you, in fact, see your cooperation with  
7 Chevron as a way of making money for yourself?

8 MR. KEHOE: I have to object to the question  
9 because counsel went from June to November. It's confusing  
10 because the Witness has just testified that things changed  
11 in October when Zambrano said that he wouldn't participate,  
12 so it is a very confusing question, based on what the  
13 Witness had just testified to a moment ago.

14 MR. BLOOM: I will ask it a little bit  
15 differently.

16 MR. KEHOE: Okay.

17 BY MR. BLOOM:

18 Q. At any time between June and November 2012, did  
19 you see your cooperation with Chevron as a way for you to  
20 make money?

21 A. The money that I received from Chevron was in July  
22 2012, and later on, the final money in Ecuador was on  
23 November 2, 2012. Before July in the month of June, I  
24 didn't think that I was going to receive anything from  
25 Chevron. I thought that my actions of becoming an

04:58 1 interlocutor, a link between Chevron's representatives and  
2 Zambrano, and then the "connector" between Zambrano and  
3 Chevron's representatives, I thought that that was going to  
4 yield some benefit for me, however small that benefit may  
5 have been.

6 Q. I promised to move on, and I will.

7 Let's turn to the subject of the Memory Aid.

8 Now, what you called a Memory Aid was yet another  
9 source of cash from Chevron, was it not?

10 A. Look, the Aide Memoire when in late March/early  
11 April 2013, well, when I obtained that document and I  
12 provided it to Chevron through my lawyer, well, at that  
13 time I didn't know that the possibility existed that I was  
14 going to get 10,000 additional dollars for that document.  
15 That matter had been discussed by my lawyer, and I did not  
16 expressly ask to be given not even one cent. This,  
17 regardless of everything else, I had my heart, I had my  
18 feelings, I have never been a thief with a gun--so that you  
19 understand what I'm trying to say--in those kinds of  
20 things, and the \$20,000 came from Chevron.

21 It was said to me that my lawyer had obtained  
22 that, and I said you are very kind, thank you very much.

23 Q. So, providing the Memory Aid of Chevron was, in  
24 fact, another source of cash from Chevron?

25 A. That was the effect, but at any time, as I said,

05:00 1 did I have the intention at least to say this is what I  
2 have, and you need to give me money. I already said that  
3 my lawyer, my attorney had arranged this, he was--but that  
4 was the result.

5 Q. Right. I understand.

6 The payment of \$10,000 from Chevron surprised you,  
7 did it not?

8 A. Honestly, the payment of \$10,000 was unexpected.  
9 Let me be very honest.

10 Q. But you still took the money; correct? You didn't  
11 give it back to them?

12 A. I spent it.

13 Q. Now, during your discussions with Chevron's  
14 investigators in 2012, you told them that Pablo Fajardo,  
15 one of the Plaintiffs' representatives, in fact, prepared  
16 and gave you the Memory Aid to assist you in revising the  
17 Lago Agrio Court Judgment. That's what you told them;  
18 correct? And we will go through--I understand that you  
19 have a different recollection now, but I just want to  
20 confirm for the Tribunal that when you first spoke with  
21 Chevron's representatives you told them that Pablo Fajardo  
22 gave you the Memory Aid to assist you in revising the Lago  
23 Agrio Court Judgment; correct?

24 A. Let me see. I recalled the issue of the Aide  
25 Memoire in general terms. This is something that I

05:02 1 mentioned to Chevron's attorneys in Quito, and yes, I  
2 remembered, I had it in my mind, in those circumstances,  
3 that I received the memory aid by email or that I received  
4 it in Quito on a memory flash," et cetera, et cetera. And,  
5 yes, I requested said memory aid from Mr. Fajardo once I  
6 reviewed the draft Judgment, and I saw some concerns in  
7 connection with some issues that I had discussed with  
8 Mr. Fajardo over the phone, and Mr. Fajardo proceeded in  
9 due time to provide me the memory aide.

10 Q. And I'm going to walk you slowly through the  
11 different statements that you have made as it relates to  
12 the provision of the so-called "Memory Aid."

13 In June of 2012, you told Chevron's investigators  
14 that Pablo Fajardo e-mailed you that document. I think you  
15 just confirmed that, but is that correct?

16 A. Yes. I said that on that date.

17 Q. In fact, you told them that several times on that  
18 date, on June 25, 2012; isn't that correct?

19 A. Back then, that was my recollection. But you also  
20 need to remember that, that talk, those assertions, at that  
21 time I did not swear over the life of my mother that that  
22 was the final word. That's how I remembered it.

23 Q. And then on November 17, 2012, which is, again,  
24 the Declaration that we have relied on previously, that  
25 was--that Declaration was, in fact, made under oath, was it

05:06 1 Q. But you nonetheless have testified that you at  
2 least remember calling Mr. Fajardo on his cellphone; isn't  
3 that right?

4 A. Yes, sir, I did call him.

5 Q. And you remember that he told you not to worry.

6 A. I remember that he said that, given my concerns,  
7 the concerns that I stated, I detailed the concerns I had  
8 in connection with the document that I had just read; and,  
9 in that regard, he told me that for me to have a better  
10 vision, a better view of the problem, he was going to give  
11 me an Aide Memoire that had some aspects connected to the  
12 concerns that I mentioned.

13 Q. And both in June of 2012 and then in your  
14 Declaration of November of 2012, you reaffirmed that your  
15 recollection at that time was that Mr. Fajardo also told  
16 you that he would e-mail you a Memory Aid; correct?

17 A. That is stated--if that is stated in the  
18 Declarations in the testimony that you mentioned, the  
19 answer is yes.

20 Q. But Chevron's representatives did not want your  
21 word for it; they actually wanted to review your hard  
22 drive, did they not?

23 A. I do not know what Chevron's gentlemen want. If  
24 they are referring to my hard disk or--I don't know what  
25 hard disk you're referring to.

05:04 1 not?

2 A. Yes, sir.

3 Q. And in that Declaration, you did swear to tell the  
4 truth, and you said, and I quote--and this is at  
5 Paragraph 26--"I remember that I called Mr. Fajardo on his  
6 cellphone to ask him about some sections of the document  
7 that confused me. Mr. Fajardo told me not to worry, and  
8 that he would e-mail me a Memory Aid to clarify my  
9 questions. Mr. Fajardo e-mailed me a document around ten  
10 to 12 pages titled 'Memory Aid' with some information about  
11 the case."

12 So, that's what you said on November 17th, sir;  
13 correct?

14 A. Yes, sir. That's on the record.

15 Q. And you specifically represented that you called  
16 Mr. Fajardo on his cellphone; am I right?

17 A. Yes, sir.

18 Q. And there are no cellphone records that you are  
19 aware of that confirm that phone call to Mr. Fajardo; isn't  
20 that also right?

21 A. I tried to obtain those records. I requested  
22 them, but it seems that my phone did not maintain those  
23 records since it was a pre-paid phone as I was informed by  
24 the company. Mr. Fajardo may have those records; that is  
25 likely.

05:08 1 Q. You understand that Chevron looked through all of  
2 your saved e-mails, and they looked for a record that the  
3 Memory Aid was e-mailed to you by Pablo Fajardo; is that  
4 your understanding, sir?

5 A. If you allow me, I would like to say the  
6 following: On the first day, when Chevron's  
7 representatives went to my domicile in Quito, which was on  
8 July 13, 2012, the day I gave them the computer, the day I  
9 received the \$18,000 from them before they left my house, I  
10 accepted to give them the passwords and also the code words  
11 to go into--the passwords to go into the e-mail. They  
12 tried to go into the contents of all of the documentation  
13 on the e-mail, but they received the information that the  
14 e-mail had been closed down, and that the information had  
15 been lost, and I testified that that was the case.

16 Q. The bottom line is that Chevron advised you that  
17 they never found the Memory Aid e-mail to you; am I  
18 correct?

19 A. What I'm saying is that on the day I gave my  
20 computer to Chevron representatives, they also placed a  
21 phone call from their own cellphone to somewhere to the  
22 U.S. asking for access, giving the user name and also the  
23 access code, and they were unable to access my accounts.

24 So, from that very moment, they knew that the  
25 e-mail and also all of the information that I had been

05:11 1 referring to was not going to be found there because it had  
2 been lost.  
3 Q. You initially recalled receiving the e-mailed  
4 document from Mr. Fajardo while you were at your home in  
5 Quito; correct? That's how you first recalled it.  
6 A. Yes. I had said that I may have received it  
7 through--via e-mail or a USB drive.  
8 Q. While you were at your home?  
9 A. Yes.  
10 Q. And then your memory changed after that, and you  
11 subsequently recalled working not from Quito but from Lago  
12 Agrio. And instead of receiving it while at home, you  
13 recalled receiving it at an internet cafe. That was a  
14 later recollection, was it not?  
15 A. Look, with all due respect, the human mind cannot  
16 be totally infallible, absolute, like computer. And there  
17 are memories that evolve over time little by little when -  
18 as when one focuses mentally on certain facts. When  
19 Chevron's representatives were asking me questions that  
20 way, by that very way, or sharply, so to speak, well I  
21 would say just about anything without paying too much  
22 attention to its essence. So I accept, admit that there  
23 are inconsistencies, but definitely in the main these are  
24 details I fine-tuned, especially regarding the final  
25 November affidavit I submitted for the RICO case

05:13 1 Q. And today, your recollection is no longer that you  
2 received it in an internet cafe or even by e-mail. Your  
3 current recollection is that it was hand-delivered to you  
4 by Mr. Fajardo; correct?  
5 A. Yes, sir, at some point. I already said it. That  
6 is the case.  
7 Q. And that's very different from having received it  
8 by e-mail.  
9 A. I was in Lago Agrio. Mr. Zambrano was in Lago  
10 Agrio back then. And logic tells us that there was no need  
11 to send me an e-mail when Mr. Zambrano did not have  
12 internet or a computer at home.  
13 PRESIDENT VEEDER: Just stop. Are you meaning to  
14 refer to Mr. Zambrano in your answer?  
15 THE WITNESS: Mr. President, I meant that when I  
16 received this document, the Aide Memoire, Mr. Zambrano did  
17 not have internet connection at home, and he did not have a  
18 personal computer at home.  
19 PRESIDENT VEEDER: Thank you.  
20 MR. BLOOM: The one concern that a colleague is  
21 asking is whether the interpreter might be getting a little  
22 bit tired.  
23 PRESIDENT VEEDER: I think that is a real concern.  
24 I think we ought to finish quite soon.  
25 Have you got many more questions for this evening?

05:15 1 MR. BLOOM: I could stop now.  
2 PRESIDENT VEEDER: Let's stop now.  
3 MR. KEHOE: Thank you.  
4 PRESIDENT VEEDER: Let's stop today now. It's  
5 5:15. We're going to resume tomorrow at 9:30. If you  
6 could come back, please, for further questions at 9:30  
7 tomorrow morning. In the meantime, we ask you not to  
8 discuss the case or your testimony with anyone, not until  
9 you come back before the Tribunal at 9:30 tomorrow.  
10 Do you understand that?  
11 THE WITNESS: Yes, sir. Please rest assured that  
12 I will observe this order.  
13 PRESIDENT VEEDER: You may leave the table.  
14 THE WITNESS: Thank you.  
15 PRESIDENT VEEDER: Mr. Bloom, we're not tying you  
16 down, but just to get some idea of planning.  
17 MR. BLOOM: I think I am on pace to finish by late  
18 morning, by lunch.  
19 PRESIDENT VEEDER: I understand. And, again, you  
20 probably can't say, but on redirect re-examination, it will  
21 take us to the end of tomorrow, or will it take us into  
22 Saturday?  
23 MR. KEHOE: It will not take us into Saturday. It  
24 may take us towards the ends of the day, but that's--  
25 PRESIDENT VEEDER: That's fine.

05:17 1 MR. KEHOE: Yeah.  
2 PRESIDENT VEEDER: Thank you very much.  
3 MR. KEHOE: Thank you.  
4 PRESIDENT VEEDER: Until 9:30 tomorrow. Thank  
5 you.  
6 MR. BLOOM: May I ask one question?  
7 PRESIDENT VEEDER: Yes.  
8 MR. BLOOM: Because we had talked about it before,  
9 if we were going much faster than expected, we were talking  
10 about whether Mr. Lynch will be here tomorrow. So, I  
11 just--my only question--we could wait and provide and have  
12 Mr. Lynch here on Monday, or we could proceed tomorrow, but  
13 I wanted to know before we adjourn for the evening.  
14 MR. BISHOP: I think that if it's--there's a fair  
15 likelihood that we will take a good bit of the afternoon,  
16 we would prefer to start with Mr. Lynch on Monday. Is  
17 that--if we could have that agreement, that's what we would  
18 prefer.  
19 PRESIDENT VEEDER: Is that agreeable?  
20 MR. BLOOM: Yeah, we're amenable either way.  
21 PRESIDENT VEEDER: Let's do that. We won't start  
22 Mr. Lynch, provided we went into the afternoon, until  
23 Monday. Monday morning.  
24 Thank you.  
25 (Whereupon, at 5:18 p.m., the Hearing was

05:18 1 adjourned until 9:30 a.m. the following day.)

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CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

  
DAVID A. KASDAN

IN THE MATTER OF AN ARBITRATION BEFORE A TRIBUNAL  
CONSTITUTED  
IN ACCORDANCE WITH THE TREATY BETWEEN THE U.S.A. AND THE  
REPUBLIC OF ECUADOR CONCERNING THE ENCOURAGEMENT AND  
RECIPROCAL PROTECTION OF INVESTMENT, SIGNED AUGUST 27, 1993  
(THE "TREATY")

and

THE UNCITRAL ARBITRATION RULES 1976

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In the Matter of Arbitration :
Between: :
:
CHEVRON CORPORATION (U.S.A.), :
TEXACO PETROLEUM COMPANY (U.S.A.), :
:
Claimants, : PCA Case No.
: 2009-23
and :
:
THE REPUBLIC OF ECUADOR, :
:
Respondent. :
:
- - - - -x Volume 4

TRACK 2 PROCEDURAL MEETING

Friday, April 24, 2015

The World Bank  
700 18th Street, N.W.  
J Building  
Conference Room JB0-180  
Washington, D.C. 20003

The Hearing in the above-entitled matter convened  
at 9:30 a.m. before:

MR. V.V. VEEDER, Q.C., President

DR. HORACIO GRIGERA NAÓN, Arbitrator

PROFESSOR VAUGHAN LOWE, Q.C., Arbitrator

## Registry, Permanent Court of Arbitration:

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09:10 1 P R O C E E D I N G S  
2 ALBERTO GUERRA BASTIDAS, CLAIMANTS WITNESS, RESUMED  
3 PRESIDENT VEEDER: Good morning, ladies and  
4 gentlemen. We'll start Day 4 of this Hearing. We resume  
5 the cross-examination of Mr. Guerra.  
6 Mr. Guerra, I'm addressing you in English through  
7 the interpreter. Can we check that the technology is  
8 working?  
9 Can you hear me?  
10 MR. KEHOE: Check the channel, perhaps?  
11 PRESIDENT VEEDER: Yes, please.  
12 I'll just start again to make sure--  
13 Could the interpreters repeat that, please.  
14 (Pause.)  
15 PRESIDENT VEEDER: Mr. Guerra, we're going to  
16 resume your cross-examination from yesterday. I need to  
17 remind you that you are still bound by the Declaration that  
18 you made at the beginning of your evidence yesterday  
19 morning.  
20 Do you understand that?  
21 THE INTERPRETER: Mr. President, can you hear me  
22 now? This is the interpreter speaking.  
23 (Pause.)  
24 PRESIDENT VEEDER: Mr. Bloom.  
25 CONTINUED CROSS-EXAMINATION

C O N T E N T S

WITNESS:

ALBERTO GUERRA BASTIDAS (Resumed)

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09:32 1 BY MR. BLOOM:  
2 Q. Good morning, Mr. Guerra.  
3 A. Good morning, Mr. Bloom.  
4 Q. We have just handed up another binder of  
5 documents. And just to confirm, at the bottom of the  
6 binder itself, it should say "Binder 3." Can you confirm  
7 that you have that?  
8 A. I do have it, Mr. Bloom.  
9 Q. Thank you. And we also have some additional  
10 slides we'd like to show you. And I'd like to begin with a  
11 couple of slides to follow up on some questions we had  
12 yesterday regarding the Court Seals and hoping you can help  
13 us out a little bit.  
14 If we could show the first slide, which  
15 corresponds to Tab 48. For the record, this is our 1545 at  
16 Cuerpos 1497-0159630.  
17 And you'll see this highlighted. In the lower  
18 right-hand part of the page is a circular seal.  
19 Could you confirm for us whether this round Court  
20 Seal is placed on court documents to confirm that the  
21 document itself is an authenticated copy?  
22 A. The affixing of the seal on a document does not  
23 necessarily indicate that the copy is authentic. For a  
24 copy to be evidenced as authentic, the Clerk of the Court  
25 must write something--for example, "I hereby certify that

09:34 1 this is a certified copy of the original," and then you see  
 2 the signature of the relevant Clerk.  
 3 Q. And at the top of the page--and you'll see on the  
 4 slide that we have it highlighted--you'll see the Foja  
 5 number on this page. I believe, if my eyesight is good  
 6 enough, it's 158630 [sic], or at least I'm close.  
 7 Can you tell me what the purpose is of putting the  
 8 Foja number on there?  
 9 A. Thank you very much for your question.  
 10 The correct number, the one evidenced here, is  
 11 159630. The purpose of placing there the page number, the  
 12 Foja number, in Ecuador, for procedural purposes--well,  
 13 this is called as the pagination. And the person  
 14 responsible for processing the case, the Clerk of the Court  
 15 or some auxiliary of the Court, upon receiving the document  
 16 from one of the litigants, includes in the main file the  
 17 document that was received, entered and delivered. And  
 18 then immediately thereafter, the Clerk paginates each one  
 19 of the pages chronologically, according to the sequence in  
 20 which it was delivered. That's what it refers to.  
 21 Q. Now, in your prior answer, you indicated that the  
 22 Court Seal alone does not indicate or establish the  
 23 authenticity of the copy, and you said that the Clerk of  
 24 the Court had to include some kind of further notation or  
 25 certificate.

09:36 1 Is that on the same document or on a separate  
 2 document?  
 3 A. This certification of authenticity is to be placed  
 4 on the same document, the document that is provided as a  
 5 copy, if you wish, to one of the litigants.  
 6 Q. And if you turn the pages, at Tab 49, do you see  
 7 anything on this document specifically to confirm its  
 8 authenticity?  
 9 MS. BEERS: Tab 49 or 48?  
 10 MR. KEHOE: I'm sorry. Tab 48. Thank you for  
 11 that.  
 12 THE WITNESS: This document, apart from the Seal  
 13 of the President's Clerk's office--there's also a  
 14 certification here, apart from initials as well, the Seal  
 15 of the reporting clerk Marieia Salazar Jaramillo. It  
 16 contains--it contains the signature--  
 17 The interpreter is asking for clarification.  
 18 We are saying that this ruling is authentic. It  
 19 contains the signature of the Clerk. It is an original  
 20 document.  
 21 Q. In fact, I see her signature on the last two  
 22 pages; correct?  
 23 A. I am looking at the signature at Page 159634.  
 24 Q. And if I may ask you to turn to 159633. Do you  
 25 see Ms. Jaramillo's signature at the bottom of that page as

09:39 1 well?  
 2 A. I do. I do see it, sir.  
 3 Q. Now, we're going to show you another slide, and  
 4 this corresponds to the document behind Tab 49.  
 5 For the record, this document is  
 6 R-1545TEMPSC0003306.1.  
 7 And first you'll confirm for me that neither on  
 8 Point 1, nor on the backside, Point 2, do you see the Court  
 9 Seal itself?  
 10 A. In the document that you're making reference to,  
 11 my understanding--and I can say this objectively--that this  
 12 is a pleading that contains a prayer for relief or some  
 13 kind of request to the President of the Court by Diego  
 14 Larrea Alarcon, attorney. I understand that he is an  
 15 attorney for the Chevron group.  
 16 And if you look at the lower right part overleaf  
 17 of the document, you see the Seal of the Provincial Court  
 18 of Justice of Sucumbios for the President's office, and  
 19 then you see here the certification of receipt: Received  
 20 in Nueva Loja at 5:46 p.m. on 14 October 2010. And it has  
 21 two or four annexes, according to this. This has been  
 22 signed by the Clerk of the Court--the recording Clerk of  
 23 the Court. And this is a certification of submission for  
 24 this document, a receipt of filing of this document.  
 25 Q. Can you explain why there would not be a Foja

09:42 1 number on this document at all?  
 2 A. I don't know why. But if this was included into  
 3 the file, then it must have been paginated; the number must  
 4 be there.  
 5 Q. So what is the significance of the Foja number not  
 6 being here?  
 7 A. Well, we would have to look at the case binder  
 8 (cuerpo) for that date to verify whether this document has  
 9 been included in the case file. And if it was included in  
 10 the case file, then we would have to see if the pagination  
 11 is not there.  
 12 But the document as is--well, possibly this is a  
 13 copy of the original document that was received by the  
 14 person delivering the document, and obviously the original  
 15 document, the authentic original is in the case file, and  
 16 I'm sure it has to be paginated.  
 17 And this is a copy with the filing certification,  
 18 that to this end has been provided by the interested party,  
 19 who kept this copy with the certificate of submission.  
 20 Let me conclude by saying that I mean to say that  
 21 we paginate the pages, and we exclusively paginate those  
 22 pages that are included in the case file. We did not  
 23 paginate--we do not paginate similar documents that are  
 24 held by the party delivering a document.  
 25 Q. I thank you, sir, for that clarification.

09:44 1 ARBITRATOR GRIGERA NAÓN: Excuse me. Mr. Bloom,  
2 are you done with this line of questioning? Because I have  
3 a question for Mr. Guerra.

4 MR. BLOOM: please.

5 ARBITRATOR GRIGERA NAÓN: Mr. Guerra, I am looking  
6 at this document, R-1514--R--essentially R-1514, and I am  
7 looking at the stamps on the documents. I am looking at  
8 the stamps on the documents, stamps on the documents, and I  
9 read "Presidencia of the Provincial Court of Sucumbios,  
10 "and I read "Secreteria or Secretariat of the Presidencia."

11 Does this mean that documents submitted to the  
12 Court have to be necessarily submitted at the seat of the  
13 Court, or maybe they submit it somewhere else?

14 THE WITNESS: Thank you. Generally speaking, I  
15 would say that generally 99 percent of the cases the  
16 litigants go to the offices of the competent Court during  
17 business hours, and they submit their document to the Clerk  
18 of the Court. That is the usual practice  
19 inexorably--inexorably speaking.

20 But there is a legal admissible possibility for  
21 the litigant in certain circumstances to go to the domicile  
22 of the Clerk of the Court outside of business hours, for  
23 special circumstances, and submit the relevant document for  
24 the Clerk of the Court to include the document in the case  
25 file during business hours.

09:46 1 Now, the secretary--or, rather, the Clerk of the  
2 Court must write the Certificate of Submission, when he is  
3 at his domicile, stating that date and that time.

4 This situation generally--takes place generally in  
5 civil law cases when we're talking about deadlines. And  
6 the periods of time provided by the Court start running as  
7 the law or the Court has established them.

8 In connection with the Chevron Case, each Parties  
9 were provided six days to provide evidence. And I remember  
10 that one of the Parties at one point in time--one of the  
11 litigants went to the domicile of the Clerk of the Court at  
12 night and asked the Clerk of the Court to receive the  
13 document after business hours, and that was legitimate.

14 The Clerk of the Court affixed the certificate of  
15 submission and the very next business day included this in  
16 the case file, paginated it, and sent it to the relevant  
17 judge.

18 ARBITRATOR GRIGERA NAÓN: Do I understand  
19 correctly then that this happens in very exceptional  
20 circumstances and when there is a situation of urgency  
21 because a delay--a procedural delay is about to expire?

22 THE WITNESS: That is correct, sir, Member of the  
23 Tribunal, yes.

24 BY MR. BLOOM:

25 Q. Okay. Turning subjects now, if you can please

09:48 1 turn with me to the first binder at Tab 16. Ms. Bees will  
2 help you. This is Exhibit R-1331, the so-called "Memory  
3 Aid."

4 I take it you're quite familiar with this  
5 document. You've been asked about it in prior testimony,  
6 have you not?

7 A. I know the document.

8 Q. And if I understand correctly, you allegedly told  
9 Mr. Fajardo, while you were looking at a draft Sentencia,  
10 that some sections of the draft Sentencia confused you; is  
11 that right?

12 A. If you allow me, I--I did see that there were  
13 certain issues that concerned and confused me. And I did  
14 say to him what you have just stated.

15 Q. And as yesterday, I'm just going to ask you to  
16 listen very carefully to the question that I'm asking.

17 And because certain sections confused you, you  
18 needed help from Mr. Fajardo. That's your contention?

19 A. More specifically, if you allow me, there were  
20 certain aspects of the draft Judgment that I was examining  
21 at the time, well, that created certain concerns in my  
22 mind, concerns rather than confusions.

23 And, obviously I relayed those concerns to him,  
24 and I specifically asked him to help me because in the past  
25 he had offered to help me; to send me some document to help

09:51 1 me overcome those confusions, concerns.

2 Q. And you have testified that Mr. Fajardo promised  
3 that he would provide you with what we are calling the  
4 "Memory Aid."

5 A. I am recalling the beginning of that conversation  
6 with Mr. Fajardo during our meeting. He said that he  
7 committed to provide to me the help that I needed.

8 So according to those expectations, at a--at a  
9 given point in time, I called Mr. Fajardo. I said that I  
10 had certain doubts, certain confusions in connection with  
11 certain aspects, and I determined those aspects to him.

12 And then Mr. Fajardo, because of that, told me  
13 that he was going to provide to me a document that was  
14 going to help me overcome those concerns.

15 Q. And the document you say that he provided you to  
16 help you overcome these concerns is this document that  
17 you're now looking at; correct?

18 A. That is the document that he provided to me.

19 Q. Looking at the Memory Aid now, how did it help you  
20 revise the Sentencia?

21 A. In point of fact, the truth is that Mr. Fajardo,  
22 apparently--according to what he said to me, he understood  
23 the reasons for my confusion. And he told me that he was  
24 going to give me a document that was going to help me  
25 overcome these confusions of mine.

09:53 1 But actually, the truth is that the document  
 2 provided to me, the Aide Memoire, did not help me at all to  
 3 overcome the confusions or concerns that I had.  
 4 So this document, with all due respect, I must say  
 5 to you, was not used by me at that point in time at all.  
 6 Just as it was not used by me either in other situations or  
 7 in connection with other--or in connection with other  
 8 documents at all.  
 9 Q. So it's your testimony that Mr. Fajardo provided  
 10 you with absolutely no useful information, even though his  
 11 whole life for years had been about this one case and even  
 12 though the Plaintiffs were seeking billions of dollars. Is  
 13 that your testimony?  
 14 A. Would you be so kind as to repeat the question?  
 15 But could you please perhaps break down your question?  
 16 There are a number of parts to your question, and I  
 17 wouldn't want to give you a false statement, and I wouldn't  
 18 want to go against the truth.  
 19 Q. Well, you--  
 20 MR. KEHOE: I'm going to object to the question,  
 21 if he's going to break it down--it's argumentative,  
 22 obviously. I was going to let it go, but--  
 23 PRESIDENT VEEDER: Let's just give him--give him a  
 24 try.  
 25 MR. KEHOE: Okay.

09:54 1 PRESIDENT VEEDER: Please try, Mr. Bloom. Break  
 2 it down, as the Witness requested, and see what happens.  
 3 MR. BLOOM: Certainly, Mr. President.  
 4 BY MR. BLOOM:  
 5 Q. You certainly understood that this case was a very  
 6 important case for Mr. Fajardo; is that right?  
 7 A. Obviously, yes. I understood that this case--this  
 8 struggle, if you would like to call it that, of Mr. Fajardo  
 9 and his team, was very important. Not just for the group  
 10 of Plaintiffs, but also for the prestige of the justice  
 11 system, the respectability of my country. I have all of  
 12 that clear in my mind.  
 13 Q. And you also understood that Mr. Fajardo had  
 14 devoted years to this case at this point; correct?  
 15 A. Perhaps I may disagree with you in that regard,  
 16 because I think Mr. Fajardo is a professional, from my  
 17 viewpoint a bit young, and I think that he graduated a long  
 18 time after the Chevron Case started and I remember Mr.  
 19 Fajardo when the case began in 2013, the court of which was  
 20 my responsibility at the time. I remember and I identify  
 21 Mr. Fajardo as a lawyer for this case a long time after--in  
 22 2007--I think he actually obtained his degree in 2006.  
 23 Q. So for his entire professional life he was acting  
 24 as counsel for the Lago Agrio Plaintiffs; isn't that right?  
 25 A. I would not be able to assert that. I knew him as

09:56 1 a lawyer for the Plaintiffs starting in '06 or '07,  
 2 approximately around that time.  
 3 Now, before that, my understanding is that he was  
 4 not a lawyer, he was not practicing the legal profession,  
 5 because he did not have a professional degree.  
 6 Q. But it is your testimony that Mr. Fajardo provided  
 7 you in this document with absolutely no useful information;  
 8 isn't that correct?  
 9 A. If you allow me, I would have to explain briefly  
 10 this matter and to state what the concerns were that I had,  
 11 and then it will be understood that I relayed my concerns  
 12 to Mr. Fajardo and asked Mr. Fajardo to give me a document  
 13 and help me solve these problems.  
 14 And then, only in that situation, would we be able  
 15 to understand the core of this case--or of this issue,  
 16 rather.  
 17 Q. I'd like you to take a look at the Memory Aid.  
 18 And on the very first page, there is a chronology, and that  
 19 is at part 1.  
 20 Do you see that, sir?  
 21 A. I do.  
 22 Q. And the relevant dates in that chronology are as  
 23 follows: 1.1 refers to a date of May 7, 2003. 1.2 refers  
 24 to the date of October 21, 2003. 1.3 refers to the date of  
 25 August 18, 2004. 1.4, which we have on the screen, refers

09:59 1 to the date of March 19, 2007. 1.5 refers to the date of  
 2 April 1, 2008. 1.6 refers to the date of September 15 and  
 3 16. And then 1.7 refers to the date of November 17, 2008,  
 4 and subsequently February 5, 2009.  
 5 And if you look substantively at these paragraphs,  
 6 at least 1.4 through 1.7, they focus on Richard Cabrera, do  
 7 they not?  
 8 A. Yes, sir; that is correct.  
 9 Q. And Mr. Cabrera was appointed as the global  
 10 damages expert in this case, isn't that also correct?  
 11 A. Yes, sir.  
 12 Q. And to be clear, the Sentencia says that the Court  
 13 did not consider the work done by Mr. Cabrera; isn't that  
 14 correct?  
 15 A. Judge Zambrano at a given point in time has stated  
 16 that in the reasoning that he provided.  
 17 Q. And the Judgment or the Sentencia instead  
 18 expressly relied on and cited to other experts offered by  
 19 the Parties in the environmental case; isn't that right?  
 20 A. Such reasons or explanations are recorded in the  
 21 Judgment.  
 22 Q. And feel free to look at the Sentencia if you need  
 23 to. It is at Tab 36.  
 24 A. I got it.  
 25 Q. And I can point you in the Spanish pagination to

10:02 1 Page 105. And please, sir, tell me when you are at  
 2 Page 105.  
 3 A. Yes, sir. I have it right here.  
 4 Q. Thank you.  
 5 You will see on the third and seventh lines  
 6 references to the expert, Luis Villacreces?  
 7 A. Yes, sir. I see it.  
 8 Q. You'll also see about halfway down the page the  
 9 name of another expert, José Robalino.  
 10 A. José Robalino, yes.  
 11 Q. You see that as well?  
 12 A. Yes, sir. I'm seeing it.  
 13 Q. And then two lines down, you see the name John  
 14 Connor?  
 15 A. Yes, sir.  
 16 Q. If I may ask you to turn to Page 107. And 11  
 17 lines down is the name of another expert, Edison Camino.  
 18 Can you confirm that you see that as well?  
 19 A. Yes, sir.  
 20 Q. And then just a little bit more than halfway down  
 21 is the name of another expert, Gino Bianchi.  
 22 A. Yes, sir. It says here as Gino Bianchi does it.  
 23 PRESIDENT VEEDER: Just pause for a moment, we  
 24 have a technical problem.  
 25 (Pause.)

10:04 1 PRESIDENT VEEDER: Please continue.  
 2 BY MR. BLOOM:  
 3 Q. Sir, if you turn the page to Page 108, on the  
 4 first line towards the end, you will see the name of  
 5 another expert, Bjorn Bjorkman y Gino Bianchi.  
 6 A. Yes, sir.  
 7 Q. And then a little bit more than halfway down the  
 8 page, you'll see John Connor and Gino Bianchi on the  
 9 right-hand side of the page.  
 10 A. Yes, sir. John Connor and Gino Bianchi.  
 11 Q. And then five lines down, you'll see Oscar Dávila  
 12 and Edison Camino.  
 13 A. Oscar Davila and Edison Camino. Yes, sir.  
 14 Q. And then four lines down, you'll see John Connor's  
 15 name?  
 16 A. Yes.  
 17 Q. If I could ask you, sir, to turn to Page 179. And  
 18 then 10 lines up from the bottom, you will see the name  
 19 Douglas C. Allen?  
 20 MR. BLOOM: We may have another technical  
 21 difficulty. I don't know that the expert is Hearing.  
 22 THE WITNESS: Yes, he's Hearing.  
 23 PRESIDENT VEEDER: I think the Witness may be  
 24 rather than expert. That threw me.  
 25 MR. BLOOM: I thought he signaled.

10:06 1 BY MR BLOOM:  
 2 Q. Just to confirm at Page 179, 10 lines up from the  
 3 bottom of the page, you will see the name of another  
 4 expert, Douglas Allen. Can you please confirm that his  
 5 name, in fact, is cited in the Sentencia on this page.  
 6 A. Yes, sir.  
 7 Q. If I could ask you to turn to Page 182, six lines  
 8 down you will also see the name of Dr. Lawrence  
 9 W. Barnthouse.  
 10 A. On the sixth line from the bottom I see--it says:  
 11 Expert Barros states." Excuse me, page 182?  
 12 Q. Correct that it is at Page 182, six lines from the  
 13 top towards the left-hand side.  
 14 A. Yes, sir, Dr. Lawrence W. Barnthouse.  
 15 Q. Sir, you're able to confirm that the Sentencia, in  
 16 fact, specifically cites to a number of experts. And am I  
 17 correct that none of the names that we just went through in  
 18 the Sentencia are, in fact, contained in the Memory Aid?  
 19 And if you want to take a moment or two to look  
 20 through the Memory Aid, certainly you should feel free to.  
 21 A. If you allow me to tell you, I am not sure that  
 22 the names of the experts that we just reviewed and are  
 23 included in the contents of the Judgment are--are included  
 24 in the Aide Memoire.  
 25 Q. Do you want more time to look, or shall we move

10:10 1 on, Mr. Guerra?  
 2 A. I do not have any issues with that. If you think  
 3 that any of those names are here in any page and you are  
 4 certain about that, would you please show me the page and  
 5 the line number? Otherwise, I think that we can move on.  
 6 Q. You do not believe that those names are contained  
 7 in the document.  
 8 Now, sir, in the chronology contained in the  
 9 Memory Aid at Paragraph 1.7 the last date you will see here  
 10 is February 5, 2009. Do you see that?  
 11 A. Yes, sir. I am seeing it.  
 12 Q. And you purportedly received a copy of the Memory  
 13 Aid while you were revising or reviewing the draft  
 14 Sentencia when?  
 15 A. The review of the Judgment was done by me  
 16 approximately a couple of weeks before it was issued. This  
 17 was the first week in February or days before, the last  
 18 week in January 2011.  
 19 The timeline that you are referring to refers to  
 20 up to February 5th, 2009, and that is the key of the  
 21 issue. Since you have not asked me, with all due respect I  
 22 want to tell you that one of the main concerns when  
 23 reviewing the draft Judgment was the swearing in of expert  
 24 Cabrera, Witness Cabrera, because I had enough information  
 25 in the sense that Cabrera was appointed under the law by

10:12 1 the Judge at some time and it was ordered that expert  
 2 Cabrera would be sworn in at a certain date a few days  
 3 after designation date.  
 4 But, in this case, expert Cabrera, as far as I  
 5 know, he was sworn in established by the Judge.  
 6 And based on the information I had, Expert Cabrera  
 7 at no time sent any documents to the Judge indicating that  
 8 he was accepting his appointment and that he was not going  
 9 to be able to be sworn in on the designated date.  
 10 If this is true from the procedural point, this  
 11 would have led to the--to the expiration of that  
 12 appointment. And according to my understanding and my own  
 13 opinion, my concern was that if this aspect was seen from  
 14 the legal standpoint, the report by expert Cabrera was null  
 15 and void.  
 16 Thus, it would have also been seen, given this  
 17 situation, that due process would have been--was violated.  
 18 And this, in my opinion, my legal opinion, this was another  
 19 ground to declare the process null and void since this  
 20 nullity would have actually taken place.  
 21 This was one of my concerns, and this is something  
 22 that I mentioned to Mr. Fajardo. And I thought he clearly  
 23 understood my position. But far from sending any document  
 24 to focus this procedural concern, he sent me a general  
 25 document, as you can see. And clearly from my own legal

10:15 1 procedural point of view, and also given my modest  
 2 knowledge in the civil area, being in the law area for 32  
 3 years as a practitioner, you may understand that clearly it  
 4 wasn't enough for me to understand and offer a solution or  
 5 clarify that concern.  
 6 Thank you very much for listening to me.  
 7 MR. BLOOM: Mr. President, if I may ask you to  
 8 instruct the Witness as to how the system works when he  
 9 begins an answer with the phrase "and you haven't asked me  
 10 but," that should be a signal that it's not an appropriate  
 11 subject for him then to be expounding on.  
 12 MR. KEHOE: Mr. President, in fairness, if the  
 13 Witness is being asked questions completely irrelevant to  
 14 the document that he's being shown, it's difficult for a  
 15 witness to understand the questions and to give answers  
 16 without giving actual answers to what actually happened.  
 17 MR. BLOOM: Well, I certainly object to that  
 18 characterization.  
 19 PRESIDENT VEEDER: Let me stop the debate now  
 20 before it gets more difficult. I think the Witness has  
 21 been doing pretty well in answering the question.  
 22 Inevitably, he's going to want to add things, but I'll  
 23 certainly speak to him.  
 24 Mr. Guerra, we have a limited time for questions  
 25 for you. If you can answer your question--sorry. If you

10:16 1 can briefly with an answer, please do so.  
 2 But again, if you feel you need to add something,  
 3 again, please feel free to do so.  
 4 But if you can, try and keep your answers  
 5 responsive to the particular question asked by Counsel,  
 6 whether it be the Claimants or the Respondent.  
 7 THE WITNESS: Very well, Mr. President.  
 8 BY MR. BLOOM:  
 9 Q. The chronology in the Memory Aid ends on  
 10 February 5, 2009, does it not?  
 11 A. Yes, sir.  
 12 Q. And you purportedly did not begin to review the  
 13 Sentencia until approximately two years later; correct?  
 14 A. Yes, sir.  
 15 Q. And therefore, the events between February 5,  
 16 2009, through the remainder of 2009 through the remainder  
 17 of 2010 are not included anywhere in this Memory Aid; isn't  
 18 that also right?  
 19 A. That is correct, sir.  
 20 Q. And just like there was no mention of the Experts  
 21 specifically relied on in the Sentencia, there's no mention  
 22 of the so-called "supplemental experts' reports" that were  
 23 filed in 2010 by both parties; isn't that correct?  
 24 A. Yes, sir.  
 25 Q. I was corrected so I want to be more specific.

10:18 1 There were a number of supplemental experts--there was a  
 2 Plaintiffs' expert named Picone, P-I-C-O-N-E.  
 3 Do you know, sir, whether his supplemental expert  
 4 report was contained in the Memory Aid?  
 5 A. I'm sorry. What supplementary report are you  
 6 referring to?  
 7 Q. Were you aware of the fact that the Plaintiffs  
 8 filed supplemental Expert Reports in the last quarter of  
 9 2010, what Chevron has referred to as cleansing reports?  
 10 A. I recall that when I reviewed the file, the  
 11 record, when I was the ghostwriter, several objections were  
 12 logged by both Parties in connection with the Experts'  
 13 reports. And I think that motions were also presented in  
 14 connection with essential errors with regard to most of the  
 15 reports, by the Parties, in particular, by the Plaintiffs  
 16 suing Chevron.  
 17 Q. Well, the Plaintiffs' Expert Picone filed a report  
 18 in the last quarter of 2010. The Plaintiffs' Expert  
 19 Shefftz, S-H-E-F-F-T-Z; the Plaintiffs' Expert Scardinia,  
 20 there was an expert report by a Mr. Rourke, R-O-U-R-K-E.  
 21 There were Expert Reports of an Expert Barnhouse, and an  
 22 Expert Allen.  
 23 And none of these people are mentioned in the  
 24 chronology, are they, in the Memory Aid?  
 25 A. Yes. I do see that those certain names are not

10:21 1 included in the Aide Memoire.  
 2 Q. And as said, the chronology is focused on  
 3 Mr. Cabrera.  
 4 A. It's because of what I explained before, which was  
 5 also my concern.  
 6 Q. You're aware, are you not, that in December 2009,  
 7 Chevron began investigating, through U.S. Court procedures,  
 8 Cabrera's relationship with the Plaintiffs' Attorneys?  
 9 A. No, sir.  
 10 Q. Are you aware of the fact that Chevron, in fact,  
 11 attained U.S. Court orders to review the Plaintiffs'  
 12 lawyers' documents?  
 13 A. I heard or I learned through the news articles.  
 14 But this was a very superficial information I had. It was  
 15 not in-depth.  
 16 Q. Are you aware of the fact that Chevron began  
 17 providing to the Lago Agrio Court in 2010 some of the  
 18 evidence that Chevron received through the U.S. Court  
 19 procedures?  
 20 A. No, sir.  
 21 Q. And Chevron--withdraw that.  
 22 Sir, have you ever written any article related to  
 23 the environmental conditions in Ecuador whether published  
 24 or not?  
 25 A. Yes, sir.

10:23 1 ARBITRATOR GRIGERA NAÓN: I'm sorry, Mr. Bloom,  
 2 sorry, because I see you are getting a different--  
 3 MR. BLOOM: Related, but--  
 4 ARBITRATOR GRIGERA NAÓN: But before, you know,  
 5 when I was looking at the list of experts on the pages that  
 6 you mentioned, Page 105, of the Spanish version of the  
 7 decision, I see another name Pilamunga.  
 8 And when I go to the last page, you mentioned,  
 9 Page 182, I see a reference to another Expert Barros. I do  
 10 not know if, to make the record complete, whether you  
 11 should also consider those names when putting a question to  
 12 see if those names are in the Aide Memoire or not because  
 13 they don't seem to be any of the other names that you  
 14 mentioned.  
 15 MR. BLOOM: And my list was not intended to be  
 16 exhaustive.  
 17 ARBITRATOR GRIGERA NAÓN: Oh, I'm sorry.  
 18 MR. BLOOM: It was merely to show that there are a  
 19 number of experts' names not in the Memory Aid.  
 20 ARBITRATOR GRIGERA NAÓN: It's up to you, I just--  
 21 MR. BLOOM: I appreciate that.  
 22 ARBITRATOR GRIGERA NAÓN: Okay.  
 23 BY MR. BLOOM:  
 24 Q. So, sir, you said that you have written one or  
 25 more articles related to the environmental conditions in

10:24 1 Ecuador; is that correct?  
 2 A. Yes, sir.  
 3 Q. Approximately how many essays?  
 4 A. Several. I do not remember the number because I  
 5 was I was also a master's degree student in Ecuador  
 6 University--at Central Ecuador University, and I also had  
 7 those documents prepared as semester papers based on  
 8 important documents that I had, such as the claim against  
 9 Chevron and also the reply to that lawsuit or that claim.  
 10 Q. And, in fact, the essays related mostly to  
 11 environmental damages occurring as a result of oil and gas  
 12 production in the Oriente region?  
 13 A. Yes, sir.  
 14 Q. And in some of these essays you, in fact,  
 15 discussed the litigation against Chevron?  
 16 A. That is correct, sir.  
 17 Q. And you have previously testified that you wanted  
 18 to have enough information about the case in the article so  
 19 that it would be clear that the person writing the article  
 20 was familiar with the case and, in fact, was a Judge in the  
 21 case; isn't this correct?  
 22 A. Yes. Somehow that was the case. But clearly, the  
 23 final idea went beyond that, that is to say to write a  
 24 piece of an article specifically that would be published as  
 25 an idea, a goal, an intention, and at some point, I'd even

10:26 1 draf a draft Judgment from my own point of view.  
 2 Q. Who is Ms. Orellana, Magali Orellana?  
 3 A. Magali Orellana an Assembly member from the  
 4 Republic of Ecuador representing the Republic of  
 5 Orellana--the Province of Orellana.  
 6 Q. And have you ever worked with her?  
 7 A. Yes. I worked as an adviser at the National  
 8 Assembly for this Member to her benefit in 2010 up to  
 9 August 2010, and I think starting in November 2009.  
 10 Q. Just to confirm, you worked with this  
 11 Assemblywoman from November 2009 through August 2010. Are  
 12 those the correct dates?  
 13 A. Approximately. I understand that, yes, they are  
 14 correct; and I am just trusting that my recollection is  
 15 correct.  
 16 Q. And as her aide, you helped her prepare for  
 17 conferences?  
 18 A. Yes. I was her legal adviser. Therefore, I had  
 19 to advise her, study and provide guidance; and I was also  
 20 asked to review documents for her to use during her  
 21 presentation before the National Assembly in connection  
 22 with the topics in which she participated.  
 23 Q. And you also helped her prepare articles and  
 24 prepare for lectures?  
 25 A. Preferably for presentations on TV or interviews

10:30 1 that she had, radio interviews in Quito.  
 2 Q. Now, sir, when you first described the drafting of  
 3 the Sentencia, you specifically affirmed that you had given  
 4 to Judge Zambrano the Draft Judgment on a flash drive;  
 5 isn't that right?  
 6 A. I assume--well, at that time, that's how I  
 7 recalled it.  
 8 Q. And do you remember telling Chevron's  
 9 representatives that in June of 2012?  
 10 In fact, Mr. Rivero and you specifically discussed  
 11 you receiving the Sentencia on the flash drive; is that  
 12 correct?  
 13 A. That statement, which was very light on my part,  
 14 was due to the fact that practically every week--almost  
 15 every week I received documents from Zambrano and the  
 16 relevant flash drives. And my perception evidently was  
 17 that everything had been managed by means of that  
 18 mechanism, usually.  
 19 Q. And this may be a translation issue, but when you  
 20 say that statement was made "very lightly," what do you  
 21 mean by that term?  
 22 A. I meant to say that I wasn't ready to answer those  
 23 questions and to provide answers to them.  
 24 I was to meet with Chevron's representatives at  
 25 that time. I considered at that time that I was not the

10:32 1 objective; it didn't have to do with investigating me,  
 2 et cetera. But I was just to be a link for the future  
 3 meetings that they were going to hold shortly thereafter  
 4 with Mr. Zambrano.  
 5 Q. Were you deliberately lying to them?  
 6 A. If you allow me, not at all. I was careless. I  
 7 didn't think about the answers that I gave them. I  
 8 provided general answers, careless answers, because I was  
 9 being posed questions that were abrupt or that were  
 10 unexpected.  
 11 Q. And at the same time, you told Chevron's  
 12 representatives this not on a single occasion but on two  
 13 occasions, correct, both on May 6th, 2012, and again on  
 14 June 25, 2012?  
 15 And you had a little time to reflect between the  
 16 two, did you not?  
 17 A. I must tell you that immediately after the meeting  
 18 with these gentlemen, I focused on other things; and I  
 19 didn't think too much--I didn't really concern myself too  
 20 much with that, if you allow me to say it that way.  
 21 Q. When you told Chevron that you had given Judge  
 22 Zambrano the Draft Judgment on a flash drive, you were sure  
 23 of that at that time, were you not?  
 24 A. I had in mind, in my conscience, that I saw the  
 25 Draft Judgment, the one I made the changes to, corrections,

10:35 1 touched up if you will. And obviously, with time that  
 2 became scattered, it got confused in my memory, that of me  
 3 having worked on the draft at home, that I received it via  
 4 flash drive--I originally believed that, so much so that I  
 5 thought that that document was to be found somewhere in the  
 6 computer that I generally used.  
 7 But, obviously, when I delivered the computer to  
 8 Chevron's representatives, which was in July 2012, and then  
 9 days later at the end of the month, later, when I was told  
 10 that the Draft Judgment was not found in that computer, the  
 11 one that I had referred to during our discussions at that  
 12 time, well, I became concerned. And I said, "Well, how is  
 13 it? It should be there. What happens--what happened?  
 14 Where was it? Where is it?"  
 15 And then, when I decided, since this was an  
 16 important matter, to talk to Chevron to share the truth in  
 17 connection with my involvement, I thought hard, and I  
 18 remember that--that I worked with that document in Lago  
 19 Agrio, not in Quito, as I have already said in my prior  
 20 statements.  
 21 Q. And I want to walk through this a little slower,  
 22 so if you will indulge me, Mr. Guerra.  
 23 You went into great detail about how you used the  
 24 flash drive. You said that you, quote, put it in your CPU,  
 25 correct?

10:36 1 A. Those details--well, those situations, as far as I  
 2 understand, have to do with the time when I worked in  
 3 Quito. When I stated that the document was done in Quito,  
 4 that statement must be correct.  
 5 Q. And you said that you copied it; correct?  
 6 A. For purposes of the changes that have been  
 7 suggested to me, the review, the touch up, to straighten it  
 8 up, if you will, I indeed copied that document on a  
 9 different page in the same computer.  
 10 Q. And you made some changes; correct?  
 11 A. Yes, sir.  
 12 Q. And when you were done, you said, "Once again, I  
 13 copied in the flash drive, and I gave it to him"; correct?  
 14 A. I am making reference, sir, to the time when I saw  
 15 that document in the city of Lago Agria in Mr. Fajardo's  
 16 computer in Mr. Fajardo's residence. I'm not referring to  
 17 the timeline that you are referring to.  
 18 Q. I will refer you to Tab 1 of the very first  
 19 binder, because these statements were made on May 6, 2012.  
 20 Will that help you place the timing? It is at Page 5 of  
 21 Tab 1.  
 22 And you can also look at Pages 5, 7, and 14.  
 23 Those are the three references on the slide.  
 24 MR. KEHOE: Mr. President, I'm going to object,  
 25 because this is obviously a sensitive area.



10:39 1 The first question was, "And you said that you  
 2 copied it; correct?" And the Witness answered that  
 3 question.  
 4 And then Mr. Bloom asked, "You said you copied it  
 5 on a flash drive."  
 6 Those are two different questions, and that's  
 7 what--that's why the Witness is confused right now.  
 8 MR. BLOOM: I think his language speaks for  
 9 itself. "And, once again, I copied in the--in the flash  
 10 drive, and I gave it to him." Those were his words.  
 11 PRESIDENT VEEDER: Let's not argue about what the  
 12 witness has answered, but you might want to clear it up to  
 13 avoid any risk of misunderstanding, Mr. Bloom.  
 14 MR. KEHOE: Line 10 of the transcript of the page  
 15 we're on, Mr. Bloom, was your question.  
 16 PRESIDENT VEEDER: You can pick it up from Page 5.  
 17 BY MR. BLOOM:  
 18 Q. Sir, did you say, at the bottom of Page 5 of Tab  
 19 1, "He sent me that he gave me--gave it to me on a flash  
 20 drive?"  
 21 Did you say that?  
 22 A. Yes, sir.  
 23 Q. And then did you also say, "So what I did then was  
 24 put it in my CPU. I made some changes, because it didn't  
 25 have ruling-like material, meaning from the point of view

10:41 1 of moderately related to the environment, something more  
 2 legal. Somewhat more grammatical, something like that?"  
 3 Did you say that?  
 4 A. Yes, sir.  
 5 Q. And then at the bottom of Page 6, carrying over to  
 6 Page 7, did you say, "So then for corrections, I had barely  
 7 two days to--to--to write, a Friday to--to--to Sunday  
 8 evening, when Buddy himself came over, when he or I wasn't  
 9 there, the way we would always do things. So already I  
 10 waited for him at the airport. Then--then I obviously--I  
 11 made the changes I considered the most appropriate, bam,  
 12 bam, bam. And, once again, I copied in the--in the flash  
 13 drive, and I gave it to him?"  
 14 Was that what you told the Chevron investigators  
 15 on this date?  
 16 A. I said what you have mentioned and what has been  
 17 stated in this document, but I did not say this to  
 18 Chevron's representatives. These are the contents of a  
 19 conversation that I had with John Doe 2 telephonically.  
 20 Q. Okay. You said this; correct?  
 21 A. Yes, sir. Yes, sir.  
 22 PRESIDENT VEEDER: Mr. Bloom, are you leaving  
 23 Page 5?  
 24 MR. BLOOM: Yes.  
 25 PRESIDENT VEEDER: I'd like to ask you a question,

10:43 1 Mr. Guerra, about Page 5. You've acknowledged that you  
 2 used the words--and I speak in English--that set out at the  
 3 bottom of Page 5: "So what I did then was put it"--and  
 4 that is the flash drive--"in my CPU."  
 5 Do you see those words in Spanish?  
 6 THE WITNESS: Yes, sir.  
 7 PRESIDENT VEEDER: What do you mean by--when you  
 8 say you put the flash drive in your CPU? Electronically  
 9 what happens, or physically what happens? Can you describe  
 10 what you did?  
 11 THE WITNESS: Now, in connection with this  
 12 citation, Mr. President, what I am mentioning is the fact  
 13 that I took the flash drive--and I think they also call it  
 14 USB Drive--and I put it in the CPU to be able to copy it or  
 15 to look at it. That is what I am referring to here.  
 16 PRESIDENT VEEDER: Well, there are two different  
 17 things: One, you can look at a document on a flash drive  
 18 without copying it onto the hard drive of the computer; and  
 19 you can also save the document from the flash drive onto  
 20 the hard drive of your computer.  
 21 Now, in your answer just now, you used both  
 22 phrases.  
 23 Do you recall if you copied it over onto the hard  
 24 drive of the computer or you only looked at the document on  
 25 the flash drive?

10:45 1 THE WITNESS: This conversation, Mr. President, I  
 2 held it with a friend telephonically. But, the truth, the  
 3 truth--I have later clarified this--the content of the  
 4 Draft Judgment, I found it, or it was shown to me in a  
 5 different computer, not in the computer in my house in  
 6 Quito, but in a computer belonging to Mr. Fajardo, which  
 7 was in Mr. Zambrano's residence in Lago Agria. I made a  
 8 duplicate of that document, and I made changes to the  
 9 duplicate of the document in the way that I have stated in  
 10 my statement.  
 11 This statement--this assertion was an assertion  
 12 made in June, on or about 2012, before I agreed to provide  
 13 sworn statements in this regard. And this was a statement  
 14 that was evidenced here.  
 15 At that time, I assumed that all documents were to  
 16 be worked on my computer and all flash documents were going  
 17 to be worked in my computer in the city of Quito.  
 18 PRESIDENT VEEDER: Thank you.  
 19 BY MR. BLOOM:  
 20 Q. By saying that you had a flash drive of the Draft  
 21 Judgment, you understood that that would make you pretty  
 22 valuable to Chevron; isn't that right?  
 23 A. Not precisely. However, I did consider that if  
 24 the Draft Judgment was found in my computer this would have  
 25 really made me felt relieved because they would see that I

10:48 1 had not lied.  
 2 Now, in connection with valuable, like you  
 3 said--well, I think in those circumstances, I would have  
 4 received perhaps not the 18,000 but an additional amount.  
 5 Q. If you had a flash drive of the Draft Judgment, it  
 6 would also show a direct connection between you and Judge  
 7 Zambrano; isn't that right?  
 8 A. Well, I don't know how to answer that.  
 9 Possibly yes, now that you're saying it.  
 10 Q. And saying that you had a copy of the Sentencia on  
 11 your own computer would also show a direct connection  
 12 between you and Mr. Zambrano; isn't that right?  
 13 A. Yes, sir. Yes. But just like the payment of  
 14 \$1,000 by Fajardo by Ximena Centeno--well, that fact--that  
 15 fact evidences that there was also a connection between us.  
 16 Perhaps at some point in time I could have kept  
 17 Fajardo's computer and not return it to him, and that would  
 18 have shown that as well.  
 19 But at that time, I didn't think that things were  
 20 going to come to this point, that I was going to intervene  
 21 later on, but such is life.  
 22 Q. You wanted to be valuable to Chevron and receive a  
 23 financial benefit for being valuable to Chevron; isn't that  
 24 also right?  
 25 A. I was hoping to get some kind of benefit somehow,

10:50 1 but I wasn't hoping to become a millionaire or anything  
 2 like that. I was hoping to receive something, like a good  
 3 set of fees.  
 4 Q. And if you got \$10,000 for a Memory Aid, a flash  
 5 drive would be worth more money in your view, the flash  
 6 draft of the Sentencia; isn't that right?  
 7 A. Possibly, yes.  
 8 Q. And at some point you had to hand over to the  
 9 Chevron representatives all of your hard drives; correct?  
 10 A. I voluntarily handed over those materials.  
 11 Q. And the Draft Sentencia was not on any of your  
 12 flash drives; correct?  
 13 A. The technical people that worked with these  
 14 gentlemen indicated that they had not--had not found them.  
 15 Q. And you were concerned that that did not make you  
 16 look very honest; wouldn't you agree with me?  
 17 A. I was concerned that I would be told that possibly  
 18 I had lied. Possibly that was it.  
 19 Q. And because you could not help them in the way you  
 20 said you could, you had an incentive to try to help them in  
 21 other ways; isn't that also right?  
 22 A. No. I have come here only to tell the truth about  
 23 the contents of my statement. I have not said that I  
 24 authored the Judgment or things of that nature. I have not  
 25 said that I helped prepare the report of Richard Cabrera.

10:52 1 I am saying and asserting and reaffirming only and  
 2 exclusively those aspects related to my personal  
 3 intervention or of which I have personal knowledge. That  
 4 is all, Mr. Bloom.  
 5 Q. I want to ask the question again. I'm not asking  
 6 you about your testimony today.  
 7 I'm asking you: Because you could not help  
 8 Che--Chevron in the way you said you could, at that time  
 9 you had an incentive to try to help them in other ways;  
 10 isn't that correct?  
 11 MR. KEHOE: I'm going to object to the question.  
 12 He can ask the question: Did you then go out and  
 13 help them in other ways?  
 14 But this incentive part of the question is  
 15 confusing and objectionable.  
 16 MR. BLOOM: I think we have--  
 17 MR. KEHOE: It's argumentative.  
 18 MR. BLOOM: I think we have a former judge who can  
 19 answer questions without the assistance of counsel.  
 20 PRESIDENT VEEDER: I don't think it's that. I  
 21 think it's the language. I don't know how "incentive" is  
 22 coming out in Spanish for this witness.  
 23 Can you reformulate your question?  
 24 It's a perfectly appropriate question, but just  
 25 try and make it clear, beyond misunderstanding.

10:53 1 And then, by all means, ask the second question  
 2 suggested by Mr. Kehoe.  
 3 BY MR. BLOOM:  
 4 Q. Because you could not help Chevron in the way you  
 5 promised, you wanted to help them in other ways; isn't that  
 6 correct?  
 7 A. I wish I could feel capable of helping Chevron. I  
 8 wish I could help myself, help my family, help my children.  
 9 But help Chevron? No, sir. I think Chevron does not need  
 10 my help.  
 11 Q. Your recollection as it related to the flash  
 12 drive, again, in the New York trial you testified, "Upon  
 13 learning from the Chevron representatives the statement  
 14 that the Draft Judgment had not been found on any of the  
 15 flash drives or on my home computer, and after engaging in  
 16 a mental process strengthening my memory regarding these  
 17 events in time and space, I was able to recall that I had  
 18 worked on that project in Lago Agrio."  
 19 That was your testimony in New York; correct?  
 20 A. Yes, sir.  
 21 Q. Now, when you spoke with Chevron's representatives  
 22 in June of 2012, you not only remembered that you allegedly  
 23 received the Draft Judgment on a flash drive, but you also  
 24 remembered then receiving the flash drive in person from  
 25 Judge Zambrano; correct?

10:55 1 A. That is how I recalled it at that point in time,  
 2 and that is why I stated--stated it that way, sir.  
 3 Q. And you also then remembered that Judge Zambrano  
 4 allegedly gave you the flash drive at the Quito airport;  
 5 isn't that right?  
 6 A. Yes, sir.  
 7 Q. And you further represented then that this all  
 8 happened a couple of weeks before the Sentencia was issued;  
 9 is that right?  
 10 A. Yes, sir.  
 11 Q. So to be clear, your June 2012 version of the  
 12 events was that Judge Zambrano gave you a Draft Judgment by  
 13 way of a flash drive; correct?  
 14 A. If you allow me, during a period of about three  
 15 and a half years, I had received from Mr. Zambrano,  
 16 generally every week, documents--well, on Fridays, when he  
 17 came by Quito to go to his house in Manta, Guayaquil.  
 18 And that perception that I received everything  
 19 personally from Mr. Zambrano, well, that led me to say at  
 20 that time to Chevron's representatives, well, because I  
 21 assumed that I received it from him, I could not have  
 22 received it from Fajardo, nor from Donziger, generally, all  
 23 the material I received from Judge Zambrano, who was the  
 24 person of trust, the confidante.  
 25 And because of that confidence, I stated what I

10:57 1 stated at the date you indicated. But then later on, I  
 2 rectified things, my memory became stronger, et cetera.  
 3 And that is how the mind works.  
 4 And finally, I remembered that the document I  
 5 received and worked on in the city of Lago Agrio.  
 6 Q. In which case, you would agree with me that every  
 7 time you represented that Judge Zambrano gave you a Draft  
 8 Judgment by way of a flash drive was incorrect; you were  
 9 wrong every time you said that?  
 10 A. Yes, sir.  
 11 Q. You were wrong every time that you represented  
 12 that the flash drive was provided to you personally by  
 13 Judge Zambrano, and you were wrong every time you said that  
 14 this transaction occurred at the Quito airport?  
 15 A. I have stated in--that in that regard. I have  
 16 stated that I was wrong.  
 17 Q. In fact, you never told Chevron, prior to July 31,  
 18 2012, that you had worked on any part of the Sentencia on a  
 19 separate computer in Lago Agrio; correct?  
 20 A. No, because my perception and my recollection--or  
 21 my perception was that that document I had worked on in  
 22 Quito and that it was somewhere in my computer.  
 23 Q. Do you remember being asked this identical  
 24 question during your May 2, 2013 deposition? And I will  
 25 quote.

10:59 1 You were asked, quote: "You had not told Chevron  
 2 that you had worked on any part of the project on a  
 3 separate computer in Lago Agrio before July 31st;  
 4 correct?"  
 5 And you answered: "I told Chevron several things.  
 6 Some of them were true; others were exaggerations."  
 7 That's what you testified that day under oath,  
 8 isn't it?  
 9 A. Yes, sir. Yes, sir.  
 10 Q. And Judge Zambrano never gave you a flash drive  
 11 with the Draft Judgment on it; correct?  
 12 A. With due respect, I several times said that it is  
 13 correct. Correct. He never gave it to me.  
 14 Q. So you exaggerated a lot to Chevron's  
 15 investigators; would you agree?  
 16 A. If you allow me, possibly, the exaggerations are  
 17 three or four but you are making it seem like there are  
 18 40,000, but they are not.  
 19 Q. Well, that was an exaggeration, was it not?  
 20 That's what you called it.  
 21 A. That's the way I recalled it. Exaggeration was  
 22 like when I said that I received 1,500 or 2,000 from the  
 23 Plaintiffs or from Mr. Zambrano when in reality I received  
 24 1,000. I lied- that's correct- when I said that I was  
 25 going to receive 300,000 from the Plaintiffs to help with

11:01 1 the Judgment when in reality, there was no offer of payment  
 2 in this sense help with the Judgment when there was no  
 3 offer of payment.  
 4 MR. KEHOE: Mr. President, we're covering old  
 5 ground now. Is it a good time for a break? It's been an  
 6 hour and a half.  
 7 MR. BLOOM: I have no objection.  
 8 PRESIDENT VEEDER: Let's have a 15-minute break.  
 9 We'll come back--let's make it quarter past, quarter past  
 10 11.  
 11 MR. BLOOM: Thank you.  
 12 PRESIDENT VEEDER: Again, we ask you, as  
 13 yesterday, Mr. Guerra, not to discuss the case or your  
 14 testimony away from the Tribunal.  
 15 (Brief recess.)  
 16 PRESIDENT VEEDER: Let's resume.  
 17 BY MR. BLOOM:  
 18 Q. Mr. Guerra, just to clarify a couple of points.  
 19 You testified today that Parties to a proceeding  
 20 usually submit documents to the Court at the courthouse; is  
 21 that correct?  
 22 A. Usually the Parties, when submitting the  
 23 documents, do so at the Office of the Clerk where the case  
 24 is pending.  
 25 Q. And you also explained that there are instances

11:19 1 where Ecuadorian law permits a party to submit documents  
 2 outside of the courthouse. Is that also right?  
 3 A. When it's almost at the end of a deadline, for  
 4 example, as warned by one of the Judges, it could be that  
 5 this is submitted directly to the Clerk of the Court.  
 6 Q. And when the Court is conducting a legal  
 7 proceeding outside the courthouse, may Parties submit  
 8 documents to the Court at that time?  
 9 A. In cases of a judicial inspection, for example, it  
 10 is clearly admissible to file, and for the authorized judge  
 11 to receive, and the clerk, the clerk for that case,  
 12 inevitably must be present for that procedure, he can  
 13 receive documents.  
 14 (Pause.)  
 15 BY MR. BLOOM:  
 16 Q. Did Chevron tell you on July 13, 2012, that you  
 17 would be left with nothing if you did not deliver Judge  
 18 Zambrano to them?  
 19 A. Yes, they did so.  
 20 Q. And you understood at that time that without Judge  
 21 Zambrano in order for you to reap the maximal financial  
 22 benefit that you had to become even more valuable to  
 23 Chevron in some other way?  
 24 A. I understood that Chevron intended to deal  
 25 directly with Judge Zambrano, and I was the link for that.

11:22 1 And in the end, if I wasn't able to do so, I think that  
 2 that was their perception, that I couldn't facilitate that  
 3 approach and I understood; and they told me that I was not  
 4 going to reap any financial benefits.  
 5 Q. And you actually admitted in your early  
 6 discussions with Chevron that you had a weak case, that you  
 7 said to them that with the very little that you had that  
 8 your story is very weak. Do you recall that?  
 9 A. Yes. I do remember that.  
 10 Q. Mr. Guerra, you have three children, do you not?  
 11 A. Yes, sir.  
 12 Q. And am I correct that your two youngest children  
 13 were living in the United States long before Chevron moved  
 14 you to the United States?  
 15 A. That is correct, sir.  
 16 Q. And your son has lived here in the United States  
 17 since October 2003; is that right?  
 18 A. That is correct.  
 19 Q. And does he have children? Do you have  
 20 grandchildren from him?  
 21 A. Yes, sir.  
 22 Q. And how often did you get a chance to see your son  
 23 and his children before you moved to the United States?  
 24 A. It was a very low frequency; every two or three  
 25 years.

11:25 1 Q. He lives in Chicago?  
 2 A. Correct.  
 3 Q. How often do you get to see him now--or, let me  
 4 rephrase that.  
 5 How often have you seen him or his family over the  
 6 last two years?  
 7 A. Quite frequently over the last two years.  
 8 Q. And your daughter has been living in the United  
 9 States since October 2009; is that right?  
 10 A. Yes.  
 11 Q. And prior to Chevron moving you here to the United  
 12 States, how often did you see her?  
 13 A. Once; possibly once.  
 14 Q. And does she have children?  
 15 A. Currently, she does.  
 16 Q. So two of your children have been living in the  
 17 United States for some time previous to you moving here;  
 18 correct?  
 19 A. That is correct.  
 20 Q. Now, your son entered the United States legally  
 21 with a valid Visa; correct?  
 22 A. Yes, sir.  
 23 Q. And his Visa later expired; correct?  
 24 A. Yes.  
 25 Q. And your son has not returned to Ecuador for more

11:26 1 than 10 years now; is that right?  
 2 A. That is true.  
 3 Q. And that has been a subject of concern for you;  
 4 correct?  
 5 A. Yes.  
 6 Q. And both you and your wife have been concerned for  
 7 some time that your son, who has a wife and children in the  
 8 United States, could be deported; is that right?  
 9 A. Yes, sir.  
 10 Q. And at the time that you made contact with Chevron  
 11 in 2012, you actually had not seen your son or daughter for  
 12 several years; is that right?  
 13 A. Yes, sir.  
 14 Q. You had not seen your daughter since 2009?  
 15 A. Possibly, yes.  
 16 Q. And you hadn't seen your son since 2008?  
 17 A. Possibly, the answer is yes.  
 18 Q. And you were moved to the United States when? Am  
 19 I remembering correctly that it was at the end of 2012?  
 20 A. I was moved to--with intent to stay here in the  
 21 U.S. in January 2013.  
 22 Q. And, in fact, Chevron has been trying to help your  
 23 son stay in the United States legally; isn't that right?  
 24 A. Yes.  
 25 Q. Does your son or his family have an immigration

11:28 1 Attorney working on their behalf?  
 2 A. Yes.  
 3 Q. And I'm guessing that they are not paying for  
 4 immigration counsel, are they?  
 5 A. That is correct. That is correct.  
 6 Q. Chevron is paying?  
 7 A. Yes, sir.  
 8 Q. Do you, by chance, know how much the immigration  
 9 Counsel has been paid by Chevron?  
 10 A. No, sir.  
 11 Q. And is the same immigration Counsel also  
 12 representing you for immigration purposes?  
 13 A. Yes, sir.  
 14 Q. And you do not know how much Chevron has paid this  
 15 immigration counsel on your behalf?  
 16 A. No, sir.  
 17 Q. And you have your own personal counsel here today;  
 18 correct?  
 19 A. Dr. Clayman, yes, that is correct.  
 20 Q. And am I correct that he attended all 53 meetings  
 21 with you when you met with the Gibson, Dunn attorneys from  
 22 about November 2000 and--2012 through November 2013?  
 23 A. My attorney, Dr. Clayman, was always present in  
 24 all meetings that I've held. And he has come with me to  
 25 the different errands that had to be performed at offices

11:30 1 of the Government, et cetera, but not starting in  
 2 November 2012, but after he was retained, January 2013.  
 3 Q. Thank you for that clarification.  
 4 And I don't want to know the substance of  
 5 discussions between you and your attorney, but I assume  
 6 that there have been times when you have met with him  
 7 without Chevron's counsel present.  
 8 Can you confirm that?  
 9 A. Yes, sir.  
 10 Q. And you're not paying his attorneys' fees, are  
 11 you?  
 12 A. I do not, no, sir.  
 13 Q. Chevron is paying his fees; correct?  
 14 A. I consider that Chevron should pay the attorneys'  
 15 fees for my lawyer.  
 16 Q. And are you represented also by a tax attorney?  
 17 A. Yes, currently I do. As far as I know, he's  
 18 working in connection with issues related to taxes.  
 19 Q. And who is paying his fees?  
 20 A. It is my understanding that Chevron does.  
 21 Q. Do you have an accountant here in the United  
 22 States?  
 23 A. I don't know if I have one, but what I do know is  
 24 that Chevron has hired--via my lawyer, has hired an  
 25 accountant or somebody specialized in the field of taxes.

11:33 1 Q. And you're not paying that person's fees either;  
 2 correct?  
 3 A. That is correct.  
 4 Q. And I'm assuming that you are most grateful to  
 5 Chevron for helping your son and his family; are you not?  
 6 A. In some way, I am grateful for the support  
 7 provided to--for me to maintain my emotional balance, my  
 8 safety, et cetera--et cetera, yes.  
 9 Q. By the way, at this point in time, am I correct  
 10 that just two of your children are currently living in the  
 11 United States?  
 12 A. Yes.  
 13 Q. You had one son move with you to the United States  
 14 who has since left the United States; is that right?  
 15 A. That is correct.  
 16 Q. And where is he living now?  
 17 PRESIDENT VEEDER: Is that relevant?  
 18 MR. BLOOM: Depending on the answer, yeah.  
 19 PRESIDENT VEEDER: Well, I'm asking you--  
 20 THE INTERPRETER: Microphone, please.  
 21 MR. BLOOM: Depending on the answer, yes. And I'm  
 22 happy to do a sidebar.  
 23 MR. KEHOE: I'd like to confer with Mr. Clayman  
 24 for a moment, please.  
 25 PRESIDENT VEEDER: Let's just take time out.

11:34 1 MR. KEHOE: Thank you.  
 2 (Pause.)  
 3 MR. KEHOE: Mr. President, we're going to object  
 4 to that question and ask that you direct that the witness  
 5 not have to answer it for security reasons, for  
 6 Mr. Guerra's son.  
 7 MR. BLOOM: May I be heard on a sidebar?  
 8 PRESIDENT VEEDER: We don't really have sidebars  
 9 in arbitrations. That's the trouble.  
 10 THE INTERPRETER: Your microphone, sir.  
 11 PRESIDENT VEEDER: As I said, we don't really have  
 12 sidebars in arbitration.  
 13 We need to know a little bit more where you're  
 14 going. We may have to ask the Witness to leave while  
 15 that's happening, or can you explain it in his presence, if  
 16 it's not translated?  
 17 MR. KEHOE: I can assure you that Mr. Guerra does  
 18 not read or speak any English to any degree whatsoever.  
 19 MR. BLOOM: I would prefer that the witness not be  
 20 present.  
 21 PRESIDENT VEEDER: Mr. Guerra, a question has come  
 22 up where we have to discuss the matter with counsel, and  
 23 it's best done if you're not in the room.  
 24 Would you mind going with our secretary or--who is  
 25 coming, just to wait outside for five or so minutes.

11:35 1 Please don't go away, but it's best if you are not in the  
2 room.  
3 (Whereupon the Witness exits the proceeding room.)  
4 PRESIDENT VEEDER: Okay. I'm also going to ask  
5 that the transcript from now on is strictly confidential,  
6 and its circulation will be limited, depending on our  
7 ruling. But now we can hear the purpose of the question.  
8 MR. BLOOM: He obviously--part of Chevron's story  
9 has been security concerns in Ecuador.  
10 My question really is--and I don't know the  
11 answer--is: Is he back in Ecuador?  
12 That certainly would suggest that there's not a  
13 lot of great fear of family safety.  
14 MR. KEHOE: We have a lot of--we have history of  
15 transcripts in these proceedings are--not as much the  
16 transcripts, but reports that the Tribunal has designated  
17 as confidential being leaked out into the public.  
18 MR. BLOOM: Should we just do this off the record  
19 then?  
20 MR. BISHOP: Yeah. I think we should do this off  
21 the record, if that's all right with the President.  
22 PRESIDENT VEEDER: Let's stop the Transcript now.  
23 There will be no transcript and no recording until we order  
24 others in a few moments. But we can also write it on a  
25 piece of paper for the Tribunal, if it's even more

11:37 1 sensitive.  
2 (Discussion off the stenographic and audio  
3 record.)  
4 (Whereupon the Witness reenters the proceeding  
5 room.)  
6 PRESIDENT VEEDER: Mr. Guerra, thank you for  
7 stepping out. We've resolved the difficulty. We're going  
8 to move on with a different question.  
9 MR. BLOOM: Thank you for your indulgence, sir.  
10 BY MR. BLOOM:  
11 Q. Just to finish that line of questions, just some  
12 summary questions, to be clear, right as of now, you have  
13 two children in the United States; correct?  
14 A. Yes.  
15 Q. And your grandchildren?  
16 A. Yes.  
17 Q. And you also have a brother living in the United  
18 States; correct?  
19 A. Two brothers.  
20 Q. And even before you made contact with Chevron, you  
21 had a not insubstantial part of your immediate family in  
22 the United States; is that correct?  
23 A. Yes, sir.  
24 Q. Now, moving on to another subject, let me ask you  
25 this:

11:42 1 In confirming something I believe that you said  
2 yesterday, that you, in fact, gave to Chevron's  
3 representatives access to your email account, am I  
4 remembering that correctly?  
5 A. Yes, sir.  
6 Q. And, in fact, you provided the Chevron  
7 representatives with your email passwords; correct?  
8 A. Yes.  
9 Q. And you know that no email from Pablo Fajardo was  
10 ever found in your email account. You were told that, were  
11 you not?  
12 A. Yes, sir.  
13 Q. And if I can have you take a look at Tab 42.  
14 Ms. Bees will assist you. For the record, that's  
15 Exhibit R-1332. This document lists your contact  
16 information from your Hotmail account.  
17 From this list, it appears that Mr. Fajardo's  
18 email does not appear; correct?  
19 A. Yes, that is correct.  
20 Q. You don't see it there even once; correct?  
21 A. Yes, sir.  
22 Q. And you previously testified that you and he  
23 emailed each other not infrequently; correct?  
24 A. On some occasions we exchanged emails, yes, sir.  
25 Q. By telling Chevron that you had emails between

11:45 1 Mr. Fajardo and yourself, you assumed that your value to  
2 Chevron would have been enhanced; isn't that right?  
3 To the extent you were able to show connections  
4 between you and Plaintiffs' counsel, you understood that  
5 that would increase your value to Chevron?  
6 A. At that time, no, I did not think about that.  
7 Q. And it's also true that you told Chevron's  
8 representatives, in June of 2012, that you had calendars  
9 showing notes of meetings with Pablo Fajardo; isn't that  
10 correct?  
11 A. Yes.  
12 Q. And you understood that if you could produce  
13 calendars showing notes of meetings with Pablo Fajardo,  
14 that that would make you valuable to Chevron; isn't that  
15 right?  
16 A. No. Not precisely, no.  
17 Q. You did not understand that, even though the  
18 investigator specifically told you, on June 25, 2012, "That  
19 would be very valuable for us" and even though Chevron's  
20 counsel told you, "It would be very valuable, yes?"  
21 So notwithstanding the fact that they told you it  
22 would be very valuable, you did not understand that that  
23 would make you more valuable, if you provided that to them;  
24 is that your testimony?  
25 MR. KEHOE: Mr. Veeder, I need to lodge an

11:47 1 objection. Throughout this entire examination, the Witness  
 2 has had words on screens in front of him in language that  
 3 he does not speak. I know that the translator--the  
 4 interpreters are interpreting Mr. Bloom's questions. But  
 5 it's entirely unclear the extent to which he is  
 6 interpreting words on the screen or simply asking a  
 7 question, and it's--it's--  
 8 MR. BLOOM: I'm happy to clarify, certainly.  
 9 MR. KEHOE: Thank you.  
 10 And the transcripts exist in Spanish. We do have  
 11 Spanish transcripts.  
 12 BY MR. BLOOM:  
 13 Q. I think another thing which would help the  
 14 Tribunal is, if--when you are referring to a PowerPoint, if  
 15 you just indicate the slide number, where later on in the  
 16 transcript we're going to have difficulty making sure to  
 17 what reference is being made. But sometimes no reference  
 18 is being made even implicitly to a slide number.  
 19 MR. KEHOE: Right.  
 20 PRESIDENT VEEDER: So I think we just ought to be  
 21 clear, when you're referring to it, please refer to it  
 22 expressly. That's advice to both sides.  
 23 MR. BLOOM: Certainly.  
 24 MR. KEHOE: Thank you, Mr. President.  
 25 And one further point, these transcripts exist in

11:48 1 Spanish. We all have them. It would be more fair, I  
 2 think, to show the Witness the Transcript in Spanish than  
 3 in English.  
 4 PRESIDENT VEEDER: I think we've been watching  
 5 that. When the Witness feels comfortable answering the  
 6 question immediately, as he has, it seems to be unnecessary  
 7 to take the Witness to the Spanish--  
 8 MR. KEHOE: I agree with that.  
 9 PRESIDENT VEEDER: But I think there should be a  
 10 standing offer--and I can say it, or perhaps you can say  
 11 it, Mr. Bloom--that when he wants to look at something he  
 12 has said to have said, you show him what he did say in the  
 13 deposition or the Transcript or the statement.  
 14 MR. BLOOM: I will do that now. I did do it in  
 15 the beginning. And in response to Mr. Kehoe's objection, I  
 16 was going to do with this specific case.  
 17 BY MR. BLOOM:  
 18 Q. Sir, I want to renew my offer to you, as I did at  
 19 the beginning of the testimony yesterday, that you have a  
 20 standing offer at any time to be looking at any of the 20  
 21 statements made by you in that first binder.  
 22 With respect to this specific line of questions, I  
 23 am now referring for the record to slide 117 that can be  
 24 found at Tab 11 of the first binder. It is Exhibit R-1213.  
 25 And I would refer your attention specifically to Pages 113

11:50 1 and 114 of that exhibit.  
 2 Sir, do you see that now?  
 3 A. I do, sir, yes. I do see it.  
 4 Q. So on this date, on June 25, 2012, there was a  
 5 discussion with Chevron's investigator and Chevron's  
 6 attorney regarding calendars that belonged to you with  
 7 notes of meetings with Pablo Fajardo. Do you recall that?  
 8 A. I do, sir, yes, I recall.  
 9 Q. And now that you have had an opportunity to review  
 10 this transcript, you also recall that the investigator told  
 11 you, "That would be very valuable for us."  
 12 A. Yes, sir. That is what the document evidences.  
 13 Q. And that Chevron's counsel reaffirmed that that  
 14 would be very valuable; isn't that also right?  
 15 A. Yes, that is what is stated here in the document.  
 16 Q. So would you now agree that you understood, as of  
 17 at least June 25, 2012, that if you could provide calendars  
 18 to Chevron referencing notes of meetings with Pablo  
 19 Fajardo, that that would be very valuable?  
 20 A. Very valuable for them, yes.  
 21 Q. But you have not produced any calendar showing  
 22 notes of any meetings with Mr. Fajardo; isn't that right?  
 23 A. I have not.  
 24 Q. And it's also true that you told Chevron's  
 25 representatives in June of 2012 that you had calendars

11:53 1 showing notes of meetings with Steven Donziger?  
 2 A. That is true.  
 3 Q. But you never produced any such notes of meetings  
 4 with Steven Donziger; isn't that right?  
 5 A. That is correct, sir.  
 6 Q. In fact, do you recall telling Chevron's  
 7 investigators that you had, quote/unquote, everything that  
 8 would indicate or prove your meetings with Mr. Fajardo and  
 9 Mr. Donziger?  
 10 A. At that point in time, I considered that I had all  
 11 the day planners stored in my home. But when I looked for  
 12 them and reviewed them, I had lost them. I wasn't able to  
 13 find them.  
 14 Q. Do you remember being asked almost this identical  
 15 question during the New York RICO trial?  
 16 A. Yes, I do.  
 17 Q. You were specifically asked--and do you recall  
 18 telling the Chevron representatives that you had  
 19 everything, everything that would indicate your meetings  
 20 with Pablo Fajardo and Mr. Donziger? And rather than  
 21 saying that you lost them, your answer, instead, was, "I  
 22 said many things to the gentlemen, to their representatives  
 23 from Chevron. On many of those, I was exaggerating. I  
 24 wanted to improve my position regarding these gentlemen in  
 25 the face of what was expected to be a sure agreement

11:55 1 between them and Mr. Zambrano. I really wasn't--I really  
2 didn't consider that I was Chevron's objective. My intent  
3 was to negotiate for Mr. Zambrano, to be the link with  
4 Mr. Zambrano."

5 That, for the record, is at slide 119. We have  
6 that in the binder, but I do apologize that that's only in  
7 English, but we can translate that back, if you want.

8 But my question here is: Do you recall that that  
9 was your testimony?

10 And that's also at Tab 19.

11 A. Yes, sir, that is what I answered that time, when  
12 that question was posed to me.

13 Q. So when you answered to Chevron's investigators  
14 that you had everything to prove that you had meetings with  
15 Mr. Fajardo and Mr. Donziger, this was another exaggeration  
16 to the Chevron representatives? That's essentially what  
17 you are saying under oath in the New York trial; correct?

18 A. If you allow me, look. The meeting between myself  
19 and Mr. Donziger did take place. Generally, I wrote down  
20 important day-to-day issues, such as this, in day planners  
21 that I generally have every year.

22 The answer that I provided was correct in its full  
23 magnitude in connection with the meetings with Mr. Donziger  
24 and in connection with the fact that I thought that the  
25 objective was Mr. Zambrano, so much so that I ratify my

11:59 1 don't recall, but they said not that--well, they didn't  
2 take them.

3 Q. None of the calendars that you provided to Chevron  
4 actually showed a meeting with Pablo Fajardo?

5 THE INTERPRETER: I'm sorry. The interpreter  
6 needs to ask a question. Is there a difference between  
7 calendar and day planner? Are you making a difference  
8 between a calendar and day planner, or are you using them  
9 interchangeably?

10 I'm asking you, Mr. Bloom, if you're using them  
11 interchangeably, day planner and calendar?

12 THE INTERPRETER: I'm asking you, Mr. Bloom, if  
13 you're using them interchangeably, day planner and  
14 calendar.

15 MR. BLOOM: I'm not using them interchangeably.

16 THE INTERPRETER: Okay. I understand. Thank you.

17 MR. BLOOM: Certainly.

18 BY MR. BLOOM:

19 Q. Sir, none of the calendars that you provided to  
20 Chevron actually showed a meeting with Pablo Fajardo; isn't  
21 that right?

22 A. They did not because these day planners say:  
23 regarding the period from July 2011 to July 2012. And my  
24 meeting with Mr. Pablo Fajardo, the last meeting with Pablo  
25 Fajardo, as far as I can remember, took place between May

11:57 1 position in that regard.

2 Finally, I'd like to clarify that, indeed, I  
3 assumed that the day planner in which I had my notes of  
4 those meetings with Mr. Donziger and the conversations with  
5 Fajardo, well--and matters related thereto, well, I thought  
6 that I had the relevant day planners.

7 But when I went to look for those day planners, I  
8 was not able to find a couple of day planners that were  
9 vital, specifically those related to 2010 and 2011.

10 Q. Sir, did you turn over your calendars to the  
11 Chevron representatives?

12 A. At a given point in time, I put, at the disposal  
13 of Chevron's representatives, a number of day planners,  
14 possibly six or eight.

15 They chose those that were more contemporaneous to  
16 the date of our conversations and the others they  
17 considered were not relevant, and they discarded them.

18 Q. And did you turn over to Chevron representatives  
19 daily planners that you maintained?

20 A. I remember that I gave to them a day planner that  
21 has to do with July 2011 to December 2011, and the day  
22 planner contemporaneous to January 2012 to July 2012. They  
23 considered that pair of day planners, they asked me for  
24 them, and I gave them to them. The other day planners they  
25 saw related to 2007, 2008, 2005, et cetera, et cetera, I

12:00 1 and June 2011.

2 Q. Just so that the record is clear, none of the  
3 calendars or day planners that you provided to Chevron  
4 actually showed a meeting with Pablo Fajardo or Steven  
5 Donziger; isn't that right?

6 A. Yes, sir.

7 Q. And did the Chevron representatives ask you to  
8 sign a permission slip for them to get access to your phone  
9 records?

10 A. I remember that that was the case. Yes, sir.

11 Q. And did Chevron get access to your phone records?

12 A. It is my understanding that a petition was made to  
13 the relevant telephone company, and they said that some  
14 technical issue had taken place; they had been lost and  
15 they weren't able to give them the oldest records. But  
16 they were able to provide the period of time, two or three  
17 months contemporaneous to the date where those records were  
18 requested.

19 Q. And had you retained any of your bills or invoices  
20 reflecting telephone calls that you made or received in  
21 2010 or 2011?

22 A. I have been somewhat organized in that regard.  
23 And the invoices for services of telephone service, water,  
24 gas--I maintained them for some time. But then when I  
25 moved to the U.S., I discarded all those documents and I



12:02 1 threw it out.  
 2 Q. Did you offer to Chevron the opportunity for them  
 3 to review your cell phone records, your personal cell phone  
 4 records before you threw them out?  
 5 A. I do not understand the content of your question,  
 6 because I don't remember having a specific phone record.  
 7 I've not been in the habit of asking IETEL, in this case,  
 8 for a monthly record of details of all of the calls. I  
 9 haven't done so, and I do not know whether they were able  
 10 to obtain that document on my behalf.  
 11 Q. You're not aware of any currently existing record,  
 12 documentary phone record evidencing any phone calls between  
 13 you and either Mr. Donziger or Mr. Fajardo; isn't that  
 14 right?  
 15 A. No, I do not know. I haven't seen any.  
 16 Q. Now, Mr. Guerra, would you agree with me that you  
 17 have previously characterized Judge Zambrano as very  
 18 distrustful?  
 19 A. I referred to Mr. Zambrano, based on my view, and  
 20 I had said that he was a strong, rigorous person who didn't  
 21 trust very easily and somehow unpredictable. That's what I  
 22 had said about him.  
 23 Q. At Slide 120 which makes reference to Mr. Guerra's  
 24 November 17, 2012 Declaration at Claimants 1616a, it is in  
 25 the white binder in Spanish. It is Tab 4 of Respondent's

12:05 1 binder. And if I may refer you to Paragraph 8--and again,  
 2 we have this on the screen--but you said that "Mr. Zambrano  
 3 is very careful and distrustful; and therefore, he would  
 4 tell me we had to be careful and not leave any evidence  
 5 regarding this."  
 6 And that was what you wrote and what you signed?  
 7 A. That is correct.  
 8 MR. KEHOE: Mr. President, I'm going to object  
 9 again. It's being presented as some type of impeachment  
 10 when, in fact, it was entirely consistent. I just don't  
 11 understand the process that's happening right now.  
 12 MR. BLOOM: I'm happy to do this any which way.  
 13 I'm happy to ask and keep going back and forth to the  
 14 documents. I was trying expedite this.  
 15 And at your suggestion, I'm now trying to give him  
 16 the testimony. I'm just trying to get through this. I  
 17 don't think these are controversial points.  
 18 MR. KEHOE: Okay. My only point is that the  
 19 witness answered the question. What's the reason to then  
 20 bring him to the place in his transcript where he said the  
 21 same thing?  
 22 MR. BLOOM: I guess I would appreciate a little  
 23 latitude with the understanding that I'm trying to move  
 24 this along.  
 25 MR. KEHOE: Okay.

12:06 1 PRESIDENT VEEDER: I think we understand the  
 2 problem, and let's continue.  
 3 BY MR. BLOOM:  
 4 Q. But at the same time that you said this, even  
 5 though you understood that Chevron believed you were Judge  
 6 Zambrano's ghostwriter and even though you had twice  
 7 approached Chevron for a bribe, you also have testified  
 8 that you and Judge Zambrano would meet at the airport to  
 9 exchange Court files and flash drives; isn't that right?  
 10 A. Yes, sir; that is correct.  
 11 Q. And the airport is a pretty public place, is it  
 12 not?  
 13 A. Yes, sir.  
 14 Q. And Mr. Fajardo allegedly worked from Judge  
 15 Zambrano's apartment; isn't that also right?  
 16 A. The question is a little bit confusing. Would you  
 17 please repeat me that?  
 18 Q. You have previously testified that Mr. Fajardo  
 19 worked on the Sentencia from Judge Zambrano's apartment;  
 20 isn't that right?  
 21 A. No, sir. You are wrong as to certain facts and  
 22 circumstances.  
 23 Q. Is it your understanding that Mr. Fajardo met with  
 24 Judge Zambrano in his apartment?  
 25 A. That's what I said, that once I got to Lago Agrio

12:08 1 to observe the document at the request of Mr. Zambrano, I  
 2 found Mr. Zambrano and Mr. Fajardo already there together,  
 3 they greeted me because I had traveled to that city.  
 4 Q. So you and Mr. Fajardo were both at Judge  
 5 Zambrano's apartment; correct?  
 6 A. Together with Mr. Zambrano.  
 7 Q. And you all would do this even after Chevron's  
 8 contractor secretly videotaped meetings with Judge Nuñez;  
 9 correct?  
 10 A. The question is a little bit confusing to me. But  
 11 if you allow me, the issue of Judge Nuñez, had happened  
 12 long time before. The issue regarding Judge Nuñez, the  
 13 videos on Judge Nuñez were previous to August 2009 or took  
 14 place in or happened in August 2009.  
 15 And the meeting I'm referring to, the meeting I  
 16 had with Mr. Fajardo and Mr. Zambrano took place a couple  
 17 of weeks before January 14th, 2011.  
 18 Q. And I guess that's my point, sir. You understood  
 19 that Judge Nuñez was secretly videotaped in 2009; correct?  
 20 A. Based on the news, I know that Judge Nuñez was  
 21 secretly videotaped in 2009.  
 22 Q. And here you are allegedly exchanging flash drives  
 23 and documents at the Quito airport and going along with  
 24 Mr. Fajardo to the apartment of Judge Zambrano in late 2010  
 25 or early 2011.

12:10 1 Am I understanding the chronology correctly?  
 2 A. No, sir. With due respect, you are  
 3 misunderstanding it. If you allow me, the meetings that I  
 4 usually had with Mr. Zambrano were held on Friday afternoon  
 5 at the Quito airport or in the nearby area to the airport  
 6 in an area close to the main entrance to the airport where  
 7 there is the TAME freight--the freight department for TAME.  
 8 This is the place where shipments are sent or received.  
 9 And our meetings, as agreed over the phone, were  
 10 held at the Aeropuerto Shopping Center, that's what it's  
 11 called, that's it's name, that is across from the Quito  
 12 airport. I am talking about Quito's old airport on La  
 13 Prensa Avenue in Quito. This Aeropuerto Shopping Center is  
 14 approximately around 150-200 meters from the main entrance  
 15 to the Quito airport.  
 16 Q. Sir, when was the last time you were in Judge  
 17 Zambrano's apartment?  
 18 A. This was when we introduced cosmetic changes to  
 19 the ruling in the Chevron Case.  
 20 Q. Thank you. And in May 2012, isn't it true that  
 21 you actually told Chevron's investigators that Mr. Zambrano  
 22 didn't want you to be seen in Lago Agrio?  
 23 A. If you allow me to look at the quote, I may  
 24 confirm it as you say that you have it. But I do  
 25 understand that I was told that, as many other things.

12:13 1 MR. BLOOM: If I may refer the Witness to Tab 1 of  
 2 our binder at Page 15; for the record, it's reflected in  
 3 Slide 121, and the document is Respondent's Exhibit 1214.  
 4 (Pause.)  
 5 BY MR. BLOOM:  
 6 Q. Sir, have you had a chance to look at the  
 7 document?  
 8 A. Yes, sir.  
 9 Q. And you would agree that Mr. Zambrano didn't want  
 10 you to be seen in Lago Agrio?  
 11 A. Mr. Zambrano and I agreed that it was not the best  
 12 to be seen together on the streets of Lago Agrio. But we  
 13 had no problems meeting in his own domicile or when I went  
 14 to his personal office--or rather, the office he had at the  
 15 Courthouse. But we were careful not to be seen together on  
 16 the street.  
 17 Q. Because it couldn't be known that you guys were  
 18 part of the same office--you couldn't be known as part of  
 19 his office; is that correct?  
 20 A. Yes. Perception--the perception was that people  
 21 could think that we were conspiring on some things;  
 22 especially the local lawyers.  
 23 Q. Now, sir, in June of 2012, did you tell Chevron's  
 24 representatives that there was no reason for you to consult  
 25 with Judge Zambrano during the weekend, you were allegedly

12:17 1 working on the Sentencia?  
 2 A. Yes. I told them that.  
 3 Q. And that's because you understood that Judge  
 4 Zambrano had enough confidence in you that he trusted that  
 5 you would do what was proper and prudent?  
 6 A. That is correct.  
 7 Q. And because you told Chevron's investigators how  
 8 much trust and confidence Judge Zambrano had in you, you  
 9 thought that made you even more valuable to Chevron; isn't  
 10 that right?  
 11 A. No. That was not my understanding. I had been  
 12 working already for several years, assisting with law suits  
 13 on civil law matters Mr. Zambrano had, and he trusted me  
 14 that I was doing it right.  
 15 Q. But isn't it true that about a year later in  
 16 May 2013, you allegedly remembered that you had had dinner  
 17 together with Judge Zambrano in the evening when you were  
 18 actually working on the draft Sentencia?  
 19 A. Yes. That's my view that that actually happened.  
 20 Q. And in the New York trial, do you recall  
 21 testifying that you were in constant communication with  
 22 Mr. Zambrano during the days when you were working on the  
 23 Judgment?  
 24 A. I possibly said it. But the telephone  
 25 communication with Judge Zambrano took place when I was

12:19 1 trying to find out whether he was ready--whether I was  
 2 ready to go out for dinner, or if I had concluded, or  
 3 whether I had made progress in that sense. It was not on  
 4 the topics that I was addressing when working on the Draft  
 5 Judgment.  
 6 Q. Sir, when you made your edits to the Sentencia,  
 7 you did it electronically. That's your testimony. It was  
 8 actually in a computer; correct?  
 9 A. Yes, sir.  
 10 Q. And you did not use redline or track changes or  
 11 whatever it might be called in Spanish?  
 12 A. I was not an expert on those topics and under--and  
 13 in underlining.  
 14 Q. So how did Judge Zambrano even know what changes  
 15 you made?  
 16 THE INTERPRETER: I'm just trying to clarify his  
 17 answer. I didn't understand completely what he said.  
 18 PRESIDENT VEEDER: Please repeat your answer.  
 19 THE WITNESS: What I would like to say is that I  
 20 did not know how to, for example, highlight yellow or  
 21 introduce colors. That's the reason why I did not use that  
 22 mechanism.  
 23 But I did underlined words or sentences.  
 24 BY MR. BLOOM:  
 25 Q. You knew how to underline in the document?

12:21 1 A. Yes, sir.  
 2 Q. Did you delete any words?  
 3 A. On the original document I was given, the answer  
 4 is no. I copied that document in the same computer, and I  
 5 worked on the duplicate copy that I created.  
 6 Q. And then when you were revising the document, did  
 7 you suggest the deletion of any words? Did your edits  
 8 include any deletions of even a single word?  
 9 A. Yes, sir, some; some words, some phrases, the  
 10 order of some things.  
 11 Q. And how would Judge Zambrano know which words you  
 12 were deleting?  
 13 A. Because they were already in the duplicate copy.  
 14 Q. So you expected him to look and compare the two  
 15 copies?  
 16 A. Preferably not him but Mr. Fajardo, because  
 17 Zambrano was not very good like--and I wasn't either in  
 18 handling the computer. But Mr. Fajardo is as good as many  
 19 others.  
 20 Q. So you have a 188-page document. You deleted a  
 21 few words, and you wanted Mr. Fajardo to find those words  
 22 that you deleted?  
 23 A. If it was not going to be Mr. Fajardo, at least  
 24 the assistant, the assistant Mr. Zambrano had because I  
 25 knew, I had observed that his personal assistant was the

12:23 1 one who transferred from the actual document, the physical  
 2 copies that Mr. Zambrano received from me as the assistant,  
 3 to transfer those physical documents into the computer.  
 4 Q. Sir, returning for a moment to your contention  
 5 that you were to receive 20 percent or so of the \$500,000  
 6 you say was promised to Judge Zambrano, let me ask you a  
 7 couple of questions.  
 8 Exactly how much money did you personally expect  
 9 to receive if Judge Zambrano received \$500,000?  
 10 A. Whatever Mr. Zambrano decided to give me, there  
 11 wouldn't be any problem with that.  
 12 Q. But you've also testified--and I'm happy to take  
 13 you through the documents. But I want to first establish  
 14 whether you'll agree with me that you have testified that  
 15 you expected to receive 20 percent; is that correct?  
 16 A. Yes, sir, at some point, I said that. But it was  
 17 my perception there was no specific offer by Mr. Zambrano.  
 18 But that was the habit, the tradition we had. I  
 19 would receive 20 percent of what he would receive. And if  
 20 at some point he received a thousand dollars, he would give  
 21 me 200.  
 22 Q. So your expectation was that you would receive  
 23 20 percent of \$500,000, which is \$100,000; correct?  
 24 A. Yes, sir.  
 25 Q. And what value do you contend that you added to

12:25 1 the final Sentencia?  
 2 A. The goal of my work in connection with the  
 3 Judgment was to have a Judgment that would seem to the  
 4 naked eye and would leave no doubt to have been drafted in  
 5 a normal way by the Superior Court of Justice in  
 6 conformance with the tradition, the form, the style. That  
 7 was the idea. That was the goal and also to have some  
 8 elegance in the text in the expression of the ideas, in the  
 9 use of syntax, the sentences, the use of terms. That was  
 10 my goal.  
 11 Q. And you were kind enough just now to tell us what  
 12 your goal was. My question is a little bit different.  
 13 What value did you actually add to the final  
 14 Sentencia as it was issued?  
 15 A. The fact that it would seem an original--a  
 16 document that would seem a document that originated at the  
 17 Superior Court of Sucumbíos.  
 18 Q. So you would make it look more legal; correct?  
 19 A. If you allow me more than a legal aspect, more in  
 20 terms of formatting, it had to do with a form with what was  
 21 usually done back then at the Court of Justice.  
 22 Q. You were trying to make it more proper, more  
 23 appropriate, more official-looking; correct?  
 24 A. That it would look--yes, as drafted by Judge  
 25 Zambrano.

12:28 1 Q. But, in fact, sir, you made very few changes to  
 2 the document; isn't that right?  
 3 A. Yes, sir.  
 4 Q. And your changes were mostly word changes. Would  
 5 you agree with me?  
 6 A. Words; and in some cases, stylistic formalities,  
 7 if you can use that term.  
 8 Q. And the word changes were due to your personal  
 9 preference; correct?  
 10 A. In some cases. But in others, it had to do with  
 11 the customary way--the natural way of drafting a ruling of  
 12 this sort by the Second Instance Court in Ecuador.  
 13 Q. In fact, according to your own Declaration--and  
 14 I'll give you the citation, if you want to look at it--you  
 15 returned the document to Judge Zambrano in a form that was  
 16 not too different from the one that you received,  
 17 allegedly, from the Plaintiffs; isn't that correct?  
 18 And let me know if you want to look at your  
 19 Declaration.  
 20 A. Yes. It is correct.  
 21 Q. And if, as you contend, Judge Zambrano solicited  
 22 and agreed to a bribe in exchange to let the Plaintiffs  
 23 prepare the Judgment, isn't it true that Judge Zambrano  
 24 didn't need you for a deal at all?  
 25 A. I cannot characterize whether I was essential for

12:30 1 Judge Zambrano or not. The truth is that during the time  
 2 during which Mr. Zambrano was the Judge of the Chevron  
 3 Case, I cooperated with him.  
 4 And the truth is that during the time that Judge  
 5 Zambrano was the Judge in civil cases, I wrote for him  
 6 between 300 to 400 judgments in different cases.  
 7 So I think that I must have added some value and  
 8 perhaps I was in some way necessary for Judge Zambrano.  
 9 Q. But the suggestions and changes that you made were  
 10 not taken into account, were they?  
 11 A. Upon reading the Judgment, something that happened  
 12 here in the United States when I read it in detail, I  
 13 noticed that, indeed, possibly the suggestions and changes  
 14 that I had recommended had not been taken into account.  
 15 Q. So I want to return to the question that I asked  
 16 you previously. And that is, what value did you contribute  
 17 to the final Sentencia?  
 18 A. I've explained this to you. For it to be seen as  
 19 issued out of the President of the Superior Court of  
 20 Justice of Sucumbíos, that it would seem that it was  
 21 prepared by the alternate President of the Superior Court  
 22 of Justice of Sucumbíos and not as it was stated, for  
 23 example.  
 24 Q. I understand that you have already testified as to  
 25 what your goal was, what you were trying to accomplish.

12:32 1 But I also understood you to confirm for me that your  
 2 changes and suggestions were not taken into account.  
 3 First, am I misunderstanding those two  
 4 conclusions?  
 5 A. No, you did not misunderstand. But I do want to  
 6 indicate that the changes that I suggested and I  
 7 noticed--and I noted those changes in the document, I then  
 8 later saw that those changes were not included in the  
 9 Judgment.  
 10 For example, the Judgment seems to have been  
 11 issued out of the panel of the Court of Justice of  
 12 Sucumbíos; but the panel of the Court of Justice represents  
 13 an Appellate Court, whereas the President of the is the  
 14 first instance court in the cases at issue.  
 15 Q. So let me try this one more time, sir; and then we  
 16 can move on.  
 17 If all of your suggestions and comments and edits  
 18 were rejected in the final Sentencia as issued, then does  
 19 that not mean that you did not make any contribution to the  
 20 final issued Sentencia?  
 21 MR. KEHOE: I'm going to object to the question.  
 22 It's argumentative. It's been answered twice. He's been  
 23 given all of the facts, and Mr. Bloom is looking for some  
 24 kind of a sound bite that will mischaracterize the facts.  
 25 PRESIDENT VEEDER: Mr. Bloom, ask your question.

12:34 1 MR. BLOOM: Thank you, sir.  
 2 BY MR. BLOOM:  
 3 Q. Now that we have our understanding, my question is  
 4 this: Given the fact that all of your edits and  
 5 suggestions and comments were rejected and did not find  
 6 their way into the final Sentencia as issued, would you  
 7 agree with me that, in fact, you provided no contribution  
 8 to the final Sentencia?  
 9 A. Rather, I'd agree with the fact that because of a  
 10 given circumstance they erased or they lost the document on  
 11 which I worked.  
 12 Q. Do they even see the document that you worked on?  
 13 A. Mr. Zambrano saw the final document that I worked  
 14 on. Evidently, it was not too, almost not to different  
 15 from the original document. But, rather the document I  
 16 worked on, the duplicate I made the relevant changes. I  
 17 changed terms, the format, words; and that document was  
 18 seen by Mr. Zambrano.  
 19 Q. Let me ask you this, sir.  
 20 By bringing you--well, strike that.  
 21 You believed you expected to receive about  
 22 \$100,000 for edits you did to a Sentencia that were never  
 23 accepted?  
 24 A. Well, not precisely. It wasn't about receiving  
 25 things exclusively for what you have stated.

12:36 1 The matter was that I--that I was going to  
 2 share--it was about me sharing a percentage, I hoped that  
 3 it would be 20 percent of what Judge Zambrano would receive  
 4 at the end or was going to receive at the end from the  
 5 Plaintiffs, for the fact of my having coparticipated  
 6 specifically in the rulings, in studying the record the  
 7 court order during Judge Zambrano's two periods, and that  
 8 whole general context, not exclusively for having gone a  
 9 couple of days to review one document, no. But rather for  
 10 keeping--this includes my continuing to keep the secret of  
 11 my ghostwriting and all those kinds of things.  
 12 It had to do with keeping this ghostwriting secret  
 13 secret and all those kinds of things.  
 14 Q. Now, sir, you've testified previously that the  
 15 deal was struck directly between Judge Zambrano and the  
 16 Plaintiffs and that you only learned about this alleged  
 17 bribe of \$500,000 through Judge Zambrano; isn't that  
 18 correct?  
 19 A. Yes, sir. But with the precedent that the initial  
 20 proposal related to the \$500,000 that I told Mr. Fajardo  
 21 then I confirmed it before Mr. Donziger and Mr. Yanza, all  
 22 of this suggest and requested by Mr. Zambrano.  
 23 Q. But allegedly only after Mr. Zambrano had already  
 24 spoken with the Plaintiffs. That's your testimony; isn't  
 25 that right?

12:38 1 A. No. Mr. Zambrano was the one who asked me to talk  
2 to Plaintiff representatives in connection with the  
3 \$500,000 and the drafting of the Judgment. And I spoke  
4 about this initially with Mr. Fajardo.

5 A few days later, I ratified the same proposal to  
6 Mr. Donziger, Mr. Yanza; Mr. Zambrano was also present at  
7 that time. And later on, Mr. Zambrano told me that in  
8 connection with this matter, this agreement, he had agreed  
9 directly with Plaintiffs' lawyers.

10 Q. But he didn't need you to cut a deal with the  
11 Plaintiffs. He could have done that himself, could he not?

12 A. Mr. Zambrano, as I said, was very careful. He was  
13 very distrustful. And I think that he asked me to put  
14 forth that proposal on his behalf because, ultimately, if  
15 that proposal that I made was recorded, he said, "Oh, I  
16 don't know anything about this."

17 But if this proposal was recorded and this came to  
18 light in the media and juricially, Judge Zambran would have  
19 come off poorly, and he wanted to avoid that risk.

20 Q. Well, in fact, you told Chevron that Fajardo did  
21 once approach Mr. Zambrano, and Zambrano threw him out of  
22 his office; isn't that right?

23 A. In connection with that, Mr. Fajardo told me about  
24 that event personally to me.

25 This occurred when Zambrano took over the Chevron

12:42 1 Sir, you told Chevron's investigators: "Fajardo  
2 is the one telling me, once he finds me, says, But, damn, I  
3 almost died. This monkey made me, had me leave; and, damn,  
4 he is impossible. There is no, damn, I just--not even, I  
5 damn. It would have been worse had I gone to propose  
6 something, he would have killed me. Damn."

7 So this is the story that you personally remember  
8 Mr. Fajardo telling you that you conveyed in this instance  
9 to the Chevron investigators; correct?

10 A. Yes, sir.

11 Q. And you also told the investigators that Zambrano  
12 wouldn't give them a chance--that's what you told Chevron's  
13 investigators; correct?

14 And that's at Page 70 of Tab 11. If you want to  
15 look at it, we have that on Slide 129.

16 Just so you understand the question, you told  
17 the investigators that Mr. Zambrano wouldn't give the  
18 Plaintiffs a chance; isn't that right?

19 A. Yes, sir.

20 Q. Then you continued, Zambrano "is not like me, for  
21 example, as far as temperament with everyone."

22 "Um, yes, come in, let's take a look, let's take a  
23 look. We'll do all that's possible. Be well."

24 And sometimes I would I would say, "Have some  
25 candy."

12:41 1 Case the first time, well, in this connection with this  
2 matter, Mr. Zambrano also corroborated about that somewhat  
3 aggressive attitude that he took.

4 Q. I'd like to show you a slide.

5 And for Counsels' edification, it's not for  
6 purpose of impeachment, it's for purpose of facilitation.

7 MR. KEHOE: Okay. On the issue of facilitation,  
8 can we get an estimate of when we might break for lunch?

9 PRESIDENT VEEDER: It's nearly quarter do 1:00.  
10 You were hoping you might finish this morning. How's it  
11 going?

12 MR. BLOOM: Great. What I would suggest is this  
13 line of questions, we'll break, I'll consult with my  
14 colleagues; and I might have five or ten minutes after.

15 PRESIDENT VEEDER: Fine. And this line of  
16 questioning will last?

17 MR. BLOOM: A couple of minutes.

18 PRESIDENT VEEDER: A couple of minutes. Thank  
19 you.

20 BY MR. BLOOM:

21 Q. So we have Slide 128 on the screen. For the  
22 Witness, this is Tab 11. This is Respondent's  
23 Exhibit 1213. And if I could refer you to Page 69 of the  
24 document--but again, I will read it from the screen to  
25 facilitate.

12:45 1 So you understand that you have a very inviting  
2 personality, and that's very different than Mr. Zambrano's  
3 personality; correct?

4 A. Yes, sir.

5 Q. And, in fact, you called Zambrano a tyrant,  
6 because he would not talk to the Plaintiffs; isn't that  
7 right?

8 A. I am answering that, sir, yes.

9 Q. And after Mr. Zambrano threw the Plaintiffs out  
10 the door, you told Chevron's investigators that the  
11 Plaintiffs had to work through you; isn't that right?

12 A. Possibly I did that, sir. If it's stated there,  
13 yes.

14 MR. BLOOM: Now would be an appropriate time for  
15 lunch, Mr. President.

16 PRESIDENT VEEDER: We have one question from the  
17 Tribunal.

18 ARBITRATOR LOWE: It's just a point--

19 THE INTERPRETER: Microphone, please.

20 ARBITRATOR LOWE: It's a small point of  
21 clarification that I can probably best put through  
22 Mr. Bloom.

23 I understood the Witness to say that the day  
24 planners for 2010, 2011 had been lost and he couldn't find  
25 them.

12:46 1 I'm not entirely clear in my mind what the word is  
 2 that we're using to describe the document which appeared on  
 3 Slide 13. Is that not a day planner or a calendar? What  
 4 do we call that?  
 5 It's Slide 13. It's from the Torres report, and  
 6 it appears also as Tab 22 in the second binder.  
 7 MR. BLOOM: My understanding is that's a day  
 8 planner.  
 9 ARBITRATOR LOWE: And which year is it for?  
 10 MR. BLOOM: It's 2011. It looks like June and  
 11 July of 2011.  
 12 ARBITRATOR LOWE: Maybe that's something that I  
 13 can look at after lunch, because at Page 815, Line 11 of  
 14 the transcript today, I understood the Witness to say that  
 15 he couldn't find that document. Maybe that's something we  
 16 could check on after lunch.  
 17 PRESIDENT VEEDER: Before we break for lunch, one  
 18 other further item, we'd like to welcome Ms. Kathryn Owen,  
 19 the Tribunal's expert, who is coming to listen to the  
 20 technical witnesses starting at Monday morning. But  
 21 Ms. Owen has come early and is sitting with our  
 22 ICSID--sorry, PCA Secretariat. I think many of you know  
 23 her already.  
 24 So we'll break for lunch. We'll come back at 10  
 25 to 2:00. And again, Mr. Guerra, we ask you not to discuss

12:48 1 the case or your testimony away from the Tribunal.  
 2 (Whereupon, at 12:54 p.m., the proceedings were  
 3 adjourned until 2:00 p.m., the same day.)  
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01:42 1 AFTERNOON SESSION  
 2 PRESIDENT VEEDER: Let's resume.  
 3 BY MR. BLOOM:  
 4 Q. Mr. Guerra, we're coming towards the close of the  
 5 cross-examination, and I thank you for being patient with  
 6 me.  
 7 Sir, have you paid any U.S. taxes on all income  
 8 received while in the United States?  
 9 A. Thank you. Not yet. But as far as I know,  
 10 Chevron is going to do it--to do it in due time.  
 11 Q. Do you know what your income was for 2013?  
 12 A. Yes. I have been receiving the amount of \$12,000  
 13 a month during 2013. And we're talking about 12 by 12,  
 14 we're talking about \$144,000.  
 15 Q. Do you understand that your U.S. income would  
 16 include finance benefits beyond \$12,000 a month? For  
 17 example, payments made on your behalf for your counsel?  
 18 A. I sincerely have to tell you that I have no  
 19 knowledge about those kinds of details.  
 20 Q. So you don't know whether your income, for U.S.  
 21 tax purposes, would include payments made by Chevron on  
 22 your behalf, even if not made directly to you?  
 23 A. I am getting that information from you at this  
 24 point in time. I don't know anything about that matter.  
 25 Q. And you don't know how much you may be required to

02:03 1 pay in 2013; correct?  
 2 A. I do not.  
 3 Q. Or for the tax year of 2014?  
 4 A. The same answer: No.  
 5 Q. You only know that Chevron will be paying all of  
 6 your taxes for 2013 and 2014?  
 7 A. In a supplementary agreement, the last one that  
 8 was signed about a month ago, in March of 2015, that  
 9 Agreement was made in the sense that Chevron offered to pay  
 10 the taxes that I owe for the years 2013 and 2014, because  
 11 of taxes that I owe the U.S. government.  
 12 Q. Did Chevron offer or did you ask Chevron to pay  
 13 for the taxes?  
 14 A. Frankly speaking, I have to say that I asked  
 15 Chevron to do that.  
 16 Q. And Chevron agreed?  
 17 A. It did.  
 18 Q. Sir, I want to ask you to turn to--or at least I  
 19 want to reference a document provided to Respondent by  
 20 Claimants, and it is in your binder at R-39--I'm sorry--Tab  
 21 39. It is Respondents' Exhibit 892.  
 22 And for the record, we also have Slide 131 on the  
 23 screen.  
 24 Are you with me, sir, so far?  
 25 A. I have not found it in Spanish.

02:05 1 Q. Let me first ask you to turn to Page 6 of that  
 2 document and confirm for me that your signature may be  
 3 found towards the bottom of that page.  
 4 A. Yes, that is my signature.  
 5 Q. And I will represent to you that this appears to  
 6 be an agreement between you and Chevron.  
 7 And you anticipated my question: Is this  
 8 document--is the contract dated January 27, 2013, that you  
 9 signed, also in Spanish?  
 10 A. Yes, sir.  
 11 Q. Since we do not have the Spanish version here, I'm  
 12 going to have to rely on the court reporter and interpreter  
 13 to help me. But I will be referencing, on Page 4 of that  
 14 document, at Tab 39, at Paragraph 5.  
 15 And this paragraph reads, in English--and we will  
 16 have it translated for you, sir: "Chevron is under no  
 17 obligation to make any further payments to Guerra pursuant  
 18 to this agreement after the 24th month. Chevron will  
 19 obtain, at least one month prior to the last of the 24  
 20 monthly payments, an independent third-party assessment of  
 21 the ongoing risk, if any, to Guerra's personal safety and  
 22 security at that time, and the nature and time horizon of  
 23 any such risks. If that independent assessment finds  
 24 substantial evidence of a risk to Guerra's personal safety  
 25 and security, Chevron and Guerra will act in good faith to

02:07 1 reach an agreement on new terms (including the provisions  
 2 of Section II(B)(1) and the duration of any agreement) to  
 3 address Guerra's personal safety and security concerns  
 4 under all the circumstances as they exist at that time.  
 5 Chevron shall base any agreement in this regard on that  
 6 independent assessment. Any further agreement will not be  
 7 contingent on the content of Guerra's statements or  
 8 testimony or the outcome of any matter in which Guerra  
 9 testifies, or on the outcome of any investigation in which  
 10 he provides statements or testimony."  
 11 Sir, do you remember generally the substance of  
 12 this paragraph as I read it to you?  
 13 A. I do, sir.  
 14 Q. And you knew when you prepared and executed your  
 15 Declarations and provided deposition and trial testimony,  
 16 that a new contract might one day still be negotiated for  
 17 you at the conclusion of the 24th month of this  
 18 agreement; isn't that right?  
 19 A. Yes. I understood that, as of 27 January 2013,  
 20 then two years after that, the validity of this agreement  
 21 would end, according to the terms stated therein.  
 22 Q. And, in fact, you executed a supplemental  
 23 agreement, did you not?  
 24 A. I did.  
 25 Q. And that supplemental agreement, again, only in

02:10 1 English, with apologies, is at Tab 38, behind the  
 2 green-colored page.  
 3 And I would ask you, sir, to turn to Page 6 of  
 4 this document and confirm for us that you, in fact, signed  
 5 this document.  
 6 A. Yes, I did. My signature appears therein.  
 7 Q. And do you recall--and please let me know if you  
 8 don't, because we can, again, read out the paragraph and  
 9 have it translated.  
 10 But do you generally recall a similar provision as  
 11 the one that I just read, except it says that Chevron is  
 12 under no obligation to make any further payments to Guerra  
 13 pursuant to this agreement after the 12th month, whereas  
 14 the predecessor agreement said after the 24th month, but  
 15 raised the possibility of yet a further agreement with you?  
 16 Do you recall that?  
 17 A. I do recall that, yes, sir.  
 18 Q. And you understand that this current agreement  
 19 with Chevron will expire in March of 2016?  
 20 A. That is correct, yes.  
 21 Q. And today, as you testify, you also understand  
 22 that a new agreement might be negotiated to cover a  
 23 timeframe after March of 2016; is that correct?  
 24 A. Yes. If the circumstances referred to in one of  
 25 the clauses of this agreement occurs, yes.

02:12 1 MR. BLOOM: And with that, Members of the  
 2 Tribunal, I tender the Witness.  
 3 PRESIDENT VEEDER: Thank you very much.  
 4 Do you want a short break, or should we proceed  
 5 immediately with the reexamination?  
 6 MR. KEHOE: I think we can just proceed  
 7 immediately. Thank you.  
 8 PRESIDENT VEEDER: Again, just for planning  
 9 purposes, time estimate?  
 10 MR. KEHOE: Yes. As I had mentioned to Mr. Bloom  
 11 during the lunch break, I expect to be less than one hour.  
 12 PRESIDENT VEEDER: Okay.  
 13 MR. KEHOE: Thank you.  
 14 Mr. Guerra--  
 15 Oh, if you wouldn't mind, I'm going to just hand  
 16 out one single binder, and that way we can eliminate the  
 17 multitude of binders that are in front of everyone.  
 18 THE INTERPRETER: Microphone, please.  
 19 (Pause.)  
 20 THE INTERPRETER: There is no microphone.  
 21 MR. KEHOE: It's--I find it difficult to read the  
 22 TAME shipping record in such small type, which is Exhibit 3  
 23 in the binder that--or Tab No. 3 in the binder that I just  
 24 gave you, so we've had it blown up. It's an exact  
 25 duplicate of Exhibit 1616a, Attachment F, like "Frank."

02:14 1 REDIRECT EXAMINATION  
 2 BY MR. KEHOE:  
 3 Q. Mr. Guerra, I just want to clear up something from  
 4 your testimony this morning. I believe it's--you just made  
 5 a misstatement. It's not a big deal, but we may as well  
 6 clarify the record.  
 7 On Page 84 of the transcript, you were being--  
 8 asked.  
 9 (Pause.)  
 10 PRESIDENT VEEDER: You might start again, given  
 11 the technical problem.  
 12 MR. KEHOE: Sure.  
 13 BY MR. KEHOE:  
 14 Q. Mr. Guerra, can you hear me in Spanish?  
 15 A. I do, yes. Right now I do.  
 16 Q. Thank you.  
 17 Mr. Guerra, I want to ask you just a few questions  
 18 to clarify, I think, a misstatement by you in the record.  
 19 I think you just got two names confused. It's not a big  
 20 deal, but we may as well clean it up while we're here.  
 21 On page 83 of the transcript, you were asked,  
 22 "Now, sir, you've testified previously that the deal was  
 23 struck directly between Judge Zambrano and the Plaintiffs,  
 24 and that you only learned about this alleged bribe of  
 25 \$500,000 through Judge Zambrano; isn't that correct?"

02:15 1 And you said, "Yes, sir, but with the precedent  
 2 that the initial proposal related to the \$500,000 that I  
 3 had told Mr. Fajardo then I confirmed it before  
 4 Mr. Donziger and Mr. Yanza, all this as suggested and  
 5 requested by Mr. Zambrano."  
 6 So that's all good.  
 7 But then you were asked, "But allegedly  
 8 after--only after Mr. Zambrano had already spoken with the  
 9 Plaintiffs--that's your testimony; isn't that right?"  
 10 And you said, "No. Mr. Zambrano was the one who  
 11 asked me to talk to the Plaintiffs' representatives in  
 12 connection with the \$500,000 and the drafting of the  
 13 Judgment. And I spoke about this initially with  
 14 Mr. Fajardo, and a few days later I ratified the same  
 15 proposal to Mr. Donziger, Mr. Yanza--and Mr. Zambrano was  
 16 always present at the time. And later on Mr. Zambrano told  
 17 me, in connection with this matter, this agreement--he had  
 18 agreed directly with the Plaintiffs lawyers."  
 19 At the end there, where you said that Mr. Donziger  
 20 and Mr. Yanza were joined by Mr. Zambrano, did you mean to  
 21 say Mr. Fajardo?  
 22 MR. BLOOM: Objection.  
 23 PRESIDENT VEEDER: For the moment, please don't  
 24 translate what I'm saying into Spanish.  
 25 MR. KEHOE: There is no dispute about this between

02:17 1 the Parties.  
 2 PRESIDENT VEEDER: Well, there is obviously a  
 3 dispute, because there's an objection.  
 4 MR. KEHOE: Okay.  
 5 PRESIDENT VEEDER: But in a sense, this is  
 6 something that's--the Witness has said--I can see the point  
 7 you're making, but can you really do this by way of  
 8 redirect in the way you've done it?  
 9 To put it mildly, it's about as leading as it can  
 10 possibly be.  
 11 MR. KEHOE: It is, and the reason that I did it  
 12 that way is because, frankly, the Parties do not  
 13 disagree--Mr. Donziger has admitted under oath that he was  
 14 in the Honey Honey restaurant with these people--  
 15 PRESIDENT VEEDER: We understand that.  
 16 MR. KEHOE: -- and not Judge Zambrano.  
 17 PRESIDENT VEEDER: We understand that. It's just  
 18 a question of--the witness has actually said what he said.  
 19 It's for us really to work out whether it's a  
 20 mistake or whether it's a genuine statement on his behalf.  
 21 MR. KEHOE: Okay.  
 22 PRESIDENT VEEDER: I just query whether you can do  
 23 it in the way you indicated.  
 24 MR. KEHOE: That's fair enough. I'll ask it  
 25 differently.

02:18 1 BY MR. KEHOE:  
 2 Q. Mr. Guerra --  
 3 MR. KEHOE: Oh, if we can have the translation  
 4 back, please.  
 5 PRESIDENT VEEDER: Yes. I'm sorry.  
 6 Could you please start translating into Spanish  
 7 again?  
 8 BY MR. KEHOE:  
 9 Q. Mr. Guerra, I'm going to ask you a different  
 10 question.  
 11 Who was present at the meeting in September or  
 12 October of 2010 at the Honey Honey restaurant? Yourself  
 13 and who else?  
 14 A. Mr. Donziger, Mr. Fajardo, and Mr. Yanza. Those  
 15 three individuals, including myself. So four exclusively.  
 16 Q. Thank you. I'm moving on to a different topic  
 17 now.  
 18 Mr. Guerra, you were asked quite a few times  
 19 yesterday about the extent to which the physical evidence  
 20 supports your claim that you ghostwrote orders for  
 21 Mr. Zambrano in the Chevron Case beyond simply taking your  
 22 word for it.  
 23 Do you remember that, those lines of questions?  
 24 A. Yes, I do remember it.  
 25 Q. And similarly, on the same topic, I'm going to ask



02:19 1 you some questions about this.  
 2 Do you remember you were asked quite a few times  
 3 about the physical evidence and the extent to which it  
 4 supports your claim that the Lago Agrio Plaintiffs were  
 5 paying you to move the case along faster in your role as a  
 6 ghostwriter for Mr. Zambrano, other than simply taking your  
 7 word for it? Do you remember all those questions?  
 8 A. Yes, I do.  
 9 Sir, a little slower, please.  
 10 Yes, I remember these questions that were related  
 11 to this matter, and I also remember the content of the  
 12 answers that I provided in that regard.  
 13 Q. Okay. I'd like to look at some physical evidence  
 14 with you, and I'll ask you to please open the binder in  
 15 front of you to Tab 5A. It is Exhibit 1616a, which is your  
 16 November 17, 2012, Declaration, Attachment O.  
 17 Do you recognize that document, sir?  
 18 A. I do, sir, yes. I recognize it. It is the first  
 19 Ruling that I wrote for Mr. Zambrano during his first  
 20 tenure in the context of the Chevron Case.  
 21 Q. Looking five or six lines down, you wrote, "I  
 22 hereby assume jurisdiction over Case No. 2-2003," filed by  
 23 Maria Aguinda against Chevron for environmental damage.  
 24 Why did you write that? What was the timing and  
 25 the context of this October 20, 2009, draft order?

02:21 1 A. Yes, thank you.  
 2 Procedurally, the law in Ecuador establishes that  
 3 the judge upon taking over a case as in this case it was  
 4 Judge Zambrano's first turn, he expressly has to issue a  
 5 court order. The order is different from a decree, because  
 6 here we find the term "whereas," "vistos." And, in this  
 7 order which is the first order issued by Mr. Zambrano, it  
 8 expressly provides reasons for the background that  
 9 determined the reason why Judge Zambrano took over the case  
 10 as the Judge presiding over the case.  
 11 After making reference to those background events  
 12 very briefly in this ruling, he states: Consequently, in  
 13 my capacity as Alternate President of the Court or  
 14 Alternate Judge, I take over of the Case No. XXX, that  
 15 Maria Aguinda has brought against, Chevron, et cetera.  
 16 And so once he has the power to act as a judge in  
 17 this case, he indicates that procedurally he's going to  
 18 make decisions and resolutions, and then he starts  
 19 indicating each one of the points that have to do with the  
 20 Orders that he has issued in order to move the case along.  
 21 I hope that I've answered your question.  
 22 Q. You have.  
 23 And did you write that language that you just  
 24 talked about?  
 25 A. I did, sir, yes.

02:23 1 Q. Turn the page, if it you would, please. The  
 2 paragraphs are numbered paragraphs. Down near the bottom,  
 3 we see paragraph numbered 13.  
 4 And tell me when you're there.  
 5 A. Yes, I have it before me.  
 6 MR. BLOOM: Mr. President--and I don't want to be  
 7 intervening for my friend's redirect, but I am a little bit  
 8 concerned in terms of where we're going and whether this is  
 9 exceeding the scope of cross. I did not get into the  
 10 substance of any of the Orders or the nine Orders that were  
 11 on his hard drive.  
 12 We--this is beginning to sound like maybe a direct  
 13 examination that they were preparing, but I'm very  
 14 concerned that we are going down a road--and if the only  
 15 link is that I asked the Witness about physical evidence,  
 16 that cannot be an invitation for them to now use that to  
 17 basically make whatever affirmative case that's beyond the  
 18 scope of my cross-examination.  
 19 PRESIDENT VEEDER: Let's see where it goes.  
 20 Please continue.  
 21 MR. KEHOE: Thank you.  
 22 BY MR. KEHOE:  
 23 Q. So paragraph numbered 13 refers to a brief filed  
 24 by Dr. Adolfo Callejas, counsel for the defendant, on  
 25 September 11, 2009.

02:24 1 Sir, what was Dr. Callejas asking for on behalf of  
 2 Texaco in this application, and what was your ghostwritten  
 3 ruling with respect to that request?  
 4 A. Mr. Callejas, in his motion--in the motion in  
 5 connection with the ruling stated in numeral 13, asked  
 6 that all the procedural steps taken by the former judge,  
 7 Juan Nuñez, for all of that to be declared null and void,  
 8 absolutely null and void. That was the motion.  
 9 That was the claim, and in accordance with what is  
 10 stated under 13, that you make a reference to, I expressly  
 11 stated that the grounds for procedural nullity determined  
 12 by the law, Articles 346 and Article 1014 of the Code of  
 13 Civil Procedure that had to be applied to this case, did  
 14 not include as grounds for nullity what was stated or  
 15 singled out in the motion filed by Mr. Callejas. And that  
 16 was precisely the support and grounds that were the basis  
 17 for denying Mr. Callejas his motion to annul all of the  
 18 Court's proceedings during Judge Nuñez's tenure.  
 19 MR. BLOOM: And I'd like to renew the objection,  
 20 Mr. President. We've had five years or more of briefing on  
 21 these subjects. This is not a subject matter that I  
 22 covered in the cross-examination at all.  
 23 MR. KEHOE: I respectfully disagree completely  
 24 with Counsel's argument.  
 25 Most of the cross-examination was spent on an

02:27 1 effort to undermine the credibility of the witness by  
 2 suggesting that this Tribunal needs only to rely on the  
 3 Witness' word, including an extensive period of time on the  
 4 TAME shipping records, which I'm going to get to in a  
 5 minute, where Counsel was attempting to show that  
 6 Mr. Guerra was not shipping Chevron Orders.  
 7 This goes to the heart of one of the two main bits  
 8 of testimony that Mr. Bloom was soliciting. I don't see  
 9 how it could be remotely outside the scope.  
 10 MR. BLOOM: The substance of the Orders have  
 11 nothing to do with that.  
 12 PRESIDENT VEEDER: Let the Counsel deliberate.  
 13 (Pause.)  
 14 (Comments off the record.)  
 15 PRESIDENT VEEDER: Thank you for your submission.  
 16 The Tribunal has deliberated, and the objection is  
 17 overruled. Please continue.  
 18 BY MR. KEHOE:  
 19 Q. Mr. Guerra, please turn to Tab B in the binder in  
 20 front of you. It's Exhibit 1616a, your  
 21 November 12th--November 2013 Declaration Attachment P,  
 22 like "Paul."  
 23 Tell me when you're there.  
 24 A. I do, sir, yes.  
 25 Q. Now, do you recognize this document?

02:29 1 A. I do, yes. This is a Ruling prepared by me in my  
 2 computer at the date stated here.  
 3 Q. On the date. Now, let me ask you about that.  
 4 On the page on the left--right, it's up's the  
 5 screen--it says "metadata fields." And I am told that the  
 6 "docdate," the fourth line down, dated November 18, 2009,  
 7 is the last date that you worked on this document,  
 8 according to your computer.  
 9 And my question to you is, if you look at the next  
 10 page, the date is November 20th, 2009, which is two days  
 11 later.  
 12 Do you know why that is, why those dates are  
 13 different?  
 14 A. I used to place an estimated date--perhaps two or  
 15 three days later on because, generally, when I was working  
 16 on these Orders, I worked late Friday evening and Saturday  
 17 or Sunday. So the dates that I wrote was possibly the very  
 18 first or second business day after that weekend, and I did  
 19 it for purposes of having both Mr. Zambrano and his  
 20 assistant--or his assistant who would transfer these  
 21 Rulings to their computers for later editing.  
 22 Well, they didn't--I didn't want them to make a  
 23 mistake. I was scared that if I wrote the date of a  
 24 Saturday, perhaps they thought, well, they're going to  
 25 include a Saturday date on the ruling and then may cause a

02:31 1 problem.  
 2 So, they knew, Mr. Zambrano knew, that I placed  
 3 this date. Sometimes this date, as I remember it was  
 4 respected by him. Or, otherwise, this date was respected  
 5 by him, or he placed the date when the ruling was asked of  
 6 them, two, three, or four days after I prepared it.  
 7 Q. Like the last Order, Mr. Guerra, this one is  
 8 sequentially numbered paragraphs. Where does this Order  
 9 end, the actual Order?  
 10 A. Thank you very much.  
 11 The Order finishes at No. 12 where it says "be it  
 12 notified." All of the Rulings are completed with that  
 13 formal text, be it notified, or it is so ordered.  
 14 Q. Now, turn the page. Even though you've just  
 15 testified the Order is ended with notice to be given, we  
 16 see lots of--more words.  
 17 What is that? Why was that in your computer as  
 18 part of this order?  
 19 A. The truth of the matter is that due to lack of  
 20 technique or time, I was hurried here. Generally I used to  
 21 copy the first ruling to develop a second one. And in this  
 22 second one which was contemporaneous with the documents  
 23 that I received, so I used some literature that was already  
 24 used in the first Ruling.  
 25 For example, generally at the very beginning

02:33 1 where it says President of the Superior Court of Justice of  
 2 Sucumbíos the trial of Mrs. Aguinda against Chevron, number  
 3 such and such, generally that--obviously, so I wouldn't  
 4 have to Retype because that would perhaps take time. And  
 5 that's how I did it, that's how I did it one after the  
 6 other, one after the other, to the point that it  
 7 accumulated it became, it accumulated. I didn't believe  
 8 that with time this would leave a bad impression of me -  
 9 but there it is. These were the accumulated remnants of the  
 10 previous court orders, one after the other.  
 11 Q. And, sir, just to be clear, neither I nor anyone  
 12 else is suggesting that this creates a bad impression on  
 13 you. I'm just asking you the facts of how this document  
 14 was created.  
 15 Please turn to C, Tab 5C, which is C 1616a,  
 16 Attachment Q.  
 17 Do you recognize this document?  
 18 A. Are you referring to the document dated  
 19 December 1st, 2009? Yes.  
 20 Q. Yes, sir. That's exactly what I'm referring to.  
 21 So you're there?  
 22 A. Yes, sir.  
 23 Q. Now, again, we see the paragraphs are numbered  
 24 sequentially. And I'm going to ask you to turn to  
 25 paragraph numbered 4.

02:35 1 A. Yes, sir.  
 2 Q. And you don't need to read the entire paragraph.  
 3 I'm not going to be asking you about the substance of it.  
 4 But I note that, until the end, until the  
 5 parenthetical at the end, all of the text is in normal type  
 6 of capital and lower case letters. And then at the end,  
 7 you have a Note in all caps.  
 8 And my question to you is, why did you write that  
 9 Note? Why did you write it in all caps? What does it have  
 10 to do with?  
 11 A. In that note I said: Watch out, note to Judge  
 12 Zambrano or his assistant, precisely so they would comply  
 13 with the suggestions I was making as to how to fill in the  
 14 blanks.  
 15 In this case, it refers to including  
 16 the--inserting the names of the professionals, of the  
 17 corresponding experts, which I did not include and which I  
 18 was unable to complete.  
 19 And this is clear, since the list of the experts  
 20 that were accepted or qualified by the Public Prosecutor is  
 21 found in the Secretary of the Judiciary, and I did not have  
 22 that information.  
 23 In the case of this case, Judge Zambrano usually  
 24 invited the Parties to the proceeding before naming the  
 25 Parties and before recording the names, Judge Zambrano had

02:37 1 the habit of inviting the litigants and saying to them:  
 2 Look, gentlemen, I have these names for this expert  
 3 assignment. Do you agree? Let's do an internal draw, et  
 4 cetera. And clearly those names had to be recorded once  
 5 Judge Zambrano, by draw, or in their presence revealed the  
 6 appointment based on the list he had.  
 7 Thank you, Mr. Guerra.  
 8 In this same document, please turn to the last  
 9 page numbered--paragraph numbered 17. And here again we  
 10 see a Note in this same order--referring back to Section 4  
 11 that you just testified to about appointing experts. Why  
 12 did you write this Note here at the end of the order?  
 13 A. This was just a second reminder in connection with  
 14 numeral 4.  
 15 I did it because I believed that Judge Zambrano,  
 16 because of all of the tasks he had to complete, he would  
 17 allow the assistant, the young assistant to do it. And  
 18 this assistant, who was very young, could have made  
 19 mistakes or could have had some omissions; and I just  
 20 wanted to make sure that that did not happen with this  
 21 ruling.  
 22 Q. Please turn to the next tab, which is D in your  
 23 binder. It's an order dated December 7, 2009. It's  
 24 Attachment R to your November Declaration, sir. Tell me  
 25 when you're there.

02:39 1 A. Yes, got it.  
 2 Q. Did you write this Draft Order?  
 3 A. Yes.  
 4 Q. Please turn to paragraph numbered 10, and read it  
 5 to yourself, if you would, please, and let me know when  
 6 you're done reading it.  
 7 A. Yes.  
 8 Q. Towards the bottom of Paragraph 10 about five  
 9 lines up from the bottom, you wrote: "It is provided that  
 10 ordinary timeframes may not exceed those given under  
 11 Article 288 of the Code of Civil Procedure with regard to  
 12 issuing judgments. This is done in accordance with the  
 13 provisions of Articles 303 to 319 ibidem, which without  
 14 fail must be observed by the Parties as applicable."  
 15 Sir, what was your aim or goal or purpose for  
 16 rendering that particular ruling in draft form for Judge  
 17 Zambrano?  
 18 A. It was to streamline the process. Basically, that  
 19 was the reason, and also to avoid any delays as we had seen  
 20 throughout the proceeding starting from this day backwards,  
 21 and also for several years too.  
 22 Q. And did you make this ruling, at least in part  
 23 because of your agreement with the Lago Agrio Plaintiffs to  
 24 move the case along quickly through your ghostwritten  
 25 Orders?

02:41 1 A. It could be said that the answer is yes, and also  
 2 in agreement with the Judge of the proceeding, Judge  
 3 Zambrano.  
 4 Q. Well, when you say "it could be said," what do you  
 5 mean by that?  
 6 A. If you allow me, and briefly, from the onset, when  
 7 judicial inspection started--and that was late 2004 onwards  
 8 and almost up to the date that we're discussing in this  
 9 ruling, 2009, for five years, approximately--the Parties  
 10 were used to having very long deadlines, very long periods.  
 11 For example, 100 days for the Expert to issue a report, 150  
 12 days for the parties to the proceeding to issue a decision  
 13 on the Expert's report, 45 days for one Party to provide  
 14 comments as to whether the lab will be paid given the work  
 15 that has been conducted. And that was the way the case was  
 16 being handled.  
 17 Numeral 10 was part of a legal warning. It was  
 18 analyzed, and it was--it basically conveyed the idea that  
 19 we wanted to prevent very long deadlines or terms. And  
 20 here, at this number, says, the law states that every  
 21 Judgment should be issued within the following six days,  
 22 starting from the date the decision is passed.  
 23 So according to the law, there could be the  
 24 recusal of a judge if that judge does not issue a Judgment  
 25 in three times--three times the deadline provided for under

02:44 1 the regulations, under the law. So we need to include all  
2 of the conditions, all of the terms, and to make clear that  
3 they should not go beyond 18 days.

4 This way we were trying to avoid for Chevron  
5 people who were always asking for 40, 50 days for  
6 something, or 25 days; and when they got there, when the 25  
7 days expired, the day before they would request an  
8 extension of the deadline. And the same happened with the  
9 Plaintiffs in the case, the same story.

10 So all in all, this order at 10 says, Gentlemen,  
11 enough. We're not going to give you more than 18 days for  
12 Expert Reports, et cetera, et cetera, et cetera.

13 So that's the reason why, later on, the terms are  
14 more reasonable, such as three days for the Expert to  
15 elaborate on the report; three days for the Parties to  
16 issue decision on such and such a thing and no more than  
17 five days for the other thing, so that was the reason for  
18 this order. Well, at least that was the idea behind the  
19 order.

20 It was drafted with that legal idea so as to speed  
21 up the proceeding and try to prevent any sort of delays.

22 And I hope I satisfied your--your curiosity or  
23 your question with this.

24 Q. You have, to a great degree. So I understand the  
25 legal basis for the ruling.

02:48 1 A. This is part of a ruling that denies the intention  
2 of Chevron's attorneys to dismiss the provision to limit  
3 the deadlines to no more than 18 days.

4 Q. Sir, you stated in your written Declaration that  
5 you personally ghostwrote all nine Orders that were found  
6 on your computer which were attached to your November 2012  
7 sworn Declaration.

8 I've just reviewed five of them with you. In the  
9 interest of time, I won't go through the remaining four.  
10 But as you sit here today in these proceedings, do you  
11 reaffirm and confirm that you, Alberto Guerra, wrote all  
12 Orders that were found on your computer that you  
13 voluntarily provided to Chevron?

14 A. Yes, sir.

15 Q. Now, the nine Orders that we just reviewed were  
16 dated between October 20, 2009 and December 19, 2010. And  
17 this coincides, if I have your testimony correctly and the  
18 record, with Mr. Zambrano's first term as Judge on the case  
19 which spanned from October 21st, 2009, to March 11th,  
20 2012.

21 A. Yes. That is correct.

22 Q. Do you know why there are no Draft Orders on your  
23 computer during Mr. Zambrano's second term?

24 A. Precisely because I prepared those rulings from  
25 the Chevron Case in Lago Agrio in Mr. Fajardo's computer.

02:46 1 And a follow-up question is: Did you figure out  
2 that legal basis and write it into this Draft Order, at  
3 least in part because you were being paid by the Lago Agrio  
4 Plaintiffs to speed the case along?

5 A. We had agreed that; and clearly, I did it based on  
6 that commitment.

7 Q. Please turn to Tab 5E, which is Annex S, like Sam.  
8 It's dated December 14, 2009.

9 Do you recognize this one, sir?

10 A. Yes, sir.

11 Q. Please turn to paragraph numbered 12. You don't  
12 have to read the whole thing. I'm just going to ask you  
13 why you left blank spaces there.

14 A. As I explained before, I did not have the names of  
15 the qualified experts. The Clerk's office to the President  
16 of the Court was the one that had the names, and The intent  
17 was that when the time came, in order for these names to be  
18 entered by the judge in the case, Judge Zambrano would  
19 become aware that he had to certify the names of the  
20 qualified experts.

21 Q. And if you'll turn to Paragraph 18, just read it  
22 to yourself. Let me know when you're finished.

23 (Pause.)

24 A. Yes.

25 Q. What is this?

02:50 1 Q. Thank you, and I misspoke. Just I'll clarify the  
2 record earlier. I said that Mr. Zambrano's term ended in  
3 2012. It was actually March 11, 2010; is that right?

4 MR. BLOOM: May I just also seek a clarification  
5 after this?

6 MR. KEHOE: Sure.

7 BY MR. KEHOE:

8 Q. Sir, is that right? When did Mr. Zambrano's first  
9 term end as Judge? Do you remember?

10 A. Mr. Zambrano concluded the term immediately after  
11 Judge Ordoñez was appointed the Judge of the Court.

12 Q. Do you remember when that was?

13 A. I remember that, in that meeting of the tribunal.  
14 It was was sitting en banc. This took place on  
15 February 28, 2010.

16 Q. Mr. Zambrano--or Mr. Guerra, did Mr. Zambrano  
17 normally pay you in cash or some other way for your  
18 ghostwriting?

19 A. It generally was in cash. Occasionally--only  
20 occasionally he did it differently, like by deposits, money  
21 into my savings account, but that was very occasional.

22 Q. Please turn to Tab 1A in your binder, Annex H to  
23 your Declaration. Again, you were asked a lot of questions  
24 on cross-examination about physical evidence and your  
25 testimony and your word.

02:52 1 I'm going to ask you if you recognize this  
2 document.  
3 A. Yes, sir. This document is a deposit slip. And  
4 this is a deposit into my savings account with Pinchincha  
5 Bank in Ecuador.  
6 And this is--this was done in Nueva Loja or Lago  
7 Agrio on June 24th, 2011, for \$300; and the party making  
8 the deposit was Judge Nicolas Zambrano. I'm familiar with  
9 his signature.  
10 Q. Is that his signature down in the lower right-hand  
11 corner?  
12 A. To the right, this is my note. But the signature  
13 that looks like a seal of the Pinchincha Bank, that was  
14 entered by an employee at the bank.  
15 Q. And where is Mr. Zambrano's signature?  
16 A. It is to the lower right of this deposit slip.  
17 Q. And how do you know that's his signature?  
18 A. I am familiar with his signature. It is typical  
19 of him. I have seen him doing it several times. It's his  
20 signature.  
21 Q. Okay. Moving on, Mr. Guerra, Ecuador's Counsel  
22 asked you a series of questions about the TAME shipments  
23 between you and Mr. Zambrano and some intermediaries.  
24 And demonstrative exhibits were used that  
25 reordered and re-categorized the information, so I need for

02:55 1 us to go back to the actual document. You should have it  
2 in front of you in a larger piece of paper that's easier to  
3 read for everyone.  
4 It's Exhibit 3 in the binders in front of  
5 everyone, if anyone would prefer to look at the smaller  
6 version.  
7 Sir, did you personally request the TAME shipping  
8 records from TAME?  
9 A. Yes, sir; personally, I did.  
10 Q. Now, let me clarify what I said previously.  
11 Did you testify yesterday that Mr. Zambrano's  
12 first term on the Chevron Case lasted approximately four  
13 months, from October 2009 to March 2010?  
14 A. Yes.  
15 Q. Now, the first four shipments on this TAME  
16 shipping record shows shipments from you during this period  
17 of time that we just mentioned, Mr. Zambrano's first term;  
18 is that right? The first four?  
19 A. Yes, sir. That is correct.  
20 Q. And the first one is to Narcisa Leon. The first  
21 two are Narcisa Leon, actually. Who is Narcisa Leon again?  
22 A. Narcisa Leon back then worked with the Superior  
23 Court of Justice of Nueva Loja. And later on, I learned  
24 that she was hired by the Council of the Judiciary to  
25 continue working as an assistant with that

02:57 1 Secretariate--with that Secretary; and today, I'm not  
2 aware.  
3 Q. Now, you testified yesterday on cross-examination  
4 that she was used as an intermediary, that you were  
5 actually shipping the documents to Mr. Zambrano when you  
6 were shipping them to her. Do you remember that?  
7 A. Yes, sir.  
8 Q. Why didn't you ship them directly to Mr. Zambrano  
9 during this period of time?  
10 A. Mr. Zambrano was very careful, very possessive of  
11 these things.  
12 He told me that I shouldn't put any documents  
13 under his name, and that's the reason why I send them to  
14 Narcisa Leon so that she could receive them or withdraw  
15 them from the TAME office in Lago Agria and then give them  
16 to him in person.  
17 Q. Now a few moments ago, you and I reviewed an Order  
18 that was on your computer. It was in Tab 5B, like boy, you  
19 don't need to go there. It's Annex P to your Witness  
20 Statement, and you can look at it if you need to. But you  
21 worked on it on November 18th, 2009.  
22 Do you remember I showed you the metadata field?  
23 A. Yes, sir, I do remember that.  
24 Q. And the first entry on this exhibit that we're  
25 looking at is dated one day later, November 19th, 2009;

02:58 1 is that right?  
2 A. Yes, sir. That is correct.  
3 Q. Do you know whether the package of documents that  
4 you sent on November 19th included the Order that you  
5 drafted in the Chevron Case the day before?  
6 A. I am completely sure that it was included in this  
7 shipment.  
8 Q. How are you so completely sure?  
9 A. When it was not possible for me to give the  
10 rulings personally to Judge Zambrano, because he did not  
11 travel to travel from Lago Agrio to Manta or because  
12 sometimes he told me that he was going to be delayed, that  
13 he was in Guayaquil, he was going to take a different way  
14 to get to Guaya--to Lago Agrio and that he would not be  
15 able to pass through Quito. Generally Sunday evenings he  
16 told me that oftentimes I had to send the documentation  
17 through TAME.  
18 And if I prepared the documentation on  
19 November 18th, in this particular case, and I sent it on  
20 the 19th, it was because once the Ruling was ready--the  
21 specific Ruling was ready; in identical fashion to what  
22 happened with other civil court cases, I prepared the box  
23 with all of the Rulings to be returned, including the  
24 rulings inside the packages and even the flash--the USB  
25 drive that contained all of the rulings that I had handled.

03:00 1 And if possible, the same evening I would drop it  
2 off at TAME. And if it was not possible, I would do it  
3 early in the morning the next day so that this could be  
4 sent on the plane because there was only one shift in the  
5 morning. I think that the plane left Lago Agrio at  
6 9:00 a.m. So that means that I needed to drop off the  
7 package no later than 7:00 a.m.--6:00-6:30 a.m., to  
8 guarantee that package left on that flight. Otherwise,  
9 we--we could have had that package delayed until the next  
10 day.

11 So if I prepared the ruling on the 18th and I  
12 have a shipment on the 19th, I am completely sure that,  
13 in that case, that Ruling left with the shipment.

14 Q. The fifth entry is July 22nd, 2010.

15 Am I right that this was during the six-month  
16 period when Judge Zambrano--or Mr. Zambrano was not  
17 presiding over the Chevron Case?

18 A. Yes, I see that.

19 Q. Why did you send the shipment directly to him?  
20 Why didn't you use an intermediary in that case?

21 THE INTERPRETER: Sorry. The interpreter pressed  
22 the wrong button, Mr. President, to be perfectly honest.  
23 So--

24 PRESIDENT VEEDER: I've done that before.

25 THE INTERPRETER: -- my deepest apologies.

03:03 1 PRESIDENT VEEDER: I think it's best if you ask  
2 your question again.  
3 Pointing to the Witness, I'm very sorry. We had a  
4 technical problem, so we didn't catch your answer. The  
5 question will be put again, and then you can give your  
6 answer again and complete it.

7 Please proceed.

8 BY MR. KEHOE:

9 Q. You just acknowledged that the fifth  
10 shipment--Mr. Guerra, you had just acknowledged that the  
11 fifth shipment was made during the period when Judge  
12 Zambrano was not presiding over the Chevron Case.

13 And I asked you why did you ship directly to  
14 Mr. Zambrano in--with this fifth shipment rather than  
15 through an intermediary.

16 And you gave, I'm sure, a wonderful answer, but  
17 half the room didn't hear it.

18 A. Thank you.

19 At that date, Judge Zambrano actually threw in the  
20 towel, as--so to speak. He was no longer concerned with  
21 the Chevron case. He didn't handle the Chevron Case. This  
22 is a case that really concerned him, because he thought  
23 that he was being spied on, he was being followed, and he  
24 got tired of that. And he said, "Okay. Just send all the  
25 rulings to my name, and we will avoid all problems."

03:04 1 That, in essence, was what happened.

2 Q. And the next seven shipments all went to Fernando  
3 Albán, and all of--all of them were shipped during the  
4 period when Judge Zambrano was presiding over the Chevron  
5 Case for his second term; is that right?

6 A. Yes.

7 Q. And why did you go back to using--well, who were  
8 those shipments intended for, the ones that you shipped to  
9 Fernando Albán?

10 A. They were intended for Mr. Zambrano.

11 Specifically, these were the Rulings that I had prepared in  
12 the civil cases that Mr. Zambrano was Hearing, with the  
13 exception of the Chevron Case.

14 The Rulings for the second term of Mr. Zambrano in  
15 the Chevron Case, those were worked on in the city of Lago  
16 Agrio itself.

17 The other matters I worked on in my computer in  
18 the city of Quito, and evidently it was necessary for them  
19 to be sent in this manner. When I travel to Lago Agrio to  
20 prepare the Lago Agrio Rulings. I didn't want to bring the  
21 package with me because, generally speaking, this was very  
22 voluminous. It was a--very voluminous documents that were  
23 very heavy.

24 I went by bus, and I was uncomfortable. And I  
25 also thought of the possibility of a traffic accident, for

03:06 1 example, and I thought, well, if there's a traffic  
2 accident, well, these Rulings, these original files are  
3 going to be found in this accident, and a scandal could  
4 ensue of national proportions. And if the plane crashes,  
5 much less probable, well, that situation would not  
6 transpire.

7 That is why I sent this to Mr. Zambrano, but  
8 through Fernando Albán, because Zambrano requested this,  
9 and Mr. Albán was very happy to act as an intermediary.

10 Q. And then my final question on this document,  
11 Mr. Guerra, is to look at the bottom nine shipments, and  
12 those are all shipped from you directly to Mr. Zambrano,  
13 and these are all after he is off the Chevron Case; is that  
14 right?

15 A. Yes, sir.

16 Q. And this is a similar question to one I asked you  
17 a moment ago: Why did you start shipping directly to him?  
18 Why didn't you continue to use an intermediary after he was  
19 off the case--the Chevron Case?

20 A. Yes. Mr. Zambrano had left the Chevron Case. He  
21 had put it aside, and he was no longer--no longer concerned  
22 with this matter, and he asked at this time that all  
23 documents were sent to his name.

24 Q. Okay. We're done with the TAME shipping record.  
25 Moving to some more issues of physical evidence

03:08 1 that you say supports your word.  
 2 How did the Plaintiffs' representatives normally  
 3 get you the \$1,000 a month, physically? How did they get  
 4 it to you usually?  
 5 A. Mr. Fajardo delivered the \$1,000 monthly to me in  
 6 our occasional meetings, whether they be in the city of  
 7 Quito or Lago Agrio. They were provided personally to me,  
 8 given personally to me.  
 9 There are a couple of aspects that justify the  
 10 fact that some of those payments were made via deposits in  
 11 my savings account by Ms. Ximena Centeno, and I don't know  
 12 Ms. Centeno up to now.  
 13 Q. I'll ask you about that. I won't belabor the  
 14 point, because it was covered extensively on cross.  
 15 But do please turn to Tab 4C, C like "Charlie."  
 16 This is Attachment N to your November Declaration.  
 17 And please tell us what this document is that you  
 18 attached to your November Declaration.  
 19 A. Yes, thank you very much.  
 20 This is exactly the same--or, well, very similar  
 21 to the document in connection with which I already made my  
 22 statement. This is a deposit slip--a cash deposit slip for  
 23 the amount of \$1,000, that it is made to be deposited in my  
 24 account in the Banco de Pinchincha. It says here  
 25 February 5, 2010, and then here you see, on the lower left

03:10 1 side of the document, a signature.  
 2 And there is another document that identifies the  
 3 number of the--the document card right below the signature.  
 4 Q. And you testified that you didn't know Ms. Centeno  
 5 at the time that these deposits were made; is that right?  
 6 A. Yes. I have not met her up until today--I mean, I  
 7 don't know her at all.  
 8 Q. Did you know one way or the other whether or not  
 9 these deposits at the time were deposits by the Lago Agrio  
 10 Plaintiffs as their payment to you for your ghostwriting on  
 11 their behalf to move the case forward?  
 12 A. Yes. No other commitment has existed.  
 13 And the way in which I found out about this  
 14 deposit is that, at a given time, Mr. Fajardo called me on  
 15 the phone--well, he used to call me on the phone, and he  
 16 told me that the amount of \$1,000 had been deposited in my  
 17 account. And he had my account number, because I provided  
 18 it to him.  
 19 MR. KEHOE: Mr. President, I probably have another  
 20 15 minutes. If we could take a short break, I might even  
 21 shorten that further.  
 22 PRESIDENT VEEDER: That's an application which  
 23 never fails. We'll take a 15-minute break. We'll come  
 24 back at 3:30.  
 25 Mr. Guerra, please don't discuss the case or your

03:12 1 testimony away from the Tribunal.  
 2 (Brief recess.)  
 3 PRESIDENT VEEDER: Let's resume.  
 4 MR. KEHOE: Thank you, Mr. President.  
 5 BY MR. KEHOE:  
 6 Q. Mr. Guerra, would you please turn to Tab 6B in  
 7 your binder--for the record, this is Torres Exhibit 26--and  
 8 tell me when you're there.  
 9 A. Yes, I have it.  
 10 Q. Sir, do you see at the bottom right-hand  
 11 correspond a series of numbers--letters and then numbers?  
 12 It says DONZ00059141.  
 13 Do you see that?  
 14 A. Yes, on the lower portion of the document.  
 15 Are you referring to that?  
 16 MR. KEHOE: I'm not able to hear the lower--  
 17 THE WITNESS: Are you referring to the lower  
 18 portion of the document?  
 19 BY MR. KEHOE:  
 20 Q. I'm sorry. Yes, the lower portion of the  
 21 document, sir, the lower right-hand corner. There should  
 22 be, if it's the same as the one I have, DONZ00059141.  
 23 A. Yes, sir. Yes.  
 24 Q. And can you identify this document?  
 25 It says it's from you to Steven Donziger on

03:28 1 Sunday, September 5th, 2010.  
 2 Did you send him this email?  
 3 A. I sent this email from my computer in Quito, and I  
 4 sent it to Mr. Donziger, yes.  
 5 Q. In the email, down at the bottom, about, you know,  
 6 three or four lines up from the bottom, you say, "By the  
 7 way, my daughter is in Chicago. I will support the matter  
 8 of Pablo Fajardo so that it will come out soon and well.  
 9 Affectionately."  
 10 Sir, what are you referring to when you wrote  
 11 those words, "I will support the matter of Pablo Fajardo so  
 12 it will come out soon and well"?  
 13 A. Specifically speaking, I wanted to motivate  
 14 Mr. Donziger--so that he would concern himself with the  
 15 request that I made to legal advice for my daughter. And  
 16 it says here, "I will support the matter of Pablo Fajardo  
 17 so it will come out soon and well." Specifically and  
 18 concretely, I was speaking about the action of Lago Agrio  
 19 that they had brought against Chevron.  
 20 MR. KEHOE: I have no further questions,  
 21 Mr. Veeder.  
 22 PRESIDENT VEEDER: Thank you.  
 23 The Tribunal may have questions.  
 24 QUESTIONS OF THE TRIBUNAL  
 25 ARBITRATOR LOWE: I wonder if I could get an

03:30 1 answer to the point I raised before the lunch break.  
 2 My understanding, sir, was that you had said that  
 3 you had lost your day planners for the years 2010 and 2011,  
 4 but one of the documents appeared to be taken from one of  
 5 the year planners for 2011. And I'm confused as to the  
 6 evidence on that. It's a reference to Slide 13 in the  
 7 slides that we had from Respondents. And you'll see there,  
 8 under the heading "Torres Expert Report," Exhibit 36, the  
 9 extract that I've got in mine.  
 10 Could you just explain--clarify the relationship  
 11 between this document and the planners which you said you  
 12 were unable to find, please.  
 13 THE WITNESS: Thank you very much. If you allow  
 14 me.  
 15 In early 2011, I had purchased the day planner for  
 16 2011 that goes January 1st to December 31st, clearly  
 17 and I was making notes in chronological order, if you will,  
 18 on January 1st, January 3rd, February 2nd, et cetera.  
 19 But for some reason, I lost that day planner in July 2011.  
 20 And instead of going to a bookstore for a new day  
 21 planner for 2011 to continue taking notes starting on that  
 22 date--that is to say the date when I lost my previous day  
 23 planner--instead of doing that, which would have been  
 24 advisable, I took one of the old day planners from 2002 or  
 25 2003 that had not been used and that I had at home. I just

03:32 1 took any of those, which was empty, and old one, and I get  
 2 more or less to the same date, July. But just to make sure  
 3 that I was using the right date--because July 5th of  
 4 2010, Saturday, will hardly be Saturday on July 5th,  
 5 2011.  
 6 So to avoid that situation, I started to take  
 7 notes in that day planner at the various dates: July  
 8 11th, July 12th, so on and so forth, as the situation  
 9 called for.  
 10 I hope I was able to clarify your doubt, Member of  
 11 the Tribunal.  
 12 ARBITRATOR LOWE: That's very helpful. If I can  
 13 just ask two other points then.  
 14 Is it the case that the 2010 day planner was lost;  
 15 that you're unable to find that one at all?  
 16 THE WITNESS: Back then, I said at some point that  
 17 I was looking into the details of the construction of the  
 18 house. There I wrote down all of the nails and boards and  
 19 material that was needed for the construction. And  
 20 generally I maintained these agenda, these day planners,  
 21 and I went into the various hardware stores, and I remember  
 22 it is under those circumstances that I lost those day  
 23 planners.  
 24 ARBITRATOR LOWE: The second and last  
 25 clarification.

03:34 1 Do I understand you correctly to be saying that,  
 2 from July 2011 onwards, your day planner is complete, or as  
 3 complete as a day planner ever is?  
 4 THE WITNESS: Excuse me, I didn't catch, I  
 5 apologize, please. Would you repeat the question? I did not  
 6 understand it.  
 7 ARBITRATOR LOWE: I understood you to say that  
 8 having mislaid--having lost your 2011 day planner in July,  
 9 instead of buying a new one, you decided to reuse an old  
 10 one.  
 11 Do I understand you properly? Did you, in  
 12 July 2011, start again the practice of making entries into  
 13 a day planner, and you are now able to find that day  
 14 planner in which you made those entries, so that the  
 15 position from July 2011 onwards is complete?  
 16 THE WITNESS: If you allow me, there is  
 17 information from July 2011 to mid-July 2012, when I  
 18 willingly gave my day planner to Chevron's representatives.  
 19 ARBITRATOR LOWE: Thank you.  
 20 THE WITNESS: Thank you.  
 21 PRESIDENT VEEDER: I just have one topic to raise  
 22 with you. If you could take--or be shown Binder 3 of the  
 23 cross-examination bundles prepared by the Respondent. And  
 24 if you could turn to Tab 40. This is the Supplemental  
 25 Agreement No. 1 of the 31st of July, 2013.

03:36 1 Again, we only have the English version in the  
 2 file, although there is a Spanish translation elsewhere.  
 3 I'm going to ask you to look at Paragraph 10 and  
 4 11 on the second page, and I'm going to read each paragraph  
 5 out slowly so that the interpreters can translate for you.  
 6 But you will see the heading to those two  
 7 paragraphs is C, "Fajardo's Criminal Complaint against  
 8 Guerra in Ecuador." And in Paragraph 10: "In or about  
 9 February 2013, after Guerra and Chevron entered into the  
 10 Agreement"--and we take that to be the original agreement  
 11 of the 27th of January, 2013--"Pablo Fajardo Mendoza  
 12 caused a criminal Complaint to be filed against Guerra with  
 13 a Provincial Prosecutor's Office of Sucumbios. Said  
 14 criminal Complaint accuses Guerra of various crimes in  
 15 connection with declaration sworn to in Chicago, Illinois,  
 16 on November the 17th, 2012."  
 17 And we understand that to be your first statement,  
 18 which, for our purposes, is Exhibit C-1616a.  
 19 Now, can you tell us what you understand about the  
 20 Complaint and of what crimes the complaint addressed?  
 21 THE WITNESS: Thank you.  
 22 Immediately after the Declaration of November  
 23 17th, 2012, became public, there were many reactions of all  
 24 kinds in the Republic of Ecuador, my country, from the  
 25 Government, from various entities, and in particular,



03:39 1 obviously, from the attorneys representing the Plaintiffs  
 2 against Chevron there, Mr. Pablo Fajardo, and another  
 3 individual representing the Amazon Defense Front, et  
 4 cetera. The groups backing the matter, the claim against  
 5 Chevron.  
 6 So a Complaint was filed in Lago at the Sucumbíos  
 7 Office of the Prosecutor through which obviously the accuse  
 8 me of countless acts of irresponsibility, actions precisely  
 9 grounded on the text of the declaration I drew up here in  
 10 November before the notary public. And among the crimes  
 11 I'm accused of are attempting against the State's  
 12 authorities, the State's institutions, promoting  
 13 separatism, which is a crime that is part of or is related  
 14 to those that in my country are deemed to be in the class  
 15 of treason to the homeland, perjury, false testimony, to  
 16 mention a few I recall.  
 17 And the Prosecutor's Office that receives this  
 18 criminal complaint, obviously--based on that--it is my  
 19 understanding that it began a preliminary investigation so  
 20 as to carry out the corresponding investigation and, in the  
 21 long term, decide to criminally prosecute me or not.  
 22 Given that circumstance, given the Agreement and  
 23 also knowing of this, and upon my request, agreed to have  
 24 an attorney hired in Ecuador on my behalf by Chevron for  
 25 that attorney to be in charge of my defense and also to

03:42 1 be prison. Whereas for perjury it's jail.  
 2 PRESIDENT VEEDER: And I think the last  
 3 question--but you've answered it, I think: You don't know  
 4 anything more about the current status of this  
 5 investigation at the Office of the Prosecutor General; is  
 6 that correct?  
 7 THE WITNESS: No, it's not at--if you allow me,  
 8 this case is not in the hands of the Attorney General's  
 9 Office or any of its provincial delegations. This is in  
 10 the hands of the Public Prosecutor, meaning the Office of  
 11 the Prosecutor General, in this case, it is a Provincial  
 12 Prosecutor's Office in Pinchincha.  
 13 PRESIDENT VEEDER: Are there any questions from  
 14 Counsel arising from the Tribunal's question?  
 15 We ask the Respondent first.  
 16 MR. BLOOM: None from Respondent.  
 17 PRESIDENT VEEDER: From the Claimants?  
 18 MR. KEHOE: None from the Claimants.  
 19 Mr. President, I would--just for your benefit,  
 20 C-1944 is the Fajardo Complaint.  
 21 PRESIDENT VEEDER: Thank you.  
 22 MR. KEHOE: You're welcome.  
 23 PRESIDENT VEEDER: Thank you very much.  
 24 MR. BLOOM: May I just make one clarification so  
 25 that the record is clear?

03:40 1 represent me in any other lawsuit. And I'm sure there will  
 2 be several.  
 3 But I suggested the name of the attorney, and  
 4 Chevron hired the attorney in Ecuador that I suggested, and  
 5 he's working on that. I am unaware of the current  
 6 situation of that case, but I was told that the case is no  
 7 longer with Sucumbíos, Lago Agrío. It has been transferred  
 8 to the provincial capital, not because of an appeal but  
 9 rather because of jurisdiction. It seems they consider I  
 10 committed this crime outside the territory of the Republic.  
 11 Therefore, the Judge of the Capital of the Republic is the  
 12 one that has jurisdiction to hear in this case; and this is  
 13 still pending. And I think that it will take some time  
 14 until we finish with all of the legal details.  
 15 PRESIDENT VEEDER: Well, thank you. You've  
 16 answered a few questions I was coming to.  
 17 But coming back to my first question: The crimes  
 18 of which you were accused include, as I understand from  
 19 what you said, are perjury, separatism. And was there  
 20 anything else by way of a crime alleged against you by  
 21 Mr. Fajardo?  
 22 THE WITNESS: Yes, an offrent against the  
 23 institutions of the State. This is also a serious crime,  
 24 no less--somewhat more serious than perjury. And possibly  
 25 the punishment in this case, if memory serves me well, may

03:44 1 PRESIDENT VEEDER: Of course.  
 2 MR. BLOOM: And I don't know whether we need to do  
 3 it by--by way of a question. But--unless there is a  
 4 dispute. But the Prosecutor General is different than the  
 5 Attorney General.  
 6 PRESIDENT VEEDER: I understood that. Please.  
 7 MR. BLOOM: Okay.  
 8 PRESIDENT VEEDER: That I understood. Thank you.  
 9 We've come to the end of your testimony--sorry.  
 10 Maybe we haven't.  
 11 MR. KEHOE: I'm sorry. We may not have. May I--  
 12 PRESIDENT VEEDER: Of course you may.  
 13 MR. KEHOE: --converse with Mr. Bishop for just a  
 14 minute?  
 15 (Pause.)  
 16 MR. KEHOE: Thank you. I would like to ask one  
 17 follow-up question.  
 18 PRESIDENT VEEDER: Does it arise from the  
 19 Tribunal's question?  
 20 MR. KEHOE: It does.  
 21 PRESIDENT VEEDER: Please continue.  
 22 FURTHER REDIRECT EXAMINATION  
 23 BY MR. KEHOE:  
 24 Q. Mr. Guerra, now that the Complaint, as you  
 25 understand it, the criminal action against you, has been



04:01

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04:04

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04:06

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CERTIFICATE OF REPORTER

I, Gail Inghram Verbano, RDR, CRR, CSR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

*Gail Inghram Verbano*  
 \_\_\_\_\_  
 GAIL INGHGRAM VERBANO

04:26

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[REDACTED]

[REDACTED]

[REDACTED]

16 Is there anything else we need to address now?

17 We ask the Claimants first.

18 MR. BISHOP: No, Mr. President.

19 PRESIDENT VEEDER: And the Respondent?

20 MR. BLOOM: No.

21 PRESIDENT VEEDER: We stand adjourned. It's an

22 early start. It's 4:30. We'll see you at 9:30 on Monday.

23 Thank you very much.

24 (Whereupon, at 4:27 p.m., the Hearing was

25 adjourned until 9:30 a.m. Monday, April 27, 2015.)

IN THE MATTER OF AN ARBITRATION BEFORE A TRIBUNAL  
CONSTITUTED  
IN ACCORDANCE WITH THE TREATY BETWEEN THE U.S.A. AND THE  
REPUBLIC OF ECUADOR CONCERNING THE ENCOURAGEMENT AND  
RECIPROCAL PROTECTION OF INVESTMENT, SIGNED AUGUST 27, 1993  
(THE "TREATY")

and

THE UNCITRAL ARBITRATION RULES 1976

- - - - -X  
In the Matter of Arbitration :  
Between: :  
: :  
CHEVRON CORPORATION (U.S.A.), :  
TEXACO PETROLEUM COMPANY (U.S.A.), :  
: :  
Claimants, : PCA Case No.  
: 2009-23  
and :  
: :  
THE REPUBLIC OF ECUADOR, :  
: :  
Respondent. :  
- - - - -X Volume 5

TRACK 2 HEARING  
~~ESPECIALLY CONFIDENTIAL~~  
~~NOT TO BE PUBLICLY DISCLOSED BY PROCEDURAL ORDER NO. 29~~

Monday, April 27, 2015

The World Bank  
700 18th Street, N.W.  
J Building  
Conference Room JB1-080  
Washington, D.C. 20003

The Hearing in the above-entitled matter convened  
at 9:30 a.m. before:

- MR. V.V. VEEDER, Q.C., President
- DR. HORACIO GRIGERA NAÓN, Arbitrator
- PROFESSOR VAUGHAN LOWE, Q.C., Arbitrator



Registry, Permanent Court of Arbitration:

MR. MARTIN DOE, Secretary to the Tribunal

MR. RAYMUNDO TREVES

MS. NAYA PESSOA

Additional Secretary:

MS. JESSICA WELLS

Tribunal Expert:

MS. KATHRYN OWEN

Court Reporters:

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MR. MATTHEW FRIEDRICH

MR. JOSÉ LUIS MARTIN

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MS. TANYA VALLI

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MR. BRIAN CUMMINS  
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1 PROCEEDINGS  
2 PRESIDENT VEEDER: Good morning, ladies and  
3 gentlemen. We'll start Day 5 of this Hearing.

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C O N T E N T S

PAGE

PRELIMINARY MATTERS:

SPENCER C. LYNCH

Direct examination by Mr. White 936  
Cross-examination by Mr. Ewing 965  
Redirect examination by Mr. White 1126

J. CHRISTOPHER RASICH

Direct examination by Mr. Ewing 1139  
Cross-examination by Mr. White 1158

09:29

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09:30

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09:33

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09:32

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09:34

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4 PRESIDENT VEEDER: Then let's have the next  
5 witness.  
6 MR. BISHOP: Mr. President, my partner, Brian  
7 White, will put on the next witness.  
8 PRESIDENT VEEDER: Okay. Thank you.  
9 MR. WHITE: Thank you, Mr. President. Thank you,  
10 Mr. Bishop.  
11 The Claimants are now going to call Spencer Lynch  
12 for his direct examination.  
13 SPENCER LYNCH, CLAIMANTS WITNESS, CALLED  
14 MR. BISHOP: And while Mr. Lynch is getting  
15 himself situated, Mr. Calabro is going to hand up some  
16 materials that will be used during the course of that  
17 examination.  
18 PRESIDENT VEEDER: While that's being done, I  
19 should explain again that Ms. Kathryn Owen is sitting in.  
20 You can see her over there. We'd like her to see and hear  
21 everything that the Tribunal sees, but obviously she's not  
22 acting as an adviser to the Tribunal, and we're not talking  
23 to her privately.  
24 But at the end of today, we will be sitting with  
25 her to see what suggestions she might have to make to us

09:35 1 about drawing up a supplement in terms of reference. And  
 2 if there is an exercise thereafter, obviously the Parties  
 3 will be engaged.  
 4 MR. WHITE: We understand that, Mr. President.  
 5 Thank you.  
 6 And what you've been handed, just before we start  
 7 the examination, is really two things.  
 8 One is a slide deck that Mr. Lynch is going to  
 9 present, and the second is a short errata sheet. Mr. Lynch  
 10 had some corrections, mostly typographical in nature, and  
 11 I'll just ask him to explain what they are as part of his  
 12 direct testimony.  
 13 PRESIDENT VEEDER: Before you do that, we need to  
 14 swear in Mr. Lynch.  
 15 MR. WHITE: Certainly.  
 16 PRESIDENT VEEDER: Mr. Lynch, you have before you  
 17 a sheet of paper which is headed "Declaration of Witness."  
 18 Do you see that?  
 19 THE WITNESS: Yes, I do.  
 20 PRESIDENT VEEDER: We'd like you to state your  
 21 full name. And then if you're minded to do so, to speak  
 22 the words of the declaration.  
 23 THE WITNESS: My name is Spencer Lynch. And I  
 24 solemnly declare upon my honor and conscience that I will  
 25 speak the truth, the whole truth, and nothing but the

09:36 1 truth, and that my statement will be in accordance with my  
 2 sincere belief.  
 3 PRESIDENT VEEDER: Thank you very much.  
 4 There will first be questions from the Claimants.  
 5 But before we do that, can I just check that  
 6 Ms. Owen has the same papers that you've just handed us?  
 7 No, she doesn't.  
 8 MR. WHITE: So Ms. Owen is being given the same  
 9 materials that the Tribunal and Ecuador have been given.  
 10 And with that, if I may, Mr. President, I'll start the  
 11 direct examination of Spencer Lynch.  
 12 DIRECT EXAMINATION  
 13 BY MR. WHITE:  
 14 Q. So, Mr. Lynch, you have in front of you three  
 15 reports; is that right?  
 16 A. It is, yes.  
 17 Q. Are those the reports that you've offered in this  
 18 arbitration?  
 19 A. They are, yes.  
 20 Q. Okay. And I understand you have some corrections  
 21 that have been handed up in an errata sheet.  
 22 What is the nature of those corrections?  
 23 A. They're corrections to typos, typographical  
 24 errors, that don't affect the substance of my conclusions.  
 25 Sorry. Yes. They're typographical corrections

09:37 1 that don't affect the substance of my conclusions.  
 2 Q. Okay. Thank you, Mr. Lynch.  
 3 I'd like to ask you just a few questions about  
 4 your experience.  
 5 What is your educational background as it relates  
 6 to your role as a digital forensic expert?  
 7 A. I have a degree from Duke University in computer  
 8 science and public policy and a minor in psychology.  
 9 Q. And do you have any further training that is  
 10 relevant to your work as a digital forensic expert?  
 11 A. Yes. Part of my--as part of my work as a digital  
 12 forensic--digital forensics expert, I regularly receive and  
 13 give training.  
 14 Q. And how long have you worked as a digital  
 15 forensics expert?  
 16 A. Almost 10 years now.  
 17 Q. Have you ever been qualified as an expert to give  
 18 testimony in court as a digital forensics expert?  
 19 A. I have, yes.  
 20 Q. Which courts?  
 21 A. In the UK, I've given--I've been qualified as an  
 22 expert in the Royal Courts of Justice. And in the U.S.,  
 23 I've been qualified in state court as well as federal court  
 24 for the Southern, Northern--Southern, Northern, and Eastern  
 25 Districts of New York.

09:38 1 Q. Have you ever been qualified as an expert in a  
 2 criminal case?  
 3 A. I have, yes.  
 4 Q. And who retained you? Was it the Government or  
 5 the Defense?  
 6 A. The Department of Justice in the United States.  
 7 Q. The U.S. Department of Justice?  
 8 A. Yes.  
 9 Q. Okay. Now, I understand that you have a  
 10 presentation that you'd like to give, and I'll just ask you  
 11 to give that presentation now.  
 12 A. Sure. Thank you.  
 13 Before I begin the presentation, I wanted to open  
 14 a Word document that we'll come back to in a bit. To do  
 15 that, I just click on Word, which starts Word and, by  
 16 default, opens a new document, and I'll just do "File Save  
 17 As" and save that document as "Demonstration" on the  
 18 computer, so that saves that there and then go back to the  
 19 presentation. We'll come back to that towards the end.  
 20 So I have--I set forth in my Report some multiple  
 21 conclusions. Today I wanted to talk about three of those  
 22 conclusions and the analysis behind those conclusions.  
 23 In going through those conclusions, I'll highlight  
 24 some of the areas of agreement and disagreement between me  
 25 and Mr. Racich and describe in detail the analysis that

09:39 1 leads me to my conclusions.  
 2 Starting with the Guerra Computer, when I received  
 3 the Guerra Computer, I performed an analysis to identify  
 4 documents on that computer that contained text from Orders  
 5 that were issued by Mr. Zambrano. And I found over 100  
 6 different documents where the document on the Guerra  
 7 Computer contains text that matched that or closely matched  
 8 that to an order issued by Mr. Zambrano.  
 9 And shown on the slide in the first example,  
 10 there's a document on Mr. Guerra's computer that was last  
 11 saved on that computer on December 19th, 2010. And the  
 12 text in that order matched a--matched an order--sorry--the  
 13 text in that document matched an order that was issued by  
 14 Mr. Zambrano on December 22nd.  
 15 And as I said, there were--there were  
 16 dozens--there were over 100 such examples that fit the  
 17 pattern shown on the screen here.  
 18 When I say the text matched, I mean what's  
 19 highlighted here. On the left is one of the drafts that  
 20 was found on the Guerra Computer, and on the right is an  
 21 order that was issued by Mr. Zambrano.  
 22 And the text highlighted in yellow shows all of  
 23 the text that's identical between the two documents. So  
 24 you can see from the little bits of white, or the little  
 25 bits where there isn't highlighting, that there were minor

09:40 1 differences; but largely the text in the draft on  
 2 Mr. Guerra's computer matched that that was issued by  
 3 Mr. Zambrano.  
 4 When I received Mr. Zambrano's computer, I looked  
 5 for evidence to test my conclusion that the Guerra Computer  
 6 had drafts of Orders issued by Mr. Zambrano. And here is  
 7 an example where Mr. Guerra's computer had a draft that was  
 8 saved on January 2nd, and the text matched an order  
 9 issued by Mr. Zambrano on January 12th.  
 10 On Mr. Zambrano's computer, I found a document  
 11 created January 6th, where the text and the file name  
 12 were similar or matched that on Mr. Guerra's computer and  
 13 matched what was issued on January 12th.  
 14 And then I turned to look for evidence of how the  
 15 file may have been transferred from Mr. Guerra to  
 16 Mr. Zambrano.  
 17 I found that shortly after the file was saved on  
 18 Mr. Guerra's computer, a file was saved on a thumb drive  
 19 with the same name.  
 20 Then from there, I had records from TAME shipping,  
 21 a shipping company in Ecuador, showing that Mr. Guerra sent  
 22 a package to Lago Agrio. And I knew from my analysis of  
 23 the Zambrano Computers that that same thumb drive had been  
 24 connected to the Zambrano Computers.  
 25 I don't know for this particular thumb drive the

09:42 1 exact date it was connected. I only know from the evidence  
 2 the first time the thumb drive was connected and the last  
 3 time, but that--and that it was connected at other times as  
 4 well.  
 5 But from there, presumably Mr. Zambrano would have  
 6 copied the file from the thumb drive to his computer, and  
 7 it was that copying that resulted in the creation date of  
 8 January 6th.  
 9 And to be clear there, the creation date doesn't  
 10 refer to the content. We know, since the content was on  
 11 Mr. Guerra's computer as of January 2nd, that the content  
 12 pre-dates January 6th, but the January 6th date is the  
 13 date that the copying from the thumb drive to the Zambrano  
 14 Computer would have taken place.  
 15 Then from there, the evidences shows that  
 16 Mr. Zambrano then issued that ruling on January 12th.  
 17 Looking more broadly at the other orders that I  
 18 had, not just this one example, I didn't necessarily have  
 19 every piece of evidence in this chain for every single  
 20 order. But where I had this evidence, it was consistent  
 21 with the--the chain of evidence that I set forth there.  
 22 I also reviewed Mr. Zambrano's testimony and noted  
 23 that, in his testimony in the RICO trial, he confirmed that  
 24 Mr. Guerra did sometimes draft Orders for him and ship them  
 25 using TAME.

09:43 1 In addition to the Orders in other cases, I found  
 2 on Mr. Guerra's computer drafts of Chevron Orders, Orders  
 3 from the Chevron case in Lago Agrio.  
 4 The first example was an Order saved on  
 5 October 20th, and the text there matched an Order issued  
 6 by Mr. Zambrano the next day, on October 21st.  
 7 And there were nine such orders on Mr. Guerra's  
 8 computer where Mr. Guerra's computer had in it draft text  
 9 of an Order that was issued by Mr. Zambrano. And the first  
 10 eight fit the same pattern, where the document was saved  
 11 prior to the issuance of the associated Order by  
 12 Mr. Zambrano.  
 13 The ninth was slightly different. The version  
 14 saved on Mr.--or saved on the computer was saved on  
 15 March 7th, after the Order had been issued by  
 16 Mr. Zambrano. But my analysis showed that that save was a  
 17 Save As. So the content must have predated that Save As on  
 18 March 7th, and the Save As wiped out the metadata. But  
 19 looking at the text, it was again consistent with the other  
 20 drafts.  
 21 Turning to--to what Mr. Racich said on the Guerra  
 22 Computer, he said a few separate things, but most recently  
 23 that, looking at a two-day time period, from January--or  
 24 from July 13th, 2012, to July 15th, 2012, that over  
 25 22,000 files were accessed; and that as a result of that

09:44 1 access, it's not possible to know what might have happened  
2 to them.

3 I disagree with that. The metadata that  
4 Mr. Racich highlights and that I show in Exhibit 2 to my  
5 Report for these files shows what happened; that they were  
6 accessed. And you can see that in the column in the  
7 middle. The last access date was updated on July 13th,  
8 2012.

9 But looking at the last written date--or sometimes  
10 we call it the last modified date--that date shows that the  
11 files weren't modified or changed. Had the contents of  
12 those files been changed on July 13th, then the last  
13 written date or the last modified date would have been  
14 similarly updated.

15 Mr. Racich also says that Mr. Guerra's  
16 reinstallation of Windows in July 2010 suggests that there  
17 may have been an effort to destroy data. And I again  
18 disagree with that.

19 Windows reinstallation is a common and sometimes  
20 required part of computer maintenance. And I agree with  
21 Mr. Racich that it can be a tactic to destroy data, but  
22 there's no evidence that's what--that's what's happened  
23 here.

24 In addition, looking at what we see on  
25 Mr. Guerra's computer, there were a series--over a thousand

09:46 1 files that were copied to Mr. Guerra's computer immediately  
2 after the Windows reinstallation. And that is also  
3 consistent with someone reinstalling Windows for  
4 non-nefarious purposes.

5 It's normal, when reinstalling Windows, to back up  
6 all your files to an external drive, like the Western  
7 digital drive; because when you reinstall Windows, you  
8 don't want to lose those files. And it's then normal,  
9 after you reinstall Windows, to copy those back to the  
10 computer.

11 And in inferring motive about whether or not there  
12 was an effort to destroy data, timing of the Windows  
13 reinstallation is key. You look at when the reinstallation  
14 took place in relation to other events in the case.

15 So in cases that I've looked at where the timing  
16 suggested that there was a motive to destroy data, you can  
17 see that in looking and observing that Windows was  
18 reinstalled in some cases the day before the computer was  
19 imaged or in other cases the day after a suspect received a  
20 Court Order to turn over his computer for forensic  
21 analysis.

22 But looking at the timing on the Guerra Computer,  
23 Windows was reinstalled in July of 2010, and the computer  
24 was imaged two years later. So there is no--no correlation  
25 between the Windows reinstallation and when the computer

09:47 1 was imaged.

2 And then finally, Mr.--Mr. Racich has suggested  
3 that Mr. Guerra deleted emails and highlights evidence of  
4 Internet access to a Hotmail account, and that--that's  
5 misleading.

6 The way Hotmail works, when you access it through  
7 an Internet browser like Internet Explorer, you're  
8 accessing emails that are stored on Microsoft servers, and  
9 they're displayed temporarily to you. When you--when you  
10 click to read the email, and there will be Internet History  
11 recording that you read that email, but that particular  
12 email isn't saved for any extended period of time on your  
13 computer. It's displayed to you; but then when you leave  
14 the email, it's no longer on your computer. So the fact  
15 that there's--there's access of evidence to a Hotmail  
16 account doesn't mean that those emails were ever stored on  
17 Mr. Guerra's computer and that he then deleted them.

18 I also would note that there is evidence that  
19 multiple users of the Guerra Computer used that computer  
20 and the Hotmail access could have been from multiple  
21 different users. So it's not necessarily Mr. Guerra's  
22 account.

23 Turning to the--to the Zambrano Computers, one of  
24 the things I did on the Zambrano Computers was to look for  
25 evidence of documents with text that matched that, that was

09:48 1 found in the Ecuadorian Judgment against Chevron. I found  
2 two groups of documents, one named Providencias, one named  
3 Caso Texaco.

4 Providencias was a series of documents all of  
5 which contained Judgment text. The first one that I was  
6 able to recover was dated December 21st, 2010, and it  
7 had 42 percent of the Judgment text. The next was  
8 December 28th, which had slightly more Judgment text.

9 Then I didn't find a version of Providencias  
10 saved on or around February 14th, the day that the  
11 Judgment was issued. The next version was from  
12 March 4th, and it contained the Judgment text but also  
13 text from the February 21st Order and the Expansion  
14 and Clarification Order, and then there was a version  
15 on--on March 18th.

16 Caso Texaco, I--like Providencias, I recovered  
17 multiple versions of Caso Texaco, but only one of those  
18 documents had any Judgment text in it, and that was the  
19 version dated January 19th.

20 And I'll walk through in more detail in the  
21 presentation some of the analysis that leads to the bullet  
22 points below; but I highlighted here the edit time, as it's  
23 a factor that's important for the analysis that Mr. Racich  
24 didn't--didn't factor into some of his analysis.

25 In looking at the--those documents, the documents

09:50 1 with Judgment text and the evidence there, I also looked at  
 2 Mr. Zambrano's RICO testimony and then compared the  
 3 evidence to his RICO testimony to determine whether or not  
 4 the evidence was consistent with that testimony or not.  
 5 I found that the evidence is--is largely  
 6 inconsistent and in some cases irreconcilable with his  
 7 evidence. As one example, he testified in detail about  
 8 which computer he used to draft the Judgment and said that  
 9 the whole writing of the Judgment was done on the New  
 10 Computer.  
 11 I compared that to some of the dates that  
 12 related to Providencias. First, we knew that it was  
 13 created on the Zambrano Computers on October 11th, and  
 14 then Mr. Zambrano testified that he began drafting in  
 15 mid-November.  
 16 Records from the Lago Agrio Court show that the  
 17 computer wasn't--the New Computer wasn't purchased until  
 18 November 26th, and the first record of any activity on  
 19 that computer was on December 7th. So it would have been  
 20 impossible for Mr. Zambrano to create Providencias or begin  
 21 drafting in mid-November, since he didn't get that computer  
 22 until--until December.  
 23 Mr. Racich looked at this and opined that perhaps  
 24 Mr. Zambrano could have used the New Computer, consistent  
 25 with his testimony, even though the files were stored on

09:51 1 the Old Computer. All of the files that I set forth  
 2 earlier were found on the Old Computer.  
 3 The evidence, though, shows that it's not just the  
 4 files were on the Old Computer, but that they were saved  
 5 using the Old Computer. Looking at the metadata of  
 6 Providencias and of other files on the Zambrano Computers,  
 7 we can identify whether or not the file was saved using the  
 8 Old Computer or the New Computer based on the Last Saved by  
 9 name. Files saved by the New Computer have the Last Saved  
 10 by name of HP. Files saved on the Old Computer have an  
 11 author name of CPJS. And all of these files with Judgment  
 12 text were saved by CPJS, showing that someone was using the  
 13 Old Computer, not the new Computer. They were sitting at  
 14 the Old Computer.  
 15 Next, Mr. Zambrano testified that--about how long  
 16 he worked on the Judgment; that he worked many hours, many  
 17 days, including weekends.  
 18 And the computer doesn't record a running log of  
 19 each and every action on the computer. I can't, for  
 20 instance, say that, picking a random date, December 12th,  
 21 what someone was or was not doing at 7:58.  
 22 But as it relates to Providencias, the Word  
 23 document, what is recorded is an edit time. And the edit  
 24 time is a record of how long the document was opened  
 25 between when it was created and then the last saved.

09:52 1 Looking at the edit time of Providencias as it was  
 2 on December 21st, we know that the edit time was  
 3 35.12 hours and that it had 42 percent of the text.  
 4 Then from December 21st to December 28th, the  
 5 edit time increased by 17.43 hours and another 24 percent  
 6 of the text from the Ecuadorian Judgment was added to  
 7 Providencias.  
 8 We then know that Providencias was saved on  
 9 January 21st, but we weren't able to recover a version  
 10 from that date, so we don't know how the edit time changed,  
 11 and we don't know what changes were made in that time  
 12 period.  
 13 And then we know because January--on  
 14 January 21st it was saved using Save As, that the edit  
 15 time, which would have reset the meta--or the edit time to  
 16 zero on January 21st, we know that from January 21st to  
 17 March 4th, the edit time increased by 58 hours. But  
 18 because we don't know what the document looked like on  
 19 January 21st, we don't know what changes would have been  
 20 associated with that 58.3 hours.  
 21 So I focused my analysis in on the two time  
 22 periods at the beginning, where we had more information.  
 23 We knew both what changes were made and the edit time.  
 24 In addition, we know from Caso Texaco that from  
 25 January 5th to January 19th, the edit time increased by

09:54 1 11.5 hours and that 11 percent of the Judgment text was  
 2 added to Caso Texaco in that time period.  
 3 So looking at all of that together, we know that  
 4 from October 11th, 2010, to January 19th, 2011,  
 5 approximately 77 percent of the text from the Ecuadorian  
 6 Judgment appeared on Mr. Zambrano's computers and that it  
 7 appeared in documents that had 64.05 hours of edit time.  
 8 It had been opened for 64.05 hours.  
 9 Mr. Racich ignored the edit time and assumed  
 10 that--that Providencias document was open every day from  
 11 October 11th to December 21st and offered that, based  
 12 on that assumption, the work was done at approximately one  
 13 page per day.  
 14 But that's--that's not true. You can't assume  
 15 that it was open every single day and for the majority of  
 16 the day, as Mr. Zambrano testified, because the edit time  
 17 tells you how long it was open.  
 18 So looking at the edit time from December 21st  
 19 Providencias, we know that it was open for 35.12 hours from  
 20 October 11th to December 21st and that 81 pages of text  
 21 appeared in Providencias. That text, when it was issued in  
 22 the Ecuadorian Judgment, corresponded to Pages 1 through  
 23 107. There were--there were changes made to that text, and  
 24 it was reformatted when it was issued.  
 25 As to the changes, we know that 81--or of that

09:55 1 81 pages, 94 percent of the text is unchanged. The text  
 2 appears verbatim from the 81 pages in the issued Judgment.  
 3 And if we assume that--that whoever was working on  
 4 Providencias spent every single minute typing, that means  
 5 that text was entered into Providencias as a--at a rate of  
 6 approximately 26 minutes per page, but that's a--a--I guess  
 7 a generous assumption, and it's likely that text was  
 8 actually entered faster than that. One of the reasons we  
 9 know that is that, looking at October--or at  
 10 December 21st Providencias, it contains at the beginning  
 11 of the document other text beyond that of the Judgment.  
 12 So whatever time was spent inserting that text  
 13 into Providencias would have come out of the edit time that  
 14 we can attribute to the Judgment text. So, in fact, the  
 15 rate was likely faster.  
 16 Then looking at December 28th Providencias, we  
 17 know that the edit time increased 17.43 hours and that  
 18 there were 38 pages of additional text added. And  
 19 similarly, we know that that text was reformatted and  
 20 changed slightly, but--but 96 percent of that text is  
 21 verbatim from those 38 pages in the issued Judgment.  
 22 And if we make the same assumption that every  
 23 single minute was spent typing, that means that text was  
 24 entered into at a rate of approximately 27.5 minutes per  
 25 page. But here again, that--that assumption is likely

09:57 1 generous.  
 2 While all of the changes from December 21st to  
 3 December 28th are the insertion of Judgment text, it's  
 4 very likely that not every single minute was spent typing.  
 5 If you're working on a Word document for a little while,  
 6 get up, go get a glass of water, spend 15 minutes away from  
 7 your computer, come back, sit down, and type some more,  
 8 that 15 minutes is--is almost certainly part of the edit  
 9 time. So time spent with the document open, even if you're  
 10 not typing, is going to be in that edit time.  
 11 So it's--it's just as possible that someone spent  
 12 every single minute typing, resulting in a rate of  
 13 approximately 27.5 minutes per page, or someone left the  
 14 document open for 16 hours and then, over the course of an  
 15 hour, copied and pasted 38 pages of text in, hit Save, and  
 16 that--that would leave the same metadata. We wouldn't be  
 17 able to determine what the rate is between there, but that  
 18 this 27.5 minutes is slower than the actual--actual rate  
 19 that text was inserted.  
 20 Then I looked at--at Mr. Zambrano's testimony  
 21 about certain English language cases that appeared in  
 22 Providencias and in the Judgment.  
 23 Mr. Zambrano testified that Ms. Calva, his typist,  
 24 searched the Internet and found the cases that appear as  
 25 cited or as citations in the Judgment.

09:58 1 So I looked for evidence of legal research  
 2 Websites. And the only legal research Website that  
 3 Mr. Racich or I were able to identify was a Website named  
 4 fielweb--or--sorry--the only--the only legal research site  
 5 in the time period from October to March, when Providencias  
 6 was being modified was fielweb.  
 7 But fielweb, I understand, can't be used to access  
 8 any of the cases that were cited in the Judgment or in  
 9 December 21st Providencias. So it can't be the source of  
 10 the citations that appear.  
 11 Mr. Racich explained that Internet History  
 12 degrades over time; that--that it's not possible to know  
 13 what Websites may have been accessed.  
 14 But rather than--than explain why I think that's  
 15 potentially misleading, I just wanted to explain how  
 16 Internet History actually works. So use as an example a  
 17 computer that's accessing the New York Times Website.  
 18 And in this example, the computer would first  
 19 access the New York Times on August 26th. When that  
 20 access happens, there will be an Internet History record  
 21 created showing that someone went to NewYorkTimes.com on  
 22 August 26th and there'll be a visit count of one recorded  
 23 on the computer.  
 24 And then if that person accesses two stories on  
 25 the New York Times Website, there will be two more records

10:00 1 created showing the access date to that story and a visit  
 2 count of 1.  
 3 And if someone were to access 10 stories, there  
 4 would be ten different records created.  
 5 Then upon--sorry. In addition, there would be a  
 6 cookie created showing that someone first accessed the  
 7 New York Times Website on August 26th.  
 8 And then if in addition someone accessed the  
 9 New York Times Website again on August 27th, there would  
 10 be an update to the first record showing that the  
 11 NewYorkTimes.com Website was accessed on August 27th and  
 12 the visit count would be reflected to be 2.  
 13 And if someone accessed two more stories, there  
 14 would be two more Internet History records created showing  
 15 someone accessing those stories on August 27th.  
 16 And the cookie would remain from August 26th.  
 17 And if over time, if you were to go back to these  
 18 computers and do an analysis months or years later, the  
 19 Internet History will have degraded. Some of the records  
 20 would likely have been deleted and overwritten.  
 21 So in this example, two of the records showing  
 22 access to the New York Times Website would have degraded  
 23 and been overwritten. There would no longer be recoverable  
 24 forensic analysis, but the cookie will likely stay. And  
 25 that's--because as Mr. Racich acknowledges in his Report,



10:01 1 the computer often does not delete old cookies even while  
 2 Internet History records are deleted.  
 3 So in order for there to be no evidence of any  
 4 other legal research Website on Mr. Zambrano's computer,  
 5 all of the Internet History records would have had to have  
 6 degraded, disappeared and been overwritten such that  
 7 they're no longer recoverable and the cookie would have had  
 8 to have been deleted and overwritten.  
 9 But we have substantial Internet History in the  
 10 relevant time period from both of the computers, and we  
 11 have substantial records of cookies on both computers.  
 12 I then looked at Mr. Zambrano's testimony about  
 13 the content of the Judgment. He said that nobody else  
 14 wrote any of it.  
 15 And I reviewed December 21st Providencias and  
 16 December 28th Providencias and compared the content of  
 17 those two documents to text identified by Mr. Leonard as  
 18 having been plagiarized, and I understand that best text  
 19 from documents that were Plaintiffs' work product that  
 20 wasn't filed with the Court.  
 21 And I found in December 21st Providencias was a  
 22 series or a selection of that text and in the  
 23 December 28th Providencias is the same text plus more.  
 24 And I wanted to highlight two. Selva Viva Database, which  
 25 I'll come back to, and Citations to U.S. Cases and

10:02 1 Treatises.  
 2 December 21st Providencias has in it Citations  
 3 that don't appear in the issued Judgment. So whoever was  
 4 drafting the Judgment, after inserting these English  
 5 Language Citations to U.S. cases, had to have deleted those  
 6 Citations before the document was issued as the Judgment.  
 7 And then looking at the Selva Viva Database, I  
 8 know that as of December 21st, there was content from the  
 9 Selva Viva Database and from December 28th. There was  
 10 additional content from the Selva Viva Database inserted  
 11 from the 21st to the 28th.  
 12 I wanted to explain the Selva Viva Database in a  
 13 little more detail.  
 14 The Selva Viva Database or the Plaintiffs' unfiled  
 15 Selva Viva Databases is the database that I understand was  
 16 not filed with the Court and represented the Plaintiffs'  
 17 compilation of lab results in Lago Agrio.  
 18 So this sample here shows in the first column the  
 19 sample name; the next column, the Expert who took the  
 20 sample, then the party that expert represents, then whether  
 21 or not the sample was a soil or water sample, the chemical  
 22 that was being tested for, the test method and then  
 23 finally, the result of that test.  
 24 And to be clear, this is a very limited sample of  
 25 that database. It is over 19 columns wide and over 65,000

10:04 1 rows long. And if you print it, it's thousands of pages.  
 2 It's effectively unusable in printed form because it's so  
 3 complex and so voluminous.  
 4 And I explained in my First Report that the  
 5 Judgment copies information from the Selva Viva Database  
 6 that isn't found in the filed lab results, and there are  
 7 many reasons for that. One of the reasons or the analyses  
 8 I performed related to the sample names. The Selva Viva  
 9 Database uses an SV or a TX record to reference certain  
 10 samples. But having reviewed the filed lab results, it's  
 11 clear that the filed lab results don't use those SV or TX  
 12 references.  
 13 And the Judgment uses the SV or the TX references,  
 14 and it uses it for 61 different samples. And that's just  
 15 one of the examples. There were other naming conventions  
 16 used in the Selva Viva Database that appear in the  
 17 Judgment, as well as data irregularities, where data in the  
 18 Selva Viva Database doesn't appear in the filed lab results  
 19 but the Judgment references the data exactly as it appeared  
 20 in the Selva Viva Database.  
 21 Another thing the Judgment used the Selva Viva  
 22 Database for were a series of statistics about those  
 23 samples. The Judgment referenced that 10 percent of the  
 24 samples for TPH were above 5,000 and that 10.3 were from  
 25 1,000 to 5,000 and set forth in detail various percentages

10:05 1 of samples that fell into different buckets and in some  
 2 cases set them forth with decimal precision.  
 3 And I reviewed the Selva Viva Database and the  
 4 filed lab results to determine where those statistics would  
 5 have come from. So I went to the Selva Viva Database and  
 6 performed a calculation across that data set to identify,  
 7 for instance, how many samples in that database were from  
 8 1,000 to 5,000, and found that in that database exactly  
 9 10.3 percent were in the Selva Viva Database.  
 10 We're looking at the percentage of samples that  
 11 were submitted by Texaco, and less than 1,000, exactly  
 12 88.2 percent of those samples in the Selva Viva  
 13 Database--the percentages in the Selva Viva Database  
 14 matched those listed by the Ecuadorian Judgment.  
 15 I then looked at the filed lab results to see  
 16 whether or not you could also calculate those statistics  
 17 using the filed lab results and found that you couldn't.  
 18 And the reason for that is that the Selva Viva  
 19 database double and triple counts certain samples. So a  
 20 single sample in the Selva Viva Database may be listed such  
 21 that you would count it both in the 1,000 to 5,000 bucket  
 22 and twice in the less than 1,000 bucket. And you have to  
 23 re-create that exact double and triple counting as it  
 24 appears in the Selva Viva Database for the percentages to  
 25 match what's shown in the Judgment. So you have to use

10:07 1 double and triple counting in the Selva Viva Database to  
 2 get those percentages.  
 3       Knowing that the Selva Viva Database is the source  
 4 of data and naming irregularities that appear in the  
 5 Judgment and the statistics, I looked on the Zambrano  
 6 Computers about how long Excel was used.  
 7       Looking at the statistics, how long Excel was used  
 8 is important because the statistics are very complex to  
 9 calculate. I use Excel essentially every day and am  
 10 extremely well-practiced in using Excel. And even with  
 11 that experience, it took me multiple hours to calculate the  
 12 statistics the first time I did it.  
 13       And now knowing exactly how to calculate them and  
 14 having done it dozens of times, it's still--still takes me  
 15 20 to 30 minutes sometimes longer to do.  
 16       On the Zambrano Computers, Excel was only used for  
 17 four minutes, from October 2010 to March 2011, which, based  
 18 on my experience, calculating the statistics isn't enough  
 19 time to calculate those statistics.  
 20       I also looked at the time period from  
 21 December 21st to December 28th because I knew that  
 22 additional naming and data irregularities were copied into  
 23 Providencias in that exact seven-day window.  
 24       And Excel wasn't used at all on either Zambrano  
 25 Computer in that time period. So it wouldn't have been

10:08 1 possible for someone to open the Selva Viva Database,  
 2 reference--see the samples and then reference them while  
 3 drafting Providencias because Excel is the program that you  
 4 would use to open the Selva Viva Database and it was not  
 5 used.  
 6       Turning to what Mr. Racich looked at and offered  
 7 about the Plagiarized Documents, he didn't offer an overall  
 8 opinion on that entire analysis but broke it into pieces as  
 9 to whether or not the Judgment contained content from the  
 10 Plagiarized Documents, he agreed; whether or not the  
 11 Plagiarized Documents were on the Zambrano Computers, he  
 12 agreed--he stated in his most recent report that it's a  
 13 fact that the documents aren't present electronically.  
 14       As to whether or not the Judgment--whoever  
 15 authored the Judgment must have had those, he agreed and  
 16 offered some speculation as to ways that the Author may  
 17 have had those other than electronically.  
 18       And then as to whether or not the Plagiarized  
 19 Documents were in the record, he stated that it wasn't  
 20 based on computer forensics.  
 21       And I agree with that, in part; but whether or not  
 22 someone used Excel is a point of computer forensics. And I  
 23 knew from my analysis of the Selva Viva Database that  
 24 someone must have used the Excel electronically to  
 25 calculate those statistics. It would be nearly impossible

10:10 1 to do so across thousands of pages of paper that when you  
 2 print it are multiple pages wide, multiple pages long.  
 3       As for the other documents, I agree that it's--the  
 4 point is not on computer forensics. I rely on other  
 5 experts to establish the other documents aren't in the  
 6 record.  
 7       Another thing that Mr. Racich and I agreed on is  
 8 that the evidence in Providencias is consistent with text  
 9 having been copied and pasted from other documents.  
 10       So looking at Page 34 is one example of that  
 11 evidence where the document on Page 34 begins in Bookman  
 12 Old Style and ends in Bookman Old Style; and in the middle  
 13 of the document is a block of text with the Times New Roman  
 14 font. And that's a block of text--or that formatting  
 15 difference is what we agree is consistent with copying and  
 16 pasting.  
 17       Mr. Racich has said that that block of text or  
 18 that other blocks of text may have been copied by--copied  
 19 from Caso Texaco, but there's no evidence consistent with  
 20 that.  
 21       This block of text shown here is not in any of the  
 22 versions of Caso Texaco that we recovered. And looking at  
 23 the font, none of the versions of Caso Texaco that we  
 24 recovered have any characters in Times New Roman. They're  
 25 all in Bookman Old Style. And for this--this font and

10:11 1 formatting difference to exist, the source document would  
 2 have been in Times New Roman.  
 3       So that brings me back to the two conclusions--or  
 4 overall conclusions I drew from the Zambrano Computers,  
 5 that there's no evidence--or that the evidence isn't  
 6 consistent with Mr. Zambrano's testimony; the evidence is  
 7 inconsistent with his testimony and that at least some of  
 8 the content could not have been generated on either of the  
 9 Zambrano Computers.  
 10       And looking at what did happen or what remains  
 11 plausible based on the evidence, I wanted to go back to the  
 12 Word document.  
 13       So this is the Word document that I opened at the  
 14 beginning of the demonstration. And it's possible that I  
 15 could have--I can sit here and type from a preprinted  
 16 document, here using the declaration for an expert. And I  
 17 can type from documents that are preprinted, saved by  
 18 someone else, given to me and do all of that.  
 19       And the metadata would be as we see.  
 20       The other thing that's possible is I can take a  
 21 thumb drive that I have here--and we know that on the  
 22 Zambrano Computers there were 13 different--or at least 13  
 23 different thumb drives connected to those computers in the  
 24 relevant time period. And I'm having some trouble with  
 25 this.

10:13 1 So I can connect the thumb drive, wait for the  
2 computer to detect it, go to that thumb drive and then open  
3 a document that I've named in this case, Documento 1, which  
4 is the name of a document that was opened from a thumb  
5 drive on Mr. Zambrano's computer. And I know that there  
6 were multiple such documents opened from thumb drives on  
7 Mr. Zambrano's computer in the relevant time period.

8 And this document that I've named Documento 1 is  
9 actually December 21st Providencias. And I can copy a  
10 block of text from this document, take roughly three pages,  
11 go back to this demonstration document and paste that text  
12 in. And what we'll have here is a block of text in this  
13 case from Providencias in Bookman Old Style; and this text  
14 at the beginning, which is in Calibri, that's the default  
15 font in this document.

16 And if we look at the metadata for Documento 1,  
17 you can see that it's authorized and Last Saved By CPJS,  
18 and the metadata is all consistent with it from  
19 Mr. Zambrano's computer.

20 Q. Sorry, Mr. Lynch. Can you clarify, what is the  
21 user name--what's the computer associated with that user  
22 name CPJS?

23 A. That's the old computer.

24 Q. Of Mr. Zambrano's?

25 A. Of Mr. Zambrano's computer.

10:16 1 you've--not necessarily that you've made any changes to the  
2 content, but if you've even moved the mouse around, that  
3 will increment the revision count.

4 BY MR. WHITE:

5 Q. Mr. Lynch, before you close all that out, at the  
6 end I'm going to ask you to take screen shots so that what  
7 you've shown on the screen can be provided to the Tribunal.

8 A. Sure.

9 But that's--that takes me back to my conclusions,  
10 and I can take those screen shots now unless the Tribunal  
11 has any questions.

12 MR. WHITE: I have no further questions for the  
13 witness.

14 PRESIDENT VEEDER: Well, thank you with that.

15 Then there'll be questions from the Respondent.

16 THE WITNESS: I'm going to take a few minutes just  
17 to make those screen shots.

18 PRESIDENT VEEDER: Again, it's up to you whenever  
19 to take the midmorning break, so whenever it's convenient  
20 to you.

21 MR. EWING: Understood.

22 MR. WHITE: And if we could just give Mr. Lynch a  
23 few moments to take those screen shots.

24 PRESIDENT VEEDER: Take your time.

25 CROSS-EXAMINATION

10:14 1 Q. Thank you.

2 A. If I then remove that thumb drive, Documento 1 is  
3 not on this computer. If we did a forensic analysis, we  
4 almost certainly would not find a document with metadata  
5 reflecting CPJS.

6 But if I go to the metadata from--and I've  
7 misspelled "declare." If I go to the metadata from this  
8 demonstration document--I need to close it--we see that it  
9 shows that I created the document and I last saved the  
10 document and that the revision count is 11 because I saved  
11 it 11 times, and the edit time is roughly 37 minutes  
12 because that's how long the document has been open here.

13 But we know, having all seen me do this, that none  
14 of the content of that document came from me. I'm not the  
15 Author of the document I started retyping, nor am I the  
16 Author of December 21st Providencias.

17 But the metadata here shows that I am. And this  
18 evidence is all consistent with what we see on the Zambrano  
19 Computers and consistent with the text having been sourced  
20 from a third party and then inserted into Providencias.

21 PRESIDENT VEEDER: Before you go, what does  
22 revision number mean? Why is it 11?

23 THE WITNESS: The revision number is the number of  
24 times the document was saved. And I have a habit of  
25 hitting Control S; and every time you hit Control S, if

10:17 1 (Pause.)

2 BY MR. EWING:

3 Q. Mr. Lynch, if you would make sure to hold onto  
4 those documents that you used as your demonstration, not  
5 just your screen shots?

6 A. Yes.

7 MR. EWING: Thank you.

8 THE INTERPRETER: We have a problem with Ms. (sic)  
9 Ewing's microphone. That microphone does not work.

10 (Pause.)

11 BY MR. EWING:

12 Q. Good morning, Mr. Lynch, have you finished taking  
13 your screen shots?

14 A. I have, yes.

15 Q. And saving those documents for us?

16 A. Yes, I have.

17 Q. Excellent. Mr. Lynch, how long have you been  
18 working for Chevron?

19 A. I did a little bit of work for Chevron in 2011 but  
20 have been primarily working since 2013.

21 Q. So your primary role in this project started in  
22 2013?

23 A. Yes.

24 Q. And how long has Stroz Friedberg been working for  
25 Chevron?

10:19 1 A. I wouldn't know the exact date; somewhere around  
 2 probably 2010.  
 3 Q. And you produced three Reports in this  
 4 Arbitration; right?  
 5 A. Yes, I did.  
 6 Q. Your First Report was dated October 7th, 2013,  
 7 and that replaced a series of reports by Mr. Younger that  
 8 were dated before that; correct?  
 9 A. Yes. That's correct.  
 10 Q. And your October 7th, 2013, Report covered all  
 11 of the materials in Mr. Younger's earlier reports; correct?  
 12 A. That's my belief, yes.  
 13 Q. So they've completely supplanted them?  
 14 A. Yes, sir.  
 15 Q. Okay. You'll see in the binders that we just  
 16 handed out to you your October 7th, 2013.  
 17 THE COURT REPORTER: It's too fast for  
 18 interpretation.  
 19 MR. EWING: Understood.  
 20 BY MR. EWING:  
 21 Q. You will see in your--the binder in front of you  
 22 that we just gave you, Tab No. 1 is your--the First Lynch  
 23 Report. Do you see that?  
 24 A. Yes, I do.  
 25 Q. And then the second tab is your Second Report from

10:20 1 August 15th, 2014?  
 2 A. Yes, I see that.  
 3 Q. And the third tab is your Third Report from  
 4 January 14th, 2015?  
 5 A. Yes. I see that.  
 6 Q. Okay. At any point, if you need to access or  
 7 reference those reports, please do. That's why they're  
 8 there.  
 9 This is not intended to be a memory test. So at  
 10 any point, please take your time and review your reports.  
 11 A. Thank you.  
 12 Q. Is that understood?  
 13 A. Yes.  
 14 Q. Excellent. And I also have included Mr. Racich's  
 15 Reports at Tab 4 for December 16th, 2013; Tab 5 for  
 16 November 7th, 2014; and Tab 6 for his March 16th, 2015  
 17 Report.  
 18 And the same goes for those; if you need to access  
 19 them, please do.  
 20 A. Thank you.  
 21 Q. Did you see Mr. Racich's December 16th, 2013,  
 22 Report when it was first filed?  
 23 A. I don't know exactly when I saw it; I mean, within  
 24 a few days of it being filed.  
 25 Q. Okay. But as far as you know, you've never

10:22 1 responded to it?  
 2 A. I don't believe I had an opportunity to respond to  
 3 it.  
 4 Q. You understand that Claimants submitted two more  
 5 reports after Mr. Racich's December 16th, 2013,  
 6 Report--actually, excuse me, let me correct that.  
 7 You understand that Claimant submitted three of  
 8 your reports after December 16th, 2013, none of which  
 9 responded to Mr. Lynch's--or Mr. Racich's December 16th,  
 10 2013, Report?  
 11 A. Yes, I do.  
 12 Q. Okay. Were you not given an opportunity to  
 13 respond to that Report?  
 14 A. I understood that I issued my First Report on  
 15 October 7th and then the--did my analysis of the Guerra  
 16 Computers, among other things; and then my subsequent  
 17 reports were on different topics.  
 18 The two reports in the--in evidence in this case  
 19 were on my analysis of the Zambrano Computers. I didn't--I  
 20 didn't understand that I could revisit the Guerra  
 21 computers.  
 22 Q. And you never even listed the Racich December 2013  
 23 Report as a report that you've reviewed in any of your  
 24 reports that you've submitted since; right?  
 25 A. I don't know if I listed it as something that I've

10:23 1 reviewed. I think I--I listed in my--all the subsequent  
 2 reports and materials I relied on for those reports, and I  
 3 didn't rely on that Report for the analysis.  
 4 Q. Okay. If you could turn to Tab 1, which is your  
 5 October 7th, 2013, Report, in Paragraph 1, Item D refers  
 6 to two Nokia cell phones belonging to Former Judge Guerra.  
 7 Do you see that?  
 8 A. I do, yes.  
 9 Q. And did you create forensic images of those cell  
 10 phones?  
 11 A. I personally didn't. Someone at Stroz Friedberg  
 12 did.  
 13 Q. And did they do that under your supervision?  
 14 A. When those were created in August of 2012, they  
 15 weren't working under my supervision directly. But I've  
 16 reviewed the forensic images.  
 17 Q. Okay. To capture data from the Nokia phones, you  
 18 had to turn those phones on; right? Or someone working  
 19 under your supervision had to turn those phones on;  
 20 correct?  
 21 A. Yes. That's correct.  
 22 Q. And turning those phones on very well may have  
 23 changed them; right?  
 24 A. Yeah. Mobile phones are, I guess, particularly  
 25 difficult to--to--in most cases, impossible to preserve

10:25 1 without changing them in some way. And it's the process we  
 2 use to follow industry-accepted practices to turn them on  
 3 and preserve them.  
 4 Q. Okay. Did you--what steps did you take to prevent  
 5 loss of information from those phones?  
 6 A. Well, you turn them on in a--you remove the SIM  
 7 cards, if they had any in them, and then turn them on  
 8 somewhere that's RF-isolated; and then, if possible,  
 9 disable the wireless and then preserve them.  
 10 Q. Just pausing for the Spanish.  
 11 THE COURT REPORTER: Slow down just a little bit.  
 12 BY MR. EWING  
 13 Q. You also analyzed Mr. Donziger's hard drives;  
 14 right?  
 15 A. Yes, I did.  
 16 Q. When were those hard drives imaged?  
 17 A. They were--well, there are multiple hard drives  
 18 that I called the Donziger Media, and they were imaged at  
 19 various points in time in 2010 and 2011, I believe.  
 20 Q. If you would turn to Paragraph 75 of your  
 21 August--October 2013, Report.  
 22 A. Yes.  
 23 Q. And do you see here where it says--it lists three  
 24 images you that you called the Donziger Hard Drives; is  
 25 that correct?

10:26 1 A. Yes. I see that. That's correct.  
 2 Q. And these are the multiple images that you're  
 3 referring to?  
 4 A. Set forth through 74, 75, 76, 77 are the multiple  
 5 images; 75 is some of them.  
 6 Q. Okay. So when--let's start with  
 7 the--Paragraph 74.  
 8 What devices are listed there that were imaged?  
 9 A. Seventy-four lists a laptop, a desktop and a  
 10 MacBook Air.  
 11 Q. And your understanding is that those are  
 12 Mr. Donziger's computers; correct?  
 13 A. That's my understanding. That was what was  
 14 represented to Stroz Friedberg.  
 15 Q. Okay. And those were imaged on January 19th and  
 16 20th, 2011?  
 17 A. Yes.  
 18 Q. And you understand that January 19th and 20th,  
 19 2011, is approximately one month before the final Judgment  
 20 was issued?  
 21 A. Yes.  
 22 Q. Okay. Looking at Paragraph 75, what computers are  
 23 listed there?  
 24 A. There--there's a--I believe it was a desktop and  
 25 two laptops for a Donziger and Mr. Woods.

10:28 1 Q. And what date were those devices imaged?  
 2 A. Those were imaged in September 2010.  
 3 Q. And approximately how long before the Judgment was  
 4 issued is that?  
 5 A. Approximately four or five months before the  
 6 Judgment was issued.  
 7 Q. And then if you look at Paragraph 76, what devices  
 8 are listed there?  
 9 A. Those were two external hard drives that were  
 10 imaged.  
 11 Q. And when were those devices imaged?  
 12 A. Those were imaged, again, in September of 2010.  
 13 Q. Which you would agree with me is approximately  
 14 four to five months before the Judgment was issued;  
 15 correct?  
 16 A. Yes.  
 17 Q. And it is your understanding that this is the  
 18 entirety of the Donziger media that Stroz Friedberg  
 19 received; is that correct?  
 20 A. Yeah. We also reimaged some of those devices,  
 21 but--but my understanding is those were all of the devices  
 22 that were produced by Mr. Donziger.  
 23 Q. Okay. And they were all--the earliest any of them  
 24 was imaged--or the soonest--let me just start that over.  
 25 The closest any of these devices were imaged is at

10:30 1 least one month before the Final Judgment was issued;  
 2 correct?  
 3 A. Yes.  
 4 Q. And presumably Mr. Donziger would have known that  
 5 someone had taken his computers and imaged them; correct?  
 6 A. I think he--he provided them to a--a consultant he  
 7 had hired to image them.  
 8 Q. Okay. When did you first see these computers?  
 9 A. I--I've not personally handled the computers.  
 10 I've--I've had forensic images of the computers.  
 11 Q. When did you first see the forensic images?  
 12 A. I--I couldn't recall an exact date. Some of my  
 13 involvement in 2010 related to these devices, January 2011.  
 14 But I don't--I can't recall sitting here right now exactly  
 15 which computers and on what dates those were.  
 16 Q. And after these devices were imaged, Stroz  
 17 Friedberg--  
 18 Friedberg?  
 19 A. "Friedberg."  
 20 Q. --Stroz Friedberg extracted all of the documents  
 21 on these images; correct?  
 22 A. Yes.  
 23 Q. And they turned all of the documents over to  
 24 counsel for Chevron; correct?  
 25 A. Correct.

10:31 1 Q. Do you know which of these devices had the Fusión  
 2 Memo, for instance?  
 3 A. No. Sitting here right now, I--I couldn't tell  
 4 you which of the devices had the Fusión Memo.  
 5 Q. And the same would be true for all of what Chevron  
 6 calls the unfiled work product; correct?  
 7 A. Yes. Sitting here right now, I couldn't tell you  
 8 which of the devices those documents were all found on, but  
 9 those documents were found in--in either these devices or  
 10 some of the other media that was produced as part of the  
 11 discovery.  
 12 Q. You mentioned "other media." What other media are  
 13 you referring to?  
 14 A. For example, we also received documents that were  
 15 produced by Stratus Consulting.  
 16 Q. But in terms of the Donziger media, this is the  
 17 full extent of the Donziger media; correct?  
 18 A. Yeah. We didn't receive any--any image--any  
 19 other--  
 20 If Mr. Donziger had other computers, he didn't  
 21 tell--tell us about them.  
 22 Q. So if Chevron has any documents from Mr. Donziger,  
 23 they are from these images; correct?  
 24 A. I--I couldn't speak to all of what Chevron has.  
 25 If I have any documents from Mr. Donziger, they're

10:34 1 that, "As part of my analysis, I reviewed the Zambrano  
 2 testimony."  
 3 And the Zambrano testimony includes deposition and  
 4 trial testimony from RICO; correct?  
 5 A. That's correct, yes.  
 6 Q. So, "As part of my analysis, I reviewed the  
 7 Zambrano testimony to understand his claims as to the  
 8 process by which he and an individual he personally hired,  
 9 Ms. Calva, purportedly drafted the Ecuadorian Judgment."  
 10 Do you see that?  
 11 A. I do, yes.  
 12 Q. And more specifically, you assess whether the  
 13 forensic evidence is consistent with Zambrano's testimony;  
 14 is that right?  
 15 A. That's correct.  
 16 Q. Comparing evidence to testimony is not itself a  
 17 digital forensic task; is that correct?  
 18 A. Doing so relies on the evidence--the forensic  
 19 analysis of the evidence.  
 20 Q. In terms of what digital forensics is and what  
 21 you're here as an expert for, you are here to discuss the  
 22 information and data that you recovered from the various  
 23 computers at issue in this case; correct?  
 24 A. Yes, and describe what that evidence means, what  
 25 it--it shows and--yeah, that's what I'm here to do.

10:32 1 from these documents--or these images.  
 2 PRESIDENT VEEDER: Sorry. Can I ask you to speak  
 3 again a bit more slowly? You tend to speak very fast.  
 4 THE WITNESS: Sorry. Yeah. I can't speak to what  
 5 Chevron may or may not have. I can only speak to what I--I  
 6 have.  
 7 BY MR. EWING  
 8 Q. Understood.  
 9 In terms of those computers that have been  
 10 forensically analyzed, it is your understanding that these  
 11 computers listed in paragraphs 74 to 76 of Mr. Donziger is  
 12 the universe of computers that were forensically analyzed  
 13 for Chevron of Mr. Donziger's computers; correct?  
 14 A. That is my understanding, that these were--these  
 15 were all of the computers that he produced for--for the  
 16 analysis.  
 17 Q. Okay. And if we could move to your Second Report.  
 18 And we will be just jumping back and forth a little bit,  
 19 so--throughout today.  
 20 On Page 4 of your Report, you state that, among  
 21 other things, counsel asked you to perform an analysis of  
 22 two computers used by Nicolas Zambrano.  
 23 Do you see that in the first paragraph?  
 24 A. I do, yes.  
 25 Q. Okay. And on Page 9 of your Report, you note

10:36 1 Q. Thinking back to your First Report from  
 2 October 2013 and focusing on Mr. Guerra's media, you at no  
 3 time purport to rely upon Mr. Guerra's testimony, either in  
 4 the form of trial or deposition testimony or affidavit  
 5 testimony, to reach your conclusions; isn't that right?  
 6 A. Yes, that's correct. At the time I wrote this  
 7 Report, I--I didn't have any Guerra testimony--he hadn't,  
 8 for example, testified in the RICO case at that point.  
 9 Q. So when you wrote your Report in October 2013,  
 10 counsel had not provided to you any of his prior statements  
 11 or affidavits or recorded conversations?  
 12 A. No. I--I--I list in the Report what I had.  
 13 Q. Okay. Did you ever take up the task of assessing  
 14 whether Mr. Guerra's story is consistent with Mr. Guerra's  
 15 evidence?  
 16 A. Not explicitly in my Report, no.  
 17 Q. In your First Report, you detail your experience  
 18 in digital forensics, which are the skills on which you  
 19 rely to reach your conclusions; right?  
 20 A. Yeah. I--I describe generally some of my  
 21 background.  
 22 Q. Okay. But your Report does not list assessment of  
 23 witness testimony as an expertise; correct?  
 24 A. I don't explicitly list that. I think that's  
 25 something that--that forensic experts are--are often asked

10:37 1 to do, to compare statements made--evidence through and  
 2 statements to the forensic evidence and explain whether or  
 3 not that evidence is consistent with those statements.  
 4 Q. But you've never been qualified as an expert to  
 5 assess credibility of testimony, have you?  
 6 A. I have been asked multiple times to--to compare  
 7 the forensic evidence that I find in my analysis to  
 8 testimony.  
 9 I--I--I don't--wouldn't make an actual credibility  
 10 assessment. I think that would be the job of the Court or  
 11 the Tribunal. But I will state if--if the evidence in my  
 12 opinion is consistent with the narrative that's been put  
 13 forth.  
 14 Q. Have you been at this Hearing since last Tuesday?  
 15 A. I've been--I've been to parts of it.  
 16 Q. Did you hear our opening arguments?  
 17 A. I heard parts of it.  
 18 Q. And did you hear our cross-examination of  
 19 Dr. Leonard?  
 20 A. I heard parts of it. I wasn't--to be honest, I  
 21 was not really paying attention. I had a document I had to  
 22 write.  
 23 Q. A document which we requested; correct?  
 24 A. Yes.  
 25 Q. And Dr. Juola's testimony?

10:38 1 A. I heard parts of it.  
 2 Q. And Mr. Guerra's testimony?  
 3 A. I didn't hear that, no.  
 4 Q. Okay. And were you in the back--in the break-out  
 5 room with the rest of Chevron's experts?  
 6 A. I don't know who all was in the room. I was in a  
 7 break-out room with--  
 8 Q. Did they at least give you popcorn?  
 9 A. I didn't get any popcorn.  
 10 Q. Okay. Would you turn to Tab 7, please. This is  
 11 the letter from the Tribunal attaching the agreed-upon  
 12 protocol for imaging the Zambrano hard drives.  
 13 Do you recognize this?  
 14 A. Not the--the cover letter--I've not reviewed this  
 15 document in full to see if I've seen this particular  
 16 version, but it's at least similar to something I've seen  
 17 before.  
 18 Q. Okay. And I'll represent to you, I won't be  
 19 asking you any questions about the cover letter. I just  
 20 put it in there for completeness.  
 21 A. Okay.  
 22 Q. We're going to be focusing on Page 5 of the  
 23 protocol. You will see the Chain of Custody section.  
 24 A. Yes, I see that.  
 25 Q. And the Chain of Custody document records who is

10:40 1 responsible for the evidence in question; correct?  
 2 A. Well, it says that a--that people should certify  
 3 the accuracy of the Chain of Custody.  
 4 Q. Let me clarify that my understanding is that a  
 5 Chain of Custody tell us who has which evidence and when.  
 6 Would you agree with that?  
 7 A. Yes, it does.  
 8 Q. And it records the handing off of evidence from  
 9 one person to the next person; correct?  
 10 A. Yes.  
 11 Q. And it is standard practice to include a Chain of  
 12 Custody record for physical evidence such as a forensic  
 13 image; right?  
 14 A. It's standard practice for--for people in  
 15 forensics to maintain one, and I don't--I'm not sure I  
 16 heard the entire question. Can you repeat that? Sorry.  
 17 Q. My question was: Is it a standard practice to  
 18 include a Chain of Custody record with all physical  
 19 evidence?  
 20 A. I think it's standard practice to maintain one.  
 21 I don't know that you include one with every  
 22 single copy of a forensic image, but maintain a Chain of  
 23 Custody on any original evidence, yes.  
 24 Q. Okay. So you would agree with me that it's  
 25 correct practice to include or to maintain one for all

10:42 1 pieces of evidence; correct?  
 2 A. I'd agree that it's--it's standard practice for  
 3 forensic examiners--or best practice for forensic examiners  
 4 to maintain a Chain of Custody for original evidence.  
 5 Q. Would you please turn to Appendix A of the same  
 6 exhibit?  
 7 This is the Zambrano hard drive Chain of Custody  
 8 form itself; correct?  
 9 A. Yes. Yes, it is.  
 10 Q. And this Chain of Custody shows us that Zambrano's  
 11 hard drives were picked up by someone--someone who's name I  
 12 can't quite read, Mr. Jimenez, it looks like to me--and  
 13 were delivered to Ms. Kathryn Owen on May 20th, 2014 at  
 14 10:30 a.m.; right?  
 15 A. Yes, that's what this appears to show.  
 16 Q. Okay. And then Ms. Owen returned the hard drives  
 17 to the Ecuadorian officer's custody at 18:55 that same day;  
 18 correct?  
 19 A. Yes.  
 20 Q. So we know that if anything happened between--or  
 21 before 10:30, the Ecuadorian officer would be the person  
 22 who was responsible for those events; correct?  
 23 A. Assuming the Chain of Custody is accurate, yes.  
 24 Q. And let's do that. Let's assume that this is  
 25 accurate.

10:43 1 And this Chain of Custody would also tell us that  
 2 from 10:30 a.m. on May 20th until 6:55 p.m. on  
 3 May 20th, Ms. Owen was responsible for the Zambrano hard  
 4 drives; right?  
 5 A. Yes.  
 6 Q. And then after 6:55 p.m., the Ecuadorian officer  
 7 took responsibility again; correct?  
 8 A. I--I can't really read it. I think it's a  
 9 different Ecuadorian officer, but an Ecuadorian officer  
 10 took responsibility again.  
 11 Q. I agree. This looks like "Santiago Crespo."  
 12 A different--an Ecuadorian officer is all we're  
 13 really looking for here.  
 14 You would agree with me that he has now taken  
 15 control of those hard drives at 6:55 p.m. from Ms. Owen;  
 16 correct?  
 17 A. Yes.  
 18 Q. Okay. So if anything happened any time that day,  
 19 we would know the specific person to whom we should go and  
 20 ask questions of; correct?  
 21 A. Yes. Assuming that it's correct, yes.  
 22 Q. Assuming it's correct, we could ask Ms. Owen  
 23 between 10:30 and 6:55 p.m. what happened with the hard  
 24 drives during that time period?  
 25 A. Yes.

10:44 1 Q. And if there were an issue--and there wasn't. I  
 2 was there. There definitely was not--we could call  
 3 Ms. Owen and ask her what happened and, if need be, get a  
 4 sworn statement; right?  
 5 A. We could, yes.  
 6 Q. So you would agree that having a Chain of Custody  
 7 like this is important; right?  
 8 A. It--it can be. I would agree that it's standard  
 9 practice, because it makes--makes the process of  
 10 determining who had a computer slightly easier.  
 11 Q. So it--so it isn't surprising to you that the  
 12 Parties insisted on having a Chain of Custody in the  
 13 protocol; right?  
 14 A. No, it's not--not surprising, but I think I may  
 15 have advised Chevron that they should ask for a Chain of  
 16 Custody.  
 17 Q. But you didn't produce any Chain of Custody for  
 18 Mr. Guerra's hard drives, did you?  
 19 A. I didn't attach a Chain of Custody to my Report.  
 20 Q. Did you maintain one?  
 21 A. From the moment Stroz Friedberg received the hard  
 22 drives, yes.  
 23 Q. Did you attach a Chain of Custody for his USB  
 24 drives?  
 25 A. From the moment I received them, yes.

10:46 1 Q. And the same is true for the CDs, from the moment  
 2 you received them?  
 3 A. Yes.  
 4 Q. But you did not produce that in this arbitration  
 5 as a part of your Expert Report?  
 6 A. Not as part of the Report, no.  
 7 Q. Did you produce it in any way in this arbitration?  
 8 A. I don't believe that I've produced the Chain of  
 9 Custody for the documents in--in the arbitration, no.  
 10 Q. And you're not aware that Chevron has produced it  
 11 either?  
 12 A. I'm not aware of that, no.  
 13 Q. You were told--and if we could turn to Tab 1,  
 14 Paragraph 10.  
 15 You were told that the data was collected from  
 16 former Judge Alberto Guerra's hard drive and flash drives.  
 17 Do you see that in Paragraph 10?  
 18 A. I do, yes.  
 19 Q. But you were not there when the data was  
 20 collected, right?  
 21 A. No, I was not.  
 22 Q. And no one from Stroz Friedberg was there either;  
 23 right?  
 24 A. No.  
 25 Q. In fact, you have absolutely no firsthand

10:47 1 knowledge as to what, if anything, was done with the media  
 2 on July 13th?  
 3 A. Well, I--I have the knowledge that I've--I've  
 4 gained from my analysis of the computers as to--as to what  
 5 happened.  
 6 Q. But I'm asking you specifically: Do you have any  
 7 firsthand personal knowledge of what happened to those  
 8 computers on July 13th?  
 9 A. I--I have the knowledge that I've gained from  
 10 reviewing--from analyzing the computers. I can tell from  
 11 my analysis when certain things happened with those  
 12 computers.  
 13 Q. You were not there on July 13th when these  
 14 computers were retrieved from Mr. Guerra; correct?  
 15 A. No, I was not.  
 16 Q. And you were not there on July 14th with those  
 17 computers, wherever they were?  
 18 A. No, I was not.  
 19 Q. And you were not with the computers on  
 20 July 15th, when they were handed over to Audio Forensic  
 21 Center; is that correct?  
 22 A. That's correct. I was not there.  
 23 Q. And you have no firsthand knowledge of what  
 24 happened on these computers before July 13th; correct?  
 25 A. Well, again, I have the--the knowledge I've gained



10:48 1 from analyzing the computers.  
 2 Q. But you were not physically with these computers  
 3 any time before July 13th; correct?  
 4 A. I was not physically with the computers any time  
 5 before July 13th.  
 6 Q. And you referenced in your opening presentation  
 7 this morning that approximately 22,000 files have a last  
 8 access date of the afternoon and evening of July 13th,  
 9 2012?  
 10 A. Yes, I did reference that.  
 11 Q. And you said in your--  
 12 Actually, what does the last access date signify?  
 13 A. It signifies that the files were accessed in some  
 14 way.  
 15 Q. Okay. And July 13th, when these files were  
 16 accessed, is before you received them; correct?  
 17 A. Yes. It's before the computers were imaged.  
 18 Q. Do you know when--do you know who received those  
 19 files from Mr. Guerra?  
 20 A. I believe that it was Mr. Rivero, I think his name  
 21 was, that got the files from--got the computers from  
 22 Mr. Guerra.  
 23 Q. And if you want, I do have the transcript of the  
 24 conversation that Mr. Guerra had with Andres Rivero and  
 25 Investigator No. 5 at Tab R-1345, if you do need to refer

10:50 1 to that. At this point, I don't think you will, but this  
 2 is the context.  
 3 And actually, could you look to the end of this  
 4 file?  
 5 On the last page, it says 91 page--at the  
 6 bottom--or page--at the top, it says "Page 93 of 94," so  
 7 the page right before the translator's certification.  
 8 PRESIDENT VEEDER: I'm sorry. I've lost you.  
 9 Which tab is this?  
 10 MR. EWING: This is Tab R-1345.  
 11 PRESIDENT VEEDER: I'm sorry. Okay.  
 12 BY MR. EWING:  
 13 Q. What time does this recording end, according to  
 14 this document?  
 15 A. Looking at the third-to-last line, it looks as  
 16 though it ends at 1:54:05.  
 17 Q. And that is probably in the afternoon; right?  
 18 A. It doesn't state what time zone it is or if it's  
 19 a.m. or p.m. I can assume it's p.m.  
 20 Q. I'll represent to you that I also think it's p.m.  
 21 If Mr. Guerra is a night owl, we can learn that  
 22 later.  
 23 So this recording finishes at 1:54 in the  
 24 afternoon.  
 25 And at this point in the recording, Mr. Guerra

10:52 1 has given--  
 2 MR. WHITE: I'm sorry to interrupt, Mr. Ewing,  
 3 with an objection. It's our understanding that time is the  
 4 time in the recording, how long the recording has been  
 5 going, not the time of day. I'm not sure if it matters to  
 6 any point that Mr. Ewing is trying to make.  
 7 MR. EWING: We can--we can move past that. It's  
 8 not a--not an important time necessarily.  
 9 MR. WHITE: Thank you.  
 10 BY MR. EWING:  
 11 Q. The last access date for all of the files--the  
 12 22,000 files on Mr. Guerra's computer, what date is that?  
 13 Do you remember?  
 14 A. It was July 13th, 2012.  
 15 Q. And that's the same date that we have here, where  
 16 Mr. Guerra is handing the documents over to Mr. Rivero;  
 17 correct?  
 18 A. It's the same date that this recording was from  
 19 and the same date that I understand Mr. Guerra provided his  
 20 computer to representatives on behalf of Chevron.  
 21 Q. And do you know why all of those files were last  
 22 accessed at that time?  
 23 A. I--I understand that Mr. Rivero explained that he  
 24 and others sat in front of the computer with Mr. Guerra  
 25 and--and reviewed files, opened them, and were

10:53 1 looking--looking through the contents of the computer.  
 2 Q. Do you know exactly what they did?  
 3 A. Well, I know from--from the evidence that  
 4 they--they did, in fact, open files. There were what's  
 5 called a link file, which tracks when a user opens a file  
 6 created, showing that they were opening files, and the last  
 7 access date shows that files were being accessed.  
 8 Q. So we know then that Mr. Rivero and Investigator  
 9 No. 5 were opening and reviewing files on Mr. Guerra's  
 10 computer at that point; correct?  
 11 A. Yeah, that's--I mean, the evidence taken with what  
 12 I understand Mr. Rivero said shows that to be the case,  
 13 yes.  
 14 Q. Is there any indication of what was changed?  
 15 A. Well, yeah. As I--as I set forth in my  
 16 presentation, the--at least for the files that I analyzed  
 17 and relied on, the last modified dates weren't updated, so  
 18 those files weren't changed.  
 19 Leaving a computer running will change files.  
 20 While a computer is running, it--it--there will be  
 21 operating system files and logs that are constantly being  
 22 modified. So there were changes to those types of  
 23 documents.  
 24 But the files that I relied on were--the last  
 25 modified date for those files wasn't updated, so the

10:54 1 files--I mean, that reflects the files weren't changed.  
 2 Q. And to keep this easier, I'm only referring to the  
 3 files that are relevant to this case. We can put aside  
 4 operating system files, log files, et cetera.  
 5 A. Okay.  
 6 Q. Okay?  
 7 So you say that the last modified date was not  
 8 updated; correct?  
 9 A. Yes, that's correct.  
 10 Q. And by--it was not updated, you mean that it is  
 11 not the same or later than the last access date; correct?  
 12 A. Well, it wasn't--it doesn't reflect July 13th.  
 13 It--it's--looking at the file system metadata and the  
 14 embedded dates, those are the same. They all--they all  
 15 predate July 13th.  
 16 Q. And if you want to turn to your Report where you  
 17 address this, this might make our lives easier.  
 18 Do you have that?  
 19 A. I'm not sure specifically what you're referring--I  
 20 have the charts with the metadata for the files.  
 21 Q. The chart with the metadata, correct.  
 22 And what page are you looking at?  
 23 A. I'm looking at Page 11 for the--the chart with the  
 24 metadata for the 11 draft Guerra Orders.  
 25 Q. Correct. So if we could look at Table 2, you see

10:56 1 for all of these 11 orders, Documents 1 through 11, they  
 2 have an access date of 7/13/2012 at 5:00 in the  
 3 afternoon--5:00 or 6:00 in the afternoon.  
 4 A. Yes, I see that.  
 5 Q. And your contention is that the last written date  
 6 is earlier than that; correct?  
 7 A. Well, the last written date is earlier than that.  
 8 Q. And therefore, because the last written date is  
 9 earlier, the last access didn't actual change anything?  
 10 A. Yes. Had--had the activity that resulted in  
 11 updating the last access date changed the contents, then  
 12 the last modified date or the last written date would have  
 13 been updated.  
 14 Q. Where does the last modified date come from?  
 15 A. The--comes from the file system the files are  
 16 stored on.  
 17 Q. So if, for instance I was looking at Document 1,  
 18 and it has a last written date of October 20th, 2009, at  
 19 6:24 a.m., that date came from the operating system;  
 20 correct?  
 21 A. That--that date comes from the file system that  
 22 the--the file is stored in. It's--that's a date that--when  
 23 you move a file from the computers to external devices, the  
 24 last written date generally stays the same, so it follows  
 25 the document, but it's saved in the file system.

10:58 1 Q. And it--when a file is saved, the operating system  
 2 or the file system simply takes the date and time that the  
 3 computer believes that it is; correct?  
 4 A. Yes.  
 5 Q. So there's no indication that that is actually the  
 6 actual time when that was done, the file was modified; it's  
 7 simply the date that the file system thought that it was;  
 8 correct?  
 9 A. Yeah. The computer--there are--there are ways  
 10 that a computer can validate the date and time, the  
 11 software that does that.  
 12 But generally a computer only knows what its  
 13 internal clock believes it to be, whether or not that date  
 14 is accurate or not.  
 15 But I would note that I did an extensive amount of  
 16 analysis on the Guerra Computer to see whether or not there  
 17 was any evidence that date was wrong, if that computer--if  
 18 the computer clock was ever mis-set or tampered with.  
 19 Q. So if I were to take your computer now and change  
 20 your clock to October 20th, 2009, at 6:24 a.m., open your  
 21 document that you used in your presentation this morning--  
 22 A. Uh-huh.  
 23 Q. --and save it, what would the last written date  
 24 be?  
 25 A. The Last Written date would be updated to whatever

10:59 1 date the computer believed to be, in your example,  
 2 October 20th, 2009.  
 3 Q. And if I then close that and reset your computer's  
 4 date to the current date of April 27th at 10:59 a.m., any  
 5 future edits I would do would reflect that date; correct?  
 6 A. Yes. Any further edits would reflect--well, at  
 7 any point in time when you save the document, the time the  
 8 computer believes it will be--believes it to be will be  
 9 assigned as the Last Written date.  
 10 Q. And if I then imaged your computer and extracted  
 11 all the document files and provided them to Counsel, they  
 12 could tell me that this file was not updated during this  
 13 presentation, according to the metadata?  
 14 A. Looking at just the metadata for that document,  
 15 yes. But there would be other evidence in the image that  
 16 someone had manipulated the clock.  
 17 Q. You referred to other evidence. What other  
 18 evidence are you referring to?  
 19 A. It depends on exactly the programs that are on the  
 20 computer. But for example, if there was a virus-scanning  
 21 program on the computer, virus scanners--and many other  
 22 programs maintain a log of what their activity is.  
 23 And if you look at that log, assuming a normally  
 24 operating clock, that log appears sequentially. The first  
 25 entry is the first thing the virus scanner did. The second

11:01 1 entry is the second thing, and the dates will follow  
 2 because the clock is operating normally. It's always  
 3 advancing. And if you go down into the tens of thousands  
 4 of rows, the tenth thousand log entry will be the tenth  
 5 thousand thing that was recorded; and, assuming the clock  
 6 is operating normally from log entry 1 to 10,000, those  
 7 dates will all be sequential.  
 8 If you manipulate a computer clock, then those  
 9 dates won't be sequential, so you'll still see the first  
 10 entry's the first thing the virus scanner did. The tenth  
 11 thousandth thing is the tenth thousandth thing the virus  
 12 scanner did.  
 13 But you'll see that the clock jumps around. So  
 14 you may see that using July 13th, that on  
 15 July 13th--that some of the last entries in the virus  
 16 scanner log are July 13th; but then there would be a log  
 17 entry recorded October 20th, 2009. And then there might  
 18 be a log entry recorded another date because someone was  
 19 changing the clock at those dates, and then there would be  
 20 log entries going back to July 13th, 2012.  
 21 You'd see--you'd see stuff like that in the other  
 22 evidence in the computer. And I looked for that on the  
 23 Guerra Computer and found no evidence of any--any log out  
 24 of order, any sequential anomaly that would suggest someone  
 25 was tampering with the clock.

11:02 1 Q. So Mr.--when Mr. Guerra gave his computer to the  
 2 investigators, they probably removed his hard drive in  
 3 order to image it; correct?  
 4 A. I would imagine that Mr. Peltier, who imaged the  
 5 computer, removed the hard drive.  
 6 Q. Do you know whether the investigators took the  
 7 whole computer or just the hard drive?  
 8 A. They took the whole computer.  
 9 Q. And it was a laptop?  
 10 A. It was a desktop.  
 11 Q. It was a desktop.  
 12 THE COURT REPORTER: Can we have a break soon?  
 13 PRESIDENT VEEDER: Would it be convenient to have  
 14 a break?  
 15 MR. EWING: Yeah; one more minute.  
 16 PRESIDENT VEEDER: One more minute.  
 17 BY MR. EWING:  
 18 Q. And if they had attached Mr. Guerra's hard drive  
 19 to their own computer after taking it out of his desktop,  
 20 none of your safeguards or log files that you just  
 21 explained to us would actually be affected on Mr. Guerra's  
 22 computer; correct?  
 23 A. If you remove a hard drive and just connect it to  
 24 a--to a computer, the timestamps will still be recorded as  
 25 is.

11:03 1 Q. So if I connected your hard drive to my computer  
 2 and my computer thought it was 2009 and I modified your  
 3 presentation from this morning and I gave you your hard  
 4 drive back, none of the logs, none of the catches that you  
 5 just told us about would actually show up on--on your  
 6 computer, would they?  
 7 A. It would depend on--on how your computer is  
 8 configured.  
 9 It's likely that if you--if you access the  
 10 document to modify the file, that both the Last Access date  
 11 and the Last Written date would be--would be updated.  
 12 Q. But none of the logs would be modified?  
 13 A. No. The computer wouldn't have been running, so  
 14 the logs wouldn't have been updated.  
 15 Q. So the only thing that would change are the dates  
 16 on that file?  
 17 A. Yes. The dates would be--both the Last Access  
 18 date and the Last Written date would likely be--would be  
 19 updated.  
 20 MR. EWING: If we could take a break?  
 21 PRESIDENT VEEDER: Let's take a break. We'll come  
 22 back in 15 minutes. We'd ask you, like all other  
 23 witnesses, not to discuss the case or your testimony until  
 24 you come back before the Tribunal.  
 25 THE WITNESS: Understood.

11:04 1 (Brief recess.)  
 2 PRESIDENT VEEDER: Let's resume.  
 3 BY MR. EWING:  
 4 Q. Mr. Lynch, would you turn to Tab 1, which is your  
 5 October 7th, 2013, Report.  
 6 A. Yes.  
 7 Q. And could you look at Paragraph 11, please.  
 8 A. Yes.  
 9 Q. And do you see here where you say you used the  
 10 acquisition hash values to verify that the EnCase evidence  
 11 files provided to Stroz Friedberg by AFC were a true and  
 12 correct representation of the original media?  
 13 A. Yes, I see that.  
 14 Q. What you're saying there is that you're comparing  
 15 the image files that you received to the image files that  
 16 Audio Forensic Center created; right?  
 17 A. That's what the hash value comparison does. Yes.  
 18 Q. So the hash value is a unique key for every file;  
 19 correct? You generate this hash value, and it's a unique  
 20 key for that file; correct?  
 21 A. Yes. You generate a hash value, and that hash  
 22 value kind of statistically will uniquely identify that  
 23 file.  
 24 Q. So if I take a file and I generate a hash key and  
 25 then I generate it a hundred more times, it should always

11:21 1 be the same, correct, as long as the file does not change?  
 2 A. Yes. If you generate a hash value over the same  
 3 contents, you will always get the same hash value. If you  
 4 change the hash value--or if you change the contents of the  
 5 file, then the hash value will change.  
 6 Q. So your comparison was intended to verify that the  
 7 images that were made on July 15th, 2012, were identical  
 8 to what you received on July 23rd, 2012; correct?  
 9 A. That's what that particular hash value comparison  
 10 establishes.  
 11 Q. So when you say "a true and correct representation  
 12 of the original media," that's not exactly what you mean  
 13 there; right?  
 14 A. Well, no. That's exactly what I mean. The image  
 15 I was provided is a true and correct representation of the  
 16 original media when it was imaged.  
 17 Q. So it is a true and correct representation of the  
 18 media as of July 15th, 2012; correct?  
 19 A. Yes. That's what that--that's what that sentence  
 20 means.  
 21 Q. Okay. And you have no idea whether it's a true  
 22 and correct copy of the original media as of July 14th?  
 23 A. Well, as I described, I did an analysis of the  
 24 drive, saw what evidence was on the drive, that files were  
 25 last accessed on July 13th.

11:24 1 image it.  
 2 Q. Have you ever brought a bag of cash to a meeting  
 3 where you intended to image a person's computer?  
 4 A. No. I've never traveled with a bag of cash.  
 5 Q. So you've never paid a witness \$20,000 in cash in  
 6 a backpack for computer access to the Witness' email  
 7 accounts and two daily planners?  
 8 A. I personally have never--never purchased something  
 9 from a Witness.  
 10 Q. In cash or otherwise?  
 11 A. In cash or otherwise. If that was happening, I  
 12 would expect it to be my clients. I just go and image.  
 13 Q. Mr. Lynch, you have reviewed all of Guerra's media  
 14 that he provided to Chevron's investigator; correct?  
 15 A. Yes. One of the--one of the thumb drives didn't  
 16 work, so I don't--couldn't review that. But generally,  
 17 yes, I reviewed it all in some way.  
 18 Q. And that included the hard drive, the USB drives  
 19 or the thumb drives and CDs; right?  
 20 A. Yes.  
 21 Q. And were you asked to search for any document that  
 22 contained text substantially similar to the 2011 Lago Agrio  
 23 Judgment?  
 24 A. That's one of the things that--that I searched for  
 25 in my analysis, yes.

11:23 1 Generally, had any files been accessed or modified  
 2 after that, then the Last Accessed or Last Modified dates  
 3 respectfully would have been updated, and none were. They  
 4 were all--all the Access dates were July 13th or earlier,  
 5 and all the Modified dates were July 13th or earlier.  
 6 There's no evidence of any changes on the drive after  
 7 July 13th.  
 8 Q. And again, the evidence you're referring to  
 9 is--are the dates for those files; correct?  
 10 A. Yes. The time stamps.  
 11 Q. And those dates could all have been changed by  
 12 Investigator No. 5 if he had attached that hard drive to  
 13 his own computer; correct?  
 14 A. If he had attached that computer to his hard  
 15 drive, I would have--would expect that there would be files  
 16 updated when he attached that file to his--there would be  
 17 metadata showing a Last Access date after July 13th.  
 18 Q. Let's talk for a minute about your past experience  
 19 collecting forensic evidence.  
 20 Have you ever been sent by Stroz Friedberg to  
 21 collect images of someone's computer?  
 22 A. Yes, I have.  
 23 Q. Have you ever purchased that person's computer in  
 24 order to make forensic images of that hard drive?  
 25 A. I personally have never purchased a computer to

11:26 1 Q. But you did not find any; correct?  
 2 A. No, I did not.  
 3 Q. No early drafts?  
 4 A. No.  
 5 Q. Not on any of the USB drives?  
 6 A. Not on any of the USB drives that were provided to  
 7 me.  
 8 Q. Okay. So Counsel for Chevron has never provided  
 9 to you any external media: Thumb drives, hard drives, CDs  
 10 that it represented to you came from Mr. Guerra and which  
 11 contained the February 14th, 2011 Lago Agrio Judgment;  
 12 correct?  
 13 A. No. I have not been provided any media other than  
 14 the--or anything that I understand came from Mr. Guerra  
 15 that had a draft of that document.  
 16 Q. Have you ever investigated any media where you  
 17 found a draft of the Lago Agrio Judgment?  
 18 A. Yes, I have.  
 19 Q. What media was that?  
 20 A. As I described in my presentation, the Zambrano  
 21 Computers had draft--had a draft.  
 22 Q. But other than the Zambrano hard drives, you have  
 23 never analyzed any media that contained any portion of  
 24 Final Lago Agrio Judgment?  
 25 A. No. The Zambrano Computers are the only computers

11:27 1 that I've analyzed that have a draft of that document on  
 2 it--or text from that document, I should say.  
 3 And actually, let me just add, I have reviewed,  
 4 for instance, Mr. Donziger's computer, which have some of  
 5 the unfiled work product, so there is text from those on  
 6 other computers.  
 7 Q. But you're not contending that those are the Final  
 8 Lago Agrio Judgment, are you?  
 9 A. No. I just want to make sure--when I say, "text  
 10 from the Judgment" that I'm not excluding those when I  
 11 shouldn't be.  
 12 Q. Just to be clear, you have not reviewed any  
 13 document, any computer, any media from any party that has a  
 14 Draft that purports to be a Draft of the Lago Agrio  
 15 Judgment; is that correct?  
 16 A. Well, I've reviewed Mr. Zambrano's computers.  
 17 Other than Mr. Zambrano's computers, I've not received a  
 18 computer or media that has any document that purports to be  
 19 a draft.  
 20 Q. Could you turn in Tab 1--this is your  
 21 October 2013, Report--to Table 2, Page 11.  
 22 A. Yes.  
 23 Q. At Gibson Dunn's request you were asked to  
 24 identify and authenticate these 11 documents that were  
 25 found on Mr. Guerra's hard drive; correct?

11:28 1 A. Yes.  
 2 Q. And you concluded that they were nine Draft Orders  
 3 issued by the Lago Agrio Court; right?  
 4 A. These were Drafts of Orders issued by the Lago  
 5 Agrio Court. Right.  
 6 Q. And in your Report, you call them "Draft Guerra  
 7 Orders"?  
 8 A. Yes, I do.  
 9 Q. So Table 2 that we're looking at now is file  
 10 system metadata; right?  
 11 A. That's correct.  
 12 Q. And this is the information that the computer or  
 13 the operating system attaches to these files; correct?  
 14 A. Yes.  
 15 Q. So looking at these columns, the date columns in  
 16 particular, we've talked about the Last Written and the  
 17 Last Accessed. Let's talk about the Created date.  
 18 The Created date is when a file is created on a  
 19 computer; correct?  
 20 A. Yes. It's--it's when the file was first created  
 21 on--on this particular file system. As I describe in my  
 22 direct, that can either be through copying from another  
 23 device or--or if a file is first created there.  
 24 Q. So looking at the first line,  
 25 "ProvidenciaTexaco.doc" it was created on July 23rd,

11:30 1 2010, at 11:44 a.m.?  
 2 A. It was--yes. From my analysis, it was copied to  
 3 the--the computer. Then shortly after Windows was  
 4 reinstalled.  
 5 Q. But it was put onto this computer for the first  
 6 time on July 23rd, 2010?  
 7 A. I can't say that was the first time it was put  
 8 there. It could have been there prior--or likely was there  
 9 prior to the Windows reinstallation, but this is when it  
 10 was copied to the computer after the Windows  
 11 reinstallation.  
 12 Q. Let's just take that one piece at a time.  
 13 You agree that it's the first time that we can see  
 14 this file on this computer; correct?  
 15 A. Yes.  
 16 Q. But you said it could have been there prior to  
 17 that date?  
 18 A. Yes, I did.  
 19 Q. And you also said that it's likely that it was  
 20 there prior to that date?  
 21 A. Yes, I did.  
 22 Q. What do you base "could have been" or "likely  
 23 was"--what is your evidence that you're pointing to?  
 24 A. If it you look at Table 3, the last--well, I  
 25 should say that there are--there are multiple pieces of

11:31 1 evidence.  
 2 One, if you look at Table 3, the Last Saved By  
 3 name of Usuario, that--that's a name that's associated with  
 4 other documents that--that appear to be, on their face,  
 5 Mr. Guerra's documents. For example, his CV was last saved  
 6 using that same user name, which suggests to me that  
 7 Mr. Guerra's computer prior to the Windows reinstallation  
 8 was, in fact, using the user name Usuario.  
 9 And then all of these files--all of the files  
 10 shown in Tables 1 and Table 2, all these 11 draft Guerra  
 11 Orders, as I call them, were copied from the Western  
 12 Digital hard drive en masse with some 4,000 other files,  
 13 included his CV and including family photos of Mr. Guerra.  
 14 To me, it seems most likely that prior to  
 15 reinstalling Windows, he would have copied all of his  
 16 documents to the external hard drive, reinstalled Windows,  
 17 and then copied the documents back, particularly given  
 18 that--that these--these documents were last saved by the  
 19 same user name that was associated with some of his  
 20 documents.  
 21 Q. So, Mr. Lynch, you mentioned Mr. Guerra's CV.  
 22 Can you point to me in this Report where you  
 23 mentioned that before?  
 24 A. I don't highlight that document in my Report.  
 25 Q. So this is the first time today that you are

11:33 1 mentioning that?  
 2 A. Well, I think it's the first time today that I've  
 3 mentioned it. I have mentioned it in the past. As an  
 4 example, it's in my--it was--I mentioned it in my RICO  
 5 testimony in the case.  
 6 Q. So in your reports that you submitted in this  
 7 arbitration, Mr. Racich responded to your October 2013,  
 8 Report in December 2013 and raised this point, that all 11  
 9 of these documents were not created on Mr. Guerra's  
 10 computer until at least six months after they were issued.  
 11 Would you agree with me?  
 12 A. Yes, that--he--he described that. I don't know  
 13 exactly what words he used, but he described that general  
 14 situation in his Report.  
 15 Q. And I am paraphrasing Mr. Racich.  
 16 You have since filed three reports, none of which  
 17 have mentioned Mr. Guerra's CV.  
 18 A. Yes. As I--as I described earlier, I understood  
 19 that--that the next three reports that I--I issued, two of  
 20 which are in evidence in this case, were on different  
 21 topics.  
 22 Q. And you told me earlier that you didn't listen to  
 23 all of Dr. Leonard's presentation because you were drafting  
 24 a document. Do you remember that?  
 25 A. Yes, I do.

11:34 1 Q. And that was your description of the scope of what  
 2 you wanted to address from Mr. Racich's October 2013,  
 3 Report that you had never taken the opportunity to respond  
 4 to; correct?  
 5 MR. WHITE: I'm going to object. That was an  
 6 issue that was argued by Counsel that related to the scope  
 7 of Mr. Lynch's direct testimony.  
 8 These are responses that Mr. Ewing is eliciting  
 9 from this witness on cross-examination, and that's quite  
 10 different.  
 11 PRESIDENT VEEDER: Please continue.  
 12 BY MR. EWING:  
 13 Q. But you did not--but you did not include this  
 14 point about the CV in your short description that you wrote  
 15 during Dr. Leonard's presentation; correct?  
 16 A. The description I wrote was--was specific to a  
 17 paragraph in Mr. Racich's most recent Report. I didn't--I  
 18 didn't describe the CV, for example.  
 19 Q. So your testimony today, though, is that you have  
 20 testified before in other proceedings about these  
 21 documents, but for the first time today you're mentioning  
 22 them here?  
 23 A. Well, I understand that my RICO testimony is in  
 24 evidence. So, I mean, it--I don't think it's the first  
 25 time the CV has been before the Tribunal, but I've not

11:35 1 explicitly mentioned it in my Report.  
 2 Q. Just to make sure our record is clear, you also  
 3 mentioned photos; correct?  
 4 A. Yes.  
 5 Q. Those also are not in any of your Reports in this  
 6 operation?  
 7 A. They're not in my Reports, no. I--I believe I  
 8 described them in my RICO testimony.  
 9 Q. And are you testifying that photos have an Author  
 10 name of Usuario?  
 11 A. No, the photos don't have an Author name. The  
 12 photos are of Mr. Guerra.  
 13 Q. So there are pictures of Mr. Guerra that he copied  
 14 onto his computer?  
 15 A. Alongside these documents and other documents with  
 16 the name Usuario.  
 17 Q. And that they came from a hard drive; correct?  
 18 A. Yes.  
 19 Q. You call it the Maxtor hard drive?  
 20 A. It's the Western Digital hard drive.  
 21 Q. Oh, Western Digital, okay.  
 22 You have no idea how these documents got  
 23 onto--these documents--let me start over.  
 24 You have no idea how Documents 1 through 11 got  
 25 onto the Western Digital hard drive?

11:37 1 A. Well, I have an idea. As I said, it's--it's--when  
 2 someone reinstalls Windows, it's common for them to back up  
 3 their files to a hard drive so that when they reinstall  
 4 Windows, they don't lose their files. And it's also  
 5 common, once you reinstall Windows, for the files then to  
 6 be copied back to the computer.  
 7 So specifically whether or not, I have an idea,  
 8 yeah, I have an idea how they got onto the Western--  
 9 Q. But you have no forensic evidence?  
 10 A. No. I--I don't have forensic evidence showing  
 11 when they are copied to the Western Digital drive.  
 12 Q. So you don't know whether they were copied from  
 13 Mr. Zambrano's computer first and then onto Mr. Guerra's  
 14 computer?  
 15 A. Well, they're not--none of these files are on  
 16 either of Mr. Zambrano's computers that were produced for  
 17 imaging.  
 18 Q. None of these files? Is the substance of these  
 19 files on Mr. Zambrano's computer?  
 20 A. Yes. The text is in some of the versions of  
 21 Caso Texaco.  
 22 Q. So Caso Texaco filed--on Mr. Zambrano's computer  
 23 has the contents of all of these files; correct?  
 24 A. Yes. Well, I guess specifically it has the--the  
 25 final or near-final versions of the Orders associated with

11:39 1 these drafts. But the--just to be clear, the dates--so if  
 2 we look at--at one of these files--choosing one, the--I  
 3 can't choose right now--choosing one of them, the text was  
 4 last saved on Mr. Guerra's computer before the file named  
 5 Caso Texaco contained that text.  
 6 Q. Mr. Lynch, you say it was last saved on  
 7 Mr. Guerra's computer.  
 8 Looking at Tables 2 and 3, which is all of the  
 9 metadata you have provided for these two files, what  
 10 evidence is there that these were saved on Mr. Guerra's  
 11 computer and when?  
 12 A. I should say that the--the files on Mr. Guerra's  
 13 computer were last saved, but that they were saved using  
 14 the user name Usuario and that, as I said earlier, is also  
 15 the user name that's saved from Mr. Guerra's CV.  
 16 Q. Do you know what Usuario means?  
 17 A. I understand it means user.  
 18 Q. That's a pretty generic user name?  
 19 A. It is a generic name, yes.  
 20 Q. Looking at Tables 2 and 3, just to be clear, the  
 21 only information that we have as to when these files were  
 22 created on Mr. Guerra's computer for sure is July 23rd,  
 23 2010, for the create date for all 11 of them; everything  
 24 else that you're suggesting is speculation?  
 25 A. I wouldn't--wouldn't say that it's speculation

11:40 1 that the file was last saved on October 20th or that it's  
 2 Last Saved By the name--user name Usuario or that other  
 3 files have that same user name. I wouldn't characterize  
 4 all that as speculation.  
 5 Q. Let's try again.  
 6 October 20th, 2009, we all agree that this file  
 7 was last written?  
 8 A. Yes.  
 9 Q. And July 13th, 2012, we all agree this first  
 10 file was last accessed?  
 11 A. Yes.  
 12 Q. And July 23rd, 2010, we all agree this first  
 13 file was created on Mr. Zambrano's computer?  
 14 A. It was copied to Mr. Guerra's computer.  
 15 Q. Sorry. Mr. Guerra's computer.  
 16 So on July 23rd, 2010, that is the only date  
 17 that we know that ties this file--any of these 11 files to  
 18 Mr. Guerra's computer?  
 19 A. That's the--the first date that--that we can look  
 20 at and say definitively the file would have been there when  
 21 the computer believed it to be July 23rd.  
 22 But as I said, we know when it was Last Written  
 23 and that when it was Last Written it was done by the Author  
 24 name Usuario, or Usuario, and that other files on  
 25 Mr. Guerra's computer also have that name.

11:41 1 Q. So, Mr. Lynch, if I took your document from this  
 2 morning--it's a great example you've made--given us--and it  
 3 probably has a Created date of July--or April 27th, 2015,  
 4 what, 9:35 p.m., approximately, when you started; right?  
 5 A. Yeah, assuming that was the--yeah, the date and  
 6 time when I created it. Yes.  
 7 Q. So the Created date would be 9:35 a.m. today?  
 8 A. Yes.  
 9 Q. And the Last Written date would be today, when you  
 10 finished your presentation, you saved that file again, you  
 11 know, hit your final Control S and closed the file. So  
 12 it's probably April 27th, 2015, at 10:30?  
 13 A. Probably like 10:15, but--I don't know. But,  
 14 yeah, somewhere around there.  
 15 Q. 10:15.  
 16 So if I took that file from your computer--I  
 17 copied it from your computer and put it on my computer, the  
 18 Create date would be right now, 4/27 at 11:40 a.m.; right?  
 19 A. Yes. If we copied it from this computer to your  
 20 computer, the Create date on your computer would be when we  
 21 did the copy.  
 22 Q. It would be when I copied it?  
 23 A. Yes.  
 24 Q. But it would also show a Last Written date of  
 25 April 27th at 10:15 a.m.; correct?

11:43 1 A. Yes.  
 2 Q. So that information wouldn't change when I copied  
 3 it over?  
 4 A. The Last Written date would not change, no.  
 5 Q. So the date that it was created on my  
 6 computer--the only date that we know that ties this to my  
 7 computer would be the Created date?  
 8 A. In that case, yes, that would be the date showing  
 9 when it was first copied to--to your computer.  
 10 Q. Could you turn, still in Tab 1, to Page 13.  
 11 Do you see that?  
 12 A. I do, yes.  
 13 Q. You compared all of the soft--or the files from  
 14 Mr. Guerra's computer and from the final Lago Agrio  
 15 litigation?  
 16 A. I compared the documents from Mr. Guerra computer  
 17 (sic) to the--the issued versions of the orders in the Lago  
 18 Agrio Court.  
 19 Q. And you found that they were similar; correct?  
 20 A. Yes.  
 21 Q. Okay. So now, just to keep you on your toes, can  
 22 you turn back to Table 4? Oh, sorry. We're already at  
 23 Table 4. I already took you there.  
 24 A. We are.  
 25 Q. Okay. You are on your toes.

11:45 1 How many of these Orders were issued during Judge  
 2 Zambrano's term as Presiding Judge from October 2010  
 3 through March 2011?  
 4 A. I believe it's nine of the Orders--well, all nine  
 5 of the Orders, that--the 11 are--there are duplicates in  
 6 there.  
 7 Q. Just--listen carefully to the dates.  
 8 How many of these Orders, the nine that you have  
 9 listed, were issued by Judge Zambrano between October 2010  
 10 and March 2011?  
 11 A. Sorry. None of these Orders were issued in that  
 12 time period.  
 13 I understood that Mr. Zambrano was the Presiding  
 14 Judge earlier as well.  
 15 Q. So Mr. Zambrano was on the bench for two different  
 16 terms. Do you understand that?  
 17 A. That's my understanding.  
 18 Q. And none of these orders that you have here at all  
 19 relate to his second term?  
 20 A. No, they don't.  
 21 Q. I am correct that none of them relate to his  
 22 second term?  
 23 A. These all relate, as I understand it, to his first  
 24 term.  
 25 Q. Okay. And these are all the same Orders which

11:46 1 have a Create date on Mr. Guerra's computer of July 23rd,  
 2 2010?  
 3 A. Yes. These Orders have the--have a Create date on  
 4 Mr. Guerra's computer of July 23rd, 2010.  
 5 Q. And how many of these orders were issued by Judge  
 6 Zambrano after July 23rd, 2010?  
 7 A. None of them.  
 8 Q. Okay. Let's move on to a different topic.  
 9 You've testified that you analyzed both  
 10 Mr. Guerra's and Mr. Donziger's computers; right?  
 11 A. Yes.  
 12 Q. And you have never uncovered any email between  
 13 Mr. Guerra and Mr. Donziger in which the two of them  
 14 reference a bribe; correct?  
 15 A. I have recovered emails between the two of them.  
 16 I don't--I can't recall the content of all of them. I  
 17 don't--I don't believe any of them do, but--  
 18 PRESIDENT VEEDER: Is that really a question for  
 19 this witness? It probably isn't, is it?  
 20 MR. EWING: He had been the one who had recovered  
 21 them. I was asking him whether he had reviewed them. He's  
 22 provided testimony on how documents overlap and don't  
 23 overlap.  
 24 But I can move on.  
 25 PRESIDENT VEEDER: Please do.

11:48 1 BY MR. EWING:  
 2 Q. One question about the emails, nonsubstantive:  
 3 The emails that you recovered were all on  
 4 Mr. Donziger's computer; correct?  
 5 A. Yes, that's correct.  
 6 Q. You recovered no emails on Mr. Guerra's computer  
 7 from Mr. Donziger?  
 8 A. That's--that's correct. I didn't recover any--the  
 9 content of any emails between Donziger and Guerra on the  
 10 Guerra Computer.  
 11 Q. So the only emails that you're aware of are from  
 12 Mr. Guerra to Mr. Donziger?  
 13 A. I--sitting here now, I--I can't recall whether or  
 14 not Mr. Donziger ever replied or sent any new emails.  
 15 Q. Okay. And were you asked to search for emails on  
 16 Mr. Guerra's computer from or to Mr. Fajardo?  
 17 A. Yeah, I believe that's one of the searches that I  
 18 would have run.  
 19 Q. Did you find any?  
 20 A. No. There are--there are effectively no emails on  
 21 the Guerra Computer to--to search.  
 22 Q. And let's talk about emails for a moment.  
 23 You mentioned in your opening slides, if I can  
 24 find them here, that Hotmail temporarily displays messages  
 25 on a user's computer; correct?

11:49 1 A. Yes. When you access it through a web browser.  
 2 Q. Through a web browser. And we all agree that  
 3 there's no indication that Mr. Guerra accessed his email in  
 4 any other way; right?  
 5 A. Yeah, I would agree with that.  
 6 Q. I'm looking for your slide where you discussed  
 7 Hotmail. Do you know which one it is offhand?  
 8 A. Not off the top of my head.  
 9 Q. It would be earlier in the deck.  
 10 MR. WHITE: That is 9.  
 11 MR. EWING: Thank you, Counsel.  
 12 BY MR. EWING:  
 13 Q. So Mr. Racich's concluded that on the Guerra  
 14 Computer there appear to be emails that have since been  
 15 deleted, and you said that you disagree with that  
 16 statement?  
 17 A. Yes. I--I disagree with the implication that they  
 18 were on the Guerra Computer and then deleted. They  
 19 weren't--there's no indication that they were stored  
 20 long-term on the Guerra Computer to be deleted.  
 21 Q. You had complete access to Mr. Guerra's Hotmail  
 22 accounts; correct?  
 23 A. I--I had the user name and passwords for  
 24 Mr. Guerra's Hotmail account.  
 25 Q. And did you or anyone else at Stroz Friedberg log



11:51 1 in to those accounts?  
 2 A. Yes. I did not, but someone at Stroz Friedberg  
 3 did, yes.  
 4 Q. So someone under your supervision logged in to  
 5 those Hotmail accounts and forensically stored them;  
 6 correct?  
 7 A. Yes.  
 8 Q. And you received this information from Chevron;  
 9 correct?  
 10 A. Received the user name and passwords from Chevron.  
 11 Q. Not from Mr. Guerra directly?  
 12 A. Not from Mr. Guerra directly.  
 13 Q. Did you look for deleted messages in his Hotmail?  
 14 A. Yes, we would have. There--there--there were  
 15 effectively no emails in the account when we preserved it.  
 16 The--the first email was a notice--I don't recall the exact  
 17 content, but implying that the account had gone inactive  
 18 and that Microsoft purges all the emails out of it. So  
 19 there were no emails relevant to preserve.  
 20 Q. So there were no sent messages?  
 21 A. No, there were not.  
 22 Q. And no drafts?  
 23 A. No, there were not.  
 24 Q. Because all of those messages had been deleted?  
 25 A. Yes, they'd all been--they'd all been purged.

11:52 1 Q. When you say "purged," you're just arguing that it  
 2 was Hotmail that deleted them, not Mr. Guerra; correct?  
 3 A. Well, that--that is what the first email  
 4 suggested, that Microsoft automatically deleted all of the  
 5 emails because the account had not been used for a period  
 6 of time.  
 7 Q. But we can agree that there were likely emails  
 8 there before and they are no longer there; correct?  
 9 A. I would agree with that, yes.  
 10 Q. Okay. When you reviewed Mr. Guerra's media, did  
 11 you find any email text or any other communications with  
 12 Mr. Zambrano?  
 13 A. There was a--a reference to--in his--in his email  
 14 account, the address book was still there. The address  
 15 book contained an entry for an email address that had  
 16 the--the name Nicolas Zambrano associated with it, but I  
 17 didn't find any communications between the two of them in  
 18 email.  
 19 Q. So you found that one judge had a former judge's  
 20 email address in his Hotmail contact list?  
 21 A. Yes.  
 22 Q. Did you find any other judge's names?  
 23 A. I don't know all--I mean, I don't know all the  
 24 different judges in Ecuador. So I won't--there could be  
 25 other judges; there may not be. I don't know.

11:53 1 Q. You didn't look, though?  
 2 A. Yes.  
 3 Q. And you've not seen any emails or communications  
 4 or texts from Mr. Guerra's computers, phones, USB drives in  
 5 which Mr. Guerra purports to transmit any Proposed Order or  
 6 Final Decision to Mr. Zambrano?  
 7 A. I've not seen any--any electronic communication of  
 8 an Order from Mr. Guerra to Mr. Zambrano through email or a  
 9 text message or anything like that.  
 10 But as I described earlier, there is evidence  
 11 that--that Mr. Guerra saved orders to a thumb drive. There  
 12 is evidence that Mr. Guerra sent packages to Mr. Zambrano  
 13 or to Lago Agrio. There's evidence that those same thumb  
 14 drives were connected to Mr. Zambrano's computers.  
 15 The files--the drafts that Mr. Guerra had on his  
 16 computer, that he created on his computer, appear on  
 17 Mr. Zambrano's computer. I would consider all of that  
 18 evidence of transmission, not through email or text, but, I  
 19 guess, snail mail, as people sometimes call it.  
 20 Q. And you mentioned TAME packages. You're referring  
 21 to the TAME packages; correct?  
 22 A. Yes.  
 23 Q. That Mr. Guerra claims to have sent?  
 24 A. And there are shipping records from TAME showing  
 25 that Mr. Guerra sent packages.

11:55 1 Q. But we have no evidence of what is in those TAME  
 2 packages, other than what Mr. Guerra says; correct?  
 3 A. We also have Mr. Zambrano's testimony that  
 4 Mr. Guerra shipped him Orders using TAME.  
 5 Q. Did Mr. Zambrano testify that Mr. Guerra assisted  
 6 with the Lago Agrio action?  
 7 A. I don't believe so.  
 8 Q. So we have no evidence--no TAME records that show  
 9 that Mr. Guerra assisted with the Lago Agrio Final  
 10 Judgment?  
 11 A. No, there aren't any TAME records showing  
 12 that--that Mr. Guerra did that.  
 13 Q. Okay. And you analyzed Mr. Guerra's two cell  
 14 phones; correct?  
 15 A. Yes.  
 16 Q. And you used the forensic software that we  
 17 discussed earlier in an RF-blocking bag that would have  
 18 enabled you to view and recover text messages; correct?  
 19 A. Yes.  
 20 Q. But you found no evidence of text messages between  
 21 Mr. Guerra and Mr. Zambrano about a bribe?  
 22 A. I can't recall all--whether--the content of any  
 23 text messages, but I don't--I don't recall any about a  
 24 bribe.  
 25 Q. And you didn't find any evidence of text messages

11:56 1 between Mr. Guerra and any representatives of the  
 2 Plaintiffs about a bribe?  
 3 A. Not that I can recall, no.  
 4 Q. Or about the merits of the Lago Agrio Case?  
 5 A. No.  
 6 Q. Or, in fact, no text messages at all between  
 7 Mr. Guerra and any representative of the Plaintiffs?  
 8 A. No. Not that I'm aware of, no.  
 9 Q. And to be clear, you found absolutely no text  
 10 messages at all between Mr. Guerra and Mr. Zambrano?  
 11 A. Yeah. I--I don't believe there were any text  
 12 messages.  
 13 Q. Okay. Let's move on to a different topic again,  
 14 away from communications.  
 15 A. Actually, I just--on--there may have been texts--I  
 16 can't recall any text messages right now. There may have  
 17 been text messages. If there were, they would be listed in  
 18 Exhibits 37, 38, and 39.  
 19 Q. Okay. We can double-check those, but I don't  
 20 think there were any between Mr. Guerra and Mr. Zambrano.  
 21 But we can double-check.  
 22 So let's move on to a different topic, away from  
 23 communications and text messages.  
 24 Could you return to Page 29 of your October 2013,  
 25 Report?

11:58 1 A. Yes.  
 2 Q. And at the bottom, do you see where it says "Pit  
 3 Counts"?  
 4 A. I do, yes.  
 5 Q. So at this section, you are referencing the 880  
 6 pits that the Final Judgment says require remediation;  
 7 correct?  
 8 A. Yes.  
 9 Q. And what you have done is calculated the 880 pits  
 10 using what you call the Stratus Compilation or Annex H1  
 11 from Mr. Cabrera's Report; is that right?  
 12 A. Yes, that's what I--what I did.  
 13 Q. And Mr. Younger did a similar analysis of this  
 14 before and reached the same conclusion; right?  
 15 A. Yes, he did.  
 16 Q. And your conclusion is that the 880 Pit Count  
 17 comes from the Selva Viva data compilation, or Annex H1;  
 18 right?  
 19 A. Yes, that's generally the conclusion  
 20 specifically--I mean, I can walk you through that analysis.  
 21 Q. Let me do the walking through, and we'll get  
 22 there.  
 23 A. Okay.  
 24 Q. Stop me at any point.  
 25 So you both looked at the Stratus Compilation and

11:59 1 Annex H1?  
 2 A. Yes.  
 3 Q. And you found that they are, for all intents and  
 4 purposes, identical in terms of the data that is in there?  
 5 A. Yes. One had one more pit listed. But for all  
 6 the other pits, they were identical.  
 7 Q. If you want to turn to the next page, we'll be  
 8 focusing more there.  
 9 Just to make sure our background is right, the  
 10 Stratus compilation is Stratus Consulting's attempt to  
 11 identify all of the pits in the Concession Area; correct?  
 12 A. I don't know what they were attempting to do. I  
 13 just know that that's--I mean, I know what the data in the  
 14 compilation is.  
 15 Q. It's a compilation of pits in the Concession Area.  
 16 You would agree with me on that?  
 17 A. Yes, that's what it is.  
 18 Q. And Annex H1 is the same thing. It's a  
 19 compilation of pits in the Concession Area?  
 20 A. Yes.  
 21 Q. Annex--and for the Tribunal's reference, Stratus  
 22 compilation is in the arbitral record at R-1217, and Annex  
 23 H1 is in the record at R-1216.  
 24 So when you looked at the Stratus compilation,  
 25 you noticed that many of the pits included information

12:01 1 in a column called Comentario del RAP; right?  
 2 A. Yes.  
 3 Q. And that column provides some information about  
 4 how a pit was or was not addressed in the Remedial Action  
 5 Plan, or the RAP; right?  
 6 A. That's my understanding.  
 7 Q. And you understand that the RAP was an agreement  
 8 between TexPet and the Ecuadorian Ministry of Mines to  
 9 clean up part of the Oriente as a part of a separate  
 10 Release Agreement?  
 11 A. That's my understanding.  
 12 Q. And if we look at Figure 18, you have listed here,  
 13 on the left side of your figure, the Comentario de RAP--del  
 14 RAP; right?  
 15 A. Yes.  
 16 Q. And these are the categories that you found in the  
 17 Stratus compilation and the Annex H1.  
 18 A. Yes.  
 19 Q. Are you aware of the fact that Chevron also  
 20 created its own pit compilations?  
 21 A. No, I'm not.  
 22 Q. Or that HBT AGRA, one of the two auditors hired  
 23 before the RAP, also had its own pit compilations?  
 24 A. No, I am not.  
 25 Q. Or Fugro McClelland, the other auditor hired

12:02 1 before the RAP, had its own pit compilations?  
 2 A. No, I'm not.  
 3 Q. So you didn't perform these same style  
 4 calculations on Chevrons' compilations or either auditor's  
 5 compilations; correct?  
 6 A. No, I didn't have them, so I could not have done  
 7 that.  
 8 Q. Okay. And you don't know whether the Lago Agrio  
 9 Court-appointed experts also had these same pit  
 10 compilations, do you?  
 11 A. Well, do you mean Mr. Cabrera? I mean, he had the  
 12 same thing that Stratus did.  
 13 Q. So, Mr. Cabrera had it. We all agree to that?  
 14 A. Yes.  
 15 Q. And Mr. Barros--do you know whether Mr. Barros had  
 16 it?  
 17 A. No, I don't know if Mr. Barros--I actually want to  
 18 revise my previous statement.  
 19 I don't know that Mr. Cabrera had it. It was  
 20 submitted under his name. I should say that differently.  
 21 Q. Okay. But that's just an understanding you have  
 22 from counsel; that's not something you have determined by  
 23 your own expertise?  
 24 A. Well, I received his Report, and this information  
 25 is in it.

12:03 1 Q. So both you and Mr. Younger concluded that the  
 2 Stratus compilation was the most likely source of the  
 3 Judgment's 880 Pit Count; right?  
 4 A. Yes.  
 5 Q. And you performed your analysis using the--using  
 6 the Stratus compilation because it was in Microsoft Excel  
 7 and therefore much easier to use; right?  
 8 A. Yes, that's correct.  
 9 Q. You could have done the same thing by hand using  
 10 Cabrera's Annex H1?  
 11 A. Yes, and--yes, I could have.  
 12 Q. So you and Mr. Younger both found that Cabrera's  
 13 Annex H1 listed 916 pits and the Stratus compilation listed  
 14 917 pits; right?  
 15 A. Yes.  
 16 Q. So there's a difference of one between the two?  
 17 A. Yes. And--and Footnote 23 identifies the pit that  
 18 was--  
 19 Q. Was different?  
 20 A. --different.  
 21 Q. Okay. So this footnote that Charapa 4 was not  
 22 part of the Concession Area was intended to explain why you  
 23 excluded Charapa 4; correct?  
 24 A. Well, it's--it's what I understand, and it's why I  
 25 understand it wasn't listed in the Cabrera report--or might

12:04 1 not have been listed in the Cabrera Report.  
 2 Q. Charapa 4 was one of the blank lines, wasn't it,  
 3 in the Comentario del RAP?  
 4 A. It was, yes.  
 5 Q. So it was one of the 676?  
 6 A. It was one of the 676 in the Stratus compilation.  
 7 Q. So then--  
 8 A. I'm sorry. It was one of the 676 in the Stratus  
 9 compilation. It did not appear in the Cabrera Anexo H1.  
 10 Q. And you then excluded Charapa 4 to get to your  
 11 revised count of 675; correct?  
 12 A. I--yes, I excluded it from the Stratus  
 13 compilation. If you do the calculations using the Cabrera  
 14 annex, you don't need to exclude it, because it's not  
 15 there.  
 16 Q. Okay. But that's the only pit you excluded from  
 17 the blank category; correct?  
 18 A. Yes, that's the--the only pit I excluded from the  
 19 blank category.  
 20 Q. But you left the three pits that are at Charapa 1  
 21 on the list, right, that are also in the blank category?  
 22 A. Yes, because those appear in the--in the Cabrera  
 23 Report, and I--I don't have any understanding that they're  
 24 outside the Concession Area.  
 25 Q. So you didn't know that Charapa 1 is also not part

12:06 1 of the Concession Area?  
 2 A. No. I--I--until you said that, I--I did not know  
 3 that.  
 4 Q. Similarly, you left the four pits from Bermejo 1,  
 5 3, and 4 on the list; right?  
 6 A. Yes. Those appear in the Cabrera Report, and I  
 7 have no understanding that they are outside the Concession  
 8 Area.  
 9 Q. But you did this using the Stratus compilation;  
 10 right?  
 11 A. Well, yes, because it was in Excel, but I--I also  
 12 confirmed that the Stratus compilation and the Stratus  
 13 Report are--sorry--the Stratus compilation and the Cabrera  
 14 annex, other than Charapa 4, have the same data. So the  
 15 effects are the same, that--excluding Charapa 4 from the  
 16 Stratus compilation makes the Stratus compilation the  
 17 Cabrera annex.  
 18 So I guess I did it with the Stratus compilation  
 19 but excluded it so that it was effectively doing it  
 20 with--with either one.  
 21 Q. But you also then left the pits at Coca 1 on the  
 22 list, which is also not part of the Concession Area?  
 23 A. Yeah, because those are in the--the Cabrera annex.  
 24 Q. Did you know that Coca 1 was a Texaco-drilled well  
 25 that's actually now part of the Burlington concession?

12:07 1 A. No, I did not.  
 2 Q. So you included all of these other pits at all of  
 3 these other sites that are not part of the concession, even  
 4 though you removed Charapa 1 because it was not part of the  
 5 Concession Area?  
 6 A. I removed Charapa 4 because it is the single  
 7 difference between the Stratus compilation and the Cabrera  
 8 Report, and I--I understood that the--the reason it may  
 9 have been different was because it wasn't in the Concession  
 10 Area.  
 11 Q. Okay. So the Younger Report found that the Lago  
 12 Agrio Judgment did not include no-impact figures or  
 13 similar--similar entries or those related to Petroecuador  
 14 and Petroproducción; correct?  
 15 A. I don't--I mean, I don't know if I describe it as  
 16 a--as a finding or something that's found.  
 17 The Judgment, reading the English translation,  
 18 describes what it's including in the count, and it  
 19 describes that it doesn't include those--those pits.  
 20 Q. At the top of page 30, you say the same thing:  
 21 Stroz Friedberg observed that the Judgment did not include  
 22 no-impact figures or similar entry--entries or those  
 23 related to Petroecuador and Petroproducción.  
 24 Do you see that?  
 25 A. I do, yes.

12:09 1 Q. Okay. What does "no impact" mean?  
 2 A. To me--I mean, I--like I said, at an environmental  
 3 level. I'm not offering an opinion what "no impact" means,  
 4 just that's what it said.  
 5 Q. But you went through these descriptions of sites  
 6 and decided which ones were no impact or similar; correct?  
 7 A. It--I mean, from the descriptions, it appeared to  
 8 me which ones were saying there was no impact and which  
 9 ones didn't say that.  
 10 So, for example, I looked at the line "no detecto  
 11 impactos"--and I apologize for my Spanish. I--I don't  
 12 speak Spanish.  
 13 But I looked at that and said that that, to me,  
 14 seems to be saying no impact.  
 15 Q. And your Spanish is correct there.  
 16 But what are the other "or similar" categories  
 17 that you removed because they are no impact?  
 18 A. "No terminada coma piscina."  
 19 I believe those were the only two.  
 20 Q. So you made some determination of what you thought  
 21 "no impact" meant, because you then also included no  
 22 determination as a piscina, no finding of a pool or a pit?  
 23 A. Yeah. I guess--yes. But to me that seemed to be  
 24 saying there--there--if there wasn't a pit, there was no  
 25 impact.

12:11 1 Q. Wouldn't you agree with me, though, that  
 2 remediation complete, remediación completa, also would be  
 3 no impact?  
 4 A. To me, that sounds like there was an impact and it  
 5 was remediated, not specifically that there was no impact.  
 6 Q. So you understand that means that the impact has  
 7 been cleaned up?  
 8 A. But that's what it--you know, on its face, that's  
 9 what it seems to say to me--or that's what it seems to be  
 10 saying.  
 11 Q. But this exercise that you were doing here is to  
 12 determine which pits needed to be cleaned still, yet you're  
 13 including pits that have already been cleaned?  
 14 A. No. I'm--I'm--I'm not making a determination as  
 15 to whether or not pits need to be cleaned. I'm--I am  
 16 applying the description in the Judgment to the Cabrera  
 17 annex, as I read it.  
 18 Q. So when Mr. Younger did this calculation, he  
 19 came--or calculated that there are 880 pits; correct?  
 20 A. Yes, he did.  
 21 Q. And you used the same methodology and came up with  
 22 the same number?  
 23 A. Yes. If you apply the same methodology to the  
 24 same data set, it's a good test that someone did it  
 25 correctly, that it's the same result.

12:12 1 Q. So if we could put Figure 22 from the Younger  
 2 Report--that's the equivalent of Figure 18--for the  
 3 Tribunal's reference, the Younger Report is Tab 9, and  
 4 Figure 22 is on Page 19, almost the last page.  
 5 And both in your Report and Mr. Younger's  
 6 Report, you start out with a full count of 917 pits and  
 7 end up with 880; right?  
 8 A. Yes.  
 9 Q. But you and Mr. Younger included and excluded  
 10 different pits, didn't you?  
 11 A. Yes. In this chart, Mr. Younger doesn't include a  
 12 pit in impactful action level and didn't exclude the  
 13 Charapa 4. So there is a different pit that's counted.  
 14 I--I can't speak for Mr. Younger, but my  
 15 understanding of what he was trying--it was that we were  
 16 applying the same analysis.  
 17 Q. Your understanding is that you were applying the  
 18 same analysis, the same methodology, to the same data set,  
 19 yet you used different pits in that analysis and included  
 20 and excluded different pits in that analysis?  
 21 A. Yeah. I can't speak to what Mr. Younger did.  
 22 I--I would view this--this table as having a--an  
 23 error in that it should--it should exclude Charapa 4 from  
 24 the blank, and there should be a--a line that says 1.  
 25 I don't know if that's just--if that was a

12:14 1 typographical error or if he--he used a different counting  
2 of the pits.  
3 Q. So you don't know whether he used the same  
4 methodology?  
5 A. Well, he used the same methodology in that he--he  
6 read the Judgment, tried to apply that description to the  
7 Cabrera Annex or the Stratus compilation and--and came to  
8 880.  
9 Q. Let's move away from Pit Counts, and let's look at  
10 your analysis of the Zambrano Computers, beginning with  
11 your Second Report from August 15th, 2014, and that is  
12 Tab 2.  
13 A. Yes.  
14 Q. Did you analyze the Zambrano hard drives to make  
15 sure they were not tampered with?  
16 A. Yeah. I looked for--for evidence of that.  
17 Q. And did you see any evidence that they were  
18 tampered with?  
19 A. I noted that--that on one of the computers  
20 there--the last apparent activity on the computer was  
21 the--the bulk copying of the group of files and then the  
22 deletion and said that that could have been consistent or  
23 that it was consistent with--I guess with tampering, but I  
24 don't know what the motivation was.  
25 Q. And that was the only indication that you found of

12:18 1 a computer, they still remain on the computer, generally  
2 speaking?  
3 A. Yes.  
4 Q. So if I deleted your document from the  
5 presentation this morning, that file would physically still  
6 be on your computer, but a normal user would not be able to  
7 access it?  
8 A. I understand that.  
9 Q. And that you would be able to, as a forensic  
10 examiner, use your forensic tools likely to recover that  
11 file; right?  
12 A. Yep.  
13 Q. Okay. And that file remains in unallocated space  
14 on the hard drive?  
15 A. That's correct.  
16 Q. And you point to the fact that one may get rid of  
17 deleted documents or files in the unallocated space by  
18 overwriting the deleted documents; right?  
19 A. That is correct.  
20 Q. And this can be done, you say, by copying data  
21 onto a computer to fill up the unallocated space and  
22 thereby overwrite previously deleted files?  
23 A. Well, that's--that's something one can do,  
24 and--and that the copying of files--or creation of any new  
25 file can overwrite data in unallocated space.

12:16 1 tampering, in your definition of "tampering"?  
2 A. That was the--the only evidence that I--I found  
3 and highlighted, yeah.  
4 Q. Okay. And we will definitely come back to your  
5 contentions about bulk copying, but let's do some  
6 preliminary issues first.  
7 Actually, you know what? Let's--let's just talk  
8 about the bulk copying while we're here.  
9 A. Sure.  
10 Q. In your Second Report, you discuss the issue of  
11 bulk copying on the old and new Zambrano Computers; right?  
12 A. I do describe that, yes.  
13 Q. And you conclude that, "In my experience, the bulk  
14 copying of files will destroy data, and bulk copying and  
15 subsequent deletion of the copied files is consistent with  
16 an attempt to overwrite previously deleted data."  
17 Is that right?  
18 A. That's what I describe in my Report, yes.  
19 Q. Okay. But as a qualifier, you do state at the  
20 beginning of that sentence that you, "Do not know the  
21 motivation for these actions"; right?  
22 A. Yes.  
23 Q. And that's still true today?  
24 A. Yes.  
25 Q. You understand that, when one deletes documents on

12:19 1 Q. But the person copying files to a computer has no  
2 control over where that new file is placed, do they?  
3 A. No. They can't--generally they can't control it.  
4 Q. So if I deleted your document from this morning,  
5 it is now still an unallocated space; the file is still  
6 sitting there; correct?  
7 A. The file is still sitting there, yes.  
8 Q. And you could copy a new file onto it and--in an  
9 attempt to try and overwrite that file; right?  
10 A. I could, yes.  
11 Q. Do you think you would be successful?  
12 A. It would depend on--on what other activity is  
13 occurring on the computer. The computer does generally  
14 tend to reuse certain portions, but I couldn't, as a  
15 layperson, target any one area for overwriting.  
16 Q. So if you copied one or two files on there, you  
17 would have no certainty that you actually overwrote your  
18 deleted file?  
19 A. No, I wouldn't--I wouldn't have certainty.  
20 Q. Okay. So the only way to be sure that you  
21 permanently removed a particular deleted file would be by  
22 copying new files onto the computer to completely fill the  
23 unallocated space; correct?  
24 A. Yes. The only way to be--to be sure that you have  
25 eliminated anything unallocated space is to fill

12:20 1 unallocated space with--with other data.  
 2 Q. And if you don't fill the entirety of unallocated  
 3 space, you have no idea whether a particular deleted file  
 4 has been permanently erased?  
 5 A. No. I would--I would have no idea. As you copy  
 6 more files, it--I think most people would assume it becomes  
 7 more likely that they've--they've deleted something that  
 8 was unallocated space. But like I said, a forensic--as a  
 9 forensic point, unless you fill unallocated space entirely,  
 10 you would have no assurance that you've overwritten a file.  
 11 Q. So if someone, for instance, filled up 1 percent  
 12 of the unallocated space, they maybe would have 1 percent  
 13 chance of actually overwriting the deleted file; right?  
 14 A. As I said, the computer tends to reuse some space  
 15 more than others. I can't, sitting here right now,  
 16 quantify the percentages, but...  
 17 Q. You stated the most recent bulk copying on the old  
 18 Zambrano computer took place on September 26th, 2012, and  
 19 that's in Paragraph 68 of your August Report.  
 20 A. Yes, on--on Page 11, so everyone can find that.  
 21 Q. Sorry. Yes. Page 11. Sorry.  
 22 You provide that 2,202 files were created on that  
 23 computer on that day; right?  
 24 A. Yes, that's what I describe.  
 25 Q. And those files were mostly Microsoft Word

12:22 1 documents; right?  
 2 A. That--that's my recollection. I can't--I can't  
 3 speak to the specific percentages, but that is my  
 4 recollection.  
 5 Q. The total size of these 2,202 files was 734  
 6 megabytes.  
 7 Do you remember that from Mr. Racich's Second  
 8 Report?  
 9 That is in Paragraph 68. And for the record, that  
 10 would be Tab 5, Racich's Second Report at November 7, 2014,  
 11 Paragraph 68.  
 12 A. Yes. I--I see him saying that it was only 734  
 13 megabytes. And I--I believe I would have confirmed that.  
 14 I believe that number to be true.  
 15 Q. This is less than 1 percent of the total space on  
 16 the Old Computer; right?  
 17 A. Yes, it's less than 1 percent of the total space.  
 18 Q. But you didn't mention that in your First Report  
 19 where you brought up the bulk copying?  
 20 A. No, I didn't describe that in the Report.  
 21 Q. And it's also less than 4 percent of the  
 22 unallocated space on the Old Computer; right?  
 23 A. Yes.  
 24 Q. And you didn't mention that in your earlier report  
 25 either, did you?

12:24 1 A. No, I did not.  
 2 Q. The fact that it's such a small percentage of  
 3 files indicates that it's very unlikely that anything was  
 4 actually deleted, wouldn't you agree?  
 5 A. Well, no. Regardless of the--the percentage--I  
 6 mean, there's a--there's a decent chance something was  
 7 overwritten. I don't know what that--that would have been.  
 8 But creating a new file, essentially regardless of its  
 9 size, has a chance of overwriting something.  
 10 Q. But the person who creates that file would have no  
 11 idea which file was overwritten; right?  
 12 A. No, they--they wouldn't. I--I--well, I wouldn't  
 13 be able to tell. I don't know whoever--if anyone is doing  
 14 this with an intent to destroy data, what they knew or  
 15 didn't know. They may just think that if you create a  
 16 file, it destroys the most recently deleted file. I--and  
 17 I've heard people think that.  
 18 So I can't speak to what whoever did the copying  
 19 and deletion thought. I also I think say clearly I'm  
 20 not--I'm not--I'm going to say I do not know the motivation  
 21 for the actions.  
 22 Q. And I agree that we don't know the motivation of  
 23 the actions.  
 24 As a forensic expert sitting here today, wouldn't  
 25 you agree with me that copying 734 megabytes--it is only

12:25 1 4 percent of the unallocated space--would be an incredibly  
 2 uneffective (sic) way to overwrite a previously deleted  
 3 file?  
 4 A. I would agree that if you were trying to--if--if  
 5 you knew what you were doing and were trying to get rid of  
 6 all deleted files, it would be ineffective.  
 7 I--I can't speak to whether or not someone knew  
 8 what they were doing; just that I have seen, in my  
 9 experience, people try and destroy data by creating new  
 10 copies of files.  
 11 And it doesn't strike me as unreasonable to think  
 12 that someone might think that they--that if they created  
 13 2,000 files on a computer, that they might overwrite  
 14 something that had been deleted.  
 15 But again, I--I don't know why someone did that or  
 16 what they were trying to do.  
 17 Q. And again, putting aside what they are trying to  
 18 do or their motivation, as a forensics expert, you would  
 19 agree with me that it was not an effective way to overwrite  
 20 those files?  
 21 A. It would not have been effective to overwrite all  
 22 of the deleted files on the computer. It likely would have  
 23 overwritten information on the computer, and that's the  
 24 point I try and make clear.  
 25 In addition to talking about the unallocated

12:26 1 space, there are what's called the "MFT" on the computer.  
 2 The MFT is like an index of all the files on the drive.  
 3 When you delete a file, the file's contents remain in  
 4 unallocated space to be overwritten, and the records for  
 5 that file remain in the MFT to be overwritten. They are  
 6 marked as deleted, but they're still there.  
 7 So if you created 2,202 files, as were done on the  
 8 Zambrano Old Computer, you'd both be putting files into  
 9 unallocated space, which would potentially overwrite  
 10 information; and you would have reused 2,202 MFT entries.  
 11 So whatever was in those MFT entries would be overwritten.  
 12 As to whether or not that would be effective--if  
 13 you were trying to destroy a single file, it would entirely  
 14 depend on where the computer--which MFT entries the  
 15 computer choose--chose to overwrite and what areas of  
 16 unallocated space.  
 17 And again, I don't--I don't know what someone was  
 18 trying to do. I am trying to highlight that that action  
 19 would have overwritten data, and we don't now know what  
 20 that data was; not--not to say that it was effective or  
 21 ineffective. We don't know what it was, so we can't  
 22 determine whether or not it was effective.  
 23 Similar, we don't know the motivations, we don't  
 24 know that someone was trying to do that, but we know that  
 25 it happened.

12:28 1 Q. Just one technical question. We'll just skip past  
 2 most of that.  
 3 Is there a limit on the number of MFT entries that  
 4 can be on a computer?  
 5 A. No. The MFT--if it hits the maximum size--the MFT  
 6 is set up so that it has a certain number of records in it.  
 7 When it hits that number of records, it will grow the MFT;  
 8 new space will be assigned to the MFT.  
 9 Q. Do you know how many MFT entries were on this  
 10 computer?  
 11 A. No, I don't know sitting here right now.  
 12 Q. But it's probably a lot more than 2,000?  
 13 A. Oh, yeah. There were--I mean, on any computer,  
 14 even without any user activity, there will be thousands of  
 15 MFT entries just from installing Windows.  
 16 Q. Right. The 2,202 files that were copied into a  
 17 folder on the Old Computer were copied into a folder called  
 18 "Respaldo PC Pentium 4."  
 19 Do you know what "Respaldo" means in Spanish?  
 20 A. I don't speak Spanish. I understand it, I think  
 21 from Mr. Racich's Report, to mean backup.  
 22 Q. So these 2,202 files were copied into a backup  
 23 folder. You would agree with that?  
 24 A. Yes.  
 25 Q. Would you agree with me that that's a pretty good

12:29 1 indication that these files were created as a backup?  
 2 A. That file name alone would suggest that. It seems  
 3 odd to me that you would make a backup and then delete it.  
 4 That's not normally how people make--it's not a backup if  
 5 you then delete it.  
 6 So again, I don't know what the motivation was.  
 7 I'm just stating that it happened.  
 8 Q. And looking at the New Computer, you discuss a  
 9 bulk copying of data on July 9th, 2012, which resulted in  
 10 the creation of 4,701 new files; right?  
 11 A. Yes. That's correct.  
 12 Q. You didn't mention in your Report, though, that on  
 13 July 9th, 2012, a new user profile was created for Juan  
 14 Encarnación on the New Computer, did you?  
 15 A. No, I did not.  
 16 Q. Would you agree with me that it's more likely that  
 17 copying files on the same day that a user has his profile  
 18 created on a computer is more likely just giving that user  
 19 his files and instead is not an attempt to overwrite data?  
 20 A. Yes. I--again, I'm not saying that that copy was  
 21 an attempt to overwrite data, just that it very likely did  
 22 overwrite data.  
 23 Q. Nor did you mention in your Report that the new  
 24 files created on the New Computer accounted for less than  
 25 one and a half of the total space on that hard drive and

12:31 1 approximately 7 percent of the unallocated space?  
 2 A. No, I did not describe that.  
 3 Q. And again, the same would have hold (sic) true in  
 4 terms of to effectively remove any particular file, one  
 5 would have to overwrite the entirety of unallocated space;  
 6 correct?  
 7 A. Yes. To effectively remove a deleted file, you  
 8 would have to--without using sophisticated data destruction  
 9 techniques, you'd have to just overwrite all of unallocated  
 10 space.  
 11 Q. Would you agree with me that we either have an  
 12 inept data destroyer or someone who is just creating user  
 13 profiles for it to be used at the Court?  
 14 A. On the New Computer, yes, it seems that the copy  
 15 on July 9th was a creation of a user profile which--why I  
 16 highlight that that would have--I mean, it's after the  
 17 relevant time period, which is why we're able, perhaps  
 18 not--we're maybe not to recover all of the evidence that  
 19 would have been there prior, but that bulk copy would have  
 20 overwritten evidence. That's what I'm trying to highlight  
 21 there.  
 22 Q. Okay. Could we move on to Page 27 of your  
 23 August 15th, 2014, Report.  
 24 A. Yes.  
 25 MR. EWING: And actually, before I start this

12:33 1 line, Members of the Tribunal, when would be a good time  
 2 for us to take a break?  
 3 PRESIDENT VEEDER: Whenever you think it's  
 4 appropriate.  
 5 MR. EWING: Well, I could go all afternoon, but we  
 6 are at an easy stopping point.  
 7 PRESIDENT VEEDER: Well, let's stop now.  
 8 MR. EWING: So I would be happy to take a break.  
 9 PRESIDENT VEEDER: I don't think anybody is  
 10 complaining.  
 11 MR. EWING: Let's take a break.  
 12 PRESIDENT VEEDER: Let's come back at 25 to 2:00,  
 13 and we'll resume.  
 14 And you've heard me say this before--  
 15 THE WITNESS: Understood.  
 16 PRESIDENT VEEDER: --please don't discuss the case  
 17 or your testimony away from the Tribunal.  
 18 THE WITNESS: Understood.  
 19 (Whereupon, at 12:33 p.m., the proceedings were  
 20 adjourned until 1:36 p.m., the same day.)  
 21  
 22  
 23  
 24  
 25

1 AFTERNOON SESSION  
 2 PRESIDENT VEEDER: Since we're all here, we'll  
 3 start early. Let's resume.  
 4 BY MR. EWING:  
 5 Q. Welcome back from lunch, Mr. Lynch.  
 6 A. Thank you.  
 7 Q. You mentioned earlier that you found a CV file on  
 8 Guerra's computer with the Usuario user name and that that  
 9 was an indicator of how you could say Usuario was specific  
 10 to Mr. Guerra?  
 11 A. It was an indicator that he previously used a  
 12 computer with that name.  
 13 Q. We did a cursory search over lunch, and I  
 14 emphasize "cursory." Did you know there are actually 10  
 15 other CVs on Guerra's computer with Guerra's CV information  
 16 in them?  
 17 A. There are multiple files, yes.  
 18 Q. And that at least one of them has other Author  
 19 names such as Dr. Alberto Guerra B.?  
 20 A. Yeah. I don't recall the metadata for all of  
 21 them; but, yes.  
 22 Q. Okay. So if we could turn to your Second Report  
 23 at Page 27, so this should be Tab 2 in the Tribunal's  
 24 binder.  
 25 In looking at Page 27, you identify multiple

01:37 1 copies of two files from Mr. Zambrano's computers that  
 2 contained text from the Ecuadorian Judgment; one file is  
 3 named "Providencias" and the other is "Caso Texaco."  
 4 Do you see that?  
 5 A. I do, yes.  
 6 Q. With regard to the Providencias document, you  
 7 found copies of that document on both the Old Computer and  
 8 the New Computer; right?  
 9 A. Yes. There were copies of--copies of the document  
 10 on both.  
 11 Q. And in your Report--in your Report, you state that  
 12 this document was created on Mr. Zambrano's Old Computer on  
 13 October 11th, 2010; right?  
 14 A. Yes.  
 15 Q. And that you don't know the content of that file  
 16 when it was first created on October 11th, 2010?  
 17 A. Yes.  
 18 Q. And between October 11th, 2010, and  
 19 December 21st, 2010, the Providencias document was saved  
 20 at least 286 times; right?  
 21 A. Yes.  
 22 Q. You agree with me about that?  
 23 A. Yes.  
 24 Q. And as of December 21st, 2010, the Providencias  
 25 document contained 42 percent of the text that was

01:39 1 ultimately contained in the Ecuadorian Judgment.  
 2 That's still your understanding?  
 3 A. Yes.  
 4 Q. And between December 21st and December 28th,  
 5 the Providencias document was saved an additional 29 times;  
 6 correct?  
 7 A. Yes.  
 8 Q. And as of December 28th, the Providencias  
 9 document contained 66 percent of the text that ultimately  
 10 was the Ecuadorian Judgment; right?  
 11 A. Yes.  
 12 Q. And on January 21st, 2011, the Providencias  
 13 document was saved using a Save As; correct?  
 14 A. Correct.  
 15 Q. And this is all--also on your Slide 15, just to  
 16 reference back to that.  
 17 And we can't know how many times the document was  
 18 saved between December 28th and January 21st, 2011;  
 19 right?  
 20 A. No, we can't.  
 21 Q. And we don't know how long it was edited between  
 22 December 28th and January 21st, 2011; right?  
 23 A. No, we don't.  
 24 Q. But we know that between January 21st and  
 25 March 4th, 2011, the Providencias document was saved 124



01:40 1 more times; right?  
 2 A. Yes.  
 3 Q. And as of March 4th, 2011, the Providencias  
 4 document contained 99 percent of the Judgment text; right?  
 5 A. Yes.  
 6 Q. So overall, the application metadata tells us that  
 7 this document was saved over 400 times; right?  
 8 A. Yes.  
 9 Q. And you have no basis to dispute this evidence,  
 10 that the Providencias document was saved on Mr. Zambrano's  
 11 computer over 400 times, do you?  
 12 A. No. It's the evidence I set forth in my Report.  
 13 Q. Okay. And this 400 times that this document was  
 14 saved is called the "revision number"; right?  
 15 A. Yes.  
 16 Q. And--sorry.  
 17 A. Or the revision count. People use slightly  
 18 different names; but, yes.  
 19 Q. It was what we saw in your presentation as  
 20 "revision number"?  
 21 A. Yeah.  
 22 Q. Okay. And this morning in response to the  
 23 Tribunal's question about revision count, you said that  
 24 moving the mouse would be enough to allow revision number  
 25 to increase with a save.

01:41 1 Do you stand by that statement that moving the  
 2 mouse is enough to increase the revision number?  
 3 A. If you move the mouse and click, yes. If you move  
 4 the cursor and save without changing the text, that will  
 5 increase the revision count.  
 6 Q. So if you click on a document without changing  
 7 anything, it's your testimony that you can increase the  
 8 revision count?  
 9 A. Yes. You don't have to change the contents to  
 10 increase the revision count.  
 11 Q. Okay. You agree with me that the amount of  
 12 Judgment text in the Providencias document increased  
 13 incrementally over time; correct?  
 14 A. Well, we--I would--to the extent set forth in my  
 15 reports, we know it went from presumably zero percent to 42  
 16 as of December 21st, that then it was 66 percent on  
 17 December 28th; and then that as of March 4th,  
 18 essentially all of the text, 99 percent was there.  
 19 Whether or not you would call two versions prior  
 20 to the--to after it was issued incrementally, I would leave  
 21 that to the person using the word "incrementally."  
 22 Q. And the version--if we could pull up Table 13 on  
 23 Page 31 of your Report; and specifically on the screen, if  
 24 we could show Exhibit 48.  
 25 And Exhibit 48 is Tab 11, for the Tribunal's

01:43 1 reference.  
 2 You say that the March 4th, 2011 version of the  
 3 Providencia contained 99 percent of the Judgment.  
 4 Do you know what text was missing as compared to  
 5 the complete issued Judgment?  
 6 A. The header was inaccurate in the version--in  
 7 Providencias.  
 8 Q. Anything else?  
 9 A. No. I believe that was the difference, was the  
 10 heading.  
 11 Q. If you look at the end, the signature is also  
 12 different.  
 13 A. Yes. Sorry. Yeah, the signature.  
 14 Q. So the heading and the signature were different?  
 15 A. Yes.  
 16 Q. Exhibit 48, on the left of this file, you have  
 17 provided a--and this--let me start over.  
 18 Exhibit 48 is a comparison between the March 4th,  
 19 2011 version of the Final Judgment and the version that was  
 20 issued; correct?  
 21 A. Exhibit 48 is a comparison of the March 4th  
 22 version and the version that was issued.  
 23 Q. Correct. And if we start at the first page of  
 24 Exhibit 48, on the left side, we see in red the text from  
 25 the March 4th document. And on the right side we see the

01:45 1 text from the final issued Judgment; right?  
 2 A. Yes.  
 3 Q. So in Exhibit 48 that we're looking at, the red  
 4 text on the left is the--what eventually became the  
 5 March 4th, 2011 Amplification or Clarification Order;  
 6 correct?  
 7 A. Yes.  
 8 Q. And that, obviously, wasn't in the  
 9 February 14th, 2011 Judgment, so that right-hand column  
 10 is blank?  
 11 A. Yes.  
 12 Q. And if we page past the March 4th order, it's  
 13 line--starts at the very bottom. On the left-hand side, it  
 14 says "Line 281." And most of the text we're interested in  
 15 starts on the page that has "282" in the top left.  
 16 A. Yes.  
 17 Q. Do you see that?  
 18 A. I see that.  
 19 Q. Now, on the left, which is the document from  
 20 Mr. Zambrano's computer, we see a short Providencia that  
 21 Mr. Zambrano issued on February 21st, 2011; correct?  
 22 A. Yes.  
 23 Q. And that also is not part of the Final Judgment,  
 24 which is why it's not on the right?  
 25 A. Yes.

01:46 1 Q. Okay. And then below on the next page with the  
 2 line starting with "334" and the header right above that,  
 3 now we see the Judgment starting; correct?  
 4 A. Yes.  
 5 Q. So this file that you recovered on Mr. Zambrano's  
 6 computer from March 4th, 2011, had the March 4th  
 7 Clarification Order, the February 21st Providencia or  
 8 Procedural Order, and then the Final Judgment; correct?  
 9 A. Yes.  
 10 Q. So let's walk through what would have happened to  
 11 this file in its life between February 14th and  
 12 March 4th, 2011, based on what we know from this file.  
 13 A. Okay.  
 14 Q. On February 14th, the Final Judgment was issued;  
 15 right?  
 16 A. Yes.  
 17 Q. And the text that you have here in this  
 18 March 4th, 2011 document, there are no substantive  
 19 changes until we get to the signature at the end. So the  
 20 header and the signature are the only differences that you  
 21 have; right?  
 22 A. Yes.  
 23 Q. And I've paged through this looking for more red  
 24 text, and I don't see any. So far as I can tell, this is  
 25 100 percent the exact same except for the header and the

01:49 1 what your Exhibit 48 shows; right? It's the same document?  
 2 A. It's the same document, yes, assuming that  
 3 Mr. Zambrano wrote February 21st Order in this document  
 4 and then saved it--it is all the same document.  
 5 Q. Yeah.  
 6 A. Then the Create date would remain what it was when  
 7 someone--the last time someone had saved it and before that  
 8 until someone hit Save As.  
 9 Q. So for this document, the Create date would still  
 10 be October 11th, 2010; but the Last Written date would be  
 11 21st of February 2011?  
 12 A. The filesystem Create date would be  
 13 October 11th. The embedded Create date would be  
 14 February 21st, the last time someone used Save As.  
 15 Q. If they used the Save As?  
 16 A. Sorry. It would be January 21st, the last time  
 17 the document was saved using Save As.  
 18 Q. But the document was created and would have a  
 19 filesystem Create date of October 11th, 2010?  
 20 A. Yes.  
 21 Q. And then when you save it on the 21st, the  
 22 filesystem would have February 21st, 2011, as its Last  
 23 Written date?  
 24 A. Yes; assuming it was saved on that date, it would.  
 25 Q. And then you don't even have to page to the front;

01:47 1 signature. Would you agree with me?  
 2 A. That's my understanding, yes.  
 3 Q. Let's assume that Mr. Zambrano had this  
 4 Providencia or the Final Judgment order on his computer on  
 5 February 14th, 2011. Okay?  
 6 A. Yes.  
 7 Q. When he then wrote--sorry.  
 8 So he had the file on February 14th, 2011. When  
 9 he saved it, he would have a Last Written date of  
 10 February 14th, 2011. You know, let's pick the time here,  
 11 8:33 in the morning. You know, the details of the time are  
 12 not important. But you would agree with me; right?  
 13 A. Yeah. It would have--if it was saved on February  
 14 14th, it would have a Last Modified date on  
 15 February 14th.  
 16 Q. Perfect. When he then wrote the February 21st,  
 17 2011 amplifica--Procedural Order and saved that onto his  
 18 computer, the Last Written date would be what?  
 19 A. If he saved it on February 21st, it would  
 20 be--the Last Written date would be February 21st.  
 21 Q. But the Create date would remain the same;  
 22 correct?  
 23 A. Assuming he's working in the same date, then,  
 24 yeah.  
 25 Q. And he is. This is the same document. This is

01:50 1 but if Mr. Zambrano then saved the  
 2 March 4th--Amplification Order on March 4th, the Last  
 3 Written date, filesystem Last Written date would now be  
 4 March 4th; correct?  
 5 A. Yes.  
 6 Q. But the original filesystem Create date would  
 7 still be October 11th, 2010?  
 8 A. Yes.  
 9 Q. And there would be no metadata in this file that  
 10 remembered that this file was saved on February 14th,  
 11 2011?  
 12 A. Yes.  
 13 Q. That's correct?  
 14 A. That's correct. Looking at the file from  
 15 March 4th, there's no way to know whether or not it had  
 16 been saved on February 14th.  
 17 Q. Other than the fact that the content is here?  
 18 A. Yes. If you assume that the content means that it  
 19 was saved on February 14th, then--there's no way to  
 20 say--there's no way for the metadata to confirm or refute  
 21 that.  
 22 Q. Okay. But at the end of the day, this document  
 23 would reflect the most recent saves, i.e., the saves that  
 24 were done to write the March 4th, 2011 Amplification and  
 25 Clarification Order and not the Last Written dates from any

01:51 1 earlier work?  
 2 A. Yes.  
 3 Q. So now, if we look at what is missing from the  
 4 Final Judgment, on Line 331, we see the header. And you  
 5 actually see another header up on Line 282. But let's  
 6 assume the header is entirely missing just to make the math  
 7 easier and give you the benefit of the doubt.  
 8 And then if we look at the very last page, we see  
 9 the signature is missing.  
 10 A. Yes.  
 11 Q. I'll represent to you that I counted the words for  
 12 the heading and the signature and that the heading has 35  
 13 words and that the signature has 15.  
 14 Assuming that I did my math right, that means the  
 15 Final Judgment on March 4th, 2011, the final document that  
 16 we have on Mr. Zambrano's computer is missing 50 words.  
 17 Would you agree, assuming that my math is correct?  
 18 A. Yeah. Assuming your math is correct, then, yes.  
 19 Q. In your August 2014 Report at Page 39, you  
 20 calculated that there are approximately 88,000 words in the  
 21 Final Judgment. Do you remember that?  
 22 A. That sounds right to me. Which page was that?  
 23 Q. Thirty-nine.  
 24 A. Yeah. Okay.  
 25 Q. So if I calculate the percentage of the Final

01:53 1 Judgment that's complete, if we just look at the substance,  
 2 you would agree with me that this is 100 percent complete;  
 3 right? If the only difference is the heading and the  
 4 signature, the substance is 100 percent complete?  
 5 A. The--the body is 100 percent complete, but the  
 6 heading is different.  
 7 Q. So if I take the heading out of that 88,000, I end  
 8 up with 87,950 words that are the same. And if I calculate  
 9 that percentage, it ends up being 99.94 percent the same.  
 10 Would you, again, believing that I've done my math  
 11 correctly, agree with me?  
 12 A. Yes.  
 13 Q. So even assuming that the header and signature  
 14 actually matter in terms of calculating the percentage of  
 15 substantively complete text, we're still at 99.94 percent.  
 16 A. Okay.  
 17 Q. So if we look now at Table 8 of your Report on  
 18 Page 28--we're moving on from the percentages so,  
 19 hopefully, there'll be less math.  
 20 A. Okay.  
 21 Q. Looking at the Author names for documents 11  
 22 through 16, those are all CPJS; correct?  
 23 A. Yes. That's correct.  
 24 Q. And that is the registered Author for Microsoft  
 25 Office on Mr. Zambrano's Old Computer; correct?

01:55 1 A. That's correct.  
 2 Q. So all of these files were originally created on  
 3 Mr. Zambrano's old computer?  
 4 A. Yes. The file was originally created on the Old  
 5 Computer, and every save shown here was done using--from 11  
 6 to 16 was done using the Old Computer.  
 7 Q. So the Author name and the--so the Author name  
 8 doesn't change as you save it, is what you're suggesting?  
 9 A. The last Save By name changes, if you save it on a  
 10 different computer.  
 11 Q. But the Author name does not change if you save it  
 12 on a different computer?  
 13 A. Yeah. The Author name--yes, that's correct.  
 14 Q. Now, if we looked at the Last Saved By date or  
 15 Last Saved By Author--sorry--document 11 through 16 are all  
 16 CPJS as well; correct?  
 17 A. That's correct.  
 18 Q. So those were all saved on the Old Computer as  
 19 well; correct?  
 20 A. Yes. 11 through 16 were all last saved on the Old  
 21 Computer.  
 22 Q. And then Document 17 has a user name of HP. Which  
 23 computer is that?  
 24 A. That's the New Computer.  
 25 Q. And when was that saved?

01:56 1 A. It was in 2012.  
 2 Q. So that's relatively irrelevant for what we're  
 3 looking for at this point; right?  
 4 A. Yes.  
 5 Q. You didn't find any forensic data--metadata or  
 6 filesystem metadata, Table 7 or Table 8, that indicate that  
 7 the Providencias document was provided to Mr. Zambrano in  
 8 any way by Mr. Guerra, did you?  
 9 A. I--I don't have any metadata to establish who  
 10 would have provided content to Mr. Zambrano.  
 11 Q. But looking at the objective dates that are in  
 12 this file--these two tables, Table 7 and Table 8, you would  
 13 agree with me that there's no indication in these--in this  
 14 metadata that this file was provided to Mr. Zambrano by  
 15 Mr. Guerra?  
 16 A. No. Looking at just the metadata, there's no  
 17 indication--the indication is that the file was created on  
 18 Mr. Zambrano's computer, not necessarily the content.  
 19 Q. And just looking at the metadata in Table 7 and  
 20 Table 8, there's no indication that the Providencia was  
 21 provided to Mr. Zambrano by Pablo Fajardo, is there?  
 22 A. Looking at just the metadata, there's no  
 23 indication that the file itself was provided by any third  
 24 party.  
 25 Q. So the metadata by itself supports the conclusion

01:58 1 that only Mr. Zambrano created, worked on and saved the  
2 Final Judgment?  
3 A. If you take the metadata on its own out of context  
4 of other evidence, then it shows that the file was created  
5 and last saved on Mr. Zambrano's computer. But that--that  
6 takes it out of context from other evidence.  
7 Q. And we will talk about the other context to which  
8 you are referring.  
9 But at this point, just looking at the  
10 metadata--and I understand that I am limiting you to  
11 looking at just the metadata that you presented here in  
12 Table 7 and Table 8--this metadata fully supports the  
13 conclusion that Mr. Zambrano created, edited, saved the  
14 Final Judgment in the Lago Agrio case; right?  
15 A. I think there are--there's very little you  
16 can--can say just about this metadata alone.  
17 It's consistent with a few different things, that  
18 Mr. Zambrano created this file or, as I set forth in my  
19 presentation, that someone retyped from an existing  
20 document or copied from another source.  
21 Q. Okay. Let's come back to that after we've  
22 addressed some of your other contextual concerns.  
23 In your analysis of the Providencias files, you  
24 note that blocks of text existing on some of the  
25 Providencia files have different formatting and that you

02:01 1 consistent with text having been copied and pasted from  
2 another document."  
3 A. Yes. I--I don't conclude that it's consistent  
4 with having been copied and pasted from another document on  
5 Mr. Zambrano's computer. I don't know the sources.  
6 Q. So, you have no idea what other sources could be  
7 for those documents?  
8 A. Well, they're--there are many other  
9 sources--possible sources. It--it could have been a  
10 document on a thumb drive, or it could have been a document  
11 on Mr. Zambrano's computer that's since been deleted.  
12 I--I can't, from that block of text, confirm where  
13 it was copied from, because that block of text doesn't  
14 appear in any other document. So, I don't know where it  
15 came from.  
16 Q. From all of these other sources that you mentioned  
17 and any others that you could think of, do you have any way  
18 of indicating which one is more or less likely?  
19 A. Yeah. I mean, given--given the--the block of text  
20 changes from Bookman Old Style to Times New Roman,  
21 it's--it's more likely that it would be a document in Times  
22 New Roman.  
23 Q. Given all of the sources, though, that you know  
24 of, you have no way of telling which Times New Roman  
25 document is more or less likely the source?

02:00 1 conclude that this is consistent with text having been  
2 copied and pasted from another document.  
3 And this is at Page 30 of your August 15th  
4 Report.  
5 A. Yes.  
6 Q. Do you remember reaching that conclusion?  
7 A. Yes.  
8 Q. And you stand by that today?  
9 A. Yes, that the--that blocks of text with formatting  
10 differences like that are consistent with copying and  
11 pasting.  
12 Q. Is that the only thing they're consistent with?  
13 A. No. They could be consistent with other things,  
14 but they are consistent with copying and pasting.  
15 Q. What else would it be consistent with?  
16 A. In--in drafting a document, someone can choose to  
17 change the formatting.  
18 Q. So, to come back to your conclusion that you put  
19 forward first, your conclusion is that text from another  
20 document on Mr. Zambrano's computer could have been the  
21 source of the copied text; right?  
22 A. Could you--I--could you point me to where I--I  
23 conclude that in my Report? Sorry. I'm just--  
24 Q. The second-to-last sentence starts with: "In my  
25 experience, blocks of text with different formatting is

02:02 1 A. No. It could be the--the universe of other  
2 documents there are in Times New Roman.  
3 Q. And if we look at Slide 32 from your presentation  
4 this morning, this is the Judgment text that was copied  
5 from an unknown document into Providencias.  
6 Do you remember this slide?  
7 A. Yes.  
8 Q. Do you have it in front of you?  
9 A. I don't have it before me, but I remember it.  
10 Q. Have you noticed that the Judgment often uses  
11 italicized font for quotes?  
12 A. I have seen that, yes.  
13 Q. Looking at this example that you provided,  
14 couldn't this also be explained by a person selecting an  
15 italicized font for a quote and then nonitalicized font for  
16 regular text and then going back to italicized font?  
17 A. Well, I mean, if you look--if you look above, it  
18 begins in Bookman Old Style italicized and then switches to  
19 Bookman Old Style italicized and bold, and then towards the  
20 end it's--or at the beginning of the next block of text  
21 with Bookman Old Style, it's Bookman Old Style without bold  
22 or italics--I guess it's a long way of saying that one  
23 could have switched from Bookman Old Style to Bookman  
24 Old-size--Bookman Old Style italics. Switching from  
25 italics to nonitalics doesn't explain the shift to Times

02:04 1 New Roman.  
 2 Q. But someone could have easily just picked a  
 3 different font?  
 4 A. Someone could have chosen at that point in time  
 5 to--to write in a different font.  
 6 Q. And you have no way of knowing why the first part  
 7 of this is Bookman Old Style, the second part is Times New  
 8 Roman, and the third part is Bookman Old Style. It could  
 9 just be someone wanted a different font?  
 10 A. It--it could be. But as I stated and as I think  
 11 Mr. Racich agreed with me, this is--it is also consistent  
 12 with copy and pasting.  
 13 Q. Okay. So, the difference here that we're talking  
 14 about is we're going from Bookman Old Style to Times New  
 15 Roman to Bookman Old Style. That's your opinion; right?  
 16 A. That's one difference.  
 17 There is another place in the document where the  
 18 margins change entirely.  
 19 Q. Okay.  
 20 A. That's--that wouldn't be explained by someone just  
 21 choosing a different italicized font.  
 22 Q. Is there--the Caso Texaco file that you analyzed  
 23 was also written in Bookman Old Style; right?  
 24 A. It was, yes.  
 25 Q. Are there any other files in Mr. Zambrano's

02:05 1 computer that were written in Bookman Old Style?  
 2 A. I believe there were other documents in Bookman  
 3 Old Style.  
 4 Q. Are there any others that were written in Times  
 5 New Roman?  
 6 A. I think there are some documents in Times New  
 7 Roman.  
 8 Q. So, any of those other documents could have been  
 9 the source for these different fonts?  
 10 A. Well, none of those other documents contain this  
 11 text. So, had that--had that text been the source, someone  
 12 would have had to have chosen to delete text out of there.  
 13 Q. So, let's go back to your document from this  
 14 morning, your example.  
 15 You pasted in--was it--Calibri was your default.  
 16 A. Yes.  
 17 Q. And what was the text that you pasted in?  
 18 A. Bookman Old Style.  
 19 Q. Bookman Old Style.  
 20 If I took your document from this morning--and,  
 21 again, I now have it on my computer--and I paste it into my  
 22 own document, what font will appear on my document on my  
 23 computer?  
 24 A. If you paste the entirety of my document into a  
 25 document that you already have, it would be whatever font

02:06 1 your document already had, then the few lines in Calibri  
 2 that I showed, and then the block of text in Bookman Old  
 3 Style.  
 4 Q. So, it would generally retain the text; right?  
 5 A. Generally when you copy and paste in Word, it  
 6 retains the--the font and formatting.  
 7 Q. So, if I took your document, instead of copying  
 8 it, I cut it and then I pasted it into my document, it  
 9 would still appear in my document as Calibri and then  
 10 Bookman Old Style; correct?  
 11 A. Yes.  
 12 Q. And it would no longer be in your document at all?  
 13 A. It would no longer be in the copy of my document  
 14 that you had, if you then saved my document after cutting  
 15 the text out.  
 16 Q. So, if I cut your text out and put it into my  
 17 document and saved your document, the forensics on my  
 18 computer will now show the only source for this  
 19 Calibri-Bookman Old Style transition is some unknown  
 20 document?  
 21 A. Yeah. We would--I would not be able to--if  
 22 you--if you change the document I gave you to ident--I  
 23 wouldn't necessarily be able to identify what the source  
 24 was, but that--the font and formatting differences that  
 25 we're talking about would show that copying and pasting

02:07 1 likely did occur.  
 2 Q. So, any of the text that you've identified as  
 3 copied and pasted could just as easily have been cut and  
 4 pasted, and we would never see it anywhere else, because it  
 5 has been cut out of that document?  
 6 A. If it was cut out of a document and then that  
 7 document was saved, it would no longer be in that document.  
 8 Q. So, I could have written a document with this  
 9 little section in Times New Roman in a separate document,  
 10 cut it, pasted it into my Providencias draft, and saved my  
 11 other file, and that other file will no longer reflect this  
 12 text; correct?  
 13 A. Yes.  
 14 Q. And we know that Mr. Zambrano has multiple  
 15 documents on his computer that are Times New Roman and  
 16 Bookman Old Style?  
 17 A. Yes. We know there are--there are many documents  
 18 on the document computer.  
 19 Q. Any of which could have been the source if the  
 20 text was cut out of them?  
 21 A. I--well, any of them in Times New Roman could be  
 22 the source, but there are--we have not--no one has  
 23 identified any document in Times New Roman that has any  
 24 Judgment text in it.  
 25 Q. And if it was cut out, it would not be there; so,

02:09 1 we would never be able to find it?  
 2 A. If someone took the text out and then saved the  
 3 document, it would no longer be in the document. It would  
 4 be unknown document, as I described.  
 5 Q. Okay. Could we talk briefly about the Caso Texaco  
 6 document?  
 7 A. Okay.  
 8 Q. This is Table 16 of your Second Report.  
 9 A. Yes.  
 10 Q. This table indicates that you found multiple  
 11 versions of the Caso Texaco document; correct?  
 12 A. Yes.  
 13 Q. You found 17 of them, it looks like.  
 14 A. Yes. Some of--some of the versions are  
 15 essentially the same. But yes, there are 17 different  
 16 documents I list there.  
 17 Q. Okay. And you state that a "single instance of  
 18 Caso Texaco contained text from the Ecuadorian Judgment in  
 19 the immediately subsequent instance that text was missing  
 20 from the document, indicating that it had been deleted."  
 21 A. Yes, I state that.  
 22 Q. Okay. And you calculated that the version of the  
 23 Caso Texaco document that you found had 11 percent of the  
 24 Judgment text; correct?  
 25 A. I believe that--yeah, that's correct.

02:12 1 other file and I cut that text out of that document and I  
 2 pasted it into my Providencias, the Providencias Final  
 3 Judgment would grow by 10 percent and my other file would  
 4 have no text in it?  
 5 A. Yes. If you have--if you have Providencias and  
 6 you save it at, say, 11:51, and then a minute later you cut  
 7 and paste text from another document and then save the  
 8 other document, it won't be in that document anymore. And  
 9 when you paste it into Providencias, it would then be in  
 10 that document. If you save at 11:52, it will have then  
 11 10 percent more text over a one-minute time period, because  
 12 you've just moved it.  
 13 Q. Which, if I calculated out the typing speed, would  
 14 be incredible; right?  
 15 A. Yes.  
 16 Q. And we would all agree, probably not realistic?  
 17 A. Yes.  
 18 Q. And we don't know how many other files on  
 19 Mr. Zambrano's computer he cut text out of?  
 20 A. We don't--we don't know if he cut text out of any  
 21 other documents on his computer or--or any of the USB  
 22 Devices that were connected to them.  
 23 Q. Let's take a step back and make sure what we do  
 24 and don't know.  
 25 The Caso Texaco document you've already said

02:10 1 Q. Sorry. That's on Page 34, Table 18.  
 2 A. Yeah.  
 3 Q. But that's just the 11 percent that you found in  
 4 one of these 17 snapshots; correct?  
 5 A. Well, that's--that's the 11 percent that exists  
 6 across any of those snapshots.  
 7 Q. So, if I had a version of this Caso Texaco  
 8 document in which I was drafting portions of the Judgment,  
 9 as Mr. Zambrano seems to have been doing, because we see  
 10 that 11 percent of the Judgment was in this text--if I had  
 11 another 10 percent, and, instead of copying it, I cut it  
 12 out of that document and pasted it into my final  
 13 Providencias, the final Providencias would reflect that  
 14 text, but the Caso Texaco document would not?  
 15 A. If you cut text out of the document and pasted it  
 16 into Providencias, it will no longer, no longer be the  
 17 document that it came from.  
 18 Q. And again, sort of like your example this morning,  
 19 if I did that with 10 percent of the Judgment text--I cut  
 20 it out of the Caso Texaco document and I pasted it into the  
 21 Final Judgment, the Final Judgment would grow 10 percent  
 22 instantly; correct?  
 23 A. Yes.  
 24 Q. And the same would be true of any other file which  
 25 I used as my source document. If I had 10 percent in some

02:13 1 contained 11 percent of the Final Judgment; right?  
 2 A. Yes.  
 3 Q. So, we know--and that is a file that is different  
 4 from the final Providencias document; correct?  
 5 A. Yes.  
 6 Q. So, we know that Mr. Zambrano had a working habit  
 7 of having a document in which he is drafting the  
 8 Providencia, and then he has a second document where there  
 9 is other text from it; right?  
 10 A. I don't--I don't know if I would consider that--we  
 11 have a single instance of text being cut and pasted. I--I  
 12 wouldn't classify that evidence of a working habit.  
 13 Q. We have a single instance where this definitely  
 14 happened; correct?  
 15 A. We have a single instance where text was in  
 16 Caso Texaco and then either copied and pasted and then  
 17 deleted from the original or cut and pasted into  
 18 Providencias.  
 19 Q. So, we know that Mr. Zambrano technically knew how  
 20 to do this; right?  
 21 A. Assuming Mr. Zambrano did it.  
 22 Q. And we know that he had done it before.  
 23 A. Assuming he did it. We know that--assuming he did  
 24 it, we know that he did it.  
 25 Q. And there's no way for you to tell us today how

02:15 1 many times he did or didn't do it. It could have been  
 2 zero, or it could have been 10 more times?  
 3 A. Assuming he did it--and I guess I would also  
 4 add--and we assume that the text did go from Caso Texaco to  
 5 Providencia; that there wasn't a mutual predecessor  
 6 document from which the text went to both.  
 7 Q. A mutual predecessor. There's no evidence of  
 8 that, is there?  
 9 A. No. I mean, I just--I want to make clear the  
 10 options that exist. I don't want to rule out one  
 11 without--without cause.  
 12 Q. So, there are--that's another option, but for  
 13 which there is no evidence at this point?  
 14 A. Well, there is--there is no evidence that that  
 15 happened versus someone cut and pasting text from  
 16 Caso Texaco to Providencias. I guess both are options, and  
 17 I can't tell you which is more likely.  
 18 Q. Okay. Can we turn to your August Report, Page 14.  
 19 Let's talk about the USB Devices. This is Tab 2, Page 14.  
 20 A. Yes.  
 21 Q. You state here that nine USB Devices were used on  
 22 the Guerra Computer and one or both of the Zambrano  
 23 Computers.  
 24 Do you see that?  
 25 A. Yes.

02:18 1 "most recently connected"?  
 2 A. Yes.  
 3 Q. And that says March 16th, 2011.  
 4 A. Yes.  
 5 Q. And that is later in time than any of the four  
 6 dates on the Zambrano Computer, old or new?  
 7 A. Yes.  
 8 Q. The same question for the next line. March 8th,  
 9 2011, is later than any of the dates for the Old Computer  
 10 and New Computer?  
 11 A. Yes.  
 12 Q. And we can go down through the rest of them until  
 13 we get to mass storage device.  
 14 All the USB Devices earlier have a later date of  
 15 the most recently connected than Guerra than in either of  
 16 the Zambrano Computers; correct?  
 17 A. No. The--the second, I guess, nonhighlighted  
 18 line, with the serial number beginning 001B, was most  
 19 recently connected to the New Computer in 2012, but most  
 20 recently connected to the Guerra Computer in 2011.  
 21 Q. Okay.  
 22 A. The same for the--the document--well, not the  
 23 same. But the same condition exists for the USB Device  
 24 Data Traveler 108. It was most recently connected to the  
 25 Zambrano New Computer a day after it had been most recently

02:16 1 Q. And I am--I'm paraphrasing.  
 2 And you state that eight of the devices were used  
 3 first on the Guerra Computer and then on the Zambrano  
 4 Computer; right?  
 5 A. I'm trying to find where I state that.  
 6 Q. In Table 1 on Page 15--so the next page--is where  
 7 you have it as a table.  
 8 A. Yeah, but it sounds right to me.  
 9 Q. You also discuss in the text, but we're going to  
 10 focus on the table.  
 11 According to Table 1, weren't all the nine USB  
 12 Devices also used on the Guerra Computers after they were  
 13 attached to one of the Zambrano Computers?  
 14 A. I--I just do the comparison.  
 15 Could you repeat the question? I want to make  
 16 sure I heard it.  
 17 Q. Yeah. According to Table 1, weren't all nine of  
 18 the USB Devices also used on the Guerra Computer after they  
 19 were attached to one of the Zambrano Computers?  
 20 A. The--the last one was used after it had been  
 21 connected to--to the Guerra Computer on the Zambrano  
 22 Computers, but...  
 23 Q. Let's look at these one at a time. And maybe this  
 24 is just a lack of clarity in my question, so I apologize.  
 25 The first row on the far right column, it says

02:20 1 connected to the Guerra Computer.  
 2 Q. But you don't know who plugged these USB Devices  
 3 into any of these computers; right?  
 4 A. No, no. I don't know who was physically holding  
 5 them when they were connected.  
 6 Q. So, it could have been Mr. Guerra, or it could  
 7 have been Mr. Zambrano, or it could have been someone else  
 8 entirely?  
 9 A. Yeah. I don't know who was physically holding the  
 10 USB Device when it was connected.  
 11 Q. So, this evidence that you presented is equally  
 12 consistent with Mr. Guerra having plugged it into all of  
 13 these computers as it is with any other scenario, isn't it?  
 14 A. This evidence alone, though taken with  
 15 Mr. Zambrano's testimony that Mr. Guerra shipped him  
 16 Orders, it seems more likely that at least Mr. Zambrano  
 17 connected some of these drives to his computer.  
 18 Q. And there are no records of USB Devices being  
 19 inserted into Mr. Zambrano's computer in February of 2011?  
 20 A. No. This--this--this chart is the USB Devices  
 21 that were shared between the Guerra Computer and the  
 22 Zambrano Computers.  
 23 If you turn to Page 36, it's a more comprehensive  
 24 listing of the USB Devices connected to the Zambrano  
 25 Computer in general, regardless of whether or not they were

02:22 1 shared. And the last one there was connected on  
 2 February 21st.  
 3 But taken more generally--and actually I think the  
 4 chart on the screen illustrates the point well--from the  
 5 forensic evidence, we can generally only tell the first  
 6 time a USB Device is connected and the most recent time.  
 7 So, it's--it's possible that any device connected  
 8 to the Zambrano Computer prior to February 2011 was also  
 9 connected in February 2011 and then just also connected  
 10 later.  
 11 Q. It's possible, but there's no evidence; is that  
 12 right?  
 13 A. There's evidence that this USB Device was  
 14 connected on February 12th, the last line on Table 23.  
 15 There is no evidence of any other device having  
 16 been connected in February 2011, but it's possible, nor  
 17 would I necessarily expect there to be evidence of it.  
 18 Q. Okay. You state in your Report that you received  
 19 seven images of USB Devices, of which five are among the  
 20 nine used on one or both of Zambrano Computers; is that  
 21 right?  
 22 A. That sounds right, yes.  
 23 Q. Okay. On Page 376 of your Report, which is the  
 24 Table 24--  
 25 A. Yes.

02:24 1 Q. It's Tab 2, Page 37. This lists the files that  
 2 were accessed from USB Devices on the Zambrano Computers  
 3 between October 2010 and March 2011.  
 4 Do you see that?  
 5 A. This lists files--I don't want to say it lists all  
 6 of the files. It lists files that--that were--were  
 7 accessed in that time period. For some of them, I don't  
 8 know the specific date. But from the metadata of those  
 9 files, it seems most likely they were accessed in that time  
 10 period.  
 11 Q. But there's no evidence of a document having been  
 12 opened from a USB Device on either Zambrano Computer  
 13 between February 1st and February 14th, 2011, is there?  
 14 A. There is--there is no specific evidence of a--of a  
 15 file having been opened from a USB Device in that time  
 16 period, though, as I said, this isn't--this isn't a  
 17 complete listing of every file that could have been opened.  
 18 The computer doesn't track when files are opened in that  
 19 way. You often only get the most recently accessed files.  
 20 So, if we take the document--just--by way of  
 21 example, 8.docx, which we know was--was accessed  
 22 January 28th. It could have been accessed multiple times  
 23 before that. So looking at documents that were accessed  
 24 after February, they--they could have just been another  
 25 document was named--had the same name. So, the last

02:25 1 recently accessed date has been updated.  
 2 So, I guess I'm saying I can't--I can't point to  
 3 anything and say there definitely was this document that  
 4 was accessed, but I also can't say that there wasn't a  
 5 document accessed.  
 6 Q. But the question of whether there is some other  
 7 document that was accessed would be speculative. We have  
 8 no evidence that another document was accessed?  
 9 A. I wouldn't--I'm saying I wouldn't necessarily  
 10 expect there to be evidence, but I'm stating that it is  
 11 possible that--that one was.  
 12 Q. So, when you stick a USB drive into your computer  
 13 and there's a document on that USB drive and you open that  
 14 document--so if we took your document, right, put it on a  
 15 USB drive and put it into my computer, and I opened it from  
 16 the USB drive--  
 17 A. Yes.  
 18 Q. --you would expect to see an MRU, or Most Recently  
 19 Used, entry for that document; correct?  
 20 A. Yeah, showing--showing when you accessed it.  
 21 Q. So, in my list of Most Recently Used documents, I  
 22 would see, you know, "E," for the name of my USB device,  
 23 and then document without an extension or whatever. I  
 24 forget your exact name.  
 25 A. That would be Documento 1.

02:27 1 Q. Documento 1. I would see "E:Documento1.doc";  
 2 right?  
 3 A. Yes.  
 4 Q. And we have here a list of documents that were  
 5 opened on Mr. Zambrano's New Computer from November 25th,  
 6 2010, up through January 28th, 2011.  
 7 There's no evidence of any other documents being  
 8 opened; correct?  
 9 A. No. And I guess to continue your example, I'm  
 10 saying that one of the reasons that can be the case is  
 11 that, if we came back in a month and reconnected the same  
 12 thumb drive to your computer and then opened a document  
 13 also named Documento 1, there would no longer be evidence  
 14 of us accessing that document today. There would only be  
 15 the most recent date.  
 16 Q. Do you understand that the Most Recently Used  
 17 list, by default, keeps the last 15 or the most recent 15  
 18 documents?  
 19 A. It keeps--actually, we have to be very specific  
 20 about this.  
 21 Q. Please.  
 22 A. It keeps the most recent date that a file was  
 23 accessed. It's not that if you open the same document 15  
 24 times that you get 15 different records, so--and that also  
 25 depends on the version of the operating system that you're



02:28 1 using.  
 2 Q. So, to make this practical, looking at what we  
 3 have here, what you're saying is that 8.docx could have  
 4 been opened 15 times before January 28th, 2011, and we  
 5 would only have the reference on January 28th, 2011?  
 6 A. Well, I'll pick--you know, I'll just pick an  
 7 absurd number. It could have been accessed a million times  
 8 before January 28th. We would only know the most recent  
 9 date from the evidence that we have here.  
 10 Q. So, this is a list of the most recently accessed  
 11 versions of any of these files?  
 12 A. This list is here from--from October 2010 to  
 13 March 2011. If a file was accessed from October 2010 to  
 14 March 2011 with a name, and then a file with that same name  
 15 was accessed later, we would have--then it would--it would  
 16 fall outside the scope of this list, even though it had  
 17 been accessed in this time period.  
 18 And this is--this is also evidence that we were  
 19 able to recover forensically looking back in time. So, if  
 20 we were to look at this list on February 14th, there  
 21 would--there would likely be other records, but those  
 22 records have since been overwritten by subsequent access.  
 23 Q. So this list of most recently used files here, you  
 24 understand that these are link files that are created in a  
 25 directory by Microsoft Windows; correct?

02:31 1 recently used version is captured here. So the most  
 2 recently used version of 8.docx was on 1/28/2011?  
 3 A. Yes.  
 4 Q. And it may have been opened many times before  
 5 that, but we know that it was not accessed after  
 6 January 28th, 2011.  
 7 A. I would generally agree to that. There are some  
 8 specific scenarios where that may not be the case; but  
 9 generally, that's fair.  
 10 Q. The majority of the documents that we see on the  
 11 Old and the New Computer and particularly the Old have a  
 12 USB Device volume label with "Evelyn"; right?  
 13 A. Yes. That's correct.  
 14 Q. And would you agree that the USB named "Evelyn"  
 15 likely belonged to Mr. Zambrano's assistant, Evelyn Calva?  
 16 A. The name would suggest that it was at least the  
 17 device either named after her or that she named after  
 18 herself. Someone else could have named it after her,  
 19 but...  
 20 Q. And there are other documents here that are opened  
 21 from USB Devices with the volume name "Mariela"; right?  
 22 A. Yes, there are.  
 23 Q. Were you aware that there was a Lago Agrio Court  
 24 secretary in 2010 and 2011 with the name Mariela Salazar?  
 25 A. Yes, I'm aware of that.

02:30 1 A. On the Old Computer, they--they are link files  
 2 that would have been created in the--the recent folder.  
 3 And actually, specifically for the Old Computer, the reason  
 4 we don't know the most recent used date is that all those  
 5 link files were subsequently deleted.  
 6 So we're able to recover the link file showing  
 7 they had been being accessed. For the New Computer, it's a  
 8 combination of link files and what's called a jump list.  
 9 The New Computer is in--is a Windows 7 computer which uses  
 10 multiple ways to track files.  
 11 Q. But the point I'm trying to get to is these files  
 12 that we have here have metadata like all the other files  
 13 we've been looking at, don't they?  
 14 A. Well, for the Old Computer, we have--for these  
 15 link files we have the metadata that was embedded within  
 16 them because we were able to recover the link files  
 17 themselves earlier when I was describing the unallocated  
 18 space in the MFT.  
 19 What's happened with these link files is the MFT  
 20 entries for these link files have been overwritten, so we  
 21 don't know when they were created.  
 22 But the unallocated space that contains that link  
 23 file still exists, so we know the metadata inside the link  
 24 file.  
 25 Q. You have said just a minute ago that the most

02:32 1 Q. So like the Evelyn devices, these devices are  
 2 likely Ms. Salazar's devices?  
 3 A. I wouldn't say they're likely their devices, but  
 4 they're named after them. The Mariela drive could actually  
 5 be a court-owned drive, for instance, and just named after  
 6 her because she was assigned to it. I don't want to speak  
 7 to ownership, if there's what you're implying.  
 8 Q. I'm not getting into the specifics of who  
 9 necessarily owned the USB drive. But given that it has a  
 10 name, a volume label of Mariela, you would agree with me  
 11 that it's likely that's a drive that she was using?  
 12 A. It's--I mean, it seems reasonable to assume it was  
 13 a drive that she was using.  
 14 Q. And we don't have evidence of the content of these  
 15 files that are listed here, do we?  
 16 A. No. We have no way of knowing of contents of  
 17 these files.  
 18 Q. And when you analyze the metadata from the  
 19 Zambrano Computers relating to files accessed from USB  
 20 Devices, you did not find any evidence of a file containing  
 21 the Final Judgment text having been accessed on either  
 22 Zambrano Computer; right?  
 23 A. I don't know the content on any of these files, so  
 24 I don't know what they contained. I...  
 25 Q. Would you agree with me that we can look at the

02:34 1 file names and have a good understanding of what these  
2 documents are?  
3 A. In some cases, I think it's fair to assume that  
4 the file name can tell you what the content may be, though  
5 I don't think that's necessarily always the case. Looking  
6 at, for instance, KKKK.docx, I have no idea what the  
7 contents of that file could be.  
8 Or even looking at Providencias--my understanding  
9 is that Providencias means "orders"; yet, the vast majority  
10 of that content is a Judgment or a Sentencia.  
11 So I think there are instances where you can kind  
12 of take a reasonable guess at the content based on the file  
13 name but there are also instances where it's not possible  
14 to know what the content is from the name.  
15 Q. Did you have any opportunity to look at any of the  
16 other data about these files that would give you an  
17 indication of whether they are or are not copies of  
18 Providencias?  
19 A. I have no idea what the content of these files is.  
20 I can't speak to their contents.  
21 Q. Okay. Could we turn to Zambrano's Internet  
22 History?  
23 A. Yes.  
24 Q. On Page 23 of your Second Report, you conclude  
25 that Stroz Friedberg did not identify any translation or

02:36 1 legal research services in the Internet History from either  
2 Zambrano Computer.  
3 A. I think I state a time period for that. There was  
4 no evidence of--when I wrote this Report, I was not aware  
5 of any evidence of any legal research cite or translation  
6 service from October 2010 to March 2011. I was not aware  
7 that fielweb was a legal research site.  
8 So I would agree now that there is evidence that  
9 fielweb was used. But looking at--in context of what I was  
10 doing here, I would still stand by that there is no  
11 evidence consistent with Mr. Zambrano's testimony in the  
12 Internet History.  
13 Q. This morning you said that fielweb cannot be used  
14 to access any of the cases that were cited in the Judgment.  
15 But your slide, No. 21--  
16 A. If I said that, I meant English language cases.  
17 Q. In your slide, it says just English.  
18 A. I was referring specifically to just English  
19 language cases, or I meant to if I did not say that.  
20 Q. So your position is that the fielweb cannot be  
21 used to access any of the English language authorities  
22 cited in the December 21st, 2010 Providencias?  
23 A. That's what I understand from Mr. Riofrio, I  
24 believe his name is, who wrote a Declaration about fielweb.  
25 Q. This morning you also mentioned cookies and that

02:38 1 cookies tend to persist.  
2 Do you remember that?  
3 A. Yes.  
4 Q. Could you turn to Mr. Racich's November Report,  
5 which is Tab 5, Page 13.  
6 A. Yes. I see that.  
7 Q. Specifically Paragraph 49.  
8 A. Yes.  
9 Q. Mr. Racich here identifies multiple cookies for  
10 LexisWeb and LexisNexis.  
11 Do you see that?  
12 A. Yes.  
13 Q. And he also identifies numerous undated Internet  
14 History entries for Lexis.com.ec, Cervantesvirtual, which  
15 is a virtual library, books.google.com, and  
16 apuntejuridicos.com.ec. Do you see those?  
17 A. Yes, I do.  
18 Q. All of those could also reflect Internet legal  
19 research during this time period; right?  
20 A. Well, the cookie that he references are all dated  
21 after the relevant time period. And as he says, generally  
22 cookies do persist. So where the cookie from LexisNexis  
23 shows it was accessed on May 31st, I would expect  
24 subsequent access to LexisNexis to have all been after  
25 that.

02:40 1 Q. When a person visits a Website that has a cookie  
2 on it, that cookie gets stored on the person's computer as  
3 a file; correct?  
4 A. Yes.  
5 Q. And that file has embedded metadata, has metadata  
6 that says when this file was created; correct?  
7 A. The file has metadata saying when it was created,  
8 yes.  
9 Q. For instance, here these say "January 11th, 2012,"  
10 or "May 31st, 2012"; right?  
11 A. Yes.  
12 Q. So if I went to LexisNexis in January of 2009 and  
13 I received my cookie on that day and it's sitting on my  
14 computer, and then I went there every day from then until  
15 January--February 14th, 2011--  
16 A. Yes.  
17 Q. --and then I didn't visit the site again until  
18 January 11th, 2012, but in the meantime, Lexis changed  
19 their cookie, that would create a new cookie, wouldn't it?  
20 A. I guess I'll take this in two, focusing  
21 specifically on your hypothetical.  
22 It would create a new cookie, assuming that your  
23 cookie remained from 2009 to 2012. I would generally  
24 expect that the creation date for that cookie would stay  
25 from 2009 because of a property known as file tunneling,

02:42 1 where if you create a file in the same location with the  
 2 same name where a file was just recently deleted, it will  
 3 adopt the creation date of the file that previously  
 4 existed.  
 5        Q. So even though a new cookie is--though you may get  
 6 a new cookie three years later, that new cookie will delete  
 7 and then immediately adopt the creation date from the  
 8 previous cookie. But then, as I said, I want to take this  
 9 in turns.  
 10        A. Looking at Mr. Zambrano's computer, the New  
 11 Computer didn't exist in 2009. The Old Computer had  
 12 Windows reinstalled on it in 2010. So any of your activity  
 13 in--any of your cookies from 2009 would have been deleted  
 14 when you reinstalled Windows so that the scenario doesn't  
 15 necessarily apply to the Zambrano Computers because of the  
 16 reinstallation of the Windows.  
 17        Q. Are these cookies still extant on the computer or  
 18 were they recovered?  
 19        A. The cookies listed in Paragraph 49?  
 20        Q. Yeah.  
 21        A. I couldn't, sitting here right now, recall for any  
 22 one cookie whether or not it had been deleted or was extant  
 23 on the New Computer, I couldn't specifically recall.  
 24        Q. So we know, though, based on these cookies, that  
 25 Mr. Zambrano went to LexisWeb and LexisNexis, albeit in

02:45 1 described, file tunneling.  
 2        Q. Let's move on from cookies. We're getting too  
 3 much into my former life.  
 4        A. Would you agree with me that the absence of  
 5 recovered Internet History does not necessarily mean  
 6 that there never was Internet History?  
 7        A. I would agree that it does not necessarily mean  
 8 there never was an Internet History.  
 9        Q. So you would agree with me that your list of  
 10 Internet History is likely incomplete compared to what  
 11 existed contemporaneously on the Zambrano Computers?  
 12        A. Yes. And I tried to illustrate that in my example  
 13 with the New York Times where it is likely that some  
 14 records have been--have been lost.  
 15        Q. Okay. If you could turn--  
 16        MR. EWING: Actually, before I move on to the next  
 17 section, do we want to keep going or is this a good time  
 18 for a break?  
 19        PRESIDENT VEEDER: It's a good time for a break.  
 20 Let's have a 15-minute break. We'll come back at  
 21 3 o'clock.  
 22        Again, please don't discuss the case.  
 23        THE WITNESS: Yes.  
 24        PRESIDENT VEEDER: Or your testimony away from the  
 25 Tribunal.

02:43 1 2011; correct?  
 2        A. I don't think Mr. Zambrano was a judge for some of  
 3 this activity. I think he had been dismissed for some of  
 4 this activity.  
 5        Q. Do you know when he was dismissed?  
 6        A. I can't recall the specific date.  
 7        Q. I think it was after January 11th, 2012, just to  
 8 make this simpler. So we know at least January 11th  
 9 2011, Mr. Zambrano used LexisWeb.com on his Website--on his  
 10 computer?  
 11        A. We know someone using the computer visited Lexis.  
 12        Q. The computer that was assigned to Mr. Zambrano?  
 13        A. Yes.  
 14        Q. And your testimony today is that when that  
 15 operating system was reinstalled, you would have lost those  
 16 cookies, any previous cookies?  
 17        A. When it was reinstalled in July of 2010, not that  
 18 you would have lost them. Some of them may still be  
 19 recoverable, but they would have been deleted.  
 20        Q. Do you know that when a Website updates their  
 21 policy on cookies that actually creates a new cookie?  
 22        A. It can. But as I described earlier, when a new  
 23 cookie is created, it doesn't necessarily get a new  
 24 creation date. It would take on the creation date of the  
 25 previous cookie, and that's because of the property I

02:46 1        THE WITNESS: Understood.  
 2        (Brief recess.)  
 3        PRESIDENT VEEDER: Let's resume.  
 4        And if we've resumed, could we just ask, without  
 5 pressing you, just get some idea of time.  
 6        MR. EWING: My estimate is I have approximately an  
 7 hour to an hour and 15 minutes left.  
 8        PRESIDENT VEEDER: Okay. Thank you.  
 9        BY MR. EWING:  
 10        Q. Mr. Lynch, could you turn back to, if you've  
 11 already closed, or keep open your August 2014 Report. It's  
 12 Tab 2 in the binder, and turn to Page 25, please.  
 13        A. Yes.  
 14        Q. And do you see at the very bottom you conclude  
 15 that, "Although Mr. Zambrano testified that the New  
 16 Computer was used exclusively to type the Ecuadorian  
 17 Judgment, the only recoverable documents containing text of  
 18 the Ecuadorian Judgment were saved on the Old Computer."  
 19        A. Yes, I see that.  
 20        Q. Am I correct that your decision to use the word  
 21 "although" indicates that you believe there's a  
 22 contradiction between Mr. Zambrano's testimony and the  
 23 forensics evidence on this point?  
 24        A. Yeah, I think the forensics evidence is  
 25 inconsistent with Mr. Zambrano's testimony.

03:02 1 Q. Let's walk through that.  
 2 When the Old Computer was put into service,  
 3 Mr. Zambrano's files were copied onto it; right?  
 4 A. I'm not sure I understood, when the Old Computer  
 5 was put into service?  
 6 Q. Let me rephrase.  
 7 On Page 12 of your Report that we're looking at  
 8 now, you say at the very top: "However, unlike the Old  
 9 Computer, there was no discernible bulk transfer of  
 10 documents to the New Computer when it first began to be  
 11 used."  
 12 Do you see that?  
 13 A. Yes.  
 14 Q. So, I understand that to mean that when  
 15 Mr. Zambrano first started using the Old Computer, someone  
 16 copied all of his files onto that computer for him to use  
 17 them; is that your understanding?  
 18 A. Yes. I think I explained that on the previous  
 19 page where the beginning of Section A(1) I describe that  
 20 same day shortly after Windows was installed, a significant  
 21 amount of data was copied to the computer, including 2000  
 22 Word documents, and I'm describing the Old Computer.  
 23 Q. Perfect.  
 24 But you then go on, on Page 12, to say that there  
 25 was no bulk transfer of documents to the New Computer when

03:05 1 A. Yes.  
 2 Q. Would you agree with me that that is a pretty  
 3 common way of sharing files across computers?  
 4 A. Yes.  
 5 Q. And the New Computer was networked to the Old  
 6 Computer so that Mr. Zambrano could access from the New  
 7 Computer his files that were still on the Old Computer;  
 8 correct?  
 9 A. Yes.  
 10 Q. And this was the Z drive on Mr. Zambrano's  
 11 computer, New Computer; correct?  
 12 A. Yes, the Z drive on the New Computer was, in fact,  
 13 files on the Old Computer.  
 14 Q. It was his actually My Documents folder on his Old  
 15 Computer?  
 16 A. Yes.  
 17 Q. So, Mr. Zambrano would have been able to open  
 18 files while sitting at his New Computer when the files were  
 19 physically stored on his Old Computer; correct?  
 20 A. Yes, he would have been able to do that.  
 21 Q. And if he opened a file like that, we would see  
 22 records of that; correct?  
 23 A. Yes, with the same caveat as whether or not files  
 24 were accessed on USB Devices, there isn't necessarily a  
 25 record--there isn't a running record of every single time a

03:03 1 that computer was first put into use; right?  
 2 A. Yes.  
 3 Q. So, when Mr. Zambrano got the New Computer around  
 4 December 7, 2010, that computer did not have on its own  
 5 hard drive Mr. Zambrano's documents?  
 6 A. Yes, that would be true.  
 7 Q. And there is no indication that those files were  
 8 copied to the New Computer for Mr. Zambrano to use them;  
 9 correct?  
 10 A. Not until later.  
 11 Q. During this time period, there is no indication  
 12 that those files were copied to Mr. Zambrano's computer?  
 13 A. That's correct.  
 14 Q. Presumably, Mr. Zambrano would need to have access  
 15 to his files if he was going to use--if he were going to  
 16 use them; correct?  
 17 A. If he were to be using old documents, yes. If he  
 18 were to create new documents, then, no.  
 19 Q. But you recognize in your First Report--sorry,  
 20 your Second Report--at Page 35 that the Old and New  
 21 Computers were connected to each other over the same  
 22 network; right?  
 23 A. Yes.  
 24 Q. Have you seen computers networked like that  
 25 before?

03:06 1 file is accessed, and some of those records could have been  
 2 overwritten.  
 3 Q. You state that there was no evidence that the New  
 4 Computer was used to modify the Providencia document.  
 5 A. Yes, I do state that, and I can explain that. I  
 6 mean, I did explain that in my direct testimony.  
 7 Q. And let's get to that in just a moment.  
 8 But you do recognize that the Providencia document  
 9 was opened on the New Computer from the Old Computer at  
 10 least 40 times?  
 11 A. A user sitting at the New Computer did open  
 12 Providencia as it was stored on the Old Computer, yes,  
 13 that--  
 14 Q. And they did that at least 40 times?  
 15 A. That sounds right. Mr. Racich includes the number  
 16 in his Report, but that sounds right, yes.  
 17 Q. And if you'd like to check, that is Mr. Racich's  
 18 November 7th, 2014, Report, Paragraph 33.  
 19 A. Yeah, I see that.  
 20 Q. Did you recognize this before Mr. Racich pointed  
 21 it out in his November 2014 Report?  
 22 A. Yeah. If you go to Table 21 of my Report on  
 23 Page 35, I set forth times that Providencia was accessed  
 24 and then describe that Z drive of the New Computer was, in  
 25 fact, in My Documents on the Old Computer.

03:08 1 Q. And Table 21 is intended to just give three  
 2 examples?  
 3 A. It gives the most recently accessed dates.  
 4 Q. But you would agree with me that it didn't just  
 5 happen three times. It happened 40 times?  
 6 A. Yes, but I didn't have the dates that it happened.  
 7 I mean, here I was just trying to list when I could date  
 8 the access.  
 9 Q. Did you review the internet history to verify your  
 10 conclusion that the Providencia file was not accessed  
 11 across the network?  
 12 A. I don't offer the conclusion that Providencia file  
 13 was not offered or not accessed across the network.  
 14 Q. And I agree with you, I inartfully worded that.  
 15 Did you review the internet history to verify your  
 16 conclusion that the Providencia file was not changed across  
 17 the network?  
 18 A. I also don't say that it wasn't changed, but to go  
 19 back to my conclusion, Mr. Zambrano's testimony was that  
 20 the New Computer was used exclusively to draft Providencia,  
 21 and there are multiple data points that are inconsistent  
 22 with that: First, every single version that we found of  
 23 Judgment text was last saved using the Old Computer, so  
 24 that's--Providencia was modified using the Old Computer,  
 25 not the New Computer, and the New Computer didn't exist to

03:11 1 The other argument you put forward as to why the  
 2 New Computer did not modify the Judgment file on the Old  
 3 Computer is related to the metadata of the file that you  
 4 found on the Old Computer; correct?  
 5 A. Yes. Had that file or had the versions of the  
 6 file or snapshots of the file that I recovered been saved  
 7 using the New Computer, their Last Saved By name would be  
 8 HP, but it, in fact, was CPJS.  
 9 Q. Would you turn to Page 28 of your August Report.  
 10 A. Yes.  
 11 Q. And we're going to look at Table 8.  
 12 A. Yes.  
 13 Q. So, document 17 is an example of what you're  
 14 talking about where the New Computer was used to Save the  
 15 file that existed on the Old Computer?  
 16 A. That's actually not quite right. Seventeen is a  
 17 file where the New Computer was used to Save a file, and  
 18 that file was stored on the New Computer. We know that  
 19 from Table 7, the full path there.  
 20 Q. But in terms of the metadata, Document 17 is how  
 21 you would expect a file to look that was saved by the New  
 22 Computer; right? It would have a Last Saved By of HP?  
 23 A. Yes.  
 24 Q. Okay. And your contention is that Document 11  
 25 through 15 because 16 was also on the New Computer, 11

03:10 1 Mr. Zambrano when he said he began drafting the Judgment.  
 2 So, that is what I'm setting forth, not that  
 3 Providencias was never accessed or modified using the New  
 4 Computer but that it wasn't accessed or modified  
 5 exclusively as Mr. Zambrano testified.  
 6 Q. Let's deal with those two statements in reverse  
 7 order?  
 8 A. Sure.  
 9 Q. First, Mr. Zambrano did not have the New Computer  
 10 until December 7, 2010. I think we all agreed to that;  
 11 right?  
 12 A. Yes.  
 13 Q. But Mr. Zambrano said in his testimony that he  
 14 used the New Computer exclusively to draft the  
 15 Providencias; right?  
 16 A. He said he used it to exclusively draft the  
 17 Judgment.  
 18 Q. Do you remember what computer you were using in  
 19 December 7th, 2010?  
 20 A. December 7th, 2010, I do, for worker. I mean, I  
 21 would remember my computers. That's kind of my thing.  
 22 Q. That's kind of your shtick?  
 23 A. Yes.  
 24 Q. I understand that.  
 25 Let's move on from that.

03:13 1 through 15 all have a Last Saved by date or Last Saved by  
 2 Author of CPJS; correct?  
 3 A. Yes. Well, documents 11 through 16 all were last  
 4 saved by CPJS.  
 5 And just to be clear about the difference between  
 6 15 and 16, those are both there, copies of the March 18th  
 7 version of Providencia. It was after March 18 it was  
 8 copied to the New Computer. That's why it's shown on the  
 9 New Computer for 16.  
 10 Q. Okay. So, we're most interested then, I think, in  
 11 documents 11 through 14; would you agree with me?  
 12 A. We're most interested in 11, 12, 14 and 15.  
 13 Q. Because 12 and 13 are copies of each other?  
 14 A. Yes.  
 15 Q. Okay. So, looking at Document Number 11, that  
 16 document existed on the Old Computer; right?  
 17 A. That's correct.  
 18 Q. And, according to this, it was last saved by CPJS  
 19 on December 21, 2010.  
 20 A. Yes.  
 21 Q. If Mr. Zambrano--and it had been saved 286 times?  
 22 A. Yes, the revision count was 286.  
 23 Q. If Mr. Zambrano was sitting on his New Computer  
 24 and opened the file on his Old Computer across the  
 25 network--

03:15 1 A. Um-hmm.  
 2 Q. --and saved it 285 times before this, and then  
 3 Mr. Zambrano or Ms. Calva opened the computer and saved  
 4 this file on the Old Computer once, that would still  
 5 reflect usage only on the Old Computer; right?  
 6 A. I don't think the--I guess being very specific, I  
 7 don't think the hypothetical you set forth is possible. At  
 8 least one of those 285 prior Saves would have been the  
 9 creation of the document, and that was before the New  
 10 Computer existed on October 11th.  
 11 Q. I appreciate the details. Let's do this again.  
 12 The file is saved on October 11, 2010, on the Old  
 13 Computer; right?  
 14 A. Right.  
 15 Q. And the metadata would have looked, CPJS would be  
 16 the Author, and last saved would be CPJS; right?  
 17 A. Yes.  
 18 Q. Reflecting that that file was saved on the Old  
 19 Computer; right?  
 20 A. Yes.  
 21 Q. And on December 21, 2010, that file was again  
 22 saved on the Old Computer?  
 23 A. Yes.  
 24 Q. We don't know what happened or who saved that  
 25 file, whether it's the Old Computer or the New Computer,

03:18 1 have.  
 2 Q. And the evidence we have here is four snapshots  
 3 out of over 400 revisions of this file; correct?  
 4 A. We have recovered four versions of Providencias.  
 5 Q. So, what you can tell us today is that this file  
 6 was saved four times from the Old Computer on the Old  
 7 Computer plus the original, five times.  
 8 A. Yes, it was saved five times in total using the  
 9 Old Computer.  
 10 Q. 395 other times we don't know.  
 11 A. I can't tell you what the content of those--that  
 12 looked like or where it was saved.  
 13 Q. So, those 395 times could have all been the New  
 14 Computer. You don't know?  
 15 A. There is no evidence that they were--that it was  
 16 saved using the New Computer, but I can't rule that out.  
 17 Q. On Page 26, Tab 2, you state: "Although  
 18 Mr. Zambrano testified that he and Ms. Calva typed the  
 19 Ecuadorian Judgment for most of the hours of the day for a  
 20 multi-week period, including some weekends, 66 percent of  
 21 the Ecuadorian Judgment was present on the Old Computer as  
 22 of December 28th, 2010, in a file that could not have been  
 23 edited for any more than 53 hours."  
 24 Do you see that?  
 25 A. I do, yes.

03:17 1 the 284 interim revisions?  
 2 A. Yeah, that's correct. We don't know when the  
 3 interim versions were saved, what the contents of the files  
 4 were, or on what computer they were saved.  
 5 Q. And the same is true between December 21st and  
 6 December 28th. December 28th Save was on the Old Computer;  
 7 correct?  
 8 A. December 28th Save was on the Old Computer.  
 9 Q. But the 29 or 28 Saves before the 12 21 version  
 10 could have been all on the New Computer; right?  
 11 A. I guess, again, for those 28 Saves between  
 12 December 21st and December 28th, we don't know where they  
 13 were saved, how the content changed.  
 14 Q. So, it could have been on the Old Computer or it  
 15 could have been on the New Computer?  
 16 A. The interim Saves could have been on the Old  
 17 Computer or the New Computer.  
 18 Q. So, Revision 314 could have been saved from the  
 19 New Computer to the Old Computer?  
 20 A. I can't tell you what revision 314 would have  
 21 looked like. It could have been saved on the New Computer.  
 22 It could have been saved on the Old Computer, it could have  
 23 had the same exact content as December 21st. The  
 24 Providencias could have had different content. I can tell  
 25 you what we have here. I can tell you the evidence we do

03:21 1 Q. And I think you had a very similar slide this  
 2 morning in your presentation.  
 3 A. Yes.  
 4 Q. So, your conclusion here is that 53 hours is not  
 5 enough time for 66 percent of the Judgment to have been  
 6 saved on the computer; is that correct?  
 7 A. No, I'm not. I'm not saying that. I'm stating  
 8 what the edit time is and comparing that to the description  
 9 of a multi-week period, including some weekends or as  
 10 Mr. Zambrano said many days, many weeks, including some  
 11 weekends.  
 12 Fifty-three hours, if you assume an eight hour  
 13 workday, is 13 hours more than one week. It's not what I  
 14 would describe as many--a multi-week period.  
 15 Q. So let's walk through that. You calculated how  
 16 much of the Judgment was quoted; correct?  
 17 A. Yes.  
 18 Q. And you determined that approximately 30 percent  
 19 of the Lago Agrio Judgment was quoted text; right?  
 20 A. Yeah, approximately 30 percent.  
 21 Q. And this is on Page 39 of Tab 2; right?  
 22 A. Yes.  
 23 Q. And that quoted text was quoted from submissions  
 24 of the Parties and other legal sources, et cetera; correct?  
 25 A. Yeah, I don't know the sources of all the quotes,

03:22 1 but that's text that appears in quotes.  
 2 Q. How did you determine that it was 30 percent  
 3 quoted?  
 4 A. Ultimately from a very time-consuming review of  
 5 the text. I first wrote a program to search for quotation  
 6 marks, and then when I found an opening quotation mark, to  
 7 the continue searching until the end--the next quotation  
 8 mark, the ending quotation mark, pull it out--all those  
 9 phrases, everything that appeared between quotes and then  
 10 reviewed those to see where there was, for instance, they  
 11 quote missing a hanging--a hanging quotation mark, and then  
 12 review the context of the document. In some cases, I was  
 13 able to find where it would say this is a quote from some  
 14 law, find that source on line or from counsel, review it,  
 15 see where the quotation actually ended, where the quotation  
 16 mark was missing. I had to occasionally identify where it  
 17 was missing and then add that quotation mark, which I will  
 18 say was time-consuming, but ultimately it was a program to  
 19 search for quotation marks, count the words between them  
 20 with manual review to make sure that that didn't  
 21 over-include any text.  
 22 Q. And just to make this a little easier, I'm not  
 23 arguing with you that it is 30 percent quoted. I wrote a  
 24 similar little program and it counted the same number, so  
 25 we're in agreement about that.

03:26 1 Q. So, if Mr. Zambrano came in on the weekend and  
 2 handwrote portions of the Providencia, that would not be  
 3 counted in this 53 hours?  
 4 A. It wouldn't be, although I would want to actually  
 5 see his testimony. I believe he said he didn't do that.  
 6 That he formulated the thoughts or reading from notes and  
 7 then spoke them to Ms. Calva.  
 8 Q. Does the 53 hours include the time Mr. Zambrano  
 9 spent handwriting his notes?  
 10 A. It would not include any time spent writing notes  
 11 unless Providencia was open when you were writing notes.  
 12 Q. Does the 53 hours include any time working with  
 13 notes from previous judges?  
 14 A. No, it's only the time Providencia was opened.  
 15 That's what it is.  
 16 Q. Would you please turn to Page 23 of your  
 17 August 2014 Report. Again, Tab 2.  
 18 And I'm sorry, I'm actually looking for the  
 19 document that starts of Page--or the portion of your  
 20 document that starts on Page 21, dealing with usage of  
 21 Excel.  
 22 A. Sure.  
 23 Q. I want to shift gears a little bit.  
 24 You conclude that: "It would not have been  
 25 possible in the amount of time Excel was recorded as having

03:24 1 A. Okay.  
 2 Q. That text, though, could have been copied in from  
 3 any other document, from the internet, from sources that  
 4 Mr. Zambrano had in other documents; is that correct?  
 5 A. Well, I would agree that it could have been copied  
 6 in, but in this--this exercise comparing it to his  
 7 testimony, he didn't--I mean, he suggested that he dictated  
 8 it entirely to Ms. Calva.  
 9 Q. Does the 53 hours of edit time include time spent  
 10 writing in other documents, like Caso Texaco?  
 11 A. The 53 hours is the edit time of Providencia. It  
 12 doesn't include edit time from any other document.  
 13 Q. Does the 53 hours include--I guess maybe you just  
 14 answered this--it does not include edit time in any other  
 15 document, does it?  
 16 A. No, this is the edit time of Providencia.  
 17 Q. Does the 53 hours include time that Mr. Zambrano  
 18 spent handwriting portions of the document?  
 19 A. Well, the edit time, I guess--let me back up. If  
 20 Providencia was open on the screen while he was  
 21 handwriting, then it would, but it would--I mean, the edit  
 22 time is a record of how long Providencias was open, that is  
 23 what it is. It doesn't include time spent anywhere else  
 24 unless that time was spent with Providencia happening to be  
 25 open on the screen.

03:28 1 been used to derive statistics appearing in the Ecuadorian  
 2 Judgment from the Lago Agrio Plaintiffs' unfiled Excel  
 3 spreadsheets or (2) copy the other Microsoft Excel data  
 4 from the Plagiarized Documents appearing in the Ecuadorian  
 5 Judgment."  
 6 Do you see that?  
 7 A. I do, yes. That's at the top of Page 23.  
 8 Q. And then at the end of your Report, you include  
 9 Appendix A, which is where you purport to compute the  
 10 percentages in the Ecuadorian Judgment; right?  
 11 A. Yes.  
 12 Q. And you calculated these using the Selva Viva  
 13 Excel spreadsheet?  
 14 A. Yes.  
 15 Q. And the Selva Viva spreadsheet is the Plaintiffs'  
 16 copy of the judicial inspection data in the record; right?  
 17 A. It's the Plaintiffs' compilation. I wouldn't call  
 18 it a copy. It doesn't represent the same data number in  
 19 every case.  
 20 Q. So, it's the Plaintiffs' compilation of judicial  
 21 inspection data in the record. You would agree with me?  
 22 A. I would--that's what I understood it was intended  
 23 to be.  
 24 Q. And are you inferring by this appendix that the  
 25 Court also must have calculated the percentages using the

03:29 1 Selva Viva spreadsheet?  
 2 A. Yeah, if you take this appendix with my First  
 3 Report beginning at Page--or really beginning at Page 22, I  
 4 set forth a number of examples of data that is in the Selva  
 5 Viva Database and is not in the data that was the filed Lab  
 6 Results, naming irregularities, data irregularities and  
 7 then a section beginning on Page 27 where I talk about  
 8 numerical errors, which includes counts that appear in the  
 9 statistical section, and percentages, and I described that  
 10 in Paragraph 69 of my First Report, that the Selva Viva  
 11 data compilation or the Selva Viva Database double or  
 12 triple counts certainly Lab Results and that that counting  
 13 is necessary--that double or triple counting is necessary  
 14 to calculate the statistics as they appear in the Judgment.  
 15 Q. Okay. So, you have assumed that the Author of the  
 16 Judgment had access to the Selva Viva Database because, in  
 17 your expert opinion, that's the only way to calculate these  
 18 particular percentages?  
 19 A. I'm not aware of any other dataset from which it  
 20 could be calculated. I'm aware of two datasets, I guess,  
 21 from which one could calculate the statistics; the Lab  
 22 Results or the Selva Viva Database, and it's not the Lab  
 23 Results, so it's, therefore, the Data Compilation.  
 24 Q. Did Chevron give you access to their Data  
 25 Compilation?

03:33 1 10.2 percent. So, you have to have exactly the dataset in  
 2 the Selva Viva Data Compilation. You get these statistics  
 3 as they appear.  
 4 Q. The Judgment says 10 percent; right?  
 5 A. It says 10 percent, but then if you look at some  
 6 of the other places, it's more specific, it says  
 7 10.3 percent and 79.7 percent and 80.4 percent and 80.2.  
 8 So, it does go to two decimal places for some of those  
 9 numbers.  
 10 Q. Do you know how many samples there are in the  
 11 Selva Viva Database?  
 12 A. I know that the Selva Viva Database has more than  
 13 65,000 rows.  
 14 Q. And your testimony is that one sample out of  
 15 65,000 could affect your statistic that significantly?  
 16 A. Because this is a calculation across just the TPH  
 17 results, so there are--the Judgment sets forth some of the  
 18 numbers. There were I think 420 results from one set and  
 19 then there were 1984, 1,984 results that were attributable  
 20 to Texaco or Chevron. The Judgment sets forth those  
 21 numbers, and those numbers match exactly to the Selva Viva  
 22 Database.  
 23 So, if you were to change a number, so if you take  
 24 a sample that's listed in the Selva Viva Database as  
 25 attributable to Chevron, and you take it out of that

03:32 1 A. No, I don't have access to Chevron's Data  
 2 Compilation, if they were to have one. I don't know if  
 3 they do.  
 4 Q. I will represent to you that they do, and it's in  
 5 Access.  
 6 So, you did not try and calculate these  
 7 percentages using Chevron's Data Compilation?  
 8 A. Well, yeah, I don't have that Data Compilation.  
 9 Q. So, you don't know whether it could be done or  
 10 not?  
 11 A. For it to be done, it would have to do the exact  
 12 double and triple counting that the Selva Viva Database  
 13 does in the exact same way, and it would have to have the  
 14 same errors in some of the, for instance, the units and the  
 15 naming conventions. It would have to be an exact copy of  
 16 the Selva Viva Database, given the amount of information  
 17 that's set forth in my Report about the Selva Viva  
 18 Database.  
 19 Q. So, sticking with the percentages, your testimony  
 20 is that the 10 percent for TPH samples greater than 5,000  
 21 can only be calculated using the Selva Viva Database's  
 22 particular anomalous data?  
 23 A. If you change a single sample from 5,000 to less  
 24 than 5,000, you don't get, as I set forth in Appendix 8,  
 25 10.02 percent or rounded to 10 percent. You get

03:35 1 population, then you will no longer have 1,984, so yes,  
 2 changing a single sample can impact the statistics so they  
 3 no longer match the Judgment.  
 4 Q. Okay. The percentage you calculated are all from  
 5 judicial inspection data; correct?  
 6 A. They're all from the compilation of inspection  
 7 data, yes.  
 8 Q. And do you know that the judicial inspections were  
 9 completed on November 6th, 2006?  
 10 A. I don't know that.  
 11 Q. I will represent to you that the judicial  
 12 inspections were completed at the end of 2006.  
 13 A. Okay.  
 14 Q. There were some non-party or independent  
 15 inspections later, but the judicial inspections were  
 16 completed as of the end of 2006.  
 17 So, the record reflected all of the judicial  
 18 inspection data that you used to calculate--  
 19 MR. WHITE: I'm sorry, I have to interject here.  
 20 The judicial inspections were never completed. They were  
 21 suspended. I don't want there to be a mistake about that.  
 22 PRESIDENT VEEDER: That's a fair point.  
 23 You can rephrase your question.  
 24 MR. EWING: Well, I might not agree with the  
 25 suspension, but I will rephrase.



03:36 1 PRESIDENT VEEDER: Go ahead.  
 2 BY MR. EWING:  
 3 Q. You know that--actually, let's just start from  
 4 here: The record reflected all of the judicial  
 5 inspections, the data from all the judicial inspections,  
 6 that had been completed as of March 28th, 2007; correct?  
 7 A. I don't know, I guess sitting here now, when the  
 8 inspections occurred.  
 9 Q. Okay. So, they were--I will represent to you they  
 10 were suspended in 2007 without agreeing to that term. Is  
 11 there any reason for you to believe that at that time the  
 12 sitting judge didn't calculate these percentages?  
 13 A. Well, I don't know if he calculated percentages.  
 14 If he were to calculate percentages, he would have to  
 15 calculate them using a dataset that exactly double and  
 16 triple count samples in the same exact way as the Selva  
 17 Viva Data Compilation.  
 18 Q. And did you verify whether the samples in the  
 19 judicial or the Lago Agrio Record are not reflected  
 20 accurately in the Selva Viva Database?  
 21 A. I'm not sure I completely understand, but I guess  
 22 I can take a--I mean, what I think you're saying.  
 23 I know that the Selva Viva Database does not  
 24 accurately reflect all of the results as they're listed in  
 25 the filed Lab Results. I described that in a section

03:38 1 called "data irregularities," beginning at Paragraph 62 of  
 2 my First Report, where, just taking an example, the Selva  
 3 Viva Database gets the units wrong for a test result. It  
 4 lists, using the example in the Report, HAPs--or H-A-P--the  
 5 Selva Viva Database lists them in milligrams per kilogram,  
 6 the filed Lab Results list them in micrograms per kilogram.  
 7 Q. Mr. Lynch, if I could just interrupt you--I'm  
 8 really focused here on the percentages. I understand you  
 9 have other datapoints. I really want to talk to you about  
 10 the percentages. So, if we could focus on those at the  
 11 moment.  
 12 Do you know which snapshot of the Final Judgment  
 13 contained these percentages?  
 14 A. December 21st Providencias did.  
 15 Q. And you have no idea whether one of the previous  
 16 judges calculated those percentages?  
 17 A. Again, if they calculated those percentages, they  
 18 would have had to have done so using a dataset that exactly  
 19 double and triple count certain samples in the way that is  
 20 done so in the Selva Viva Data Compilation.  
 21 Q. So, I think there are two points that you get at  
 22 in your Report. One is that Excel was not open long enough  
 23 on Mr. Zambrano's computer to have calculated percentages;  
 24 correct?  
 25 A. That's what I say, yes.

03:40 1 Q. And the second point that you make is that someone  
 2 would have had to have access to the Selva Viva Database,  
 3 in your opinion, to calculate these percentages; correct?  
 4 A. Yes.  
 5 Q. So, if we could address the first point, and then  
 6 we will come back to the second point.  
 7 You don't know whether one of the previous judges  
 8 may have calculated the percentages using Excel?  
 9 A. I don't know who calculated the percentages. I  
 10 just know that it would not have been done using the  
 11 Zambrano Computers in that time period.  
 12 Q. Okay. So it could have been Judge Nuñez on his  
 13 computer using Excel in 2007?  
 14 A. It could have been anyone who had the Selva Viva  
 15 Data Compilation.  
 16 Q. And you know that other court-appointed experts  
 17 had the Selva Viva Database?  
 18 A. I'm just trying to--I'm trying to go through all  
 19 the different court-appointed experts and think of who else  
 20 would have had it. If you could direct me to--  
 21 Q. Well, by early 2010, Mr. Cabrera seems to have had  
 22 it, according to Chevron. Do you know whether Mr. Barros  
 23 had it?  
 24 A. I don't know whether or not Mr. Barros had it.  
 25 Q. Okay.

03:41 1 A. But I guess I would note that--I mean, this is  
 2 whether or not--the topic is whether or not Judgment text  
 3 came from a third party. I mean, I'm offering the opinion  
 4 that it must have.  
 5 Q. And you don't know whether the Selva Viva Database  
 6 was supplied to the Ministry of the Environment of Ecuador,  
 7 do you?  
 8 A. I don't know.  
 9 Q. And that it could then have, therefore, been  
 10 provided appropriately from the Ministry of the Environment  
 11 to the Court in Ecuador?  
 12 A. I don't know. All I know is what I say in my  
 13 Report: That it must have been used to calculate the  
 14 statistics and that that calculation wasn't done on the  
 15 Zambrano Computers.  
 16 Q. Looking at the bottom of Page 26 of your Report,  
 17 you conclude that "the Ecuadorian Judgment contains text  
 18 that was electronically copied and pasted or otherwise  
 19 transferred from other sources, including the Plagiarized  
 20 Documents and the unfiled Selva Viva Data Compilation."  
 21 A. Yes, I see that.  
 22 Q. Did you do any independent analysis to determine  
 23 whether these documents were filed?  
 24 A. For the Plagiarized Documents outside the Selva  
 25 Viva Data Compilation, I rely on other experts. For the

03:43 1 Selva Viva Data Compilation, I understand from other  
2 experts that they weren't filed in the record and also know  
3 that they weren't on Mr. Zambrano's computers.  
4 Well, I would say I know that none of the  
5 Plagiarized Documents were on Mr. Zambrano's computer. I  
6 know that the Selva Viva Data Compilation had been used to  
7 calculate the statistics by Mr. Zambrano it would have had  
8 to have been on his computers, but it wasn't on his  
9 computers.  
10 Q. So, to use the words "Plagiarized Documents" and  
11 "unfiled Selva Viva Data Compilation," you were relying on  
12 Dr. Leonard and Dr. Juola's reports; correct?  
13 A. Yes, I adopt those terms.  
14 Q. You would agree with me that if we see a thumb  
15 drive being inserted into a computer and then a file being  
16 created one or two minutes later, there is a presumption  
17 that that file came from that thumb drive; right?  
18 A. I think you can infer that. I don't know that  
19 it's--I mean, it's not necessarily accurate, but you can  
20 infer that.  
21 Q. Would you turn to Table 24, Page 37. And do you  
22 see the row near the bottom that says "E:\Providencia  
23 Chevron/Texaco de fecha 15 de Junio 2010." My Spanish  
24 numbers are bad.  
25 A. Yes, I see two of those rows.

03:45 1 Q. So, that file was created or used on December 7th,  
2 2010, at 5:49 in the evening; correct?  
3 A. Yes.  
4 Q. And you would agree with me, based on the file  
5 name, that there is a strong likelihood that this is a copy  
6 of a Providencia issued in the Chevron/Texaco case on  
7 June 15th, 2010?  
8 A. I don't want to, I guess, opine as to the  
9 likelihood that that--that the contents are accurately  
10 represented by the file name, but based on the file name--I  
11 mean, the file name would suggest it is an order in the  
12 Chevron Case from June 15th, 2010.  
13 Q. And the fact it's copied on December 7th, 2010, in  
14 the evening, the same day Mr. Zambrano got his new  
15 computer, it's also a good indication that maybe he was  
16 getting this file to then use as a template, for instance?  
17 A. I don't know what he was using the file for, if he  
18 was using it at all, or its contents. It's possible it was  
19 being used as a template.  
20 Q. And this file is coming from a USB device that is  
21 labeled "Mariela"?  
22 A. It is, yes.  
23 Q. And we know that Mariela Salazar, as we discussed  
24 earlier, is one of the Court Secretaries; right?  
25 A. Yes, we do.

03:47 1 Q. So, now, if you turn to Table 23, and you look for  
2 a USB Device that was connected around 17:49 on 12/7/2010,  
3 you see one; right? On the fourth line.  
4 A. Yes.  
5 Q. So, the last Kingston Data Traveler 2.0? Or the  
6 fourth one down?  
7 A. Yes. Not the last one, but yes, it's the  
8 fourth one down.  
9 Q. All right. And it ends with a serial number of  
10 16E3; correct?  
11 A. It does, yes.  
12 Q. And those serial numbers are unique?  
13 A. Those particular serial numbers are all--or at  
14 least all appear to be unique. Some manufacturers reuse  
15 serial numbers, but that's not as common.  
16 Q. Now, looking at your August 2014 Report again,  
17 could you now turn to Page 18. And in Table 2 you list the  
18 file system metadata for each instance of the Zambrano  
19 Index Summary; right?  
20 A. Yes.  
21 Q. And the first one, Document 1, has a created of  
22 January 6th, 2011, at 11:38 a.m.  
23 A. Yes, it does.  
24 Q. And the Last Saved Dates for Documents 1-10--one  
25 to ten--so, for all of these, is December 2nd at 3:29 in

03:49 1 the afternoon; correct?  
2 A. Yes.  
3 Q. So, looking at this system metadata, this file was  
4 most likely copied onto Mr. Zambrano's computer on  
5 January 6th, 2011; right?  
6 A. Yes.  
7 Q. But was probably originally created on a different  
8 computer?  
9 A. Yes.  
10 Q. Do you know where that document came from?  
11 A. No, I don't know where that particular document  
12 came from.  
13 Q. So, let's see if we can figure it out, and I think  
14 that we can.  
15 So, the file was created on January 6th, 2011, at  
16 11:38 a.m. on the Old Computer?  
17 A. Yes.  
18 Q. That's what Table 2 says.  
19 Now, if we turn back to Page 36, and Table 23, do  
20 you see any USB Devices that were connected to the Old  
21 Computer on January 6th, 2011, around 11:38 a.m.?  
22 A. Yes.  
23 Q. And it was plugged into the Old Computer; right?  
24 A. Yes.  
25 Q. And it also has a serial number that ends in 16E3?

<p>Sheet 52</p> <p style="text-align: right;">1123</p> <p>03:50 1 A. Yes.  2 Q. So, this is likely the same USB drive that was  3 used to copy the earlier Providencia that we were  4 discussing from the Court Secretary?  5 A. It's possible, yes.  6 Q. The fact that the two serial numbers are identical  7 makes it likely; right?  8 A. Yes, assuming that it was copied from a thumb  9 drive.  10 Q. The metadata here indicates that a thumb drive was  11 inserted at 11:37; right?  12 A. Yes.  13 Q. And that a file was created at 11:38; right?  14 A. Yes.  15 Q. So, a minute or less later?  16 A. Yeah.  17 Q. So, there is a strong presumption that that thumb  18 drive was where that document came from.  19 A. Yeah. As I said earlier, I don't--it's not  20 necessarily the case that it was copied from a thumb drive.  21 It could have been another source, for instance, a Web mail  22 account, but there is a strong inference that it was from  23 the thumb drive.  24 Q. So, now we have Mariela Salazar, the Court  25 Secretary, providing to Mr. Zambrano the June Index</p>	<p style="text-align: right;">1125</p> <p>03:54 1 have before alleged was part of an unfiled document, at  2 least two examples, you just said.  3 A. It is not "at least." It is two examples.  4 Q. Two examples?  5 A. Of the instances.  6 Q. Okay.  7 A. Actually, let me just--one second--read...  8 (Witness reviews document.)  9 A. Yes, that's correct. I just wanted to make sure  10 that was...  11 MR. EWING: I have no further questions.  12 PRESIDENT VEEDER: Thank you very much.  13 Do you want a short break or should we proceed?  14 MR. WHITE: It would be helpful to have a very  15 short break.  16 PRESIDENT VEEDER: How long do you need?  17 MR. WHITE: Ten minutes.  18 PRESIDENT VEEDER: Let's have ten minutes.  19 Same request.  20 THE WITNESS: Yes.  21 (Brief recess.)  22 PRESIDENT VEEDER: Let's resume.  23 Again, we're not pressing you, but just for  24 planning purposes, some rough estimate as to how long the  25 redirect may take.</p>
<p style="text-align: right;">1124</p> <p>03:52 1 Summary?  2 A. No. The Zambrano Index Summary.  3 Q. Which you have indicated has the same index, the  4 same--one of the same tabs; correct?  5 A. It has one of the same tabs, but it is, I  6 guess--I'll just see where I describe it, so I describe it  7 in the same way--the Excel file here, the Zambrano Index  8 Summary, had a tab with the same name and some of the same  9 content but lacked most of the content from the June or the  10 January Index Summary.  11 Q. But that tab is one of the sources that was  12 allegedly from an unfiled document; correct?  13 A. That particular tab does not include any of the  14 information that was allegedly "unfiled," as you say.  15 Sorry--I guess I said "doesn't include any." It  16 doesn't include all of it. There are two instances where  17 it has some of the information but not all of it.  18 Q. So--okay.  19 A. So, I guess, it said--it may be clear if I say it  20 the other way. The January and the June Index Summary  21 contain information that isn't in the Zambrano Index  22 Summary, and some of that information is part of the  23 "plagiarized text," as we're using that phrase.  24 Q. But the Index Summary that is on Mr. Zambrano's  25 computer has some of the information in it that Claimants</p>	<p style="text-align: right;">1126</p> <p>04:05 1 MR. WHITE: I think less than 15 minutes.  2 PRESIDENT VEEDER: Thank you.  3 REDIRECT EXAMINATION  4 BY MR. WHITE:  5 Q. Mr. Lynch, I wanted to pick up on the last line of  6 questions you were just asked by Mr. Ewing.  7 A. Yes.  8 Q. And I just want to be clear about something. When  9 you say that there was some information from the  10 Plaintiffs' Index Summary on Mr. Zambrano's computer, are  11 you suggesting that the Plaintiffs' Index Summary was filed  12 in the Court Record?  13 A. No, I'm not.  14 Q. Thank you.  15 Now, earlier today you were asked by Mr. Ewing a  16 series of questions concerning what could be inferred about  17 Mr. Zambrano's practices in drafting documents from an  18 instance of Caso Texaco from January 2011.  19 Do you recall that?  20 A. I do, yes.  21 Q. So, I'd like to pick up on that line of  22 questioning and ask if you could be shown--and we'll need  23 to just do this on the screen--Exhibit 65 to your Reports,  24 and we can provide a paper copy.  25 PRESIDENT VEEDER: C-65?</p>

04:06 1 MR. WHITE: No, I believe that's Exhibit 65 to--to  
 2 the August 2014 Lynch Report. There were several boxes of  
 3 exhibits, but we'll provide a paper copy.  
 4 BY MR. WHITE:  
 5 Q. Mr. Lynch, are you familiar with this document?  
 6 A. I am, yes.  
 7 Q. What is it?  
 8 A. Exhibit 65 is a comparison of Caso Texaco from  
 9 December 7th, 2009, to Caso Texaco from January 19th, 2010,  
 10 so it's a comparison of the changes that were made in that  
 11 time period.  
 12 Q. And what did you find in that version of Caso  
 13 Texaco?  
 14 A. I found kind of overall looking at that version of  
 15 Caso Texaco a series of Orders. Looking at the changes  
 16 between those two versions, I found that three Orders were  
 17 added to Caso Texaco.  
 18 Q. And what is the nature of the three orders that  
 19 were added to Caso Texaco during the time period you've  
 20 just described?  
 21 A. Those are three Orders, and we can see the first  
 22 one on the screen here. Those are three of the Orders that  
 23 were found on Mr. Guerra's computer, so this document here,  
 24 the first one from January 19 is one of the Orders that I  
 25 described in my presentation as having been on the Zambrano

04:09 1 A. Yeah. If you go to Table 16 of my August Report,  
 2 that sets forth the metadata for this version of the  
 3 document. It's Document 26, and the edit time in this  
 4 version was 3,145, which is just over 15 or I guess it's  
 5 about 1500 minutes more than the prior version, so over  
 6 that 1500 minutes, these three Orders must have been copied  
 7 and pasted from the other documents that were on  
 8 Mr. Guerra's computer.  
 9 Q. Over the course of 1500 minutes you said?  
 10 A. Yes.  
 11 Q. All right. And in that 1500 minutes, were you  
 12 able to tell how many times the revision count incremented,  
 13 in other words, how many times somebody hit Control Save on  
 14 this document?  
 15 A. Yes, the revision count increase that's shown  
 16 here, it went from 162 to 674, which, if my math is  
 17 correct, is 512 different Saves.  
 18 Q. And were you able to find over those 1500 minutes  
 19 in the 500-plus Saves that you just described evidence of  
 20 any activity other than cutting and pasting the Guerra  
 21 Draft Orders into Caso Texaco by Mr. Zambrano or somebody  
 22 using his computer?  
 23 A. There were minor changes made to the text, but not  
 24 substantial drafting.  
 25 Q. Nothing other than minor changes?

04:08 1 or--sorry, on the Guerra Computer.  
 2 Q. And is this one of the 105 non-Chevron Orders or  
 3 one of the nine Chevron orders?  
 4 A. This is one of the nine Chevron orders.  
 5 Q. And just to be clear, you're saying that after you  
 6 found this on the Guerra Computer, you found it in Caso  
 7 Texaco?  
 8 A. Yes. It's--looking at each of the three Orders,  
 9 the text is on the Guerra Computer, but then it's saved in  
 10 this version on January 19th. All of the text on the  
 11 Guerra Computer is in a document that was last saved before  
 12 this version.  
 13 Q. And Mr. Ewing suggested to you in  
 14 cross-examination that Mr. Zambrano may have been using  
 15 Caso Texaco to input original work of his own, and then  
 16 cutting and pasting it into Providencias. Do you see any  
 17 evidence that he was inputting original text of his own  
 18 into this version of Caso Texaco?  
 19 A. Looking at the changes here, all of this text must  
 20 have come from another document, specifically the documents  
 21 that were on Mr. Guerra's computer.  
 22 Q. Thank you, Mr. Lynch.  
 23 When you were looking at this document, did you  
 24 draw any conclusions concerning the edit time of this  
 25 document?

04:11 1 A. Yes. The changes to take the Guerra, what I  
 2 called the Guerra draft and make the minor changes that  
 3 then appeared in the final order.  
 4 Q. I wanted to ask you now to turn to a different  
 5 topic. You were asked about the Chain of Custody for  
 6 Mr. Guerra's computer from the time that Chevron's folks  
 7 were given access to it until the time that it was  
 8 imaged--for purposes of the image that you examined. Do  
 9 you recall that?  
 10 A. Yes.  
 11 Q. Who did the imaging?  
 12 A. It was imaged by a gentleman named Christopher  
 13 Peltier.  
 14 Q. And how long was the period of time between  
 15 Chevron's folks getting hold of this and Mr. Peltier taking  
 16 the image?  
 17 A. I understand that they received it on the 13th,  
 18 and it was imaged on the 15th, so approximately two days  
 19 later.  
 20 Q. Okay. Now, I want to take you to one of the  
 21 exhibits that Mr. Ewing took you to when he was asking  
 22 about the Chain of Custody. It's behind Tab 7 in the  
 23 binder that Mr. Ewing handed up. It's the one that has a  
 24 letter from the PCA, and then behind that there is a  
 25 version of the protocols for imaging Mr. Zambrano's

04:12 1 computer. And if you go back to Appendix A, you will  
 2 recall that Mr. Ewing asked you questions about the Chain  
 3 of Custody documentation that appears at Appendix A.  
 4 A. Yes.  
 5 Q. Do you have that in front of you, sir?  
 6 A. I do, yes.  
 7 Q. All right. Can you tell me what the first date is  
 8 on that Chain of Custody?  
 9 A. The first date appears to be--I think it says  
 10 May 20, 2013.  
 11 Q. And Mr. Ewing represented to you that Mr. Zambrano  
 12 was still--was--well, I'll represent to you that it was in  
 13 early 2012 when Mr. Zambrano left the bench.  
 14 Do you have a Chain of Custody form for this  
 15 computer from the period in early 2012, when Mr. Zambrano  
 16 left the bench, until this date in 2013, when this Chain of  
 17 Custody form starts?  
 18 A. No.  
 19 Q. Now, you were also asked about the two-day period  
 20 during which Mr. Ewing suggested there wasn't a Chain of  
 21 Custody form on the Guerra Computer, and you responded that  
 22 you had done certain tests to see if that--sorry.  
 23 You were also asked about the clock on the Guerra  
 24 Computer and whether it might have been manipulated. You  
 25 indicated that you had done some tests associated with

04:16 1 though, in fact, it was 2012 because someone backdated the  
 2 clock.  
 3 But looking at all that, tens of thousands, if not  
 4 hundreds of thousands of different data points, underlines  
 5 and logs or Windows updates, I didn't find any evidence of  
 6 any clock manipulation on that computer.  
 7 Q. Okay. Now, Mr. Ewing put a hypothetical to you--I  
 8 hope I followed it correctly--that involved another  
 9 computer, an unknown computer being attached to  
 10 Mr. Guerra's computer during that two-day time period. Did  
 11 you see any evidence of an unknown computer being attached  
 12 in the way that Mr. Ewing suggested?  
 13 A. No, I didn't.  
 14 Q. And then turning to the Western Digital hard  
 15 drive--this relates to the testimony that Mr. Ewing  
 16 elicited concerning the Windows reinstallation--did you see  
 17 any evidence that the Western Digital hard drive was ever  
 18 attached to either of the Zambrano Computers?  
 19 A. No, I did not.  
 20 Q. And I want to take you to Slide 3 of the  
 21 presentation that you gave this morning. And while we're  
 22 looking that out, I want to pick up another point very  
 23 quickly.  
 24 You were asked a number questions about what you  
 25 found on Mr. Donziger's computer, what you found on

04:14 1 seeing that that clock had been manipulated. What are the  
 2 tests you ran?  
 3 A. I ran multiple tests to determine whether or not  
 4 the clock on the Guerra Computer had been manipulated. As  
 5 I described, there are virus logs. There were thousands of  
 6 lines in those virus logs. I looked at all of the lines to  
 7 see if any of them were out of sequence, and I looked at  
 8 other such log files.  
 9 I also looked at Windows updates, when a computer  
 10 such as--when a Windows computer is connected to the  
 11 internet, it will automatically download and install  
 12 Windows updates, and I compared the dates of the Windows  
 13 update installation on the Guerra Computer to the dates  
 14 that those Windows updates had been released by Microsoft  
 15 and found that immediately after the computer was--Windows  
 16 was reinstalled on the computer, all of the updates that  
 17 had been released prior to the reinstallation were  
 18 downloaded and installed and then from that point forward,  
 19 Windows updates were always downloaded and installed  
 20 shortly after the update had been released.  
 21 Had there been any clock manipulation, I would  
 22 expect that Windows updates would not necessarily be  
 23 installed with any correlation to when they were released.  
 24 So, for example, you may have a Windows update that gets  
 25 installed when the computer believes to be 2011 even

04:17 1 Mr. Guerra's computer and what you didn't find there. Did  
 2 you ever have access to Pablo Fajardo's computer?  
 3 A. No, I did not.  
 4 Q. Ever have access to any other media from Pablo  
 5 Fajardo?  
 6 A. No, I did not.  
 7 Q. Okay. When we look at Your Exhibit 3, this is  
 8 where you're talking about the over 100 Orders in  
 9 non-Chevron cases, the dates on which--have I understood  
 10 correctly that from this and from your Slide Number 5 that  
 11 these are dates on which you found some evidence of sharing  
 12 of thumb drives between the Guerra Computer and the  
 13 Zambrano Computers?  
 14 A. Across this time period, yes, there's evidence of  
 15 thumb drives being shared between the Guerra Computer and  
 16 the Zambrano Computers.  
 17 Q. Do you have all of the thumb drives that were  
 18 shared between the Guerra Computer and the Zambrano  
 19 Computers?  
 20 A. No, I do not.  
 21 Q. How many do you have?  
 22 A. I have I believe images of five of the nine that  
 23 were shared.  
 24 Q. Nine were shared, you got five?  
 25 A. I believe. I would have to check my Report.

04:18 1 That's by best recollection.  
 2 Q. I accept that if that's what you tell us.  
 3 And were there other thumb drives beyond those  
 4 shared thumb drives that were also attached to  
 5 Mr. Zambrano's computers during this time period?  
 6 A. Yes, there were.  
 7 Q. And did you have access to those I will call them  
 8 the non-Guerra-Zambrano shared thumb drives? Did you have  
 9 access to the other ones?  
 10 A. No, I didn't receive other any thumb drives other  
 11 than--from Ecuador other than the ones Mr. Guerra produced.  
 12 Q. Okay.  
 13 MR. WHITE: I have no further questions.  
 14 PRESIDENT VEEDER: I have just two very minor  
 15 matters to raise.  
 16 THE WITNESS: Yes.  
 17 QUESTIONS FROM THE TRIBUNAL  
 18 PRESIDENT VEEDER: If you could turn to your First  
 19 Report of October in Tab 1 of the Respondent's bundle, and  
 20 turn to Page 30, Paragraph 72.  
 21 THE WITNESS: Yes.  
 22 PRESIDENT VEEDER: Now, you say there on the 21st  
 23 of January 2011, this Court ordered Steven Donziger, et  
 24 cetera.  
 25 THE WITNESS: Right.

04:21 1 bundles. Obviously the Transcript is, but it may be easier  
 2 if you just listed them for us.  
 3 MR. WHITE: C-2368, which is a tab in Mr. Ewing's  
 4 bundle. And that's just an excerpt there, but that's the  
 5 exhibit.  
 6 PRESIDENT VEEDER: And the deposition?  
 7 MR. WHITE: We would have to look for it.  
 8 PRESIDENT VEEDER: If you don't have it, we can  
 9 come back to it.  
 10 MR. WHITE: Okay.  
 11 PRESIDENT VEEDER: And you're staying here to hear  
 12 the next witness, I hope? You're staying around?  
 13 THE WITNESS: That's my understanding.  
 14 PRESIDENT VEEDER: Good. Thank you very much.  
 15 THE WITNESS: Thank you.  
 16 PRESIDENT VEEDER: We may call upon you again, but  
 17 for the moment, please leave the table, and we thank you  
 18 for coming here to assist the Tribunal.  
 19 THE WITNESS: Thank you for the opportunity.  
 20 PRESIDENT VEEDER: Before we take five minutes,  
 21 it's 4:20, I assume we go straight on with the next  
 22 witness?  
 23 MR. BISHOP: Yes, that's our assumption and our  
 24 preference.  
 25 PRESIDENT VEEDER: And the Respondent, too?

04:20 1 PRESIDENT VEEDER: Is that a reference to the New  
 2 York Federal Court.  
 3 THE WITNESS: Yes, that is. I guess I will  
 4 describe that--this, as I described in Paragraph 1, that  
 5 were Stroz Friedberg was retained in a related matter. The  
 6 reports--my analysis was my analysis, and my Report a  
 7 report that I used as the basis for both that. This should  
 8 say--  
 9 PRESIDENT VEEDER: The Court.  
 10 THE WITNESS: --the Court in a related matter.  
 11 PRESIDENT VEEDER: I understand that. So, in the  
 12 RICO proceedings in New York, you produced how many  
 13 reports? You produced one, but did you produce more than  
 14 one?  
 15 THE WITNESS: I produced one in August of 2013.  
 16 It may have been very early September, but somewhere around  
 17 the end of August.  
 18 PRESIDENT VEEDER: Were you deposed before the  
 19 RICO trial?  
 20 THE WITNESS: I was, yes.  
 21 PRESIDENT VEEDER: And you gave evidence at the  
 22 RICO trial with your evidence recorded in a transcript?  
 23 THE WITNESS: Yes.  
 24 PRESIDENT VEEDER: Could you give us the  
 25 reference? I don't have these at hand, if that are in the

04:22 1 MR. EWING: We would be happy to go on with him.  
 2 If he has not started questioning, the question would be  
 3 how far are we going to get tonight in terms of will the  
 4 cross start tonight or will it be just his direct  
 5 presentation.  
 6 PRESIDENT VEEDER: Cross won't finish tonight, but  
 7 I assumed it would start.  
 8 MR. WHITE: We would like to go ahead and get  
 9 started. We are mindful that we are falling a little  
 10 behind schedule.  
 11 PRESIDENT VEEDER: We are. Let's take five  
 12 minutes, and then we will start with the next witness.  
 13 (Brief recess.)  
 14 J. CHRISTOPHER RACICH, RESPONDENT'S WITNESS, CALLED  
 15 PRESIDENT VEEDER: Let's resume. We have a new  
 16 witness before us.  
 17 Sir, if you would like to look at the piece of  
 18 paper which has the words of the Declaration for witnesses,  
 19 we would invite you to state your full name and if you will  
 20 to read out the words of the Declaration?  
 21 THE WITNESS: I, John Christopher Racich.  
 22 I solemnly swear and declare upon my honor and  
 23 conscience that I shall speak the truth, the whole truth,  
 24 and nothing but the truth, and that my statement will be in  
 25 accordance with my sincere belief.

04:31 1 PRESIDENT VEEDER: Thank you.  
 2 The first will be questions from the Respondent.  
 3 DIRECT EXAMINATION  
 4 BY MR. EWING:  
 5 Q. Good afternoon, Mr. Racich.  
 6 A. Good afternoon.  
 7 Q. You submitted three reports in this arbitration;  
 8 correct?  
 9 A. I did.  
 10 Q. You will see those as Tabs 1, 2, and 3 of the  
 11 binder in front of you that I have given you. Do you have  
 12 anything to retract or modify from those Reports?  
 13 A. No, I do not.  
 14 Q. You stand by the conclusions you drew in those  
 15 Reports?  
 16 A. I do.  
 17 Q. Have you ever testified in arbitration before?  
 18 A. I have.  
 19 Q. Where?  
 20 A. In JAMS Arbitration, AAA Arbitration, National  
 21 Labor Relations Board Arbitration.  
 22 Q. Have you ever testified in Federal Court?  
 23 A. I have.  
 24 Q. And have you been qualified as an expert in  
 25 Federal Court before?

04:31 1 A. I have.  
 2 Q. How many times?  
 3 A. In Federal Court, I don't know the exact number.  
 4 I think it's in excess of 13, total being qualified as an  
 5 expert in computer forensics I believe is 28 times.  
 6 Q. Have you ever been retained by the U.S. Federal  
 7 Government to testify in Federal criminal prosecution?  
 8 A. I have.  
 9 Q. And you're here today as a forensic expert; right?  
 10 A. Yes.  
 11 Q. And what does that mean?  
 12 A. A forensic expert is someone who acquires and  
 13 investigates media and uses the data and metadata that  
 14 exists on the media in order to try to assess and determine  
 15 what's going on, what's happening during the timeframe,  
 16 what can the computer tell us.  
 17 Q. Does your work include review of witness  
 18 testimony?  
 19 A. Not typically. We may attempt to confirm witness  
 20 testimony based upon what the metadata and data of a  
 21 computer tells us. It's not really analysis for testimony  
 22 itself, but using the data to do a comparison of what's  
 23 going on.  
 24 Q. And if there is an inconsistency between the  
 25 forensic data and the Witness testimony, what do you do?

04:33 1 A. Typically, I rely on the computer data. Without  
 2 some Herculean effort, the data is usually correct.  
 3 Q. Now, I understand you have a presentation that you  
 4 wanted to give today?  
 5 A. I do.  
 6 Q. Would you, please?  
 7 A. Sure.  
 8 As Mr. Ewing said, my name is Christopher Racich,  
 9 and I'm the President and founder of Vestigant. Vestigant  
 10 is a computer forensics and investigation firm, and I have  
 11 been doing computer forensics since 1997 when I graduated  
 12 from law school.  
 13 With regards to my background and my experience, I  
 14 have testified, as I said, over 28 times. I teach as an  
 15 adjunct Professor at American University Washington College  
 16 of Law on a course on electronic discovery, and I have both  
 17 taken and taught courses on computer forensics for the last  
 18 17, 18 years now.  
 19 And what I would like to discuss here is the  
 20 summary of the main points that are very important with  
 21 regards to what I have been asked to do, and when I first  
 22 was involved in this case, we were asked to look at certain  
 23 parts of computer media images that were provided and as  
 24 this has progressed, we have gotten access to more and more  
 25 data, and a lot of this has focused on the creation of the

04:34 1 Ecuadorian Judgment.  
 2 But before we get into that, we really need to  
 3 understand what computer forensics can do. And the reality  
 4 is computer forensics is not a magic bullet. It doesn't  
 5 supply us with every bit of information. I believe  
 6 Mr. Lynch very clearly said that during his testimony. We  
 7 don't have a moment in time for every bit of information  
 8 that goes through a computer. But what we can do is we can  
 9 preserve and analyze the computer media that we are  
 10 provided. We can make forensic images of computers and  
 11 media in order to try to get a snapshot, a perfect moment  
 12 in time as the computer existed when we imaged it. And the  
 13 reason to do that is to make sure that what we do as  
 14 forensic investigators doesn't in fact change the data.  
 15 And that's an important part of what we do. We try as hard  
 16 as we can not to change the data. And if we are forced to  
 17 in the rare extenuating circumstances, we have to explain  
 18 that and be able to understand exactly what happened.  
 19 Another thing that we do is we recover deleted  
 20 data from computer media, and we do this using a variety of  
 21 tools, there are things that automate the process. We can  
 22 recover files, we can recover logs, we can recover internet  
 23 history. These are all things that are discussed within  
 24 the bounds of this case, and these are very important to  
 25 try to determine what's going on in a computer.

04:36 1 We can analyze metadata, and I don't think we  
 2 actually put the definition out of what metadata is, but  
 3 it's an important concept to understand. Metadata is  
 4 essentially data about data, and it sounds a little  
 5 redundant, but essentially what we have is the corpus of  
 6 files, we have the content, we know what is inside  
 7 documents, and if we printed it out, we have the document  
 8 itself. But computers throw a lot of other information  
 9 about the files and some of it has been discussed today  
 10 with regards to who was the registered Author of a file  
 11 when it was created, when it was created, where, what do  
 12 the dates and times state about a document. These are all  
 13 included in metadata. And there's different types of  
 14 metadata. There is operating system metadata, which we  
 15 will get into in a little bit, as well as application  
 16 metadata, these are all fields that can give us information  
 17 about what's going on on a computer.  
 18 And we can take this data, we can take the content  
 19 itself of the documents, of the files. We can look and  
 20 review that information with, including of metadata and log  
 21 files, and we can try to establish a timeline of activity,  
 22 and I think that's what both Mr. Lynch and I have tried to  
 23 do here, to attempt to figure out what exactly is going on.  
 24 And interpreting that data, including the gaps  
 25 where we may be missing information, is very important to

04:39 1 that are important with regards to this case. And we look  
 2 at certain things when we are looking for this information  
 3 in a forensic exam. We look for things like operating  
 4 system metadata. All these things I will explain as we go  
 5 forward, but we look for Microsoft Office metadata. We  
 6 look for the amount of text that exists in documents, we  
 7 look how often a document is opened. We look for the use  
 8 and editing of documents over time. And we look to see how  
 9 does the document actually exist when it's finished. These  
 10 are all things we look for when we're trying to understand  
 11 the life cycle of a document.  
 12 In this particular case, we are looking at these  
 13 specific pieces of information, and we're looking to see  
 14 when was the Ecuadorian Judgment created, when were the  
 15 drafts created, how does the operating system metadata tell  
 16 us this, when was the creation and the Saves of these types  
 17 of documents, how was it listed within the Microsoft  
 18 Application metadata. We know we have certain snapshots in  
 19 time with regards to this particular document. We have  
 20 text being added to the document on at least three  
 21 different instances over time.  
 22 We also have the use of Microsoft Office over  
 23 time. From the October, early October, to the mid-February  
 24 timeframe, Microsoft Office is, in fact, being used.  
 25 And, finally, we do have evidence that the

04:37 1 try to figure out exactly what's going on.  
 2 But there are some things that computer forensics  
 3 can't do. And again, this was discussed earlier, we can't  
 4 get a whole, entire understanding of every moment in time,  
 5 typically. That's not available on a computer. Computers  
 6 are not designed to keep every moment in time, every single  
 7 instance of event that goes on in a computer. If they did,  
 8 they would fill up so quickly you wouldn't be able to  
 9 actually determine--you wouldn't be able to use them. The  
 10 amount of data that would take up would be immeasurable.  
 11 You can't, in fact, always--you can't, based on the  
 12 computer forensic information that we have, you can't see  
 13 who is actually sitting at the keyboard, you don't have  
 14 that ability to see who is typing, who is plugging in a USB  
 15 Device into a computer. These are things you can't do with  
 16 computer forensics. You might be able to infer some  
 17 information but you can't definitively prove that. And as  
 18 Mr. Lynch said, you can't establish the intent of the  
 19 person using the computer, what were they thinking at the  
 20 moment in time when certain things occurred.  
 21 And as I discussed before, one of the things  
 22 that's very important is to try to determine, with regards  
 23 to this case, is trying to figure out the life of a  
 24 document, where did it come from, what users were touching  
 25 it, how long was it being opened for. These are all things

04:40 1 Ecuadorian Judgment was, in fact, uploaded to the SATJE  
 2 Logs on February 14th, 2011, completing the lifespan of  
 3 this particular document.  
 4 So, let me start with the operating system  
 5 metadata.  
 6 One of the things that we definitely have is the  
 7 Creation Date of the Providencias.docx file. The original  
 8 creation, both according to the internal metadata and the  
 9 operating system metadata, show that the Providencias.docx  
 10 was created on October 11, 2010. We also have another  
 11 instance of that document being Saved As on  
 12 January 19, 2011. And as Mr. Lynch said, that in essence  
 13 resets certain metadata fields.  
 14 We also have a number of drafts and--meaning the  
 15 temporary files that were able to be recovered--that  
 16 existed on December 21st, 2010, and December 28th, 2010.  
 17 And we have an increase of text. We have, on  
 18 December 21st, we have 42 percent of the document being--of  
 19 the finalized Ecuadorian Judgment being in place, and on  
 20 December 28th, we have 66 percent of the document being in  
 21 place at that point.  
 22 And then, in our last Save, on March 4th that we  
 23 have, we also have evidence of 99 and, as Mr. Ewing said,  
 24 99.9 percent of the document existed as of that moment in  
 25 time.



04:42 1 With regards to the internal Microsoft Office  
 2 metadata, we also have that the Author information for the  
 3 Providencias.docx shows CPJS, which is the registered user  
 4 of Microsoft on the Old Computer. And that's important.  
 5 That shows that this document was created on  
 6 October 10th--I'm sorry, October 11th, 2010, by the user  
 7 CPJS on the Old Computer. That is where that document  
 8 first came into existence.  
 9 We have that the document was Saved, based on  
 10 internal metadata, over 400 times, and that includes the  
 11 124 times after January 19th but before March 4th of 2011.  
 12 And we have the last Saved By field as the Author  
 13 information. For all the instances prior to the  
 14 March 4th timeframe, it's CPJS, which is, in fact, the  
 15 registered user of the Old Computer.  
 16 We have an increasing amount of text that exists  
 17 within the Ecuadorian Judgment, in the actual file itself  
 18 and in the temporary files. And again, I'm going to go  
 19 back for this, this is a--the pieces that we have are  
 20 snapshots. They aren't the entirety. We don't see every  
 21 moment in time and every bit of text that's being typed  
 22 over time. What we do have is certain snapshots on  
 23 December 21st, on December 28th, and on March 4th. What we  
 24 have is 42 percent of the document on the 21st, 66 on the  
 25 28th of 2010, and then 99 percent as it existed on

04:45 1 snapshots that we happened to be able to recover. So, we  
 2 have the December 21st, 2010, and we have the  
 3 December 28th, 2010 snapshots that show that we've got the  
 4 document being opened over the course of time.  
 5 We also can see that the edit time--and Mr. Lynch  
 6 went into this--we have that the edit time increases over  
 7 time in the snapshots that we have and in the final  
 8 document. Some of this information, some of this metadata,  
 9 is being reset with the Save As that occurred on  
 10 January 19th, 2011, but we do have editing over time  
 11 increasing, and that's again consistent with someone typing  
 12 or someone adding text to this document.  
 13 Mr. Lynch also went into information about the  
 14 Microsoft Office session logs, and what we can see is that  
 15 the Office Session logs do, in fact, show that Microsoft  
 16 Office was being used essentially on a consistent basis  
 17 over--between October 11th on the Old Computer up to  
 18 December, and then going further on to March of 2011 on  
 19 both the Old and the New Computer.  
 20 And then finally, we have the SATJE Logs that were  
 21 provided by Ecuador. And we have an entry in the SATJE Log  
 22 that shows that on February 14th, 2011, the Providencias or  
 23 the content of the Providencias document was copied up to  
 24 the SATJE system, and we have this going on from a computer  
 25 with the name CPJS1, which is the name of the computer in

04:43 1 March 4th. This is consistent with the adding of document  
 2 text over time. We were fortunate in that we were able to  
 3 recover these snapshots in time. They don't always stay  
 4 with us, and it's sometimes very difficult to recover this.  
 5 But in this case we were able to do so.  
 6 We have that this document was opened numerous  
 7 times, and that's really important to think about. What we  
 8 have is an indice that exists in the Microsoft Office  
 9 system that shows every time a document is opened using  
 10 Windows Explorer. And this information can be overwritten  
 11 over time, but we have a couple instances where it wasn't  
 12 overwritten, and we have the Providencias.docx and Caso  
 13 Texaco.doc that were opened many times on both the New and  
 14 the Old Computer.  
 15 In fact, on the New Computer we have the  
 16 Providencias.docx file being opened at least 40 times  
 17 within the log file that we were able to recover. And on  
 18 the Old Computer we have it being opened over 400 times.  
 19 This is consistent with someone opening and editing a  
 20 document. If this was something where a lot of data was  
 21 being copied in at--in fell swoops, essentially, you  
 22 wouldn't expect to see hundreds and hundreds of times that  
 23 a document is actually being opened.  
 24 We also have specific instances of the document  
 25 being opened, and those are the temporary files, the

04:47 1 question, the Old Computer, and we have that the user that  
 2 was logged in at the time was ZambranoN. Again, this is  
 3 consistent with Judge Zambrano uploading this Providencias  
 4 to the SATJE system at this moment in time.  
 5 So, if you look at all the pieces that we looked  
 6 for, we've got information that's consistent with--we have  
 7 operating system metadata that's consistent with the  
 8 document being edited over time. We've got Microsoft  
 9 Office metadata, including Author information and Save As  
 10 information and Edit Time that is consistent with the data  
 11 being edited on the Old and the New Computer over time.  
 12 We've got increasing amount of text in the  
 13 snapshots that we were able to recover showing that data  
 14 has, in fact, been added to this document over time.  
 15 We have the document being opened numerous, in  
 16 fact, hundreds of times in the lifespan of this computer  
 17 from the same location, both on the Old Computer and the  
 18 New Computer.  
 19 We have Microsoft Office being used consistently  
 20 over time.  
 21 And then we have the document--the  
 22 Providencias.docx, the content being uploaded to the SATJE  
 23 system on February 14th, 2011.  
 24 But we don't see everything. One of the things we  
 25 don't see is we don't have any evidence that--no forensic

04:48 1 evidence that the Ecuadorian Judgment was introduced to the  
 2 Zambrano Computer using a USB Device. Neither Mr. Lynch  
 3 nor I have been able to find that.  
 4 We don't have any direct evidence, direct forensic  
 5 evidence, that shows any USB Devices were attached to the  
 6 Zambrano Computer in February 2011 prior to the February  
 7 21st date.  
 8 We don't have any evidence in the metadata of the  
 9 document itself that shows any Author information or  
 10 anything that might indicate that this Judgment came from  
 11 another computer.  
 12 But what we do have, on the--both the New and the  
 13 Old Computer, is we do have some internet history. And  
 14 internet history is not just about the internet. It also  
 15 shows certain documents. And I described before the fact  
 16 that the internet history does, in fact, tell you when a  
 17 document has been opened in certain circumstances, and we  
 18 get a running count of how many times. But we have some  
 19 information about, as well, about legal research and  
 20 translation Web sites that we were able to recover; the  
 21 fielweb, for example. But we also can see that there's a  
 22 lot of internet history that's not available. We have  
 23 instances, again, where--and Mr. Lynch described in his  
 24 presentation where you have an uptick of information as you  
 25 go to a Web site over and over and over again.

04:51 1 destruction.  
 2 And I think this is more consistent with the  
 3 use--with just normal computer use. In particular,  
 4 on--we've got the one instance where 4 percent of the  
 5 unallocated space was overwritten with the Respaldo folder  
 6 and content being copied to the Zambrano Computer. And  
 7 that 4 percent is a very small amount of data. It's a very  
 8 small (sic) of overwriting.  
 9 Now, did it overwrite data? It could have. It  
 10 may very well have overwritten data. But the question is  
 11 is whether or not it was something dealing with data  
 12 destruction. That's not a--the scenario that we are seeing  
 13 here is not what I typically see with data destruction.  
 14 There is no evidence of data destruction tools, wiping  
 15 softwares, softwares that will destroy all evidence.  
 16 There's nothing like that that's ever been put forth. I  
 17 haven't found it. I don't believe Mr. Lynch has found it  
 18 either. What we have is small amounts of data being copied  
 19 to the computer, and knowing that it's a very small amount,  
 20 it is not consistent with the deliberate data destruction.  
 21 And what I'll do is I'm going to use a metaphor  
 22 to--of exactly what happens because this was one of the  
 23 best ways I ever heard that--of how data destruction works  
 24 or how deletion actually occurs on a computer.  
 25 The way I look at it is it's very similar to the

04:50 1 But what we have here is we have instances of  
 2 that, where, say, we have the tenth time where that's  
 3 occurred but we don't have the seventh time or the sixth  
 4 time or the fifth time, indicating that that information  
 5 may no longer be available on the computer. So, we are  
 6 missing information from the internet history that existed  
 7 on both the New and the Old Computer of Mr. Zambrano.  
 8 And that's because internet history is very  
 9 ephemeral. It's not designed to stick around for a long  
 10 period of time. Sometimes you can recover it from a long  
 11 time, but over the course of time it does degrade. And, in  
 12 fact, here we had two years between when the Judgment was  
 13 issued and the computers were imaged.  
 14 And that overwriting of internet history leads us  
 15 into an issue that's come up here, which is the deliberate  
 16 destruction of data. So, something you have to think about  
 17 is what exactly happens when a file is deleted or when data  
 18 is deleted on a computer. And, in essence--and I will get  
 19 into this in a little bit of detail in a little bit--what  
 20 you have is data being marked as deleted and then  
 21 essentially being available to be overwritten, but until it  
 22 is overwritten, you can potentially recover it using  
 23 forensic means.  
 24 So, let's go into some of the specific things that  
 25 Mr. Lynch contends could be construed as deliberate data

04:53 1 old card catalog in library system. What you have is  
 2 you've got a card catalog with an index. So, you have  
 3 certain information that exists in that index, and that's  
 4 the metadata. That's the operating system metadata. It's  
 5 things like the Creation Date, the pathing information,  
 6 where the file exists, the size of the file. All of that  
 7 is included in your index.  
 8 And then you have the content of the data: What  
 9 you're typing, what exists in the file. Those are the  
 10 books.  
 11 So, the index points to the books, and if you have  
 12 both of those, you have an active file. And on what we  
 13 have up here, we have green active files, and then we've  
 14 got an index, and this is an active file at this point.  
 15 But then you have to understand what happens when  
 16 you delete something. When you delete something, what  
 17 you're actually doing is you're marking the index as  
 18 deleted. It's not actually deleted. You're just marking  
 19 it as deleted, and you're marking the file as deleted. So,  
 20 it's not the--the contents are still available, but the  
 21 file is still recoverable using forensic means at this  
 22 point.  
 23 The computer is essentially tricking itself into  
 24 thinking that this index is available, and this file area  
 25 is available to be--to have new data written to it. It's

04:54 1 still there, but the computer essentially fools itself into  
 2 thinking this area is available.  
 3 And this is what happens when you add about  
 4 4 percent of the data. You've got a small number of books  
 5 that are put on to the shelf. Now, the user has no ability  
 6 to direct where this data goes. This is done by the  
 7 operating system. And you don't know where the old data  
 8 is. You don't know where the new data is going. So, if  
 9 you're copying a small amount of data, you have a very  
 10 small chance of overwriting it. You could, it's possible,  
 11 but from a deliberate data destruction point of view, it's  
 12 exceptionally unlikely.  
 13 If you really wanted to get rid of this file, what  
 14 you would have to do is you'd have to fill up unallocated  
 15 space. And what we're doing here is adding new files,  
 16 adding essentially, in our case, where we have 4 percent of  
 17 the unallocated space being overwritten, now we have  
 18 100 percent of unallocated space being written. And in  
 19 that way we can guarantee that this file is no longer  
 20 available. And, in fact, using a large number of files,  
 21 you can get rid of indices as well.  
 22 But without doing that, there is no  
 23 guarantee--and, in fact, it's exceptionally unlikely--that  
 24 you're going to not overwrite the data.  
 25 So, in summary, and I tried to keep this short and

04:57 1 PRESIDENT VEEDER: We were planning to go longer  
 2 than 5:30.  
 3 MR. WHITE: Okay.  
 4 PRESIDENT VEEDER: If that helps you.  
 5 Do you want to talk about it for five minutes?  
 6 And then--  
 7 MR. WHITE: That makes sense.  
 8 PRESIDENT VEEDER: We can sort it out, and we will  
 9 speak to the shorthand writers and the interpreters as  
 10 well.  
 11 MR. WHITE: Thank you.  
 12 PRESIDENT VEEDER: But the feeling we get is we've  
 13 fallen slightly behind and we need to keep up with the  
 14 original program.  
 15 MR. WHITE: Thank you.  
 16 PRESIDENT VEEDER: Let's take five minutes.  
 17 You've heard this before. Please don't discuss  
 18 the case or your testimony until you come back.  
 19 (Brief recess.)  
 20 PRESIDENT VEEDER: Let's resume.  
 21 I think we're prepared and conferred with the  
 22 stenographers to go to 6:30. We will need another break  
 23 obviously, but is that agreeable to the Claimants?  
 24 MR. WHITE: That would be fine from our  
 25 perspective.

04:55 1 to the point as to the highlights of what we're looking at  
 2 here, what we have on the Zambrano Computers is we have  
 3 evidence of a document being created on October 11th, 2010.  
 4 We have evidence that data has been added to it. We have  
 5 evidence that multiple drafts occurred. We have evidence  
 6 that this document has been opened hundreds of times, has  
 7 been saved hundreds of times. And we have evidence that  
 8 the final product was uploaded to the SATJE system on  
 9 February 14th. What we don't have is any evidence that  
 10 affirmatively states that this information came from  
 11 anywhere outside of the Zambrano Computers.  
 12 And with that, that's my presentation.  
 13 BY MR. EWING:  
 14 Q. Thank you.  
 15 And I would, with no further questions, tender the  
 16 witnesses.  
 17 PRESIDENT VEEDER: Thank you.  
 18 There will now be questions from the Claimants,  
 19 but before we start, how long do you think overall you will  
 20 be? Again, this is just for planning purposes. We're not  
 21 going to hold you to it. We have to decide how long we go  
 22 on tonight.  
 23 MR. WHITE: My thought had been we'd go till about  
 24 5:30 as planned. I'm happy to go longer than that if  
 25 that's needed.

05:03 1 PRESIDENT VEEDER: And the Respondents too?  
 2 MR. EWING: Yes.  
 3 PRESIDENT VEEDER: And the Witness?  
 4 THE WITNESS: That's fine, thank you.  
 5 PRESIDENT VEEDER: Last, but not least, there will  
 6 be questions from the Claimants.  
 7 MR. WHITE: Thank you, President Veeder.  
 8 CROSS-EXAMINATION  
 9 BY MR. WHITE:  
 10 Q. Mr. Racich, my name is Brian White. I'll be  
 11 asking you a few questions now. You prepared three reports  
 12 for this arbitration; correct?  
 13 A. I did.  
 14 Q. One in December 2013, one in November 2014, and  
 15 one in March 2015; is that right?  
 16 A. That's correct.  
 17 Q. So, if I refer to them by those names as the  
 18 December 2013 Report, et cetera, you'll know what I'm  
 19 talking about?  
 20 A. Yes.  
 21 Q. And those Reports reflect your work; is that  
 22 right?  
 23 A. Yes.  
 24 Q. They reflect your analysis?  
 25 A. Yes.

05:04 1 Q. And you apply your expertise; is that right?  
 2 A. Yes.  
 3 Q. And you're responsible for the content of those  
 4 Reports?  
 5 A. Yes.  
 6 Q. So, I want to talk to you first about your  
 7 analysis of the user names that are shown in the metadata  
 8 on various documents. I want to start by talking about the  
 9 105 documents that Mr. Lynch described as the non-Chevron  
 10 orders that Mr. Guerra drafted for Mr. Zambrano.  
 11 Do you know which documents I'm referring to?  
 12 A. I believe so.  
 13 Q. In your December 2013 Report, your First Report,  
 14 you concluded that those documents were not created on  
 15 Mr. Guerra's computer; is that right?  
 16 A. I believe the Author information was not the same  
 17 as the Author information as Mr. Guerra's computer.  
 18 Q. And that's because the Author name that's found in  
 19 the file create field in the metadata to those documents,  
 20 most of them is a punctuation mark, dot?  
 21 A. I believe that's correct.  
 22 Q. And the user name registered to Microsoft Office  
 23 on Mr. Guerra's computer when it was imaged is something  
 24 different. It was Estación?  
 25 A. I believe that's correct.

05:05 1 Q. Okay. Now, would you agree with me that when you  
 2 just look at the Author name on a file, and even if you  
 3 take that in connection with the last saved name or Last  
 4 Saved By name on a file, that doesn't tell you anything  
 5 about who generated the content for that file; isn't that  
 6 right?  
 7 A. That's correct.  
 8 Q. So, let's turn to Exhibit C to your First Report,  
 9 Mr. Racich.  
 10 A. Can you direct me where that--  
 11 Q. Sorry. There is a tab behind Tab 2 here that has  
 12 a placeholder, because it's not very useful to look at a  
 13 hard copy of Exhibit C. We're going to look at an  
 14 electronic copy. It's a Microsoft Excel spreadsheet. So  
 15 if I could ask Jamie to pull up Exhibit C-on the screen.  
 16 So, this is the exhibit that you created to  
 17 illustrate the user names of the documents that you found  
 18 on the Guerra Computer; that's right?  
 19 A. Yes.  
 20 Q. All right. And it's a Microsoft Excel file?  
 21 A. Yes.  
 22 Q. And Microsoft Excel, just for the record, is the  
 23 same program that was used to create the Selva Viva  
 24 Database; correct?  
 25 A. I don't know if it was originally created in that

05:07 1 manner, no.  
 2 Q. Okay.  
 3 A. I don't know.  
 4 Q. Fair enough.  
 5 So, let's be clear about what you did here. You  
 6 used a forensic tool to extract metadata about documents  
 7 from Mr. Guerra's computer, and then you assembled it in  
 8 the Excel spreadsheet and you used the Excel spreadsheet to  
 9 organize that data; is that right?  
 10 A. Yes.  
 11 Q. Okay. If we look at the bottom left-hand corner  
 12 of this document, you see we have a tab that says "Author  
 13 count," and we have a tab that says "export." You see  
 14 those?  
 15 A. Yes.  
 16 Q. And those are referred to as two different pages  
 17 on the spreadsheet; right?  
 18 A. They're not contained in the same page.  
 19 I'm not sure I understand the question.  
 20 Q. Sorry. So, if we click on "Author count," which  
 21 is where we now, we'll see one page of the spreadsheet;  
 22 right?  
 23 A. Yes.  
 24 Q. And if we click on "export." we'll see a separate  
 25 page?

05:08 1 A. Yes.  
 2 Q. Okay. So, let's do that now.  
 3 What's displayed on this page which has got the  
 4 title on the tab "export"? Is this all the metadata that  
 5 you recovered concerning documents that were found on  
 6 Mr. Guerra's computer?  
 7 A. I'm not sure if it's all the metadata, but it's  
 8 metadata from the files on Mr. Guerra's machine.  
 9 Q. And the way this works, let's just take the first  
 10 document as an example, you've got a document ID number.  
 11 Do you see that?  
 12 A. Yes.  
 13 Q. And that is, within this spreadsheet at least,  
 14 that's unique for that file; right?  
 15 A. Yes.  
 16 Q. Okay. And then you've got a sort date time, and  
 17 that's how you've sorted this data; is that right?  
 18 A. Yes.  
 19 Q. And Excel did that for you?  
 20 A. With some help, but yes.  
 21 Q. And then you've got the file name. That tells you  
 22 the title that the document on Mr. Guerra's computer?  
 23 A. Yes.  
 24 Q. And there's a file path that tells you about where  
 25 you found it on the computer?

05:09 1 A. Yes, with regards to the image of Mr. Guerra's  
 2 machine.  
 3 Q. Okay. And then the file Author, that's where you  
 4 get the Author name on the computer that it was generated  
 5 on--  
 6 A. Yes.  
 7 Q. Was found on.  
 8 A. Within the metadata fields, that's what was listed  
 9 as the file Author.  
 10 Q. Okay. And there's other information in this  
 11 spreadsheet too; right?  
 12 A. Yes.  
 13 Q. Okay. So, let's go back down to the page we were  
 14 on a moment ago and click the Author count page.  
 15 Here, you've organized the Author names in  
 16 descending order of the frequency in which they appear; is  
 17 that right?  
 18 A. Yes.  
 19 Q. So, the first Author name is in Row 4, I'm going  
 20 to call it CERFIN. Do you see that?  
 21 A. I don't know how to pronounce that one.  
 22 Q. So, if I say CERFIN, we'll be talking about that.  
 23 And there are 477 documents on the Guerra Computer  
 24 that were created on a computer with that Author name; is  
 25 that right?

05:10 1 A. Yes.  
 2 Q. Okay. And then dot in Line 5, that is the user  
 3 name on the computer that originally created the dot--it's  
 4 the Author name on the computer on which the 105  
 5 non-Chevron Orders were originally created; is that right?  
 6 A. I believe it was 103, if I recall, but the vast  
 7 majority, yes.  
 8 Q. Okay. And that appears on 425 documents.  
 9 I'm sorry, let me clarify that. That doesn't  
 10 necessarily mean that all 103 of the documents that  
 11 Mr. Lynch has described as draft Chevron Orders were  
 12 created on the computer that has the user name dot, does  
 13 it?  
 14 A. I don't think he characterized those as draft  
 15 Chevron Orders.  
 16 Q. Draft non-chevron Orders.  
 17 A. Okay.  
 18 Q. So let me restate the question.  
 19 That doesn't mean that the content of all 103 of  
 20 those, what Mr. Lynch calls draft non-Chevron Orders was  
 21 created on the computer with the user name dot, does it?  
 22 A. Can you say that again?  
 23 Q. Yeah, it could be that there was one document that  
 24 was created as a template on the computer called dot. That  
 25 was transferred on to Mr. Guerra's computer, and the other

05:11 1 documents were all created from that template. That's a  
 2 possibility; right?  
 3 A. That's a possibility.  
 4 Q. Okay. Thank you.  
 5 And if we look down to Line 13, we see the user  
 6 name Estación; right?  
 7 A. Yes.  
 8 Q. And we got 34 documents out of all the documents  
 9 on Mr. Guerra's computer that have the user name and the  
 10 Author field of Estación; is that right?  
 11 A. Yes.  
 12 Q. Now, I want to take you to your March 2015 Report,  
 13 and that is behind Tab 3 in the notebook that I handed out.  
 14 A. March?  
 15 Q. That's the most recent report you filed. I'm  
 16 sorry, March 2015. I'm sorry, behind Tab 4.  
 17 A. Thank you.  
 18 Q. It's the March 2015 Report.  
 19 A. Yes.  
 20 Q. I wanted to take you, Mr. Racich, to Page 2,  
 21 Paragraph 5(c).  
 22 A. Okay.  
 23 Q. Okay. But before I ask you about that, when you  
 24 wrote your original report in December 2013, you hadn't  
 25 gained access to the Zambrano hard drives yet; correct?

05:12 1 A. That's correct.  
 2 Q. You since have gained access to the Zambrano hard  
 3 drives; right?  
 4 A. That's correct.  
 5 Q. Okay. And when you looked at those, you were able  
 6 to identify the user name on the two Zambrano Computers;  
 7 right?  
 8 A. Yes.  
 9 Q. Neither of them has the user name dot, does it?  
 10 A. That's correct.  
 11 Q. Thank you.  
 12 So, what you say here in Paragraph (c) is that  
 13 there is no forensic evidence showing that Guerra created  
 14 or authored any of the 105 alleged Draft Orders and  
 15 non-Lago Agrio Cases that were found on his computers. All  
 16 105 documents were created on computers other than  
 17 Guerra's.  
 18 That was one of your conclusions?  
 19 A. Yes.  
 20 Q. Okay. Does that conclusion apply equally to  
 21 Mr. Zambrano's computers?  
 22 A. In what manner?  
 23 Q. The basis for this conclusion is that the user  
 24 name that was used to Create or Author the 105 Draft Orders  
 25 is something different from the user name on Mr. Guerra's

05:13 1 computer. It's also different from the user name on both  
 2 Zambrano Computers; right?  
 3 A. Yes.  
 4 Q. Okay. When you use the words "Created or  
 5 Authored," you're not talking about two different concepts  
 6 here. This is all about the Author name and the Create  
 7 field; right?  
 8 A. Correct.  
 9 Q. So, let's illustrate what the Author field is with  
 10 reference to your Exhibit C here. If Jamie goes up to the  
 11 File Tab here and clicks that, we get some of the metadata  
 12 off your Exhibit C; right?  
 13 A. Yes.  
 14 Q. Okay. And if we look off to the right-hand side  
 15 here, we will see the Create Date; right? The Create Date  
 16 is September 23, 2013; right?  
 17 A. Yes.  
 18 Q. That's a few months before you submitted this with  
 19 your December 16th Report; right?  
 20 A. Yes.  
 21 Q. And we see the Last Modified date--that's  
 22 December 16, 2013; right?  
 23 A. Yes.  
 24 Q. And that's the last time any activity was done in  
 25 this document or any changes were made to this document;

05:15 1 right?  
 2 A. The last time it was saved.  
 3 Q. And that's right before you filed your Report, so  
 4 that makes sense; right?  
 5 A. Yes.  
 6 Q. All right. Now, we don't have the last access  
 7 date for this file on Jamie's computer here, but if we did,  
 8 the fact that we have this file opened would update the  
 9 last access date on the computer that's being used to  
 10 display this; right?  
 11 A. That's correct.  
 12 Q. But because we haven't gone in and done any typing  
 13 or modifying or otherwise change the underlying document in  
 14 any way, the Last Modified Date isn't changed?  
 15 A. Correct.  
 16 Q. But if I go in and make changes to the document  
 17 and then hit Save, the Last Modified Date will change?  
 18 A. Yes.  
 19 Q. All right. Now, if we look down here--actually,  
 20 before I do. I want to ask you a question.  
 21 You were here when Mr. Lynch was being  
 22 cross-examined earlier today; right?  
 23 A. Yes.  
 24 Q. And you heard Mr. Ewing ask him on a few occasions  
 25 to focus just on the metadata and not take into account any

05:16 1 other evidence, and draw conclusions from the metadata  
 2 about the document. Do you remember that?  
 3 A. Yes.  
 4 Q. Okay. So, let's look at the related people field  
 5 on the metadata for this document.  
 6 The Author name, that's not the Author name on  
 7 your computer, is it?  
 8 A. No.  
 9 Q. Okay. The Author name is Ewing Gregory L; right?  
 10 A. That's correct.  
 11 Q. And the last Modified Name is Greg Ewing; right?  
 12 A. Yes.  
 13 Q. That's not the user name on your computer, is it?  
 14 A. No.  
 15 Q. Okay. Now, we know from your testimony today that  
 16 you prepared the content of this document; right?  
 17 A. Yes.  
 18 Q. So, if I asked you to focus just on the  
 19 metadata--if I asked you to focus just on those two pieces  
 20 of metadata, what the Author name is and the Last Modified  
 21 By name is and draw conclusions about who is responsible  
 22 for the content of this document, that would be very  
 23 misleading, wouldn't it?  
 24 A. Yes.  
 25 Q. Okay. But if we take into account the other

05:17 1 evidence, your testimony, the fact that you're an expert  
 2 witness in this arbitration, we know that the Author name  
 3 and the Last Modified name really don't tell us anything  
 4 about who generated the content of this document; right?  
 5 A. Not specifically, no.  
 6 Q. Okay. Now, there is another issue that this  
 7 raises. You would agree with me; right?--that the Author  
 8 name on this computer and the Last Modified By name are  
 9 different; right?  
 10 A. Yes.  
 11 Q. So, it's possible--there's a couple of  
 12 possibilities here. One possibility is that this document  
 13 was originally created in September 2013 on one computer,  
 14 but it was then last saved on a different computer with a  
 15 different computer name; right?  
 16 A. That's possible.  
 17 Q. Another possibility is this is the same computer,  
 18 but the user name was changed at some point; right?  
 19 A. The Author information comes from who Microsoft  
 20 Office is registered to, so typically unless you do a  
 21 reinstall or something along those lines, that's not going  
 22 to change.  
 23 Q. Okay. Let's explore that a little bit further.  
 24 Suppose that whoever the owner of the original computer was  
 25 had Microsoft Office registered to the name Ewing Gregory

05:18 1 L, they needed to do some routine maintenance on their  
 2 computer so, they do a Windows reinstall some time after  
 3 creating this document but before the Last Modified Date,  
 4 but do the reinstall, the new version of Windows is  
 5 assigned to, say, it's the same person but they've  
 6 registered it under a different variant of their name.  
 7 Instead of Ewing Gregory L, the new version is Greg Ewing.  
 8 And they put that user name in, register the computer to  
 9 that user name and after, they do the reinstall. That's a  
 10 possible explanation for why there are two different user  
 11 names on this document; right?  
 12 A. That's possible.  
 13 Q. Okay. Let's turn to the document--we don't need  
 14 to go to it, but let's turn to the document called  
 15 Providencias. It was found on Mr. Zambrano's computers and  
 16 that you and Mr. Lynch both analyzed. Do you know which  
 17 document I'm talking about?  
 18 A. There are iterations, so which one are you  
 19 speaking of?  
 20 Q. Well, these questions will apply to each of the  
 21 iterations, I think.  
 22 You found versions of a document that were all the  
 23 titled Providencias; right?  
 24 A. There were some documents entitled Providencias.  
 25 Some had temporary file information. Some were carved out

05:21 1 A. Yes.  
 2 Q. Okay. And you also note that the Last Saved By  
 3 name on that document, December 21st Providencias, is also  
 4 CPJS; right?  
 5 A. Yes.  
 6 Q. You can't infer from those two facts that the  
 7 content of that document was generated on Mr. Zambrano's  
 8 computer, can you?  
 9 A. Can you repeat the question, please?  
 10 Q. Yeah. It wouldn't be a fair inference to draw,  
 11 just if you do, as Mr. Ewing asked Mr. Lynch to do, to take  
 12 those two pieces of metadata--the Author name being CPJS,  
 13 the Last Modified By name being CPJS, and conclude that  
 14 Mr. Zambrano or somebody using his computer was responsible  
 15 for the content of that document?  
 16 A. Simply with those two metadata fields?  
 17 Q. Right.  
 18 A. Correct.  
 19 Q. All right. I want to talk about what's been  
 20 described as the "Guerra media." These are the media from  
 21 Mr. Guerra that are the subject of your First Report and  
 22 Mr. Lynch's First Report.  
 23 You know what I'm talking about?  
 24 A. Yes.  
 25 Q. Okay. Now, when you did your December 2013

05:20 1 from unallocated space.  
 2 I think I know what you mean and if you give me  
 3 the dates I can probably do that more easily.  
 4 Q. That's fine. Let's take the December 21st, 2010  
 5 Providencias.  
 6 A. Okay.  
 7 Q. You know what I'm talking about?  
 8 A. Yes.  
 9 Q. Thank you.  
 10 You talked about the file Providencias being  
 11 Authored on Mr. Zambrano's Computer; do you remember that?  
 12 A. Yes.  
 13 Q. That's because the Author's name that appears in  
 14 connection with the Create name on that document was CJPS;  
 15 right? Sorry CPJS.  
 16 A. Scared me for a second there. Yes.  
 17 Q. Sorry, let me make sure the Transcript is clear on  
 18 this.  
 19 When you refer to the Author of that document, or  
 20 the document being Authored on Mr. Zambrano's Computer,  
 21 what you're saying is that the December 21st Providencias  
 22 has the Author name CPJS; right?  
 23 A. Yes.  
 24 Q. And that's the Author name on Mr. Zambrano's Old  
 25 Computer?

05:22 1 Report, you were responding to Mr. Lynch's First Report in  
 2 the arbitration; right?  
 3 A. Yes.  
 4 Q. And when you performed your analysis of these  
 5 Guerra media, you were looking at the same images that  
 6 Mr. Lynch reviewed; is that right?  
 7 A. I believe so.  
 8 Q. And those images came from the hard drive, the  
 9 images of Mr. Guerra's laptop came from the hard drive that  
 10 was--sorry.  
 11 The image of the desktop computer, the Maxtor hard  
 12 drive?  
 13 A. That's my understanding, yes.  
 14 Q. Those images came from a hard drive that was  
 15 imaged by Audio Forensics on July 15, 2012; correct?  
 16 A. That's my understanding.  
 17 Q. Okay. Now, Mr. Lynch has said that that is--or  
 18 has offered opinions on the basis of the belief that that  
 19 is Mr. Guerra's hard drive. You've called that into  
 20 question. Do you recall that?  
 21 A. I don't believe I called that into question.  
 22 Q. Well, let me just make sure I've clearly  
 23 understood you. You're not offering an expert opinion that  
 24 those media were never in Mr. Guerra's possession? Is that  
 25 right?

05:23 1 A. No.  
 2 Q. Okay. So, you agree that those are the media that  
 3 were given to Chevron and then to Audio Forensics by  
 4 Mr. Guerra; is that right?  
 5 A. What I understand is that those were the--the  
 6 computer and the thumb drives were in possession of  
 7 Mr. Guerra and that they were taken out of possession of  
 8 Mr. Guerra on July 13th, I believe it was, 2012. There was  
 9 a two-day gap in between there. And then Audio Forensics,  
 10 I believe, then made images of that data. I didn't call  
 11 into question the source of that information, but rather  
 12 the fact that Chain of Custody is important to be able to  
 13 ask questions, if necessary, as to what happens within gaps  
 14 of Chain of Custody.  
 15 And it wasn't to summarily discount. All it  
 16 really goes to is the fact that I was never provided with a  
 17 Chain of Custody at all of what went on during that  
 18 timeframe. If it exists, I would be happy to look at it,  
 19 but my understanding is it doesn't exist. Until Stroz got  
 20 access to it. And I presume that their Chain of Custody is  
 21 full and complete as of--to the time that they received the  
 22 data.  
 23 Q. That's very helpful, Mr. Racich, because I wanted  
 24 to clarify whether you were questioning whether the  
 25 original source of these media were Mr. Guerra. So, let's

05:25 1 turn to the issue you've just raised, which is the Chain of  
 2 Custody between July 13 and July 15. That's the period  
 3 you're concerned about?  
 4 A. Yes.  
 5 Q. Okay. Now, I want to take you back to your  
 6 December 16, 2013 Report, and that's behind Tab 1 of the  
 7 binder I handed out. If we look at, starting on Page 3,  
 8 with Paragraph 8, and then 8 has some subparts that go over  
 9 to Page 4, you described the materials you've considered;  
 10 is that correct?  
 11 A. Yes.  
 12 Q. Was that all the materials that you reviewed?  
 13 A. I believe at that time, yes.  
 14 Q. Okay. The reason I ask is that if we go to--yeah,  
 15 I'm sorry--yeah, if we go to Paragraph 11 of your Report,  
 16 on Page 5--I'm sorry, it's Paragraph 22 of your Report on  
 17 Page 8--you reference the testimony of Andres Rivero.  
 18 Do you recall that?  
 19 A. Yes.  
 20 Q. Did you review a transcript of Mr. Rivero's  
 21 testimony?  
 22 A. No.  
 23 Q. Okay. So, you're relying on what somebody told  
 24 you that Mr. Rivero said?  
 25 A. I believe--I would have to go back and look. I

05:27 1 believe that Mr. Lynch references Mr. Rivero. I could be  
 2 incorrect on that.  
 3 Q. You've got Mr. Lynch's Reports there. Can you  
 4 point to me where Mr. Lynch refers to that?  
 5 A. That's Tab 5 for the First Report?  
 6 Q. Yes, his First Report is behind Tab 5.  
 7 I think, if it helps, Mr. Lynch's description of  
 8 the acquisition of those images starts on--in Paragraph 10  
 9 on Page 7. Mr. Lynch doesn't talk about the 13th. He just  
 10 talks about the 15th.  
 11 A. Okay. Then I don't recall from--I don't recall  
 12 off the top of my head where that came from.  
 13 Q. Okay. This is important, Mr. Racich, because, in  
 14 Paragraph 22 of your Report, you say that: "If one relies  
 15 on the testimony of Andres Rivero, it appears the media  
 16 were seized from former judge Guerra in the morning."  
 17 Do you recall saying that?  
 18 A. Yes.  
 19 Q. But you don't know where you get the idea that  
 20 he--that these items were seized from Mr. Guerra in the  
 21 morning?  
 22 A. I can't recall.  
 23 Q. Okay. Because I want to go to Exhibit 910. This  
 24 is the Transcript of Mr. Rivero's deposition in the RICO  
 25 case. And that's--yeah, behind tab--behind Tab 16 in our

05:29 1 binders. And I will ask if this can be brought up on the  
 2 screen. It's Page 149.  
 3 A. All right.  
 4 Q. I'm starting at Line 25. It's a simple point,  
 5 really. It's just that Mr. Rivero testified that these  
 6 materials were provided on the afternoon of the 13th, and  
 7 doesn't say they were "seized." He says that they were  
 8 "obtained."  
 9 Do you see that?  
 10 A. Yes.  
 11 Q. The reason I want to draw that to your attention  
 12 is because you--I take it you were under the impression  
 13 when you wrote your Report that the materials were taken  
 14 away from Mr. Guerra in the morning, and then these  
 15 accesses that you talk about happened sometime in the  
 16 afternoon of the 13th.  
 17 A. I believe they were around 5:00, 5:00 to 6:00.  
 18 Q. Okay. So, you don't have any reason, sitting here  
 19 today, to think that these materials were taken away from  
 20 Mr. Guerra in the morning and then somebody else accessed  
 21 them later that day; right?  
 22 A. What I can say is they were accessed later that  
 23 day, yes.  
 24 Q. Okay. And you're not suggesting they were  
 25 accessed outside Mr. Guerra's presence?



05:31 1 A. I don't know one way or the other.  
 2 Q. Okay. Now, you agree that the acquisition hash  
 3 values on the Guerra hard drives images show that no  
 4 changes have been made to those forensic images from the  
 5 time that the images were made on July 15th; right?  
 6 A. The hash values as they--the acquisition hash  
 7 values match what the hash values were at the time when I  
 8 received the images. So, as of July 15th, there was a  
 9 certain very large number that is the electronic  
 10 fingerprint of the image, and that, in fact, does match the  
 11 image as it existed when I received it.  
 12 Q. Okay. And when you talked about a Chain of  
 13 Custody form a few minutes ago, that's a form that somebody  
 14 fills out to say where the computer was during a certain  
 15 period of time; right?  
 16 A. Yes.  
 17 Q. And you have experienced imaging clients' laptops,  
 18 hard drives, other media; right?  
 19 A. Yes.  
 20 Q. And when they bring them to you and give them to  
 21 you, they don't have a Chain of Custody form, usually, do  
 22 they?  
 23 A. It depends. I've had clients--when I get involved  
 24 in cases, oftentimes, the first time I will do we'll send  
 25 them a Chain of Custody so they can begin filling out as to

05:34 1 Q. And none of them had their Last Modified dates  
 2 updated; right?  
 3 A. I can't say that none of them. I would be very  
 4 surprised that none of them had--I would have to go back  
 5 and look specifically, but I--unless the machine was  
 6 accessed from taking the hard drive out and attaching it to  
 7 a computer without a write block, the Last Written  
 8 dates--if the machine was booted, something was going to be  
 9 updated during that timeframe.  
 10 Q. You haven't noted any files or identified any  
 11 files that had their Last Modified dates updated on  
 12 the 13th through the 15th of July; right?  
 13 A. Not specifically, no.  
 14 Q. All right. Now, in Paragraph 11 of your First  
 15 Report, the December 2013 Report, you say--and there's  
 16 three sentences. This is the second sentence. You talk  
 17 about the Last Access dates being updated and then you say  
 18 "this indicates the files had been touched or manipulated  
 19 in some way."  
 20 Do you recall that?  
 21 A. Yes. Yes.  
 22 Q. Okay. And you say something a little bit  
 23 different in your most recent Report, which is behind  
 24 Tab 4. In the portion of that Report--I'm going to take  
 25 you there--it's Paragraph 5(e).

05:32 1 who possesses something at a particular point of time. And  
 2 depending on the clients, some clients actually have enough  
 3 experience with this type of litigation--well, with  
 4 litigation, so they actually have their own Chains of  
 5 Custody.  
 6 But no matter what, when the media comes in  
 7 possession of my firm, we will establish a Chain of Custody  
 8 if it doesn't already exist.  
 9 Q. All right. Just like Audio Forensics did on  
 10 July 15th; right?  
 11 A. I've never seen a Chain of Custody from Audio  
 12 Forensics.  
 13 Q. Okay. You're not taking issue with the fact that  
 14 Mr. Guerra didn't have a Chain of Custody form on July 12th  
 15 or July 11th or July 10th; right? You wouldn't have  
 16 expected to see that?  
 17 A. Typically, no.  
 18 Q. Okay. Focusing on the period between July 13th  
 19 and the time that the image was taken on July 15th, the  
 20 only activity that you've identified on Mr. Guerra's  
 21 computer during that interval of time is that the files  
 22 were--the last access dates were updated on some files on  
 23 the afternoon of the 13th; right?  
 24 A. 22,000 files had their last access dates updated  
 25 during that timeframe.

05:35 1 A. All right.  
 2 Q. And this, if we look, starting on Page 1, which is  
 3 where Paragraph 5 starts, this is a summary of your  
 4 conclusions from your December 2013 Report; right?  
 5 A. Yes.  
 6 Q. Okay. And in Paragraph 5(e) which is over on  
 7 Page 2, you again identify the fact that the files were  
 8 accessed on Mr. Guerra's computer, but you don't use the  
 9 "touched or manipulated" language. You say there's no way  
 10 to know what was done to those files or their metadata  
 11 during this time period; right?  
 12 A. Yes.  
 13 Q. Okay. You're not offering an opinion that there  
 14 was any manipulation that happened on those computers  
 15 during that two day time period, are you?  
 16 A. No, not specifically. No.  
 17 Q. Because you don't--you don't have any evidence  
 18 indicating that there was manipulation; right?  
 19 A. No, not from that.  
 20 What I was going for is the lack of Chain of  
 21 Custody during that two-day period sort of gives us an  
 22 inability to understand what was going on.  
 23 And now, I will grant you, it takes some  
 24 sophistication, but one can manipulate data in a way that  
 25 doesn't leave the footprints that Mr. Lynch talked about

05:37 1 with regards to the logging and the change of times. If  
 2 one attaches an external drive--a drive as an external  
 3 drive to a computer and changes your own computer's  
 4 clock--so if, say, I had this computer right here, I change  
 5 that to be November 2009, I could attach Mr. Guerra's hard  
 6 drive as it existed, mess around with particular data,  
 7 opened data, saved data, and it would all reflect the  
 8 November of 2009 date, not today's. And I'm not saying I  
 9 have specific evidence of that. I'm just saying that that  
 10 lack of Chain of Custody is something to be considered.  
 11 Q. So, you're just--you've got no evidence indicating  
 12 that anything like that might have happened. You're just  
 13 speculating that it could have happened.  
 14 A. Correct. It could have happened, yes.  
 15 Q. All right. I wanted to go on to--I wanted to go  
 16 on to the Guerra issue.  
 17 PRESIDENT VEEDER: If you're going to change the  
 18 subject, let's have a break now. Can we do that?  
 19 MR. WHITE: Perfect. Perfect.  
 20 PRESIDENT VEEDER: So, a 15-minute break.  
 21 MR. WHITE: Yes.  
 22 (Brief recess.)  
 23 PRESIDENT VEEDER: Let's resume.  
 24 MR. WHITE: Thank you, Mr. President.  
 25 BY MR. WHITE:

05:48 1 Q. Mr. Racich, I want to take you to the document  
 2 behind Tab 15 in the notebook that I provided, which is  
 3 Ecuador's Track 2 Rejoinder on the Merits from December 16,  
 4 2013. I want to take you to Page 125 and specifically to  
 5 Paragraph 263. I want to take you to the second sentence,  
 6 whenever you're ready.  
 7 A. I will grab my glasses.  
 8 All right. Second sentence?  
 9 Q. Yeah.  
 10 And I want to show you an allegation that Ecuador  
 11 has made, a statement they made in one of their pleadings.  
 12 They say: "We know from the contents of Mr. Guerra's hard  
 13 drive that in late 2009 and early 2010 Mr. Guerra had  
 14 prepared at least one speech." You see that?  
 15 A. There is a little blurb in between there, but yes.  
 16 Q. Okay. Well, it's a speech--well, it's the date  
 17 2009 and 2010, and then it's that speech that I want to  
 18 focus on, and so let's if we can find that speech. If we  
 19 look at Footnote 459, speech is identified as Exhibit  
 20 R-997; it's a document name there; right? You see that?  
 21 "Discurso de"--I'm not going to try to say that in Spanish.  
 22 You see the document name?  
 23 A. I see Footnote 459, yes.  
 24 Q. Okay. And then at the end, that's a document  
 25 number that shows up in your Exhibit C as being extracted

05:50 1 from Mr. Guerra's hard drive; right?  
 2 A. Yes.  
 3 Q. Okay. So, let's go back to your Exhibit C.  
 4 MR. WHITE: The Tribunal--you may want to keep  
 5 your thumb on that tab.  
 6 BY MR. WHITE:  
 7 Q. And we're going to go back to Exhibit C, and we  
 8 can pull that up on the screen.  
 9 This is your Exhibit C. If we go down to the  
 10 export tab, and if we search in here for the last four  
 11 digits of that document number, 0171, would you agree with  
 12 me that this is the document that's referenced in  
 13 Footnote 459 of Ecuador's Memorial?  
 14 A. I believe so.  
 15 Q. It's the same document number; right?  
 16 A. Yes.  
 17 Q. It's got the same title; right?  
 18 A. Yes.  
 19 Q. And this is a document that Ecuador says  
 20 Mr. Guerra was prepared in late 2009/early 2010; right?  
 21 What is the user name on the computer that was  
 22 used to create that document?  
 23 A. "Usuario."  
 24 Q. Now--no surprise. The reason I've taken you here  
 25 is this relates to Mr. Lynch's opinion concerning the nine,

05:52 1 what he calls the nine draft Chevron Orders prepared by  
 2 Mr. Guerra for Mr. Zambrano. Do you recall his testimony  
 3 about that?  
 4 A. I do.  
 5 Q. Okay. You disagreed with his testimony, and to  
 6 see where you did that, I want to go back to your December  
 7 2013 Report, which is Tab 1 of the binder, and we'll be  
 8 leaving the Memorial now.  
 9 And I want to take you to Paragraph 24 of your  
 10 Report.  
 11 A. All right.  
 12 Q. This is where you pick up on Mr. Lynch's analysis  
 13 of the 11 documents he found on Mr. Guerra's computer that  
 14 he says became the nine Orders that Judge Zambrano issued;  
 15 right? That's what you're addressing here?  
 16 A. I believe so, yes.  
 17 Q. And you say that, "Based on the available forensic  
 18 evidence, Mr. Lynch's conclusion is unsupported." That was  
 19 your conclusion?  
 20 A. Yes.  
 21 Q. Okay. Now, if we go to Paragraph 33, this is  
 22 where you give the reason why you think Mr. Lynch's  
 23 conclusion was unsupported; right?  
 24 A. Yes.  
 25 Q. Okay. And the reason is--I'll give you a moment

05:53 1 to look at this, if you need to--the reason is the  
2 documents were created and last saved on a computer with  
3 Microsoft Office registered to the user Usuario.; right?  
4 A. That's part of it.  
5 Q. Well, let's focus on this part of it now?  
6 A. Sure.  
7 Q. You go on to say that this indicates the 11  
8 documents were created on a computer that neither you nor  
9 Mr. Lynch had looked at; right?  
10 A. Yes.  
11 Q. All right. And then you say--the last  
12 sentence--"there is no forensic evidence offered to show  
13 that former Judge Guerra ever used the computer with the  
14 Microsoft Office registered to the user Usuario to author  
15 any documents, let alone" the Chevron orders; right?  
16 A. Yes.  
17 Q. Now, that's the statement I want to focus on  
18 first.  
19 Now, having just looked at your Exhibit C, and the  
20 metadata from Mr. Guerra's computer and Ecuador's statement  
21 that Mr. Guerra--showing an Author with the name of Usuario  
22 for a speech that Ecuador says was prepared by Mr. Guerra  
23 in late 2009, early 2010, wouldn't you agree with me that  
24 there is forensic evidence indicating that Mr. Guerra used  
25 a computer with the Microsoft user name registered to

05:57 1 I will do a little exercise with you. If we  
2 remove the name Guerra from that sentence and we replace it  
3 with the name Zambrano, that sentence would be correct;  
4 right?  
5 A. With regards to what?  
6 Q. If this sentence was rewritten to say, "there is  
7 no forensic evidence offered to show that former Judge  
8 Zambrano ever used a computer with the Microsoft Office  
9 registered to the user Usuario to author any documents, let  
10 alone these 11," that statement would be correct; right?  
11 A. From the analysis that I have, that's correct.  
12 Q. Now, we talked a little while ago about the  
13 possibility of computer changing its user name; do you  
14 recall that?  
15 A. Yes.  
16 Q. And you said that that might happen in connection  
17 with a Windows reinstall; right?  
18 A. That could happen, yes.  
19 Q. Okay. Now, in the timeframe after Ecuador says  
20 that Mr. Guerra prepared the speech that had the user name  
21 Usuario and the time that the computer was--Mr. Guerra's  
22 computer was imaged by Audio Forensics, during that period  
23 of time, Mr. Guerra's computer underwent a Windows  
24 reinstall; correct?  
25 A. On July 23rd, I believe, 2010, yes.

05:55 1 Usuario?  
2 A. I don't know whether or not Mr. Guerra had a  
3 computer with the user name Usuario. This particular  
4 computer didn't have a user name Usuario. It had the user  
5 name Estación or dot, depending on what you're looking at.  
6 What we do have is that these particular documents  
7 didn't exist on the Guerra computer until July of 2010,  
8 about eight to nine months after they were issued.  
9 So, while they may have Usuario as a name and it  
10 may be similar, a very generic name user for both the  
11 document that you referenced in Exhibit 15, I believe, as  
12 well as the document itself, there is no forensic evidence  
13 that this came from Mr. Guerra's computer.  
14 Q. Let me ask the question again because that's not a  
15 answer to the question I asked. I'm asking you whether the  
16 statement in the last sentence of your Paragraph 33, I  
17 think if you--if that statement is incorrect, we do have  
18 forensic evidence from your Exhibit C tying the user name  
19 Usuario to a document that Mr. Guerra prepared, don't we?  
20 A. I don't know if Mr. Guerra prepared that document.  
21 Q. Do you have any reason to doubt what Ecuador said  
22 about that?  
23 A. I don't know one way or the other.  
24 Q. All right. Well, leaving that aside, then, the  
25 last sentence in Paragraph 33.

05:58 1 Q. So, after later 2009, early 2010 but before July  
2 15, 2012, there was Windows reinstall on Mr. Guerra's  
3 computer; right?  
4 A. Yes.  
5 Q. Isn't it possible that Mr. Guerra's computer prior  
6 to the Windows reinstall had Microsoft Office registered to  
7 the user name Usuario, and that after the Windows reinstall  
8 Microsoft Office was registered to the user name Estación?  
9 A. It's possible, but we don't have any evidence to  
10 that one way or the other.  
11 Q. It's possible?  
12 A. It's possible, but we don't have any evidence of  
13 it.  
14 Q. Now, you didn't find any documents on Mr. Guerra's  
15 computer that had the user name Usuario and a Last Saved  
16 Date after the Windows reinstall, did you?  
17 A. Could we put Exhibit C back up? I don't recall  
18 off the top of my head.  
19 Q. Absolutely.  
20 A. This is going to be tough.  
21 Q. Well, let's make it easier. Sitting here today,  
22 you're not aware of any document on Mr. Guerra's computer  
23 that had the user name Usuario and a Last Saved Date after  
24 Windows reinstall; right?  
25 A. I don't know sitting here right now.

06:00 1 Q. All right. And similarly, you don't know sitting  
 2 here right now whether there are any documents on Mr.--  
 3 PRESIDENT VEEDER: It's getting late in the day,  
 4 but let's slow down a little bit both of you. We have the  
 5 interpreters as well as the stenographers to cope with.  
 6 BY MR. WHITE:  
 7 Q. And you can't point to any documents on  
 8 Mr. Guerra's computer that had the user name Estación and a  
 9 Create Date or Last Saved Date before the Windows  
 10 reinstall; right?  
 11 A. I don't know sitting here right now.  
 12 Q. So, let's talk about the Windows reinstall.  
 13 You heard Mr. Lynch testify about that; right?  
 14 A. Yes.  
 15 Q. And you would agree, would you not, that  
 16 reinstalling Windows is often a part of routine maintenance  
 17 on the computer?  
 18 A. It can be.  
 19 Q. And sometimes it's necessary to do that; right?  
 20 A. It can be.  
 21 Q. And if a person was going to reinstall Windows on  
 22 a computer, it would be good practice to back up any files  
 23 you want to keep on to an external hard drive; right?  
 24 A. If you wanted to keep the files, yes.  
 25 Q. Okay. And the reason that you would do that is so

06:01 1 that after you reinstall the operating system, you can plug  
 2 in the external hard drive and use it to place those files  
 3 back on the computer; right?  
 4 A. Yes.  
 5 Q. And that would result in files that had been on  
 6 your computer prior to the reinstall appearing now on the  
 7 computer with a Create Date that is some time after the  
 8 reinstall; right?  
 9 A. Yes.  
 10 Q. Now, you testified that the 11 documents that  
 11 Mr. Lynch says are nine resulted or were drafts of nine  
 12 Chevron Orders, you testified that those were created or  
 13 put on the Guerra hard drive on July 23rd, 2010; right?  
 14 A. Yes.  
 15 Q. They were put on there from a Western Digital hard  
 16 drive; right?  
 17 A. It's indicative of that.  
 18 Q. Okay. That's the same day that the operating  
 19 system was installed; right?  
 20 A. Yes.  
 21 Q. You say in your First Report, you said it's just  
 22 as likely that the 11 Orders or 11 draft documents were  
 23 copied--you don't use the term "draft documents," but the  
 24 11 documents I'm talking about, were copied by former Judge  
 25 Guerra from a computer at the Lago Agrio Court to the

06:02 1 Western Digital hard drive and from there to the Guerra  
 2 computer.  
 3 PRESIDENT VEEDER: Paragraph 31?  
 4 MR. WHITE: Paragraph 31.  
 5 BY MR. WHITE:  
 6 Q. Why don't we take you to it and let you have a  
 7 look at it. It's Paragraph 31 of your First Report. It's  
 8 the last sentence there.  
 9 A. Yes.  
 10 Q. And so you're suggesting there that it's possible  
 11 that the Western Digital--that the documents were on a  
 12 computer at the courthouse, they went from there to the  
 13 Western Digital hard drive and from then to Mr. Guerra's  
 14 computer?  
 15 A. Without access to the hard drive, we can't say.  
 16 All we can say is when they were created on the hard drive.  
 17 We can't say what the pathing information was as they  
 18 existed on the hard drive. Without that hard drive, we're  
 19 just guessing.  
 20 So, all we have is that the 11 documents were  
 21 copied to Mr. Guerra's computer on July 23rd. Anything  
 22 else is just speculation by either Mr. Lynch or myself.  
 23 Q. That's all you had when you wrote your  
 24 December 2013 Report; right? But after you wrote that  
 25 Report, you got access to the Zambrano hard drives; right?

06:04 1 A. Yes.  
 2 Q. Okay. And then you wrote a report in  
 3 November 2014 that you said was to supplement your original  
 4 report; right?  
 5 A. Yes.  
 6 Q. When you analyzed the Zambrano hard drive, you  
 7 didn't find any evidence that the Western Digital hard  
 8 drive had been connected to either of the Zambrano  
 9 Computers, did you?  
 10 A. No.  
 11 Q. And you didn't--when you wrote your Supplemental  
 12 Report in December 2014, you didn't mention that, did you?  
 13 A. No.  
 14 Q. Now, you're aware, are you not, that there were  
 15 other documents that were personal to Mr. Guerra that were  
 16 also downloaded from the Western Digital hard drive to his  
 17 computer on July 23rd, 2010?  
 18 A. I don't know if I--I don't know about personal. I  
 19 know there were other documents that were copied to the  
 20 Guerra hard drive on that date.  
 21 Q. Okay. I just want to be clear about this. If we  
 22 go to Tab 9 of the binder I gave you and look at Claimants'  
 23 2020, this is one of the documents that was downloaded from  
 24 the Western Digital hard drive at essentially the same time  
 25 as the 11 documents that Mr. Lynch refers to as the draft

06:05 1 Chevron Orders; right?  
 2 A. I don't know. If you're saying it is, I don't  
 3 know.  
 4 Q. Okay. Well, let's look at Tab 13. That is  
 5 Claimants' C-2024. Are you aware that that's one of the  
 6 documents that was downloaded at the same time as the  
 7 11--one of the files that was downloaded at the same time,  
 8 essentially the same time as the 11 draft documents that  
 9 Mr. Lynch testified about?  
 10 A. I don't know one way or the other.  
 11 Q. Well, assume with me for a moment that they were.  
 12 You're not suggesting that Mr. Guerra's CV and these  
 13 pictures--there are more of them--we won't go to them--that  
 14 those pictures were taken from anywhere other than  
 15 Mr. Guerra's computer prior to the Windows reinstall, are  
 16 you?  
 17 A. I know there were a number of documents with the  
 18 name Curriculum Vitae or at least Vitae with respect to at  
 19 least one temporary file that existed on Mr. Guerra's  
 20 machine.  
 21 Q. Okay. Mr. Racich, did you review Mr. Lynch's RICO  
 22 testimony?  
 23 A. No.  
 24 Q. Were you aware that Mr. Lynch had testified at the  
 25 RICO trial?

06:09 1 Q. And you looked at Mr. Lynch's comparison of the  
 2 text of the files on Mr. Guerra's computer and the text of  
 3 the final Orders. You saw that he talked about that?  
 4 A. Yes.  
 5 Q. Okay. And you agreed that that comparison was  
 6 accurate; right?  
 7 A. It appeared to be, yes.  
 8 Q. And Mr. Lynch said that the documents found on  
 9 Mr. Guerra's computer were drafts of the Orders; right?  
 10 A. That's how he referred to them, yes.  
 11 Q. And the reason--and the reason he said that is  
 12 because the text on the documents on the Guerra Computer  
 13 were different than the final issued Orders; right?  
 14 A. There were--there were some differences, yes.  
 15 Q. Okay. So, picking up on your suggestion that  
 16 perhaps Mr. Guerra obtained those documents from the  
 17 courthouse and somehow they got on to the Western Digital  
 18 hard drive, if that's what happened, Mr. Guerra or somebody  
 19 acting for him would have had to have gone to the  
 20 courthouse on eight separate occasions and retrieved the  
 21 file from some computer there, a file that had a document  
 22 whose text was different from the final Order; right?  
 23 A. I don't know. All I can say is that they existed  
 24 on Mr. Guerra's Computer as of July 23rd, 2010, while we  
 25 don't have direct evidence that they were on Mr. Zambrano's

06:07 1 A. Not until today, no.  
 2 Q. Were you aware that there was a RICO trial?  
 3 A. Yes, that I know.  
 4 Q. And you didn't ask if Mr. Lynch had testified  
 5 there?  
 6 A. No.  
 7 Q. Okay. I want to go now to Mr. Lynch's--I want to  
 8 go now to Mr. Lynch's presentation of his direct testimony  
 9 earlier today. I want to take you to Slide Number 6.  
 10 Do you have a copy of that slide deck?  
 11 A. I do not.  
 12 MR. EWING: He can look at mine.  
 13 THE WITNESS: I was going to look at the screen.  
 14 BY MR. WHITE:  
 15 Q. Whatever you're more comfortable with, Mr. Racich.  
 16 A. All right. I have it now.  
 17 Q. Okay. Now, Mr. Racich, you looked at the metadata  
 18 associated with the files that are illustrated on this  
 19 slide; correct?  
 20 A. Assuming these are the 11 documents representing  
 21 the nine Orders, yes.  
 22 Q. Okay. And you agree that the first eight of these  
 23 documents had a Last Saved Date prior to the date that the  
 24 final order was issued?  
 25 A. I believe that's correct.

06:10 1 Old Computer. His operating system was installed,  
 2 reinstalled, in July 2010 as well. And all of these  
 3 documents pre-date that time frame.  
 4 Q. I'm talking about how those documents would have  
 5 gotten on to the Western Digital hard drive. You said they  
 6 could have come from a computer at the courthouse on to the  
 7 Western Digital hard drive; right?  
 8 A. Yes.  
 9 Q. And I'm suggesting to you that if that's what  
 10 happened, Mr. Guerra or somebody acting on his behalf,  
 11 would have had to have gone to the courthouse on eight  
 12 separate--at least on the ninth one, but eight separate  
 13 dates to get the first eight of these documents in a form  
 14 as they existed before the final Order was issued; right?  
 15 A. I don't know one way or the other. It's possible  
 16 that all of these existed with those changes in one--those  
 17 differences in one place prior to July of 2010 on  
 18 Mr. Zambrano's Computers.  
 19 I don't know as to how they existed then.  
 20 Q. But you agree that the Last Modified Dates on each  
 21 of these documents pre-dated the date when the Order was  
 22 issued by Mr. Zambrano; right?  
 23 A. Yes.  
 24 Q. Okay. Let's turn to a different topic for a  
 25 minute here.

06:12 1 You've read Mr. Zambrano's RICO testimony; right?  
 2 A. Yes.  
 3 Q. And you're aware that he testified that the whole  
 4 of the writing of the Judgment was done on his New  
 5 Computer; right?  
 6 A. Yes.  
 7 Q. Now, Providencias--that's the document that you  
 8 say later became the Judgment; right?  
 9 A. And Mr. Lynch did, yes.  
 10 Q. We'll come back to that. We'll come back to that,  
 11 Mr. Racich, but the document--Providencias is the document  
 12 that you say later became the Judgment. That document was  
 13 not drafted exclusively on Mr. Zambrano's New Computer, was  
 14 it?  
 15 A. No.  
 16 Q. Now, let's go to Mr. Lynch's--no, let's not do any  
 17 of that.  
 18 You suggested that--Mr. Ewing suggested during  
 19 cross-examination that Mr. Zambrano might have relied on  
 20 notes from a prior judge to draft parts of the Judgment;  
 21 right?  
 22 A. Yes.  
 23 Q. Do you have any forensic evidence suggesting that  
 24 that happened?  
 25 A. No.

06:15 1 Q. Now, turn to what has been referred to sometimes  
 2 in this arbitration as the Plagiarized Documents. I think  
 3 you referred to it as the "alleged Plaintiffs' unfiled work  
 4 product"?  
 5 A. Yes. My understand there's a contention as to  
 6 whether or not the documents were filed or not.  
 7 Q. Yeah. And you don't have any opinion as to  
 8 whether they were filed or not?  
 9 A. No.  
 10 Q. Okay. But you know which documents I'm talking  
 11 about?  
 12 A. Yes. In general I do, yes.  
 13 Q. Okay. And you agree that portions of the Judgment  
 14 contain text that is identical to those documents; right?  
 15 A. Can you refer me to specific examples?  
 16 Q. Well, I want to talk generally. Maybe it helps if  
 17 we go to your March 2015 Report.  
 18 A. Sure.  
 19 Q. Which you'll find behind Tab 4, and I want to take  
 20 you to Paragraph 30.  
 21 A. Got it. Paragraph--I'm sorry, which one?  
 22 Q. Paragraph 30.  
 23 A. 30. All right.  
 24 Q. So, I want to be sure I understand. You agree  
 25 that portions of the Judgment appear to contain text

06:13 1 Q. And these would be notes, if they're the prior  
 2 judge's notes, they wouldn't be filed in the public court  
 3 record; right?  
 4 A. I don't know.  
 5 Q. When you gave that opinion, did you take into  
 6 account Mr. Zambrano's testimony that nobody else wrote any  
 7 of the words?  
 8 A. I'm not sure exactly what you mean by that.  
 9 Q. Well, perhaps it would be helpful to show you the  
 10 testimony. It's Exhibit C-1980.  
 11 A. What's the tab on that? I apologize.  
 12 Q. And that's Tab 8 in the binder.  
 13 A. Okay. 1980, you said?  
 14 Q. Yeah.  
 15 So, let's go to Page 1604.  
 16 A. Okay.  
 17 Q. 1604, Lines 7 through 10.  
 18 A. Okay.  
 19 Q. Yeah. You read that testimony; right?  
 20 A. Yes, I believe so.  
 21 Q. And did you have that in mind when you suggested  
 22 that Mr. Zambrano might have just relied on notes from  
 23 another judge?  
 24 A. I don't think I had that in mind when I wrote  
 25 that.

06:16 1 identical to the documents we were just talking about?  
 2 A. In Mr. Lynch's analysis, using the Beyond Compare  
 3 software, there was text that matched the--portions of the  
 4 unfiled--the various unfiled documents.  
 5 Q. Did you perform your own analysis?  
 6 A. I looked at Mr. Lynch's analysis to see whether or  
 7 not what he had done was accurate, and it appeared to be  
 8 accurate.  
 9 Q. Okay. So, you agree that portions of the Judgment  
 10 contained texts that are identical to documents, the  
 11 documents we're talking about?  
 12 A. Yes, portions do. Yes.  
 13 Q. Okay. And you agree that the Author of the  
 14 Judgment, therefore, had to have access to copies of those  
 15 documents; right?  
 16 A. In some form, that's possible, yes.  
 17 Q. Okay. Sorry, I want to make sure that's clear.  
 18 My question was you agree that the Author of the  
 19 Judgment, therefore, had to have access to copies of those  
 20 documents; right?  
 21 A. Had to have copies? It seems likely that there  
 22 were copies of some sort. Whether or not they're paper or  
 23 electronic, I don't know.  
 24 Q. Okay. Let's pick up on electronic documents  
 25 first.

06:17 1 You didn't find electronic copies of any of those  
 2 documents on Mr. Zambrano's two computers, did you?  
 3 A. No.  
 4 Well, I believe there was one that had portions--I  
 5 don't recall. I'm trying to think of the one Excel  
 6 spreadsheet that had content, whether or not that was  
 7 considered under the unfiled documents.  
 8 Q. Okay. Setting aside that one Excel document that  
 9 you're talking about, you didn't find any of the  
 10 other--text from any of the other documents on  
 11 Mr. Zambrano's computers; right?  
 12 A. I don't believe so, no.  
 13 Q. Other than in Providencias?  
 14 A. Correct.  
 15 Q. Okay. So, let's go to Paragraph 31 of your  
 16 March 2015 Report. The last sentence is what I'm  
 17 interested in here. This is where you talk about paper  
 18 copies; right?  
 19 A. Yes.  
 20 Q. All right. You say: "I see no reason why  
 21 Mr. Zambrano could not have copied these portions of the  
 22 Judgment from filed paper copies of these documents."  
 23 Right?  
 24 A. Yes.  
 25 Q. All right. Now if I change that word "filed" to

06:20 1 in--on his computer; right?  
 2 A. I don't believe we have any evidence of that.  
 3 Q. I'm asking you a hypothetical. Is it possible  
 4 that that happened?  
 5 A. It may be possible, but we don't have any evidence  
 6 of it.  
 7 Q. Okay. And you suggested it might have been a  
 8 former judge who did the calculations, but it could just as  
 9 easily have been Pablo Fajardo; right?  
 10 A. I don't know one way or the other.  
 11 Q. And you don't know one way or the other whether  
 12 there was a former judge involved.  
 13 A. No.  
 14 Q. So, it could have been anybody who had access to  
 15 an electronic copy of the Selva Viva Database; right?  
 16 A. Or the calculations.  
 17 Q. Okay. So, it could have been anybody who had  
 18 access to the Selva Viva Database or the calculations;  
 19 right?  
 20 A. That's possible. I don't know one way or the  
 21 other.  
 22 Q. Okay. And you saw Mr. Lynch, who made this point  
 23 earlier today concerning the usage of Microsoft Excel on  
 24 the Zambrano Computers, and he testified that from October  
 25 through March, I think--sorry, through February--the

06:19 1 "unfiled," that statement is still true; right?  
 2 A. It's possible, yes.  
 3 Q. So, you see no reason why Mr. Zambrano could not  
 4 have copied portions of the Judgment from unfiled paper  
 5 copies of those documents?  
 6 A. Correct.  
 7 Q. Okay.  
 8 Now, regarding the Selva Viva Database, you  
 9 suggested that--and be careful, because it's late--I will  
 10 take you to the paragraph. In Paragraph 41 of your Report  
 11 on Page 10, this is where you talk about the Selva Viva  
 12 Database, and it's where you say that Mr. Zambrano might  
 13 have--we're in Paragraph 40 now--might have had access to a  
 14 former judge's notes; right?  
 15 A. Yes.  
 16 Q. And in Paragraph 41--sorry, it's Paragraph 41  
 17 where you say that. And right after you say that, you say,  
 18 "there may still be other explanations"; right?  
 19 A. Yes.  
 20 Q. Okay. Let's talk about what are--some of those  
 21 other explanations might be. It's possible that somebody  
 22 who had access to the Selva Viva Database in electronic  
 23 form ran those calculations, wrote the Judgment text  
 24 relating to those, put it on a thumb drive, and gave it to  
 25 Mr. Zambrano before the December 21st Providencias appeared

06:22 1 Microsoft Excel was open for a total of four minutes on  
 2 those computers; do you recall that?  
 3 A. I believe it was five, but yes.  
 4 Q. I won't quibble over four or five minutes.  
 5 And you agree with that; right?  
 6 A. According to the Microsoft Office logs, yes.  
 7 Q. Okay. And during the period between December 21st  
 8 and December 28th, Microsoft Excel wasn't used--open at all  
 9 on either of the Zambrano Computers; right?  
 10 A. Yes.  
 11 Q. Okay. Did you try and use the Selva Viva Database  
 12 to calculate the statistics that appear in the Judgment?  
 13 A. I'm not a statistician. I did not.  
 14 Q. Okay. So, you don't have any reason to disagree  
 15 with Mr. Lynch's testimony about how long it takes to do  
 16 those calculations.  
 17 A. I don't know nor I don't know Mr. Lynch's skill at  
 18 that either. I just don't know.  
 19 MR. WHITE: Mr. President, this is the point where  
 20 I was going to change to another topic that's a bit longer,  
 21 and it's 6:25. If it's convenient, I would suggest we may  
 22 break here.  
 23 PRESIDENT VEEDER: Let's break here.  
 24 MR. WHITE: Thank you.  
 25 PRESIDENT VEEDER: And we'll resume again at 9:30.

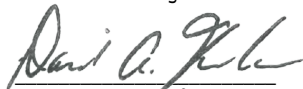
06:23 1 We ask you, as before, not to discuss your  
2 testimony or this case until you come back before this  
3 Tribunal.

4 THE WITNESS: All right. Thank you.  
5 (Whereupon, at 6:23 p.m., the Hearing was  
6 adjourned until 9:30 a.m. the following day.)  
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CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

  
DAVID A. KASDAN



IN THE MATTER OF AN ARBITRATION BEFORE A TRIBUNAL  
CONSTITUTED  
IN ACCORDANCE WITH THE TREATY BETWEEN THE U.S.A. AND THE  
REPUBLIC OF ECUADOR CONCERNING THE ENCOURAGEMENT AND  
RECIPROCAL PROTECTION OF INVESTMENT, SIGNED AUGUST 27, 1993  
(THE "TREATY")

and

THE UNCITRAL ARBITRATION RULES 1976

- - - - -X  
In the Matter of Arbitration :  
Between: :  
CHEVRON CORPORATION (U.S.A.), :  
TEXACO PETROLEUM COMPANY (U.S.A.), :  
Claimants, : PCA Case No.  
and : 2009-23  
THE REPUBLIC OF ECUADOR, :  
Respondent. :  
- - - - -X Volume 6

TRACK 2 HEARING  
ESPECIALLY CONFIDENTIAL:  
NOT TO BE PUBLICLY DISCLOSED BY PROCEDURAL ORDER NO. 29

Tuesday, April 28, 2015

The World Bank  
700 18th Street, N.W.  
J Building  
Conference Room JB1-080  
Washington, D.C. 20003

The Hearing in the above-entitled matter convened  
at 9:30 a.m. before:

- MR. V.V. VEEDER, Q.C., President
- DR. HORACIO GRIGERA NAÓN, Arbitrator
- PROFESSOR VAUGHAN LOWE, Q.C., Arbitrator

## Registry, Permanent Court of Arbitration:

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MR. RAYMUNDO TREVES

MS. NAYA PESSOA

## Additional Secretary:

MS. JESSICA WELLS

## Tribunal Expert:

MS. KATHRYN OWEN

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LitOptix

1 PROCEEDINGS  
2 PRESIDENT VEEDER: Let's start Day 6 of this  
3 Hearing.  
4 Unless there are matters by way of housekeeping,  
5 let's continue with the cross-examination of this Witness.  
6 MR. WHITE: Thank you, Mr. Veeder.  
7 J. CHRISTOPHER RASICH, RESPONDENT'S WITNESS, RESUMED  
8 CONTINUED CROSS-EXAMINATION  
9 BY MR. WHITE:  
10 Q. I want to take you back to the 105 documents that  
11 Mr. Lynch testified about in relation to drafting  
12 non-Chevron orders for Mr. Zambrano. Do you know what I'm  
13 talking about?  
14 A. Yes.  
15 Q. Now, and I think we--I want to just go over this  
16 quickly because we talked about it a little bit yesterday.  
17 Your opinion is that because the user name on those--the  
18 user name on the computer that was used to create those  
19 documents originally was dot, and Mr. Guerra's computer  
20 user name when it was imaged was Estación, that you say  
21 those Orders weren't prepared on Mr. Guerra's computer; is  
22 that right?  
23 A. I don't think I said they weren't prepared. I  
24 said they weren't originally created.  
25 Q. Okay. And I think you said yesterday, but I want

C O N T E N T S

PAGE

WITNESSES:

J. CHRISTOPHER RASICH

Cont. cross-examination by Mr. White 1216  
Redirect examination by Mr. Ewing 1270

JOHN A. CONNOR

Direct examination by Ms. Renfroe 1288  
Cross-examination by Mr. Ewing 1328

09:30 1 to make sure I understood you correctly, that there may  
2 have been a document that was created on the computer with  
3 the user name dot that was used as a template for  
4 Orders--for those drafts, and those drafts could have been  
5 prepared on Mr. Guerra's computer from the original  
6 template that came from dot; is that right?  
7 A. That's possible.  
8 Q. Okay. And you would agree, right, that in your  
9 experience historic files like these templates are often  
10 used for future files, and the reason to do that is so that  
11 formatting and templating will remain the same; is that  
12 right?  
13 A. That's possible. I've seen documents used as  
14 templates before.  
15 Q. Well, let's go to your 2014 Report, November 2014  
16 Report; if you still have the binder that I gave you  
17 yesterday, that's behind Tab 3. I do.  
18 I want to take you back to Paragraph 60, which is  
19 on Page 15.  
20 And in this paragraph, you're talking about a  
21 document that found its way onto Mr. Zambrano's computer,  
22 and you're suggesting that that may have been a template  
23 document that Mr. Zambrano was using to create new  
24 documents; right?  
25 A. It's possible, yes.

09:32 1 Q. And then I want to focus your attention on the  
2 last sentence. You say: "In my experience, historic files  
3 like this are often used as templates for future files so  
4 that formatting boilerplate language remains the same."  
5 That's your opinion; right?  
6 A. Yes, that's possible, yes.  
7 Q. Okay. And you say "often." Right?  
8 A. Yes.  
9 Q. Okay. And that may very well be what happened  
10 with Mr. Guerra getting the template that had dot and then  
11 using it to prepare Draft Orders.  
12 A. That's possible. I don't know one way or the  
13 other.  
14 Q. Now, let's look at if you still have Mr. Lynch's  
15 slides from yesterday or if you can follow on the screen.  
16 A. I'll follow on the screen.  
17 Q. Okay. I want to take you to Slide 3 from  
18 Mr. Lynch's presentation. Slide 3.  
19 Now, you were here when Mr. Lynch presented this  
20 slide; right?  
21 A. I was.  
22 Q. And you've offered no analysis or opinion to  
23 contradict what Mr. Lynch has said concerning the dates  
24 these documents were last saved on Mr. Guerra's computer  
25 versus the dates on which the corresponding Orders were

09:33 1 issued by Mr. Zambrano; right?  
2 A. I don't believe there is any evidence that these  
3 documents were last saved on Mr. Guerra's computer.  
4 Q. The user name--this is the 105--  
5 A. Oh, the 105, I apologize. I apologize. I see,  
6 okay.  
7 Q. We have a smaller number of pictures on here?  
8 A. Right.  
9 Q. But so those, you haven't offered any opinion or  
10 analysis to contradict Mr. Lynch's testimony concerning the  
11 Last Saved Dates on Mr. Guerra's computer of these  
12 documents versus the dates when these corresponding Orders  
13 were issued by Mr. Zambrano; right?  
14 A. No.  
15 Q. And then if we go on to Slide 5 of Mr. Lynch's  
16 presentation, this is where Mr. Lynch described files being  
17 saved to thumb drives, Mr. Guerra's shipping documents by  
18 TAME, and then the Orders or the documents being created on  
19 Mr. Zambrano's computers--computer--and then the Orders  
20 being issued.  
21 You haven't offered any opinion or analysis to  
22 contradict that testimony by Mr. Lynch; right?  
23 A. No.  
24 Q. No, you haven't offered any opinion or analysis to  
25 contradict Mr. Lynch?

09:34 1 A. Correct.  
2 Q. Now, at the time you prepared your December 2013  
3 Report, you had not reviewed Mr. Zambrano's RICO testimony;  
4 right?  
5 A. That's correct.  
6 Q. But you reviewed it now; right?  
7 A. Yes.  
8 Q. And were you aware, when you prepared your First  
9 Report in December 2013, that Mr. Zambrano had testified in  
10 the RICO proceedings?  
11 A. I don't know. I don't think so, but I don't know.  
12 Q. In any event, you weren't aware when you wrote  
13 that report, but you are aware now that Mr. Zambrano  
14 acknowledged that Mr. Guerra drafted Orders for him and  
15 shipped them to him by TAME?  
16 A. I believe that's my understanding, yes.  
17 Q. And you're aware that Mr. Guerra testified  
18 basically to the same effect?  
19 A. For Orders outside the Ecuadorian Judgment, the  
20 Lago Agrio, I believe that's the case. I believe that was  
21 his testimony. I could be wrong.  
22 Q. And you haven't seen any forensic evidence that  
23 would contradict that testimony by either Mr. Guerra or  
24 Mr. Zambrano?  
25 A. Which testimony in particular?

09:36 1 Q. I'm talking about testimony from Mr. Guerra and  
2 Mr. Zambrano that, with respect to Orders outside the  
3 Chevron Case, Mr. Guerra prepared drafts, used TAME to ship  
4 them to Mr. Zambrano, and Mr. Zambrano issued the Orders.  
5 A. Not from a forensic point of view, no.  
6 Q. Thank you.  
7 I want to turn to another topic now. One of the  
8 things that you have done in your analysis in formulating  
9 your opinion is to take different documents and to compare  
10 their text; is that right?  
11 A. Yes.  
12 Q. So, for example, with the December 21  
13 Providencias, you compared that with the December 28th  
14 Providencias?  
15 A. Yes.  
16 Q. And then you compared both of those documents to  
17 the Final Judgment?  
18 A. Yes.  
19 Q. And you drew conclusions from that comparison?  
20 A. Yes.  
21 Q. Okay. I want to look back to your December 2013  
22 Report that's behind Tab 1. I want to take you to Page 9,  
23 and it's Paragraph 27.  
24 Do you recall what you said there?  
25 A. Yes.

09:37 1 Q. I want to take you to the second sentence of that  
2 paragraph. You were criticizing Mr. Lynch for comparing  
3 documents, the text of documents, on the grounds that  
4 that's not an application of forensic science. That was  
5 your criticism of Mr. Lynch?  
6 A. I'm not sure it was a criticism. It was just a  
7 statement that the software and the process he used was  
8 really just comparing words from a forensic point of view.  
9 It wasn't a specialized--it wasn't a specialized science.  
10 Q. Let's look at Paragraph 28, then. It said, "The  
11 comparison done by Mr. Lynch is akin to simply reading two  
12 documents, identifying similarities and differences between  
13 the documents. Doesn't require any forensic ability."  
14 That was what you said?  
15 A. Yes.  
16 Q. But that's exactly what you did with the  
17 Providencias documents you found on Mr. Zambrano's  
18 computer; right?  
19 A. Yes.  
20 Q. Thank you.  
21 I want to move on to talk about USB Devices now.  
22 You said that there was no evidence that a document was  
23 copied from a USB Device to either of the Zambrano  
24 Computers; is that right?  
25 A. Can you point me to where I said that?

09:38 1 Q. Yeah. Let's look at your November 2014 Report,  
2 which is behind Tab 3. And it's Paragraph 7 that I have in  
3 mind.  
4 I'm sorry, I should identify the timeframe between  
5 October 2010 and February 2011. You said there's no  
6 evidence that any document was copied from a USB Device to  
7 any of the Zambrano Computers. I'm sorry, and used to  
8 create any part of the Lago Agrio Judgment.  
9 A. Yes, and used to create the Lago Agrio Judgment,  
10 yes.  
11 Q. Okay. Sorry, that's a little more precise  
12 formulation of what you said.  
13 PRESIDENT VEEDER: Just before you go on, as  
14 yesterday, it's important to speak a little bit more slowly  
15 both of you, and to leave gaps for the interpreters to  
16 interpret.  
17 MR. WHITE: Understood, thank you.  
18 BY MR. WHITE:  
19 Q. You would agree, Mr. Racich, that during the  
20 period when you say the Judgment was being drafted, this  
21 October 2010 to February 2011 period, 13 USB Devices were  
22 attached to the Zambrano Computers; right?  
23 A. I believe that's the case.  
24 Q. Let's now go to Mr. Lynch's August 2014 Report,  
25 and that's behind Tab 6 in your notebook. Let's go to

09:40 1 Page 36, Table 6. And this is a table that lists the USB  
2 Device that were used during the period October 2010 to  
3 March 2011.  
4 PRESIDENT VEEDER: Let's just pause. Is the table  
5 reference right?  
6 MR. WHITE: I'm sorry, Table 23 under heading  
7 Number 6. My apologies.  
8 BY MR. WHITE:  
9 Q. Do you have that in front of you, sir?  
10 A. I do.  
11 Q. This is a list of USB Devices used during the  
12 period October 2010 through March 2011; is that right?  
13 A. Yes.  
14 Q. Okay. Now, you haven't received all of the 13 USB  
15 Devices that were connect to the Zambrano Computers during  
16 this period of time, have you?  
17 A. No.  
18 Q. There are USB Devices that neither you nor  
19 Mr. Lynch had access to; right?  
20 A. Yes.  
21 Q. I want to look at the time period when these USB  
22 Devices were being connected.  
23 So, Providencias was created on October 11, 2010;  
24 right?  
25 A. Yes.

09:41 1 Q. And on October 12th, the next day, a USB Device  
2 was connected; right?  
3 A. Yes.  
4 Q. And then between that date, October 12th and  
5 December 21st, how many USB Devices were connected to the  
6 Zambrano Computers?  
7 A. At least seven.  
8 Q. In the period between December 21st and  
9 December 28th, two more USB devices were connected; right?  
10 A. Including the 28th, yes.  
11 Q. And then prior to the January--you've identified  
12 another document besides Providencias, Caso Texaco. Caso  
13 Texaco--between the time you recovered Judgment text and  
14 Caso Texaco from December 28th, 2010, there were a further  
15 three USB Device connections shown here; right?  
16 A. Could you give me those dates again?  
17 Q. Yeah, I'm talking about the period after  
18 December 28th when you recovered a period of Providencias,  
19 and I think it's January 19th when you recovered a version  
20 of Caso Texaco that had Judgment text. You've got the  
21 timeline?  
22 A. Yes.  
23 Q. There is a further three USBs connections recorded  
24 here.  
25 A. Yes.

09:10 1 Q. Now, when I asked you about the period between  
2 October 12 and December 21st, you said at least seven  
3 connections. That's because there could have been more;  
4 right?  
5 A. It's possible. I would have to look at both the  
6 first and the last to be sure of what evidence we have,  
7 but--so, with what the forensic evidence that we know we  
8 have the first and the last attachment, and that's what we  
9 can show and we can prove, and there may be certain other  
10 information with regards to, say, link files, local host  
11 information that we can look at as well. So I would have  
12 to look at all of those factors to see what our window is.  
13 Q. Okay. So, looking at this table, you know that  
14 these connections occurred and there may have been more?  
15 A. It's possible. I would have to look at all the  
16 information, and I don't have that at the top of my head.  
17 Q. Okay. And if one of the USB Devices that you  
18 haven't seen that was connected had Judgment text on it,  
19 you wouldn't know that, would you?  
20 A. I don't have any way to know that at this point.  
21 Q. Okay. Now, you did some analysis of what might  
22 have been on those USB Devices in your November 2014  
23 Report, so I would like to take you there. That again is  
24 behind Tab 3 in the notebook, and I would like to take you  
25 to Paragraph 60, again. I want to see if we can understand

09:45 1 at a high level what you're saying here.  
2 You're saying that you can look at the names of  
3 the files on these USB Devices and draw some conclusions  
4 about what the contents are; right?  
5 A. As Mr. Lynch said in his testimony, we can make  
6 some inferences. We don't know for sure exactly what's in  
7 the data without the data itself, but we can infer.  
8 Q. Okay. Let's go back to Mr. Lynch's August 2014  
9 Report--sorry that we're jumping around a little bit, but  
10 it's behind Tab 6--and take a look at the file names.  
11 Let's go to Page 37. I'll get the table name right this  
12 time. It's Table 24.  
13 This is where we see file names from documents  
14 that were connected to--sorry, from documents that came  
15 from USB Devices that were connected to Mr. Zambrano's  
16 computers; right?  
17 A. Well, to be technically accurate, these are  
18 documents that were opened from--documents that existed on  
19 USB Devices that were opened on Mr. Zambrano's computers  
20 while the USB Device was attached.  
21 Q. Okay. And if you do that, what you just  
22 described, it's possible you can open the USB Device, you  
23 can copy text from a document that's on it, paste it into a  
24 document, pre-existing document, on the computer, close the  
25 document that you opened from the USB Device, removed the

09:46 1 USB Device, and you won't know the contents of the document  
2 that was on the USB device from which the text was copied;  
3 isn't that right?  
4 A. We would need access to the USB Device to be  
5 certain, but as you say, we don't have that, and have no  
6 evidence of that one way or the another.  
7 Q. Okay. So, I just want to be clear, if somebody at  
8 Mr. Zambrano's computer plugged in one of these USB  
9 Devices, opened one of the documents that's listed here,  
10 copied text out of that document, pasted it into a document  
11 that was already on the Zambrano Computer, closed the  
12 document on the USB Device, unplugged the USB Device, we  
13 wouldn't know what the text was in the document that was on  
14 the USB Device; right?  
15 A. We would need access to the USB Device itself in  
16 order to definitively determine that.  
17 Q. Okay. So, what we've got here and what you looked  
18 at was the names of the files--right?--and I just want to  
19 ask you if you agree with me that if we look down to the  
20 file with the Create time of November 9th, 2010, at 20:20  
21 hours, the document name there is Pinocho1.doc; right?  
22 A. I apologize. I left my glasses in my bag.  
23 Q. It's on the screen there.  
24 A. That might be a little better.  
25 Yes, I can see that.

09:48 1 Q. Would you like to take a break and get your  
2 glasses, would that help?  
3 A. If it I could take a minute, I know exactly where  
4 they are.  
5 PRESIDENT VEEDER: Take your time, of course.  
6 THE WITNESS: I apologize.  
7 MR. WHITE: I don't want you to be without your  
8 glasses.  
9 (Pause.)  
10 THE WITNESS: Thank you very much. Okay.  
11 BY MR. WHITE:  
12 Q. I was drawing your attention to the document with  
13 the name "Pinocho1.doc." You can't draw any conclusions  
14 from the file name as to what was in the content of that  
15 document, can you?  
16 A. No.  
17 Q. Okay. And similarly, if we go down four lines, we  
18 see KKKK.docx. You can't draw any conclusions about what's  
19 in that document, can you?  
20 A. Not from the name. You can see the dates, the  
21 Last Modified Dates of those, though. For the Pinocho1 I'm  
22 looking, the Last Modified Date was September 11, 2010.  
23 Q. Okay. Got it.  
24 One thing you can tell from the name, though, is  
25 one is a .doc file and one is a .docx file. Those are Word

09:50 1 documents; right?  
 2 A. Yes.  
 3 Q. Just like Providencias?  
 4 A. Yes.  
 5 Q. And just like Caso Texaco?  
 6 Just one other I wanted to look at, if we go down  
 7 two more from the KKKK document, we have Documento1; right?  
 8 A. Yes.  
 9 Q. And you can't tell anything from that file name  
 10 other than the fact that it's a Word document like  
 11 Providencias and Caso Texaco; right?  
 12 A. Well, in this case, it's a doc file and the  
 13 Providencias and Caso Texaco are docx files, so it's  
 14 slightly different but they are Word--Office documents.  
 15 Q. Let's turn from that now to the discussion of  
 16 internet history, and I would like to go to Slide 14, if  
 17 you have your slide deck from yesterday. I want to look at  
 18 Slide 14.  
 19 A. I actually don't have the slide, I apologize.  
 20 Q. This is Mr. Racich's, yes.  
 21 So, I want to look at Slide 14 about internet  
 22 history. Your first bullet point there is the recovered  
 23 internet history reveals legal research and translation Web  
 24 sites. Do you recall that?  
 25 A. Yes.

09:51 1 Q. But to be clear, you didn't recover any evidence  
 2 of visits to legal research sites during the period from  
 3 October 2010 to February 2011, other than one visit or some  
 4 visits to fielweb; right?  
 5 A. I believe those are the ones we could establish  
 6 exact dates and times.  
 7 Q. Okay. But you didn't have any evidence of visits  
 8 to other legal research sites during the time period  
 9 October 2010 to February 2011; right?  
 10 A. Not all the entries had date and time stamps. The  
 11 ones that we did have, the fielweb was the only one with a  
 12 particular date and time stamp.  
 13 Q. Okay. And fielweb, you agree, can't be used to  
 14 access the English language cases that were or to locate  
 15 the English language cases that were found in the  
 16 December 21st Providencias; right?  
 17 A. I don't know. I didn't do any analysis as to what  
 18 documents were available in there.  
 19 Q. Okay. Now, let's go to your November 2014 Report.  
 20 Again, that's behind Tab 3. And I would like to take you  
 21 to Paragraph 49, and that's on Page 13.  
 22 This is where you say it's normal that old  
 23 internet history is deleted but cookies remain; right?  
 24 A. They can remain, yes.  
 25 Q. You didn't find any cookies or any internet

09:53 1 history that showed visits to legal research sites other  
 2 than fielweb during this period, October 2010, you say,  
 3 through March 2011; right?  
 4 A. We didn't have any metadata fields available with  
 5 dates and times that showed that, no.  
 6 Q. You say in the third sentence, this is the first  
 7 cookie you found, and that's at January 11, 2012; right?  
 8 A. There is a cookie for the "lexisweb.com," if  
 9 that's what you're referring to.  
 10 Q. And that's 11 months after--almost 11 months after  
 11 the Judgment was issued; right?  
 12 A. That's what the metadata of that particular cookie  
 13 file shows, yes.  
 14 Q. Okay. The next one you identify is on  
 15 May 31st, 2012, more than a year after the Judgment was  
 16 issued?  
 17 A. Yes.  
 18 Q. Now, let's talk about--let's talk about visits to  
 19 translation Web sites. You testify about this in  
 20 Paragraph 50; right?  
 21 A. Yes.  
 22 Q. Okay. And you talk about--the first one,  
 23 "traducegratis.com." The only evidence you found of visits  
 24 to that site happened in 2009; right?  
 25 A. Yes.

09:55 1 Q. Okay. You identify later in that paragraph a  
 2 visit to a Web site "windowslivetranslator.com" on  
 3 January 4th, 2011; right?  
 4 A. Yes.  
 5 Q. But that is after the English language authorities  
 6 appeared in the December 21st Providencias; right?  
 7 A. With regards to the one draft that we--the  
 8 snapshots that we were able to recover, there were, my  
 9 understanding is that there were--there was some case law  
 10 in that draft.  
 11 Q. Right. English language case law on  
 12 December 21st, and that's before the January 4th visit that  
 13 you found to windowslivetranslator?  
 14 A. Yes.  
 15 Q. I want to turn to a different topic now. This is  
 16 the SATJE records. And if you go to Tab 7(a) of  
 17 Mr. Lynch's--well, it's Tab 7(a), it's an exhibit to  
 18 Mr. Lynch's Report from January of this year. Have you  
 19 reviewed that exhibit?  
 20 A. Tab 7(a)?  
 21 Q. Tab 7.  
 22 A. It says Exhibit 1?  
 23 Q. Yes.  
 24 What's in here is first a translation of some  
 25 documents followed by the original Spanish-language

09:57 1 documents, so you will see the translation, then there's  
 2 the certification from Merrill Corporation, and then the  
 3 next page is where I want to take you.  
 4 So, if you go through the English-language  
 5 translation, you will come at the end of that to a  
 6 certification that says "Merrill Corporation" on it.  
 7 A. Okay. Got it.  
 8 Q. And did you review these documents before you  
 9 prepared your March 2015 Report?  
 10 A. I believe--these were attachments to Mr. Lynch's  
 11 Report?  
 12 Q. They were.  
 13 A. Yeah, then I read them.  
 14 Q. And you saw that these have official Government  
 15 seals from a Government department in Ecuador; right?  
 16 A. I don't know one way or the other. I presume that  
 17 they are official seals.  
 18 Q. Okay. What I would like to do now is look at your  
 19 SATJE information. It's Exhibit Respondent 1348, and it's  
 20 behind Tab 17 in this binder.  
 21 A. I'm glad I have my glasses.  
 22 Q. I'm glad I have a screen.  
 23 So, this is behind Tab 17 in the binder, and it's  
 24 Exhibit Respondent's 1348.  
 25 This is what you exhibited to your Report in

09:58 1 support of your conclusion that the Judgment was uploaded  
 2 from one of Mr. Zambrano's computers; right?  
 3 A. Yes.  
 4 Q. Okay. This doesn't have any official Government  
 5 seals on it, does it?  
 6 A. This was an electronic copy, no.  
 7 Q. Okay. Where did you get this?  
 8 A. I was provided this by counsel.  
 9 Q. And what's your basis for thinking that these are  
 10 official records from the SATJE system?  
 11 A. I was told by counsel that these were the exports  
 12 of the logs of the SATJE system--exported logs of the SATJE  
 13 system.  
 14 Q. Okay. And you don't explain in your Report  
 15 anywhere how counsel, or whoever obtained these from the  
 16 SATJE system, how they went about obtaining them for you,  
 17 did you?  
 18 A. I did not.  
 19 Q. Okay. I want to go now to--I want to go now to  
 20 your most recent report from March of this year. I believe  
 21 it's behind Tab 4 in your binder. I want to go to  
 22 Paragraph 18 and pick back up on a point about the internet  
 23 history.  
 24 You say that the internet history is necessarily  
 25 incomplete; right?

10:00 1 A. Typically, yes.  
 2 Q. Yeah. So--and so you don't know whether somebody  
 3 using Mr. Zambrano's computers was visiting file sharing  
 4 sites like Dropbox?  
 5 A. There is no evidence of it.  
 6 Q. Just like there is no evidence of legal research  
 7 sites during this period, but it's possible in your view?  
 8 A. Correct. There is no evidence, but it is  
 9 possible.  
 10 Q. All right. And you also don't know whether  
 11 somebody on Mr. Zambrano's computer was visiting e-mail  
 12 addresses like--e-mail sites like Hotmail, and downloading  
 13 attachments or copying text out of attachments?  
 14 A. Can you rephrase that question?  
 15 Q. Yeah.  
 16 If the internet history is incomplete, as you  
 17 suggest, it's possible that somebody on one of  
 18 Mr. Zambrano's computers could have logged in to Hotmail  
 19 and found a document or found text in an e-mail and cut and  
 20 pasted it into Providencias and you wouldn't know that.  
 21 A. Those are two different things. The internet  
 22 history itself wouldn't necessarily remove the process of  
 23 downloading a document, so if you downloaded a document,  
 24 the document would, in fact, be created on the local  
 25 machine. So, in order to get information out of a

10:02 1 document, it would be saved on the local computer, and  
 2 there would--or could--be evidence of that.  
 3 As far as content of an e-mail, the internet  
 4 history wouldn't tell us that one way or the other whether  
 5 or not that occurred, but again, there is no evidence about  
 6 that.  
 7 Q. Right. So, okay, fair point about downloading a  
 8 document. What if you just cut and pasted text? Then you  
 9 wouldn't--the internet history wouldn't tell you that;  
 10 right?  
 11 A. No, the internet history would not tell us that.  
 12 Q. Okay. Now, I wanted to look at some of the  
 13 internet history that you did recover--oh, yeah, sorry, one  
 14 other question.  
 15 Hotmail allows you to open a document without  
 16 downloading it; right?  
 17 A. You can preview certain types of documents. It's  
 18 possible.  
 19 Q. Yeah. And you could cut and paste text out of one  
 20 of those preview documents?  
 21 A. I don't think you can cut and paste document text  
 22 from that.  
 23 Q. But you can copy and paste?  
 24 A. I believe so.  
 25 Q. All right. Well, looking at your Paragraph 18 on



10:03 1 Page 5 of the most recent report, you've identified a Web  
2 site here where there were multiple visits--multiple hits,  
3 you call it--and that is Live.com; right? The log-in page  
4 on Live.com; right?  
5 A. Yes.  
6 Q. And this is an internet hit you got on  
7 Mr. Zambrano's computer?  
8 A. Yes.  
9 Q. And that is the log-in page or can be used as the  
10 log-in page to access Hotmail; right?  
11 A. Yes.  
12 Q. So, the user of Mr. Zambrano's computer was, we  
13 know from the internet history, going to the log-in page  
14 for Hotmail; right?  
15 A. Yes.  
16 Q. And if we go to the next page, top of Page 6, you  
17 show a hit count of 14 on January 7th, 2011; right?  
18 A. Yes.  
19 Q. And then you see a hit count of 29 on  
20 January 13th, 2011; right?  
21 A. Yes.  
22 Q. That means that, at a minimum, somebody using the  
23 Zambrano Computers had gone to the log-in page of Hotmail  
24 14 times at least by January 7th, 2011, and a further 15  
25 times by January 13th; right?

10:04 1 A. Yes. The hit count indicates an incremental  
2 hitting of that page.  
3 Q. So, during this period in early January 2011, a  
4 month before the Judgment was issued, somebody on  
5 Mr. Zambrano's computer was logging in to Hotmail; right?  
6 A. Yes.  
7 Q. All right. Now, did you recover the contents of  
8 any e-mails that were opened from Hotmail on Mr. Zambrano's  
9 computer during this time?  
10 A. No.  
11 Q. No. Now, one of the things that you've raised in  
12 this report concerning Mr. Guerra's internet history is  
13 that you found similar visits to Hotmail; right?  
14 A. Yes.  
15 Q. And you say that that's--the fact that that's  
16 there and you can't find the e-mails, that's evidence that  
17 somebody was deleting e-mails on Mr. Guerra's computer;  
18 that's what you said, right?  
19 A. It's a little different. What we were able to do  
20 is recover fragments of the Hotmail messages themselves  
21 that, the content, the body is no longer available on the  
22 computer. And, as Mr. Lynch said, these types of e-mails  
23 aren't really--they're not really designed to be stored  
24 permanently, but parts of them are downloaded into the  
25 internet history. We didn't find any--any examples of

10:05 1 fragments like that on the Zambrano Computers.  
2 Q. Did you do that kind of recovery exercise on  
3 Mr. Zambrano's computers?  
4 A. I believe we pulled--we did the same process for  
5 all three computers, yes.  
6 Q. And the fact that you didn't find fragments on  
7 Mr. Zambrano's computer, that doesn't mean that somebody  
8 wasn't opening e-mails on that computer; right?  
9 A. It doesn't, but again, it doesn't mean that  
10 definitively, but we have no evidence one way or the other.  
11 All we--we do have evidence of that on Mr. Guerra's machine  
12 but we don't have it on Mr. Zambrano's machine.  
13 As you said, there is a log-in, there is evidence  
14 that someone went to the log-in a number times, but there  
15 is no evidence of what e-mail was opened, if any at all,  
16 from what we have here.  
17 Q. Okay. So, all you're saying there is that you  
18 know that whoever logged into Hotmail on Mr. Guerra's  
19 computer was able to see some e-mails, but you don't--all  
20 you have on Mr. Zambrano's computer is that somebody went  
21 29 times to log in to Hotmail but you didn't recover any  
22 e-mail fragments?  
23 A. That's correct.  
24 Q. Okay. So, as far as you can tell, if somebody  
25 actually found any e-mails in the 29 times they logged into

10:06 1 Hotmail from Mr. Zambrano's computers, records of what  
2 those e-mails said are not there; right?  
3 A. We don't have any evidence of that at all.  
4 Q. Okay. Now, turning to Mr. Guerra's e-mails, if  
5 whoever was visiting the Hotmail site on Mr. Guerra's  
6 computer simply visited Hotmail, opened their in-box,  
7 looked at e-mails, read e-mails, maybe even replied to  
8 e-mails, those e-mails wouldn't be stored locally on the  
9 computer in the ordinary course, would they?  
10 A. As discrete files, some of the data would be  
11 available in the "pagefile.sys." There likely could be  
12 information that would be stored there for at least a  
13 finite period of time. But as far as maintaining a  
14 database outside of logging in to some sort of client,  
15 there is no evidence that that occurred on Mr. Guerra's  
16 machine.  
17 Q. Let's simplify this. What you saw on Mr. Guerra's  
18 machine is fully consistent with somebody who just opened  
19 e-mails and closed them without ever taking active steps to  
20 delete them from the computer; right?  
21 A. As far as user? I don't think I ever said that  
22 the user actively deleted it. I said that they were  
23 deleted.  
24 Q. You're saying that they were physically present on  
25 the computer and somebody went in and deleted them?

<p>Sheet 10</p> <p style="text-align: right;">1242</p> <p>10:08 1 A. No, I said that they--that there were fragments 2 and information that were there, and then as we--when we 3 received the Guerra image, those weren't there anymore as 4 active data. 5 Q. That doesn't mean that somebody went in and 6 deliberately deleted e-mail content; right? 7 A. No, I didn't say--I don't believe I said that. 8 Q. Thank you. Now, you said that you found no 9 evidence of e-mails between Guerra and the Lago Agrio 10 Plaintiffs' lawyers; right? 11 A. Yes. 12 Q. That doesn't mean that there weren't any e-mails 13 between Guerra and the Lago Agrio Plaintiffs' lawyers. It 14 just means you didn't find any on this computer. 15 A. All I can go on is what the data has. I don't 16 have any information to show that that information existed. 17 Q. Yeah. But you don't--but you can't conclude to a 18 reasonable degree of certainty that that never happened; 19 right? 20 A. No, but I can conclude to a reasonable degree of 21 scientific certainty that it's not there. 22 Q. It's not there, but you don't know that it was 23 never there? 24 A. There is no evidence to it. 25 Q. Yeah. There is no evidence that it was there, but</p>	<p style="text-align: right;">1244</p> <p>10:11 1 A. I do. 2 Q. Okay. That's a Gmail e-mail address; right? 3 A. Yes. 4 Q. And that says "SDonziger@gmail.com"; right? 5 A. Yes. 6 Q. Okay. That's Mr. Donziger's e-mail address; 7 right? 8 A. I would have to go back and look, but I believe 9 that's correct. 10 Q. Well, when you searched to see if there were 11 records of any e-mails to and from the Lago Agrio 12 Plaintiffs' lawyers you had a list of e-mail addresses you 13 were searching; right? 14 A. Yes. 15 Q. Okay. And that's one of them; right? 16 A. That's an e-mail address, yes. 17 Q. Okay. And did you find this when you were doing 18 your searches? 19 A. I can't--I don't know. I don't--I honestly don't 20 know. 21 Q. Okay. Well, we can close out this part of the 22 program, and I want to look at another file record. I want 23 to go to File Record 226. Okay. And this one--Jamie, if 24 you'll just Control-F and do a search for DONZ. 25 Okay. We find in this file record another</p>
<p style="text-align: right;">1243</p> <p>10:09 1 you can't exclude that it was there; right? 2 A. I just don't have any evidence one way or the 3 other. I have that it's not there. 4 Q. Okay. Let's look at Exhibit 2 to your March 2015 5 Report, and this is slip-sheeted in the binders because 6 it's a native document that we're going to have to go into 7 on the screen. 8 A. Okay. 9 Q. Okay. And let's go to the Hotmail Web mail 10 fragments here. This is an exhibit you prepared; right? 11 A. Yes. 12 Q. Okay. Let's go to File Record 32. 13 Okay? Again, this is information that you 14 prepared and put in your exhibit? 15 A. Yes. 16 Q. Okay. Now, if we right click on this and go to 17 View Source, that's the Code behind the e-mails; right? 18 A. It's the HTML/XML information there, yes. 19 Q. Okay. And down the right-hand side you--we see 20 Numbers 1, 2, 3, 4; right? 21 A. Yes. 22 Q. I want to go down to Line 1815. Okay. And ask 23 Jamie to highlight--yeah--the name that the cursor is on 24 right now. 25 Do you see that?</p>	<p style="text-align: right;">1245</p> <p>10:12 1 reference to the e-mail address, to an e-mail address 2 SDonziger@gmail.com; right? Mr. Donziger's e-mail address? 3 A. Yes. 4 Q. Okay. And would it surprise you to know--I'm not 5 going to go through the exercise, but if we do this 6 multiple times, you'll find multiple references here? 7 A. That's possible. 8 Q. Did you find these references when you were doing 9 your searches? 10 A. I can't recall sitting here. I can't imagine that 11 the searching--we used NK Search Tool to do it. It would 12 have pulled this up. 13 MR. WHITE: Thank you, sir. 14 Mr. Veeder, if we took a five-minute break, we 15 might be able to shorten this and wrap things up. 16 PRESIDENT VEEDER: Never fails. Five-minute 17 break. 18 MR. WHITE: Thank you. 19 (Brief recess.) 20 PRESIDENT VEEDER: Let's resume. 21 MR. WHITE: Thank you, sir. 22 BY MR. WHITE: 23 Q. Mr. Racich, I want to take you to another one of 24 these very large documents that we need to put on the 25 screen, and that is Exhibit 21 from Mr. Lynch's August 2014</p>

<p>Sheet 11</p> <p style="text-align: right;">1246</p> <p>10:20 1 Report.  2 You recognize this; this is the internet history  3 from Mr. Zambrano's Old Computer?  4 A. That might help. Yes.  5 Q. Okay. What I want to take you to is Page 1104.  6 This is about halfway through the document, which is why we  7 don't have it all printed. Page 1104, I want to take you  8 to an entry on January 12th, 2010, which we'll highlight  9 here. And you may be able to see it easier on the screen  10 that's in front of you rather than the big screen.  11 But that's an access to Hotmail; right?  12 A. Yes. Yes, it appears to be.  13 Q. Okay. And that's at 5:33 in the evening on  14 January 12, 2011; right?  15 A. Yes.  16 Q. Okay. Now, I want to take you down two minutes  17 later to 5:35 that same day and highlight the entry we see  18 there.  19 Do you see that?  20 A. Yes.  21 Q. That shows that somebody on Mr. Zambrano's Old  22 Computer opened the document Caso Texaco at 5:35 that day;  23 right?  24 A. Yes, that's the Old Computer, and there are a  25 number of documents that were opened in quick succession</p>	<p style="text-align: right;">1248</p> <p>10:24 1 A. Yes.  2 Q. That was your opinion in November of 2014; right?  3 A. Yes.  4 Q. In your March 2015 Report you relied on the  5 OSessions logs; right?  6 A. To the fact that they're within the context that  7 they're available, yes.  8 Q. So, you think that they're sufficiently reliable  9 for purpose of the analysis you did in March of this year?  10 A. For the purposes that I relied on them, yes.  11 Q. And that's actually the subject of Slide 10 of  12 your presentation from yesterday; right?  13 A. Yes.  14 Q. So, let's go to Slide 10.  15 And you're saying that there is  16 consistent--consistent Microsoft Office--sorry--Microsoft  17 Word use between October 2010 and February 2011. That's  18 the point you're making; correct?  19 A. Yes.  20 Q. And the reason that you do this is found in your  21 March 2015 Report at Paragraph 23, so let's go behind  22 Tab 4.  23 Sorry. That's where you describe what's in your  24 slide. Where I want to take you now is to Paragraph 9 of  25 the March 2015 Report.</p>
<p style="text-align: right;">1247</p> <p>10:21 1 after that.  2 Q. Right. So, at 5:33 on January 12th, somebody on  3 Mr. Zambrano's Old Computer opens Hotmail, and two minutes  4 later they open Caso Texaco; right?  5 A. Yes.  6 Q. Now, just so that we're oriented in time here,  7 that is--that's the 12th of January 2011. The 19th of  8 January 2011 is the date on which you recovered a version  9 of Caso Texaco that had Judgment text in it; right?  10 A. Yes.  11 Q. Thank you, Mr. Racich.  12 I want to move from here to the discussion of  13 OSession logs. We can go to it if you need to, but I just  14 ask you if you recall that in your November 2014 Report you  15 criticize Mr. Lynch's reliance on OSession logs on the  16 grounds that those logs are unreliable.  17 A. No. It was more along the lines that Mr. Lynch  18 didn't provide any support for the fact that they said what  19 he said they said.  20 Q. Well, let's look at your November 2014 Report,  21 then, and I want to take you to Paragraphs 72 and 73. This  22 is behind Tab 3 in the notebook. Page 18. And at the end  23 of Paragraph 73 it's where you say: "In my experience the  24 log entries have been inconsistent (if they were are  25 created at all) on various computers I've analyzed."</p>	<p style="text-align: right;">1249</p> <p>10:25 1 And this is where you're using the OSession logs.  2 You're using it to draw this comparison between two  3 scenarios. One is a scenario where Mr. Zambrano's  4 assistant writes the Judgment. The other is that a third  5 party writes the Judgment and gives it to Mr. Zambrano  6 immediately before he issued it on February 14, 2011. Do  7 you recall that?  8 A. Yes.  9 Q. And that second scenario about a third party  10 giving it to Mr. Zambrano right before it's issued, you say  11 that didn't happen because of your analysis of the OSession  12 logs; right?  13 A. Well, with regard to the OSession, what I was  14 talking about with the fact that they're not necessarily  15 complete is they're not a--there are instances on different  16 types of operating--well, not operating system, different  17 versions of Microsoft Office that are installed where the  18 OSessions are not available at all or the fact that there  19 are instances where the OSessions aren't complete due to  20 the fact that they are not saved and recorded. As we  21 described at least two instances where Microsoft Office was  22 crashed or where Microsoft Office has issues which are not  23 necessarily recorded in the OSessions.  24 Q. We've moved on from that point, Mr. Racich. Maybe  25 it would be helpful if we go to Paragraph 23 of this</p>

10:26 1 Report. This is under the heading where you discuss  
 2 OSession logs.  
 3 You say that there would be unreasonably long  
 4 periods of use in Microsoft Word during this period in  
 5 early February 2011, if somebody had given a copy of the  
 6 Judgment to Mr. Zambrano at that point in time. That's  
 7 what you're using OSession logs for in your Report; right?  
 8 A. Yes.  
 9 Q. And that's to refute the scenario you described in  
 10 Paragraph 9 that some third party gave Mr. Zambrano a copy  
 11 of the Judgment right before it was issued; right?  
 12 A. Again, it's what evidence we have. This is the  
 13 evidence that we do have.  
 14 Q. Here's where I'm going with this, Mr. Racich.  
 15 That's a straw man argument; right? Nobody from  
 16 the Claimants--Mr. Lynch--nobody has ever suggested that  
 17 somebody gave a pre-printed or pre-drafted copy of the  
 18 Judgment to Mr. Zambrano right before it was issued and  
 19 then it was uploaded to SATJE; right?  
 20 A. I don't know one way or the other.  
 21 Q. Okay. Let's talk about--sorry, one more thing on  
 22 the OSession logs. Let's go to Mr. Lynch's January 2015  
 23 Report that's behind Tab 7. Let's go to Page 20.  
 24 Now, you described in your Report that there was  
 25 near constant use--this is on your Slide 10--consistent

10:28 1 Microsoft Word use between October 2010 and February 2011;  
 2 right?  
 3 A. Yes.  
 4 Q. When we talk about the edit time for Providencias,  
 5 I want to focus on the period between December 21 and  
 6 December 28, 2010.  
 7 A. Okay.  
 8 Q. And you've suggested that the edit time in  
 9 Providencias between December 21 and December 28, 2010, may  
 10 not tell the full story of when Judgment text was being  
 11 drafted because there could have been drafting going on in  
 12 other documents; is that your testimony?  
 13 A. That's possible, yes.  
 14 Q. So, I want to focus in on that period and the  
 15 issue of whether drafting was going on in other documents  
 16 that's not reflected in the edit time of Providencias  
 17 between December 21, 2010, and December 28, 2010.  
 18 Now, these two paragraphs are where Mr. Lynch  
 19 describes--  
 20 A. I'm sorry, which paragraphs?  
 21 Q. The two paragraphs at the bottom of Page 20.  
 22 A. Thank you.  
 23 Q. Mr. Lynch sets out the edit time for Providencias  
 24 as 17.4 hours during the Christmas week of 2010; right?  
 25 A. I believe that's correct.

10:30 1 Q. Now, if somebody was working in a Microsoft Office  
 2 document other than Providencias, that would be reflected  
 3 in the OSession logs; right?  
 4 A. Barring some sort of issue where it wasn't  
 5 recorded, yes.  
 6 Q. Okay. And the only time that Microsoft Word was  
 7 active, that the OSession logs show that Microsoft Word was  
 8 active on the Old Computer during Christmas week of 2010 is  
 9 aside from the edit time of Providencias, the total amount  
 10 of time is 52 minutes; right?  
 11 A. Can you repeat that? I apologize.  
 12 Q. Yeah.  
 13 So, Microsoft Word--sorry, Providencias has an  
 14 edit time of 17.4 hours between December 21 and  
 15 December 28, 2010; right?  
 16 A. Yes.  
 17 Q. Okay. And that's the Christmas week; right?  
 18 A. Yes.  
 19 Q. Okay. And the OSession logs show that Microsoft  
 20 Word was opened during that period for a total of 18.3  
 21 hours; right?  
 22 A. I'd have to go back to be sure, but that sounds  
 23 about right.  
 24 Q. Okay. And what that tells us is that, if somebody  
 25 was working in another Word document during the Christmas

10:31 1 week of 2010 on Mr. Zambrano's Old Computer, for whatever  
 2 purpose, and they were outside Providencias, they were only  
 3 doing it for less than an hour; right?  
 4 A. That's the minimum amount of time based on the  
 5 OSessions, so the OSessions could be incomplete, but with  
 6 regards to--that's our minimum.  
 7 Q. They're only incomplete if something unusual  
 8 happened; right?  
 9 A. If something happened. I don't know if it's usual  
 10 or not. Microsoft Word unfortunately crashes a lot for me,  
 11 but if there is a crash on Microsoft Word, that would  
 12 necessarily limit the OSessions.  
 13 Q. And you have no evidence that there was a crash of  
 14 Microsoft Word during the Christmas week of 2010 on  
 15 Mr. Zambrano's computer, do you?  
 16 A. Well, we know it happened twice or at least we  
 17 suspect it happened twice based on the temporary files that  
 18 were saved and not deleted but once on the 21st and once on  
 19 the 28th.  
 20 Q. Okay. But between these dates, you don't have any  
 21 evidence that that happened?  
 22 A. We don't have any other instance like that between  
 23 those time frames.  
 24 Q. All right. I want to talk about the edit time in  
 25 Providencias, Mr. Racich.

<p>Sheet 13</p> <p style="text-align: right;">1254</p> <p>10:33 1 Edit time is a type of metadata; right?  2 A. Yes.  3 Q. It shows us the amount of time a document was open  4 on a computer?  5 A. Yes.  6 Q. And you saw Mr. Lynch's demonstration yesterday--  7 A. I apologize. It shows the amount of time the  8 document was open and then saved.  9 Q. Okay.  10 A. With a change.  11 Q. Okay. But any changes that were made that weren't  12 saved wouldn't be reflected in the document; right?  13 A. Correct.  14 Q. Okay. So, edit time is the maximum amount of time  15 a person could spend actively working in the document and  16 then saving it; right?  17 A. In general. I can think of some exceptions to  18 that, but in general, it's a fairly good indicator of that.  19 Q. But it's not the minimum amount of time; right?  20 You could have a document open in Microsoft Word and the  21 edit time accrues while you have no activity going on in  22 the document?  23 A. It begins to toll when the document starts to be  24 opened.  25 Q. Yeah. In other words, you can have edit time</p>	<p style="text-align: right;">1256</p> <p>10:35 1 metadata from the recovered versions of Providencias;  2 right?  3 A. Yes, that Mr. Lynch recovered, yes.  4 Q. Yeah. So, this is where we get from Document 11  5 the file created on October 11, 2010; right?  6 A. Yes.  7 Q. And then we can see the Author name CPJS, that's  8 where we get that it's the Old Computer?  9 A. Yes.  10 Q. And then that document is Last Saved By CPJS;  11 right?  12 A. Yes.  13 Q. And then the Last Saved Date is December 21st,  14 2010; right? So, that's the December 21st version of  15 Providencias.  16 A. Yes.  17 Q. Now, the total edit time we get here from the  18 creation of this document on Mr. Zambrano's computer until  19 December 21st is 2,107 minutes; right?  20 A. Yes.  21 Q. That's 35 hours? Approximately?  22 A. My math is awful, but yes, I believe that's  23 approximately correct.  24 Q. Okay. So, the most any of time anybody spent  25 typing any text or cutting and pasting any text into that</p>
<p style="text-align: right;">1255</p> <p>10:34 1 accruing in a document, getting higher in a document, while  2 nobody is actually actively working in the document; right?  3 A. That's possible.  4 Q. Now, it happens a lot; right? I mean, people open  5 a document, they type text into it or cut and paste text  6 into it, or whatever they are doing, they get up and go do  7 something else, they come back and do some more work, and  8 then they Save it, the time they spent doing something  9 else, that's recorded as edit time; right?  10 A. It continues to toll as time goes by.  11 Q. Yes. So, the time spent doing something else in  12 the hypothetical I just gave you, the edit time is  13 accruing; right?  14 A. In the hypothetical you gave, yes.  15 Q. Okay. Now, Providencias was first opened on  16 Mr. Zambrano's computer on--first created on Mr. Zambrano's  17 computer on October 11, 2010; right?  18 A. That's what the metadata indicates.  19 Q. And that's the Old Computer; right?  20 A. Yes.  21 Q. Okay. Let's look at Mr. Lynch's August 2014  22 Report, which you may still have open--I'm sorry, it is  23 Tab 6.  24 Let's go to Page 28, and that's Table 8. Table 8  25 I wanted to take you to. That's the metadata--and that is</p>	<p style="text-align: right;">1257</p> <p>10:36 1 document is around 35 hours; right?  2 A. On this particular document, yes.  3 Q. Yeah. Now, that document had 81 pages of text;  4 right?  5 A. Yes.  6 Q. So, if Mr. Zambrano was dictating text to  7 Ms. Calva for this period October--from the Create Date to  8 the Last Saved Date, that's less time spent dictating than  9 one 40-hour work week; right?  10 A. As far as the timing goes, the 35 hours is less  11 than one 40-hour work week.  12 Q. Yeah. So, over the course of ten weeks  13 approximately, you've got less than a 40-hour work week's  14 worth of actual activity in this document?  15 A. In this particular document.  16 Q. Yeah. Now, in your November 2014 Report--we can  17 go there if you need to--you say that text was created at a  18 rate of one page per day if the work was evenly spaced;  19 right?  20 A. Yes.  21 Q. That works out to--if we make your assumption,  22 that works out to less than 30 minutes a day of dictation;  23 right?  24 A. I'll take your word for that on that one.  25 Q. Okay. Now, you're aware that Mr. Zambrano and</p>

10:38 1 Ms. Calva, the assistant, both testified that they didn't  
2 start working on the Judgment until  
3 mid-November 2011--sorry, 2010; right?  
4 A. I don't recall off the top of my head. I would  
5 have to go back to the testimony.  
6 Q. Okay. Well, assume with me for a minute that  
7 that's true. The period between October 11 and the  
8 mid-November start time of their work, any edit time that  
9 was accrued then, any Saves that accrued then, obviously  
10 wouldn't be Judgment text; right?  
11 A. I don't know. All I can say is that the document  
12 was created on October 11th, and by December 21st, it had  
13 the 42 percent of the Judgment in it.  
14 And I apologize.  
15 As to when it was put in there, I don't know  
16 specifically.  
17 Q. You don't have any evidence that there was  
18 Judgment text in Providencias prior to mid-November 2010;  
19 right?  
20 A. I don't have any evidence one way or the other  
21 when the data--when the text of the document, when it was  
22 placed in. All I know is that, prior to the--it happened  
23 before December 21st of 2010.  
24 Q. And so, you can't say it happened before  
25 December 1st?

10:39 1 A. No, or after. I can't say one way or the other.  
2 Q. Okay. And another date I want to give you is  
3 December 17th. You don't have any evidence that there is  
4 any Judgment text in Providencias as of December 17th;  
5 right?  
6 A. We don't have any evidence other than the  
7 snapshots that we have.  
8 Q. Okay. And that's another way of saying there is  
9 no evidence of any Judgment text in Providencias prior to  
10 December 17th, 2010?  
11 A. Can you repeat the question?  
12 Q. Yeah.  
13 I want to be clear, I want to make sure the  
14 Transcript is clear. Your testimony is that there is no  
15 evidence that there was any Judgment text in Providencias  
16 as of December 17th, 2010?  
17 A. What I can say is that the document as of the 21st  
18 had the data from the--had the Judgment--the amount of  
19 Judgment text that was in it as of December 21st. I can't,  
20 nor can anyone else I believe determine exactly when the  
21 data was put in there. We don't have evidence of that one  
22 way or the other. We do have evidence of when it existed  
23 within the bounds of certain snapshots.  
24 Q. Mr. Racich, I'm going to ask you this again  
25 because it's important. You don't have any evidence that

10:41 1 there was any Judgment text in Providencias as of  
2 December 17th, 2010? Yes or no.  
3 A. We don't know one way or the other.  
4 Q. So you have no evidence of Judgment text in  
5 Providencias as of December 17th?  
6 A. We only have the snapshots that we have as of  
7 December 21st and December 28th, and March 4th.  
8 Q. Mr. Racich, that's not an answer to the question  
9 I'm asking. The question I'm asking is, as of  
10 December 17th, 2010, you've got no evidence that there was  
11 any Judgment text in Providencias?  
12 A. Again, what we have are our snapshots in time.  
13 Where we have evidence as to when the data was there are in  
14 our snapshots.  
15 Q. That's what you do have. I'm asking you about  
16 what you don't have. What you don't have is evidence of  
17 Judgment text in Providencias as of December 17th--  
18 MR. EWING: Mr. President, I would object. This  
19 is asked and answered I think three, maybe four times.  
20 PRESIDENT VEEDER: I think we're getting a  
21 difficulty between the question and the answer, but my  
22 colleague is going to clarify with a question from the  
23 Tribunal's perspective.  
24 ARBITRATOR LOWE: It's simply that I hear a clear  
25 answer from the Witness, and I don't understand the

10:42 1 distinction that's leading you to ask the question again.  
2 I wonder if in case this distinction should become  
3 important later on, you can make it clearer.  
4 MR. WHITE: Yes, it's simply this. I'm asking the  
5 question to confirm that there is no Judgment text--that  
6 there is no evidence of Judgment text in Providencias on  
7 December 17th. What the Witness is not doing is not  
8 answering what wasn't there. He's saying what was there on  
9 December 21st. I don't think the Transcript is clear.  
10 ARBITRATOR LOWE: Well, isn't he saying that  
11 that's the only evidence that he has?  
12 MR. WHITE: If that's clear to the Tribunal, I can  
13 move on from this question.  
14 PRESIDENT VEEDER: I think you've made your point,  
15 and we'll come back to what it is later.  
16 MR. WHITE: Thank you, Mr. President.  
17 BY MR. WHITE:  
18 Q. Now, given the testimony you've just given, it's  
19 possible, consistent with the forensic evidence you've seen  
20 that all of the Judgment text that appears in Providencias  
21 on December 21st could have been cut and pasted into that  
22 document in the days immediately preceding December 21st,  
23 or, indeed, on December 21st; correct?  
24 A. It's possible, but there is no evidence of it.  
25 Q. Okay. Now, hypothetically, if I wanted to--if I

10:43 1 received a document with Judgment text, and I wanted--on  
 2 December 21st or 20th or 19th--and I wanted to create the  
 3 impression that that document may have been on the computer  
 4 prior to those dates, and I wanted to have it in a document  
 5 that had some edit time in it and multiple Saves, I could  
 6 go back, look at an old file on my computer and simply cut  
 7 and paste the text that I wanted in the document into that  
 8 document, and you would see what you're seeing in the  
 9 December 21st Providencias: A document that was created a  
 10 few months before, multiple Saves, and a chunk of Judgment  
 11 text; right?  
 12 A. So, I just want to be clear with the hypothetical.  
 13 You're talking about opening the document that existed  
 14 previously, presumably this October 11th document.  
 15 Q. Yep.  
 16 A. Opening it and to give the impression that it had  
 17 been worked on prior to copying and pasting--I don't think  
 18 the evidence supports that in this case.  
 19 Q. Yeah. I'm not asking whether you have evidence  
 20 that says that happened. I'm asking if it could have  
 21 happened consistent with the evidence you see.  
 22 A. I don't--okay.  
 23 Q. So--so, the scenario is: Somebody wants to create  
 24 the impression that there has been work done, there has  
 25 been Saves on a document, that they--the text of which they

10:45 1 get in mid- to late-December 2010, they can just go back  
 2 and find an old file on the computer, open it up, dump the  
 3 Judgment text into it, and it will look like what you see  
 4 here, a document that was opened a few months ago, multiple  
 5 Saves, and some edit time; right?  
 6 A. I think there is another datapoint that's here  
 7 that doesn't support that.  
 8 Q. I'm asking you to confine yourself to the  
 9 hypothetical that I'm giving you.  
 10 A. And I appreciate that. I'm saying that you asked  
 11 if whether or not the evidence that we have here supports  
 12 that theory, and I don't believe so.  
 13 There is evidence--and I know in my last Report,  
 14 in Exhibit 3, I believe it was, it shows that the  
 15 Providencias.doc was opened hundreds of times over the  
 16 lifespan of the document between October 11th and  
 17 that--what I'm choking on is that when that--when that  
 18 entry, the internet history entry that shows that,  
 19 indicates, that's not consistent with someone opening a  
 20 document hundreds of times. That's not consistent with  
 21 someone doing a--open up to sort of fake people out that  
 22 they were working on the document.  
 23 Q. Let's go about this another way, Mr. Racich.  
 24 Are you aware that Providencia is the Spanish word  
 25 for order?

10:46 1 A. I am.  
 2 Q. And the Spanish word for judgment is Sentencia?  
 3 A. I am.  
 4 Q. Okay. And that Providencias with an S is plural;  
 5 right?  
 6 A. Yes.  
 7 Q. It means Orders?  
 8 A. Yes.  
 9 Q. Okay. Now, you said earlier that you can look at  
 10 the title that somebody gives a document and draw some  
 11 conclusions about what they put in the document; right?  
 12 A. It's possible. You can infer.  
 13 Q. Yeah. And using that inference, wouldn't you  
 14 infer that when somebody creates a document called  
 15 Providencias, they're intending to put Orders in it, but if  
 16 they were going to put a judgment in it, they'd call it  
 17 Sentencia?  
 18 A. I can't tell as far as specifically. I said you  
 19 can infer, but what people have as a matter of habit, I  
 20 don't know.  
 21 Q. Yeah, but it would be a logical inference that  
 22 when you're looking at a document that says Providencias,  
 23 when you open it up, you're going to find Orders; right?  
 24 A. Again, it depends on who is writing the Order  
 25 and/or Judgment.

10:47 1 Q. And that's an inference you're not prepared to  
 2 draw?  
 3 A. No, not here.  
 4 Q. Okay. And you're aware that October 11, the  
 5 Create Date of Providencias, are you aware that that's the  
 6 date that Mr. Zambrano came back on to the case?  
 7 A. I may have--I may have known that.  
 8 Q. Are you aware that he issued an Order that day?  
 9 A. No, I was not.  
 10 Q. Okay. Well, with that in mind, coming back to my  
 11 hypothetical, if Mr. Zambrano wanted to create the  
 12 impression that he had been working on Judgment texts and  
 13 Providencias for a period of months, he could go back to a  
 14 document called "Providencias"--not Sentencia--in which he  
 15 had been working on Orders, which there are multiple Saves  
 16 and there's some edit time--and he could cut and paste  
 17 Judgment text into that document, and it would appear that  
 18 that document had had Judgment--may have had Judgment text  
 19 for a period of time and that it may have been edited and  
 20 Saved multiple times.  
 21 A. What we have here is--the only datapoints that we  
 22 have evidence of is that the Ecuadorian Judgment existed in  
 23 this Providencias, and it's a particular Providencias in a  
 24 particular folder structure.  
 25 And we have two instances, one where it's been

10:49 1 opened on the Old Computer, one where it's been opened on  
 2 the New Computer. On the Old Computer it's been opened in  
 3 excess of 400 times between the lifespan of the document,  
 4 October 11th, and--again, the latter date is where I'm  
 5 tripping. I can't remember what that latter date is--and  
 6 on the New Computer we have at least 39 or 40 times the  
 7 same document in that particular location being opened.  
 8 And the only information we have at present is  
 9 that the Ecuadorian Judgment, or parts of it, existed in  
 10 that document as of December 21st, the 28th, presumably  
 11 February 1st as information got up to the SATJE Logs, and  
 12 then the March 4th date, and then some dates after that.  
 13 So, with the datapoints that we have, we have a  
 14 document being opened hundreds of times between--on the  
 15 lifespan of the document in that particular location, and  
 16 the information that we have is the content is, in fact,  
 17 parts of the Ecuadorian Judgment. That's the only datasets  
 18 points that we have.  
 19 Q. And if Mr. Zambrano was opening Providencias and  
 20 doing whatever he was doing with Orders in that document in  
 21 October before he says he was working on the Judgment and  
 22 making Saves, you've got no way to know that that didn't  
 23 happen; right?  
 24 A. I can only point to the datapoints that I do have.  
 25 Q. Okay. All right. So, let's turn to--back to

10:50 1 Mr. Lynch's slides from yesterday, and let's look at Slide  
 2 Number 18, if you would, Mr. Racich.  
 3 You agree that the edit time on the December 21st,  
 4 2010 Providencias was 35.12 hours; right?  
 5 A. As of December 21st, yes.  
 6 Q. Yeah. And that at that point there were 81 pages  
 7 of Judgment text; right?  
 8 A. I believe that's correct.  
 9 Q. Okay. Now, Mr. Lynch says 94 percent of this text  
 10 is unchanged in the Final Judgment. Did you do any  
 11 analysis to determine whether that was correct or not?  
 12 A. I think I validated it, and it seemed--appeared to  
 13 be correct.  
 14 Q. So, you agree with the 94 percent of the text as  
 15 unchanged in the Final Judgment?  
 16 A. I believe so.  
 17 Q. Okay. And you would agree that if we assume that  
 18 every minute that Providencias was opened was spent typing,  
 19 text was entered at this rate at approximately 26 minutes  
 20 per page?  
 21 A. Give or take, yeah, I believe that sounds correct.  
 22 Q. Let's go to the December 28th Providencias.  
 23 That's reflected on Slide 19.  
 24 And you would agree that the additional text that  
 25 came in between December 21st and December 28th, the edit

10:51 1 time during that period was 17.43 hours?  
 2 A. Yes.  
 3 Q. And during that period of time, 38 additional  
 4 pages of Judgment text were entered?  
 5 A. I believe that's correct.  
 6 Q. And did you validate that 96 percent of the text  
 7 is unchanged in the Final Judgment?  
 8 A. I believe so.  
 9 Q. And if we assume that every minute that  
 10 Providencias was opened during that time period somebody  
 11 was typing in it, the text was entered at a rate of less  
 12 than 30 minutes a page?  
 13 A. I believe so.  
 14 MR. WHITE: Could we just take a moment.  
 15 (Pause.)  
 16 MR. WHITE: I have no further questions at this  
 17 time.  
 18 PRESIDENT VEEDER: Thank you very much.  
 19 It may be good to take our mid-morning break now  
 20 but it depends on how long your re-examination might be.  
 21 MR. EWING: I would appreciate taking a  
 22 mid-morning break.  
 23 PRESIDENT VEEDER: Then it would be appreciated.  
 24 Let's take 15 minutes. We'll come back at 10 past 11:00.  
 25 Again, please don't discuss the case or your testimony.

10:52 1 THE WITNESS: Of course.  
 2 (Brief recess.)  
 3 PRESIDENT VEEDER: Just before we start the  
 4 redirect, Mr. White, we had a question for you. You told  
 5 us that Ms. Calva had testified during the RICO proceeding  
 6 in New York. We have a reference to the direct testimony  
 7 C-2387 when she made a sworn declaration, and C-2458,  
 8 exhibited in these proceedings. But did she also subject  
 9 herself to a deposition, and was she cross-examined?  
 10 MR. WHITE: This is Ms. Calva?  
 11 PRESIDENT VEEDER: Yes.  
 12 MR. WHITE: It's my understanding she submitted a  
 13 declaration but that she wasn't either deposed or  
 14 cross-examined.  
 15 MR. BISHOP: She did not show up at the RICO  
 16 Hearing, and so she was not cross-examined and she was not  
 17 deposed.  
 18 PRESIDENT VEEDER: You need to explain that  
 19 because I'm looking at her direct testimony at C-2387.  
 20 That's simply a document put in without the witness  
 21 attending the trial?  
 22 MR. BISHOP: That's correct. She put in a  
 23 declaration, a RICO Declaration, but then she did not come  
 24 to the Hearing, and so she was not cross-examined and was  
 25 not deposed.



11:13 1 PRESIDENT VEEDER: Is that because she couldn't  
 2 get a visa?  
 3 MR. BISHOP: I doubt it, but I don't know the  
 4 answer to that.  
 5 PRESIDENT VEEDER: There is some story in the  
 6 Transcript that we can see, but we haven't got to the  
 7 bottom of it.  
 8 We can come back to it later, but she didn't  
 9 actually testify in New York?  
 10 MR. BISHOP: That's correct.  
 11 PRESIDENT VEEDER: Thank you very much.  
 12 MR. PATE: There is a story in the Transcript as I  
 13 recall.  
 14 PRESIDENT VEEDER: At some stage give us the  
 15 reference, but I think there are quite a few stories in  
 16 this case.  
 17 Again, just for planning purposes--we're not tying  
 18 you down. Just give us some idea of how long you might be.  
 19 MR. EWING: I expect to be less than 15 minutes or  
 20 less. It should be short.  
 21 PRESIDENT VEEDER: You could be as long as you  
 22 like.  
 23 MR. EWING: I will try to give it 15 minutes or  
 24 less.  
 25 REDIRECT EXAMINATION

11:14 1 BY MR. EWING:  
 2 Q. Mr. Racich, are you aware that Providencias--one  
 3 of the meanings for Providencia is also Sentencia?  
 4 A. Even after six years of Spanish, I don't believe I  
 5 ever got into the legal parts of it, so I'm not sure.  
 6 Q. So, you don't know if it you typed Providencias  
 7 into Word Sentencia comes up as one of the meanings?  
 8 A. I don't know.  
 9 Q. Earlier, Mr. White asked you some questions about  
 10 cookies and internet history.  
 11 A. Yes.  
 12 Q. And if you could turn to--sorry.  
 13 And you mentioned other evidence of visits in the  
 14 internet history that did not include dates.  
 15 A. Yes.  
 16 Q. Do you remember that?  
 17 A. Yes.  
 18 Q. What do you mean by the fact that those entries  
 19 did not include dates? What does that tell you?  
 20 A. There are certain types of internet history  
 21 redirects being one as well as other instances of items  
 22 that are recorded in the internet history that don't have  
 23 the date field populated, so what we can say is that the  
 24 internet history itself shows that those particular sites  
 25 are where the objects are that are being accessed--they

11:15 1 were accessed, but we don't have a specific date as to when  
 2 it occurred.  
 3 Q. And in your Report from November 7, 2014, at  
 4 Paragraph 49, you listed a series of Web sites that were  
 5 visited that don't have dates, including LEXIS, and a few  
 6 others, Cervantesvirtual, Googlebooks and then an  
 7 Ecuadorian legal research Web site, but those don't have  
 8 dates.  
 9 What does that tell you about those particular  
 10 entries?  
 11 A. What we have is that they were visited at some  
 12 point, but we can't pinpoint the exact moment in time that  
 13 occurred.  
 14 Q. And do you know how often they were visited?  
 15 A. I'd have to look to see if there was a hit count  
 16 on those particular files, but I don't believe so from  
 17 this.  
 18 Q. And would the same be true of any other sites that  
 19 are listed around this section of your Report about undated  
 20 entries?  
 21 A. Yes.  
 22 Q. Moving to a different subject, you did an analysis  
 23 on Mr. Guerra's computer to extract all of the HTML  
 24 fragments of e-mail; correct?  
 25 A. Yes.

11:17 1 Q. And that was an exhibit in your Report that they  
 2 pulled up for you earlier; correct?  
 3 A. The March report, yes.  
 4 Q. And it was a long list of fragments that you  
 5 found?  
 6 A. Yes.  
 7 Q. Do you remember approximately how many there were?  
 8 A. At least a hundred, if I recall.  
 9 Q. Now, I don't have that in front of me, so I can't  
 10 pull it up for you.  
 11 Did you do that same analysis on Mr. Zambrano's  
 12 computer?  
 13 A. I can't recall. I can't recall right now. I  
 14 don't know if we did that exact analysis.  
 15 Q. Did you look for HTML fragments like you found on  
 16 Mr. Guerra's computer?  
 17 A. I believe we did.  
 18 Q. And did you find any on Mr. Zambrano's computer?  
 19 A. I don't believe we did. We used the same tool,  
 20 Internet Evidence Finder in this case. I don't believe we  
 21 did.  
 22 Q. Mr. White also took you to two entries in--from  
 23 Mr. Guerra's e-mails that included a Donziger e-mail  
 24 address. Do you remember that?  
 25 A. Yes.

11:18 1 Q. The first one was Record 31. That was an e-mail  
 2 address from Mr. Donziger; right?  
 3 A. Yes.  
 4 Q. Was that an e-mail from Mr. Donziger?  
 5 A. Looking at the text that was surrounding it, it  
 6 was some part of code. There was no content that appeared  
 7 there. It was just an e-mail address itself.  
 8 Again, I only looked at it for the belief period  
 9 of time that it was on the screen, but there didn't appear  
 10 to be any content associated around that.  
 11 And just so we're clear, what the tool does is it  
 12 attempts to find the beginning of where the fragments that  
 13 it can interpret are, and then attempts to find the end.  
 14 It's not always that great at finding the end result of  
 15 where the content stops, and so, subsequently, there's  
 16 sometimes a lot of garbage, a lot of extra stuff that's put  
 17 in, and it makes an attempt to interpret it, but the  
 18 HTML--the format of HTML is what it's really trying to  
 19 extract.  
 20 MR. EWING: And would it assist the Tribunal to  
 21 have these exhibits up while we talk about them?  
 22 PRESIDENT VEEDER: Yes.  
 23 MR. EWING: Would you kindly put those up? We  
 24 don't have those on our--  
 25 PRESIDENT VEEDER: Maybe not now, but it might be

11:20 1 useful to have a screenshot of those page or pages.  
 2 MR. WHITE: Certainly.  
 3 BY MR. EWING:  
 4 Q. Thirty-two.  
 5 Before you do that, looking at this page,  
 6 Mr. Racich, do you see Mr. Donziger's e-mail anywhere?  
 7 A. Not within the content here.  
 8 Q. And when you view the source of this e-mail, what  
 9 is that showing you?  
 10 A. It's showing me underlying HTML code plus whatever  
 11 the software Internet Evidence Finder extracted out in its  
 12 attempt to reconstruct these fragments of e-mail.  
 13 Q. So, now if we view the source behind this page,  
 14 you went down to Donziger, is there anything in here that  
 15 indicates to you that this is an actual e-mail?  
 16 A. No, it's just an e-mail address. And you can see  
 17 around it, you can see "eatyourshare.live.com." You can  
 18 see it says RPL@hotmail.com, Facebook Mail.com. These are  
 19 just addresses that exist in this chunk of text.  
 20 Q. And if we pull up record 226, please.  
 21 Could you go back to the index.  
 22 So, on the typed column for record 226, what is  
 23 that?  
 24 A. The software interprets this as a contact list, so  
 25 when it attempted to reconstruct the page, this is the

11:22 1 contacts that was extracted from the fragment.  
 2 Q. And if we look at that fragment itself, and  
 3 Mr. Donziger's e-mail address is in there somewhere, what  
 4 is this? Would you agree with the software that this is a  
 5 list of contacts?  
 6 A. It appears to be. It looks like it has the names  
 7 and the e-mail addresses and certain other metadata  
 8 information about particular contacts. Presumably from a  
 9 Hotmail account here.  
 10 Q. But again, this is a contact list on Mr. Guerra's  
 11 computer; right?  
 12 A. That's my--yes.  
 13 Q. And neither of these documents is an e-mail?  
 14 A. No, not from what I'm seeing, no.  
 15 ARBITRATOR GRIGERA NAÓN: Excuse me, if you look  
 16 at the line above, there is the full name of Mr. Donziger.  
 17 Does that have any relevance in respect of what we are  
 18 addressing now?  
 19 THE WITNESS: So, what it looks like--and I'd have  
 20 to do more analysis to see exactly how it's broken up, but  
 21 what it appears is that there are different fields, meaning  
 22 entries in the contact database, and you've got a name  
 23 field. It looks like possibly a unique ID field, and then  
 24 at least the e-mail address itself, and then it moves to  
 25 the next step. So, it looks like essentially a list of

11:24 1 both the name and the e-mail address for each of these  
 2 contacts.  
 3 PRESIDENT VEEDER: It's misspelled. Does that  
 4 mean anything?  
 5 THE WITNESS: It means that there is a bad  
 6 speller.  
 7 PRESIDENT VEEDER: Okay.  
 8 ARBITRATOR LOWE: What did you search through the  
 9 materials which were sent to you for the name of  
 10 Mr. Donziger? Did you also search under the misspelling of  
 11 his name?  
 12 THE WITNESS: I don't believe I did.  
 13 BY MR. EWING:  
 14 Q. Mr. Racich, when you receive an e-mail from  
 15 someone through a program like Hotmail, is that person's  
 16 address added to your--let me step back.  
 17 When you send an e-mail to someone like Steven  
 18 Dozinger (sic), is that person's e-mail added to your  
 19 contact list?  
 20 A. Typically it is.  
 21 Q. So, that would be automatically added?  
 22 A. Typically, it is.  
 23 Q. And if I receive an e-mail from someone, is that  
 24 e-mail added to my contact list?  
 25 A. Not by default, unless you do a reply.

11:25 1 By default, it is, and otherwise you'd be adding  
 2 huge numbers of spam e-mails. The e-mail addresses would  
 3 be added to your contacts on a continuous basis.  
 4 Q. So, if I e-mailed you for the first time and you  
 5 had an e-mail from me, from Greg Ewing, and you replied to  
 6 that, you would expect that my name and e-mail address  
 7 would be in your contact list as I spelled them; correct?  
 8 A. Typically.  
 9 Q. If in this case, would you expect--let me take a  
 10 step back. In this case, Steven Dozinger (sic) is  
 11 misspelled. Does that indicate to you anything about where  
 12 this e-mail came from, whether it be from Mr. Guerra,  
 13 Mr. Donziger or someone else?  
 14 A. Well, if you've got the e-mail address which is  
 15 the "SDonziger@gmail.com," and you have a misspelled name,  
 16 so that either means that that an e-mail came in that had  
 17 that as the contact name and was replied to with that  
 18 misspelling; or it indicates, which I think is more likely,  
 19 that someone typed in the e-mail address and as far as who  
 20 the person was, they misspelled the name. I would think  
 21 that's the likely explanation unless someone has a habit of  
 22 not having their name correctly on their e-mail, I think  
 23 that's the most likely explanation.  
 24 Q. So, the two choices are either Mr. Guerra  
 25 misspelled Mr. Donziger's name or Mr. Donziger misspelled

11:27 1 his own name?  
 2 A. Well, whoever sent the e-mail address, let's say,  
 3 but yes.  
 4 Q. Thank you for putting this up. I think we're done  
 5 with it for now.  
 6 Towards the end of your cross-examination by  
 7 Mr. White, he asked you a hypothetical; and in his  
 8 hypothetical, Mr. Zambrano created an order on October 11,  
 9 2010, when he took the bench; correct?  
 10 A. Yes.  
 11 Q. And then sometime around February 14, 2011, he  
 12 used that same document to paste the Judgment text into it.  
 13 A. I don't think I have a hypothetical said that  
 14 date, but at some point I think it was the December 21st  
 15 date that there was text was being added to the document.  
 16 That was in the hypothetical.  
 17 Q. Okay. So, the hypothetical--I guess to make it a  
 18 little more generic, is the question of whether in a sense  
 19 Mr. Zambrano could spoof or fake the computer or you and  
 20 Mr. Lynch into thinking that this document started on his  
 21 computer on October 11, 2010, and finished on February 14  
 22 or March 4th as a complete document, that he could--that he  
 23 would use that to fake us all out.  
 24 A. I think that was the purpose of the hypothetical.  
 25 Q. We have heard Mr. Lynch recovered three snapshots

11:29 1 or temporary files of the Judgment in between  
 2 October 11th--between October 11th and March 4th; correct?  
 3 A. Yes.  
 4 Q. Where did those temporary files come from?  
 5 A. They were tilde files. There was one card file  
 6 meaning that the file was carved from unallocated space,  
 7 what Mr. Lynch did in type validated but actually used his  
 8 numbering system because it made more sense to look at what  
 9 he was doing. It looked for the header of the document  
 10 file.  
 11 And we talked about this with regards to the  
 12 books. We basically looked for the book without the index,  
 13 and were able to pull out the data of the book, and that's  
 14 the--that was one of the instances, and then we had I  
 15 believe it was two tilde files, so they're essentially  
 16 temporary files that when Microsoft Office opened the  
 17 document or PowerPoint or what have you in this case, a  
 18 document, what Microsoft Word does is it creates a  
 19 temporary file with content that it could save information  
 20 to, so if Microsoft Word crashes, which unfortunately  
 21 happens, it will allow you to recover certain information  
 22 about what you were working on. In this particular case,  
 23 those documents were maintained on the computer, and  
 24 subsequently we were able to recover data from them.  
 25 Q. So, the tilde files, who creates those?

11:31 1 A. Microsoft Word does.  
 2 Q. And are they typically visible on a computer?  
 3 A. If you know where to look, you can find them, but  
 4 the user doesn't typically have the ability to see them.  
 5 Q. So, these are not versions of the file that  
 6 Mr. Zambrano purposefully saved. They're just we happen to  
 7 have found them. Is that what you're trying to say?  
 8 A. Yes. I mean, in fact, we're very fortunate. This  
 9 doesn't happen as often as I would like from as a forensic  
 10 examiner point of view; when you're analyzing documents, it  
 11 was very fortunate to find snapshots like this over the  
 12 course of time.  
 13 Q. And looking at Mr. Lynch's Table 23 of his--I'm  
 14 sorry--of the metadata for the Providencias document--  
 15 A. Which report was this?  
 16 Q. This is his August 15, 2014 Report.  
 17 A. And you said Table 23?  
 18 Q. I have the wrong table number.  
 19 In his Tables 7 and 8 on Page 28 of Mr. Lynch's  
 20 August 15, 2014 Report.  
 21 A. Yes.  
 22 Q. And looking at the metadata for these files, is  
 23 there anything else here that indicates that this document  
 24 was opened--sorry, which contradict the hypothetical that  
 25 Mr. White had presented?

11:33 1 A. Again, these, as we just discussed, are temporary  
2 files that Microsoft Word creates during the process of  
3 editing a document, so for someone to do this, they would  
4 have to know that this temporary file was--as a  
5 hypothetical, as someone trying to game the system, so to  
6 speak, someone would have to know that these temporary  
7 files were, in fact, being created, know that they were  
8 going to be maintained and then know they were going to be  
9 recoverable. To be frank, the easier thing to do is to not  
10 have them there at all.

11 Q. When you looked at--do you address this in your  
12 Reports at all?

13 A. In what way?

14 Q. You didn't address this hypothetical; right?

15 A. Not my reports, no.

16 Q. Is there a reason why you didn't?

17 A. A combination of things. One, it doesn't seem  
18 plausible from a realistic point of view, as well as the  
19 fact that there's evidence that the document was--the  
20 Providencias document living in this particular path is  
21 opened hundreds of times over the lifespan of the document.  
22 That's not consistent with someone opening up a document  
23 and copying data in at the last minute.

24 Q. And you mentioned that it's opened hundreds of  
25 times. Are you just looking at Table 8, or is there

11:34 1 something else you're referring to?

2 A. I seem to recall an exhibit that my last report in  
3 Exhibit 3 there's a list of internet history, and that  
4 shows how often the Providencias, at least in specific  
5 moments in time, had been opened on the Old Computer and  
6 the New Computer.

7 Q. And you talked about that in your Report?

8 A. Yes.

9 Q. And if you could turn to Paragraph 33 of your  
10 November 7, 2014 Report.

11 A. Which paragraph? I apologize.

12 Q. Paragraph 33. Page 9 of your November report.

13 A. Yes.

14 Q. Is this what you're referring to?

15 A. Yes.

16 Q. And how does Paragraph 33 coincide with the  
17 information you see in Table 8 of Mr. Lynch's Report?

18 A. What it tells us is all we have are the snapshots  
19 in time. We have this December 21st snapshot in time,  
20 the 28th snapshot in time. What we have is that we can't  
21 tell exactly definitively whether or not the content of the  
22 text was copied on to Mr. Zambrano's computer or any  
23 other--we don't have any evidence to show that this came  
24 from any other location. All we have is the data points  
25 that we have.

11:36 1 Q. But you--okay.

2 MR. EWING: No further questions.

3 PRESIDENT VEEDER: We have no questions, and so  
4 you may leave the table, but we need to discuss with  
5 counsel where we go from now as regards the expert  
6 testimony. So, please stay in the room, but you're no  
7 longer a witness, and we thank you for coming to assist the  
8 Tribunal.

9 THE WITNESS: I will do. Thank you.  
10 (Witness steps down.)

11 PRESIDENT VEEDER: Well, we've come to the end of  
12 the expert testimony on these particular issues. We've had  
13 the Expert of the Tribunal listening and following  
14 testimony as she has already been studying the written  
15 materials, and the question is whether we make further use  
16 of the Expert to the Tribunal by enlarging her existing  
17 Terms of Reference. Those Terms of Reference were limited  
18 to taking part at this Hearing on an informed basis. What  
19 we'd like to invite the Parties to do is to consider  
20 whether we should do that, and if we should, what  
21 additional Terms of Reference we would have to specify in  
22 such terms of reference? We don't ask you to respond  
23 straight away. She'll be here until 2:00 tomorrow, but we  
24 would like to resolve this particular matter before 2:00.  
25 Is that a possibility for the Claimants? We ask

11:38 1 the Claimants first.

2 All we're asking at the moment is that you  
3 consider it. You don't have to respond formally.

4 MR. BISHOP: Yes, we will consider it. We will  
5 discuss it this evening and come back with our position  
6 tomorrow, if that's all right.

7 PRESIDENT VEEDER: Thank you.  
8 And the Respondent?

9 MR. EWING: Mr. President, not surprisingly, we  
10 think it's a great idea. We will also consider it and get  
11 back to her tomorrow--get back to you tomorrow.

12 PRESIDENT VEEDER: What we'd like you to do is to  
13 consider it obviously separately, but if you can consider  
14 it together to see if you can agree or if you disagree, why  
15 you disagree, and facilitate ourselves tomorrow morning,  
16 but we'd like, as I said, to get an order settled if we do  
17 make an order before 2:00 tomorrow.

18 MR. EWING: Of course.

19 PRESIDENT VEEDER: Thank you. Well, we'll move on  
20 to the next witness.

21 MR. WHITE: President Veeder, before we do that,  
22 to tie up some loose ends on the Experts, one is that the  
23 Tribunal asked for exhibit numbers to Mr. Lynch's--for the  
24 other exhibit numbers for Mr. Lynch's RICO testimony.  
25 They're Claimants' 2383--that's trial testimony--and

11:39 1 2457--that's deposition transcript. So, 2383 and 2457 from  
 2 Claimants Exhibits for the Transcript.  
 3 The second item is that we had Mr. Lynch take  
 4 screenshots of materials that he used in his opening or his  
 5 direct presentation yesterday. We have those now and can  
 6 hand them up.  
 7 PRESIDENT VEEDER: I think we've just been given  
 8 them. They've been marked C-2154, and it consists of three  
 9 pages.  
 10 MR. WHITE: That's correct. But there is also an  
 11 additional item there. It consists of two items.  
 12 And then the third item is there were some  
 13 materials that were used during Mr. Racich's  
 14 cross-examination that we should hand up. We don't have  
 15 those ready yet, but we will provide them separately.  
 16 PRESIDENT VEEDER: I have just been given C-2516  
 17 and C-2515.  
 18 MR. WHITE: Yes, those are the items from  
 19 Mr. Lynch's presentation yesterday.  
 20 PRESIDENT VEEDER: I see.  
 21 MR. WHITE: There were some items that were used  
 22 with Mr. Racich yesterday afternoon and this morning where  
 23 we were working with native files, and we'll provide  
 24 screenshots of those as soon as we can get those together.  
 25 PRESIDENT VEEDER: We'll come back to those later

11:42 1 when you print them out.  
 2 MR. WHITE: Yes.  
 3 PRESIDENT VEEDER: For the moment, can we ask the  
 4 Respondent. Do you have any objection to these exhibits  
 5 going in as C-2154, C-2515 and C-2516?  
 6 MR. EWING: We don't have any objections to them  
 7 as demonstratives from Mr. Lynch's presentation.  
 8 PRESIDENT VEEDER: Thank you very much. We'll  
 9 admit them with these references, and we'll come back to  
 10 the other documents later.  
 11 MR. WHITE: Thank you.  
 12 PRESIDENT VEEDER: Anything else before the next  
 13 witness?  
 14 MR. WHITE: No, sir.  
 15 PRESIDENT VEEDER: Anything else from the  
 16 Respondent? Nothing else?  
 17 MR. EWING: Not at this time.  
 18 PRESIDENT VEEDER: Let's go to the next witness.  
 19 JOHN A. CONNOR, CLAIMANTS' WITNESS, CALLED  
 20 PRESIDENT VEEDER: Mr. Connor, you will find  
 21 somewhere on the table a form of words on a declaration.  
 22 And if you're willing to do so, we'd ask you to state your  
 23 full name and then to read the words of the Declaration.  
 24 THE WITNESS: Yes, sir.  
 25 John Anthony Connor.

11:46 1 I solemnly declare upon my honor and conscience  
 2 that I speak the truth, the whole truth, and nothing but  
 3 the truth, and that my statement will be in accordance with  
 4 my sincere belief.  
 5 PRESIDENT VEEDER: Thank you.  
 6 There will first be questions from the Claimants.  
 7 MS. RENFROE: Thank you, Mr. President, Members of  
 8 the Tribunal.  
 9 DIRECT EXAMINATION  
 10 BY MS. RENFROE:  
 11 Q. Mr. Connor, we are now moving from the forensic  
 12 portion of this Track 2 Hearing to the environmental  
 13 discussion; and, with that transition, would you please  
 14 tell this Tribunal what your role was in the Lago Case and  
 15 the subject matter of your testimony today?  
 16 A. Yes, I was one of the Judicial Experts on behalf  
 17 of Chevron in the Lago Agrio Case, and I also wrote reports  
 18 in response to Mr. Cabrera's Reports.  
 19 Q. And what will be the subject matter of your  
 20 testimony today?  
 21 A. I'll be talking about the environmental  
 22 remediation work that was done by TexPet as well as the  
 23 current environmental conditions in the block and the  
 24 issues those posed with regard to human health.  
 25 Q. Have you prepared four reports for this

11:47 1 arbitration case?  
 2 A. Yes.  
 3 Q. Specifically your Report of September 2010?  
 4 A. That's correct.  
 5 Q. June 2013?  
 6 A. Yes.  
 7 Q. May of 2014?  
 8 A. Yes.  
 9 Q. And January of 2015?  
 10 A. Yes.  
 11 Q. And are those reports sitting--a copy of those  
 12 Reports sitting on the table there? Can you confirm those  
 13 are your Reports?  
 14 A. Yes, they are.  
 15 Q. Have you provided any corrections to those  
 16 Reports?  
 17 A. Yes, I have.  
 18 Q. And have you provided or prepared an errata sheet  
 19 documenting those corrections?  
 20 A. Yes, there are a number of minor corrections.  
 21 Q. All right. Now, with those corrections, do these  
 22 Reports accurately and completely contain your testimony  
 23 and the opinions you have formed about your work in this  
 24 case?  
 25 A. Yes, they do.

11:49 1 Q. Have you prepared a presentation to help explain  
 2 your testimony to the Tribunal?  
 3 A. Yes.  
 4 MS. RENFROE: With the permission of the Tribunal,  
 5 may Mr. Connor proceed with his presentation?  
 6 PRESIDENT VEEDER: Of course.  
 7 BY MS. RENFROE:  
 8 Q. Thank you, Mr. Connor.  
 9 A. Hello. I'm John Connor. I think you know that by  
 10 now, and I'm very pleased to be here to talk to you about  
 11 the work that I've done over the past 12 years in the  
 12 former Petroecuador-Exxon Concession. As you know, I was  
 13 one of the JI Experts that worked on the Cabrera case and I  
 14 worked on this as well.  
 15 What I'm going to be talking about today is the  
 16 data. There have been thousands of environmental samples  
 17 collected and analyzed at facilities throughout the former  
 18 Concession area. What I'm going to talk about is what  
 19 those data tell us with regard to the TexPet Remediation  
 20 Project, the current environmental conditions, and health  
 21 risks posed, if any, to the good people that work and live  
 22 in this area.  
 23 At the same time, to the degree I can, I'm going  
 24 to try to help you understand why two groups of experts  
 25 have looked at the same data and come up with what seem to

11:51 1 Government organizations, and it involves developing  
 2 improved methods for investigation of sites, for assessment  
 3 of risks, and for remediation of those sites.  
 4 Today, I'm going to talk about five issues that  
 5 have been documented in my Reports, and I'm going to go  
 6 through these opinions now and remind you of what my  
 7 findings have been.  
 8 First is the TexPet remedial action program of '95  
 9 to '98. The data show that that program was completed in  
 10 accordance with specifications spelled out in the Remedial  
 11 Action Plan, RAP, the RAP.  
 12 Second, the Judicial Inspections that were  
 13 conducted in 2003 to 2009. The results of those Judicial  
 14 Inspections showed that the RAP had been properly  
 15 implemented but there were limited non-RAP impacts that  
 16 remained to be addressed and by non-RAP impacts I mean  
 17 issues that weren't included in the RAP and had not yet  
 18 been addressed.  
 19 The Ecuador Experts, and by Ecuador Experts, I  
 20 mean the Parties that have been--working in this BIT  
 21 proceeding, have done additional work in 2013 to 2015, and  
 22 I will show you that the work that they have collected is  
 23 in good agreement with the prior work by the Chevron  
 24 Experts in the Judicial Inspection. Certain limited  
 25 impacts remain to be addressed under the current

11:50 1 be completely opposite conclusions. At least I'll do my  
 2 best in that regard.  
 3 A bit about my background. I'm an environmental  
 4 engineer with 35 years of experience in this field. I'm  
 5 the President of a company called GSI Environmental. We're  
 6 a company that works around the world doing the type of  
 7 work that's exactly what we're going to be talking about  
 8 today. That's environmental investigation, environmental  
 9 risk assessment, and environmental remediation of pollution  
 10 impacts. We've worked for a lot of industrial companies  
 11 around the world, and we also worked for a lot of--oh, I'm  
 12 sorry.  
 13 PRESIDENT VEEDER: My fault. I should have warned  
 14 you that every word is being written down in English, but  
 15 it's also being interpreted into Spanish and written.  
 16 THE WITNESS: I talked to you about that earlier.  
 17 I will slow down.  
 18 PRESIDENT VEEDER: You have to slow down a lot.  
 19 And again, we have to remind people not to overspeak  
 20 because they can't translate and transcribe simultaneous  
 21 speech.  
 22 THE WITNESS: Okay. We have also worked for State  
 23 oil companies such as Petroamazonas or Petroecuador in  
 24 various countries, and one of the things our company does a  
 25 lot of is research and development. It's mostly for

11:52 1 regulations.  
 2 Finally, health risk--next, I should say. The  
 3 health risks, the data that we have show that, yes, there  
 4 are impacts to be addressed but these impacts do not pose a  
 5 risk to public health in this area.  
 6 And finally, the Judgment. The Judgment is not in  
 7 agreement with the data that was collected at these sites.  
 8 And I will point that out as I go through my presentation.  
 9 Let's start with the TexPet remedial action  
 10 program.  
 11 The TexPet remedial action program begins in 1995  
 12 with a settlement agreement which is signed by the Parties  
 13 in May of that year. Under that Agreement, TexPet is  
 14 assigned work at 157 sites, one or more tasks at each site.  
 15 And those tasks included pit remediation at 108 of those  
 16 sites, cleanup of soils and spills at 27 sites, plugging  
 17 and abandonment of wells, repair tank dikes and  
 18 installation of produced water equipment at a number of  
 19 other sites. Based on that general Scope of Work, a  
 20 Remedial Action Plan is issued in September 1995. A  
 21 Remedial Action Plan, often called a RAP, RAP, is a  
 22 standard part of our field. What it does, it says what  
 23 you're going to do, how you are going to do it, and how do  
 24 you know it's done right.  
 25 It's very similar to a skilled contractor working

11:53 1 at your home who is going to fix this door and paint it  
2 this color. Well, this particular Remedial Action Plan  
3 tells TexPet that they're going to work at these sites and  
4 remediate these pits. I believe that Ms. Renfro showed  
5 you a list, one of the tables from the Remedial Action Plan  
6 which gives a very specific list of the pits that are to be  
7 remediated and those lists were signed and initialed by all  
8 the Parties.

9 There are also reasons why pits weren't included  
10 in the RAP. Well, you could go to a site that was on the  
11 list of the Settlement Agreement but it would remain in  
12 place because it wasn't assigned to TexPet. Those reasons  
13 are listed on this slide.

14 I will talk about the latter two reasons. Pits  
15 constructed or closed after June 30, 1990, that would be  
16 pits that were closed by Petroecuador after the operations  
17 had transferred from TexPet to Petroecuador. If they had  
18 been closed by Petroecuador, TexPet was not required to  
19 re-enter and remediate those pits.

20 (Pause.)

21 A. The HBT Agra audit of 1993 and the Fugro audit of  
22 1992 tell us that there were a large quantity of pits that  
23 were closed by Petroecuador between 1990 and 1992 by  
24 covering them with earth. Those pits--and we will see some  
25 of them today, were not assigned to TexPet.

11:55 1 Pits that were closed before June 30, 1990, were  
2 also addressed in the RAP. Those pits that had been  
3 properly remediated and had no visible impacts at that time  
4 were not assigned to TexPet. Some of them were, and during  
5 the course of the RAP, more pits were assigned, a total of  
6 25 pits were added to the RAP during the course of its  
7 implementation.

8 Let's look on the ground to see what the RAP  
9 really means when you measure it against a site, so here we  
10 see an aerial satellite image of the Shushufindi 45A well  
11 site. In the center of the area I put a white dotted line  
12 around the platform it's called. It's a large area of  
13 pavement, of gravel, impacted gravel and rock, and there is  
14 a symbol in there that indicates the well, the oil well  
15 itself. At this site at the time of the RAP, there were  
16 four pits present at the site. Two of these pits were  
17 assigned to TexPet for remediation, Pits 3 and 1A, and they  
18 were called RAP pits. And then two of the pits were not  
19 assigned to TexPet. TexPet was not required to remediate  
20 these pits. These were pits specifically called out as  
21 non-RAP pits for some of the reasons you saw on the prior  
22 slide.

23 And in addition, any other conditions that may  
24 have existed at that time or in the future at this site  
25 were not assigned to TexPet. TexPet's assignment for its

11:56 1 work was Pit 3 and Pit 1A and nothing beyond that.

2 Well, the RAP didn't just tell TexPet what they  
3 needed to clean up. They told TexPet how they needed to  
4 clean up. And here in this diagram I show you an eight  
5 step process that was spelled out in the RAP document. I  
6 discussed this in my Reports and for the interest of time,  
7 I won't repeat it here. I will just point to you one of  
8 the eight steps. That's Step Number 6, and that slide we  
9 see representatives from Universidad Central of Quito who  
10 were contracted to come to the site and before the pit was  
11 remediated and closed, to test that remediated material, to  
12 see if it in the laboratory met the cleanup criteria upon  
13 which the Parties had agreed in the RAP.

14 Now, at this time in Ecuador, there were no  
15 regulations in place that mandated specific cleanup  
16 criteria. Those are concentration limits in the soil.  
17 Consequently, the Parties, as many other Parties did at  
18 that time, agreed among themselves in a contract what those  
19 cleanup criteria would be.

20 The team from Universidad Central collected those  
21 samples, they analyzed them in their laboratory. If they  
22 met those standards, the remediation was finished and the  
23 pit was backfilled. If they didn't, further work was  
24 needed.

25 This process was carefully overseen by

11:58 1 representatives of the Government of Ecuador. Inspectors  
2 from the Ministry of Energy and Mines, Petroecuador and  
3 Petroproducción visited these sites at critical junctures  
4 and the course of their work, was documented in a series of  
5 Actas or Declarations that memorialized their findings.

6 There is three types of Actas. First, RAT Actas.  
7 These were the day to day observations of the inspectors,  
8 if they noted deficiencies in the work or things that  
9 needed to be improved, they recorded those in those Actas.  
10 As you review those Actas, you will recognize the vigorous  
11 oversight and the attention paid to detail to see that this  
12 work was done right. When it was done right, it was  
13 memorialized in an approval Acta. These were issued piece  
14 by piece for different sets of pits. Each one that came  
15 out would say these sites are finished, this dozen pits are  
16 finished, until eventually all the work was finished, and  
17 it was memorialized in a Final Acta issued in  
18 September 1998 and signed by all the Parties saying the  
19 work had been done, it had been done satisfactorily, and  
20 the project was finished.

21 We now jump to 2003 to 2009, when a process called  
22 Judicial Inspections is undertaken in the Lago Agrio Case.  
23 I was one of the Experts in that case. And as an expert,  
24 we were asked to address three technical issues:

25 First, was the TexPet remediation program properly

11:59 1 completed?  
 2           Secondly, what are the environmental conditions  
 3 today?  
 4           And, third, do those conditions pose a potential  
 5 risk to human health?  
 6           As part of our work, we received a set of  
 7 instructions from the Lago Court, and these instructions  
 8 were called the Court Terms of Reference, and I will tell  
 9 you some of the important things it told us about how to do  
 10 our job.  
 11           First, we were instructed to respond to the  
 12 questions by each Party. Chevron's representatives would  
 13 pose questions, the Plaintiffs' representatives would pose  
 14 questions, and we were to faithfully make our effort to  
 15 respond to those.  
 16           In addition, we were instructed by the Court to  
 17 follow the jointly developed sampling analysis plans.  
 18 These plans specified that we use certain standard  
 19 scientific Protocols to collect samples and analyze them in  
 20 the lab, specific methods that were to be used and the  
 21 Parties have agreed upon. The Chevron Experts and I,  
 22 myself, followed these.  
 23           There has been a lot of talk about  
 24 Pre-Inspections, and let me explain some of that.  
 25 Pre-Inspections were done by both Parties. They were done

12:02 1 reconnaissance of the site and they had identified areas of  
 2 interest, areas where there could be environmental impacts  
 3 that they thought warranted investigation. They marked  
 4 these with the colored flags we see on this site.  
 5           I also worked with Charles Calmbacher as a  
 6 Plaintiffs' Expert and José Robalino. And in each case,  
 7 when I arrived at the site, those gentlemen had conducted  
 8 very thorough reconnaissance. Their own Pre-Inspection  
 9 because they needed that information just as we did.  
 10           Let me explain something about the Pre-Inspections  
 11 that I believe is important to understand because these  
 12 terms have been used and I believe they have been  
 13 misunderstood. I'm going to talk about the concept of  
 14 perimeter sampling as it was done in the Pre-Inspection.  
 15 We call this step-out sampling or perimeter sampling, and  
 16 let's get an understanding of the task of the  
 17 Pre-Inspection team. Here is some information about the  
 18 Pre-Inspection at the Shushufindi 21 well site.  
 19           When the Pre-Inspection team came to the site,  
 20 they had only a crude sketch such as this to understand  
 21 where the former remediated pits were. These are pits that  
 22 had been removed, cleaned, compacted and vegetated, and  
 23 they were very difficult to see or find. Consequently, the  
 24 process that would be followed would be, first, to estimate  
 25 where that pit might be on the ground, and then to go to

12:00 1 by Chevron and they were done by the Plaintiffs. And why  
 2 were they done? They were essential to doing the work of  
 3 the Judicial Inspection. These were complex sites. Texaco  
 4 hadn't been at these sites for over 20 years approximately,  
 5 and there was a lot of work that needed to be done in a  
 6 very short amount of time. In order for us to do Judicial  
 7 Inspections efforts to complete that work, both sides  
 8 needed to have background information, and that background  
 9 information was collected in a process called  
 10 Pre-Inspection.  
 11           The assignment of the Pre-Inspection team included  
 12 general site layout, locating closed pits and open pits and  
 13 spills, locating drinking water resources so they could be  
 14 sampled and locating any surface water bodies near the  
 15 site.  
 16           At the top of this page, I show the Chevron PI  
 17 sampling team at Shushufindi 21 well site in January 2004,  
 18 and the bottom right-hand corner, there are some other  
 19 important photos. Those are photos taken at the  
 20 Shushufindi Norte production station during the time of  
 21 Judicial Inspection. I was the designated Expert on behalf  
 22 of Chevron at that location.  
 23           The designated Expert on behalf of the Plaintiffs  
 24 was Oscar Davila, and at the time of that inspection, Oscar  
 25 Davila and his team had conducted a very thorough

12:03 1 that suspected location and attempt to drill a boring into  
 2 that pit, that former pit and find it.  
 3           You can find these materials by looking at the  
 4 soil that comes out of that boring. Remediated material is  
 5 a clay material with a dark stain and a petroleum odor, and  
 6 sometimes it has an oil sheen. If they saw that, they knew  
 7 that they were in the pit. Then they would do what's  
 8 called step-out borings, and here is an example. They step  
 9 away and drill another hole, and they step away and drill  
 10 another hole. I show those as two and three on this  
 11 diagram. If they get out of the material and they see  
 12 clean soil without the oil stain, they know they found the  
 13 edge of the pit, and here I've illustrated, they now have  
 14 confidence at least on one side of the pit.  
 15           This process is conducted in the other directions  
 16 until they believe that they have located and confirmed the  
 17 location of that remediated pit. That's the work that you  
 18 see being done on the video that was shown during the  
 19 Ecuador opening. That's what the gentlemen are conducting.  
 20 It can be a frustrating process because it can be difficult  
 21 to find the edge of those pits, but when they do find them,  
 22 those green dots are reported to the Judicial Inspection  
 23 Expert so that that person also can efficiently find the  
 24 pit and sample that pit during the Judicial Inspection  
 25 itself.



12:05 1 There have been a number of suggestions that the  
 2 work done by the Chevron Judicial Inspection teams and the  
 3 Pre-Inspection teams was untoward, it was designed to hide  
 4 the pits, to find clean areas and avoid the contaminated  
 5 areas. I can tell you as a person that conducted this work  
 6 in conjunction with other environmental professionals, that  
 7 is absolutely, absolutely not true.  
 8 In my 2013 Report, I provided you with this table,  
 9 and I have a copy of it here with me. It's several pages  
 10 long, and what I have done is lined up the features of the  
 11 Pre-Inspections with the features of the Judicial  
 12 Inspections to show you that when there was a problem found  
 13 in the Pre-Inspection, it was investigated in the Judicial  
 14 Inspection, and it was reported in that report, either  
 15 Judicial Inspection Report or the Rebuttal Report. Those  
 16 data were presented. And that's very important. It's very  
 17 important because the data show--regardless of what has  
 18 been said that, in fact, the work was done properly and  
 19 faithfully.  
 20 I hope that sets this aside, but if there are  
 21 questions from the representatives of Ecuador, I'm happy to  
 22 discuss that, certainly.  
 23 Now we're at the Judicial Inspection itself. I'm  
 24 there with my sampling team, the Plaintiffs' Expert is  
 25 there with their sampling team, the Judge is there with the

12:07 1 understand the full scope of the work.  
 2 Well, what do we find? First, was the TexPet RAP  
 3 satisfactorily completed? The Chevron JI Experts drilled,  
 4 sampled, and tested 59 RAP pits at 56 JI sites; and, in  
 5 those cases, they found that a pit that had looked like the  
 6 image on the left-hand side of the screen in 1995 today at  
 7 the time of the JI looked like the image on the right-hand  
 8 side of the screen.  
 9 The material, the pit had been treated and  
 10 solidified and capped and revegetated according to the  
 11 eight step process. And samples removed from inside that  
 12 pit of the remediated material met the RAP criteria based  
 13 on laboratory tests.  
 14 What do these pits look like underground? Under  
 15 ground, these pits are filled with soil, with compacted  
 16 soil, very much like the soil that surrounds them. At the  
 17 base of that former pit, you will find what we call  
 18 remediated material. These were the oily sediments in the  
 19 pit that have been mixed with soil and cementing agent to  
 20 form a solid mass, a solid firm mass that has a petroleum  
 21 stain and odor and perhaps a sheen but will not release its  
 22 petroleum to the environment.  
 23 Atop this remedial material was placed a clay soil  
 24 cover of between half a meter to 1.5 meters thick, and on  
 25 top of that, top soil to support vegetation.

12:06 1 representatives of both Chevron and the Plaintiffs, and  
 2 questions are posed. Again those questions: Was the  
 3 remediation proper, what are the current conditions, are  
 4 there human health risks? And to answer those questions on  
 5 a site-specific basis, it's required of both Parties to  
 6 collect samples. We worked together, we worked openly, we  
 7 see each other working, we sign our sampling reports.  
 8 What work did we do? The Chevron sampling team  
 9 commonly conducted this type of sampling.  
 10 First, RAP pits, if they were present, were  
 11 sampled to determine if they met the standards. Perimeter  
 12 soil samples were collected to determine if the impacts  
 13 that were on the site extended beyond it. These perimeter  
 14 samples weren't always perfect. Different experts did  
 15 different degrees, but in whole they were sufficient to  
 16 tell us that the impacts we found on the property did not  
 17 extend beyond that area.  
 18 Drinking water sample--drinking water wells that  
 19 were in the area were sampled. Surface water was sampled  
 20 that was nearby. And if requested by the Court, the  
 21 non-RAP pits were also sampled and tested. The documents  
 22 regarding and memorializing this includes the JI Acta  
 23 itself, the JI Report put out by the Expert, and in some  
 24 cases a companion Rebuttal Report, such that the JI Report  
 25 and Rebuttal Report need to be observed in concert to

12:09 1 So, when you see these sites, that's what's under  
 2 ground. It is a former pit that's filled with compacted  
 3 solidified material.  
 4 When we went to these sites, we found that the  
 5 remediated pits that were listed in the RAP had been  
 6 faithfully remediated. But we also saw at that time many  
 7 non-RAP pits that still had not been addressed by  
 8 Petroecuador. Now, since that time, many of those have  
 9 been addressed. Petroecuador initiated a remediation  
 10 program in 2007, and they have remediated hundreds of pits  
 11 in this area. This is one of the issues that I pointed out  
 12 that are in conflict with the Judgment. Regardless of how  
 13 you estimate the number of pits, you need to recognize that  
 14 that number is diminishing on a daily basis. TexPet  
 15 remediated many of those pits, and Petroecuador has  
 16 remediated many pits, but the Judgment does not consider  
 17 the fact that many of these pits have been treated and are  
 18 not present, and do not require further remediation.  
 19 Let's move on.  
 20 In the Judicial Inspection, we were also asked to  
 21 sample the environment and determine what those  
 22 environmental conditions were at that time. I'm going to  
 23 talk about several environmental media such as soil. This  
 24 plot shows the results of 1,007 soil samples that were  
 25 collected during the Judicial Inspection process and

12:10 1 analyzed by TexPet by the methods in the sampling analysis  
 2 plan. These results show that 93 percent of those samples  
 3 met the international criteria in effect at the time.  
 4 And if we take that same data and we compare it to  
 5 current Ecuadorian criteria for soil cleanup, criteria that  
 6 were issued in 2001, 87 percent meet those criteria.  
 7 What does this tell us? It tells us, as I've said  
 8 in my Reports, that there are limited areas that require  
 9 attention today. They're not RAP areas. They were areas  
 10 that were excluded from the RAP, but there are limited  
 11 areas, as we've said throughout our Reports that do require  
 12 attention to meet current standards.  
 13 Drinking water, another medium. Drinking water  
 14 was perhaps the most important medium that we sampled and  
 15 tested with regard to human health. Why? Because people  
 16 drink this water. And if there is contamination in that  
 17 water, it is a direct issue for human health. I'm showing  
 18 you in this image a typical hand-dug water well that was  
 19 found in rural areas at houses. The image on the  
 20 right-hand side is a 1 meter diameter hole that's hand dug  
 21 to a depth of approximately six to 8 meters below ground.  
 22 It stays open on its own because it's dug into clay soils.  
 23 On the left-hand side, we see a typical structure  
 24 and a bucket that's lowered into the well to extract the  
 25 water.

12:13 1 many people, in the city such as Sacha and Shushufindi and  
 2 others. 100 percent of those public water supply systems  
 3 met drinking water criteria for petroleum compounds,  
 4 100 percent. They were not impacted by TexPet, they are  
 5 not impacted by Petroecuador. But the Judgment has stated  
 6 that TexPet is to pay \$150 million to replace all of these  
 7 systems. These systems do not need to be replaced.  
 8 Surface water was another medium that we sampled  
 9 at the sites during the Judicial Inspection. At the top  
 10 right-hand side, I show you a typical stream that you may  
 11 see when you visit these sites. They are near many of the  
 12 well sites. It's a shallow stream, perhaps one to  
 13 two meters wide, usually 30 centimeters deep. When these  
 14 were present, they were sampled. Again, the results under  
 15 WHO and U.S. EPA, 99 percent of those streams met those  
 16 criteria--of those samples, I should say. And similarly  
 17 they meet the criteria of today that published in Ecuador  
 18 after 2003.  
 19 There is a small number of surface water samples  
 20 that don't, and each of those was associated with an active  
 21 wastewater discharge by Petroecuador that occurred at three  
 22 or four sites.  
 23 Let's move on to today. 2013 to 2014--'15, excuse  
 24 me. Ecuador Experts have returned to these--some of these  
 25 same sites to validate or check the work that was done by

12:12 1 There is one other important thing to note about  
 2 this well. That is lacks a sanitary seal. There is no  
 3 seal to prevent surface water and rain water from entering  
 4 this well and carrying with it vegetative debris and animal  
 5 waste. And that presents a serious problem with regard to  
 6 bacterial contamination.  
 7 520 samples were collected of drinking water from  
 8 throughout the Concession Area during the Judicial  
 9 Inspection. And what did we find in those data?  
 10 99 percent of those samples that were collected at every  
 11 site met World Health Organization and U.S. EPA drinking  
 12 water criteria. In preparing that same data, the current  
 13 Ecuadorian drinking water criteria, 98 percent met. There  
 14 are not impacts, widespread impacts, from oilfield  
 15 operations on drinking water in this area, not by TexPet,  
 16 not by Petroecuador.  
 17 But as we see on the far right-hand side, there  
 18 are impacts from fecal coliform that are associated with  
 19 animal waste contamination of those wells. This is a  
 20 serious health problem.  
 21 There is one other very important thing with  
 22 regard to the Judgment. During the Judicial Inspection  
 23 process, Chevron sampled 31 public water supply systems  
 24 throughout the Concession Area. These are deeper wells  
 25 that pump water and distribute it to local communities,

12:15 1 Chevron during the Judicial Inspections. There has been a  
 2 very active exchange, a very complex exchange of  
 3 information between the two groups of experts. And as I  
 4 mentioned before, I suspect the Tribunal is faced with the  
 5 quandary of determining why two groups of experts are  
 6 looking at the same data and saying very different things.  
 7 In my most recent reports, I made an effort to  
 8 simplify this discussion by putting these discussions into  
 9 two categories. One, the things that we agree upon and,  
 10 two, the things that we don't agree upon.  
 11 What do we agree about? We agree that there are  
 12 unaddressed non-RAP pits and spills that still require  
 13 remediation today to meet the current Ecuadorian standards.  
 14 There is no disagreement among the Parties. Those areas,  
 15 whether they're spills or pits or contaminated sediments,  
 16 need to be addressed to meet those standards. But we  
 17 disagree on everything outside those areas.  
 18 And to help you understand the basis for that  
 19 disagreement, I'm going to talk about three different  
 20 concepts, three different factors, that may help clarify  
 21 that disagreement. I'm going to talk about TexPet-only  
 22 sites, I'm going to talk about the applicable criteria used  
 23 by the Parties, and I'm going to talk about the extent of  
 24 impacts and migration.  
 25 Let's start with TexPet-only sites.

12:16 1 This is a chart from my Report of 2015. It's  
 2 Exhibit A, and there are a great many of documents that are  
 3 provided in Appendix C to support this. This is directed  
 4 towards the issue of TexPet-only sites.  
 5 Okay. And so is this slide. On this diagram, I  
 6 have summarized the information as little dots. On the  
 7 left-hand column, I've listed all the sites that were  
 8 investigated by the Ecuador Experts. And incidentally, the  
 9 sites that I've highlighted in yellow are the only sites  
 10 that were in the Judicial Inspection and that could have  
 11 been considered by the Lago Court.  
 12 Then, across the top, I have listed different  
 13 activities that could change the environmental conditions  
 14 at a site. Oil spills that have occurred. Pit closure  
 15 remediation by Petroecuador changes the pit count.  
 16 Workovers. Workovers are the repair of a well in which the  
 17 equipment from the well is removed and it can generate oily  
 18 waste materials. If it's properly handled, it has no  
 19 Environmental Impact. But if it's not, it can have an  
 20 Environmental Impact. And flares.  
 21 Let's look at some examples of this. And why do  
 22 we care? Why do we care that this may have happened?  
 23 Because, under the Judgment, it is assumed that any  
 24 conditions that are observed today are the responsibility  
 25 of TexPet. And many of those conditions that exist today

12:17 1 are not--they're not associated with TexPet operations, but  
 2 they're associated with operations that have happened over  
 3 the past 25 years.  
 4 Here is three examples. This is a pipeline spill  
 5 that was observed in March 2006 at the time of the Judicial  
 6 Inspection at the Guanta 6 well site. That is a flow line  
 7 that carries the oil and water from the well to the central  
 8 station. It ruptured and resulted in a large oil stain on  
 9 the ground in the surrounding area. Just below that, on  
 10 the left-hand side is what I observed at the Lago Agrico 1  
 11 well site in January of 2004. There had been a workover of  
 12 this well immediately before my arrival. The equipment had  
 13 been removed from the well, and a lot of oily waste was  
 14 generated. It wasn't properly contained. Rather, it was  
 15 placed in an open excavation and covered with dirt. This  
 16 is not a proper environmental management or workover, and  
 17 it does result in Environmental Impact.  
 18 The right-hand side, it illustrates a flare upset  
 19 that occurred due to an operator error at the Aguatico  
 20 production station by a Petroecuador employee on  
 21 November 2005 during the Judicial Inspection. In this  
 22 image we see crude oil emanating under great pressure from  
 23 the gas flare. This is a very unusual and a very dangerous  
 24 condition, and it also creates some Environmental Impact,  
 25 clearly, as this oil spreads across a large area on the

12:19 1 ground.  
 2 I observed this same condition at most of the 18  
 3 production stations that I visited at that time.  
 4 Oops--ah, there it is. Sorry. Another important  
 5 factor is the expansion of the field. This is an active  
 6 productive oilfield, and it has changed dramatically since  
 7 1990. This is not the same oilfield that TexPet left. For  
 8 an example of that, I'm showing you the Shushufindi 13 well  
 9 site as it looked in 1990, and that's how it looked when I  
 10 visited that well site in 2004 as well. But now in 2013,  
 11 we can see that that well platform has been dramatically  
 12 expanded. There are new oil wells, there is new equipment,  
 13 it is not the same oilfield as it was long ago. And there  
 14 I've superimposed the old well platform, so you can see the  
 15 difference.  
 16 Another big, important factor with regard to  
 17 understanding the provenance of current Environmental  
 18 Impacts is the issue of pits closed by Petroecuador after  
 19 June 1990. I'm showing you an aerial image of the Lago  
 20 Agrico 2 well site, Pit Number 3. The Ecuador Experts  
 21 understood that this pit was associated with activities by  
 22 TexPet, that it had been closed by TexPet before June 1990.  
 23 But the actual data, the photographic evidence, show us  
 24 that's not correct.  
 25 Here is an aerial image from September 1985, and

12:20 1 we can see Pit 3 as a large black area with the yellow dots  
 2 around it to the north of the platform. There's that same  
 3 pit still there in July 1990, and note that this is the  
 4 month immediately after the transfer of operations from  
 5 TexPet to Petroecuador.  
 6 Now another image, here in October 1991, the same  
 7 area. What do we see? The area has been scarified of  
 8 vegetation and overlain with soil. This is comparable to  
 9 the report from HBT Agra and Fugro in their audits that  
 10 noted that this had occurred at many sites, and it had also  
 11 occurred at this site. So, when we look at this data at  
 12 this site, when you visit this site in the coming month,  
 13 you should understand that, in fact, that pit was not  
 14 closed by TexPet. It was closed by Petroecuador.  
 15 Another factor that helps explain the difference  
 16 between the two Parties' conclusions is applicable  
 17 criteria. Applicable criteria are numerical concentration  
 18 limits in a soil. A chemical concentration below that  
 19 limit is not contaminated. A chemical concentration above  
 20 that limit is and needs to be remediated. They're much  
 21 akin to speed limits. If I'm driving under the speed  
 22 limit, I'm fine. If I'm driving over the speed limit,  
 23 something has to change.  
 24 Well, criteria of this nature were issued for soil  
 25 remediation at oilfield sites by the Government of Ecuador

12:22 1 in 2001. It was called Decree 1215 or the RAOH Rule, and  
 2 it was specific to the hydrocarbon industry. And that  
 3 regulation set forth remediation standards for three  
 4 categories of lands use. Why three categories of land use?  
 5 Well, again, it's similar to a speed limit. We have  
 6 different speed limits for residential streets than we have  
 7 for commercial streets or major highways. In the same way,  
 8 it's understood under this regulation, and similar  
 9 regulations around the world, that different levels of  
 10 petroleum in the ground are tolerable for different uses.  
 11 For an industrial use in Ecuador, TPH, or Total Petroleum  
 12 Hydrocarbon in soil, cannot exceed 4,000. If it does, it  
 13 needs to be remediated. For agricultural use, the limit is  
 14 2,500. And for sensitive ecosystems, the limit is 1,000.  
 15 A sensitive ecosystem under the regulation is a  
 16 designated wildlife preserve or park, and it's designated  
 17 under a complex--under a very set process by the Ministry  
 18 of the Environment. There are no sensitive ecosystems at  
 19 any of the sites that you'll be considering in this BIT  
 20 process, at none of the JI sites and at none of the sites  
 21 sampled by the Ecuador Experts.  
 22 So, those are the limits that are being used by  
 23 every oil company in Ecuador today. They're the limits  
 24 that are approved by the Government of Ecuador on every  
 25 remediation site. But they are not the limits that were

12:23 1 used by the Ecuador Experts in their evaluation of  
 2 Environmental Impacts at these sites.  
 3 Rather, the Ecuador Experts have indicated that a  
 4 site is impacted if there is detectable oil in the soil.  
 5 This is akin to say that any car that is moving is  
 6 speeding. There is no tolerance for car movement. There  
 7 is no tolerance for oil in the soil. And this is very  
 8 different from what's being used by all other oil  
 9 companies, including Petroecuador and Petroamazonas today,  
 10 and approved by the Government. It's 100 to 400 times  
 11 lower. This is not reasonable.  
 12 And the Judgment makes the same mistake. The  
 13 Judgment imposes a limit of 100. And that's not the limit  
 14 that's being used by the other Parties in Ecuador and  
 15 results in unnecessary remediation.  
 16 Unnecessary remediation. Let's look at what  
 17 happens when we apply the correct criteria. This is an  
 18 example of a figure from the June 2014 Report by the  
 19 Ecuador Experts. And it plots chemical concentrations on  
 20 this map. You can see those points, and I'm going to  
 21 circle them here in yellow. If they are detected,  
 22 remember, they're considered contaminated, they're  
 23 considered a problem.  
 24 But what if we apply the actual remediation  
 25 criteria that is used by Petroecuador, Petroamazonas, and

12:25 1 the Government of Ecuador at all other locations, including  
 2 these? We find that only one of those locations actually  
 3 exceeds a true TPH limit for agricultural soils. Only one  
 4 of those areas requires action. It's a very limited  
 5 problem, not a widespread problem.  
 6 So, if we all apply the same criteria as all other  
 7 Operators, we don't have a disagreement in this group. We  
 8 don't have a disagreement between the two groups of  
 9 experts.  
 10 My final category to help explain the  
 11 disagreements, the extent of impacts and whether or not  
 12 they are migrating and getting worse over time. Let's look  
 13 at that.  
 14 What I found by looking carefully and comparing  
 15 the information between Chevron's JI Experts and the  
 16 Ecuador Experts at the sites where both of those Parties  
 17 conducted sampling is that the data agree. The data are in  
 18 pretty good agreement.  
 19 And why is this important? In the reports, the  
 20 Ecuador Experts have expressed concerns about the  
 21 reliability of the Chevron data, that the laboratory  
 22 methods were not reliable, that the sampling methods were  
 23 not reliable. But then the test comes down, if Parties go  
 24 out to the sites and find similar results, then those  
 25 results are reliable. Let's look at that.

12:26 1 What I'm showing you here is a set of six pie  
 2 charts, and they're in three columns: Soils on the  
 3 left-hand side, outside of pits; groundwater sampling  
 4 locations outside of pits; and drinking water. Both  
 5 Parties went to these same sites and conducted sampling.  
 6 Both Chevron and the Ecuador Experts find the same  
 7 frequency of soil problems, 87 to 88 percent. Are there  
 8 some areas that need to be addressed? Yes. There are some  
 9 localized spills and other issues that require attention.  
 10 Are there groundwater issues that need to be  
 11 addressed? There are some limited areas that do, but the  
 12 vast majority do not.  
 13 And drinking water. All of the drinking water  
 14 samples collected by both Parties met drinking water  
 15 criteria in Ecuador today. The few locations where we do  
 16 find soil impacts are in close proximity to the pits. So  
 17 the data tell us--both Parties' data tell us--that we do  
 18 not have widespread pervasive impacts in this area.  
 19 Let's look at this from another perspective.  
 20 Delineation. Lots of talk about delineation and the  
 21 reliability of Chevron's delineation. What I found by  
 22 comparing the data at the six sites where both Parties did  
 23 analyses is that data lines up very well.  
 24 Here is an example. On the left-hand side I have  
 25 the Chevron sampling results for the Shushufindi 25 well

12:27 1 site for soils and sediments. On the right-hand side I  
 2 have the more recent data collected by the Ecuador Experts.  
 3 And if we put these together, we can see that the red  
 4 points, points that exceed the current regulatory criteria  
 5 of Ecuador, and the green points, the points that don't,  
 6 align very well. Both Parties found that there are  
 7 sediments in that stream near this site that require  
 8 attention under the current Ecuador regulations. But  
 9 outside of that, the soils are clean.

10 So, both Parties have gone to these sites, and we  
 11 can show, going site by site, that there is generally very  
 12 close agreement between the places where we found problems  
 13 and the places that we didn't. There are some exceptions,  
 14 there are places where there are differences, but in  
 15 general they are in good agreement.

16 Now, the question of migration. Is this problem  
 17 getting worse over time, or is it not? The Parties don't  
 18 seem to agree about that.

19 Now, if there is a problem of migration, the most  
 20 likely place for that to happen would be an open  
 21 unremediated pit. This is one example here. And let's  
 22 look inside--where, if we had x-ray vision, what would we  
 23 see in this pit? Well, you may have the chance to see some  
 24 pits like this when you go there, and this is what you can  
 25 expect to see. On the surface of the pit is a semi-solid

12:29 1 tarry material. It's weathered oil that's floating on that  
 2 surface. At the edge of the pit it may have dried to form  
 3 an asphaltic solid, but in the center of the pit, it will  
 4 be an oily rubbery material. If you put a stick into this,  
 5 it will come out coated with oily goo.

6 Now, underneath that is rainwater. This oil is  
 7 floating atop rainwater, and that rainwater is held within  
 8 that pond. Why? Because the soils in this area are  
 9 predominantly clay, and they will hold water. If this was  
 10 sand, the water would drain out, but it doesn't drain out  
 11 because it's predominantly clay. At the bottom of that pit  
 12 you'll find oily sediments. If you stir those with a  
 13 stick, oil droplets will rise to the surface. That's  
 14 what's in those pits.

15 Now, does that material migrate in the  
 16 environment? There are many scientific reasons why we will  
 17 say no, but for me the acid test is, did we observe it?  
 18 Can we find it outside those pits? I will talk about two  
 19 lines of evidence that are very important in that regard.

20 The first that I put on here, you will see the  
 21 white dotted line around the pit. That is from the  
 22 Woodward-Clyde Remediation Report of 2000 where they note  
 23 that when they remediated these pits, when they dig into  
 24 them and they empty them out, they would find some  
 25 penetration of the oil into the adjacent soils, typically

12:30 1 on the order of half a meter. Very limited penetration.  
 2 And they would remove that when they remediated it.

3 Also, both Parties, Chevron and the Ecuador  
 4 Experts, have completed soil borings in close proximity to  
 5 those pits, and those soil borings have shown that the  
 6 concentrated oily material that's in these pits has not  
 7 moved from those pits. That's very important.

8 I'm going to address now two calculations that are  
 9 presented by the Ecuador Experts and that you saw in the  
 10 opening of this session last week. They're calculations  
 11 that suggest to the Ecuador Experts that there are  
 12 widespread impacts, that there is a lot of oil outside the  
 13 pits throughout the Concession Area. This is the first of  
 14 those calculations. This is a diagram that shows what they  
 15 understood to happen when TexPet was in operation and it  
 16 processed the produced water from the oil wells. In this  
 17 diagram we see oily water coming out of a separator vessel  
 18 going into a pit, and then pouring out on to a stream and  
 19 causing a large oil slick. There is oil coming out and  
 20 causing an oil slick. And the estimate is that there are  
 21 1.2 million kilograms of oil in the stream.

22 Well, again, I think the important thing here is  
 23 for us to look at the data. What do the data really tell  
 24 us about this operation?

25 Now, the Ecuador Experts relied on three reports

12:32 1 where different parties went to the different production  
 2 stations and measured that water as it came out of that  
 3 facility into the stream. That was a common practice at  
 4 that time. The actual management of that produced  
 5 water--that's water that comes out with the oil and needs  
 6 to be separated from the oil--the actual management of that  
 7 produced water is depicted in this diagram. It goes  
 8 through a series of treatment cells to try to remove as  
 9 much oil as possible before it is discharged to a stream.

10 The three sampling episodes that were conducted  
 11 showed the following: That there was no free oil that was  
 12 exiting from those ponds, and that 90 percent of those  
 13 samples met current Ecuador criteria for discharge to a  
 14 stream, 20 milligrams per liter. Why is 20 milligrams per  
 15 liter acceptable? It's acceptable because we know that  
 16 discharging water of that nature will not impact the water  
 17 quality of a stream. And we also know that because in each  
 18 of those three studies, additional samples were taken  
 19 downstream 500 meters to determine if there were impacts.  
 20 No impacts were detected.

21 Consequently, there is not an impact from that  
 22 produced water generation, and we confirmed that during  
 23 Judicial Inspection. There is no oil slick that was  
 24 released.

25 You also saw this image in the opening by Ecuador.

12:33 1 And the--based on a rather complex statistical calculation  
 2 by the Ecuador Experts, they have concluded that there is  
 3 an enormous amount of oil outside of the oil pits in the  
 4 Concession Area. An enormous amount equivalent to six of  
 5 the Exxon Valdez. Six. Well, this is rather astounding,  
 6 and I'm going to go through this calculation and determine  
 7 and show you that it's not correct.  
 8 And I don't mean to be disrespectful in any  
 9 manner, and if I have that tone, I apologize in advance,  
 10 but I feel that it is important for us to understand the  
 11 veracity of these calculations.  
 12 So, let's first put this in perspective, and then  
 13 I will go through the data.  
 14 If under this understanding there are--98 percent  
 15 of the oil is outside the pits. So, that means that, on  
 16 average, when I go to a site and I see an oil pit, there  
 17 will be 50 oil pits of oil spread around the site. I  
 18 inspected all these sites. The Ecuador--the Plaintiffs'  
 19 Experts inspected all these sites. The local residents  
 20 inspected all these sites. We didn't see anything of that  
 21 nature. What we found were very limited impacts. So, how  
 22 did we get from a very limited impact to an enormous amount  
 23 of oil? I will try to explain that.  
 24 And maybe you will hear from the gentlemen from  
 25 Ecuador's side more about this this week.

12:36 1 and photographed and measured two oil spills. They're oil  
 2 spills that had just occurred. One was on a platform--I've  
 3 labeled that as Petroecuador oil spill A--and one was off  
 4 the platform in an area where a pipeline had been  
 5 vandalized and oil had run down to an adjacent stream--I've  
 6 called that oil spill B. It had just happened under  
 7 Petroecuador's watch by vandals--not their fault--shortly  
 8 before the Judicial Inspection.  
 9 Now, these are photographed in the Judicial  
 10 Inspection Report, they are mapped in the Judicial  
 11 Inspection Report, and they were sampled by both Parties'  
 12 experts.  
 13 Now, this data tells us very accurately how much  
 14 oil is in that soil, and it's very limited. However, in  
 15 the calculation by the Ecuador Experts, they understand  
 16 that that oil, they assume that that oil, came from the  
 17 pits. But we know it didn't come from the pits. It did  
 18 not emanate from the pits. They were isolated limited  
 19 problems. But in that calculation, the average  
 20 concentrations that were observed at that location are  
 21 applied to the entire ring. So, this assumes that those  
 22 two oil spills were replicated throughout that entire ring,  
 23 and we know they were not.  
 24 When this is rolled up across 322 sites, we arrive  
 25 at the astounding figure, based on two small oil spills

12:34 1 Okay. The methodology that was employed was to  
 2 sort all the data from all the sites into three buckets: A  
 3 bucket where all the data that were sampled, soil data from  
 4 zero to 50 meters around the site, 50 to 100 meters around  
 5 the site, and 100 to 200 meters around the site. There  
 6 were 37 well sites. They had that data. For each of those  
 7 rings, the data were averaged and they were considered to  
 8 be representative of all 322 sites. And then those  
 9 averages were multiplied by the 322 sites and added up to  
 10 six Exxon Valdezes.  
 11 I'm going to go through just one of the rings.  
 12 I'm going to go through the bucket of data from 100 to  
 13 200 meters to help you understand what's wrong with this  
 14 calculation.  
 15 Okay. For the 100 to 200-meter radius, there are  
 16 only seven well sites in the database that have data in the  
 17 100 to 200-meter ring. Of those seven sites, only one site  
 18 has any samples that exceed the current Ecuador criteria.  
 19 One site. And that site is Sacha 13. So, how did we get  
 20 from one site with perhaps five barrels of oil spilled on  
 21 the ground, to 240,000 barrels throughout the Concession  
 22 Area? Let's try to figure that out.  
 23 Now, the Sacha 13 site is a site about which we  
 24 know a lot. There was a Judicial Inspection conducted here  
 25 in 2004, and in that Judicial Inspection, there were mapped

12:37 1 under Petroecuador's watch, of 220,000 barrels of oil. An  
 2 Exxon Valdez. That site was one Exxon Valdez. There are a  
 3 lot of mathematical reasons that I could go through with  
 4 you. I'm happy to answer questions from you or the Ecuador  
 5 Parties about that. But I will just say that that oil  
 6 exists only in that calculation.  
 7 Human health risk. Are there risk posed to human  
 8 health? Now, I've told you that there are conditions that  
 9 require response today. And in my 2010 Report, I take all  
 10 the data--the Chevron data, the Plaintiffs' data,  
 11 Mr. Cabrera's data--and I have analyzed that to determine  
 12 if it poses a human health risk. My finding was that if  
 13 you apply the approved methods and factors that are  
 14 approved by regulatory agencies and health institutions  
 15 around the world, the answer is no. Yes, there are some  
 16 problems. They do not pose a health risk. In the interest  
 17 of time, I'm not going to explain this, but I'm happy to  
 18 talk about it further, if you have questions.  
 19 Finally, the Lago Agrio Judgment. In the course  
 20 of my presentation today, I have tried to identify  
 21 conflicts between the Judgment and the actual conditions at  
 22 this site, and I just want to address one final factor.  
 23 That is, the statement in the Ecuador Experts' Report that  
 24 the Judgment was reasonable. Now, I find that they do not  
 25 have the technical basis in their reports to make that

12:39 1 statement. And why do I say that?  
 2 Well, here is a chart where I've listed each of  
 3 the very specific categories of damages and the very  
 4 specific costs that are presented in the Judgment.  
 5 Let's look at one--two important aspects of that.  
 6 For four of those categories, there is no technical support  
 7 provided. There is no reason for those costs. So, it's  
 8 not possible to find something reasonable when there is no  
 9 reason to assess. There is no technical basis to be able  
 10 to say that's reasonable. For three of the categories,  
 11 there are reasons presented, but there is no analysis in  
 12 these reports that showed that those reasons are  
 13 reasonable. In fact, those values aren't discussed at all.  
 14 So, my conclusion is not only that the  
 15 Ecuador--the Lago Agrio Judgment does not comport with the  
 16 facts, there is also no basis provided to call it  
 17 reasonable.  
 18 That summarizes my presentation. I've talked  
 19 about each of these issues. I won't repeat them for you.  
 20 In the interest of time, I thank you for the opportunity.  
 21 I will answer your questions, and I welcome questions from  
 22 the representatives of Ecuador.  
 23 Thank you.  
 24 PRESIDENT VEEDER: Do the Claimants have any  
 25 further direct examination?

1 AFTERNOON SESSION  
 2 (Discussion off the record.)  
 3 PRESIDENT VEEDER: Let's resume.  
 4 There will now be questions from the Respondent.  
 5 CROSS-EXAMINATION  
 6 BY MR. EWING:  
 7 Q. Good afternoon, Mr. Connor. As you know, since we  
 8 met before, my name is Greg Ewing, and I will be conducting  
 9 the cross-examination today. Welcome to D.C.  
 10 A. Thank you.  
 11 Q. You will probably notice that I will try and pause  
 12 after you give an answer, trying to listen to the Spanish  
 13 interpreters just to explain my awkward staring at you  
 14 while I wait for them.  
 15 So, we'll try and keep things slow for that  
 16 purpose.  
 17 A. Yeah, and I'm going to try to repair my  
 18 relationship with the Court Reporters and the translators  
 19 as well.  
 20 Q. They're both very gracious, so I think we'll be  
 21 okay.  
 22 Mr. Connor, you have a Master's of science in  
 23 civil engineering; correct?  
 24 A. Yes.  
 25 Q. And you graduated in 1979?

12:40 1 MS. RENFROE: We do not, Mr. President.  
 2 PRESIDENT VEEDER: Before we turn to the  
 3 cross-examination, it might be useful to have a lunch  
 4 break, or do you dispute that?  
 5 MR. EWING: I do not dispute that.  
 6 PRESIDENT VEEDER: I didn't think you would.  
 7 Let's come back at 20 to 2:00.  
 8 We ask you not to discuss the case or your  
 9 testimony until you come back before the Tribunal.  
 10 THE WITNESS: Yes, sir. Thank you.  
 11 (Whereupon, at 12:40 p.m., the Hearing was  
 12 adjourned until 1:40 p.m., the same day.)  
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01:46 1 A. From graduate school, yes.  
 2 Q. And then you began working in 1980?  
 3 A. Yes.  
 4 Q. And then you started GSI in 1986; is that correct?  
 5 A. Correct.  
 6 Q. And were you the President of GSI as of 1986?  
 7 A. Yes.  
 8 Q. And GSI has been working on oil field remediation  
 9 for approximately 29 years; is that right?  
 10 A. Working on oil field projects and many other types  
 11 of projects during that period of time, yes.  
 12 Q. When did you personally begin to work for Texaco?  
 13 A. Well, as a consultant on their projects, I believe  
 14 the--let me think. I think, if I remember correctly, I  
 15 think some of the first projects were remediation projects  
 16 for Texaco in New Jersey, and it would have been in the  
 17 1990s.  
 18 Q. Is that when GSI started working for Texaco as  
 19 consultants?  
 20 A. Yes.  
 21 Q. And when did you personally begin consulting for  
 22 Chevron?  
 23 A. The first project directly for Chevron would have  
 24 been, I think, around 1998 or 2000--actually around 2000,  
 25 when there was an acquisition. I'm not sure what actually

01:48 1 the business relationship is, but I was working on a  
 2 project with Texaco, and the two entities created--then it  
 3 became Chevron. I'm not sure what the legal aspects of  
 4 that are, but that would have been the first project with  
 5 Chevron directly that I recall.  
 6 Q. So, you've been working with them since--with  
 7 Chevron since 19--since 2000, approximately?  
 8 A. Well, on and off, with different people within  
 9 that corporation, I have done projects on and off during  
 10 that period of time, yes.  
 11 Q. And you told us this morning that you're an expert  
 12 in the Lago Agrio Litigation for the Judicial Inspections;  
 13 correct?  
 14 A. That's correct.  
 15 Q. And you were appointed by Chevron in those--  
 16 A. I think that may be the right terminology. I was  
 17 nominated by Chevron for that position. I was the Expert  
 18 on behalf of Chevron in that process for five of the  
 19 Judicial Inspections.  
 20 Q. And Chevron paid all of your expenses during that  
 21 time?  
 22 A. Yes.  
 23 You know, we charged for our services and the  
 24 expenses, and just as we charge anyone else, yes, they did  
 25 pay us.

01:49 1 Q. And Chevron paid for you to inspect the sites in  
 2 the Pre-Inspections?  
 3 A. Yes, all the work that we performed on that  
 4 project was paid by the client.  
 5 Q. And Chevron paid you to write the playbooks that  
 6 you put together before the Judicial Inspections; is that  
 7 right?  
 8 A. Our staff compiled those playbooks, and so the  
 9 work that we contributed to those Pre-Inspection reports,  
 10 we were compensated for that work.  
 11 Q. And you coordinated with Chevron about when the  
 12 Pre-Inspections would take place and who would go; correct?  
 13 A. No, that's not correct.  
 14 Q. Do you know who made those decisions?  
 15 A. No, I wasn't involved in the management of that  
 16 Pre-Inspection process. There were certain members of our  
 17 staff who were involved, but in terms of the scheduling and  
 18 management of that work, I wasn't involved in that. And I  
 19 don't think that direction came out of our organization.  
 20 Q. Who was involved in that?  
 21 A. From our organization?  
 22 Q. From GSI.  
 23 A. See, there were three individuals, if I recall  
 24 correctly. There was Dr. David Adamson, there was Mr. Jim  
 25 McDade, and there was Roberto Landazuri, and that would be

01:51 1 spelled L-A-N-D-A-Z-U-R-I.  
 2 There may have been other people at certain times,  
 3 but those were the names that I recall at this time.  
 4 Q. You said a moment ago that the scheduling of the  
 5 Pre-Inspections did not come out of your organization.  
 6 Does that mean that it came from Chevron?  
 7 A. You know, I don't know exactly how those were  
 8 organized. It wasn't organized by our office.  
 9 Q. Was there anyone else who may have organized it,  
 10 other than Chevron?  
 11 A. There were a number of other companies and  
 12 consultants that were part of that effort. I don't know  
 13 how exactly those were organized or scheduled.  
 14 Q. What other companies were involved in the effort  
 15 to do Pre-Inspections?  
 16 A. There was ENTRIX Consultants, who has an office in  
 17 Quito, and they provided much of the manpower for the  
 18 fieldwork in that effort.  
 19 There were other companies that collected the  
 20 aerial imagery and satellite imagery to help the team  
 21 locate the historical features of the site.  
 22 There was another company called URS that was  
 23 related to Woodward-Clyde, the original remediation  
 24 contractor, that had the responsibility to organize all the  
 25 historical information with regard to the remediation

01:52 1 project, that they would go through those files and provide  
 2 that.  
 3 There was a contractor to ENTRIX out of Quito who  
 4 conducted the interviews of the local residents.  
 5 Those are the ones I can recall offhand.  
 6 Q. Okay.  
 7 A. And there was a laboratory; STL Laboratory was  
 8 involved, and they had a facility, a temporary facility  
 9 they built in Lago Agrio to accommodate the collection of  
 10 samples and transport to their offices in the U.S.  
 11 Q. You mentioned earlier that you would say the  
 12 correct term is that you were nominated by Chevron. Does  
 13 that mean that you would consider yourself to have been  
 14 working for the Judge in the Lago Agrio Case?  
 15 A. I guess the way I would answer that, Mr. Ewing, is  
 16 that in all cases as an expert, you are to conduct your  
 17 work as an independent technical entity, that you are to  
 18 evaluate the data for what the data say, regardless of who  
 19 is paying your bill.  
 20 And I think it's a difficult task, but it's a very  
 21 important task. It's a task on which I made a lot of  
 22 effort in my career. I think it's a challenge, but you  
 23 have to--that has to be a real focus.  
 24 No, the Judge--the Judge was--when I say  
 25 "nominated," that was the technical terminology used there.



01:54 1 The Parties would both put forward the nomination, and the  
 2 Judge would swear you in to abide by the strictures of the  
 3 Court and to do your best to be objective in your analysis.  
 4 Q. Would you say that you have been successful in  
 5 being independent, despite Chevron having paid all of your  
 6 expenses and bills for all of this work?  
 7 A. Yes.  
 8 Q. Did you view your role as an assistant to the  
 9 Judge, then?  
 10 A. No, we were not--we were not assistants to the  
 11 Judge. We were independent of the Judge. We received the  
 12 Judge's instructions, but we were not accessories to the  
 13 Court by any means. We were separate entities. We were  
 14 independently asked to prepare our Reports, and both  
 15 Parties, both the Plaintiffs' experts and the Chevron  
 16 experts, would submit their Reports to the Court to be  
 17 considered by the Court, and their settling Experts, as  
 18 they were called.  
 19 Q. And you wrote five Judicial Inspection Reports  
 20 during your time in the Lago Agrio Litigation; is that  
 21 correct?  
 22 A. That's correct.  
 23 Q. You wrote one at Sacha 6, Sacha 21, Shushufindi  
 24 Sur, Shushufindi Norte, and Sacha Central Production  
 25 Station?

01:55 1 A. That's correct.  
 2 Q. And you submitted a JI report for each of these  
 3 five sites; correct?  
 4 A. That's right.  
 5 Q. And the Rebuttal Report?  
 6 A. No, I didn't write Rebuttal Reports, and I don't  
 7 believe the--no, I didn't write Rebuttal Reports.  
 8 Q. And Chevron appointed or nominated three experts  
 9 in total from GSI to conduct Judicial Inspections; right?  
 10 A. Just two.  
 11 Q. It was you, Mr. Bianchi?  
 12 A. Yes, Gino Bianchi--  
 13 (Overlapping speakers.)  
 14 THE WITNESS: Excuse me. You got that?  
 15 COURT REPORTER: No.  
 16 BY MR. EWING:  
 17 Q. Let me just rephrase. And this is not meant to be  
 18 a memory test, so I'll just make this more straightforward.  
 19 Chevron appointed you, Mr. Bianchi, and Mr. Baca  
 20 as Judicial Inspection experts from GSI; right?  
 21 A. Well, this will maybe correct the facts on that.  
 22 Ernesto Baca and I both were appointed both as  
 23 experts on behalf of Chevron in that process. We were both  
 24 employees of GSI Environmental at the time. Mr. Bianchi  
 25 was not with GSI at that time. He was with a separate

01:57 1 organization called Geomatrix.  
 2 Q. And Mr. Bianchi has since joined GSI?  
 3 A. Yes, some years after that time.  
 4 Q. Did GSI perform all of the support work for  
 5 Chevron's appointed experts during the Lago Agrio trial?  
 6 A. There was some portions of support work,  
 7 administrative work, that was provided by GSI to all the  
 8 experts, and they had to do with shipping of equipment,  
 9 organization of the laboratory work and the attendant  
 10 appurtenances of that, development of an electronic  
 11 database and a geographical information system where the  
 12 information would be compiled and made available to those  
 13 experts as they saw fit to use.  
 14 Q. And there were 56 Judicial Inspections conducted  
 15 during the Lago Agrio Litigation?  
 16 A. Yes.  
 17 Q. And 45 of those were conducted by party-appointed  
 18 or party-nominated experts; is that right?  
 19 A. Yes, originally it was scheduled for there to be  
 20 originally 122, but the courts terminated that process  
 21 after 45. And after that point in time, the Chevron  
 22 experts were not allowed to participate, so that the  
 23 Judicial Inspections during which Chevron experts collected  
 24 data and wrote reports was limited to 45.  
 25 Q. Let's just make sure to clarify that. The first

01:58 1 45 Judicial Inspections were conducted by party-nominated  
 2 experts, an expert from the Lago Agrio Plaintiffs and an  
 3 expert from Chevron; correct?  
 4 A. That's right.  
 5 Q. And then each side wrote a report, a Judicial  
 6 Inspection Report; correct?  
 7 A. Yes.  
 8 Q. After those 45 were completed, there were 11  
 9 court-appointed Judicial Inspections; correct?  
 10 A. That's right.  
 11 Q. And you said that Chevron was not allowed to  
 12 participate in those?  
 13 A. Chevron was--after the original--the original  
 14 process was, as I understood it as one of the experts,  
 15 there was a list of 122 sites that were submitted to the  
 16 Court by the two Parties at which Judicial Inspections  
 17 would be conducted, and at which both sides would nominate  
 18 an Expert for participation as you described. Both experts  
 19 would write a report and submit it. And then there was a  
 20 group of other experts that were appointed by the Court  
 21 independent of the two Parties that were called "Settling  
 22 Experts." There were five persons in that role. They were  
 23 charged with responsibility of receiving both of those  
 24 Reports and evaluating them and making their technical  
 25 recommendation to the Court. That occurred only one time.

02:00 1 That was at the Sacha 53 well site. And after that time,  
 2 during which the settling experts agreed with the findings  
 3 of Mr. Baca, that process was terminated, so there--  
 4 Q. If I can just stop you right there, Mr. Connor, we  
 5 will be definitely talking about Sacha 53, and we will talk  
 6 about the Settling Experts. I would like to talk to you  
 7 about the 11 Judicial Inspections that occurred after the  
 8 45 because that is what made the final 56, and this was not  
 9 intended to be a contentious point.  
 10 A. Oh, I was just trying to clarify for you the  
 11 multiple roles of the different types of experts that were  
 12 involved, but I'd certainly be happy to talk about the last  
 13 11.  
 14 Q. You'd agree with me, though, that there were 11  
 15 party-appointed--say it again.  
 16 You would agree with me, though, that there were  
 17 11 court-appointed Judicial Inspections that occurred after  
 18 the 45 party-appointed Judicial Inspections?  
 19 A. Yeah, in your terminology, yes, that's correct.  
 20 Q. What would you call those 11?  
 21 A. Well, we call them the court experts, but I think  
 22 you'd call the Court--all the experts technically speaking  
 23 were court-appointed, but after those last 11, the two  
 24 Parties did not have their nominated expert. It was just  
 25 one expert selected by the Court, to my understanding.

02:01 1 Q. So, there were a total of 45 Judicial Inspection  
 2 reports that were submitted by Chevron-nominated experts?  
 3 A. That's correct.  
 4 Q. And Mr. Baca performed 12 of those?  
 5 A. You know, I don't know how many Ernie did, but he  
 6 did a number of them, yes.  
 7 Q. Mr. Baca did 12 of those. Do you have any reason  
 8 to disagree with me on that?  
 9 A. No, I just don't know what his total number was.  
 10 Q. And Mr. Bianchi did 13?  
 11 A. That may be correct as well.  
 12 Q. And he is now a Vice President of GSI. Your  
 13 testimony is he was not at the time; is that correct?  
 14 A. No. He joined GSI after Geomatrix was acquired by  
 15 a different company some years later, and now he is a  
 16 member of our organization, yes.  
 17 Q. And you did five Judicial Inspection Reports?  
 18 A. Correct.  
 19 Q. So, you are here today partly to explain and  
 20 defend your Reports in this proceeding and to explain and  
 21 defend your Reports in the Judicial Inspections?  
 22 A. I wouldn't characterize it that way. In the BIT  
 23 proceeding, I have looked at all the data collected by all  
 24 Parties, both the nominated Experts from Chevron and those  
 25 from the Plaintiffs and those of Mr. Cabrera. And so, in

02:03 1 my Reports, I discuss all that. It's a comprehensive  
 2 analysis. It's not a defense or a discussion of any single  
 3 JI Report.  
 4 Q. In 2007, when Chevron entered into settlement  
 5 negotiations with the Lago Agrio Plaintiffs, you went to  
 6 Boulder, Colorado, with Ms. McMillen for those  
 7 negotiations; is that correct?  
 8 A. I wasn't aware that they were settlement  
 9 negotiations at that time. I was asked by Chevron to go  
 10 meet with Mr. Doug Beltman and Ms. Ann Maest at the office  
 11 of Stratus in Boulder, Colorado, and I did that. And I  
 12 provided them a summary of the information that we had  
 13 compiled during the Judicial Inspections, and we talked  
 14 about that. But I wasn't knowledgeable as to what legal  
 15 discussions were under way at that time.  
 16 Q. Was there anyone else in the room when the four of  
 17 you met?  
 18 A. No, I don't believe so. It was just the four  
 19 people.  
 20 Q. So, you don't remember a meeting that happened  
 21 December 19th, 2007, where you attended with Ms. McMillen  
 22 and the two representatives from Stratus as a part of  
 23 settlement negotiations?  
 24 A. Well, maybe we're not understanding each other.  
 25 I did attend a meeting at the Stratus office in

02:04 1 Boulder, Colorado, and that may have been the time, but I'm  
 2 not aware that that was involved with settlement  
 3 proceedings. I have no knowledge of that. I was asked to  
 4 meet with those persons and discuss our technical findings  
 5 and exchange information, and that's what we did.  
 6 Q. But it's your testimony today that there was no  
 7 one else there?  
 8 A. You know, Mr. Ewing, I don't recall that there was  
 9 anybody else in the room. I recall that it was the four of  
 10 us.  
 11 Q. And if there had been an independent settlement  
 12 negotiator, you would probably recall that, wouldn't you?  
 13 A. There was no such person. I'm certain of that.  
 14 Q. So, you conducted your Pre-Inspection visits in  
 15 December 2003; is that right?  
 16 A. The first visits were in December 2003, and they  
 17 were related to the Controller General's charge that the  
 18 remediation program had never happened. I conducted  
 19 additional site visits in 2004, but it wasn't until some  
 20 time after the first quarter of 2004 that it was indicated  
 21 that those visits would also relate to the Judicial  
 22 Inspection process for the Lago Agrio Plaintiffs' case.  
 23 Q. By December 2003, the Lago Agrio Litigation had  
 24 been filed; correct?  
 25 A. That's my understanding, yes.

<p>Sheet 35</p> <p style="text-align: right;">1342</p> <p>02:06 1 Q. What other dates did you conduct a Pre-Inspection 2 other than December 2003 and January 2004? 3 A. If you look in my 2010 Expert Report--and I have 4 it here--there is a list of every Pre-Inspection that was 5 done by any Party on behalf of Chevron of any sort. I will 6 give you the table number for reference. 7 It lists out who was involved in the 8 Pre-Inspection and when it was conducted. 9 Q. And this is in your 2010 Report? 10 A. Yes. 11 I will find it. Here it is. 12 It is Table (2)(c) of my Report of 13 3rd September 2010; and, in this table, there is a three 14 page table, you will find every oilfield listed, every site 15 at that oilfield, and it will list the dates on which 16 different Parties visited the site and whether that 17 inspection was a PI--which it says Pre-Inspection--or 18 JI--which it says Judicial Inspection--and all of those 19 dates are listed there. You can see when I visited the 20 site and when other Parties visited the sites as it's 21 recorded here. 22 Q. And was this information disclosed to the Lago 23 Agrio Court? 24 A. This particular table, is that what you're 25 referring to?</p>	<p style="text-align: right;">1344</p> <p>02:10 1 attachments is a more complete text of those specific 2 Actas. So, these were documents prepared during the 3 Judicial Inspection that recorded all the statements by the 4 different Parties. And you will see in these examples how 5 the identification of different flagging and marking left 6 by the Plaintiffs' Experts were discussed and acknowledged 7 and openly aware to all Parties, as was the fact that the 8 Chevron Experts' Parties had visited there, too. 9 Q. Did Chevron put flags on their sampling locations? 10 A. No, we didn't put flags on the sampling locations 11 because, after the first Judicial Inspection at Sacha 6 12 that I conducted, the Court had instructed the Parties not 13 to the disturb the sites, not to change the appearance of 14 the sites, not to cut the vegetation, not to leave 15 flaggings, not to leave markings, and we abided by that. 16 Q. So, as Ms. Renfro asked you earlier, you 17 submitted four Reports in this arbitration; is that right? 18 A. Yes. 19 Q. Okay. And according to your August 2013 Report, 20 TexPet drilled 344 or operated 344 sites; is that right? 21 A. The records I have indicate that, as of June 1990, 22 there were 344 different types of oilfield facilities in 23 the Concession at that time. 24 Q. And at least 322 of those were wells; is that 25 correct?</p>
<p style="text-align: right;">1343</p> <p>02:07 1 Q. This particular information. 2 A. The information that was given to the Lago Agrio 3 Court was confined to that that was collected during the 4 Judicial Inspections themselves. I don't believe there is 5 any mystery that the Parties were conducting 6 Pre-Inspections. That was acknowledged during the Judicial 7 Inspections themselves. It was acknowledged in 8 correspondence between the Court and Chevron. 9 I don't believe that this particular table was 10 submitted in that proceeding. It was submitted in this 11 proceeding. 12 Q. So, it's your testimony today that both Parties 13 conducted Pre-Inspections and the Court was well-aware of 14 those pre-inspections; is that right? 15 A. That was my understanding. I know that both 16 Parties--I know that both Parties conducted 17 Pre-Inspections, and it was--to answer that, I provided it 18 in my 2014 Report--let me pull that up--I can give you the 19 citations there--a list of the dialogue in the Actas where 20 the Pre-Inspections are discussed with the Judge, and, for 21 example, identifying the flagging, et cetera. 22 I can find that for you, just a minute. Here it 23 is. Yeah. You will find that--some of those excerpts that 24 I provided you in my May 7th, 2014 Report, Section 5.2 25 Pages 35 to 37, and then attached in one of those</p>	<p style="text-align: right;">1345</p> <p>02:11 1 A. That is my understanding, yes. 2 Q. Mr. Connor, would you turn to Tab 6 in the binder 3 that we have provided you, the large binder. 4 A. It is large. 5 Q. Yes. 6 A. Tab 6. 7 BY MR. EWING: 8 Q. Unfortunately, it's not the only one either. But, 9 for now, we will stick with that. 10 A. Okay. Is it large binder Number 1? 11 Q. Yes, large Number 1. 12 And this is RLA-308, and it's Ecuadorian law from 13 October 21st, 1921. 14 Were you aware of the Ecuadorian law in effect at 15 the time the TexPet Consortium Agreement was signed 16 provided that oil Operators had the "right of use for 17 purposes or commercial use and in the necessary quantity 18 lands, waters without depriving them of their qualities of 19 potability and purity and without affecting fishing." Were 20 you aware of that? 21 MS. RENFROE: Pardon me, Mr. President, I'll level 22 an objection that this is a question of a legal nature. 23 The question seems to call for a legal conclusion of a 24 non-legal expert. 25 PRESIDENT VEEDER: Well, the objection is correct,</p>

02:13 1 but I suspect you're asking simply if he knows its effect.  
 2 MR. EWING: That's correct.  
 3 PRESIDENT VEEDER: Then please proceed, but it  
 4 certainly won't be understood as a legal conclusion or a  
 5 legal answer.  
 6 BY MR. EWING:  
 7 Q. And I don't ask you to make legal conclusions  
 8 today. Please.  
 9 A. Not making any legal conclusion, no, I'm not aware  
 10 of what the laws were that surrounded those activities at  
 11 that time. There is similar language in the Concession  
 12 Agreement between the Government and TexPet from what I've  
 13 seen. But my evaluation was really of the practices and  
 14 the regulations that apply. I haven't offered opinions on  
 15 the legal context of those activities.  
 16 Q. You said that your evaluation was of the practices  
 17 and the regulations that apply. What do you mean by "and  
 18 the regulations that apply"?  
 19 A. I mean two different things.  
 20 In the analysis that I presented in my Reports,  
 21 starting with the 2010 Report and then explained further in  
 22 the other three Reports, I have evaluated the operations of  
 23 the TexPet organization in Ecuador with regard to the  
 24 prevailing standards of that time in other countries as  
 25 well as with Latin America, and I have also considered

02:14 1 their operations in the context of the prevailing  
 2 regulatory standards in that country and elsewhere to see  
 3 if they were consistent in that manner.  
 4 Q. Did you evaluate TexPet's practices as they  
 5 related to the 1921 Hydrocarbons Law?  
 6 A. No, I did not. I evaluated them with regard to  
 7 the prevailing standards for Environmental Protection as  
 8 applied by industrial organizations throughout the world  
 9 and in Ecuador at that time.  
 10 Q. But assuming with me for a moment the legal  
 11 conclusion that this was in effect--and I'm not asking you  
 12 to actually--we're not making a legal conclusion based on  
 13 that, but assuming it's in effect, wouldn't it have been  
 14 most appropriate for you to compare TexPet's operations  
 15 with Ecuadorian law?  
 16 MS. RENFROE: I'll renew my objection. The  
 17 question assumes a hypothetical, and it assumes a legal  
 18 interpretation of a law that this Witness has already  
 19 explained he did not consider and was not familiar with.  
 20 PRESIDENT VEEDER: Where are you going with this?  
 21 You've taken it as far as you can.  
 22 MR. EWING: My understanding from what his answer  
 23 was, is that he just said he evaluated TexPet's practices  
 24 in accord with laws other than that in place in Ecuador,  
 25 and now the screen has gone off.

02:16 1 PRESIDENT VEEDER: You mustn't talk. You will  
 2 find it goes on. I think you asked whether it would have  
 3 been more appropriate for you to compare TexPet's  
 4 operations with Ecuadorian law.  
 5 MR. EWING: He says "I have evaluated the  
 6 operations of the TexPet organization in Ecuador with  
 7 regard to the prevailing standards of that time in other  
 8 countries as well as with Latin America."  
 9 Mr. President, I will just move on and just  
 10 simplify this all.  
 11 PRESIDENT VEEDER: You may move on. You made your  
 12 point.  
 13 BY MR. EWING:  
 14 Q. Would you turn to Page 3 of your June 2013 Report,  
 15 please.  
 16 A. Is that in the binder there?  
 17 Q. It is in the binder, you can also find it in the  
 18 spiral-bound version that Claimants have provided to you.  
 19 A. 2013?  
 20 Q. Correct. It is Tab 13 in our binder?  
 21 A. Okay. 2013. Page 3.  
 22 Yes, I'm there.  
 23 MS. RENFROE: Did you say Page 3?  
 24 MR. EWING: Correct. Page 3 of his 2013 Report.  
 25 It is Tab 13. Sorry, it's not actually in the

02:17 1 binder. If you would--  
 2 PRESIDENT VEEDER: That's why we can't find  
 3 Tab 13.  
 4 MR. EWING: It's not quite large enough.  
 5 If you could look at the spiral-bound one, it's  
 6 the same. My apologies for that.  
 7 BY MR. EWING:  
 8 Q. Do you see where you say: "Visual inspections,  
 9 soil sampling, and laboratory analysis of oil composition,  
 10 residual saturation characteristics and leeching potential  
 11 of over 1400 soil samples show that the petroleum remaining  
 12 in soils and pits as of 2004 to 2009 was highly weathered  
 13 except in areas of recent spills or discharges by  
 14 Petroecuador"?  
 15 A. Yes.  
 16 Q. And turning to Page 22 of the same Report, in the  
 17 middle of little Section VI.  
 18 A. Yes.  
 19 Q. Do you see where you state that "these data showed  
 20 the residual hydrocarbons to consist of insoluble resins  
 21 and asphaltenes that are immobile in the soil matrix. LBG  
 22 suggests that these petroleum residuals could migrate to  
 23 impact groundwater, surface water, or other land areas  
 24 beyond the well platform, which is physically impossible"?  
 25 Do you see that?

02:20 1 A. Yes.  
 2 Q. Is that still your opinion today?  
 3 A. Yes, it is, and I can explain that if you wish.  
 4 Q. We will get to that.  
 5 So, would it be fair to say that you are  
 6 concluding in these two paragraphs and in your Reports that  
 7 the hydrocarbons remaining from TexPet's operations are  
 8 immobile because "only the heavier end portions persist."  
 9 A. No, not completely.  
 10 Q. You said here that the data show--these data  
 11 showed the residual hydrocarbons consist of insoluble  
 12 resins and asphaltenes. What are resins?  
 13 A. Resins are components of the crude oil spectrum  
 14 that are in the heavier ranged carbon range above C-30, and  
 15 the asphaltenes are particulates that exist as colloids  
 16 within that mixture. These are characteristic of the--I  
 17 should say this, there are four different fractions that  
 18 were analyzed: The saturated, the aromatics, the resins  
 19 and the asphaltenes on all the oil samples that were  
 20 collected, and the residuals that were found were  
 21 principally in the resins and asphaltenes spectrum with  
 22 aromatics and saturates principally absent.  
 23 Q. So, would it then be fair to say that you conclude  
 24 that the hydrocarbons remaining, the residual hydrocarbons,  
 25 from TexPet's operations are immobile because only the

02:23 1 immobility.  
 2 Q. At the end of this Paragraph VI you rely on an  
 3 article by O'Reilly and Thorsen that was published in 2010.  
 4 That was titled "Impact of Crude Oil Weathering on the  
 5 Calculated Effective Solubility of Aromatic Compounds:  
 6 Evaluation of Soils from Ecuadorian Oilfields." Is that  
 7 correct?  
 8 A. Yes, that's one of the citations that I present  
 9 here, correct.  
 10 Q. And that citation supports your conclusion that  
 11 the residual hydrocarbons, it is physically impossible for  
 12 them to be mobile in the soil matrix?  
 13 A. It's particularly related to the leachate  
 14 potential of those residual hydrocarbons. I don't rely on  
 15 that document to characterize the degree of weathering. I  
 16 only rely on it, along with the article by Dr. Newell, to  
 17 evaluate the leaching effects of that material, how much  
 18 can it leach. So, not only is it theoretically not  
 19 reasonable for that material to leach into the soil, but  
 20 hundreds or thousands of leachate tests had supported that  
 21 theoretical finding.  
 22 Q. And when you're referring to "leachate tests,"  
 23 you're referring to the TCLP test?  
 24 A. That was the test that was conducted principally  
 25 in this matter, and that's a test, for the benefit of the

02:22 1 heavier end portions persist along with the asphaltenes?  
 2 A. No, that would not be correct.  
 3 Q. What other portions remain in addition to the  
 4 asphaltenes and resins?  
 5 A. Well, the reason your Statement is not correct is  
 6 that the oil composition is only one factor in the mobility  
 7 of those materials within the environment, and I list a  
 8 number of other factors throughout this Report and into the  
 9 citations that you present here that affect the ability of  
 10 that material to move within the environment.  
 11 Q. So, looking just at these data that you are  
 12 referring to in VI, Section VI here, are there any other  
 13 portions of the residual hydrocarbons that you are leaving  
 14 out of your sentence?  
 15 A. There are the--the ability of that material to  
 16 move is characterized by the soil leachate tests and the  
 17 residual saturation tests. As I state other where, these  
 18 materials are found that principally consist of asphaltenes  
 19 and resins as two of the characteristic components of the  
 20 crude oil. As documented in the Reports, there are some  
 21 diesel range organics that still remain in those materials,  
 22 but they're not soluble as demonstrated by leaching tests.  
 23 The primary composition is resins and asphaltenes, and the  
 24 analysis of those remaining materials by means of leachate  
 25 tests and residual saturation tests demonstrated their

02:25 1 panel, the leachate is much like the fluid that forms in  
 2 your cup when you drip in a tea bag. So, if you have a  
 3 soil and you put it in water, some of that material in the  
 4 soil will dissolve into the water, and that's called  
 5 leachate.  
 6 Sorry for the interruption, Mr. Ewing.  
 7 Q. We're okay so far.  
 8 Did you know that Chevron funded that O'Reilly  
 9 paper?  
 10 A. The O'Reilly paper indicates that at the end of  
 11 the text.  
 12 Q. That Chevron funded it?  
 13 A. That's what it says. I wasn't aware of what their  
 14 arrangements were when they wrote the report, but the paper  
 15 discloses that within the body of the text.  
 16 Q. And the paper also discloses that Chevron provided  
 17 the data for the paper; correct?  
 18 A. I don't recall if they say that, but that's my  
 19 understanding, yes.  
 20 Q. I apologize. We don't have a binder. We had some  
 21 printing problems this morning, which is why we only have  
 22 two of our large--or one large binder. We'll put this on  
 23 the screen for now.  
 24 PRESIDENT VEEDER: Can I just say that we are very  
 25 grateful to both sides for this incredibly efficient

02:26 1 bundling system. It's been very helpful to us. If it goes  
 2 wrong once, don't worry about it.  
 3 MR. EWING: Thank you. We are doing our best, as  
 4 I know Claimants are as well.  
 5 BY MR. EWING:  
 6 Q. My apologies, Mr. Connor. Here are the  
 7 acknowledgments in that paper. So, they've--Chevron funded  
 8 it and provided the raw data for it.  
 9 Did you know that Chevron also commented on it?  
 10 A. No, I wasn't party to the communication between  
 11 the authors and Chevron.  
 12 Q. And that Ms. McMillen actually provided comments  
 13 on it?  
 14 A. No, I wasn't party to that communication.  
 15 Q. And the Newell paper that you referred to from  
 16 2005, that's Charles Newell, Dr. Newell; right?  
 17 A. Correct.  
 18 Q. And he is a Vice President at GSI?  
 19 A. Yes.  
 20 Q. And he was at the time?  
 21 A. Yes.  
 22 Q. So, the only sources you have here are a paper by  
 23 GSI and a paper funded and edited by Chevron?  
 24 A. No, that's not correct. If you read the paper by  
 25 Chuck Newell, you will see that he signs--he cites a number

02:29 1 of research papers that were conducted by various Parties  
 2 to support his analysis of residual saturation. His  
 3 analysis is more of a profile of what those other papers  
 4 say. And if we pull up that report, I can point those out  
 5 to you.  
 6 Q. And we may get to the report--I don't know if  
 7 we'll need to get into the details of it--but would you  
 8 agree then that it's an acceptable practice to cite to and  
 9 rely on reports that amalgamate and bring together a series  
 10 of other reports?  
 11 A. Or, in that you're referring to the report by  
 12 Dr. Newell?  
 13 Q. Is that a--generally, the idea that Dr. Newell has  
 14 brought together research papers conducted by various  
 15 Parties and presented them in his single paper--is that a  
 16 normal and acceptable practice in your field?  
 17 A. The work product by Dr. Newell in this case was a  
 18 report written for Chevron for this matter which addressed  
 19 the residual saturation characteristic of the clayey soil  
 20 in that region based on samples that I collected and sent  
 21 to the laboratory. Dr. Newell then cites to a number of  
 22 different papers by different academic researchers to  
 23 evaluate that data and arrive at a conservative estimate of  
 24 the holding capacity of the soil which we call "residual  
 25 saturation." That's the ability of the soil as a sponge to

02:30 1 retain an oil before that oil becomes mobile.  
 2 And I think yes, that's a completely appropriate  
 3 manner, that if you do scientific work, you certainly need  
 4 to consider the context and the research done by others in  
 5 order to arrive at an informed decision.  
 6 Q. The point of this Section VI on Page 22 of your  
 7 2013 Report, though, is to say that the residual  
 8 hydrocarbons are immobile and cannot migrate to the  
 9 surrounding land and water resources.  
 10 A. The specific purpose of that paragraph is to  
 11 respond to the prior report by the Ecuador Experts and to  
 12 more specifically focus in on one technical element, a  
 13 technical element that is discussed more broadly in my  
 14 other reports. And in this particular paragraph, if you  
 15 read this whole section, you will see that what I'm  
 16 presenting is a response to the Ecuador Experts noting that  
 17 they had failed to consider certain scientific principles.  
 18 And the inability of that material to move is not  
 19 simply dependent on the scientific theories that are  
 20 presented by Dr. Newell and by Dr. O'Reilly. It's more  
 21 completely related to the additional information, that same  
 22 paragraph, of the hundreds if not thousands of analyses  
 23 conducted on every soil sample that contained hydrocarbons  
 24 collected during the Judicial Inspections to determine if  
 25 those hydrocarbons, whatever their composition, were mobile

02:32 1 within the environment. And the conclusion of those  
 2 thousands of analyses were they were not.  
 3 And my critique at this point in this document was  
 4 that those data, which are very important, had not been  
 5 duly considered in the conclusions drawn in the Ecuador  
 6 Experts' Reports at that time.  
 7 Q. Mr. Connor, I will try to be very specific with my  
 8 questions, if you could try and focus on those questions in  
 9 your response. What you're saying in Section VI here is  
 10 that LBG's conclusion that the TexPet residual hydrocarbons  
 11 can migrate and pose a risk of impacts; you are saying that  
 12 is wrong?  
 13 A. I'm saying that the tests that we had conducted  
 14 indicated that the materials that remained within the  
 15 closed pits and the other materials we tested within soils  
 16 were not mobile within the environment given their  
 17 composition. That's what we're saying, yes.  
 18 Q. So, you disagree with LBG that TexPet residual  
 19 hydrocarbons can migrate and pose a risk of impact on the  
 20 surrounding land and water resources?  
 21 A. I guess the point of difference is whether or not  
 22 they migrate, whether or not they spread. There are some  
 23 material that remain from the TexPet era, pits that were  
 24 not included in the RAP, and there are new problems that  
 25 have occurred after that era. Our findings are that those

02:34 1 materials are not spreading. They're relatively static  
 2 within the environment. If there is a pit that has liquid  
 3 material in it, it hasn't exited that pit, nor is it likely  
 4 to do so. And that relates to a number of different  
 5 factors that I point to here and encourage the Ecuador  
 6 Experts to consider the body of that data.  
 7 Q. So, you disagree with LBG?  
 8 A. Yes.  
 9 Q. Thank you.  
 10 Your basic premise, then, is that liquid crude  
 11 oil, which would be mobile crude oil, must be--must not be  
 12 TexPet's residual hydrocarbons; correct?  
 13 A. No, that's not my testimony.  
 14 Q. So, if there is liquid crude oil, do you believe  
 15 that could be left from TexPet?  
 16 A. I just to want clarify our terminology here.  
 17 I do think you can have liquid weathered crude oil  
 18 that, under certain circumstances, can remain within the  
 19 environment, and it could date from the era when TexPet was  
 20 the Operator for the Consortium. All the liquid crude oil  
 21 in this area is not of recent vintage or old vintage.  
 22 The earlier statement that you pointed out in  
 23 which I stated that all of the oil was highly weathered  
 24 except those associated with very recent spills from  
 25 Petroecuador, by "very recent spills," I mean spills

02:36 1 perhaps within one month. Weathering occurs very rapidly  
 2 in that environment. And only in those few places where we  
 3 did encounter fresh crude oil spills, those were crude oil  
 4 spills associated with recent operations. Crude oil spills  
 5 that were older could not be time stamped because it's not  
 6 clear when they had happened.  
 7 But yes, you can have liquid crude oil, weathered  
 8 crude oil, that's not mobile within the environment, within  
 9 the environment in which it's located, regardless of its  
 10 age.  
 11 Q. Are you saying that I could have liquid crude oil  
 12 and, therefore, it couldn't be mobile, similarly to I have  
 13 liquid water in my bottle but it's not currently mobile  
 14 outside of this bottle; is that what you're trying to say?  
 15 A. That may be an apt analogy. So, here we have  
 16 water in a bottle, and the water doesn't come out, and my  
 17 hands are dry. This is very much akin to the pits that I  
 18 showed you, and you'll see them, too, Mr. Ewing, if you  
 19 haven't had the opportunity to visit the Concession Area.  
 20 There were pits excavated in clay that were not included in  
 21 the RAP and still remain. As I described, there is gooey  
 22 material on the surface and there's oil-laden sediments at  
 23 the bottom. You can't extract liquid material from those.  
 24 In all cases, it's quite weathered. It is not capable of  
 25 moving through the pores in a clayey soil any more than

02:37 1 this water can move through the plastic liner around it.  
 2 And that's--I think that's a relatively good  
 3 analogy that you've made.  
 4 Q. If the pits are dug into sand, would that allow  
 5 the liquid petroleum to migrate?  
 6 A. It would have a different potential to migrate.  
 7 You--certain oils, depending on their viscosity, will move  
 8 more easily through larger-pored soil, so a sandier  
 9 gravelly soil, yes, it can move more freely through that.  
 10 A clayey soil, no. A silty sand or a clayey sand, no.  
 11 Q. So, you specified, in the diagrams you showed us  
 12 earlier this morning, pits that are lined in clayey soil  
 13 is, I think, the description on your slides. The fact that  
 14 it's clayey is integral to your conclusion; correct?  
 15 A. It's--I think the actual statement on the slide is  
 16 it's principally clayey soil, and by "clayey," I mean that  
 17 it has clay as a principal component. The geotechnical  
 18 analyses of porous soils--by that I mean sand or  
 19 gravel--have long since showed that if the clay fraction  
 20 exceeds 10 percent, then the effective permeability of that  
 21 material is like a clay, because all the pores have been  
 22 blocked by the clay. So, a clayey soil will uniformly  
 23 exhibit a low permeability. By low permeability, it means  
 24 it's resistant to water movement and resistant to oil  
 25 movement. That's why I use the term "clayey." It

02:39 1 indicates a soil whose clayey content is greater than  
 2 10 percent by dry weight.  
 3 Q. So, your opinion--so, your opinion is that the  
 4 pits in Ecuador are equivalent to these water bottles that  
 5 we have in terms of their ability to contain the oil that's  
 6 put into them?  
 7 A. I would say that functionally, in terms of the  
 8 work that we did, we did not find significant migration  
 9 beyond the boundaries of those pits.  
 10 They're not exactly the same because as the--those  
 11 are made out of soil, and--which is different from  
 12 plastic--and as observed in the Woodward-Clyde report, I  
 13 showed you a diagram, there is some permeation of the oil a  
 14 short distance into those soils that was observed. But  
 15 there is no permeation or migration at any significant or  
 16 measurable distance. Samples--core soils that were taken  
 17 only a few meters away did not encounter that oil.  
 18 Q. And if I took this bottle and I stuck a knife in  
 19 it and pulled it out, you would agree with me that the  
 20 water would come out; right?  
 21 A. Yes, it would come out. But that wouldn't happen  
 22 in clayey soil because clay is very plastic.  
 23 Q. So, if I took--  
 24 A. By that I mean deformable. Do you understand that  
 25 difference? Yeah. It doesn't have--I guess the difference

02:41 1 is what you call catastrophic failure. This is the reason  
 2 we don't use plastic tanks at refineries. Because when a  
 3 plastic vessel ruptures, it ruptures completely. Soil  
 4 vessels such as ponds have long been used because they have  
 5 the characteristic of resisting catastrophic failure.  
 6 They're very plastic and moldable, and that's one of the  
 7 advantages of earthen pits compared to plastic bottles.  
 8 Q. But you would agree with me, if there are roots  
 9 through the clayey soils, or cracks in the clayey soils,  
 10 that those would also be avenues for the water or oil to  
 11 get out just like a knife in the side of my bottle?  
 12 A. No, it won't be like a knife in the side of your  
 13 bottle because it doesn't cause a catastrophic failure, the  
 14 soil.  
 15 But roots and small fractures do provide an avenue  
 16 for movement of the oil through the soil because they serve  
 17 to create a larger pore, and a larger pore space allows the  
 18 oil to enter. That was observed in the case by--in the  
 19 report that you see from Woodward-Clyde who did the  
 20 remediation, they did note that via tree roots and others,  
 21 you would see a short movement over a short distance, I  
 22 should say, of the oil into the surrounding soils.  
 23 However, they did not observe significant migration, and  
 24 neither did the data that's been collected today by any  
 25 Party.

02:42 1 Q. So, just to make sure I understand, and this is  
 2 clear, your opinion is that there may be liquid crude oil  
 3 from TexPet's operations, but that that crude oil is  
 4 contained within these pits?  
 5 A. To be more specific about that, it's not always  
 6 contained within the pits, and we should refer to this as a  
 7 hypothetical. I can't testify, Mr. Ewing, that the crude  
 8 oils that we find either when it's sediments or  
 9 unremediated pits, I can't testify that those are  
 10 necessarily associated with TexPet's period of operation.  
 11 They may be. I don't know. But in the investigations that  
 12 we have conducted, I don't recall observing that these  
 13 materials had migrated a significant distance outside these  
 14 pits.  
 15 There is one instance that I recall in seeing a  
 16 sample outside a pit, and that's at the Lago 2 well site.  
 17 Some of the information that was collected by the Ecuador  
 18 Experts, there is one location outside a pit where  
 19 indicates that there has been a short distance migration.  
 20 But in general, no, we haven't seen significant migration  
 21 from these pits, and that's generally consistent with the  
 22 data compiled by all Parties.  
 23 Q. When you referred to Ecuador Experts, do you mean  
 24 LBG?  
 25 A. I believe in my Reports I identify a variety of

02:44 1 experts that I have referred to as "Ecuador Experts." It  
 2 certainly includes Mr. Goldstein and Dr. Garvey associated  
 3 with LBG, as well as Dr. Strauss and, I believe, Dr. Short.  
 4 But my work is most responsive to Dr. Goldstein and  
 5 Dr. Garvey, if it is Dr. Garvey. If it's not, I apologize.  
 6 Q. You've given Mr. Goldstein a promotion and  
 7 Dr. Garvey a demotion, I think, but--  
 8 A. Let's strike that.  
 9 Q. They have stayed in their seats, so I think we're  
 10 okay.  
 11 A. Yeah, I hope so.  
 12 MR. EWING: I'm about to move into, you know, a  
 13 little bit further on this and it would be helpful to give  
 14 out your binders. Could we take about 10 minutes' break?  
 15 PRESIDENT VEEDER: We can take 15, if you need it.  
 16 MR. EWING: We will be able to hand them out  
 17 quicker but if you'd like to take a break, a full 15, I'm  
 18 happy, or--  
 19 PRESIDENT VEEDER: We'll take a full 15, so we  
 20 will start again at 3:00.  
 21 MR. EWING: Thank you.  
 22 PRESIDENT VEEDER: Again, please don't discuss the  
 23 case as before.  
 24 (Brief recess.)  
 25 PRESIDENT VEEDER: Let's resume.

03:01 1 BY MR. EWING:  
 2 Q. Mr. Connor, we started this morning with your or  
 3 this afternoon with your presentation in which you included  
 4 two slides with pits lined by predominantly clayey soils  
 5 and your conclusion that the oil contamination is not  
 6 migrating. We've now established that root canals and  
 7 cracks in that predominantly clayey soil could cause  
 8 migration. Would you agree?  
 9 A. It's a question of scale. If you're talking about  
 10 movement within a half a meter, for example, yes, that's  
 11 been observed. There has been no migration on a larger  
 12 scale of meters on the cases that I have observed to date.  
 13 Q. So, you have seen no evidence that the TexPet--let  
 14 me start over.  
 15 You have seen no evidence that oil has migrated  
 16 more than half a meter?  
 17 A. When you say, "migrated," where and how? With  
 18 which? I'm not clear on specifically what you're asking.  
 19 Q. So, I'm looking at your Slide Number 37 from your  
 20 presentation this morning.  
 21 A. Yes.  
 22 Q. And in that slide it's titled, "Weathered Oil Not  
 23 Migrating."  
 24 Do you remember this slide?  
 25 A. Yes, I do.



03:03 1 Q. And you have a picture, a diagram of a pit with  
 2 various materials in it, including oily sediment,  
 3 rainwater, and semi-solid tarry material, and from what you  
 4 said this morning, I think your conclusion was the evidence  
 5 shows that the contaminants in this pit have not migrated  
 6 beyond .5 meters and the white line that you have drawn  
 7 around that pit; is that correct?  
 8 A. I don't believe you have interpreted that exactly  
 9 correctly. As I said during the presentation of the  
 10 slide--and this is indicated on the documents referenced at  
 11 the base of the slide--that dotted white line as based  
 12 represents the observation of the company that closed  
 13 hundreds of pits during the TexPet remediation project, and  
 14 their observation was that, yes, the soils bordering the  
 15 pit did contain oil, and that commonly it would require  
 16 scraping the walls of the pit about half a meter away.  
 17 Then my own observations, and based on all the  
 18 data by all the Parties are that we have not observed oil  
 19 to have migrated in terms of meters away from these pits,  
 20 even the open unclosed pits as demonstrated by soil  
 21 borings, and that is generally the case.  
 22 Q. So, you have not observed oil that has migrated  
 23 more than one meter?  
 24 A. I can't say that, Mr. Ewing. I can say that the  
 25 borings that were located in proximity to these pits, that

03:07 1 stepped out from the center of the pit to find the edges of  
 2 the pit; is that right?  
 3 A. Yes, there was a series of step-outs that were  
 4 done in order to find the general location of that pit, in  
 5 concert with historical aerial photographs and other  
 6 evidence that might be available.  
 7 And then samples were taken beyond that footprint  
 8 to determine if there had been lateral migration. The  
 9 proximity of those borings to the edge of the pit were  
 10 quite variable, but the observations were consistent, that  
 11 we did not observe or I did not observe in that compilation  
 12 of data that there was migration laterally from the pits  
 13 such as that it would affect off-site areas.  
 14 Q. And there was a Judicial Inspection at Lago Agrio  
 15 2; correct?  
 16 A. Yes.  
 17 Q. So, Chevron would have delineated that pit;  
 18 correct?  
 19 A. Chevron in that case, the Chevron Expert was asked  
 20 during the Judicial Inspection to do perimeter samples  
 21 around the site rather than the pits. That pit was  
 22 identified during the Judicial Inspection, and the data  
 23 from that are provided in the Judicial Inspection Rebuttal  
 24 Report rather than the Judicial Inspection Report itself.  
 25 So, that pit was identified but the specific boundaries of

03:05 1 were within meters of those pits, we have not observed oily  
 2 impacts on those soils. Those borings are located  
 3 different distances at different sites, but in combination  
 4 with all those put together, we are not seeing lateral  
 5 migration of oil through these soil types.  
 6 Q. And in your Statement referring to soil borings,  
 7 are you including LBG's analysis in 2013 and 2014?  
 8 A. Yes, I am.  
 9 And I did note that there was one boring put in by  
 10 LBG at the Lago 2 site that was a monitoring well that did  
 11 detect hydrocarbons that suggest they had moved from a  
 12 nearby pit called Pit 3A. It's not a great distance, but  
 13 the data do indicate there has been some motion.  
 14 Q. How far had that contamination moved?  
 15 A. Well, I can't say that it had moved, but it was  
 16 detected within some meters of the estimated boundaries of  
 17 Pit 3A. Either--the pit boundaries are not known. They  
 18 haven't been defined, but the boring did not appear to have  
 19 been drilled through contaminated soil; and, therefore, by  
 20 my estimation, would provide a more reliable estimate or  
 21 measurement of the water; and in that location there is  
 22 affected water by hydrocarbons. It appears it did not come  
 23 from above; it must have come from a lateral location.  
 24 Q. You said one of the purposes of the Judicial  
 25 Inspections was to delineate the pits; correct? And you

03:08 1 that pit were not the subject of the Judicial Inspection.  
 2 Rather, perimeter borings, as they're termed, were placed  
 3 to the north and south, east and west of the site per the  
 4 Judgment of the judicial inspection Expert and in  
 5 comply--as their Judgment as to how to meet the request of  
 6 the Court.  
 7 Q. I think, Mr. Connor, you're trying to anticipate  
 8 where I'm going with these questions. We will talk about  
 9 in detail about Lago Agrio 2, but not right now. The  
 10 question was: Did Chevron delineate the pit at Lago Agrio  
 11 2? And I understand your answer is no, because you  
 12 understand that the Judge asked for site delineations, not  
 13 pit delineations; is that correct?  
 14 A. Yes, I read the Acta for that site, and the  
 15 specific request that was put forward by the representative  
 16 for Chevron was for a site delineation; and normally that  
 17 was the case, that it was more to evaluate the general site  
 18 characteristics rather than individual pits. In some  
 19 cases, the experts did do individual pits. They did not in  
 20 that specific case.  
 21 Q. In addition to roots or fissures in clay being one  
 22 way that contamination may migrate, depending on the  
 23 distance, would you also agree that oil contamination can  
 24 migrate out of pits by overtopping those pits?  
 25 A. Yes.

03:10 1 Q. Would you also agree that the oil contamination  
2 can migrate if the pit walls fail?  
3 A. If the pit walls fail for an open unremediated pit  
4 that contains liquid material.  
5 Let me get my question a little more succinct. If  
6 you're talking about a geotechnical failure of the dike  
7 around the pit such that it ruptured and there was liquid  
8 material in there, yes, it could exit that pit and flow  
9 across the ground surface. Is that what you're asking?  
10 Q. It is, but let me put that in lay terms.  
11 If the walls of a pit break, the contents can come  
12 out; right?  
13 A. Just to be clear for the purpose of the Members of  
14 the Tribunal, the pit has a subsurface and above-surface  
15 portions. The above-surface portion is surrounded by a  
16 dike, much like the country of The Netherlands, which you  
17 may be familiar with. If that dike breaks above surface,  
18 if the water level is above the base of that dike, those  
19 fluids can exit, and if there are liquid oils in that, it  
20 would exit as well.  
21 Q. And if a pit had oil in it, and it was simply  
22 covered with dirt and then the dike broke, that oil could  
23 come out as well?  
24 A. If--I guess the exception to that case, Mr. Ewing,  
25 is that once the pit is covered with dirt, there is no

03:11 1 longer any physical extension of the dike above ground  
2 surface; it's been leveled. Therefore, there is no  
3 propensity for there to be a rupture of that physical  
4 feature above ground surface. Rather, that type of a  
5 failure would require a rupture of the subsurface  
6 surrounding clay material, which, from an engineering  
7 perspective, is not likely to occur because of earth  
8 pressure.  
9 Therefore, I would not expect there to be that  
10 type of release, unless that release would occur above the  
11 ground surface, not below the ground surface.  
12 Does that make sense?  
13 Q. It makes sense, but it seems to be based on the  
14 assumption that pits are dug into a large flat level area.  
15 If a pit is dug into--next to the side of a hill, you no  
16 longer have--what did you call it? The ground tension or  
17 the ground strength to maintain it. You simply have a wall  
18 of your pit. Would you agree with me about that?  
19 A. So, your hypothesis is that a pit is constructed  
20 at the edge of a steep incline, and if that incline were to  
21 fail, would the contents of the pit exit?  
22 Q. Correct.  
23 A. Yes, I would agree with that.  
24 Q. And you are aware of examples where pits  
25 overtopped?

03:13 1 A. Yes.  
2 Q. And are you aware of examples of where Sand  
3 fractures and fissures allowed oil contamination to  
4 migrate?  
5 A. In the Oriente region of the Concession?  
6 Q. In the Oriente Region.  
7 A. I observed one location where that had occurred  
8 that via Sand migration, and that was at the Shushufindi  
9 Norte production station during the Judicial Inspection  
10 that I described where I worked in concert with Mr. Davila.  
11 There is one pit there that had been recently constructed  
12 that contained fresh oil excavated into Sand in which there  
13 was seepage of that fresh oil.  
14 Q. Are you aware of any studies--  
15 A. And that was in the year--I'm sorry, I should  
16 specify. I believe it was in the Year 2004-2005. Sorry.  
17 Q. Are you aware of any studies conducted by TexPet  
18 or Texaco identifying the soil type before the pits were  
19 dug?  
20 A. No, I'm not aware of records of what  
21 investigations they did on the soils at the time, not that  
22 I had seen in this Concession Area.  
23 Q. After TexPet or Texaco was leaving the Oriente,  
24 there were two audits conducted of TexPet's operations;  
25 correct?

03:15 1 A. There were two audits conducted of the Concession  
2 operations because at that time TexPet had not been  
3 operating for two years, but yes, there were two audits  
4 conducted in the period of 1992 to 1993.  
5 Q. So, when you clarify that TexPet had not been  
6 operating for two years, TexPet was still part of the  
7 Concession from 1990 to 1992; correct?  
8 A. You know, I don't know what the legal arrangements  
9 were. I believe that is my understanding, but they no  
10 longer were operating. After June 30, 1990, all the  
11 information I reviewed indicates that Petroecuador became  
12 the sole operator of that facility, and TexPet was no  
13 longer involved in the day-to-day operations.  
14 Q. The two audits, one was conducted by HBT Agra and  
15 one by Fugro-McClelland?  
16 A. Yes.  
17 Q. And HBT Agra's audit was a joint audit between  
18 TexPet and Petroecuador; correct?  
19 A. That's my understanding, yes.  
20 Q. And Fugro-McClelland was hired just by TexPet?  
21 A. I believe that's correct.  
22 Q. You described one of the purposes of the  
23 environmental audits of the former Concession Area was to  
24 characterize the current environmental conditions  
25 immediately after TexPet left in 1992 to 1993?

03:16 1 A. Are you looking at a particular document that we  
 2 could share?  
 3 Q. Of course. I wasn't particularly, but we can look  
 4 at your 2010 Report, Paragraph 49.  
 5 A. Yes, I'm looking at that page now.  
 6 Q. And in your opinion, these audits, "represent a  
 7 very thorough audit of oil field operations in the  
 8 Concession." Correct?  
 9 A. Yes, and I explain in the paragraph what I mean by  
 10 that. They inspected a very high percentage of the  
 11 facilities in combination, 75 percent of the facilities,  
 12 the audits that I have conducted of many other oil field  
 13 facilities are commonly on the order of only 5 to  
 14 10 percent of the facilities, so these audits were  
 15 exceptional in that regard.  
 16 Q. First, you just said that you typically inspect 5  
 17 to 10 percent of facilities. Is that what you just said?  
 18 A. Yes, that's what I just said.  
 19 Q. And based on that analysis of 5 to 10 percent of  
 20 facilities, you were able to draw conclusions about the  
 21 larger whole?  
 22 A. Those particular audits are regulatory compliance  
 23 audits, and they are specifically designed in accordance  
 24 with the protocols that were first developed in the early  
 25 Nineties to be of adequate design to characterize the

03:20 1 MR. EWING: Tab 17. 6-21. So it's Page 21 of  
 2 Section VI.  
 3 PRESIDENT VEEDER: The pagination is on the  
 4 left-hand side.  
 5 Mr. Connor, have you got it?  
 6 THE WITNESS: Yes, I have it. Thank you.  
 7 BY MR. EWING:  
 8 Q. They took 196 samples; is that correct?  
 9 A. That's what the document says, yes.  
 10 Q. And that's just over one sample per site.  
 11 Let me save you the time. It's 1.2 samples per  
 12 site.  
 13 A. I think it's about 1.2 samples per site. It is  
 14 whatever amount that they judged necessary to reach their  
 15 conclusions. And it was satisfactory to their sponsors of  
 16 their work.  
 17 Q. And you remember reading that HBT Agra found that  
 18 95 percent of the soil samples exceeded background levels  
 19 of oil contaminants?  
 20 A. I don't recall that specifically, but given that  
 21 they were specifically sampling the observed spills, that  
 22 would be consistent with their sampling practice.  
 23 Q. And this is on Page 6-22. On that page it also  
 24 says that over half of the soil samples taken were above  
 25 the 5,000 micrograms per gram standard they were using?

03:18 1 environmental management system of the organization and its  
 2 ability to meet those regulations at the range of  
 3 facilities. That's different from estimating a volume of  
 4 impact. It's directed more towards--it's like an  
 5 accounting audit. But normally in those, it's a 5 to  
 6 10 percent survey. These were very different.  
 7 Q. And what HBT Agra did was inspect, physically  
 8 inspect, 50 percent of the well sites; is that right? And  
 9 I'm just looking at the middle of that paragraph.  
 10 A. Yes, that's the understanding I had from reviewing  
 11 their materials, correct.  
 12 Q. And that's 163 wells, according to your Report  
 13 here?  
 14 A. Yes, that was the information I obtained from the  
 15 report.  
 16 Q. Do you remember how many samples HBT Agra took to  
 17 evaluate the 163 sites that they visited?  
 18 A. No, I don't recall.  
 19 Q. If you could turn to Tab 17. This is Page 6-21 of  
 20 the HBT Agra report. It says here they took 196 samples.  
 21 A. What page, 621?  
 22 Q. 6-21.  
 23 PRESIDENT VEEDER: It's not that easy.  
 24 MR. EWING: Excuse me?  
 25 PRESIDENT VEEDER: Tab 17?

03:22 1 A. That's correct. That's what it says.  
 2 Q. And 5,000 micrograms per gram, is that the same as  
 3 5,000-milligram per kilogram?  
 4 A. Yes.  
 5 Q. So, over half of the samples they took were above  
 6 the 5,000-milligram per kilogram standard?  
 7 A. That's correct.  
 8 Q. And also on that page, they found that a wide  
 9 variety of sampled areas contained oil and grease levels  
 10 which exceed the criterion?  
 11 A. Correct.  
 12 Q. And that the "principal contaminant in analyzed  
 13 soils is oil"--this is on Page 6-23--"and that mobile and  
 14 toxic hydrocarbon compounds were also present"?  
 15 A. Where are you now on 6-23? Can you point me to  
 16 the paragraph?  
 17 Q. It's on the screen. It starts: "In summary, the  
 18 analytical data suggests or suggest."  
 19 A. Yes, that's correct. Their audit found that there  
 20 were materials to be addressed, and they described that in  
 21 their document.  
 22 Q. And could you please now turn to Tab 11, that's  
 23 going to be in your first binder, just to keep you on your  
 24 toes. And towards the bottom right you will see page  
 25 numbers that start with CA-5, and we're most interested in

03:24 1 the 697, the last three numbers. This is Table 6-4.  
 2 And you understand this is the scoring system that  
 3 HBT Agra used to rate the potential environmental impacts  
 4 that they found?  
 5 A. That's what I understand it to be, yes.  
 6 Q. And under "high," it lists "pit containing oil is  
 7 present. Contaminants appear to have migrated out of the  
 8 pit."  
 9 Do you see that?  
 10 A. Yes, I see that.  
 11 Q. So, you would agree with me that where HBT Agra  
 12 assigns a "high" rating, the auditors saw pits with oil  
 13 present that had migrated out of the pits?  
 14 A. Yes, on the surface, if you read the report. They  
 15 weren't drilling borings to find that. They had been  
 16 overtopping those pits, and they were identified as things  
 17 that need to be remediated, and subsequently were  
 18 remediated as part of the Remedial Action Plan.  
 19 Q. Is it your testimony that all of the pits that HBT  
 20 Agra found as "high" were remediated as part of the RAP?  
 21 A. No. The RAP was an agreement between the Parties,  
 22 it listed a specific list of pits at specific sites and  
 23 those were remediated in the RAP. Others that HBT Agra may  
 24 have observed, if not included in the RAP, could remain  
 25 after the RAP, some of them still do today.

03:26 1 Q. So, when you said they were identified as things  
 2 that needed to be remediated and were subsequently  
 3 remediated as part of the Remediation Action Plan, you  
 4 meant that some of them were remediated by TexPet as a part  
 5 of the RAP?  
 6 A. Yes. Only TexPet did the remediation.  
 7 Petroecuador did not do their remediation until many years  
 8 later with the inception of the PEPDA program.  
 9 Petroecuador has undertaken an aggressive program to  
 10 remediate pits that had been left to life out over 20  
 11 years.  
 12 Q. Again, I would ask you to try and constrain  
 13 yourself to the questions.  
 14 Could you turn to the page that ends in 700, so  
 15 it's CA-5 000700.  
 16 A. Yes, I see that.  
 17 Q. And at the bottom of the page, you can see there  
 18 is an entry for Auca 1. It's A-U and then a one.  
 19 A. Yes.  
 20 Q. And it has a listing of "high"?  
 21 A. Correct.  
 22 Q. And in the comments for this site it says: "Well  
 23 pad spill. Pit seepage."  
 24 A. Yes.  
 25 Q. And you would agree with me that given the rating

03:28 1 of "high" and the comments of "pit seepage," this means it  
 2 was a pit containing oil seeping outside of the pit.  
 3 A. I think that would be consistent with their  
 4 classification system, yes.  
 5 Q. And if you turn one page earlier, to 699, if you  
 6 look at Shushufindi A 30, this is also classified as  
 7 "high"; correct?  
 8 A. Yes.  
 9 Q. And again this would mean that there are pits  
 10 containing oil that has migrated out of the pit?  
 11 A. Correct, due to overtopping or other events like  
 12 that, but they weren't indicating a subsurface migration,  
 13 they're not tagging these for remediation.  
 14 Q. To clarify, they're not indicating anything about  
 15 how it's migrated; correct?  
 16 A. In that language they're not, but as you noted,  
 17 that there were not an extensive number of soil samples  
 18 taken, sufficient for their purposes and sufficient for  
 19 their clients. However, they did not conduct borings  
 20 around these pits, they made physical observations of the  
 21 ground surface. So, accordingly, in the context of the  
 22 Report, if you read it carefully, those observations  
 23 indicate surface seepage which can occur and apparently did  
 24 occur in these cases.  
 25 PRESIDENT VEEDER: Mind if I ask a question? The

03:29 1 first was in reference to pit seepage, and the second  
 2 reference was to pit discharge. What's the difference, do  
 3 you think was intended by the different terms?  
 4 THE WITNESS: I can answer that. I should be  
 5 cautious. I will interpret it as I see it and not  
 6 necessarily how they use the words.  
 7 A pit seepage would suggest that fluids were  
 8 coming through the surrounding soil, they were seeping  
 9 through it, much like cheese can sweat when you can see the  
 10 fluid coming out of it. Whereas a discharge would be an  
 11 overtopping, an actual fluid flow that would move over the  
 12 top of the dike and flow as a liquid rather than seeping.  
 13 Does that make sense?  
 14 PRESIDENT VEEDER: You tell me.  
 15 THE WITNESS: I think it does. So, one is a slow  
 16 seepage through a soil face and the other is actually a  
 17 fluid flow over the dike.  
 18 PRESIDENT VEEDER: Thank you very much.  
 19 BY MR. EWING:  
 20 Q. As President Veeder just pointed out, this says  
 21 pits discharged to the stream, so the stream seems to have  
 22 received some of the pit's contents. Would you agree with  
 23 me?  
 24 A. Yes.  
 25 Q. And do you know if that stream was remediated

03:31 1 during the RAP?  
 2 A. I would have to look to see. I'd have to look at  
 3 the RAP records to see if that was addressed or not.  
 4 There's a lot of sites in there. I can't recall offhand  
 5 without checking. If it was assigned to TexPet, there were  
 6 a number of remediations of that nature, but I don't recall  
 7 if this specific site was on that list.  
 8 Q. So, you are testifying now that the RAP included a  
 9 number of remediations of streams?  
 10 A. Yes.  
 11 Q. And you visited this site in December 2003;  
 12 correct?  
 13 A. Which site?  
 14 Q. Shushufindi 30.  
 15 A. I would need to look at my list. I have it--would  
 16 you mind if I looked in my Report on that chart? It says  
 17 when I visited.  
 18 Q. You may look at any of your Reports at any point.  
 19 Please.  
 20 A. Okay.  
 21 Yes.  
 22 As it says on Table 2(c) in my September 3rd, 2010  
 23 Report, I conducted a Pre-Inspection of this site in 2003,  
 24 and I believe that would it have been December 2003.  
 25 Q. And do you remember whether you investigated this

03:34 1 standard construction was that, as the backhoe excavates  
 2 the pits, the soils that are moved are placed around the  
 3 pit in a dike to provide extra fluid capacity, so some  
 4 portion is below ground, some portion is above ground.  
 5 Q. How thick are those walls of the dikes that they  
 6 put around the pits?  
 7 A. I don't know. They appear quite variable, and I  
 8 can't recall all of them. Some dikes would be a meter  
 9 thick or more, and there could be some--there were some  
 10 that were less.  
 11 One of the pits that I saw that remained open, the  
 12 dikes were not always present in the non-RAP pits.  
 13 Q. So, at Shushufindi 55, your testimony is that the  
 14 oil contamination has seeped through the dike walls based  
 15 on what HBT Agra found?  
 16 A. I told you that that's my interpretation of their  
 17 language, and it appears there is some release from that  
 18 pit that they're recording.  
 19 Q. And we will come back to Shushufindi 55. And as  
 20 you know, and I think as the Tribunal knows, we will be  
 21 going there on a site visit. But for now, could you turn  
 22 to Page 960 in the same document, so it is Tab 11  
 23 CA-5 000960.  
 24 And just so the Transcript is clear for the  
 25 future, when we all go back to read this, this is

03:32 1 stream?  
 2 A. No, I don't remember that.  
 3 Q. I am just asking your memory. We will come back  
 4 to it potentially later.  
 5 Turning back to the HBT Report, could you look  
 6 down a little bit further, the Shushufindi B55.  
 7 A. Is that on the same Page 699?  
 8 Q. Correct.  
 9 A. Yes, I see that.  
 10 Q. And again, it says the rating is "high;" correct?  
 11 A. Yes.  
 12 Q. And again it says "pit seepage."  
 13 A. Correct.  
 14 Q. So, your understanding of pit seepage is that is  
 15 oil contaminant that is coming out of the soil from that  
 16 pit?  
 17 A. My understanding is that would be fluid seeping  
 18 through the earthen dikes around the pit above surface such  
 19 that you could visibly observe that. I think that's how I  
 20 would interpret that. Although I'm not certain exactly  
 21 what they mean by that.  
 22 Q. So, your understanding is that, let's say just for  
 23 example, half of a pit will be below ground level, and then  
 24 half of a pit will be dikes around the pit?  
 25 A. I don't know if it's half and half, but the

03:36 1 Claimants' Exhibit C-13.  
 2 So, this is still a part of the HBT Agra Report  
 3 from 1992 to 1993, and this table, F-5 is a description of  
 4 contamination associated with well site pits.  
 5 Do you see that table?  
 6 A. Yes.  
 7 Q. And in the middle of the page, do you see their  
 8 assessment that there are a total of 126 "yes" pits?  
 9 A. I don't think I'm following that. Do you have  
 10 that highlighted on your screen?  
 11 Q. Yes.  
 12 A. It's on the middle of the page, total yes, I  
 13 believe I do see that now.  
 14 Q. And their assessment, "there were 126 open or  
 15 closed pits with evidence of oil in the pit and/or evidence  
 16 of oil migrating beyond the confines of the pit."  
 17 Do you see that?  
 18 A. Yes, that's correct.  
 19 Q. And if you go down a few lines, do you see that  
 20 the total number of pits is 202?  
 21 A. That's correct.  
 22 Q. So, in HBT Agra's analysis, that was primarily  
 23 visual, they found 126 out of 202 pits had evidence of oil  
 24 in the pit and/or migrating beyond the confines of the pit;  
 25 would you agree?

03:38 1 A. Yes, I would agree with that, with the caveat that  
2 given, as you pointed out, they were not drilling beneath  
3 the ground but these were observations at the ground  
4 surface. They saw that oil had overtopped or otherwise  
5 left the confines of that pit.

6 They did do other subsurface investigations, and  
7 they concluded that there was not significant migration  
8 subsurface. So, comparing to my work, we would discuss  
9 those latter observations, the subsurface. But on the  
10 surface, yes, they found materials had gone beyond the  
11 confines of the pit, in a number of circumstances.

12 Q. So, as far as you know, HBT Agra never used the  
13 backhoe to excavate or analyze any of these pits?

14 A. Yes, they did do backhoe tests, and they provided  
15 information for that.

16 Q. Wouldn't a backhoe test be subsurface analysis?

17 A. Yes, it is. And based on those backhoe tests they  
18 conclude that that have not observed significant subsurface  
19 migration or impacts on groundwater, and that's an  
20 important observation in their report. They do see pits  
21 that need attention. They do see materials on the surface  
22 outside the confines of that pit. But in whole, the  
23 conclusions that they raise or they come to, and I have  
24 explained those in my 2013 Report, are they do not have  
25 significant subsurface problems with these pits.

03:42 1 what they're doing with these numbers, but, you know, the  
2 numbers they present or what they say. So, I'm not quite  
3 sure if the 43 is part of the 50. I haven't been able to  
4 figure that out.

5 Q. So, they definitely, though, are saying that 50  
6 have oil wastes confined in the pit, 43 have oil wastes in  
7 open pits where that oil has migrated beyond the confines  
8 of the pit, 33 have oil wastes in covered pits where the  
9 oil waste is present beyond the confines of a pit. That's  
10 what they're saying.

11 A. Oh, I see it. Yeah, yeah. The 33 and the 13 are  
12 the sum of all of the covered pits that they have seen.  
13 There is 46 of those. They talk about that early in the  
14 Report and they indicate that the majority of those were  
15 pits that were closed between '90 and '92, and that was  
16 what I was speaking about earlier in my presentation. So,  
17 those are--so, those two should be added to get the total  
18 number of covered pits.

19 Q. Right. And I wasn't asking about the total number  
20 of covered pits. I'm just asking, they're finding 43 open  
21 pits with oil migrating, 33 closed pits with oil migrating?

22 A. Correct.

23 Q. And this Report was submitted in 1994; right?

24 A. I believe the date is 1993. They submitted two  
25 different reports, one that had a Corrective Action Plan in

03:39 1 Q. You see below here also that they found 50 pits  
2 with liquid oil confined to the pits; right?

3 A. Yes.

4 Q. And 43 of those where that oil waste had migrated  
5 beyond those open pits.

6 A. Are those the same pits, do you think? I'm not  
7 sure I'm reading that correctly.

8 Q. My understanding is that there are 76 total pits  
9 where oil had migrated beyond the open or closed pit.

10 Is that how you would read that?

11 A. No, I haven't looked at this table carefully  
12 enough to understand that.

13 Q. Take your time for a moment.

14 A. So, I--oh, you want me to look at it? Okay.  
15 (Witness reviews document.)

16 A. Can I borrow a pen or a pencil? Or other  
17 stenographic device?

18 Q. Of course.

19 A. Hey, thank you.

20 Thanks, Professor.

21 (Pause.)

22 Q. Mr. Connor, I think we can agree that HBT Agra  
23 doesn't necessarily organize how we would have liked them  
24 to organize.

25 A. I'm sorry, Mr. Ewing. I can't quite figure out

03:44 1 it, and one that did not, and it's--they're hard to keep  
2 straight.

3 There is a final version that's submitted in 1997.  
4 So, the publication dates can be a bit confusing.

5 Q. Let's skip the publication date. This analysis,  
6 this review that they did was between 1992 and 1993;  
7 correct?

8 A. I believe that most of the site investigation work  
9 was in the Year 1992.

10 Q. And if you could turn back to page--it ends in  
11 957. So, it's CA-5000957.

12 A. Yes.

13 Q. And do you see the entry here for Sacha 94?

14 A. Yes, I do.

15 Q. And there are two pits described in the table for  
16 Sacha 94; right?

17 A. Yes.

18 Q. And according to the key on this table, these pits  
19 have oily waste present in them. Do you see that?

20 A. Just a moment.

21 (Pause.)

22 Yes, that's correct.

23 Q. And in the column that says "oil condition,  
24 fluid/tar," at Sacha 94 they found fluid oil in them;  
25 right?

03:46 1 A. That's what it says, yes.  
 2 Q. And that's not the only well site for well pits  
 3 that we see on this table with fluid oil in them; correct?  
 4 A. Yes. They do contain fluid, as do the presently  
 5 open pits.  
 6 Q. And you visited this site at least three times as  
 7 a part of Chevron's Pre-Inspections. Do you remember that?  
 8 A. I did visit this site. I could refer to my Report  
 9 to tell you the dates and how many times, if you wish.  
 10 Q. My understanding is that you visited on  
 11 January 15th, 2004, May 27th, 2004, and July 27th, 2004.  
 12 Do those sound approximately right?  
 13 A. I don't know when I visited the site.  
 14 Q. It was in 2004? You can look at your Report,  
 15 Mr. Connor. Please.  
 16 A. Well, I'm just telling you, I mean, whenever I  
 17 visited, I visited. I just don't remember the dates.  
 18 Q. Okay. And you were aware that TexPet shut in this  
 19 well in 1986?  
 20 A. Am I aware as we sit here today? I may have been  
 21 aware of that one time. I don't remember the details of  
 22 this particular well site.  
 23 Q. And I put up here an excerpt from the clickable  
 24 database that GSI prepared for Sacha 94, and this is an  
 25 excerpt from the Fugro-McClelland report, Table 6.2, and

03:49 1 A. If the shut-in has been properly implemented, no,  
 2 you would not expect there to be continued production until  
 3 such time as an operator decided to do so.  
 4 Q. And we can assume that TexPet would have properly  
 5 shut in its wells?  
 6 A. I saw no evidence that they had not done that, but  
 7 I did not assess that as part of my work.  
 8 Q. So, when HBT Agra auditors inspected Sacha 94 in  
 9 1992 and saw fluid oil, the well had stopped all oil  
 10 production for approximately six years; is that correct?  
 11 A. If these numbers are correct, that would be  
 12 correct. I can't speak to whether or not the information  
 13 in the database is complete. But if we accept those  
 14 numbers, yes, that would be approximately six years.  
 15 Q. So, accepting that Fugro-McClelland has an  
 16 accurate date for when the well was shut in, and HBT Agra  
 17 accurately recorded when they actually went there, that's a  
 18 six-year period between the end of production and when the  
 19 site was investigated; right?  
 20 A. Correct.  
 21 ARBITRATOR LOWE: Sorry, just a small point of  
 22 clarification. The line above the line that you're  
 23 referring to has two dashes in the box for the shut-in  
 24 date. Could you just explain the significance of that? Is  
 25 that a separate facility, or is it an aspect of the same

03:48 1 this shows that this well was shut in on October 14th,  
 2 1986; right?  
 3 MS. RENFROE: Pardon me, Mr. Ewing, do you have a  
 4 tab number?  
 5 MR. EWING: Tab 21.  
 6 MS. RENFROE: Thank you.  
 7 MR. EWING: You're welcome.  
 8 THE WITNESS: Sweet.  
 9 BY MR. EWING:  
 10 Q. Don't get too excited. It's not the whole  
 11 clickable database.  
 12 A. The tab number again?  
 13 Q. 21.  
 14 And when a well is shut in, that means its  
 15 production of oil stops; correct?  
 16 A. "Shut in" means that it's temporarily removed from  
 17 service. It hasn't been plugged and abandoned, and it  
 18 retains the capacity of being re-entered and used for a  
 19 variety of different purposes. But it's shut-in at that  
 20 time commonly would involve the placement of a plug to  
 21 isolate the surface from the production zone, a temporary  
 22 plug that can be removed.  
 23 Q. So, when a well is shut in, you would not expect  
 24 oil to continue coming out of it unless someone came back  
 25 and removed the plug; correct?

03:51 1 well?  
 2 MR. EWING: I would be happy to explain, but I  
 3 would also be happy to give it to Mr. Connor.  
 4 THE WITNESS: I'm glad to make you happy.  
 5 That refers to the same well, but it's two  
 6 different actions taken at the same well. If you look at  
 7 the different lines in that row, starting at the far left,  
 8 you will see they're identical. Well Number Sacha 94, spud  
 9 date--that means the date that the drilling commenced or  
 10 the same date. Completion date is the same date. Last  
 11 workover date. Everything is the same until you get to the  
 12 date of the production method. At that well, the pump has  
 13 been--a submersible pump has been replaced with a hydraulic  
 14 pump in 1986. And shortly after that, the well is shut in.  
 15 So, yes, they do refer to the same well.  
 16 Q. And Mr. Connor, in your 2010 Report to this  
 17 Tribunal, you listed the Judicial Inspection Reports as  
 18 cited documents in your Report; is that correct?  
 19 A. I did cite a number of them, and I believe I put  
 20 as many of them as I could in there. Yes, they were cited.  
 21 Q. But not all of those were actually submitted with  
 22 your Report?  
 23 A. I don't know which of those were submitted with  
 24 the Report.  
 25 Q. And did you rely on those reports in coming to

03:53 1 your conclusions in your 2010 Expert Report?  
 2 A. I relied on the entirety of the data that was  
 3 compiled in those reports. I did review those reports for  
 4 their conclusions. My conclusions were not wholly  
 5 dependent on those reports. They were dependent on all of  
 6 the data that was collected by the different Parties,  
 7 including the Plaintiffs and Mr. Cabrera.  
 8 Q. And in your list of cited documents, Shushufindi 4  
 9 is the sixth from the top. And, to make this clear, it's  
 10 Tab 5, and this is your 2010 Report at Page 81, and we have  
 11 it up on the screen, if you would like to--it's easier that  
 12 way.  
 13 A. Oh, this is the 2010 Report?  
 14 Q. Correct.  
 15 A. Yeah, I'll just look at my own copy then.  
 16 The page number again? Excuse me.  
 17 Q. Eighty-one.  
 18 A. Yes, I see that, and your--but I don't recall your  
 19 question, Mr. Ewing. Excuse me.  
 20 Q. Sorry?  
 21 A. I didn't recall your question.  
 22 Q. Shushufindi 4 is listed at the top of this page;  
 23 correct? Sixth from the top?  
 24 A. Page 81?  
 25 Q. Correct.

03:55 1 A. Oh, under the list of--it's not from the top of  
 2 the page but under the reports by experts nominated on  
 3 behalf of Chevron.  
 4 Yes, it's the sixth line under that heading.  
 5 Q. And this was not a RAP site?  
 6 A. I don't recall without looking at the list if it  
 7 was or not.  
 8 Q. If you want to look at the list, or look at the  
 9 site summary for this Shushufindi 4, it is Tab 20. And we  
 10 put the excerpt on the screen.  
 11 And the Judicial Inspection Report submitted for  
 12 this site was by Ernesto Baca. Do you remember that?  
 13 A. That's indicated in the index here, yes.  
 14 Q. And Mr. Baca worked for GSI at the time you wrote  
 15 this Report?  
 16 A. Yes.  
 17 MS. RENFROE: Tab 20 pertains to a different site.  
 18 THE WITNESS: Yeah, I'm not finding it.  
 19 MR. EWING: It should say Shushufindi 4, unless  
 20 our--  
 21 MS. RENFROE: Tab 20 says Sacha 94.  
 22 MR. EWING: Sorry, it is Tab 22.  
 23 Thank you, Tracie.  
 24 BY MR. EWING:  
 25 Q. Could we turn then to--we have excerpts of the

03:57 1 Judicial Inspection Report for Shushufindi 4 at Tab 23. I  
 2 provided to you excerpts because, as I think you know,  
 3 Mr. Connor, these Judicial Inspection Reports can be  
 4 thousands of pages, and we already felt guilty enough about  
 5 the number of pages that we have printed.  
 6 A. Okay.  
 7 Q. Mr. Baca finds--  
 8 MR. EWING: Actually, Mr. President, when--I don't  
 9 remember when we started--when are we timed for a break?  
 10 Do we want to go longer? Or should we stop for a break  
 11 now?  
 12 PRESIDENT VEEDER: I was looking over to see who  
 13 decides these things. I think you should have a break now.  
 14 We'll take a break, but can we just say we are going to  
 15 finish by 5:30 today?  
 16 MR. EWING: Yes, we can definitely finish by 5:30.  
 17 I will probably have more questions than 5:30.  
 18 PRESIDENT VEEDER: Then we will continue tomorrow.  
 19 I just didn't want a repetition of yesterday.  
 20 MR. EWING: 5:30 is perfect for us.  
 21 PRESIDENT VEEDER: We think 5:30 would be the  
 22 latest.  
 23 MR. EWING: 5:30 is great.  
 24 PRESIDENT VEEDER: You will have more questions  
 25 going over into tomorrow. Are you up to speed or behind or

03:59 1 ahead?  
 2 MR. EWING: I think we are up to speed, would be  
 3 my expectation.  
 4 PRESIDENT VEEDER: Let's take ten minutes. And we  
 5 will come back at ten minutes past 4:00.  
 6 (Brief recess.)  
 7 PRESIDENT VEEDER: Let's resume.  
 8 BY MR. EWING:  
 9 Q. Mr. Connor, would you turn to Tab 23, please. And  
 10 this is the excerpts from Mr. Baca's Judicial Inspection  
 11 Report of Shushufindi 4.  
 12 A. Yes, I'm there.  
 13 Q. And for our record, it is Exhibit R-954.  
 14 And do you see where he says in the description of  
 15 the well site that the well produced until 1984. That  
 16 means that it produced oil; is that correct?  
 17 A. Which page are you on, Mr. Ewing? I'm sorry if I  
 18 wasn't paying adequate attention.  
 19 Q. I'm sure it was my fault for missing the page.  
 20 Page Number 2. Page numbers are important.  
 21 He says the well produced until 1984. Do you see  
 22 that?  
 23 A. Yes, I do.  
 24 Q. And when he says the well produced, he means the  
 25 well produced oil until 1984; right?



04:11 1 And then he said it was converted to an injection  
 2 well for secondary recovery of petroleum crude; correct?  
 3 A. Yes, that's what he says.  
 4 Q. When he says, "converted to an injection well for  
 5 secondary recovery," do you agree with me that that means  
 6 that well changed from producing oil to injecting water  
 7 into the ground to assist with production at other wells?  
 8 A. Correct.  
 9 Q. So, this well was not producing after 1984?  
 10 A. Not according to the information we have here.  
 11 Q. And you have no reason to believe that Mr. Baca  
 12 was incorrect in his Judicial Inspection Report; right?  
 13 A. No, I have no reason to believe that he was  
 14 incorrect.  
 15 Q. And then Mr. Baca says that--skipping one  
 16 sentence--he says, in 1991, "the well site was abandoned  
 17 and thus became an inactive well."  
 18 A. I think I've lost you.  
 19 Q. So, there is the sentence we're looking at--  
 20 A. Oh, I see it now.  
 21 Q. And then the well's name gets changed.  
 22 A. Yes.  
 23 Q. So, the well site was inactive from 1991 until at  
 24 least 2005 when Mr. Baca wrote his Report; correct?  
 25 A. The well did not produce oil at that time. He's

[REDACTED]

04:13 1 not saying there wasn't any other type of activity at all  
 2 or use of the site, but it was not an active production,  
 3 according to this information.  
 4 Q. Do you have any indication that there was use of  
 5 the site that would cause contamination?  
 6 A. I haven't looked at the records to make that  
 7 determination for this site.  
 8 Q. If Mr. Baca thought there was some other source  
 9 for other contamination, wouldn't you expect he would have  
 10 included it in his Report?  
 11 A. If he was aware of that information, I expect that  
 12 he would have included it.  
 13 Q. And when Chevron conducted its PIs at the  
 14 site--and if you could turn to Tab 24--this is the site  
 15 summary for Shushufindi 4, and looking at Pit 1, the second  
 16 sentence, "Chevron found that surface seeps of highly  
 17 weathered crude oil were found on this former pit site."  
 18 Do you see that?  
 19 A. Oh, yes. It indicates above that that the owner  
 20 himself had covered these pits with earth and then  
 21 indicates that there was oil seeping through the surface  
 22 there.  
 23 Q. [REDACTED]

[REDACTED]

17 Q. You testified earlier that in the Oriente  
 18 weathering occurs quickly in a matter of approximately a  
 19 month, I think you said?  
 20 A. I think I did say that. I talked about that a lot  
 21 in the various reports that I've issued, that the volatile  
 22 and soluble fraction of the oil may be gone within as  
 23 little as a month. It certainly depends on the  
 24 site-specific characteristics, but there is very rapid  
 25 weathering to lose those fractions, and then there is

04:20 1 slower weathering to convert to a principally resident  
2 asphaltene fraction. But those very light ends are lost  
3 rather quickly.  
4 Q. So just to make sure this is clear, petroleum or  
5 crude oil is made up of varying length chains of  
6 hydrocarbons, C4, C6, C8, C10, C12, C14 and on up. And  
7 that's the number of carbons in these chains of carbon;  
8 correct?  
9 A. Yes, except there is alkanes and aliphatics, some  
10 in a ring shape and some are in a straight line, but there  
11 are of different dimensions, yes.  
12 Q. So, when oil is described, you're talking about  
13 fractions, or you're talking about the light ranges or the  
14 heavy ranges. When you referred to the light ranges, you  
15 tend to mean the ones that are C4, 6, 8 and 10; is that  
16 correct?  
17 A. Yes, I think that's correct. Fractions of carbon,  
18 molecules that have less than 10 carbons would generally  
19 fall within the gasoline range organics, and that's a light  
20 end. Considered light, yes.  
21 Q. And your testimony is the gasoline range or these  
22 light end carbons would disappear within one month within  
23 the Oriente?  
24 A. They would disappear relatively quickly. I  
25 can't--my testimony is not that that will happen all the

04:22 1 time within a month, but that the rates of volatilization  
2 and loss of that light fraction is so high as to make it  
3 difficult to date a sample within a month's time.  
4 Q. So, just--  
5 A. Pretty much like if you were pumping gas at the  
6 service station, that liquid that you spill on the ground,  
7 that's light end hydrocarbon. And the short amount of time  
8 after you spill it, it's gone. It's the same process that  
9 occurs when crude oil is in the environment and loses its  
10 light end--a little bit slower than that because it has to  
11 get out of the oil, but it loses that relatively quickly.  
12 Q. And that's though when you're at the gas station,  
13 if you do spill or if someone else has spilled, that's the  
14 smell you can smell typically. Is that the volatile  
15 component of the gasoline; correct?  
16 A. Yes, in that case, the smell would be associated  
17 with the volatiles. With the crude oil, the smell is more  
18 related to the thiol compounds which are a heavy sulphur  
19 compound, but with gasoline, yes, you're smelling the  
20 volatile compounds.  
21 Q. And when you say "volatile," part of the  
22 definition of "volatile" is it's those aspects that can be  
23 released into the air?  
24 A. In general, yes.  
25 Q. Okay. So, you're saying that the volatile, the

04:23 1 gasoline range organics typically will weather or disappear  
2 in a month, in or around a month?  
3 A. Again, I wouldn't testify to it in a month. I'm  
4 saying that it happens relatively quickly if the material  
5 is exposed to the environment, particularly to the air. It  
6 will use its volatile fraction.  
7 There were many samples that were taken in the  
8 pits, and there were trace level benzene measurements that  
9 were found in some of the open pits, but the composition of  
10 that oil was still consistent with the weathered oil. High  
11 concentrations of that material are indicative of  
12 relatively fresh oil, and those were seen at times as well.  
13 Q. So just again clarify the technical terms, you  
14 said trace levels of benzene. Benzene is one of the  
15 components of the gasoline range of petroleum hydrocarbons;  
16 correct?  
17 A. Yes.  
18 Q. So, when we look at Mr. Slocum's report from  
19 Shushufindi 4, [REDACTED]  
[REDACTED] and then when he did his analysis about two-thirds  
21 of the way through Pit one, it said one sample within the  
22 pit demonstrated TPH DRO of 5,200 milligrams per kilograms  
23 and TPH GRO of 24 milligrams per kilogram; right?  
24 A. That's correct.  
25 Q. So, this is a smaller amount of GRO, of the

04:25 1 volatiles; correct?  
2 A. Yes. The fresh crude oil, if I remember the  
3 numbers correctly in that field, contains on the Order of  
4 20,000 parts per million of the light ends, the GROs.  
5 That's determined by a topping test where that will be  
6 removed. If I remember correctly, it's approximately  
7 20 percent, so that 20,000 number in this case is  
8 diminished down to 24, so it's clearly a very significant  
9 loss of the light ends, although not a complete loss, most  
10 likely due to the water cap that was on that pit.  
11 Q. And again, this is 20 years after this pit was  
12 shut in and no longer producing?  
13 A. After the well was shut in.  
14 Q. Correct. After the well was shut in?  
15 A. Correct, that's right.  
16 Q. In reality, this oil was probably put into this  
17 pit well before that, before the well was shut in; correct?  
18 A. We don't know that for sure, but if it were from  
19 that well, it would have been before that time, yes.  
20 Q. And you mentioned two things I'd like to come back  
21 to. One is that the pit that was covered and, therefore,  
22 you expected some of the GRO, the volatiles to still  
23 remain, and you mentioned that it would be covered by soil  
24 or by water. By covering a pit like this with soil or  
25 water, that removes the oxygen; correct?

04:26 1 A. The pit that has a soil or water cap on it, and a  
2 hydrocarbons source in it will see its oxygen consumed  
3 relatively quickly by aerobic bacteria, and after that time  
4 the anaerobic bacteria will dominate the digestion process  
5 for biodegrading the oil, so you would expect the oxygen to  
6 drop, Mr. Ewing, in a short amount of time.

7 Q. And I think you're anticipating my questions about  
8 bacteria again.

9 The question is, and I think you would agree with  
10 me, the oxygen would definitely drop when the pit is  
11 covered with soil or with water?

12 A. Well, just to be clear, if you have an open pit  
13 with oil in it, it's particularly in oily sediments, then  
14 you will have consumption of the oxygen relatively quickly,  
15 whether there is earth on top of it or not because the  
16 oxygen will only be replenished by diffusion. That's a  
17 very slow process, or by fresh rainwater falling in. But  
18 it would not be enough to sustain the aerobic bacterial  
19 process.

20 Q. And as a result of the fact that these pits are  
21 capped with water or soil, that's why you then are not  
22 surprised to see DRO of 5,000 or amounts of GRO in this  
23 pit?

24 A. Well, the GRO that's in the pit is decreased by a  
25 factor of 1,000-fold, but there certainly can be some

04:30 1 than if you're in an open pit.

2 Q. Mr. Connor, you reviewed all of the sites that LBG  
3 sampled during 2013 and 2014; right?

4 A. Yes.

5 Q. And you have reviewed all of the data specifically  
6 for the four sites that the Republic nominated for the  
7 upcoming site visits; correct?

8 A. Those are included among those 13 if I recall  
9 correctly, yes.

10 Q. Correct. The four are a subset of the 13?

11 A. Yes.

12 Q. So, your first answer, I guess, answers my second  
13 question as well. You're right.

14 A. I hope so.

15 Q. And you have included your conclusions on those  
16 sites in your Reports submitted after LBG's sampling was  
17 completed; correct?

18 A. Yes, the sampling by the Ecuador experts was in a  
19 number of phases, but I did submit reports after those  
20 phases of work.

21 Q. So, if we look at Page 35 of your 2015 Report, and  
22 you discuss Shushufindi 34, and you said, "it's an open  
23 non-RAP pit located northwest of the platform and has yet  
24 to be addressed by Petroecuador."

25 Do you see that?

04:28 1 remnants of that light end hydrocarbons held up within  
2 those said sediments and oils in that pit, yes, but it's  
3 1/1000th of what it was originally when placed in the pit,  
4 if I remember my numbers correctly.

5 Well, excuse me. No, it's more. The 20 percent  
6 is 220,000; 20,000 is only 2 percent, so that the original  
7 fraction of GRO in that material should have been on the  
8 Order of 200,000, and now it's 24, so that's 10,000 times  
9 smaller, and that's consistent with what we have observed  
10 when oil is placed in the open environment, so it's  
11 1/10,000ths of its original light end composition, if I  
12 remember my numbers correctly.

13 Q. So, to come back to my question, if you have a pit  
14 that is covered with oil--rephrase that.

15 If you have a pit that is covered with soil, you  
16 agree with me that the oxygen will be quickly removed from  
17 that pit?

18 A. Yes, I believe the oxygen would be quickly  
19 removed, whether or not the pit was covered with soil.

20 Q. So, open or closed, oxygen will be removed from  
21 the pit?

22 A. It would be faster in this environment if it's  
23 covered because rainwater in this area brings in three  
24 meters a year, and rainwater is oxygen saturated. So, you  
25 would have faster depletion of the oxygen if you're covered

04:32 1 A. Yes.

2 Q. And then looking at Appendix B--this is Tab 29 of  
3 your Report--sorry. This is Tab 29 of our binder or  
4 Appendix B of your Report?

5 A. Tab 29?

6 Q. It's Tab 29 in our binder.

7 A. Okay.

8 Q. If you would turn to Page 16.

9 A. Of Appendix B?

10 Q. Of Appendix B or Tab 29. They are the same.

11 And at the bottom of that page you see--you again  
12 describe the open non-RAP pit, "The undocumented pit can be  
13 clearly seen as early as 1975."

14 A. Yes, that was an aerial photograph that was  
15 located by Mr. Cabrera and included in his document, and  
16 then posted on the Petroecuador Web site, at which time  
17 that pit was first identified.

18 Q. The pit at Shushufindi 34, you're saying, was  
19 first identified in a Cabrera Report that was posted on the  
20 Petroecuador Web site?

21 A. Yes, Mr. Cabrera compiled--he did an aerial  
22 photography survey, and he compiled his list of identified  
23 pits. This particular pit was on that list. And then that  
24 list was used by Petroecuador. Sometime after that list  
25 was issued or actually in the same year, two pits were

04:35 1 closed at this site by Petroecuador, but that pit was not  
2 closed.  
3 Q. Okay. So, if you could look at the images I have  
4 on the screen, these are from your Appendix C, the 1976  
5 image is on the left, and the 1985 image is on the right.  
6 And in these images, we can see that the images--that the  
7 pit is clearly there in 1976; right?  
8 A. Yes, you can see that.  
9 Q. And in 1985 you can no longer see it; right?  
10 A. It may be due to vegetation overgrowing, but you  
11 don't see it there at that time.  
12 Q. So, in 1985, if I tried to walk to that pit,  
13 you're saying that it looks to be overgrown by the jungle?  
14 A. I believe if you went to that pit today, you would  
15 see that it's surrounded by tall trees, unless they've been  
16 cleared by the landowner, but in this case I can't say for  
17 sure, Mr. Ewing, but you can see there's a lot of trees  
18 that have grown into a formerly cleared area. You can't  
19 say definitively whether the pit is still there or if it's  
20 just obscured by the canopy.  
21 Q. I can tell you this is not how it looks today, but  
22 we will go to that when we take the Tribunal down there,  
23 and we will discuss the site more. But for now you would  
24 agree with me, though, that this pit is not evident in the  
25 aerial photography as of 1985?

04:36 1 A. In the 1985 photo, the pit is not discernible.  
2 Q. And I don't think you mentioned it in your Report,  
3 but this well was shut in by TexPet in 1983 as well;  
4 correct?  
5 A. I don't recall. I'd have to look at the records.  
6 Q. Okay. And when LBG visited this site, they found  
7 the liquid crude and, in fact, you note on page 16 of your  
8 appendix that, "Ecuador experts claimed to have found free  
9 flowing, liquid oil just below the surface within the pit  
10 boundary."  
11 A. I lost track of you there, Mr. Ewing. I  
12 apologize.  
13 Q. On Page 16 you just repeat what Ecuador's experts  
14 had found, claimed to have found.  
15 A. Yeah, I characterized--I actually quote a  
16 statement from their Report.  
17 Q. And you say, "claimed to have found." Do you have  
18 any reason to believe that they didn't find it?  
19 A. That word is just to characterize that this was  
20 their statement. They stated that. I don't have any  
21 reason to believe that that was not correct.  
22 Q. And one of your explanations for why liquid crude  
23 is still found in this pit from 1976 is if this pit was not  
24 included in the TexPet RAP; is that correct?  
25 A. Yes. If it had been in the TexPet RAP, it would

04:38 1 have been remediated as demonstrated by the other  
2 facilities that we visited.  
3 Q. And you've seen the photos that LBG has taken at  
4 Shushufindi 34; correct?  
5 A. I've seen some of them, yes.  
6 Q. And just to refresh your memory, these should be  
7 coming up on the screen now. This is the open pit at  
8 Shushufindi 34 we will be visiting, and you can see there  
9 it is no longer covered by tall trees.  
10 A. That's right. I believe it looks like the natural  
11 vegetation has been cleared and they planted papaya trees.  
12 That's what it looks like today. So the open non-RAP pit  
13 remains in place as they do at many sites.  
14 Q. And do you dispute that these photos show liquid  
15 oil?  
16 A. It's difficult to say from this photo, certainly  
17 you have groundwater in there and it looks very oily,  
18 whether or not that's oil or the droplets have coalesced, I  
19 can't say clearly without seeing it directly, but there is  
20 clear evidence that there is oily material in that  
21 location, yes.  
22 Q. We will have a chance to see it in about a month's  
23 time, so we will come back to these when we're standing  
24 here, okay?  
25 A. Okay.

04:39 1 Q. Let's move on from Shushufindi 34 and talk about  
2 Shushufindi 55, another site that we will be visiting and  
3 that LBG investigated.  
4 In your 2015 Report, at Page 37, which should be  
5 the next page from where we just were, you were stating--  
6 MS. RENFROE: Pardon me, we were just, and perhaps  
7 I'm lost, but we were just in B-16 in the Appendix B of the  
8 Report. Are you taking us to a different place in his  
9 Report?  
10 MR. EWING: Yes, I am. Let me correct my relative  
11 references and make them absolute.  
12 BY MR. EWING:  
13 Q. If you could look into your January 2015  
14 Report--this is Tab 19 of our binder, and we're looking at  
15 Page 37.  
16 A. Yes.  
17 Q. And this is your one-paragraph description of  
18 Shushufindi 55. Did you find that?  
19 A. Yes, I have.  
20 Q. And this is the same Shushufindi 55 where HBT Agra  
21 found that the pit was seeping oil, that we were discussing  
22 earlier. Do you remember that from about an hour ago?  
23 A. No, I don't recall that, but that may be the same  
24 well. This is a non-RAP pit, it may be the same one that  
25 HBT Agra visited.

<p>Sheet 53</p> <p style="text-align: right;">1414</p> <p>04:41 1 Q. Would you like to go back to it, or would you like 2 to take my word for it? We're still talking about 3 Shushufindi 55? 4 A. I don't think we need to go back to it, Mr. Ewing, 5 unless you prefer that I do that. 6 Q. No, I think that I'm right. 7 And you looked at Chevron's data and LBG's data 8 for this site; correct? 9 A. Yes. 10 Q. And you concluded that, and I quote your third 11 sentence, "sampling and testing at the Shushufindi 55 well 12 site show a limited extent of impacts to wetland sediments 13 beyond the foot print of the facility." 14 Do you see that? 15 A. Yes. 16 Q. And Mr. Cabrera also went to this site and sampled 17 at this site; correct? 18 A. Correct. 19 Q. And did you include his results in forming your 20 conclusion? 21 A. His results are not plotted on this map. The 22 Chevron results that were collected at that time are 23 plotted on this map. 24 Q. To be clear, we're not relying on those either at 25 this point. We're just talking about Chevron and LBG</p>	<p style="text-align: right;">1416</p> <p>04:45 1 A. Yes. 2 Q. And with this page's reference, we know that 3 Shushufindi 55 was drilled in 1975; correct? It's in the 4 second paragraph? 5 A. Yes, I see that. 6 Q. And that it was shut in on 1 January 1983; 7 correct? 8 A. Yes, that's what it says. 9 Q. So, after 1983, again assuming TexPet actually 10 shut it in when it says it shut it in--Shushufindi 55 did 11 not produce any oil; right? 12 A. There is an oil spill that occurred after 13 June 1990 at this site that's reported in my Report in the 14 exhibit I just recently cited to you. And I would have to 15 go into my records of Appendix C of my 2015 Report to get 16 you the exact date that that occurred. 17 So, my understanding--hang on a second. 18 Q. And Mr. Connor, just to save you the trouble, I 19 promise we will get to your Appendix C on Shushufindi 55 20 probably within the next 15 minutes, so if you could just 21 focus on the questions. 22 A. Okay, Mr. Ewing. I apologize if that's 23 frustrating you, but in answering your question, when you 24 say there were no oilfield--there was no oil production 25 and, therefore, inference that there would be no propensity</p>
<p style="text-align: right;">1415</p> <p>04:43 1 results. 2 A. That's right. 3 And to be clear, in my risk assessment work 4 presented in the 2010 Report, I did consider all of 5 Mr. Cabrera's data and all of the Lago Plaintiffs' data but 6 in the delineation of the sites, I have not included those 7 data because they were not reliable for that purpose. 8 Q. Understood. You're anticipating a question I 9 haven't asked yet, and I don't think I will ask. 10 So, did you include--sorry. 11 Could you turn now to Tab 25. And this is the URS 12 Summary Report that was prepared for Chevron, and I think 13 you said earlier that URS was tasked with collecting the 14 historical documents about these various sites? 15 A. Specifically yes, specifically historical 16 documents related to the remediation program, the TexPet 17 remediation program, 1995 to 1998, but not the historical 18 records on spills, et cetera. Those are presented on 19 Exhibit A of my 2015 Report, Page 8. 20 Q. And we will get to your Report to deal with the 21 spills in a moment. If we could just focus on the URS 22 document first. 23 And looking at the third page, it has at the 24 bottom "GSI_0398701." 25 Do you see that?</p>	<p style="text-align: right;">1417</p> <p>04:46 1 for a spill to occur, that's actually not correct in this 2 case, given that there were spills after that time, but I 3 don't believe there was production based on this 4 information, but there were other activities that 5 contributed to oil spills. If I had to be more specific 6 about that, I would have to look it up. 7 Q. Shushufindi 55 was not producing oil after 1983, 8 according to this URS Summary, a Chevron-created document? 9 A. The document that URS put together indicates 10 that's correct, yes. 11 Q. But it's your testimony that there is some future 12 spill after 1990 at this site that may have contaminated 13 the site? 14 A. Yes. 15 Q. Okay. It was abandoned in 1983 but it was not 16 plugged and abandoned until 1996; correct? 17 A. Well, the proper term would be shut in and then 18 plugged and abandoned. Sometimes I'm not sure of the 19 language being used there, but in 1996, this well under the 20 TexPet remediation program was formally plugged and 21 abandoned, which would destroy the well and install 22 permanent seals. 23 Q. So, after 1996, basically the top 100 feet of the 24 well is filled with concrete; is that your understanding 25 when it's plugged and abandoned?</p>

04:48 1 A. No, that's not correct.  
 2 Q. What is your understanding of what a plugged and  
 3 abandoned well looks like?  
 4 A. The plug-and-abandonment design varies according  
 5 to the producing formation. Concrete plugs are placed at  
 6 various steps within the well to isolate the production  
 7 zones from the surface and from other subsurface zones.  
 8 The casing will be perforated and destroyed, and the cement  
 9 will be squeezed out of that through the casing into the  
 10 surrounding areas to completely seal the well. Those plugs  
 11 would be placed at a variety of different depths according  
 12 to the petroleum engineers' design.  
 13 But then at the surface, the casing is excavated  
 14 and cut off to a depth that's below what's called plow  
 15 depth such that anyone using the property or doing  
 16 agriculture will not bump into that casing. There is a  
 17 cement plug that's also placed at the surface there,  
 18 although the depth of that plug would be variable based on  
 19 the design. However, these wells are not plugged and  
 20 abandoned simply by placing a concrete plug at the surface.  
 21 It's a much more involved operation as I have described.  
 22 Q. And no one realized that this pit or this well had  
 23 only been shut in in 1983 until the documents were reviewed  
 24 in 1986, and it was actually finally plugged and abandoned;  
 25 is that right?

04:49 1 A. I guess I don't understand your question,  
 2 Mr. Ewing.  
 3 Q. So, this well was not plugged and abandoned for 13  
 4 years after it was shut in; is that correct?  
 5 A. Oh, according to that data, yeah, that's  
 6 very--that's not an uncommon phenomenon. That a well is an  
 7 expensive piece of equipment and it may have other uses.  
 8 It could be reactivated for oil, it could be used for  
 9 Geophysical Surveys, it could be used for injection. Once  
 10 a party determines that it doesn't have those uses, then it  
 11 may be plugged and abandoned and permanently destroyed.  
 12 Q. If you turn to Page 4 of your Summary, and the  
 13 pages are closest to the three rings, do you see the second  
 14 paragraph where it says "surface soils were noted to be  
 15 contaminated with degraded oil?"  
 16 A. Yes, I do see that.  
 17 Q. And at the end of the third paragraph, it says--or  
 18 the middle of the third paragraph, "Hole Number 1," a hole  
 19 that they dug during their investigation?  
 20 A. Oh, yeah.  
 21 Q. Do you see that?  
 22 A. Yes, I do.  
 23 Q. Was in an area of visible contamination and was  
 24 14 inches deep.  
 25 A. Yes, I see that.

04:51 1 Q. And this information is coming from the remedial  
 2 investigation that was conducted as part of the RAP; is  
 3 that correct?  
 4 A. Correct.  
 5 Q. And they noted that spotty contamination was  
 6 observed along the walls of that hole.  
 7 Do you see that?  
 8 A. Yes, that's right.  
 9 Q. And water was observed seeping from the sides with  
 10 some oil floating on the water.  
 11 A. Yes, that's on the surface of the pad, and that's  
 12 why this site was included in the RAP for remediation of  
 13 that soil. The well was plugged and abandoned, and this  
 14 soil was remediated as part of the RAP.  
 15 Q. So, it's your testimony that this soil that you're  
 16 describing was remediated?  
 17 A. Yes. If you look in the records you will see that  
 18 those two holes are drilled into the effective material on  
 19 the pad, and then there is a hand sketch--it might be  
 20 actually in this package. There is a hand sketch that will  
 21 indicate the approximate area to be remediated, and the  
 22 Parties would then come and do a soil stabilization.  
 23 Here it is. It is on Page 708. Yeah, this is a  
 24 comment--it's easier to read on Page 707. It's pretty hard  
 25 to read on either page.

04:53 1 Q. It is difficult to read the maps.  
 2 A. But nevertheless, this is how they record it.  
 3 They would drill these holes on the pad, identify the areas  
 4 to be cleaned, and then include those in the RAP, and  
 5 that's what was done here.  
 6 Q. So, when they're describing that Hole 2 also had  
 7 contamination with seeping oil, your testimony is that that  
 8 was remediated?  
 9 A. Yes, you could read the Remediation Report and see  
 10 that's the case.  
 11 Q. Okay. If we turn to Page 9, which is that RI  
 12 field sketch that you were referring to--actually, I jumped  
 13 ahead too quickly.  
 14 Could we stay on Page 4 which is still the  
 15 description.  
 16 A. Okay.  
 17 Q. And the last two lines here on Page 4 says: "The  
 18 nearby stream was noted to have oil stains in several  
 19 places and a sheen of oil. Fish were observed in the  
 20 water."  
 21 Do you see that?  
 22 A. Yes.  
 23 Q. Is it your testimony that nearby stream was also  
 24 remediated?  
 25 A. No, that is not my testimony. I believe that the

04:54 1 Shushufindi 55 site was specifically tasked to TexPet for  
2 remediation of oil contaminated soils on the pad and  
3 plugging and abandonment of the well. And those were the  
4 tasks that they completed at this site. They did not  
5 address other aspects of this site.  
6 Q. So, looking at this sketch that should be coming  
7 up on the screen, and hopefully it's a little easier to  
8 read there?  
9 A. A little easier.  
10 Q. A little easier.  
11 At the bottom, just to orient ourselves, coming  
12 across the top left, do you see where it says "road"?  
13 A. Can you point a cursor at it? Do you have the  
14 ability to do that?  
15 Q. I'm glad you asked that.  
16 A. Yes, I see that.  
17 Oh, high-tech.  
18 Q. So, the road comes across the top of this site;  
19 correct?  
20 A. In this diagram, yes.  
21 Q. In this diagram. And I understand that there is  
22 concern about the orientation of what's north and south.  
23 So, let's just call it top and bottom. I recognize that  
24 that might not be the north?  
25 A. Yes, it's not the north.

04:55 1 Q. So, the road is across the top of the diagram, and  
2 then the well is right about in the middle.  
3 A. No, I can't read that very carefully, but let's go  
4 ahead and proceed on that assumption.  
5 Q. The well is right there. I was just there a  
6 year-and-a-half ago. And then there is a large hill that  
7 has been placed here, and then over here in the remedial  
8 investigation, they have identified what looks to be a pit  
9 drawn on there, or a former pit.  
10 A. Where is it you're looking?  
11 Q. On the top right corner of the drawing.  
12 A. The rectangle there?  
13 Q. Yes, the rectangle?  
14 A. Yes, that was a non-RAP pit that is located to the  
15 east of the platform.  
16 Q. And then at the bottom right-hand corner of this  
17 drawing, can you read where it says "oil sheen on water"?  
18 A. Yes, I can see that.  
19 Q. Now you can see it even easier.  
20 A. That's better, yes.  
21 Q. And this is where during the remedial  
22 investigation they found that the oil contamination had  
23 impacted this stream.  
24 A. They certainly found oil impacts in this stream,  
25 yes.

04:57 1 Q. And do we need to--Fugro-McClelland found  
2 similar--had similar findings about this site, but for now  
3 in the interest of time I will move past Fugro-McClelland,  
4 since they basically duplicate HBT Agra, but you don't have  
5 to agree or disagree to that. I'm just going to skip ahead  
6 to save us some time.  
7 A. I guess, just to be clear for the record, I think  
8 you said that they duplicate HBT Agra, right here we're  
9 looking at Woodward-Clyde's records; right? The document  
10 we're looking at I believe is by Woodward-Clyde.  
11 Q. That's correct. We looked at the HBT Agra Report  
12 earlier.  
13 A. Okay.  
14 Q. Too much commentary for me just to say--I'm just  
15 going to skip a few questions.  
16 If we turn to your Report, your 2015 Report, at  
17 Page 37, I think this is what you have wanted to talk  
18 about. On Page 37, you say, operating records show that  
19 Petroecuador has experienced at least one spill and closed  
20 one pit at this site since taking over operation of the  
21 site in June 1990.  
22 Do you see that?  
23 A. Yes.  
24 Q. And this statement follows your conclusion that  
25 LBG has "not conducted sufficient sampling to determine the

04:59 1 source of the limited sediment impacts or to assert that  
2 these limited impacts are the result of contaminant  
3 migration from the nearby closed pit."  
4 Do you see that?  
5 A. Yes, I see that.  
6 Q. So, what you're saying here, if I understand this  
7 correctly, is that LBG has identified limited impacts, but  
8 you believe operating records show that those may be due to  
9 Petroecuador?  
10 A. To be clear, I'm indicating there had been  
11 activities and known spills to have occurred at this site.  
12 Whether or not this particular incident is associated with  
13 that, I'm not stating that. What I am stating is that the  
14 conceptual model presented by the Ecuador Experts is not  
15 sustained in this case. That model or concept is that  
16 contaminants move from pits outward through the soil to  
17 contaminate the surrounding area. Yes, we have some  
18 impacts to a stream, but that does not--has not been  
19 demonstrated to be associated with that pit. Normally  
20 impacts to a stream are associated with flow line breaks or  
21 other overtopping events, not due to subsurface transport  
22 of oil from a pit as it was posited by the Ecuador Experts  
23 in what they call their conceptual site cross-section.  
24 Q. And the fact that you are pointing to say that  
25 LBG's conceptual site model has not been proven is in these

05:01 1 operating records?  
 2 A. No.  
 3 Q. Where is the fact that you know that something has  
 4 occurred at this site since 1990?  
 5 A. Well, okay, I guess those are two different  
 6 questions. Your first question was, did I know that their  
 7 conceptual site model was wrong because of the operating  
 8 records? No, that's not why I know it's wrong.  
 9 The conceptual site model is a theoretical  
 10 depiction of how chemicals move through earth. That's a  
 11 different issue as to where those chemicals originated.  
 12 Your second question, I believe, is how do I know there was  
 13 a spill that occurred at this site? I know that because we  
 14 reviewed hundreds of documents, and the specific document  
 15 upon which that opinion depends is provided in Appendix C  
 16 of my 2015 Report.  
 17 Q. Okay. So, the conceptual site model, let's put  
 18 that aside because I was not intending to ask you about  
 19 conceptual site models. We will come back to those as  
 20 well. We have got a lot to cover.  
 21 The question I have is just about the operating  
 22 records that you refer to. The purpose of offering that  
 23 statement on Page 37 is to say the contamination is there,  
 24 but it may not be TexPet's, it may be because of  
 25 Petroecuador's activities; is that right?

05:02 1 A. No. In this case, I'm not saying that the oil  
 2 found in that stream is associated with activities after  
 3 1990. I'm just making the point that the assumption that  
 4 these sites are TexPet-only is once again not correct in  
 5 this case, but that doesn't relate to the specific  
 6 provenance of that oil stain in the swamp to the south of  
 7 this facility.  
 8 Q. So, I don't see a reference to the operating  
 9 records. I would assume that they would have been in  
 10 Appendix B where you have a summary of the Shushufindi 55  
 11 well site environmental conditions, but I understand from  
 12 what you're saying now is that they are in Appendix C;  
 13 right?  
 14 A. That's correct, yeah.  
 15 Q. So, we will skip Appendix B and go right to  
 16 Appendix C, and there are actually two appendices labeled  
 17 C; correct?  
 18 A. I will have to look at the Report to answer that  
 19 question.  
 20 Q. Here is an Appendix C.1 and Appendix C.2.  
 21 A. Then I would agree there are two appendices  
 22 labeled C.  
 23 Q. And we have now moved on to Binder Number 3.  
 24 (Laughter.)  
 25 Q. It's an exciting moment.

05:04 1 MS. RENFROE: How many are there?  
 2 MR. EWING: I said there may or may not be four.  
 3 There are currently four.  
 4 MS. RENFROE: Currently?  
 5 MR. EWING: I have four.  
 6 BY MR. EWING:  
 7 Q. Mr. Connor, I'm trying to give you all of the  
 8 documentation. We had trouble at the deposition not having  
 9 everything ready, so I went beyond to make sure we would  
 10 have everything. So, I apologize for the number of  
 11 binders.  
 12 But if you look at Appendix C.1, which is Tab  
 13 Number 30, and we look down to Shushufindi--  
 14 A. Thanks, man. It's a gift.  
 15 Q. --55, which is on the second page.  
 16 A. C.1? Yes, it's on the first page of the table.  
 17 Is that what you mean?  
 18 Q. Oh, sorry, yes. On the first page of the table.  
 19 And you list one spill, one pit closure or other  
 20 remediation.  
 21 Do you see that?  
 22 A. Yes.  
 23 Q. And then there is a footnote that says "pit  
 24 closure and other remediation includes pits, soils, and  
 25 other site features for which analysis of aerial imagery

05:06 1 indicates that Petroecuador has remediated or otherwise  
 2 closed that feature."  
 3 Is that correct?  
 4 A. That's correct.  
 5 Q. So, this doesn't tell us the documents that we  
 6 need to look at. It just tabulates the results of your  
 7 research; right?  
 8 A. You need to look at Appendix C.2 to see the list  
 9 of documents.  
 10 Q. If you could turn to Tab 31, you will see Appendix  
 11 C.2.  
 12 And before we get to Shushufindi 55, I just want  
 13 to look at this first page for Aguarico 6--or, sorry,  
 14 Aguarico 2--to understand what this collection of documents  
 15 is.  
 16 I see quite a few documents here categorized by  
 17 aerial photos, information about workovers, and then  
 18 documents that were already submitted.  
 19 Do you see that?  
 20 A. Which page are you looking at? Are you looking at  
 21 the first page, or--  
 22 Q. The first page.  
 23 A. Yes, I see that.  
 24 Q. And you include information about workovers like I  
 25 said, and reports about work that was done by PEPDA or by



05:07 1 Ecuador or by other agencies of Ecuador. Production data.  
 2 It's--this is all the information you have about this site.  
 3 A. It's all the information that got recorded on this  
 4 table. There is a disk that's also attached with a large  
 5 number of documents, but this was intended to be a  
 6 inventory of those documents to facilitate searching of  
 7 that disk. It may not be a complete inventory of the  
 8 documents that were relied upon, but it was the best effort  
 9 of the staff to make those accessible.  
 10 Q. So, looking at these aerial photographs, we've got  
 11 approximately 12 from Aguatico 2, well status reports and  
 12 tables, et cetera.  
 13 A. Yes, there's quite a few documents on that site.  
 14 Q. At the end it says a "video screenshot."  
 15 Do you see that?  
 16 A. Yes, I do.  
 17 Q. The bottom of this table, it says--the second row  
 18 up it says "video screenshot."  
 19 A. Correct.  
 20 Q. Do you know what video that was taken from?  
 21 A. No, I don't. But you could find all those  
 22 documents. They should be provided on the disk. It was  
 23 provided with this.  
 24 Q. Okay. So, if we turn to Page 20 of 55, and if you  
 25 look in the top left corner closest to the three rings?

05:09 1 A. You mean 20 of 35?  
 2 Q. Twenty of 35.  
 3 A. Okay.  
 4 Q. In your Report, you said: "Operational records  
 5 provided support for the conclusion that Petroecuador has  
 6 experienced at least one spill and conducted at least one  
 7 pit closure since taking over operation of this site in  
 8 1990." Correct?  
 9 A. Correct.  
 10 Q. I don't see any operational records listed.  
 11 A. By "operational records," I mean the documents  
 12 that are provided in Appendix C, and those include well  
 13 status reports and spill records when they are available.  
 14 But I used that term in a generic sense.  
 15 Q. So, when we looked at Aguatico 2 at the very  
 16 beginning, you listed the well status reports, the  
 17 pre-assessment findings, et cetera. But when I look at  
 18 Shushufindi 55, I don't see any of those documents that you  
 19 just referred to.  
 20 A. Yes, because those documents are associated with  
 21 Aguatico 2.  
 22 Q. My question must not be clear.  
 23 If you look at the index, "document inventory,"  
 24 for site Shushufindi 55, Page 20 of 35 of your Appendix  
 25 C.2, you told us in your 2015 Report that we would find

05:11 1 operating records that show that Petroecuador has  
 2 experienced at least one spill and conducted at least one  
 3 pit closure since taking over operation of this site in  
 4 1990. And my question to you is: I don't see those; am I  
 5 missing them?  
 6 A. No, I believe these are the documents that were  
 7 available, and I use "operating records," as I said, in a  
 8 general sense. You may refer back to a footnote that you  
 9 read earlier that said that remediation activities were  
 10 sometimes in reports and sometimes determined from  
 11 evaluation of aerial photos. Sometimes spills were  
 12 characterized in that same way. I would have to go back  
 13 through these documents to clarify that for you.  
 14 Q. So, your testimony is that the aerial photographs  
 15 that you have included here would indicate where the  
 16 spill--that there was a spill?  
 17 A. The aerial photos certainly indicate that the  
 18 non-RAP pit was closed by Petroecuador, and the importance  
 19 to me on that is that the pit count is reduced. I don't  
 20 recall the basis for which the staff determined that there  
 21 had been a spill at this site. I would have to confer with  
 22 them on that.  
 23 Q. But sitting here today, you don't see any  
 24 operating records that would indicate that there was one  
 25 spill and one pit closure?

05:12 1 A. No. There--on that particular site, there  
 2 aren't--as you define operating records, no, there are not  
 3 those. They are not listed on this table.  
 4 Q. And I'm trying to use the term as you defined it  
 5 in your Report, not how I'm defining it. I don't see any  
 6 record here to support the conclusion that there was at  
 7 least one spill and one closed pit post-1990.  
 8 A. Yes. I think if I explained it before, in the  
 9 text I'm using "operating records" to refer to the types of  
 10 documents that are presented in Appendix 6--Appendix C--and  
 11 those include a variety of documents. In this particular  
 12 case, on that site, we do not have--according to the table,  
 13 we don't have actual spill reports, et cetera, or pit  
 14 closure reports. But the aerial photos were certainly  
 15 sufficient to demonstrate the closure of the pit. I can't  
 16 tell you offhand the basis for the spill report, the spill  
 17 indication, without reviewing those files.  
 18 Q. So, in Appendix C.1, your footnote on pit closures  
 19 and other remediation should have been on spills as well?  
 20 A. No, I think it's clear as to what it states, that  
 21 the pit remediation was clearly based on the aerial photos  
 22 and other documentation.  
 23 Q. So, Appendix C.1 says that there was one spill at  
 24 Shushufindi 55. Is it your testimony that that evidence is  
 25 in those aerial photographs?

05:14 1 A. You know, as I said before, Mr. Ewing, I'm not  
 2 sure what the basis was for the staff concluding that  
 3 spill. I would have to confer with them to understand  
 4 that completely.  
 5 Q. And is that information that you would be able to  
 6 obtain for us so that we could understand what your  
 7 conclusion is from your Report? And what the support is  
 8 for your conclusion?  
 9 A. The information should be provided on the CD  
 10 that's with the file. If I was advised by counsel to do  
 11 more research on that and provide you that, I certainly  
 12 would do that.  
 13 But as we noted earlier it's not my opinion that  
 14 that spill is the source of the sediment impacts in the  
 15 swamp that we have been discussing. Only that these  
 16 activities have occurred such that the environmental  
 17 condition of the site is not what it was at the time of  
 18 TexPet operations.  
 19 Q. And is that true for all 13 of LBG's report of  
 20 sites? That you are not intending causation, you are just  
 21 mentioning the fact that other activities have happened?  
 22 A. No, I can't say without reviewing it more  
 23 carefully, Mr. Ewing, that there is not causative  
 24 relationships. In some cases we know very clearly what the  
 25 cause was of the impacts we observed. In other cases we

05:18 1 is not the mechanism whereby that stream was impacted, or  
 2 is there data to support that. That's my statement. My  
 3 statement isn't to the source or timing of that effect,  
 4 it's only to the mechanism of those conditions.  
 5 Q. And I think you're again moving on to conceptual  
 6 site models.  
 7 Let's move to another document.  
 8 Could you turn to Tab 32. And this is R-1237, and  
 9 is GSI's summary of site-specific information for  
 10 Shushufindi 55. And this was done in 2007, according to  
 11 the date at the top left.  
 12 Do you see that?  
 13 A. Yes.  
 14 Q. And looking down the middle of the page, do you  
 15 see where it says that no spills had been reported? Sorry,  
 16 this is on the next page of the printed document. I  
 17 apologize. Right in the middle, the left column says  
 18 "spills," the description says "no spills reported."  
 19 Do you see that?  
 20 A. Yes, that's correct.  
 21 Q. So, as of 2007, GSI had not found any information  
 22 about spills at this site.  
 23 A. In the records that we reviewed at that time,  
 24 which were the HBT Agra Report and the Petroecuador records  
 25 that were available cited there, there was not any

05:16 1 don't. We could go through each case and I could tell you  
 2 what my findings were in that regard.  
 3 Q. But at Shushufindi 55, you're not testifying to  
 4 what caused the contamination in the stream?  
 5 A. That's correct. And that's exactly the point I'm  
 6 making in the text, that there is not information available  
 7 to support a conclusion or a hypothesis of oil migration  
 8 from a pit. And in fact, we don't know what the provenance  
 9 of the oil contamination is. We know that it's been there  
 10 for a while, but we don't know how it happened.  
 11 Q. So, you're saying that, despite the fact that HBT  
 12 Agra in 1992 found that that stream was impacted and that  
 13 Woodward-Clyde found in 1996 that that stream was impacted,  
 14 we still can't say what else may have happened to impact  
 15 that stream?  
 16 A. I don't think I followed that question.  
 17 Q. My understanding is that you--your conclusion is  
 18 that LBG's experts have not proven that the contamination  
 19 in the stream at Shushufindi 55 is the result of TexPet's  
 20 operations. Is that your statement? That they have not  
 21 made that conclusion?  
 22 A. No, that's not my statement. The statement is  
 23 simply that the conceptual model of contaminant migration  
 24 that was put forth in the Ecuador Experts' Reports has not  
 25 been demonstrated at this site or at any other site. That

05:19 1 indication of a Spill Report. Correct.  
 2 Q. And if you turn to Tab 33, this is a page from  
 3 Chevron's clickable database again, which is Exhibit R-938.  
 4 And this is, again, information that Chevron and GSI have  
 5 put together; is that right?  
 6 A. The clickable database would have been compiled by  
 7 staff at GSI. I don't recall what involvement Chevron had  
 8 in that. There were different parties that provided  
 9 information that was compiled in that database by my staff.  
 10 Q. And do you see where it says "workover dates and  
 11 procedures, no workover data available"?  
 12 A. Correct.  
 13 Q. And do you see where it says "Spill Report, no  
 14 spill data available"?  
 15 A. Correct.  
 16 Q. So, again, as of 2007, you had found no evidence  
 17 of workovers and no Spill Reports.  
 18 A. That's right.  
 19 Q. Until 2015, when you say that there had been  
 20 spills and a pit remediation, and we just have the aerial  
 21 photographs to determine that?  
 22 A. Mr. Ewing, the Petroecuador's pit Remediation  
 23 Program initiated in 2007, after the date of this summary,  
 24 and that pit has been remediated by Petroecuador. The  
 25 basis for the spill--as I've said before, I'd have to look

<p>Sheet 59</p> <p style="text-align: right;">1438</p> <p>05:22 1 at the records to see what that is based upon--is not the  2 spill that contributed to the oil in the swamp to the south  3 of the site.  4 Q. So, your testimony is that there must have been a  5 pit that Petroecuador remediated after 2007 but before 2015  6 that accounts for your information in Appendix C.1?  7 A. Yes. They remediated that non-RAP pit at this  8 site. You can see that on the aerial photographs.  9 We have incomplete documentation on the work that  10 Petroecuador has conducted, but they have certainly closed  11 many pits in the area, some of which are documented reports  12 and some of which are clearly evidenced on aerial  13 photographs.  14 There is a tool that I believe we provided you and  15 to the Members of the Tribunal called the Farallon tool,  16 and in that you will see a very useful collection of aerial  17 photographs. As you click through those, you will see pits  18 disappear as they're remediated by Petroecuador over time.  19 And I would be happy to demonstrate that tool to you, if  20 you're--if that's of interest to you, just to do that  21 exercise.  22 Q. I'm sure that we will have an opportunity to look  23 at that tool some more. Let's--we will potentially come  24 back to these aerial photographs to see what they actually  25 include.</p>	<p style="text-align: right;">1440</p> <p>05:25 1 9:00 if you want to, but don't come after 9:30.  2 THE WITNESS: I think 9:30 sounds just perfect.  3 PRESIDENT VEEDER: Okay. And again, please don't  4 talk about the case--  5 THE WITNESS: Yes.  6 PRESIDENT VEEDER: Or your testimony to anyone  7 until you come back before the Tribunal.  8 THE WITNESS: Yes, sir.  9 PRESIDENT VEEDER: Thank you.  10 SECRETARY DOE: Just before we do go, might I  11 invite the Claimant to make the corrections to the exhibit  12 numbers of the documents that were produced during  13 Mr. Lynch's examination, that were indicated to me just  14 before the break?  15 Do I understand correctly that it's C-2514,  16 C-2515, C-2516 as the numbers appear on the documents that  17 were handed out should, in fact, read C-2515, C-2516, and  18 C-2517 respectively?  19 PRESIDENT VEEDER: Please speak in the mike and go  20 on the record. What's happened is we cannot have duplicate  21 exhibit numbers and we've got to sort this out now before  22 it's too late.  23 MR. CALABRO: Yes. And that's the concern I'm  24 here to address.  25 We errantly put into the record a duplicate</p>
<p style="text-align: right;">1439</p> <p>05:23 1 The next set of questions I have is going to take  2 us a little while, or hopefully not too long, but it's  3 probably longer than six minutes. Would you rather end a  4 little early or a little late, Mr. President?  5 PRESIDENT VEEDER: Well, just tell us first how  6 things are going. Are you roughly where you want to be or  7 are you taking more slowly than you imagined?  8 MR. EWING: I think that the afternoon went a  9 little more slowly than I expected it to go. I will look  10 at my outline this evening and see what I can cut out of  11 it, but it did take longer to get where we needed to go.  12 PRESIDENT VEEDER: I think we'd better stop here,  13 hadn't we? We will stop here and then we'll resume  14 tomorrow.  15 What we would like to do is to start at 9:00  16 because we want to address the question of the Terms of  17 Reference for the Tribunal Experts. If we could start at  18 9:00, it shouldn't take us more than a half an hour or so.  19 So, if you could come back for 9:30, we'll resume our  20 cross-examination then.  21 THE WITNESS: Oh, I'm sorry. I should be here at  22 9:30 or 9:00?  23 PRESIDENT VEEDER: 9:30.  24 THE WITNESS: 9:30.  25 PRESIDENT VEEDER: Nothing's to stop you coming at</p>	<p style="text-align: right;">1441</p> <p>05:26 1 Number 2514. The two other exhibits that we put in earlier  2 today, 2515 and 2516, should remain with the numbers that  3 they were assigned. However, the document that we errantly  4 assigned 2514 should become 2517. And we've sent an e-mail  5 to that effect to both the Tribunal and the other Party.  6 PRESIDENT VEEDER: There is no objection, of  7 course, from the Respondent?  8 MR. EWING: Of course not.  9 PRESIDENT VEEDER: Thank you.  10 Unless there is housekeeping we can attend to or  11 we need to attend to now, we will adjourn until 9:00  12 tomorrow.  13 Anything from the Claimants?  14 MS. RENFROE: Nothing further, Mr. President.  15 PRESIDENT VEEDER: Respondent?  16 MR. EWING: Nothing. Thank you.  17 PRESIDENT VEEDER: Until 9:00 tomorrow. Thank  18 you.  19 MR. EWING: Have a good night.  20 (Whereupon, at 5:27 p.m., the Hearing was  21 adjourned until 9:00 a.m. the following day.)  22  23  24  25</p>

## CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

  
DAVID A. KASDAN

IN THE MATTER OF AN ARBITRATION BEFORE A TRIBUNAL  
CONSTITUTED  
IN ACCORDANCE WITH THE TREATY BETWEEN THE U.S.A. AND THE  
REPUBLIC OF ECUADOR CONCERNING THE ENCOURAGEMENT AND  
RECIPROCAL PROTECTION OF INVESTMENT, SIGNED AUGUST 27, 1993  
(THE "TREATY")

and

THE UNCITRAL ARBITRATION RULES 1976

- - - - -x  
 In the Matter of Arbitration :  
 Between: :  
 :  
 CHEVRON CORPORATION (U.S.A.), :  
 TEXACO PETROLEUM COMPANY (U.S.A.), :  
 :  
 Claimants, : PCA Case No.  
 : 2009-23  
 and :  
 :  
 THE REPUBLIC OF ECUADOR, :  
 :  
 Respondent. :  
 - - - - -x Volume 7

TRACK 2 HEARING

Wednesday, April 29, 2015

The World Bank  
700 18th Street, N.W.  
J Building  
Conference Room JB1-080  
Washington, D.C. 20003

The Hearing in the above-entitled matter convened  
at 9:00 a.m. before:

- MR. V.V. VEEDER, Q.C., President
- DR. HORACIO GRIGERA NAÓN, Arbitrator
- PROFESSOR VAUGHAN LOWE, Q.C., Arbitrator

## Registry, Permanent Court of Arbitration:

MR. MARTIN DOE, Secretary to the Tribunal

MR. RAYMUNDO TREVES

MS. NAYA PESSOA

## Additional Secretary:

MS. JESSICA WELLS

## Tribunal Expert:

MS. KATHRYN OWEN

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1 PROCEEDINGS  
2 PRESIDENT VEEDER: Good morning, ladies and  
3 gentlemen. We'll start Day 7 of this Hearing.  
4 There are certain housekeeping matters we need to  
5 address. [REDACTED]

[REDACTED]

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9 Anything else by way of housekeeping from the  
10 Claimants' side?  
11 MR. BISHOP: No, Mr. President.  
12 PRESIDENT VEEDER: And the Respondent?  
13 MR. EWING: No, Mr. President.  
14 PRESIDENT VEEDER: Well, let's resume the  
15 cross-examination.  
16 But, first of all, we have to ask our Lord and  
17 Masters if they need a break.  
18 COURT REPORTER: We're fine.  
19 PRESIDENT VEEDER: They don't need a break.  
20 Let's proceed.  
21 MR. EWING: Mr. President, if we could just have  
22 two minutes for us to change stage a little bit.  
23 PRESIDENT VEEDER: We can have five minutes'  
24 break. Don't worry.  
25 MR. EWING: Perfect. Thank you.

09:29

[REDACTED]

09:31

1 (Brief recess.)  
2 JOHN A. CONNOR, CLAIMANTS' WITNESS, RESUMED  
3 PRESIDENT VEEDER: Good morning, Mr. Connor.  
4 There'll be further questions from the Respondent.  
5 THE WITNESS: Thank you.  
6 CONTINUED CROSS-EXAMINATION  
7 BY MR. EWING:  
8 Q. Good morning, Mr. Connor. How are you today?  
9 A. Very good.  
10 Q. Could we start with your 2010 Report, which is  
11 Tab 5 in our first binder or in your copy.  
12 A. Yes, I have it.  
13 Q. And at Page 16, Paragraph 15, there's a section  
14 called, "the types of pits used in oil field operations."  
15 Do you see that?  
16 A. Yes.  
17 Q. Okay.  
18 And if we turn the page to Page 17, we have  
19 Figure 5, which I understand is the use of earthen pits in  
20 oil well drilling and production.  
21 A. Yes.  
22 Q. Is this an accurate representation of a typical  
23 well?  
24 A. Yes, it's meant to be a representation of the  
25 types of operations of a common well. They'll certainly

09:39 1 differ from one application to the next, but this is  
 2 not--this is common.  
 3 Q. So, if we could walk through the pits that you  
 4 have here, in this diagram at the top you have A, the  
 5 drilling of the oil well, and I understand that the gray  
 6 area underneath the oil rig is the platform; is that  
 7 correct?  
 8 A. Yes, on a land-based system, that would correspond  
 9 to what's called the platform in this case, which is a  
 10 gravel pad.  
 11 Q. And then to the upper left corner you have a water  
 12 pit?  
 13 A. Yes.  
 14 Q. And that is a water pit that is filled with water;  
 15 is that correct?  
 16 A. Yes.  
 17 Q. And it's dug directly into the ground, so that's  
 18 an earthen pit as well?  
 19 A. In this example, yes.  
 20 Q. Okay. And this is typical, is a typical layout  
 21 for Ecuadorian wells in the Oriente; is that correct?  
 22 A. I can't speak as to what technologies have been  
 23 used today because Petroecuador has advanced its  
 24 technologies quite a bit, but this would have been  
 25 certainly the common technology used during the era of

09:42 1 A. In this example, it is. Just like the water pit,  
 2 the soils are able to retain those fluids, so if you could  
 3 dig a water pit into the clay and it holds water, it will  
 4 also hold the mud.  
 5 Q. I understand that your contention is that it is  
 6 clay lined; is that correct?  
 7 A. It's based in natural soils clay. That's why the  
 8 water pits in this area did not require synthetic liners.  
 9 Q. You told us yesterday that the water--that the  
 10 rain in the Oriente falls at three meters per year; is that  
 11 correct?  
 12 A. In this particular region, yes.  
 13 Q. Do those water pits overflow on an almost constant  
 14 basis?  
 15 A. I don't know. I suppose it depends on how  
 16 actively they're being used.  
 17 Q. If I have an unused water pit and I'm adding three  
 18 meters of water per year, wouldn't you expect that pit to  
 19 overflow pretty frequently?  
 20 A. It would depend on the water balance into that  
 21 pit.  
 22 If you've been to the Oriente, you'll know that it  
 23 will rain very hard but then dry off very quickly. That's  
 24 why people don't use umbrellas in that area because after a  
 25 very hard rain, they will dry very quickly, and that's

09:40 1 TexPet operations and still used in many places around the  
 2 world today.  
 3 Q. Okay. So, these diagrams that we're looking at  
 4 are your understanding of a typical TexPet operation in the  
 5 Oriente between 1972 and 1992?  
 6 A. I believe it would correspond to that, yeah, for a  
 7 water-based mud application.  
 8 Q. And as far as you know, all of the wells were  
 9 water-based mud operations?  
 10 A. Yes.  
 11 Q. So, this is a typical diagram for TexPet's  
 12 operations in the Oriente from 1972 to 1992; correct?  
 13 A. Yes, I think it would apply.  
 14 Q. So, we just talked about the water pit, which is a  
 15 pit filled with water that is dug directly into the earth;  
 16 is that correct?  
 17 A. Yes.  
 18 Q. And then still in the first frame we have a  
 19 reserve pit to the bottom left; correct?  
 20 A. Yes.  
 21 Q. And that reserve pit is also dug into the dirt;  
 22 correctly--correct?  
 23 A. Yes.  
 24 Q. And it is unlined with any kind of manmade  
 25 material; correct?

09:43 1 called a process of evapotranspiration. So the water  
 2 falls, but the water also evaporates, so that the issue,  
 3 then, Mr. Ewing, is the net water gain in that pit. If the  
 4 net water gain was such that it could overtop the pit,  
 5 depending on how that worked out, but it wouldn't be such  
 6 that the pit had to retain 3 meters of water.  
 7 Q. And we saw the video of you at Aguatico 2 the  
 8 other day where we recognize that these pits did overflow,  
 9 and that was not an uncommon event?  
 10 A. They do overflow. I don't know that it was  
 11 uncommon. At that particular location it appears that that  
 12 had happened. I didn't observe that at many locations, but  
 13 there, yes.  
 14 Q. Let's move back to the types of pits.  
 15 So, we have a water pit, and then we have a  
 16 reserve pit; and the reserve pit, according to your  
 17 diagram, is filled with soil and rock cuttings and excess  
 18 drilling mud. That's all the material that's coming in and  
 19 out of the well as the bore drills down; is that correct?  
 20 A. Yes.  
 21 Q. And then moving to the second frame, B, the  
 22 operation of the well, there are some changes here that I  
 23 want to talk through. First, to start with what's the  
 24 same, the water pit is still there and is a water supply,  
 25 as you said, if needed; right?

09:44 1 A. Yes.  
 2 Q. And then now, the reserve pit is listed as  
 3 remediated.  
 4 A. Yes.  
 5 Q. And that means that any contaminants in that  
 6 reserve pit have been properly disposed of or treated, and  
 7 then that pit has been covered; is that correct?  
 8 A. It means specifically that the pit has been closed  
 9 in accordance with the standard procedures that are  
 10 described in my Report, where I cite the specifications of  
 11 the World Bank, the EMP forum, and many others, that  
 12 describe a process whereby the materials are dried,  
 13 solidified, compacted, and overlain. It's not considered  
 14 that a mud pit would normally--or a reserve pit, excuse me,  
 15 would normally contain any contaminants of environmental  
 16 concern.  
 17 Q. And in this picture, the wells currently in  
 18 operation, the drilling rig has been removed; correct?  
 19 A. Yes.  
 20 Q. And the reserve pit has been remediated?  
 21 A. It's been remediated and closed, yes, as I  
 22 described.  
 23 Q. So, once a well is in operation, the reserve pit  
 24 is not needed?  
 25 A. Yes, that's right. Unless the--and it wouldn't be

09:46 1 re-needed unless the--it wouldn't be needed again unless  
 2 the well was extended in some manner to a different depth  
 3 by drilling, whether some additional drilling operation in  
 4 the future.  
 5 Q. But that would be more of an exceptional  
 6 circumstance, not the norm?  
 7 A. It depends on the location, whether or not they  
 8 will do an offset and do a horizontal well, so it really  
 9 depends on the field and the decision of the Operator.  
 10 Q. And if we could maintain the focus on TexPet's  
 11 operations in the Oriente from 1972 to 1992, are you aware  
 12 of any circumstances where this happened, where they  
 13 drilled a well later?  
 14 A. You mean, extended the well?  
 15 Q. Extended the well.  
 16 A. No, I'm not. I'd have to look back at the  
 17 records. I don't recall that happening in particular.  
 18 Q. And then there's a third pit now listed in section  
 19 or frame B, and this is called the workover pit or test  
 20 pit.  
 21 Do you see that?  
 22 A. Yes.  
 23 Q. And your description says: "It is used to contain  
 24 oily waste associated with well repair or testing." Is  
 25 that correct?

09:47 1 A. Yes.  
 2 Q. And this is also a pit that was also dug into the  
 3 soil; correct?  
 4 A. Yes.  
 5 Q. And it had no artificial liner?  
 6 A. In the cases I observed, I don't believe so.  
 7 Q. And if we move to--  
 8 A. Those guidelines changed later in Ecuador with  
 9 regard to liner specification, but in that era that we're  
 10 discussing, no, to my knowledge.  
 11 Q. And then moving to Frame C, we again see the water  
 12 pit, but now the water pit says, "may remain in use at  
 13 discretion of property owner." Is that correct?  
 14 A. That's what it says, yes.  
 15 Q. So, this water pit, in a typical well drilling  
 16 site, is on private land?  
 17 A. That will really depend on the lease, whether  
 18 it's--for example, in the U.S. it could be on Federal land,  
 19 it could be on private land, it could be on land that was  
 20 purchased by the oil field owner or Operator, but in some  
 21 cases it can be on private land, and the operations will  
 22 entail in this country, in the U.S. at least, some  
 23 contractual relationship between the Parties.  
 24 Q. And, Mr. Connor, I have done my best to narrow  
 25 down my questions and to only bring a few examples today

09:48 1 for each point, but if you could stay focused with me on  
 2 the areas that we're looking at, and in this we are looking  
 3 at a typical well in the Oriente from TexPet's operations  
 4 from 1972 to 1992. Is it your understanding that the water  
 5 pits were typically put into or dug into private land that  
 6 is off the platform?  
 7 A. The water pits were off the platform. It's my  
 8 understanding that at times it was private land, but I  
 9 can't say what it was in all cases. I don't know.  
 10 Q. And the same for the reserve pit. We still see  
 11 that it is remediated. It also appears to be on private  
 12 land, according to this diagram?  
 13 A. Well, I don't think the diagram indicates, but it  
 14 could be on private land as well. I don't know what the  
 15 circumstances are at each of the well sites in the Oriente.  
 16 Q. And, finally, the workover pit or test pit now  
 17 appears to have the same cover on it that the remediated  
 18 reserve pit does, but it doesn't say that it's been  
 19 remediated; is that correct?  
 20 A. No, it doesn't say that on this diagram.  
 21 Q. And this pit also is, based on this diagram, off  
 22 the platform?  
 23 A. It's off the platform, correct.  
 24 Q. So, in a typical well in the Oriente from TexPet's  
 25 operations from 1972 to 1992, you would agree with me that

09:50 1 there are three pits typically?  
 2 A. There are three types of pits as is shown on this  
 3 diagram, yes.  
 4 Q. And each well would need each of these three types  
 5 of pits; correct?  
 6 A. At some point in its operation, I believe so.  
 7 That's fair.  
 8 Q. And TexPet drilled at least 322 wells; is that  
 9 correct?  
 10 A. I believe there were 322 wells identified in the  
 11 HBT Agra audit. I don't know who drilled them all, but it  
 12 could certainly be TexPet had drilled all of them.  
 13 Q. Do you have any reason to dispute that TexPet  
 14 drilled all 322 that were identified in the HBT Agra audit?  
 15 A. No.  
 16 Q. Now, Mr. Connor, could we move on now to discuss  
 17 the RAP.  
 18 You've testified that the RAP program addressed  
 19 pit and soil remediation at 148 of the 344 well sites in  
 20 the Concession Area. And this I'm looking at Tab 19. This  
 21 is your 2015 Report at Page 9.  
 22 A. Yes, I see that.  
 23 Q. And you also included this in your slides in your  
 24 opening presentation--correct?--a discussion of what the  
 25 RAP did and did not address.

09:52 1 A. Yes, but the number on the slide will be slightly  
 2 different because this number would include the overlap of  
 3 the two assignments, but at some wells they did both soil  
 4 remediation and pit remediation.  
 5 Q. And--thank you. I wasn't going to--I'm not  
 6 disputing you on the 344, but you know, Mr. Connor, that  
 7 the RAP did not address all of the features at every site;  
 8 correct?  
 9 A. Correct.  
 10 Q. And, in fact, you have said that it addressed only  
 11 some features at some of the sites?  
 12 A. It addressed the specific features that the  
 13 Parties agreed on that were identified in the tables  
 14 attached to the RAP, and those were specific features at  
 15 specific sites.  
 16 Q. So, for instance, at the 157 sites--and I put your  
 17 slide from your opening up on the screen--at 157 sites,  
 18 TexPet agreed to remediate 108 pits.  
 19 A. Correct. They actually remediated more pits at  
 20 more sites. And that's indicated on Table I(b) of my 2010  
 21 Report, which summarizes the ultimate work that was  
 22 completed during the implementation of the RAP. But yes,  
 23 this was the Agreement, as you stated.  
 24 Q. And that's less than one pit per site; correct?  
 25 A. Just a second. It averaged around two pits per

09:54 1 site, if I recall, because there were--hang on a second. I  
 2 could tell you exactly how many there were.  
 3 (Witness reviews document.)  
 4 A. The total number of pits remediated was 162 at 88  
 5 sites, so it's approximately two pits per site were  
 6 included in the remediation program. Those were not all  
 7 the pits at those sites as we both know.  
 8 Q. So, it's approximately--we'll go two pits per  
 9 site, approximately?  
 10 A. Yes.  
 11 Q. You have mentioned the RAP as an agreement between  
 12 the Parties. Do you understand who the Parties were to the  
 13 RAP?  
 14 A. Mr. Ewing, I just want to correct a statement I  
 15 made. I referred to Table I(b). I should have said Table  
 16 1(a) for the record. Sorry.  
 17 The Parties to the RAP, as far as I understand,  
 18 Mr. Ewing, are those that had signed that document or were  
 19 signatory to that document.  
 20 Q. And you understand that the Parties to that  
 21 document who signed that document were TexPet and the  
 22 Ministry of Energy and Mines?  
 23 A. I'd have to look at the document. I have it here  
 24 with me. I can read those--or you can read them.  
 25 Q. So, you don't remember who signed?

09:56 1 A. Well, it's in small print here. I could--no, I  
 2 don't remember without looking at that.  
 3 Q. Okay. Yesterday you used an analogy of a speed  
 4 limit for regulations, and you said that environmental  
 5 regulations are like the speed limit where the State may  
 6 set 65 miles an hour on the beltway, or it may set 35 miles  
 7 an hour in my neighborhood as the speed limit; correct?  
 8 A. Yes.  
 9 Q. And it may set 15 miles an hour in front of a  
 10 school; is that correct?  
 11 A. Yes, that's right.  
 12 Q. If I bought a large piece of land and put roads on  
 13 it, you would agree that I could set my own speed limit on  
 14 my property; correct?  
 15 MS. RENFROE: Objection to the question. That's  
 16 calling for a legal conclusion.  
 17 PRESIDENT VEEDER: I wonder whether this is a  
 18 helpful analogy in the first place, so you might want to  
 19 move on.  
 20 MR. EWING: I will move on, then.  
 21 BY MR. EWING:  
 22 Q. During the RAP, there are many sites that  
 23 TexPet--many pits that TexPet had closed that were not  
 24 addressed during the RAP; correct?  
 25 A. I guess I don't understand your question.

09:58 1 Q. In your opening you referred to pits that were  
 2 closed before June 30th, 1990, that had no visible impacts  
 3 as sites that were not included in the RAP. Do you  
 4 remember that?  
 5 A. Yes. The Parties agreed on that provision that if  
 6 there were such pits that existed that had been closed  
 7 prior to that date, they were understood to exist, but only  
 8 those that were observed to have indicia of poor closure  
 9 during the implementation of the RAP would be incorporated  
 10 into the RAP as additional sites.  
 11 Q. And when you say sites that "had indicia of poor  
 12 closure," you mean sites that had no visible soil impacts?  
 13 A. No, but that's my interpretation of the language  
 14 "visible soil impacts."  
 15 For example, yesterday, we discussed the pits that  
 16 the property owner had closed himself by covering with  
 17 earth at the Shushufindi 4 well site, and you showed a  
 18 video of Mr. John Slocum standing atop that pit and noting  
 19 visible soil impacts. That was an example of a pit that  
 20 hadn't been properly closed and that the sign of that is  
 21 that oil in the pit squeezes out and comes to the surface.  
 22 Q. So, that would be enough evidence to include a pit  
 23 in the RAP?  
 24 A. The Parties agreed to that. That's what they had  
 25 agreed to say that would be the basis for including it in

10:01 1 A. There's a few negative switches in there. I might  
 2 not understand your question, but I know there's two pits  
 3 that did have visible--that were understood by the Parties  
 4 to have been closed before June 30, 1990, did have visible  
 5 evidence of soil impacts on the ground surface and were  
 6 included in the RAP. To my knowledge, the RAP did not  
 7 include a list of the pits that did not have visible  
 8 impacts on the surface and had been closed prior to  
 9 June 30th, 1990.  
 10 Q. So, if we look at Tab 36--and this is the Chevron  
 11 Playbook for Lago Agrio 6--and according to this document--  
 12 A. Can you indicate a page number?  
 13 Q. Sorry.  
 14 At the bottom you will see GSI 0460859.  
 15 A. Thank you.  
 16 MR. EWING: And for the Tribunal's benefit, this  
 17 is an example of a Playbook that Chevron put together  
 18 leading up to the Lago Agrio 6 Judicial Inspection.  
 19 MS. RENFROE: And for the benefit of the Tribunal,  
 20 I respectfully disagree with your characterization, but  
 21 just for the record.  
 22 MR. EWING: I meant that to be non-controversial,  
 23 so we can clarify that later.  
 24 BY MR. EWING:  
 25 Q. Do you see where it says here that Pit 1 is

09:59 1 the RAP, if it did have such signs.  
 2 Q. So, the pit that Mr. Slocum was standing on should  
 3 have been listed as a pit closed before June 30, 1990?  
 4 A. No, it was closed by the owner a few years before  
 5 the time that Mr. Slocum was standing on it, and I don't  
 6 recall the specific time, but I believe it was around 2005,  
 7 and the owner had testified that he had closed it himself  
 8 only a short time before that. It was not a pit that at  
 9 the time of the RAP was--had been closed by TexPet, it was  
 10 not closed by TexPet. It certainly was not closed before  
 11 June 1990.  
 12 Q. So then it should have been listed in the RAP--is  
 13 that correct?--because it would have been then open before  
 14 2005 when the owner testifies he closed it.  
 15 A. It would be listed--I would have to look at the  
 16 RAP to see if it's listed. It would only be listed in the  
 17 RAP if Shushufindi 4 were one of the 157 sites--excuse me,  
 18 one of the 108 sites for which pit remediation was  
 19 designated. And if that were the case, then it could be  
 20 listed, subject to the various caveats that are listed or  
 21 the four caveats I listed on that slide that you're now  
 22 discussing.  
 23 Q. Do you know how many pits were closed before  
 24 June 30th, 1990, and included on the list of pits not to be  
 25 included in the RAP?

10:03 1 identified in the Remedial Investigation as located  
 2 northwest of the wellhead?  
 3 A. Yes, I see that. It prints--you have it on the  
 4 screen. That's really tiny, but I do see it.  
 5 Q. My understanding from this is that the RAP only  
 6 identified one pit.  
 7 MS. RENFROE: With respect, Mr. Ewing, if you're  
 8 going to ask him questions about the RAP, might you give  
 9 him a copy of it?  
 10 MR. EWING: He does have a copy of it. I was  
 11 trying to short circuit this a little bit.  
 12 MS. RENFROE: It might be helpful if you could  
 13 refer him to where the RAP is in these binders. Thank you.  
 14 BY MR. EWING:  
 15 Q. Mr. Connor, let me come back to this example when  
 16 I know the tab number for the RAP.  
 17 You said in your opening presentation that the  
 18 scope of the RAP was governed by the Scope of Work that was  
 19 agreed between the Parties; correct?  
 20 A. The Scope of Work set out certain tasks, and the  
 21 RAP detailed those tasks, and the RAP set up certain  
 22 provisions that additional--that further defined those  
 23 tasks and led to additional work during its implementation.  
 24 Q. And in your opening slide, you identified five  
 25 things that these RAP completed, five tasks.



10:05 1 A. Yes.  
 2 Q. And if we could put that back up, you identified  
 3 pit remediation, soils and spills--it's coming--P&A of  
 4 wells, which I understand is plug and abandon wells?  
 5 A. Yes.  
 6 Q. Tank dikes, and produced water equipment.  
 7 Is that your understanding of what the Statement  
 8 of Work required?  
 9 A. Yes.  
 10 Q. The Statement of Work did not address remediation  
 11 of sediment; correct?  
 12 A. The Statement of Work did not specifically use the  
 13 word "sediment." If you look in the RAP itself, you will  
 14 see that the description of some of the sites indicates  
 15 that the adjacent stream was affected, and that was  
 16 included in the RAP. There were seven instances of that.  
 17 Q. So, you're saying that the RAP included  
 18 remediation of a total of seven streams in the Oriente?  
 19 A. There were seven spills that were added to the RAP  
 20 that were observed during the implementation. Those spills  
 21 at more than one site had affected the local stream. If  
 22 that were the case and that were a part of the scope, they  
 23 were addressed. Shushufindi 13 is an example. I can't  
 24 recall the other examples, but the scope of the Settlement  
 25 Agreement and the scope of the RAP did not specify that

10:07 1 streams adjacent to these facilities would be remediated,  
 2 and that was not part of the work assignment for TexPet,  
 3 unless it fell under the categories that I described.  
 4 Q. So, what you're saying is that, of the 27 spills  
 5 listed here, seven of those affected a stream and,  
 6 therefore, they were--that stream was also addressed; is  
 7 that what I understand?  
 8 A. No, not exactly. The soils and spills that are  
 9 listed there as incorporated in the Scope of Work that's  
 10 attached to the Settlement Agreement was directed towards  
 11 oil staining on the surface of the pad or on--within the  
 12 confines of the production station. There were oil spills  
 13 within the facility.  
 14 There were seven additional spills that were added  
 15 to the work program at the request of the Government  
 16 Inspectors that were not confined to the area of the  
 17 platform. Some of those extended into streams; and, if  
 18 they did so, remediation of the area of the spill also  
 19 incorporated the sediments that they had affected.  
 20 Q. And if we could pull up one more video, I have a  
 21 question for you on this. This is C-938.  
 22 (Video played.)  
 23 Q. So, you would agree with me, Mr. Connor, that not  
 24 all of the spills were addressed during the RAP, either?  
 25 A. That's correct. They weren't assigned to TexPet,

10:09 1 if they weren't assigned in the work program, then they  
 2 weren't included in the work program.  
 3 Q. So, you would agree with me that there were spills  
 4 present at the time that were not assigned to TexPet and  
 5 that TexPet did not clean up?  
 6 A. That's right. If the work was not assigned to  
 7 TexPet, then, in completion of their obligations, they did  
 8 not complete the work that was not in their obligation.  
 9 Q. So, if the Parties did not agree to a particular  
 10 cleanup, TexPet was not required to do it?  
 11 A. That's generally true, with the caveat that during  
 12 the implementation program, the Government Inspectors did  
 13 identify additional tasks that were posed to the Parties to  
 14 decide whether it would be added and a number of tasks were  
 15 added, 25 additional pits and seven spill areas. This was  
 16 not one of those spill areas that was added at the request  
 17 of the Inspectors and a decision of the Parties.  
 18 Q. If you would turn to Page 35 of your 2010  
 19 Report--are you there?  
 20 A. Yes.  
 21 Q. --in Paragraph 62 and 63, you discuss the soil  
 22 remediation criteria from the RAP. Am I correct that in  
 23 reading this that there were two standards applied,  
 24 depending on when a pit was closed, either there is the  
 25 soil leachate test or a 1,000-milligram per liter soil

10:12 1 leachate test or a 5,000 milligram per kilogram TPH  
 2 composite test; is that correct?  
 3 A. Yes, there were two different criteria. The first  
 4 was applied throughout the program. The second was an  
 5 added additional criteria that was added to work done after  
 6 March 20, 1997.  
 7 Q. And yesterday you used the tea bag analogy to  
 8 explain the TCLP test and explain that the TCLP test is  
 9 equivalent to measuring how much tea gets into the water  
 10 outside of the tea bag; is that a proper recounting of your  
 11 analogy?  
 12 A. Well, specifically, I used that analogy to define  
 13 what leachate is. Leachate is the soluble fraction of the  
 14 soil or a chemical that will be released as water moves  
 15 through that material, much as water moving through a tea  
 16 bag. But the TCLP test is a specific laboratory Protocol  
 17 to derive--extract leachate from a solid substance.  
 18 But in general, the material that comes out is a  
 19 leachate, much as what you would get out of a tea bag.  
 20 Q. So, when water passes through a tea bag, some of  
 21 the chemicals of the tea dissolve into the water, and that  
 22 is what we then drink as tea; correct?  
 23 A. Yes.  
 24 Q. So, it's the dissolved component of the tea that's  
 25 in the water?

10:13 1 A. Yes.  
 2 Q. And then you remove the tea bag, and you can drink  
 3 your tea?  
 4 A. Yes.  
 5 Q. Do you know in the TCLP test how much oil can  
 6 dissolve in the water?  
 7 A. You mean any--of a crude oil?  
 8 Q. Correct.  
 9 A. It depends on the crude oil itself. If the crude  
 10 oil has a significant light infraction as we discussed  
 11 yesterday, a gasoline fraction, those chemicals are  
 12 relatively soluble in water compared to the heavier  
 13 compounds, so the ability to dissolve in water depends on  
 14 what portion of the oil is related to those lighter soluble  
 15 compounds. If they're not present, then you will not have  
 16 significant dissolution. If they are present, you will get  
 17 more tea.  
 18 Q. And if we look and think about an Ecuadorian  
 19 Crude, how much Ecuadorian Crude would dissolve into the  
 20 water?  
 21 A. If I recall correctly--I guess we talked about  
 22 this a bit yesterday, the soluble portion of the fresh  
 23 crude is on the order of 20 percent, if I remember that  
 24 right. It's called a topping test. It's the volatile  
 25 fraction. So, fresh crude you could have a more

10:15 1 significant amount dissolving into the water, and that  
 2 there is some complex chemistry that controls that. But in  
 3 the weathered crude, very little because that soluble  
 4 portion is gone, just as if you had used the tea bag many,  
 5 many times, and that final time you used the tea bag,  
 6 you're not getting any tea. That's similar to what you  
 7 would find with the weathered crude, where the tea is gone  
 8 for various reasons but it no longer contains it. So when  
 9 you do the leachate test on the weathered crude, you get  
 10 almost nothing in that water.  
 11 Q. Yesterday, we looked at a sample of liquid crude  
 12 that had approximately 24 milligrams per kilograms of GRO.  
 13 Is that the volatile range that you're now referring to?  
 14 A. Yes.  
 15 Q. So, if we had run the TCLP test on that liquid  
 16 crude from that pit with 24 milligrams per kilogram of GRO,  
 17 what would you expect the TCLP results to be?  
 18 A. They may have run that test on that material. We  
 19 can look in the Report to see if that had been done, but it  
 20 could result in a measurable--it could result in a  
 21 detectable fraction of soluble components in that leachate  
 22 test, but I would have to look at the Reports and see if  
 23 that were done or not.  
 24 Q. And still just staying in the theoretical, I'm not  
 25 asking about the specific--we're just using that as an

10:16 1 example, assuming there is 24 milligrams per kilogram of  
 2 GRO in the sample, would you expect the TCLP milligrams per  
 3 liter to be on the order of ten, on the order of a hundred?  
 4 What would you roughly estimate?  
 5 A. I really couldn't estimate, Mr. Ewing. There is  
 6 sort of a complex relationship that defines how much of  
 7 that will come out to the water, and the best way to know  
 8 is actually to run the test. If they ran the test, we can  
 9 certainly look at that and see what that result is.  
 10 The reason we run tests is that we don't know the  
 11 answer.  
 12 Q. Do you disagree with Dr. Short's conclusion that  
 13 the TCLP test never would have been--never would have  
 14 failed the 1,000 milligrams per liter because oil cannot  
 15 dissolve in water to that extent?  
 16 A. I would agree that these samples, as tested, both  
 17 during the RAP and during the Judicial Inspection, never  
 18 did exceed that limit. In fact, nearly all the samples had  
 19 non-detectable leachate concentrations, and that supports  
 20 the finding of high weathering of that material. The tea  
 21 bag is worn out. Whether that material ever would have  
 22 exceeded a value of 1,000 to me is somewhat immaterial  
 23 because, regardless of what the criteria were, that  
 24 material leached nothing, almost nothing, and it would have  
 25 met any criterion that were in effect at that time.

10:18 1 But I don't know--I can't answer whether or not a  
 2 fresh oil of any composition would have specifically  
 3 exceeded that criterion because I haven't done that  
 4 analysis.  
 5 Q. But you agree with me that the weathered crudes  
 6 that were analyzed during the RAP, none of them came even  
 7 close to violating the RAP 1,000-milligrams-per-liter  
 8 standard?  
 9 A. That's right. All the samples that were tested  
 10 did not release leachate. None of them were capable of  
 11 contaminating the groundwater because they contained no  
 12 soluble fractions.  
 13 Q. So, if we could look at Tab 18--and this should be  
 14 in the first binder--oh, sorry, it should be in the second  
 15 binder. I'm just giving you an opportunity to lift both.  
 16 MR. EWING: And for the record, this is Exhibit  
 17 C-43, it is the Woodward-Clyde Report.  
 18 THE WITNESS: Which tab did you say again?  
 19 BY MR. EWING:  
 20 Q. Eighteen.  
 21 A. Yes, I'm there.  
 22 And do you have a specific page number?  
 23 Q. For some reason, Woodward-Clyde, along with some  
 24 of our other historic Contractors didn't believe in page  
 25 numbers. We are looking--it's Table 3-24, and it's just on

<p>Sheet 15</p> <p style="text-align: right;">1496</p> <p>10:20 1 this side of the middle. You will see there is a large 2 collection of tables in the middle, and we're looking at 3 Table 3-24. 4 A. Yes, I see that. It's multiple pages, and they're 5 indicated sheet one of--X of six at the bottom. Perhaps 6 you know which page that is. 7 It's sheet four of six. I found it. If you find 8 Table 3-24, in the lower right-hand corner, there is a new 9 numbering. 10 Q. But if we could look at the results for Sacha 86, 11 which as you said is on sheet four of six, and the way this 12 table is set up, so that we're all on the same page, is pit 13 number is listed on the left, and then we have 14 pre-remediation results and then we have remediation 15 verification results; correct? 16 A. Yes. 17 Q. And if we look down at Sacha 86, the 18 pre-remediation TPH results, we see 17,000 milligrams per 19 kilogram, 19,000 milligrams per kilogram, et cetera; 20 correct? 21 A. Yes. Those are the two values for 86.1, which 22 refers to Pit 1 at the Sacha 86 well site. 23 Q. And at Pit 2 there were 9300; correct? 24 A. The pre-remediation concentration of Total 25 Petroleum Hydrocarbon in that soil was that value, correct.</p>	<p style="text-align: right;">1498</p> <p>10:24 1 A. Yes. The evaluation criteria that was applied 2 during the Judicial Inspections by the Chevron Experts was 3 10,000 parts per million, consistent with those other 4 values that were prevailing at that time. 5 Q. Now, could we turn to the bottom of the next page, 6 where we have Sacha 91. So, now, this is sheet five of 7 six. 8 A. For clarity, Mr. Ewing, I should point out that 9 that criterion was applied outside of pits, not in 10 remediated pits, not in the RAP pits, because the RAP pits 11 had their agreed upon specified criteria. At locations 12 outside of pits, for which there--things that were not in 13 the RAP, then the criteria of 10,000 was used by the 14 Chevron experts to evaluate whether those were actionable 15 conditions. So, I didn't mean to mislead you to indicate 16 that that 10,000 was applied inside a RAP pit. It was not. 17 I'm sorry, I interrupted you on your second 18 question. 19 Q. During the Judicial Inspections, then, you're 20 testifying that, for RAP pits, Chevron asked the Court to 21 evaluate whether the RAP was effectively completed, whether 22 the criteria from the RAP were completed for RAP pits; is 23 that your understanding? 24 A. No, it's actually the opposite. The Court asked 25 the experts to make that determination. The Court</p>
<p style="text-align: right;">1497</p> <p>10:22 1 Q. And then if we look to the far right, we see the 2 TPH by TCLP, which is the leachate test we were just 3 discussing; correct? 4 A. Yes. 5 Q. And we see here that that came out as less than 6 five, which is a non-detect; correct? 7 A. Yes. 8 Q. So, the leachate test found nothing? 9 A. The leachate test did not detect any hydrocarbon 10 in the water because that hydrocarbon mass is non-soluble. 11 Just as for an example, if you're familiar with asphalt 12 pavement. Asphalt pavement is not soluble, but it's 13 100 percent hydrocarbon. This was not asphalt, but it 14 shared that characteristic of being non-soluble. 15 Q. So, this is the site where Mr. Slocum was 16 standing; right? It was Sacha 86 that he was standing at 17 yesterday? 18 A. I thought that was Shushufindi 4. 19 Q. Okay. You're right. I have confused my videos. 20 If we go look at the TPH result, we see that 21 post-remediation it is still 16,000; correct? 22 A. Correct. 23 Q. During the Judicial Inspections, Chevron's Experts 24 recommended what they called an international criteria of 25 10,000 milligrams per kilogram; correct?--for TPH.</p>	<p style="text-align: right;">1499</p> <p>10:26 1 specifically, at the request of the Parties, posed the 2 question: Were the RAP pits remediated in accordance with 3 the specifications that were agreed upon by the Parties in 4 the September 1995 RAP document? That was the question 5 posed by the Court, not by Chevron. 6 Q. And then the portions outside of the pit, 10,000 7 milligrams per kilogram, was applied; correct? 8 A. Yes. That was to answer the second two categories 9 of questions: What are the environmental conditions at the 10 site, and to help in the evaluation of do those conditions 11 pose a human health risk. And that was one of the 12 criterion that were applied for that, to answer those 13 questions--particularly the former, not the latter. 14 Q. And if we look at Sacha 91.2, which is the last 15 line on this page, NS means "not sampled"? 16 A. Yes. 17 Q. And after remediation, this pit still had 11,000 18 milligrams per kilogram of TPH? 19 A. Correct. 20 Q. But had a non-detect for TCLP? 21 A. Yes. The oil in that pit is non-soluble. It had 22 been cemented and sealed within the soil mass, but it's 23 non-soluble and, therefore, it met the criteria of not 24 posing a risk to the environment via leaching. 25 Q. When you say it's not soluble, you're not saying</p>

10:28 1 it's not liquid?  
 2 A. Oh, no.  
 3 In this particular case, in the RAP pits, I did  
 4 not observe liquid oil. It's not impossible that there  
 5 could be some droplets of liquid along those pits. But  
 6 weathered oil, when I've talked about weathered oil,  
 7 doesn't mean that it's solid. It can still be a liquid.  
 8 In this case, this I would expect would have been a  
 9 solidified solid mass that embodied 11,000 parts per  
 10 million of oil.  
 11 Q. And you're not saying, when you say it's not  
 12 soluble, you're not making a conclusion about its toxicity,  
 13 either, are you?  
 14 A. No, that doesn't relate to its toxicity. It  
 15 relates to the exposure potential. So, regardless of what  
 16 the chemical is, if the chemical can't exit the solidified  
 17 mass, then it can't impact groundwater and it can't harm a  
 18 well. So, it's important in that aspect, but it is not,  
 19 per se, a measurement of toxicity. But it's an important  
 20 consideration when you do the complete risk assessment.  
 21 Q. Understood, and we're not talking about doing a  
 22 complete risk assessment. I'm just trying to understand  
 23 what the conditions were at the time.  
 24 Could we move on to--actually, before I do, do you  
 25 know how many more sites there are like this, where

10:31 1 Q. And when you say that the non-detects for TCLP is  
 2 consistent with the weathered state, you're assuming that  
 3 even fresh oil could violate the five milligrams per liter  
 4 detection limit; is that right?  
 5 A. I don't think that assumption--it's not dependent  
 6 on that assumption. We talked about that earlier, and I  
 7 would expect that fresh oil could exceed that limit, but my  
 8 conclusion is not dependent on the behavior of fresh oil.  
 9 It's dependent on the observed behavior of the weathered  
 10 oil, and that's complemented by oil-weathering  
 11 fingerprinting analyses that were done on every single soil  
 12 sample collected during the Judicial Inspection by Chevron  
 13 to quantify the degree of weathering. That, in complement  
 14 with the leachate test, supports the finding that  
 15 the--well, it was weathered, and that it did not release  
 16 leachate to water.  
 17 Q. And again, when you used the term "weathered,"  
 18 you're not making a statement about its--necessarily about  
 19 its toxicity?  
 20 A. The term "weathered" indicates a change in the  
 21 chemical composition; and throughout the Reports, I've  
 22 indicated that those two things are related. But the  
 23 change in the chemical composition did perforce reduce the  
 24 toxicity of that material because it entailed the removal  
 25 of the most toxic components, most of which occur in that

10:29 1 pre-remediation and post-remediation TPH results are high  
 2 but TCLP was below the criteria?  
 3 MS. RENFROE: I will object to that question,  
 4 respectfully, Mr. Ewing. It's awfully vague and ambiguous,  
 5 the way you've framed it. Could you try and reframe it?  
 6 When you say high, we don't know what that means. It's a  
 7 very relative term.  
 8 Q (By Mr. Ewing)  
 9 BY MR. EWING:  
 10 Q. Do you understand my question? Or should I  
 11 rephrase?  
 12 A. You might want to clarify for the record what you  
 13 mean by high.  
 14 Q. Happy to. Do you know how many more sites there  
 15 are like this where pre-remediation and post-remediation  
 16 TPH results are above 10,000 milligrams per kilogram, but  
 17 TCLP was below or non-detect?  
 18 A. No, I haven't done that evaluation. I understand  
 19 that of all the TCLP tests that were done, I believe the  
 20 highest detection was marginally above five. I believe  
 21 there may have only been one such test, and that  
 22 was--that's consistent with the weathered state of that oil  
 23 that was embodied in those soils. But I haven't--I can't  
 24 recall the data to that degree to be able to answer your  
 25 question.

10:32 1 light-end range, and some of which occur in the middle  
 2 range, so that in all cases the weathering did have the  
 3 effect of reducing the toxicity.  
 4 Q. You would agree with me that PAHs are a toxic  
 5 component of crude oil; correct?  
 6 A. PAHs are considered toxic chemicals. There is  
 7 some debate over what their native concentration is in  
 8 crude oil, but they were measured in the weathered crude  
 9 oil at this site, yes.  
 10 Q. And would you agree with me that, as PAHs are  
 11 weathered--let me rephrase.  
 12 Would you agree with me that, as crude oil is  
 13 weathered, PAH concentration increases?  
 14 A. No.  
 15 Q. Do PAHs weather at the same rate as the rest of  
 16 the crude oil?  
 17 A. That's a good question that I may not be able to  
 18 answer for you, Mr. Ewing. I can only answer to the extent  
 19 that I observed in the data was that the degree of  
 20 weathering of the light ends and degree of weathering of  
 21 the PAHs was both observed to be significant, ranging from  
 22 60 to 80 percent loss of those chemical mass by virtue of  
 23 the various weathering processes.  
 24 There are certain ambient conditions that would  
 25 result in faster weathering of the light ends, and I think

10:34 1 that's common, but the end result that was observed in  
 2 these samples that were analyzed by Mr. Greg Douglas--or  
 3 Dr. Greg Douglas, I should say--indicated that both of  
 4 those chemicals had experienced significant reduction in  
 5 mass.  
 6 Q. You are not a petroleum chemistry Expert; right?  
 7 A. No, I'm at--I understand petroleum chemistry to  
 8 the degree that it is applied within the environmental  
 9 realm, but apart from that, no.  
 10 Q. So, if Mr. Douglas--or Dr. Douglas--agreed with me  
 11 that PAH concentration does increase on oil weathering, you  
 12 would agree with him?  
 13 A. Well, I would consider Dr. Douglas' opinion, what  
 14 the basis was for that, and determine if I would agree with  
 15 him or not. There are certain compounds to which he may be  
 16 referring, but they are the biomarkers that you're  
 17 referring to that are used for calculation of a weathering  
 18 index or a weathering state. But the PAHs that I'm  
 19 discussing are the 16 compounds that comprise the USEPA  
 20 priority pollutant list. Those are the compounds that I  
 21 considered in my evaluation, and I wouldn't expect those  
 22 concentrations to increase relative to the oil mass, given  
 23 that they also experienced significant reduction.  
 24 Under your--what you're positing is that if the  
 25 light infraction of the oil disappears faster than middle

10:36 1 infraction, then in the resultant mass those compounds  
 2 would be a relatively higher portion of the mass, and I  
 3 believe that would be true.  
 4 Q. So, I think that you have ultimately agreed with  
 5 my original question, but would you defer to Dr. Douglas on  
 6 this issue generally speaking as--since he is a Doctor in  
 7 petroleum chemistry?  
 8 A. I think Dr. Douglas certainly is more  
 9 knowledgeable of this area. But whether or not I agreed  
 10 with his findings would depend on the specific circumstance  
 11 of the case. But he has certainly considered those issues  
 12 to a greater degree than I have in this matter.  
 13 Q. Could we turn to Page 30 of your 2013 Report,  
 14 please.  
 15 MR. EWING: And for everyone's benefit, I have a  
 16 short line of questions here, and then maybe we can take a  
 17 break. Is that appropriate?  
 18 THE WITNESS: 2013?  
 19 BY MR. EWING:  
 20 Q. Correct. 2013, Page 30. And it's your second  
 21 full paragraph, stating: "Furthermore, phenol is not  
 22 uniquely related to petroleum operations but is a naturally  
 23 occurring organic compound associated with decaying leaf  
 24 litter."  
 25 Do you see that?

10:38 1 A. Yes.  
 2 Q. And am I correct that this is in response to the  
 3 fact that LBG found phenol in the surface water, and LBG  
 4 concluded that that was an indicator that the surface water  
 5 has been contaminated by petroleum hydrocarbons? Is that  
 6 correct?  
 7 A. Not exactly.  
 8 Q. What are you responding to in this sentence?  
 9 A. I'm responding to two issues. In their First  
 10 Report, the Ecuador Experts had observed certain data that  
 11 had been collected in the course of their Remedial Action  
 12 Program, and they had misunderstood that data to be extreme  
 13 data when actually it was water treatment data within the  
 14 pits. In the eight-step process for remediation, one of  
 15 those processes is treatment of the pit water prior to  
 16 discharge. That pit water prior to discharge contained  
 17 phenol, but the measurements were not from the stream.  
 18 I then went on to explain that, if they were  
 19 measurements from the stream, those are very common to find  
 20 in this area. It's a chemical that degrades very rapidly  
 21 and would not be expected to be an indicator of oil  
 22 contamination.  
 23 Q. It would not be an indicator of oil contamination,  
 24 in your opinion, because it's naturally occurring, and, if  
 25 it is there, it would degrade rapidly?

10:40 1 A. Those are certainly relevant. Those are certainly  
 2 correct. But in order to be an indicator, it needs to have  
 3 some unique association to the source material or a unique  
 4 association in combination with other chemicals.  
 5 So, in this case, phenol is not a reliable  
 6 indicator because it is such a ubiquitous chemical.  
 7 Q. So, if we showed that phenol is not, in fact,  
 8 naturally occurring but it was found in the water samples  
 9 taken by LBG, you would agree with me, then, that it would  
 10 be an indicator of oil contamination?  
 11 A. You've set up a hypothetical there that is  
 12 contrary to my experience. Phenol is sourced by many  
 13 materials. Phenols is sourced by many materials and,  
 14 therefore, it is not a reliable indicator of oil  
 15 contamination. Oil does contain phenol, as do many others,  
 16 but giving the very short life of phenol in the environment  
 17 and its relationship to other materials, it's not a  
 18 reliable indicator. You need an indicator that's unique  
 19 and persistent to be reliable.  
 20 Q. So, your conclusion is that phenol will always be  
 21 detected in an environment like the Oriente, regardless of  
 22 whether there is oil production activities?  
 23 A. It can be. It depends. It won't always be  
 24 detected, but it can be.  
 25 Q. And that's because of the leaf litter?

10:42 1 A. The streams in the Oriente are choked with  
2 decaying vegetation. It's very common. Decaying  
3 vegetation does generate phenol. Low levels of phenol in a  
4 stream are not indicative of oil contamination.  
5 Q. So, if you turn to Tab 57--this is the Peters and  
6 Crowell article that you mentioned. Peters and Crowell.  
7 This is in the--actually in our fourth binder that we are  
8 going to hand you after the break, so, we will stop for  
9 there, so don't look for this for right now.  
10 Let me quickly wrap up this line of questions and  
11 we will come back to this.  
12 In your 2015 Report, at Page 50, there is another  
13 chemical that LBG pointed to called naphthenic acids. And  
14 LBG concluded that the presence of naphthenic acids in the  
15 water again was an indicator that petroleum hydrocarbons  
16 had contaminated that water. Do you remember LBG's  
17 conclusion?  
18 A. Yes, I think that's generally consistent with  
19 their statement.  
20 Q. And in response, you said, in your first full  
21 paragraph at Page 50, that the background level of  
22 naphthenic acids in surface water has been reported in a  
23 range of 0.16 to 1.01 milligrams per liter, and then you  
24 cite to RAMP 2013; correct?  
25 A. Yes.

10:44 1 Q. And then you say, "also, background levels in  
2 groundwater have been measured in the range of four to 55  
3 milligrams per liter," and you cite to an article by  
4 Headley and McMartin from 2004.  
5 A. Correct.  
6 Q. And my understanding from what you have here is  
7 that you are telling us that naphthenic acids can have  
8 these concentrations naturally and, therefore, if LBG found  
9 results in these ranges, those could just be natural.  
10 A. The purpose of this statement is to indicate that  
11 naphthenic acids do have background concentrations. The  
12 background concentrations at Oriente have not been measured  
13 as part of LBG's investigation. And therefore, to draw a  
14 conclusion as to the relationship of the naphthenic acids  
15 to the oil impacts would require that type of background  
16 analysis.  
17 This is in concert with comments made earlier in  
18 this same report that the laboratory relied upon by the  
19 Ecuador Experts to conduct the naphthenic acid analyses  
20 found naphthenic acid in every single sample it analyzed,  
21 including all the laboratory blanks. Pure water was found  
22 to contain naphthenic acid.  
23 Therefore, armed with that knowledge, one cannot  
24 then say that naphthenic acids were indicative of oil  
25 contamination in environmental samples. That would be

10:46 1 compounded by the fact that no background analyses were  
2 conducted in this area.  
3 Q. And we will be addressing the blank issues that  
4 you and Dr. Douglas have raised with Dr. Douglas, so let's  
5 put that aside.  
6 My understanding of what you're saying here is  
7 that you are offering some potential ranges for what  
8 backgrounds of naphthenic acids could be.  
9 MS. RENFROE: Well, pardon me, let me just respond  
10 to your instruction to the Witness. If he needs to  
11 consider the blank contamination issue in answering your  
12 question about naphthenic acids, then he can do that.  
13 PRESIDENT VEEDER: He can do that, can't he?  
14 MR. EWING: He can, of course, do that. I didn't  
15 even think that needed to be said. I was just trying to  
16 focus him on what is written here in this paragraph.  
17 THE WITNESS: Well, to answer your question then,  
18 I think it's, as I stated before, that the statements on  
19 this page are in context of my complete discussion of the  
20 laboratory results presented by AXYS Laboratories, and that  
21 includes the blank problem, and it includes the issue of  
22 failure to classify or characterize the background  
23 occurrence of naphthenic acids.  
24 The background occurrence of naphthenic acids is  
25 not something that's well-understood in our business. I've

10:47 1 never seen it analyzed on any oilfield investigation in my  
2 35 years.  
3 I found two studies that had done that. The  
4 values that are found in those studies are not necessarily  
5 relevant to the Oriente. I suspect that they might not be.  
6 However, what they point out is that in the oilfield  
7 regions where these studies were conducted, they did  
8 observe naphthenic acids in the absence of oil spills. So,  
9 it's more related to the qualitative issue rather than the  
10 quantitative issue that the fact that background analyses  
11 are very important for--to establish a baseline rather than  
12 the specific numerical values that were observed in those  
13 other oilfields.  
14 Q. So, you would agree with me that both the RAMP  
15 article that you cite to and the Headley article are  
16 dealing with naphthenic acids in the Alberta oil sands; is  
17 that right?  
18 A. I would have to look specifically, but I believe  
19 that's correct. I don't know that all of the RAMP samples  
20 were, but in general, they were samples from natural  
21 streams in an oil production area, but they were streams  
22 from areas where no oil production had yet occurred. But  
23 they were in areas of oil production.  
24 Q. But you understand that the Alberta oil sands are  
25 approximately twice the size of Ecuador and one meter thick

10:49 1 of heavy hydrocarbons; correct?  
 2 A. I don't know how big the Alberta oil sands are.  
 3 Q. Would you--do you believe that they are bigger or  
 4 smaller than Ecuador?  
 5 A. I don't know.  
 6 Q. You have no idea?  
 7 A. No, I actually don't.  
 8 Q. Okay. Let's take a break there, if you don't  
 9 mind, and move on--I can move on to the next later.  
 10 PRESIDENT VEEDER: Let's do that. We'll come back  
 11 at ten past 11:00.  
 12 And again, please don't discuss the case or your  
 13 testimony away from the Tribunal.  
 14 THE WITNESS: Yes, sir.  
 15 (Brief recess.)  
 16 PRESIDENT VEEDER: Let's resume.  
 17 BY MR. EWING:  
 18 Q. Mr. Connor, I would like to turn to what hopefully  
 19 will be some interesting subjects to wrap this up and  
 20 hopefully get out of here and be done before lunch. If you  
 21 could please first turn to your 2013 Report at Page 15.  
 22 A. Yes.  
 23 Q. And do you see where you say: "To provide an  
 24 accurate measure of the actual area of soil impacts, the  
 25 Chevron experts conducted delineation sampling to establish

11:13 1 list of all sites I visited and when. I could look at  
 2 that, if you wish.  
 3 Q. That's all right.  
 4 Looking at this, this is the Site Sampling Summary  
 5 Form or Site Summary Report Form, and it lists that you  
 6 went there in December 2003.  
 7 Now, looking at the map--  
 8 A. Was that map in one of the binders?  
 9 Q. This map we just have on the screen.  
 10 A. Okay.  
 11 Q. You can look at, if you would like, Tab 36, which  
 12 is the Chevron Playbook for Lago Agrio 6, which has a  
 13 similar map. It did not reproduce as well on the screen.  
 14 This is Tab 36.  
 15 A. Do you know where exactly in this diagram this  
 16 Tab 36 I might find that?  
 17 Q. There is a similar picture at the bottom right  
 18 corner. You'll see the GSI Bates stamps, and it's  
 19 GSI\_0460866.  
 20 A. Yes, I see that.  
 21 Q. And Tab 36 that we're looking at is the Playbook  
 22 that was provided to the Judicial Inspection Experts who  
 23 did the Judicial Inspection at Lago Agrio 6; correct?  
 24 A. This is the--yes, I believe this is the  
 25 Pre-Inspection Report prepared for the Lago Agrio 6 well

11:10 1 a clean perimeter around each pit or affected area"?  
 2 A. Could you point me to the paragraph?  
 3 Q. Yes. And I will just find it again.  
 4 Thank you. Paragraph 3?  
 5 A. Second full paragraph, perhaps?  
 6 Q. Correct.  
 7 A. Yes, I see that.  
 8 Q. And in your opening presentation, you showed us a  
 9 slide of Shushufindi 21 where you explained your step-out  
 10 and perimeter samples; is that correct?  
 11 A. Yes.  
 12 Q. So, I'd like now to put up now an image from the  
 13 clickable database, Lago Agrio 6.  
 14 Do you recognize this as the sketch-map that  
 15 Chevron had or that GSI had for Lago Agrio 6?  
 16 A. It looks similar to the maps. I'd have to look at  
 17 that particular map to see if that's the final version of  
 18 it that was in--is this from the JI Report, you're saying?  
 19 Q. This--I will attest to you this is copied directly  
 20 from the 2007 clickable database that was provided to the  
 21 Republic.  
 22 Do you remember visiting this site in  
 23 December 2003?  
 24 A. No, but I visited 86 sites.  
 25 I could look at my--in my 2010 Report I have a

11:15 1 site.  
 2 MR. EWING: And it's the page ending in 866.  
 3 BY MR. EWING:  
 4 Q. And you just said that this is the Judicial  
 5 Inspection Report prepared for the Lago Agrio 6 well site?  
 6 A. If I said that, I misspoke. It's the  
 7 Pre-Inspection Report.  
 8 Q. And at the cover of this, it says--actually it's  
 9 called the Judicial Inspection Playbook; correct?  
 10 A. Yes, that's what it says.  
 11 Q. So, this is an example of what we have been  
 12 talking about as playbooks?  
 13 A. Yes.  
 14 Q. Now, looking at this site, we see that Chevron has  
 15 identified two pits; correct?  
 16 A. Yes, on this diagram.  
 17 Q. And now if we put up a map--and this is a zoomed  
 18 version. Now, putting up a map that we put together of all  
 19 of Chevron's samples, this will show you all of the PIs and  
 20 the JIs for this result--for this site--sorry, this is your  
 21 map. And this can be found in the Playbook if you skip  
 22 past the aerial photos, starting at page ending in 883.  
 23 And you'll see that 883 is the water results, and 884 is  
 24 your soil results.  
 25 Do you see that?

11:19 1 A. Yes, I see that.  
 2 Q. And these maps include just the PI results, the  
 3 Pre-Inspection results, because the Judicial Inspection had  
 4 not yet happened?  
 5 A. Correct.  
 6 Q. So, what we have done is taken this map, these  
 7 results, and put them on to an aerial image of this site  
 8 and included the PI results and the JI results and the  
 9 Rebuttal results.  
 10 MS. RENFROE: Pardon me, Mr. Ewing. I don't  
 11 believe this map is in the record. If it is, can you tell  
 12 us where we could find it?  
 13 MR. EWING: This map, like all of the other  
 14 demonstratives, this is displaying the data that's in the  
 15 record and the aerial images that are in the record. We've  
 16 just put them together.  
 17 MS. RENFROE: So, this is not in the record  
 18 because this map is not included in any of your Expert  
 19 Reports or any of the Memorials that we have seen.  
 20 MR. EWING: We have included very similar maps.  
 21 This slide itself, just like all the other slides I think  
 22 everyone has presented in the last seven days, are not  
 23 exactly as they are in the record.  
 24 MS. RENFROE: I'm sorry, I don't accept that  
 25 characterization, and I will object to any questions of

11:20 1 this Witness about this map which is not in the record.  
 2 PRESIDENT VEEDER: Just slow down because I think  
 3 we need to know very clearly when something is a  
 4 demonstrative and when it's already in the evidential file,  
 5 and I am speaking for myself, and I speak for my  
 6 colleagues. I misunderstood when you started with this  
 7 document, I thought it was in the evidential file. But as  
 8 I now understand it, it's a demonstrative, and you're  
 9 simply putting it forward pictorially, but it's not  
 10 evidence in itself.  
 11 MR. EWING: So, what I have done and what we have  
 12 done on this demonstrative is we have taken the data from a  
 13 table that was provided to us by Chevron and put those  
 14 locations on to a map, and we have submitted similar maps  
 15 with almost all of our Reports for various sites, but this  
 16 as it looks exactly like this is not a particular file in  
 17 the record. It is bringing together data from the record.  
 18 PRESIDENT VEEDER: What we would be anxious to do  
 19 is not to catch people by surprise, but this Witness has to  
 20 be re-examined, and what does a re-examiner do with this  
 21 document? Can you tell where the information comes from in  
 22 the evidential file? Is it sourced?  
 23 MR. EWING: All of the data for this is from  
 24 Chevron's analytical database.  
 25 PRESIDENT VEEDER: What's the reference?

11:21 1 MR. EWING: That is R-968.  
 2 PRESIDENT VEEDER: Does it have a page reference,  
 3 paragraph number?  
 4 MR. EWING: It doesn't, because it is an Access  
 5 database. It is a table of all of Chevron's analytical  
 6 results, and it's thousands of Rows. And instead of  
 7 showing that in a table format, we put it onto a map so you  
 8 can visually see where these samples were taken.  
 9 MS. RENFROE: Mr. President, if I might respond,  
 10 there have been numerous reports on behalf of--submitted by  
 11 experts on behalf of the Republic of Ecuador, including  
 12 many, many maps. It is not a simple matter of taking a map  
 13 like this and comparing the data. That cannot be done in a  
 14 matter of minutes. And in our experience, there have been  
 15 problems with data being mislocated on maps supplied by the  
 16 Republic's experts. So, that's why I'm troubled about  
 17 having our witness confronted with a map that he has never  
 18 seen before without an opportunity to review the data and  
 19 whether the data is properly plotted and completely  
 20 plotted.  
 21 MR. EWING: Mr. President, I think we can make  
 22 this a little easier. I don't think that Mr. Connor or  
 23 Ms. Renfroe is suggesting that we are purposefully  
 24 inappropriately putting the data up or incorrectly, but  
 25 let's move aside from this map and let's go back to

11:22 1 Chevron's own Judicial Inspection Playbook map, and I think  
 2 we can make the same points.  
 3 PRESIDENT VEEDER: This applies to both sides. We  
 4 do need to know--we do need to know very clearly when  
 5 something is simply demonstrative and when it's in the  
 6 evidential file, so we assume, unless we're told, in a  
 7 situation like this, that it's in file, and we need to be  
 8 told it was a demonstrative, but try and find another way  
 9 to make your point.  
 10 ARBITRATOR LOWE: Sorry, are you using this  
 11 graphic on the screen now or not?  
 12 MR. EWING: We will move on from this.  
 13 BY MR. EWING:  
 14 Q. So, if we could look at Page 884 of Chevron's  
 15 Judicial Inspection Playbook for Lago Agrio 6.  
 16 And, Mr. Connor, these are the PI results for Lago  
 17 Agrio 6; correct?  
 18 A. You're looking at 884?  
 19 Q. Correct.  
 20 A. Yes, they are.  
 21 Q. And they are--  
 22 A. I'm assuming the display is the same map; correct?  
 23 Q. Yes.  
 24 A. Okay.  
 25 Q. If we could just turn the display off for now.



11:24 1 A. Well, this is Lago 2.  
 2 Q. And I'm asking to you look at Lago Agrio 6, which  
 3 should be in front of you at Page 884.  
 4 A. Okay. It's in the display was a different site;  
 5 right?  
 6 Q. Do you understand now we are looking at Lago  
 7 Agrio 6?  
 8 A. Yes.  
 9 Q. Page 884?  
 10 A. Yes.  
 11 Q. And looking at these results, what information is  
 12 presented here?  
 13 A. On Page 884, the title reads: "Recent sampling  
 14 results 2003 to 2005 soil and sediment." Therefore, my  
 15 understanding would be that the laboratory test results  
 16 that were collected by those Parties at this site are  
 17 recorded on this map.  
 18 Q. The laboratory test results are only those of  
 19 Chevron--correct?--on this map.  
 20 A. I believe that's correct.  
 21 Q. And you testified during your opening that the  
 22 Pre-Inspections were conducted so that Chevron's experts  
 23 would understand where the pits were and where they  
 24 stopped; correct?  
 25 A. Yes. If there is insufficient information of that

11:26 1 sort for remediated pits, then one of the tasks of the  
 2 Pre-Inspection was to supplement that information using,  
 3 for example, the step-up boring procedure.  
 4 Q. So, for instance, looking at Pit Number 2, which  
 5 is the right pit at the top corner of the platform, the  
 6 Chevron Pre-Inspection results seemed to be on the edge of  
 7 pit two, and they have identified, looking at the call-outs  
 8 above, TPH DRO of 4500 milligrams per kilogram.  
 9 Do you see that?  
 10 A. Yes, I believe that's correct, a sample LA-06 PI  
 11 Sp5 one-meter has TPH as DRO as 4500.  
 12 Q. So, that means that one meter down, Chevron found  
 13 4500 milligrams per kilogram of DRO?  
 14 A. Yes, in a pit that wasn't included in the RAP,  
 15 that's correct.  
 16 Q. And the other sample, the duplicate, it's the next  
 17 box down that ends in DUP. That means a duplicate of that  
 18 same location?  
 19 A. Yes.  
 20 Q. That has a TPH as DRO of 6900 milligrams per  
 21 kilogram; correct?  
 22 A. Yes.  
 23 Q. And there are no samples to the north of that pit;  
 24 right?  
 25 A. Not as indicated on this map, that's correct.

11:28 1 Q. And it's your testimony, then, that this PI  
 2 information would have been given to Chevron's Judicial  
 3 Inspection Expert so that that Expert could then sample  
 4 that pit during the Judicial Inspection and then identify  
 5 where that contamination stopped so that the Court could  
 6 properly understand where pits were and where they were  
 7 not?  
 8 A. I think my testimony would be that, subject to the  
 9 specific requests at each site, the pits would be located  
 10 and the delineation samples, if requested, would be either  
 11 located around the site or around pits. And in some cases,  
 12 if the pit was not a RAP pit, not a RAP-remediated pit, the  
 13 pit was not sampled unless instructed because it was  
 14 already known that it contained oil. It was already  
 15 identified, and the sampling in that pit provided no  
 16 additional information.  
 17 Q. So, you did not believe it was not necessary to  
 18 delineate non-RAP pits during the Judicial Inspections?  
 19 A. It wasn't my decision. The Court requested that  
 20 be done at certain times, and it was. The different  
 21 Judicial Inspection Experts would make their decision as to  
 22 how to implement that request, and they did that in  
 23 different manners.  
 24 Q. So, it was your understanding as a Judicial  
 25 Inspection Expert--let me start over.

11:29 1 It was not your understanding as a Judicial  
 2 Inspection Expert for Chevron as an assistant to the Court  
 3 that you were supposed to delineate and identify all of the  
 4 site features at each site so that the Court could properly  
 5 assess what risks were and were not present?  
 6 A. We were asked to--the term "assistant to the  
 7 Court" is a legal term I can't respond to, but we were  
 8 asked to investigate the specific features and respond to  
 9 the specific questions posed at each site. That was our  
 10 instruction. And as I said in my testimony, those  
 11 questions generally fell under the three categories I  
 12 described: The remediation, environmental conditions,  
 13 risk. The particular features that were included in that  
 14 were different for every site as posed by the Parties.  
 15 Whether or not those comprised all the features a site, I  
 16 can't say. It would depend on the site.  
 17 Q. So, it's your understanding that if, as a judicial  
 18 inspection Expert nominated by Chevron to the Court--and I  
 19 thought I was using your language of, "assistant to the  
 20 Court" yesterday--but in that role that you were filling,  
 21 it was not your understanding that you needed to disclose  
 22 to the Court all information about the environmental  
 23 conditions of any particular site for which you were the  
 24 Judicial Inspection Expert?  
 25 A. I'm not sure--I'm not quite sure the meaning of

11:31 1 your question, Mr. Ewing, but I would say that my  
 2 understanding was that we were asked to answer specific  
 3 questions about each site, and the information that we were  
 4 allowed to employ for that was restricted to the  
 5 information that was collected during the time period of  
 6 the Judicial Inspection itself in the presence and company  
 7 of the counterpart Expert on the other side. I was  
 8 specifically instructed, as were all the other experts,  
 9 that information collected prior to or after the period of  
 10 the Judicial Inspection was not admissible for  
 11 consideration by the Court; therefore, whatever features  
 12 were considered were those features that were specifically  
 13 requested by the Parties at that time.

14 Q. So, as an example, if Lago Agrio 6, Pit Number 2  
 15 was covered and not visible to the naked eye, yet you knew  
 16 that it was there because you had taken Pre-Inspection  
 17 sampling results, Pre-Inspection samples, and you had  
 18 analyzed historical aerial imagery, you were under no  
 19 obligation to report that information or to request that  
 20 the Court take samples at that location so that it could  
 21 understand what the environmental conditions were at that  
 22 site?

23 A. Well, Mr. Ewing, I was not the Judicial Expert on  
 24 this site, so I can't speak to the particulars of what was  
 25 requested of the Plaintiffs' Expert or the Chevron Expert,

11:35 1 fulfilled your obligation to the Court to disclose to it  
 2 all information that was available to you at Sacha 6?  
 3 A. I responded to the Court's questions faithfully  
 4 and fully to the degree I could. I could not provide the  
 5 Court for its consideration all the Pre-Inspection data  
 6 because we were specifically instructed that that was not  
 7 admissible. Most of that work was repeated, as it was in  
 8 many cases, in response to the Court's request at the time  
 9 of the Judicial Inspection. I would have to review--if  
 10 your question is was every sample repeated or was all of  
 11 that information duplicated, I can't say without  
 12 specifically looking at those documents.

13 Q. So, thinking to Sacha 6, you fully disclosed to  
 14 the Court the location of all of the pits that you knew of  
 15 at the time of the Judicial Inspection Report; is that  
 16 correct?

17 A. In my Report--I'm going to say this with a  
 18 caution, that I have a limited recollection of what's in  
 19 that report, and I would need to review that in order to  
 20 answer your question specifically. All the RAP pits that  
 21 existed at that time are identified in that report--I do  
 22 recall that--but there were other pits that existed to the  
 23 north of the platform which were not completely understood  
 24 at that time, or there is an indication on the map that I  
 25 submitted that there were other pits in that area, but I

11:33 1 and so I can't really answer your question in that regard.  
 2 I know that on my sites, the information that was available  
 3 to me was fully made available to the Court. It was also  
 4 shared with the Plaintiffs' experts in our daily  
 5 conversations and discussions and in implementing the site  
 6 investigations.

7 Q. So, if I understand what you said correctly, at  
 8 Sacha 6, which was one of your sites for which you were a  
 9 Judicial Inspection Expert, your testimony today is that  
 10 you shared all of the information that was available to you  
 11 with the Plaintiffs and the Court.

12 A. The information that was available to me was  
 13 presented in the Judicial Inspection Report, and I  
 14 identified a number of historical features at that site. I  
 15 did not present the Pre-Inspection data in my Reports  
 16 because it was not admissible, and neither did  
 17 Mr. Calmbacher present the Pre-Inspection data that he had  
 18 collected in a very extensive drilling and sampling  
 19 program.

20 Whether that comprises all of the information that  
 21 was presented that was compiled in the Pre-Inspection, I  
 22 can't say, but I know that the features of the site were  
 23 duly investigated and reported in response to the Court's  
 24 request.

25 Q. So, your testimony today is that you fully

11:36 1 didn't understand the full extent of those pits.

2 Q. Okay. And I have your Sacha 6 JI Report which,  
 3 unfortunately for all of us, is huge, and we're going to  
 4 pass it out to you now. This is the fourth binder.

5 MS. RENFROE: Pardon me, Mr. Ewing, which tab are  
 6 we supposed to be looking at?

7 MR. EWING: You're supposed to be looking at  
 8 Tab 56, but that is not the JI Report, so we seem to have  
 9 had a production problem.

10 BY MR. EWING:

11 Q. Mr. Connor, your understanding of your--what you  
 12 accomplished and what you did at Sacha 6 is that you  
 13 responded to the Court's questions about the existence of  
 14 environmental--about the environmental conditions at  
 15 Sacha 6 and the risks to human health at that location; is  
 16 that correct?

17 A. The specific questions that were posed at Sacha 6  
 18 are enumerated in an attachment to the Sacha 6 report, and  
 19 each of those questions is listed in the Report and duly  
 20 answered, and an answer was provided to each of those  
 21 questions in that document.

22 Q. And I actually do have your Report from Sacha 6.  
 23 It's Tab 39. I had the wrong number, and that's in  
 24 Binder 3.

25 A. Which binder again? I'm sorry.

11:40 1 Q. This is Binder 3, Tab 39?  
 2 A. Okay. Thank you.  
 3 Q. And if I understand what you're saying correctly,  
 4 we are looking now at Page 24, which is the questions and  
 5 answers section.  
 6 A. Oh. This is the English version of the Report?  
 7 Q. That is correct.  
 8 A. This is not the final and official version of the  
 9 Report. The final and official version was in Spanish, but  
 10 I made an effort at that time to create an English  
 11 translation by myself, but I can't--I just want to clarify  
 12 for your sake, Mr. Ewing, but this may not be precisely the  
 13 same as the document that was submitted to the Court.  
 14 There could be some differences.  
 15 Q. So, just so we are all clear, this is Exhibit  
 16 C-497, which is an exhibit that the Claimants have  
 17 submitted and have represented to us is the Judicial  
 18 Inspection Report at Sacha 6, in English. Are you saying  
 19 that it's not that?  
 20 A. I'm just saying that I wrote two versions on the  
 21 first two Judicial Inspections, which was quite arduous;  
 22 and, after that, I just wrote in Spanish. But in order  
 23 to--I think it should be a faithful copy, but I know that I  
 24 couldn't always go back and revise the English version to  
 25 meet the Spanish version, so I can't say this is not the

11:42 1 official version provided to the Court. This wasn't  
 2 provided to the Court, but it was my effort to create an  
 3 English version of the entire document.  
 4 Q. If at any point in these questions today you  
 5 believe that what Chevron has provided to us is not a  
 6 faithful representation of what you provided to the Court,  
 7 could you just please let me know?  
 8 A. I don't know what they've provided you, Mr. Ewing.  
 9 Q. What we're looking at.  
 10 A. Well, the record also had two versions of the  
 11 Report in it, so I can't say whether or not you have both  
 12 versions.  
 13 Q. Okay. Let's move forward with this Report. And  
 14 if there is some problem with the translation, I'm sure  
 15 Claimants' counsel will let us know if we run into  
 16 something, either now or in the future.  
 17 If we could look at Page 24, is this the questions  
 18 and answers section that you are referring to?  
 19 A. Yes, that's correct.  
 20 Q. And if I understand this correctly, Section 4.1  
 21 are the technical requests posed by Dr. Adolpho Callejas  
 22 for Chevron/Texaco; correct?  
 23 A. Yes, he was the legal representative for  
 24 Chevron/Texaco at this Judicial Inspection.  
 25 Q. So, these are requests made by Dr. Callejas?

11:43 1 A. Yes.  
 2 Q. Not by the Court?  
 3 A. No, you may misunderstand that. Both Parties  
 4 would pose questions, and the Court would then turn to the  
 5 Experts and say that you respond to that question. We were  
 6 instructed to respond to both those questions, not only in  
 7 the terms of reference but during the process itself. But  
 8 those were the questions that were presented to the Court  
 9 and then presented to us. The questions originated with  
 10 Dr. Callejas.  
 11 Q. And if we look briefly on Page 97, we see  
 12 Section 4.2, and those are the technical requests posed by  
 13 Dr. Alberto Wray for the Plaintiffs.  
 14 Do you see that?  
 15 A. Yes, I do.  
 16 Q. And this same format would have been followed at  
 17 all the Judicial Inspections that you just outlined; is  
 18 that correct?  
 19 A. The same process was followed at all the Judicial  
 20 Inspections. The way the Reports were constructed were not  
 21 in the same manner. But this Report was quite long because  
 22 it answered every question individually, and the other  
 23 Reports, the Experts combined those questions in a more  
 24 efficient manner to deal with repetition. But as far as  
 25 the process, it was the same process, yes.

11:45 1 Q. So, the first question here, it says: "The  
 2 Experts will please prepare a detailed description of Well  
 3 Sacha 6 and its facilities which I had specified earlier as  
 4 well as of the specific buildings in the immediate  
 5 surrounding."  
 6 Do you see that?  
 7 A. Yes.  
 8 And you're speaking about Page 24 now?  
 9 Q. Correct.  
 10 So, is your understanding that you were asked to  
 11 give to the Court a detailed description of Well Sacha 6  
 12 and its facilities?  
 13 A. Within the context of what he said, that he had  
 14 listed earlier, yes.  
 15 Q. Could you please clarify that?  
 16 A. In the Acta, you'll find a long discourse by each  
 17 Party, each representative; and, in that discourse, they  
 18 will describe the areas around the site or the site so that  
 19 it provides a context when they say to the north or to the  
 20 south or over by that tree, they will describe that. So,  
 21 within the context of what he said, he's asking the Experts  
 22 to provide that description.  
 23 Q. So, would that have been--would he have specified  
 24 which pits he wanted you to describe?  
 25 A. That I don't recall.

11:46 1 Q. If there was a pit there, and you knew about it,  
 2 did you feel the--were you obligated to tell him about it?  
 3 A. If he asked you about that information, you  
 4 provided that information.  
 5 Q. But you don't remember whether the Judge asked you  
 6 to tell him about all of the pits?  
 7 A. I would have to look at the Acta to see what the  
 8 specific questions were that were posed to the Experts.  
 9 Q. And looking at your Judicial--looking at your  
 10 Judicial Inspection Report, you can't answer that question?  
 11 A. If you provided me time to look at the Acta and  
 12 the Judicial Inspection Report, I would be happy to do so.  
 13 Q. And we talked about this at your deposition. Do  
 14 you remember that?  
 15 A. We did talk about the Sacha 6 well site. I don't  
 16 think we talked about this particular aspect of it.  
 17 Q. So, your testimony today is that you would need  
 18 even more than this information to be able to answer my  
 19 question about what the Judge asked you to do than the  
 20 Judicial Inspection Report?  
 21 A. What?  
 22 PRESIDENT VEEDER: I think he's answered that  
 23 question.  
 24 MR. EWING: Okay.  
 25 BY MR. EWING:

11:48 1 Q. If we look to Page 35, is this an accurate map of  
 2 the well site?  
 3 A. It was certainly considered an accurate map based  
 4 on the information available at the time.  
 5 (Sound interference.)  
 6 A. Was that just in my head? Or did everybody hear  
 7 that?  
 8 Q. No, it's just you.  
 9 (Laughter.)  
 10 Q. Let me take a step back. If you could look at  
 11 Tab 40 in the same binder, this is from your deposition in  
 12 the Saldana versus Shell Oil Case, and if we could turn to  
 13 Page 264, you said--and this is at Line 20 to 24, in  
 14 response to a question asking, "Was it your objective as a  
 15 participant in the Judicial Inspection of any of the five  
 16 sites to take samples?"  
 17 And your answer was: "As the--I was the Expert on  
 18 those five sites, and the objectives were to collect  
 19 samples to answer certain questions that had been put forth  
 20 by the Parties and then mandated by the Judge."  
 21 Which seems to be consistent with what you're  
 22 saying today.  
 23 A. Correct.  
 24 Q. And then you go on to say: "And those questions  
 25 involved a complete characterization of the site from an

11:50 1 environmental perspective."  
 2 Is that still your understanding of what your role  
 3 was as a Judicial Inspection Expert?  
 4 A. Yes, and I think I've provided more information  
 5 about that in my presentation yesterday, that in responding  
 6 to the questions, there were several components of  
 7 information that would be collected on a site-specific  
 8 basis, and in my presentation I describe what those were.  
 9 Those would be tailored at each site to answer the  
 10 questions at each site.  
 11 Q. And then if you turn to Page 265 of that  
 12 deposition, starting at Line 3, you said: "What I mean is  
 13 that, the directives from the Judge involved investigating  
 14 all components of the site, which included whatever pits  
 15 might be there, whatever crude oil spills may have  
 16 occurred, evaluating the surrounding domestic water wells,  
 17 investigating the adjacent streams, and investigating the  
 18 soils that were present around the locations of pits or  
 19 spills to determine the extent of the petroleum by means of  
 20 perimeter sampling."  
 21 Is that still your understanding of what the  
 22 directives from the Judge were?  
 23 A. Yes. The directives varied from site to site, but  
 24 in general, they fell within that scope.  
 25 Q. So, at Sacha 6, your role as a Judicial Inspection

11:52 1 Expert, would have been to include whatever pits might be  
 2 there that you were aware of, whatever crude oil spills may  
 3 have occurred that you were aware of; correct?  
 4 A. It would include investigating whatever  
 5 issues--whatever--were related to that site that were  
 6 requested by the Judge. And in cases--in a number of  
 7 cases, you will see that the adjacent streams were not part  
 8 of the scope of the questions, and in those cases they  
 9 weren't sampled or certain issues were not part of the  
 10 request. The requests were tailored to the specific  
 11 request of the Judge at each site, but in body, they fell  
 12 within the scope of the list of things I presented here,  
 13 but they weren't the same at every site. Not every  
 14 component occurred at every site.  
 15 Q. To focus in on what you have testified about  
 16 Sacha 6 and about the four other sites that you were an  
 17 Expert--at which you were an Expert, if you knew that a pit  
 18 existed, and the Judge did not specifically ask you about  
 19 that pit, were you obligated to inform the Judge that that  
 20 pit existed?  
 21 A. I think I've answered that question. If you were  
 22 asked the question that related to that, you answered that  
 23 question. I think the example you show here on this  
 24 Page 35 is a pit that was identified in my Judicial  
 25 Inspection Report in response to the questions to the

11:54 1 Parties, but if you weren't asked to sample that pit, you  
 2 did not sample that pit.  
 3 Q. I'm trying to understand exactly what your  
 4 obligations were as a Judicial Inspection Expert. If you  
 5 knew that a stream was contaminated based on your  
 6 Pre-Inspection analysis of that stream, and then you went  
 7 to a Judicial Inspection at one of your sites--let's say  
 8 Shushufindi 21--were you obligated to inform the Court that  
 9 that stream was contaminated, or that you believed it might  
 10 be?  
 11 A. No, your obligations were to answer the specific  
 12 questions of either Party. If either Party was interested  
 13 in the quality of that stream, then that stream was to be  
 14 investigated duly during the period of that Judicial  
 15 Inspection. So, the scope of the Judicial Inspection  
 16 investigation was dependent not on the data collected prior  
 17 to it, but on the specific questions that were posed during  
 18 that period, and only those questions.  
 19 Q. So, for instance, at Lago Agrio 2, a site that we  
 20 will visit--  
 21 A. Oh, man.  
 22 Q. --Chevron's Pre-Inspections found that the stream  
 23 was contaminated.  
 24 A. Do you want to look at that data?  
 25 Q. I want to talk just about--I'm not asking to look

11:56 1 at the values. I want to talk about the concepts here,  
 2 using that as an example.  
 3 And if the Plaintiffs asked for inspection of the  
 4 stream at Lago Agrio 2 because they believed it was  
 5 contaminated, were you under an obligation to disclose to  
 6 the Court the extent to which you already knew it was  
 7 contaminated or only the amount of contamination that you  
 8 found during the actual Judicial Inspections?  
 9 A. Well, let's me start by saying that I was not the  
 10 Judicial Inspection Expert for Lago 2, so I can't speak in  
 11 detail as to the obligations that either the Chevron Expert  
 12 or Plaintiffs' Expert felt they were subject to. But in  
 13 general, the response of the Chevron Expert was to address  
 14 the questions that were asked at that time.  
 15 And on the Lago Agrio 2 site, that involved a  
 16 two-part response. Some of those samples were collected by  
 17 what was called a Rebuttal team, and some were collected by  
 18 what was called a Judicial Inspection team, and those two  
 19 components were submitted to the Court. And my  
 20 recollection of looking at that is that in combination,  
 21 those samples responded to all the requests of the Court.  
 22 Q. So, let's talk about another conceptual example  
 23 for which you were the Judicial Inspection Report--or  
 24 Expert. Shushufindi 21 is another site where you were the  
 25 Judicial Inspection Expert; correct?

11:58 1 A. Sacha 21 I was the Expert, not Shushufindi 21.  
 2 Q. I apologize. Sacha 21.  
 3 Was there a stream at Sacha 21?  
 4 A. There was a drainage--without looking back at the  
 5 Report--I'm just going from recollection--and if you want a  
 6 more specific answer, we would need to do that. I believe  
 7 there was a water drainage that was to the west of the site  
 8 flowing in a southernly direction, and there was an  
 9 impoundment and land clearing to the southwest where there  
 10 was some type of new activity that was not related to  
 11 historical operations but some other type of activity was  
 12 underway in that direction.  
 13 Q. Let me try and get somewhere a different way.  
 14 You are a risk assessor; correct?  
 15 A. Yes.  
 16 Q. And, as a risk assessor, you have ethical  
 17 obligations that you uphold?  
 18 A. I would say that as a professional in any field,  
 19 you have ethical obligations that you uphold, and that  
 20 includes Professional Engineers, Professional Geoscientists  
 21 like myself.  
 22 Q. But as a risk assessor, do you have an ethical  
 23 obligation to inform of a risk of which you're aware?  
 24 A. My understanding of that, as it's embodied in the  
 25 engineering code of the State of Texas is that registered

12:00 1 engineers such as myself have a duty to report imminent and  
 2 substantial endangerment to public health, such that if you  
 3 investigate a bridge and that bridge is in danger of  
 4 collapse, you have an obligation to report that. Or if  
 5 there is, in the case of environmental, if you find that an  
 6 actual drinking water supply is being consumed or to be  
 7 impacted creating a very real--not potential, but very  
 8 real--health threat, then that would also be incumbent upon  
 9 you to make that information available to Parties that  
 10 could respond to that critical risk.  
 11 Q. See, you've answered the question as a  
 12 Professional Engineer, which wasn't exactly what I asked  
 13 you.  
 14 As a risk assessor, do you have an ethical  
 15 professional obligation to report known risks?  
 16 A. Well, I would say that, in my capacity as a risk  
 17 assessor, and as a Professional Engineer and Professional  
 18 Geoscientist, if I encountered a risk that was a critical  
 19 human health risk--not a hypothetical risk, not a risk that  
 20 could occur with 30 years of exposure to the earth, but  
 21 rather a critical, acute risk to human health--I would find  
 22 it personally incumbent upon myself to take measures to  
 23 inform and respond to that condition, and that would be my  
 24 personal ethical sense of that situation.  
 25 Q. And as an Expert nominated by a Party to a

12:01 1 litigation like you were in the Lago Agrio Litigation by  
2 Chevron, and thinking of yourself in that role, at the five  
3 sites at which you were a Judicial Inspection Expert, did  
4 you believe that you had an obligation to the Court to  
5 inform it of environmental conditions of which it was not  
6 already aware, or was your role simply to follow the  
7 Court's instructions?

8 A. That's a different question. I just want to make  
9 sure we understand that the switch, as I understand it in  
10 your question. You previously asked me if I would feel an  
11 ethical obligation to report an acute critical health  
12 situation. Yes, my answer is absolutely. You then asked  
13 me if working on the Judicial Inspection I would feel an  
14 obligation to report all environmental conditions related  
15 to a site. It's very different. If I had encountered an  
16 acute critical health condition, regardless of the Court's  
17 instructions, I would have felt that it was important to  
18 report that, not within the confines of the legal  
19 proceedings, but within my role as an individual.

20 But I didn't find any situations like that. At no  
21 place throughout the Concession Area did I encounter any  
22 situation that posed an acute critical risk to human  
23 health. Never.

24 I did encounter situations that I've duly reported  
25 to this arbitration panel and in my other reports that are

12:03 1 situations that do require remediation response. The risk  
2 associated with those are what we call "chronic." The  
3 risk--they low-level risks that could occur due to daily  
4 direct exposure over many years' time. That's a very  
5 different situation. It's a hypothetical situation. It's  
6 not a real or a critical risk. And in that regard, no, I  
7 did not feel within a directive of the Court or ethically  
8 an obligation to report non-risk conditions of that nature.

9 Q. Okay, Mr. Connor. Could we move on--and let's try  
10 and wrap this up--your June 2013 Report at Page 12.

11 Actually, let's skip to the chase and look at your  
12 May 2014 Report. So, it's in the same binder. In our  
13 binder it's--

14 A. May 2014?

15 Q. Yep. May 2014. At Page 34.

16 A. May. May. Okay. Yes.

17 Q. And this is in response to LBG's concerns  
18 regarding the reliability of Chevron data. You say, in  
19 Letter D, that the Chevron sampling program--and I think  
20 you're referring to the PIs and JIs and Rebuttals at this  
21 point--was conducted in the context of the JIs, which, as  
22 recorded in the JI Actas, entailed "specific directives to  
23 the experts."

24 Do you see that?

25 A. Yes.

12:06 1 Q. And that included the use of composite soil  
2 sampling, and the general delineation of the site by means  
3 of perimeter soil samples; is that correct?

4 A. Yes, that's what it says.

5 Q. Do you still believe that was what the Chevron  
6 sampling program was intended to do?

7 A. As I said in my presentation, there was a general  
8 construct that was employed by a number of the Chevron  
9 experts--it varied from site to site--but it did entail, it  
10 did include these various components, subject to the  
11 specific directives of the site and the judgment of the  
12 individual expert.

13 Q. And your understanding is that the Court  
14 authorized the Judicial Inspections themselves; correct?  
15 When the Court was present, the Court had authorized those  
16 Judicial Inspections?

17 A. I guess that's true. The Judicial Inspection  
18 commenced at the Order of the Judge at the time that the  
19 Parties had gathered at the site.

20 Q. And the first Judicial Inspection was the Judicial  
21 Inspection that you conducted at Sacha 6, and that started  
22 on August 18th, 2004.

23 A. Yes.

24 I don't know the specific date, but it was  
25 August 2004, and that was the first JI, yes.

12:08 1 Q. If you aren't sure about the date and you want to  
2 check, it is Tab 45. I'm not going to ask necessarily the  
3 Tribunal to turn there. I will represent to you that I've  
4 got the date right.

5 A. That's fine, yes.

6 Q. And the Ecuadorian judge was at that Judicial  
7 Inspection; correct?

8 A. Yes, Judge Novillo was the presiding--President of  
9 the Court at that time.

10 Q. And the Lago Agrio Plaintiffs were there; correct?

11 A. Yes.

12 Q. And--

13 A. Oh, excuse me, excuse me. No, the lawyers for the  
14 Plaintiffs were there. I never met a Lago Agrio Plaintiff,  
15 because they were listed, but the legal representatives of  
16 the Plaintiffs were there.

17 Q. Just let me clarify that.

18 The legal representatives for the Lago Agrio  
19 Plaintiffs were at the Judicial Inspection; correct?

20 A. Correct.

21 Q. And their experts were present; correct?

22 A. That's correct.

23 Q. And Chevron's legal representatives were  
24 correct--or--

25 A. They were correct, yes.

<p>Sheet 27</p> <p style="text-align: right;">1544</p> <p>12:09 1 (Laughter.)  2 Q. Strike that.  3 Chevron's legal representatives were present;  4 correct?  5 A. Yes.  6 Q. Okay. Sorry, I just lost it.  7 In your June 2013 Report, you say--and this is  8 Tab 13 at Page 12.  9 A. Excuse me--the--which report are we in?  10 June 2013?  11 Q. June 2013 at Page 12.  12 A. Yes.  13 Q. And it says, as you can see on the screen, "The  14 activities of experts appointed on behalf of the Plaintiffs  15 and the Defendants were defined under the Terms of  16 Reference." Correct?  17 A. Correct.  18 Q. And those Terms of Reference were issued by the  19 Court?  20 A. That's correct.  21 Q. And those are the same Terms of Reference that you  22 referred to in your opening slides?  23 A. Yes.  24 Q. And they instructed the experts to complete the  25 site investigations in accordance with the specific</p>	<p style="text-align: right;">1546</p> <p>12:12 1 for the Pre-Inspections. They only had Terms of Reference  2 for the Judicial Inspection process itself which was the  3 only process in which admissible data could be compiled.  4 Q. And I understand that you believed that the Judge  5 responded to that, and we will look at one of the Judges'  6 responses in a moment. But was the Judge present at any of  7 the Pre-Inspections?  8 A. Not to my knowledge.  9 Q. Did the Judge from the Court provide direction for  10 the Pre-Inspections?  11 A. No, I don't believe so.  12 Q. Or oversight?  13 A. No. He was focused on the legal process of the  14 Judicial Inspections, not the Pre-Inspections.  15 Q. But as I understand, the Terms of Reference said  16 that the inspections are to be carried out under the  17 direction of the President of the Court. But you have just  18 stated that he did not provide any direction for the  19 Pre-Inspections.  20 MS. RENFROE: Objection. That mischaracterizes  21 his testimony. Maybe you could rephrase your question.  22 BY MR. EWING:  23 Q. My earlier question was: Did the Judge from the  24 Court provide direction for the Pre-Inspections, and you  25 said "no, I don't believe so." And then I asked you: "The</p>
<p style="text-align: right;">1545</p> <p>12:10 1 petitions of the Court and the representatives of the two  2 Parties; correct?  3 A. Yes.  4 Q. And you attached that to your June 2013 Report at  5 Attachment B-2; correct?  6 A. You mean the Terms of Reference document itself?  7 Q. Correct.  8 A. Let me check.  9 Attachment B.  10 Yes, that's correct.  11 MR. EWING: And for the Tribunal's reference,  12 these are also Tab 46, and it's Exhibit C-177.  13 BY MR. EWING:  14 Q. And the Terms of Reference stated: "In accordance  15 with the provisions of Articles 246 to 253 of the Civil  16 Procedure Code, the inspections shall be carried out under  17 the direction of the President of the Superior Court of  18 Justice of Nueva Loja starting on the date and time fixed  19 for each one."  20 A. Correct. Yeah. I think that's a reasonable  21 translation, yes.  22 Q. Did the Judge from Nueva Loja provide a Term of  23 Reference for any of the Pre-Inspections?  24 A. No, the Judge responded to the Parties to permit  25 the Pre-Inspections but they didn't have Terms of Reference</p>	<p style="text-align: right;">1547</p> <p>12:13 1 Terms of Reference state that the inspections are to be  2 carried out under the direction of the President of the  3 Court"; is that correct?  4 A. Yes, that's what it says.  5 And I think that perhaps for the benefit of  6 the--of yourself and the panel, you could look at the top,  7 the title of this document. I don't know what tab--are you  8 at the right tab? The title is "Terms of Reference for the  9 Experts Carrying Out Judicial Inspections." During the  10 Judicial Inspections. So, everything in here refers to the  11 Judicial Inspections.  12 Q. We looked at your Report earlier where you said  13 that the Pre-Inspections were a part of the Judicial  14 Inspections, though.  15 A. They're part of what I characterized as the  16 Judicial Inspection process as it was implemented by myself  17 and other experts. So, it included the preparation for  18 Judicial Inspection, the work on the Judicial Inspection  19 and/or the rebuttal phase, and the presentation of that  20 information. So, all that information, as I defined in my  21 Report, is what I termed to Judicial Inspection process.  22 So, it wasn't the definition of the Court's. The  23 Court--that's not the same as the Court's definition of the  24 Judicial Inspection.  25 Q. So, under the Court's definition of Judicial</p>

12:15 1 Inspections, that did not include Pre-Inspections?  
 2 A. That's correct.  
 3 Q. And you visited Sacha 6 on January 15th, 2004; do  
 4 you remember that? And I will--  
 5 A. No.  
 6 Q. You visited in early January or early 2004. Do  
 7 you remember generally?  
 8 A. I visited 86 sites. Very possible.  
 9 Q. [REDACTED]

[REDACTED]

[REDACTED]

21 Q. Okay. And during the PIs, in your June 2013  
 22 Report at Page 14, you state that Chevron's experts  
 23 conducted a "time-consuming trial and error series of soil  
 24 borings first to find the pit and then to define its  
 25 dimensions based on clean perimeter samples."

[REDACTED]

12:19 1 A. Which--I'm sorry, Mr. Ewing, I missed which page  
 2 reference you are making there.  
 3 Q. So, there are two references to this, both your  
 4 presentation yesterday and your June 2013 Report at  
 5 Page 14.  
 6 So, looking at that line, it seems to me to say  
 7 that you are--Chevron's experts used the Pre-Inspections to  
 8 identify where all of the contamination was located through  
 9 this time-consuming trial and error series of soil borings.  
 10 A. That's what it says, yes.  
 11 Q. And that's what you had presented yesterday with  
 12 your diagram of Shushufindi 21; correct? Where you start  
 13 in the middle and you take steps out to find the edges?  
 14 A. That's right. If you don't have good information  
 15 of where that pit was located, it can be quite  
 16 time-consuming. And the larger the pit, the more  
 17 time-consuming it is.  
 18 Q. And I understand that you are saying or that  
 19 Chevron is saying--let's stick with what you were  
 20 saying--you were telling us that the PIs were acceptable  
 21 because both Parties conducted them; correct?  
 22 A. No, I'm not saying that they're acceptable for  
 23 that reason. I believe that they were completely  
 24 acceptable for meeting the objectives of Judicial  
 25 Inspection, whether they were conducted by either Party.



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12:21 1 But the fact is they were conducted by both Parties.  
2 Q. And you were the Judicial Inspection Expert at  
3 Sacha 6. We've already, I guess, discussed that at length.  
4 Are you aware that Chevron tried to cancel the  
5 Sacha 6 JI the day before it started?  
6 A. No. I don't recall that.  
7 Q. Did you know that Chevron tried to cancel the JI  
8 because--  
9 MR. EWING: And this is at Tab 50, if the Tribunal  
10 would like to turn to it. And this is, in fact, in  
11 Binder 4.  
12 THE WITNESS: Is that the binder without--  
13 BY MR. EWING:  
14 Q. It's the one that says Binder 4 at the bottom.  
15 MR. EWING: Sorry for--I was just explaining to  
16 Mr. Connor.  
17 THE WITNESS: In which tab, Mr. Ewing?  
18 BY MR. EWING:  
19 Q. Fifty. Five-zero.  
20 A. Okay.  
21 Q. And this filing by Mr. Callejas, who was the  
22 attorney for ChevronTexaco, first recounts media reports  
23 that the Plaintiffs are conducting a campaign through the  
24 media; correct?  
25 A. I don't recall reading this before. I do now

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12:23 1 recall the circumstances around this. I haven't read this  
2 carefully. I don't know if I've ever read it, but do you  
3 want me to do so?  
4 Q. No, I would like you to turn to Paragraph 6.  
5 A. Yes, I see that.  
6 Q. And in the second paragraph it says: "The 'status  
7 and circumstances' of the above-mentioned sites"--and they  
8 reference the sites earlier--"have been unlawfully altered,  
9 which makes it impossible to comply with any procedural  
10 steps therewith evidentiary force."  
11 Do you see that?  
12 A. Yes.  
13 Q. And then looking at Paragraph 9, do you see it  
14 says: "According to Chevron, Plaintiffs' Pre-Inspections  
15 were 'a violation of rights to legal security and the due  
16 process of law provided for in Article 2326 and 27 of  
17 Ecuador's Political Constitution.'"  
18 Do you see that?  
19 A. I see where it says that, yes.  
20 Q. And looking at Paragraph 5, not only did Chevron  
21 believe that these actions were a violation of their due  
22 process, but Chevron also argued that the Plaintiffs'  
23 "furtive actions by themselves constitute a severe  
24 environment negative impact whose magnitude is unknown."  
25 Do you see that?

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12:25 1 A. Yes, I see that it says that.  
2 Q. And in Paragraph 4, they're describing what was  
3 done and the Judicial--the Pre-Inspections that allegedly  
4 the Plaintiffs had conducted.  
5 Chevron's teams had already visited the site four  
6 times and conducted sampling each time by the time the  
7 Judicial Inspections started; correct?  
8 A. I don't remember--oh, here you have it--how many  
9 times that had been visited. They had visited it, and  
10 Mr. Calmbacher's team had visited it, and the dispute at  
11 the time wasn't the fact of the visit, it was the fact of  
12 the extensive alteration of property. That's why I  
13 mentioned in my presentation yesterday that we were  
14 instructed not to alter the property, not to leave markings  
15 and flagging. And that was, as I recall, the basis of the  
16 dispute. The property had been cleared, signage was up,  
17 drilling, labeling, press information. And I believe  
18 that's what the--that was my understanding of what the  
19 complaint was. And, therefore, going forward, it  
20 was--there was not an instruction not to do a  
21 Pre-Inspection, but that in doing those Pre-Inspections,  
22 the property was not to be altered such that the Court  
23 would not be afforded to the opportunity to see the  
24 property in its native form, rather than to be altered by  
25 the performance of the Pre-Inspection. And that is the

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12:27 1 instruction that I followed.  
2 Q. So, looking at Paragraph 12, in 12.1, do you see  
3 here where the complaint, the first complaint, by  
4 Mr. Callejas is that allegedly the Plaintiffs were  
5 performing soil drilling using drills or other mechanical  
6 means?  
7 A. Yes, it says that.  
8 Q. And that's no different from using your hand  
9 auger, is it?  
10 A. I think that the hand auger constitutes a similar  
11 activity.  
12 MR. EWING: Mr. President, I have probably about  
13 five more questions, or five more minutes of questions--or,  
14 actually, no, I have about 15 minutes more of questions.  
15 Would you rather I finish those now, or would you rather we  
16 take a break for lunch and go from--  
17 PRESIDENT VEEDER: I'm not sure I heard you. Was  
18 it 50 minutes?  
19 THE WITNESS: One five.  
20 PRESIDENT VEEDER: One five.  
21 (Tribunal conferring.)  
22 PRESIDENT VEEDER: I think it will be better if we  
23 broke now and we'll come back at 1:30.  
24 MR. EWING: I will endeavor to shorten them even  
25 further.

12:29 1 PRESIDENT VEEDER: Okay. Thank you very much.  
 2 Again, please don't discuss the case away from the  
 3 Tribunal, or your testimony.  
 4 THE WITNESS: Yes, sir. Certainly.  
 5 PRESIDENT VEEDER: And we will resume at 1:30.  
 6 (Whereupon, at 12:30 p.m., the Hearing was  
 7 adjourned until 1:30 p.m., the same day.)  
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01:30 1 A. Mr. Ewing, I don't recall specifically those  
 2 numbers, but I do recall in general that somewhere on the  
 3 Order of 95 percent of the impacts had happened prior to  
 4 the Year 2000, and that most of those were related to the  
 5 management of drilling wastes that were generated at the  
 6 time of drilling. But there were other issues that  
 7 occurred as well that were part of that 90-plus percent  
 8 number that weren't related to drilling.  
 9 But in general, in that case, most of the  
 10 questions in issues in question were related to issues  
 11 associated with drilling wastes that happened during  
 12 drilling.  
 13 Q. And in that case, Burlington, your client, did not  
 14 drill the wells?  
 15 A. For clarification, Burlington was a member of a  
 16 consortium for which the Operator was a different party.  
 17 That Consortium did drill some wells, a number of wells,  
 18 but some of the environmental costs were associated with  
 19 their drilling activities, but the bulk of them were not.  
 20 Q. But you would agree with me that Burlington did  
 21 not drill most of the wells?  
 22 A. Again, in that case, the Consortium drilled most  
 23 of the wells, if I recall it correctly, in Block 21, which  
 24 was a relatively new development, but they did not drill  
 25 most of the wells in the Block 7 or Coca-Payomino unified

1 AFTERNOON SESSION  
 2 PRESIDENT VEEDER: Let's resume.  
 3 CONTINUED CROSS-EXAMINATION  
 4 BY MR. EWING:  
 5 Q. Mr. Connor, we're going to briefly discuss the  
 6 Sacha 53 well site and then hopefully be done for today.  
 7 Sacha 53 was a well drilled by TexPet; correct?  
 8 A. I believe so. I'd have to look at the  
 9 information, but I believe it was one of the wells drilled  
 10 by TexPet.  
 11 Q. Do you remember testifying in the Burlington  
 12 Hearing that 95 percent of contamination occurs when a well  
 13 is drilled?  
 14 A. In the Burlington Hearing, my testimony was  
 15 specific to the conditions in Block 7 and Block 21. It was  
 16 not generic to all applications. Only in that particular  
 17 circumstance the events that had contributed to the  
 18 problems were during the drilling of the well, because they  
 19 were well drilling wastes. That would not be the case in  
 20 the Chevron block--excuse me, the Petroecuador Texaco  
 21 block. It was a very specific statement for a very  
 22 specific set of circumstances.  
 23 Q. So, just to clarify, in Burlington, you did  
 24 testify that 95 percent of the drilling--95 percent of the  
 25 contamination occurred at drilling for those two blocks?

01:32 1 fields.  
 2 Q. Mr. Connor, you would agree with me that when you  
 3 assessed risks, you look at both the current and the future  
 4 use of the land; correct?  
 5 A. Depends on which risk you're evaluating, but if  
 6 you're evaluating you rendering the current conditions, you  
 7 look at those conditions, say, as they exist now, but if  
 8 you're anticipating future chronic risks under different  
 9 land use scenarios, you also consider those different land  
 10 uses, yes.  
 11 Q. In this arbitration, when you have assessed risk,  
 12 you have looked at both the current and the future use of  
 13 the land; correct?  
 14 A. In this arbitration, all the calculations that I  
 15 presented which are documented in my 2010 Report are based  
 16 on residential land use. Residential land use in most  
 17 cases is neither the current or likely future use of that  
 18 land, but as a conservative measure, I assumed the most  
 19 stringent land use. So, regardless if the land were  
 20 agricultural or industrial, which comprises nearly the  
 21 entirety of the land use in this area, I assumed that the  
 22 places where impacts were found would be home sites.  
 23 Q. And as you said in Burlington, the children would  
 24 play in it, that it would be their front yard, that they  
 25 would come into intimate contact with that material every

01:33 1 day for 30 years.  
 2 A. The assumption in the default exposure scenarios  
 3 that are applied to develop those screening limits assumed  
 4 that children and adults will be exposed to that material  
 5 on a daily basis for a prolonged time period and to only  
 6 that material. So, if you have a small area of  
 7 contaminated soil, for the purpose of screening, you ask  
 8 the question, if someone, a child and adult were exposed to  
 9 this every day for many years would this--to just this  
 10 soil, would it cause based on dose response analysis, could  
 11 this cause a low-risk of a health impact. That's the  
 12 question that's posed.  
 13 Q. In their opening, Mr. Connor, Claimants stated  
 14 that, "the crowning blow to the Plaintiffs' effort to mount  
 15 a legitimate case fell at Sacha 53 in early 2006, when the  
 16 five independent Settling Experts found that there was no  
 17 significant risk to human health or the environment."  
 18 Do you remember that from the opening?  
 19 A. I don't specifically remember that statement, but  
 20 it's in the Transcript. The person here responsible for  
 21 the Transcript is quite talented.  
 22 Q. I've heard the same.  
 23 The Settling Experts were asked by the Court to  
 24 look at the Parties' JI sampling results; correct, at  
 25 Sacha 53?

01:35 1 A. Correct.  
 2 Q. And then the Settling Experts were asked to answer  
 3 particular questions from the Court about the site;  
 4 correct?  
 5 A. Yes, I believe that's a fair characterization.  
 6 Q. Before we actually pull up the Report--and we will  
 7 do that--I want to go back to when you conducted  
 8 pre-investigations at Sacha 53. And if you want to look  
 9 at, while we're talking, at Tab 58, this is the Sacha 53  
 10 Playbook. It's in binder Number 4.  
 11 A. It's Sacha 53, but it's a different tab. I'm  
 12 sorry. I just got confused.  
 13 Q. Sorry. This is just the map. I have the map for  
 14 you. We're just going to be looking at the map?  
 15 A. Which tab is it?  
 16 Q. Fifty-eight.  
 17 A. Fifty-eight, for fifty-three.  
 18 Q. And, according to this map, Chevron's PI  
 19 results--and this is a map that Chevron or GSI created;  
 20 correct?  
 21 A. This image--Chevron did not create this map. This  
 22 map would have been created by the staff at GSI.  
 23 Q. Okay. And according to the map that's at Tab 58,  
 24 the TPH results that Chevron received for Pit 1 and Pit 2  
 25 were, respectively, 17,900 milligrams per kilogram and

01:37 1 16,000 milligrams per kilogram; is that correct?  
 2 A. Yes, that's what's indicated on this diagram.  
 3 Q. And if you could look at Tab 59, which is the last  
 4 tab, or look on the screen, these are the JI results from  
 5 Chevron's database.  
 6 And am I correct that the JI results for Pit 1  
 7 have non-detects for TPH; is that correct?  
 8 A. Yes, that's what's reported.  
 9 Q. And for Pit 2, the highest of the two values is  
 10 520?  
 11 A. Yes.  
 12 Q. So, let's turn to the Settling Expert Report  
 13 quickly, and this is Tab 51, but we will put it up on the  
 14 screen. And we're going to turn to Page 69.  
 15 And do you remember this Settling Expert Report is  
 16 set up as Court question, Claimant Chevron's statement by  
 17 Mr. Baca, the Lago Agrio Plaintiffs statement by  
 18 Mr. Camino, and then the comments of the Settling Experts?  
 19 A. I'm sorry, Mr. Ewing, I didn't catch which tab it  
 20 was. I'm running a little bit behind you. I will catch up  
 21 quickly, if I can.  
 22 Q. Tab 51, please. And we're going to start at  
 23 Page 69, and so the Tribunal is familiar, if you look, for  
 24 instance, starting at Page 65, at the very bottom you see a  
 25 question from the Court, and then on Page 66 you see

01:39 1 Mr. Baca's answer, who is Chevron's representative. His  
 2 answer continues on 67, where you see his Judicial  
 3 Inspection results that we were just looking at?  
 4 A. My copy seems to have the numbers in reverse; it  
 5 starts, but I'll try to find--Page 66. Just a second.  
 6 Okay. I found it.  
 7 Q. And so on Page 69 are the comments of the Settling  
 8 Experts. They come after the Settling Experts have quoted  
 9 the opinions of the Parties.  
 10 A. Yes.  
 11 Q. And you see on Page 69 where it says, "Number 1,  
 12 under two areas have been identified that can be  
 13 potentially considered as sources of contamination," and  
 14 they have identified here an old spill located west of  
 15 Pit 1.  
 16 And it says: "From the analyses made by the  
 17 Parties, it can be seen that lower levels of the soil  
 18 contain concentrations that are higher than the allowable  
 19 limits established for TPH, chrome VI, copper,  
 20 benzo(a)pyrene in the environmental legislation for the  
 21 citation."  
 22 Do you see that?  
 23 A. Yes.  
 24 Q. So, the Settling Experts are finding exceedances  
 25 for TPH, chrome VI, and benzo (a) pyrene in this old spill;

01:41 1 correct?  
 2 A. That's certainly their statement, but there is no  
 3 benzo (a) pyrene criterion in Executive Decree 1215. They  
 4 do make that statement, it seems not quite clear what their  
 5 basis was for that statement, but yes, they do state that.  
 6 Q. Okay. And if we turn--  
 7 A. And also chrome VI, there is no criteria in  
 8 Executive 1215 for chrome VI or--I don't believe copper  
 9 either, but nevertheless, yes, they do make that statement.  
 10 Q. So, the Settling Experts--to be clear, the  
 11 Settling Experts here are saying that they have found, in  
 12 their expert opinions--the five of them--that there are  
 13 exceedances for TPH, chrome IV, copper and benzo (a)  
 14 pyrene?  
 15 A. Correct. That's what they say.  
 16 Q. And if we turn to Page 80, I want to skip right to  
 17 the risk assessment: At the very top of this page you see  
 18 the bullet that says, "sensitive receptors," and this is  
 19 the end, if you want to check back on 79, of more comments  
 20 of the Settling Experts.  
 21 And do you see here where it says: "There are no  
 22 homes next to the pits. The two families residing in this  
 23 area are located at a distance of over 250 meters from the  
 24 wellhead. The presence of human beings is occasional,  
 25 primarily when they're doing farm work."

01:43 1 A. Yes, that's their determination that they have  
 2 presented based on their own investigation of the site.  
 3 Q. And if we look at Page 82, we will see a similar  
 4 conclusion for the old spill area. There is a bullet for  
 5 sensitive receptors.  
 6 Do you see that?  
 7 It says: "There are no homes next to the spill  
 8 area. The spill is located in a palm grove. The presence  
 9 of human beings is occasional, primarily when engaged in  
 10 farm work in the palm grove."  
 11 A. Yes, I do see that.  
 12 I haven't read this Report in a long time. I  
 13 can't, without reviewing it carefully, I can't speak to  
 14 what all the references are, but it certainly does say that  
 15 in this text.  
 16 Q. Okay. And would you turn now to Page 95. And I'm  
 17 looking at the last paragraph that starts with, "Since  
 18 1972."  
 19 Do you see that?  
 20 A. Yes.  
 21 Q. And this again is comments of the Settling  
 22 Experts, who are saying: "Since 1972, when Sacha 53 well  
 23 was drilled, there is evidence of the occurrence of a  
 24 series of events that have caused contamination by crude  
 25 and other elements in the area of the pits and surrounding

01:45 1 area."  
 2 And then it says, skipping one sentence:  
 3 "Following this period, we can state that there are still  
 4 recalcitrant crude fractions present in the area."  
 5 Do you see that?  
 6 A. Yes.  
 7 Q. And this Report was filed in--do you remember what  
 8 year?  
 9 A. No. It may say so on it.  
 10 Q. February 1st, 2006.  
 11 A. Correct.  
 12 Q. And if we turn the page now to 96, looking at the  
 13 top in bold, the Court is asking the Parties and then the  
 14 comments of the Settling Experts. The Court is asked: "If  
 15 the experts believe that exposure to environmental impacts  
 16 currently existing at the Sacha 53 well can be attributed  
 17 solely and exclusively to the operations of the  
 18 Petroecuador Texaco Consortium, they shall evaluate the net  
 19 benefit that the persons possibly affected can gain from  
 20 carrying out any mitigation measures."  
 21 Right?  
 22 A. Yes, that's what it says.  
 23 Q. So, the Court is asking there for the personal  
 24 gains that these individuals will get from mitigation  
 25 measures?

01:46 1 A. This is the English translation. To understand  
 2 exactly the language of how the Court poses this question  
 3 would be important as to the Spanish because it seems that  
 4 maybe your folks are going to turn a phrase that might have  
 5 some legal implications, and I really can't advise you in  
 6 that regard.  
 7 Q. And I am not asking you to advise me on the legal.  
 8 PRESIDENT VEEDER: But have you the Spanish?  
 9 MR. EWING: We do. This is the exhibit that was  
 10 submitted by Mr. Connor. It was Exhibit 48 to his Report.  
 11 I'm sure that we can find the Spanish. I just have  
 12 provided his exhibit.  
 13 BY MR. EWING:  
 14 Q. And then below the Court's question, Mr. Baca  
 15 says: "The degraded petroleum nor the asphalt represents  
 16 a threat to the livestock and plants, and no corrective  
 17 actions are required."  
 18 Do you see that?  
 19 A. Yes, I see that.  
 20 Q. And then Mr. Camino, who is a Lago Plaintiffs  
 21 expert, carries on to estimate the size of the pits, the  
 22 cubic volume of soil that needs to be remediated, and then  
 23 provides a dollar cost per cubic meter to remediate that  
 24 soil.  
 25 Do you see that?

01:48 1 A. Yes.  
 2 Q. And he's doing that in response to the Court's  
 3 request for benefit to individuals for mitigation measures?  
 4 A. Well, it doesn't seem responsive to the question,  
 5 but clearly that's how the Settling Experts organize the  
 6 Report.  
 7 Q. And that's how Mr. Camino responded? Whether he  
 8 was right or not, that's how Mr. Camino responded to this  
 9 question?  
 10 A. Well, perhaps what we need to understand,  
 11 Mr. Ewing, is that question wasn't posed to Mr. Camino.  
 12 These are questions posed to the Settling Experts, and then  
 13 they went through the Reports of the Chevron Expert and the  
 14 Plaintiffs' Expert and cut and paste what they thought were  
 15 their most responsive. So, Mr. Camino was never asked that  
 16 question. This is just what the Settling Experts decided  
 17 would be considered responsive to the best of their  
 18 efforts, per their Judgment.  
 19 Q. And then the last question about this document, at  
 20 the bottom of 96 and going on to 97, the comments of the  
 21 Settling Experts are: "According to the results of the  
 22 laboratory analyses, the 'area of the old spill' is the one  
 23 that has petroleum contamination (TPH concentrations in  
 24 excess of 5,000 milligrams per kilogram at depths ranging  
 25 from 0.8 to 6.8 meters."

01:51 1 spill area. It was a different location.  
 2 Q. And then the experts conclude: "This area must be  
 3 remediated, even though the origin of the contamination is  
 4 unknown (due to the lack of scientific evidence)."  
 5 Do you see that?  
 6 A. Yes.  
 7 Q. So, their final conclusion was that at least the  
 8 old spill area must be remediated?  
 9 A. That appears to be their conclusion, yes.  
 10 MR. EWING: I have no further questions.  
 11 PRESIDENT VEEDER: Thank you very much.  
 12 Are there questions from the Respondent by way  
 13 of--from the Claimants by way of re-examination?  
 14 MS. RENFROE: Yes, Mr. President.  
 15 PRESIDENT VEEDER: Give us for planning purposes  
 16 how long you think that might take.  
 17 MS. RENFROE: My hope is to be finished within 30  
 18 minutes.  
 19 PRESIDENT VEEDER: Please proceed.  
 20 MS. RENFROE: Thank you.  
 21 PRESIDENT VEEDER: Unless you want to break.  
 22 MS. RENFROE: No, I don't need a break, unless  
 23 anyone else does.  
 24 Thank you very much.  
 25 May I ask my colleagues' technical adviser who

01:49 1 So, they found oil contamination had spread  
 2 6 meters deep.  
 3 And goes on to say that the, "maximum TPH DRO  
 4 value recorded between 0 meters and 0.8 meters is 1900  
 5 milligrams per kilogram, and heavy metals."  
 6 Correct?  
 7 A. Yes, that's what it says.  
 8 One clarification to your characterization is that  
 9 the Settling Experts are indicating the sample depth  
 10 according to the Plaintiffs' report, but the drilling  
 11 method employed by the Plaintiffs' Expert in this case had  
 12 the effect of dragging contaminants down to great depth,  
 13 and that is explained in the Report of Mr. Baca. So that  
 14 the 6.8 meters is not a correct or realistic  
 15 characterization of the depth of that spill. But apart  
 16 from that, yes, that's what it states.  
 17 Q. And they state here that the maximum that they  
 18 were informed of was 1900 milligrams per kilogram; right?  
 19 TPH DRO.  
 20 A. For the old spill area, correct.  
 21 Q. Even though Chevron in its PIs had found a higher  
 22 milligrams per kilogram maximum?  
 23 A. No, I don't believe that's correct.  
 24 They found--the data that we looked at earlier was  
 25 related to pits one and two. It wasn't related to the

01:52 1 just had the Sacha 53 Settling Expert document up, could he  
 2 take us back there, please, while we are there?  
 3 MR. EWING: Of course.  
 4 MS. RENFROE: And could you specifically go to  
 5 Page 82--actually Page 80.  
 6 THE WITNESS: This is Tab 51 again?  
 7 REDIRECT EXAMINATION  
 8 BY MS. RENFROE:  
 9 Q. Yes, sir, it's Tab 51. While we are on this  
 10 document, I thought we might just address one or two more  
 11 points, and then we can move on to something else.  
 12 A. That just closed it, so getting back there.  
 13 Yes, I'm there.  
 14 Q. I want to draw your attention and the Tribunal's  
 15 attention to the question in this joint Settling Expert  
 16 report for Sacha 53. The question is 4.6.2, and L.32 and  
 17 L.16.  
 18 Do you see that?  
 19 And specifically the first question says--and I'm  
 20 just setting this for context: "The experts shall inform  
 21 the Court whether the persons who have homes in the areas  
 22 surrounding the platform and the pits that were remediated  
 23 by TexPet in the Sacha 53 well could be exposed to  
 24 concentrations of crude oil at levels and with a frequency  
 25 that makes them hazardous to their health. The experts

01:53 1 shall give technical and scientific support for both their  
2 opinion and the source of that crude oil."  
3 Do you see that question, Mr. Connor?  
4 A. Yes.  
5 Q. Now, if you could, and if our technical adviser  
6 could please turn us to Page 82, and let's find the  
7 conclusion of the Sacha 53 Settling Experts. If you look  
8 towards the bottom of the page, the paragraph starting, "In  
9 view." And if we could ask the gentleman to highlight that  
10 for us, thank you very much.  
11 Can you read that to us, Mr. Connor, please. And  
12 tell us what conclusion was reached by the Sacha 53 joint  
13 Settling Experts in response to the question about  
14 potential health risk.  
15 A. It states that: "In view of the fact that the  
16 concentration of hydrocarbons (TPH-DRO) and barium are  
17 located at depths of over 0.4 meters, the risk to human  
18 health is low, with a probability of impact equally low,  
19 unless there are drastic changes in the site's current  
20 conditions, which would increase the risk (removal of the  
21 soil by mechanical operations, intense water erosion,  
22 felling of the trees with consequent exposure of roots and  
23 soil)."  
24 The statement here is that they would not  
25 anticipate current or future risks in the absence of

01:56 1 different if the material is on the surface than if it's in  
2 the subsurface. Materials that are on the surface, it is  
3 plausible that someone could come into contact with that  
4 material much more so than something that is at subsurface.  
5 At each of the locations of a remediated pit, the Chevron  
6 Experts collected samples both at the surface and at the  
7 subsurface in order to answer those questions.  
8 Q. And so, as you read the conclusion of the Sacha 53  
9 joint Settling Experts, they concluded that there was  
10 low-risk to human health, even though there were  
11 concentrations of TPH at depth?  
12 A. Correct.  
13 Q. Now, when you did your risk assessment that is  
14 included in your September 2010 Report in this arbitration  
15 case, which data did you consider?  
16 A. I considered all of the data that had been  
17 collected and submitted to the Court by all of the Parties,  
18 and that included the data compiled by the Chevron Experts  
19 within the JI/Rebuttal process, all of the data collected  
20 by the Plaintiffs' Experts in the JI process, and all of  
21 the data compiled by Mr. Cabrera in Phase II of the JIs.  
22 Q. Okay. And did that data include samples at the  
23 surface as well as samples at depth?  
24 A. Yes.  
25 Q. Okay. Now, earlier, Mr. Ewing asked you about

01:55 1 extensive modification of the sites' physical  
2 characteristics.  
3 Q. And so, let's help the Tribunal understand this  
4 question of risk assessment and evaluating samples from the  
5 surface and samples from depth.  
6 And you commented a little bit earlier about  
7 having done a risk assessment in your September 2010  
8 Report.  
9 So, while we are on this topic, could you explain  
10 to the Tribunal how a risk assessment is done and the  
11 significance of evaluating samples at the surface and  
12 samples at depth.  
13 A. Yes. As briefly as I can.  
14 The risk assessment entails a step-wise process by  
15 means of which the Measured concentration of samples are  
16 compared to concentrations that would be safe under any  
17 anticipated situation where, as I described earlier, if  
18 someone were to be in direct contact with these materials  
19 every day for many years. In my analysis, all of the  
20 samples, whether they're on the surface or subsurface were  
21 compared to those concentrations to see if any exceeded.  
22 The second step is then to evaluate whether those  
23 materials are in a location where exposure such as  
24 anticipated in the calculation of every day for 30 years,  
25 could actually occur. And the answer to that is very

01:58 1 assumptions about future land use, and I just want to make  
2 sure that we're clear on what you meant when you were  
3 explaining the assumptions that you used in performing your  
4 risk assessment about future use of the land.  
5 So, could you explain to the Tribunal, when doing  
6 a risk assessment, what assumptions you make for purposes  
7 of evaluating risk?  
8 A. Yes. It's similar to the description I gave you  
9 during my presentation of there being different speed  
10 limits for different streets and different cleanup  
11 standards for different types of land use.  
12 In my analysis, I assumed that all the land would  
13 be converted to residential use, which is the use under  
14 which persons have the greatest degree of contact with the  
15 soil or water; therefore, regardless of the future use, I  
16 would have a conservative basis for developing protective  
17 conditions. The land may well be agricultural in the  
18 future, it may well be industrial or commercial, but by  
19 assuming it would be residential, I then would have the  
20 most conservative and protective criteria on which to  
21 assess the risk, and that's what I did.  
22 Q. Now I would like to switch topics and take us back  
23 to address a few issues that were raised yesterday. I just  
24 want to make sure that the record is very clear.  
25 So, let me ask you to get in front of you--and the

01:59 1 Tribunal may wish to have in front of it--a copy of your  
2 slides, and then as well, if you could also open,  
3 Mr. Connor, your September 2010 Report and turn to Page 2,  
4 please.

5 If you could look at the bottom paragraph on  
6 Page 2 of your 2010 Report, can you tell us the dates that  
7 the Consortium operated, the TexPet Consortium--the  
8 TexPet-Petroecuador Consortium operated, as you've  
9 memorialized it in your Report.

10 A. Yes. My understanding was that the TexPet serving  
11 as the Operator for the Consortium comprised the years 1972  
12 through June 30, 1990.

13 Q. And so, today, to the extent that Mr. Ewing was  
14 asking questions about the operations--asking questions  
15 about TexPet's operations through 1992, would that be  
16 inconsistent with your understanding of the period of time  
17 that TexPet acted as the Operator?

18 A. Yes, that would be inconsistent.

19 Q. And tell us again the last date that TexPet was  
20 the Operator?

21 A. My understanding in all of the documentation I  
22 reviewed was that the role of TexPet as the Consortium  
23 Operator terminated on June 30, 1990, and, thereafter the  
24 field was under the exclusive operation of Petroecuador.

25 Q. Okay. Now, let's turn to another topic that,

02:03 1 There may be some confusion in the record because  
2 there's a number of different issues here and a number of  
3 different Parties. Any time I referred to the RAP, I was  
4 referring to these entities.

5 Q. Okay. Now, let's go to the RAP. And I believe we  
6 have handed out, or we are about to hand out, a very, very  
7 small group of documents, and I want to make sure that you  
8 and the Tribunal have it handy, so let's see if we can get  
9 those circulated now.

10 And, Mr. Connor, I would ask you to turn to  
11 Slide 8 of your slide presentation.

12 A. I don't have a copy of the slide presentation with  
13 me. Is it possible to get a copy? Is it here? Perhaps it  
14 is.

15 (Document handed to the Witness.)

16 A. Yes, I have it, thank you.

17 Q. Okay. So, I think just for this discussion on  
18 this next point, it would be helpful if we can open up the  
19 Remedial Action Plan, or the RAP. And if you can then also  
20 have Slide 8 in front of you.

21 And I would like to ask you to describe in a bit  
22 more detail exactly the process that was included or  
23 required in the RAP for remediating those pits that are  
24 identified in the tables in the RAP.

25 A. Okay. The eight step process that I've depicted

02:01 1 again, just to make sure we have a very clear record, and  
2 that has to do with what you have meant or who you have  
3 been referring to when you've spoken about the Parties.  
4 And in this respect, I would ask you to turn, and I'd ask  
5 our technical colleague to open up, Mr. Connor, your  
6 Slide 5.

7 Do you have that, sir?

8 A. Yes.

9 Q. And if we can--I mean, the question I want to put  
10 to you--and I'm hoping you can answer it from this  
11 slide--is to identify for us who the Parties are to the  
12 Remedial Action Plan. And if we can enlarge--if we have  
13 the ability to enlarge those signatures, perhaps,  
14 Mr. Connor, you can tell us?

15 A. No, I have a copy of the plan that I can read.

16 Q. So, who are the Parties to the Remedial Action  
17 Plan that you have been talking about for the last  
18 day-and-a-half?

19 A. To the Remedial Action Plan, the Parties were the  
20 Ministry of Energy and Mines; the Environmental Unit,  
21 Environmental Protection Unit of Petroecuador; Texaco  
22 Petroleum Company; and Woodward-Clyde, who was the  
23 Contractor. But when I referred to "the Parties," I was  
24 referring to the first of those three, not to the  
25 Contractor.

02:05 1 on this Slide 8 of my presentation is spelled out in more  
2 detail on Pages 13 through--13 through--this goes on for  
3 quite a while--just a second--at least through 17. Just a  
4 moment. Well, and it also reappears on Page 21 for the  
5 revegetation.

6 Nevertheless, in this document, this particular  
7 process is laid out for treatment of oil pits. And would  
8 you like for me to describe that, Ms. Renfroe?

9 Q. Please.

10 And I would like you to help the Tribunal  
11 understand how the process is laid out in this Remedial  
12 Action Plan, so that if they want to understand in more  
13 detail what was done and where it was to be done, they know  
14 how to navigate the RAP, the Remedial Action Plan document.

15 A. Okay.

16 This diagram on Slide 8 corresponds to the  
17 procedures specified for closure of pits with oil. You  
18 will see that reference first appear on Page 13 of the RAP  
19 document, which I--the document I'm holding here is labeled  
20 Connor-7.

21 Q. And let's make sure that the Tribunal is with you.  
22 Okay. Thank you. Go ahead.

23 A. Turning then to Page 14, you will see the two  
24 headings, one called "site preparation" and one called  
25 "removal and debris--of debris and crude oil," and those

02:07 1 correspond to Steps 1, 2 and 3 as indicated on Slide 8.  
 2 The process involved removing the vegetative cover from  
 3 around the pit, removing all the debris and vegetation,  
 4 logs or whatever other material might be inside the pit,  
 5 and then making an effort to recover for recycling any oil  
 6 that could be extracted from that pit. Those are the steps  
 7 that are described on Page 14 and depicted on Steps 1, 2, 3  
 8 of Slide 8 of my presentation.

9 That oil as you see on the top of Page 15 would be  
 10 transported to an oil recovering recycling facility that  
 11 was constructed for the purpose of this project on the  
 12 Sacha Central Production Station. That facility still  
 13 exists today. That oil would be transported there for  
 14 re-cover and replacement in the oil pipeline.

15 Then the water that remained in the pit now free  
 16 of oil would be processed as it's shown in Diagram Number 4  
 17 on Slide 8. It would be placed within a temporary holding  
 18 basin and processed with chemical additions as needed to  
 19 precipitate solids and meet the discharge criteria of  
 20 Acuerdo 621 issued in 1992 and incorporated into the RAP,  
 21 as it says here under the heading "discharge of water" on  
 22 Page 15.

23 The next step is called "treatment of bathtub ring  
 24 and other soil contamination," and it is depicted as  
 25 Number 5 on Slide 8. This involved a variety of different

02:09 1 treatment methods that could be employed at the option of  
 2 the Contractor or TexPet. In some cases soil washing was  
 3 used to remove oil, in other cases cementing was used, in  
 4 some cases biotreatment was used, but whatever method was  
 5 used was applied to the materials on the walls and in the  
 6 interior of the pit in order to stabilize it, remove the  
 7 oil, and render it in a condition consistent with the safe  
 8 closure of that pit.

9 Once that was completed, and the sludge in the pit  
 10 had also been treated as indicated on Page 16, the next  
 11 step as indicated on Diagram Number 6 or Image Number 6 on  
 12 Slide 8 was that the material in the base, that now the  
 13 treated material in the base of the pit would be sampled  
 14 and analyzed by a sampling team from Universidad Central in  
 15 Quito. If that material met the cleanup criteria specified  
 16 in the RAP, the next step indicated on 17 and Photo  
 17 Number 7 on Slide 8 would then be implemented, and it gives  
 18 very specific instructions on Page 17 as to how that  
 19 backfill was to be placed. Backfill is the clean soil  
 20 that's now placed atop the remediated material at the base  
 21 of the pit.

22 Later in this document--assuming I can find the  
 23 page--it specifies how the site is to be revegetated, and  
 24 you will see that, I believe, starting on Page 21. That  
 25 revegetation process involved communication with the

02:11 1 landowner and selection of appropriate species at the  
 2 requesting Grievant and landowner to determine what was the  
 3 best vegetative restoration method for that site, and those  
 4 were memorialized in certificates that were signed by the  
 5 landowner and by TexPet on every property. So, that then  
 6 corresponds to Number 8 on Slide 8, Image Number 8, and the  
 7 completed sites as they appear today are indicated in the  
 8 last photo on that slide.

9 Q. You mentioned yesterday that inspectors were  
 10 involved in this process. Can you explain a bit more about  
 11 who those inspectors were and who they were acting for?

12 A. There were several different persons that were  
 13 tasked with that responsibility, and my recollection is  
 14 there were at least five of them, and they were from three  
 15 different organizations. They were from the Ministry of  
 16 Energy and Mines, they were from Petroecuador and  
 17 Petroproducción.

18 And their responsibility was to inspect the sites  
 19 as the work was underway to confirm that the work was being  
 20 conducted in compliance with the RAP specifications and to  
 21 take actions if they felt that that was not the case.

22 Q. Now, did the specifications that the Parties--that  
 23 is, Ecuador and Petroecuador and TexPet--agreed to in the  
 24 RAP, did those specifications allow residual Total  
 25 Petroleum Hydrocarbons, or TPH, to remain in a remediated

02:13 1 RAP pit?

2 A. Yes.

3 Q. And can you explain why that is.

4 A. There are at least two reasons: The remediated  
 5 material, if it's cemented, will retain its full mass of  
 6 hydrocarbon. But as we saw in the many leachate tests that  
 7 were conducted both during the RAP and thereafter, that  
 8 that tea bag would not release any of its hydrocarbon to  
 9 the environment. Therefore, the tea, the mass of tea that  
 10 remained in the bag is immaterial to the environmental  
 11 protection if it can't move out of the tea bag. And that  
 12 was understood, I believe, by the Parties at the time they  
 13 developed these specifications. It's certainly understood  
 14 as a principle today in remediation of these pits.

15 Q. So, it was--it was within the Parties' agreement  
 16 that certain amounts of or remnants of crude oil could  
 17 remain within a pit remediated under the Remedial Action  
 18 Plan?

19 A. Yes, certainly.

20 Q. And that was approved by Ecuador and Petroecuador?

21 MR. EWING: Objection. Leading question.

22 MS. RENFROE: I will rephrase.

23 BY MS. RENFROE:

24 Q. If you turn to your next slide, Slide 9, where  
 25 you've identified the Actas, what is your understanding



02:14 1 about the Final Acta and the Approval Actas with respect to  
 2 permitting remnants of crude oil to remain in remediated  
 3 pits?  
 4 A. The Approval Actas recognized the remnants of  
 5 crude oil in those pits. The inspectors were provided  
 6 those data, reviewed those data. And based on the Reports,  
 7 found that the pits which contained remnants of petroleum  
 8 met the requirements and, therefore, were approved for  
 9 closure. Those findings are documented in RAT Acta  
 10 Number 52, Approval Actas 1 through 19, and the Final Acta  
 11 of September 1998.  
 12 Q. Now I would like to move to a different topic, and  
 13 that has to do with the timing of the HBT Report in  
 14 relation to the Remedial Action Plan. There was some  
 15 discussion yesterday, and I want to make sure that the  
 16 record is clear on the sequence of events.  
 17 When was the HBT Report done in relation to or in  
 18 comparison to the Remedial Action Plan?  
 19 A. The HBT Report was issued at least two years prior  
 20 to the time that the Parties agreed on the Remedial Action  
 21 Plan, and that information informed the basis for that  
 22 plan.  
 23 Q. And so, yesterday, when you were shown a number of  
 24 documents by Mr. Ewing from the HBT Report that identified  
 25 various findings about pits and impacts to streams, were

02:18 1 A. Yes, they were aware of those conditions. That  
 2 was the purpose of the audit conducted by HBT Agra.  
 3 Ms. Renfro, I would like to clarify for the  
 4 record that my use of the term "in the RAP" or "not in the  
 5 RAP" may be somewhat unclear. When I've said something is  
 6 in the RAP, it either means that it was a RAP site or it  
 7 was a pit that was designated for remediation. There are  
 8 also pits in the RAP that were not designated for  
 9 remediation. And I just want to be clear when I say it's a  
 10 RAP pit, it means that it was a pit assigned for  
 11 remediation.  
 12 Sorry for the interruption.  
 13 Q. No, I appreciate that.  
 14 So, then for example, when you were asked about  
 15 Shushufindi 4 and a particular condition or feature at that  
 16 site, do you know, sir, if that was a RAP feature or a  
 17 non-RAP feature? And if you don't know off the top of your  
 18 head, can you tell us by looking in the Remedial Action  
 19 Plan tables?  
 20 A. My recollection is that it was not required for  
 21 remediation by TexPet, and I can revisit those tables, if  
 22 you wish.  
 23 Q. And so, that would be a non-RAP feature?  
 24 A. Yes, by my nomenclature.  
 25 Q. And the site that you were also asked about

02:16 1 those things known to the Parties before the Remedial  
 2 Action Plan was agreed?  
 3 A. Yes. Both the Parties participated in audits such  
 4 as I have conducted on a number of these facilities, to  
 5 identify the environmental issues that remained after the  
 6 termination of the TexPet period of operations. Those  
 7 issues that were identified were then further addressed in  
 8 the scope of the Settlement Agreement and in the RAP, and  
 9 they were duly resolved in the portion of the work that was  
 10 assigned to TexPet and subsequently approved.  
 11 Q. And, Mr. Connor, do you remember yesterday being  
 12 asked by Mr. Ewing about a number of areas, so, for  
 13 example, at Shushufindi 55 and at Shushufindi 34 and at  
 14 Sacha 94, he asked you about a number of sites and a number  
 15 of areas that you said were not included within the RAP.  
 16 Do you recall those questions over a number of hours?  
 17 A. Yes.  
 18 Q. Okay. So, can you explain, just to be clear--I  
 19 think this is clear to the Tribunal, but it's important  
 20 that we are clear and that you are clear--is it your  
 21 understanding based on the HBT Report that the Parties were  
 22 aware of conditions, such as impacts to streams, where they  
 23 were noted in the HBT Report and certain pits, that they  
 24 were aware of those conditions before deciding in the  
 25 Remedial Action Plan what would be assigned to TexPet?

02:19 1 yesterday, Auca 1, which was identified or shown to you by  
 2 Mr. Ewing, there was a condition identified in the HBT  
 3 Report about Auca 1, was that a RAP feature, to your  
 4 knowledge, or a non-RAP feature?  
 5 A. You know, I don't recall that particular episode,  
 6 but I could look that up if you wish.  
 7 Q. And can you tell the Tribunal how you're going to  
 8 go about doing that.  
 9 And really, the point of my question is: Could  
 10 you help explain to the Tribunal, if we want to know if a  
 11 particular feature is a RAP feature, can you walk us  
 12 through that process. Where do we go to find that out?  
 13 A. The RAP features and non-features are specifically  
 14 identified in the exhibit that's called Connor-7, which you  
 15 may still have at hand.  
 16 Q. And that's the Remedial Action Plan, or the RAP?  
 17 A. And there are a number of tables that are attached  
 18 here, and the tables of particular relevance to pit  
 19 closures begin on what would be Page 17 of the document  
 20 right after Page 16, it's Table 3.1.  
 21 The table is inserted between Pages 16 and 17.  
 22 Q. And--go ahead.  
 23 A. What we see here on the screen is the first page  
 24 of that table. The table is divided into several  
 25 subsections. The first list is "Pits Closed-No Action."

02:21 1 Those are pits that were primarily closed after  
2 June 30, 1990, and, therefore, required no action under the  
3 RAP. You will see that designation on the far right-hand  
4 corner of the remarks of the Remedial Action Plan. There  
5 are other reasons why they are designated for "no action,"  
6 but those are the principle reasons in that case.

7 Two other pits that appear at the bottom of that  
8 page correspond to the category of pits closed before  
9 June 30, 1990, but with evidence of oil seepage at the  
10 surface. You see those on the bottom of that page,  
11 Sacha 51, Pit 4, and Sacha 65, Pit 1. Those are pits that  
12 were understood to have been closed prior to June 30, 1990,  
13 during the period of TexPet operations, and you see here it  
14 says "Cleanup of Oil Seeps."

15 So, those were--the Parties were cognizant that  
16 there were such pits and they incorporated them as  
17 specified in the Scope of Work if those pits were  
18 discovered during the course of the RAP implementation.

19 On the next page, if we turn the page, on  
20 Table 3.1, you will see another list of pits called "Pits  
21 With Oil-No Action". Again, there's a list of sites, a  
22 list of pit numbers, and a number of comments or remarks  
23 under Remedial Action Plan which explain the reason why  
24 there's no action required at those pits.

25 Continuing to turn the pages, you will arrive at

02:23 1 the largest section of the table, which is "Pits With  
2 Oil-Closure." These are the pits that are specifically  
3 assigned to TexPet to be remediated via the eight-step  
4 process.

5 Have I gotten too far ahead of you?

6 Okay. You'll see a long list there.

7 Going back to Ms. Renfroe's initial question, how  
8 would you know if Auca 1--is that the correct--

9 Q. Yes. I asked you about Shushufindi 4 and Auca 1  
10 as just two examples from yesterday's questions.

11 A. Okay. If you want to know if a specific pit at a  
12 specific site was assigned to TexPet for remediation, you  
13 would look at this particular section of the table.

14 Looking at the top row there, for example, we see that the  
15 Aguarico 1 well site, Pit Number 1 is assigned for  
16 remediation. Going down that same column on that same  
17 page, you will see that the only sites in the Auca oilfield  
18 that are assigned to TexPet are Auca 5, Auca 7, and  
19 Auca 17, with specific pits at those locations. Auca 1 is  
20 not on this list and, therefore, not included in their work  
21 program. You will come to the same conclusion with regard  
22 to Shushufindi 4 well site, which is also not on the list  
23 of pits to be remediated.

24 There are other pages to this document, to this  
25 table, that identify other pits that don't require closure

02:25 1 for other reasons. So, the table serves as the roadmap to  
2 what was and wasn't included and to some degree what you  
3 will and will not find in the field today. Pits that were  
4 not included sometimes still remain today, although  
5 Petroecuador's undertaken a program to remediate these  
6 remaining pits.

7 Q. Have you, or did you create a table that  
8 summarizes these remedial action items in your  
9 September 2010 Report?

10 A. Yes.

11 Q. And can you tell us where that table is and what  
12 it does for us?

13 A. There are a number of tables that serve to  
14 summarize the Remedial Action Plan. The most comprehensive  
15 of those is provided as Attachment B of the--my 2010  
16 Report, and there is an image of it here.

17 In this table, I have identified every site and  
18 every feature of that site as it was identified in the  
19 various Anexos to the Settlement Agreement.

20 PRESIDENT VEEDER: Can you help us where we'd find  
21 it in Attachment B? I thought we saw it before, but I  
22 can't find it.

23 ARBITRATOR GRIGERA NAÓN: It's at Table 2-B.

24 THE WITNESS: Attachment B is the at end of that  
25 report.

02:26 1 PRESIDENT VEEDER: Oh, at the end.

2 THE WITNESS: Excuse me if I misstated that.

3 MS. RENFROE: Attachment B to the 2010 Report.

4 PRESIDENT VEEDER: Yeah.

5 MS. RENFROE: Are you not finding it?

6 PRESIDENT VEEDER: No. Come on. Find it.

7 (Laughter.)

8 (Comments off microphone.)

9 PRESIDENT VEEDER: Oh. Ah, you might have told us  
10 that. Okay. Thank you very much. That's okay, don't  
11 worry. We will find it.

12 MS. RENFROE: Apologies, Mr. President.

13 PRESIDENT VEEDER: That's okay.

14 MS. RENFROE: We will make sure you have it. It's  
15 a very useful table.

16 BY MS. RENFROE:

17 Q. All right. I would like to move to a different  
18 topic now that I think will be very quick and brief. And I  
19 would ask if our technical assistant can pull up C-1108 and  
20 distribute copies.

21 Mr. Connor, you were asked a few questions a  
22 little while ago about the Pre-Inspection process, and you  
23 explained it. C-1108 is another pleading from the Lago  
24 Case, and this one submitted by Mr. Adolfo Callejas, who  
25 you had described earlier as counsel for Chevron in the

02:28 1 Lago Case.  
 2 A. Correct.  
 3 Q. All right. Now, if you look to the second page of  
 4 C-1108, we see the application that Mr. Callejas has made  
 5 to the Court regarding a Judicial Inspection for  
 6 Shushufindi refinery.  
 7 Do you see that, sir?  
 8 A. Yes.  
 9 Q. And do you also see that in the second paragraph  
 10 Mr. Callejas is asking the Court to communicate with  
 11 Petroindustrial to allow access to the refinery?  
 12 A. Yes.  
 13 Q. Do you see that, sir?  
 14 A. Yes.  
 15 Q. Let's see if we can highlight that. Yes, that  
 16 paragraph, "in order that." Right. Let's highlight  
 17 that--that paragraph.  
 18 And then the next couple of paragraphs concerned  
 19 the appointments of a Judicial Expert and a setting of the  
 20 date for a Judicial Inspection.  
 21 And then, if we move on to the next paragraph that  
 22 starts "As requested", can you read that paragraph, please.  
 23 A. "As requested, I ask that Petroindustrial in the  
 24 person of its Vice President be served with an official  
 25 letter at his offices located at calle Alpallana and

02:31 1 Q. And so, this exhibit we're looking at right now,  
 2 C-1108, is an example of a request to the Court for that  
 3 permission to do a Pre-Inspection?  
 4 A. Yes.  
 5 Q. All right. Now, I think I've got one last topic,  
 6 and that is the issue of migration that was discussed--that  
 7 you and Mr. Ewing covered yesterday in some detail. And I  
 8 would like to ask our technical colleague if he can bring  
 9 up Connor 2 and ask if you can turn to Tab 11 in the  
 10 Respondent's binders--Tab 11, if you have that--which is  
 11 the HBT Report.  
 12 And specifically, we want to go to Page 8-25.  
 13 A. Just give me a minute. These are--I need to  
 14 shuffle binders here.  
 15 Q. Of course.  
 16 And for the convenience of the Tribunal, and you,  
 17 Mr. Connor, we will hand out an excerpt of the HBT Report.  
 18 It may be more convenient. But for those of you looking  
 19 for it in the binder, it's Respondent's Tab 11.  
 20 PRESIDENT VEEDER: Just for good order's sake,  
 21 this is from the Defendant's Exhibit 310.  
 22 MS. RENFROE: This is actually Connor 2. Both the  
 23 Claimants and Respondents have this document in the record.  
 24 You already have it in Respondent's Tab 11, but it is also  
 25 C-13.

02:30 1 Avenida 6 de Diciembre in the City of Quito so that the  
 2 necessary facilities might be provided, both to perform the  
 3 judicial proceeding and so that the Parties may enter this  
 4 petroleum facilities on days before the ones scheduled for  
 5 the proceedings in order to do a Pre-Inspection, which is  
 6 extremely important to our defense in this case."  
 7 Q. So, this is an example of a--that you had  
 8 mentioned earlier of requests to the Court for permission  
 9 to do Pre-Inspections?  
 10 A. Yes.  
 11 Q. And, of course, these facilities were being  
 12 operated and still are being operated by Petroecuador;  
 13 correct?  
 14 A. Correct. At that time they were being operated by  
 15 Petroecuador.  
 16 Q. And so, did you as a Judicial Inspection Expert,  
 17 for example, did you have the right or the ability to  
 18 access these facilities without approval and access being  
 19 provided to you from representatives of Petroecuador?  
 20 A. My understanding is that we needed permission to  
 21 enter the properties. And when we arrived at a property,  
 22 many of which are enclosed by fencing with a security  
 23 representative, we would ask for permission. And there was  
 24 usually a communication to either the Court or Petroecuador  
 25 to allow us to enter the properties.

02:33 1 PRESIDENT VEEDER: C-13?  
 2 MS. RENFROE: Yes, sir.  
 3 BY MS. RENFROE:  
 4 Q. And I'm directing you to Page 8-25.  
 5 You recall--Mr. Connor, are you there?  
 6 A. I am here.  
 7 Q. Okay.  
 8 (Laughter.)  
 9 Q. You remember yesterday--  
 10 A. Oh, you mean on the page? Oh. Sorry about that.  
 11 Q. We're nearly done.  
 12 You recall the discussion yesterday about the  
 13 question of migration of material from pits?  
 14 A. Yes.  
 15 Q. And you explained to us, you spoke to us about the  
 16 role of clayey soils and how it bears on migration of  
 17 material from pits; you recall that discussion?  
 18 A. Yes.  
 19 Q. And you were asked to look at certain portions of  
 20 the HBT Report, but I don't think you were asked to look at  
 21 this provision, and so I would like to draw your attention  
 22 now to--the language actually begins on Page 8-22, and it's  
 23 Section 8.6, summary of impacts to the subsurface. And I  
 24 think Mr. Ewing asked you about some of that, but now I  
 25 want to take you to the provision he did not show you, and

02:35 1 that's on Page 8-25, starting with the paragraph "based on  
 2 the results of our investigation."  
 3 Do you see that, sir?  
 4 A. Yes.  
 5 Q. Okay. Can you tell us, can you--without  
 6 necessarily reading every single sentence here, read the  
 7 salient portions about what HBT had concluded, based on its  
 8 investigation, its audit, of these facilities and based on  
 9 the data that it had collected. Can you tell us what  
 10 conclusion HBT drew about of migration of materials from  
 11 the pits?  
 12 A. Yes. And this was the text to which I referred in  
 13 my discussion with Mr. Ewing yesterday, that the conclusion  
 14 drawn by HBT based on the entirety of their investigation  
 15 were that there was no significant evidence of subsurface  
 16 contamination, or spreading away from the pits. And I will  
 17 draw your attention to that first paragraph that says  
 18 "based on the results of our investigation, we have found  
 19 little evidence of significant subsurface contaminant  
 20 migration beyond the boundaries of the production stations  
 21 and well sites. At most sites, there was little evidence  
 22 of contamination migrating beyond the margins of the 'high  
 23 risk' features such as mud pits," and to go on to give more  
 24 specific examples. At the end of that paragraph, they  
 25 noted even at those cases where they had discovered oil on

02:38 1 they were unusual in my experience as well.  
 2 The sum finding by HBT, by Fugro-McClelland, by  
 3 all the work that was conducted in the JI and since is  
 4 that, in fact, there is no significant migration from these  
 5 pits, and the data are inconsistent in that regard.  
 6 Q. Now I want to draw your attention to one last  
 7 document, and--but to do that, let's return to your  
 8 September 2010 Report, and specifically let's go to the  
 9 section you wrote about the Fiscalía General's  
 10 investigation, and I believe that begins--or at least the  
 11 portion that I would like to take you to--is Page 76 of  
 12 your 2010 Report.  
 13 And I would also ask if we can distribute to the  
 14 Witness and to the Tribunal C-591.  
 15 And while that document is being handed out, can  
 16 you explain to the Tribunal just very briefly the--you're  
 17 talking here in this section of your Report about your  
 18 evaluation of certain Environmental Experts' analyses of  
 19 the Remedial Action Plan and how it was performed.  
 20 A. That's correct.  
 21 Q. Right. And I want to draw your attention  
 22 specifically to the--to your comments and discussion about  
 23 the report of Señor Narváez and Señor García, which you  
 24 talk about at Page 76.  
 25 Do you see that?

02:36 1 the surface of the water table, they found that that  
 2 contamination diminished within few tenths of meters.  
 3 This is an important observation, and that is  
 4 consistent with our own findings, and it also speaks to the  
 5 calculation of the Exxon Valdez impacts. I believe that  
 6 Ecuador Experts have expressed a concern that oil has  
 7 radiated out--is it's moved out radially from these pits.  
 8 The observations that are reported here and in all of the  
 9 reports and all the data collected since indicate that that  
 10 is either--that that does not occur.  
 11 There is also a statement in that second--in the  
 12 next paragraph that vertical and lateral migration of these  
 13 contaminants in the subsurface generally was found to be  
 14 limited by the low to moderate hydraulic conductivity in  
 15 the upper water table aquifers, the low permeability of the  
 16 clays commonly encountered throughout the study area, and  
 17 by the relatively low mobility of crude oil through the  
 18 area's subsurface. They do note that minor movement can  
 19 occur through fractures and root channels--we talked about  
 20 that yesterday--but that is not a significant migration  
 21 pathway on a larger scale.  
 22 And then they noticed that there were some sites  
 23 where there were permeable sand lenses present, and those  
 24 were the most significant. But as indicated by their  
 25 findings here, those are relatively unusual conditions and

02:40 1 A. Yes.  
 2 Q. All right. And just to set the context for  
 3 this--and I hope by now everybody's got a copy of C-591.  
 4 Do you have it, sir? C-591?  
 5 A. Yes, I do. Oh, C-591. Yes.  
 6 Q. Right. All right. Let's make sure everybody's  
 7 with us.  
 8 So, very briefly, there was an investigation by  
 9 the Office of the Attorney General of Ecuador into the  
 10 performance of the Remedial Action Plan; is that correct?  
 11 A. Yes.  
 12 Q. And a number of different Environmental Experts  
 13 were engaged by the Attorney General's Office to evaluate  
 14 sites that had been remediated pursuant to the Remedial  
 15 Action Plan?  
 16 A. That's right. Several different persons over the  
 17 course of several years.  
 18 Q. And you discussed those, their reports, in your  
 19 September 2010 Report.  
 20 A. Correct.  
 21 Q. And now specifically, let's look at the findings  
 22 of one, actually two of those individual experts.  
 23 And so, just for the record, we have on the screen  
 24 C-591. And can you tell us what this is, please.  
 25 MR. EWING: And actually, real quick, do you have

02:41 1 the Spanish for this?  
 2 MS. RENFROE: I don't know.  
 3 MR. EWING: I think there may be a mistranslation  
 4 of the--which office of Ecuador is doing this, whether it's  
 5 the Attorney General or the Prosecutor General, which, as  
 6 we know, is--they are different.  
 7 PRESIDENT VEEDER: We had this before, but does it  
 8 matter for your question?  
 9 MS. RENFROE: It does not matter for my question.  
 10 MR. EWING: Thank you.  
 11 BY MS. RENFROE:  
 12 Q. So, my question to you, Mr. Connor: First, let's  
 13 see if we can identify who these individuals are who have  
 14 prepared this Report, that is C-591.  
 15 A. Yes. This is an English translation of the report  
 16 that I reviewed by Señor Narváez and Señor García which was  
 17 issued in 2005, which documents their response to the  
 18 request for investigation by the Controller General's  
 19 office.  
 20 Q. Of...  
 21 A. Of Ecuador.  
 22 Q. Okay. Now, you have reviewed their work and you  
 23 now have their conclusions and--their Report and their  
 24 conclusions in front of you.  
 25 Can you turn to Page 10, the conclusions section

02:44 1 So the pits that they found that weren't  
 2 remediated did correspond to the rationale for their  
 3 exclusion in the RAP document. And at those sites where  
 4 they observed hydrocarbons to be present, regardless of  
 5 whether that was a RAP or a non-RAP feature, they found  
 6 that the impermeability of the soil prevented any spreading  
 7 or environmental impact associated with that hydrocarbon  
 8 presence. Again, that's consistent with my own  
 9 observations and those of the other experts involved in  
 10 this case.  
 11 Q. And I should have drawn your attention to  
 12 Section 6.2 of their conclusions regarding the role of the  
 13 clay.  
 14 A. Yes.  
 15 It's an interesting statement. That the--I will  
 16 just read that--"that the only environmental parameter  
 17 capable of providing an historical view of what happened is  
 18 the subsoil quality, which having been confined by the  
 19 clayey soils, has remained practically unchanged at the  
 20 bottom of the former pits."  
 21 What they mean by that is that the soils are the  
 22 same as they always have been, and the material that's in  
 23 the soil--in the pits--has not moved.  
 24 Q. And then finally, their conclusion, 6.7, my  
 25 question to you, sir, is: Is this consistent with your own

02:42 1 of their Report.  
 2 A. Yes.  
 3 Q. And before we review these conclusions, can you  
 4 tell us briefly your understanding of what they did to  
 5 investigate the efficacy of the remedial action work done  
 6 by TexPet.  
 7 A. Mr. Narváez and Mr. García investigated 130  
 8 different well sites to compare their observations to the  
 9 specifications of the RAP to determine if the site  
 10 conditions were consistent with faithful completion of the  
 11 RAP, and their findings were that was the case. They also  
 12 took samples from those pits and found that they were  
 13 consistent with the criteria of the RAP. So, it was a very  
 14 thorough investigation that they conducted.  
 15 Q. So, on the question of clay and migration from the  
 16 pits and the efficacy of the remediation work done by  
 17 TexPet, can you look at conclusions 6.6 and 6.7 and tell us  
 18 what these two Environmental Experts concluded?  
 19 A. In 6.6, they found that 81 pits observed at the  
 20 site were--corresponded to those that were excluded from  
 21 remediation requirements in the TexPet RAP. Those pits  
 22 that were excluded were given designations of NFA, meaning  
 23 no further action, or COC, meaning change of condition.  
 24 The significance of those is explained in the RAP, but I  
 25 won't repeat that.

02:45 1 conclusions, and can you explain that?  
 2 A. Yes. I will read it for the benefit of the  
 3 record. It states: "At the sites where the presence of  
 4 hydrocarbons was detected, the impact to the subsoil is  
 5 localized, permanent and irreversible. However, due to the  
 6 impermeability of the clay, said impact is confined and  
 7 does not affect underground water quality or the wildlife  
 8 in the surrounding area." That again confirms the  
 9 appropriate remediation of the sites and--that were  
 10 assigned to TexPet, and even for those sites that were not  
 11 assigned to TexPet, these gentlemen conclude, consistent  
 12 with my own conclusion, that the remnants of the  
 13 hydrocarbon do not pose a threat to underground water or to  
 14 wildlife in that area.  
 15 Q. Now, is it your understanding that these findings  
 16 were made by these Environmental Experts on behalf of the  
 17 Controller General's office of Ecuador before the Judgment  
 18 was issued?  
 19 A. Yes. This Report, if I remember correctly, was  
 20 issued in 2005.  
 21 Q. Right.  
 22 MS. RENFROE: Thank you, Mr. Connor. I have no  
 23 further questions.  
 24 THE WITNESS: Thank you.  
 25 PRESIDENT VEEDER: Thank you very much,

02:47 1 Mr. Connor. We have come to the end of your testimony. We  
2 thank you for coming here to assist the Tribunal. You may  
3 leave the table.  
4 THE WITNESS: Thank you very much, and thank you  
5 to the representatives of Ecuador as well.  
6 (Witness steps down.)  
7 MR. EWING: If we could have just a short break to  
8 change seats.  
9 PRESIDENT VEEDER: Just wait a second. We may  
10 need a longer break, for reasons I'll explain.  
11 MR. EWING: Okay.  
12 PRESIDENT VEEDER: Five minutes? Ten minutes?  
13 MR. EWING: Five or ten minutes?  
14 PRESIDENT VEEDER: Five minutes.  
15 MR. WHITE: Mr. Veeder, before we do that, there  
16 is one issue, if I may, I would just like to raise on the  
17 logistical front, and it has to do with the forensic  
18 expert, Mr. Lynch.  
19 PRESIDENT VEEDER: Yes.  
20 MR. WHITE: At the conclusion of his testimony, I  
21 think he was given an indication that he might be needed  
22 again, and I believe that Ms. Owen has left.  
23 Mr. Lynch is happy to stay as long as he's needed  
24 or to leave and be available to come back. It's just if he  
25 leaves, he would need a little bit of notice to get back

02:48 1 because he would have to travel.  
2 PRESIDENT VEEDER: Excuse me. I didn't mean that  
3 he should stay, and I'm sorry if he stayed unnecessarily--  
4 MR. WHITE: No, no, no. We asked him to stay as  
5 long as Ms. Owen was here.  
6 PRESIDENT VEEDER: No, he can leave. It's just  
7 that we have a potential proposal to make, but we're far  
8 from making it. Where in the future we may want to see him  
9 again, but not for now.  
10 MR. WHITE: Understood. Thank you.  
11 PRESIDENT VEEDER: Thank you for raising it. Five  
12 minutes.  
13 (Brief recess.)  
14 GREGORY S. DOUGLAS, CLAIMANTS' WITNESS, CALLED  
15 MR. BISHOP: Mr. President, my partner, Carol Wood  
16 in our Environmental Group is going to put on the next  
17 witness.  
18 PRESIDENT VEEDER: Thank you very much.  
19 We'll just have the Witness sworn.  
20 Mr. Douglas, if you could state your full name and  
21 if you're willing, read out the words of the Declaration on  
22 the piece of paper which you're holding.  
23 THE WITNESS: My name is Gregory Scott Douglas,  
24 and I solemnly declare upon my honor and conscience that I  
25 shall speak the truth, the whole truth, and nothing but the

03:07 1 truth, and that my statement will be in accordance with my  
2 sincere belief.  
3 PRESIDENT VEEDER: Thank you very much.  
4 You've probably heard this before if you were  
5 sitting in the back of the room, but everything you say is  
6 being transcribed, so it's important not to speak too  
7 quickly, but even more so in this case because everything  
8 is being translated into Spanish and then transcribed, so  
9 we need to leave a gap between the question and the answer.  
10 THE WITNESS: And the additional problem is I'm  
11 from New England, we park our cars, so when I say pattern,  
12 I'm probably saying patent for the translator. I say  
13 pattern all the time instead of patent.  
14 PRESIDENT VEEDER: On the other hands, New  
15 Englanders are very taciturn.  
16 MS. WOOD: Thank you very much, Mr. President,  
17 Members of the Tribunal. I just have a few questions for  
18 Dr. Douglas, and then he is going to present his direct  
19 testimony in a presentation to the Tribunal.  
20 DIRECT EXAMINATION  
21 BY MS. WOOD:  
22 Q. Good afternoon, Dr. Douglas.  
23 A. Good afternoon.  
24 Q. How many reports have you authored for this BIT  
25 proceeding?

03:08 1 A. I've authored three reports.  
2 Q. Okay. And the dates of those are September 3rd,  
3 2010; June 1, 2013; and January 14, 2015; is that correct?  
4 A. Yes.  
5 Q. And I believe you have those in front of you?  
6 A. Yes, I do.  
7 Q. Okay. Do you have any corrections to make to  
8 those Reports?  
9 A. No, I do not.  
10 Q. Just very briefly, if you would describe to the  
11 Tribunal what the general subject matter is of your direct  
12 testimony today?  
13 A. Of course. Today I will be discussing petroleum  
14 analytical issues as they relate to the collection,  
15 interpretation, and analysis of environmental data in the  
16 Oriente.  
17 MS. WOOD: With your permission, Mr. President,  
18 Dr. Douglas would proceed with his presentation.  
19 PRESIDENT VEEDER: Certainly.  
20 MS. WOOD: Thank you.  
21 THE WITNESS: Thank you.  
22 My name is, of course, Gregory Douglas, and I'm a  
23 partner at New Fields Environmental Forensics Practice. I  
24 have more than 30 years of experience in environmental  
25 chemistry, and focusing on petroleum analytical chemistry

03:09 1 and petroleum biodegradation in the environment.  
 2 I'm a hands-on person. I have hands-on experience  
 3 working in and managing petroleum analytical laboratories  
 4 over the past 30 years, so I'm very familiar with the  
 5 analytical methods that I'll be talking to you about today.  
 6 I've worked on more than 20 oil spills worldwide  
 7 from the Exxon Valdez to the current Deepwater Horizon in  
 8 the Gulf of Mexico, where I'm a forensics expert for the  
 9 National Oceanographic and Atmospheric Administration.  
 10 I've testified at the United Nations regarding  
 11 petroleum chemistry for the largest oil spill in history.  
 12 I'm also working for the United States Environmental  
 13 Protection Agency on the Kalamazoo River oil spill in  
 14 Michigan.  
 15 I routinely publish my work, and I have over 40  
 16 peer-reviewed publications and book chapters on petroleum  
 17 analytical chemistry.  
 18 And in addition, the work that I've done in the  
 19 Oriente with regards to biodegradation has also been  
 20 published in the peer-reviewed literature as well, for your  
 21 review.  
 22 I'm not new to this project. I have been working  
 23 on this project since 2004, and during the course of that  
 24 period I have produced and generated a number of research  
 25 papers and technical papers, and these are just a few here,

03:11 1 but some of the important ones include the measurement of  
 2 the chemical compounds that are present in Oriente crude  
 3 oil.  
 4 In addition, I have done a lot of work on  
 5 measuring biodegradation and oil-impacted soils and  
 6 sediments at over 40 JI sites and in produced water using  
 7 Ecuadorian conditions.  
 8 Just a minute if I could to talk to you about  
 9 biodegradation.  
 10 First of all, biodegradation doesn't occur  
 11 overnight. It takes time, it can take months and years in  
 12 order to occur, so I just want to make sure that we don't  
 13 think that biodegradation is such a rapid process. But it  
 14 does occur, and it occurs constantly.  
 15 I performed three types of biodegradation studies  
 16 for this program. The first biodegradation study was a  
 17 laboratory study, and what we did is we mixed crude oil,  
 18 Ecuadorian crude oil, with nutrients and bacteria that was  
 19 cultured from Ecuadorian soils, and then monitored this  
 20 biodegradation at 30 degrees centigrade.  
 21 And the purpose of this study, this laboratory  
 22 study, was simply to determine the biodegradation potential  
 23 of the oil. So, for example, what's the maximum  
 24 biodegradation I could get in this particular oil because  
 25 oils vary, depending on their composition. Some oils will

03:12 1 biodegrade a lot and some will not, so the purpose of that  
 2 laboratory study was to determine the biodegradation  
 3 potential.  
 4 The second study was where we collected river  
 5 water from Ecuador and simply mixed it with produced water  
 6 under natural conditions and to see how the hydrocarbons  
 7 within the produced water would degrade, and they degraded  
 8 relatively rapidly, so that's another study that I  
 9 performed with produced water.  
 10 And finally, we performed more than 40 JI studies  
 11 where I examined field samples that were collected under  
 12 ambient conditions and evaluated how degraded they were  
 13 from the field, which is actually the best way to evaluate  
 14 how much biodegradation has occurred in the environment.  
 15 In addition to these biodegradation studies, I've examined  
 16 degraded crude oil and compared it to asphaltic materials,  
 17 which is the end product of the biodegradation process.  
 18 I've also worked extensively on evaluating the impact of  
 19 plant matter and its effect on the various analytical  
 20 methods that we're talking about today.  
 21 The next slide is a summary of my key opinions,  
 22 many of which I will discuss today in the course of my  
 23 presentation. I'm not going to focus on these, so I can  
 24 spend most of my time on specific analytical key issues  
 25 relating to chemistry of Oriente crude oil. In order to do

03:14 1 that, the first thing we need to understand is what is  
 2 crude oil? It sounds like a very simple question, but it's  
 3 more complex than you might think. In fact, we're still  
 4 studying crude oil today.  
 5 Now, crude oil is a complex mixture, okay? It's  
 6 derived from natural material from plants and animal  
 7 remains. Now, what happens is the crude oil is not just  
 8 plant and animal material. What it is, is when these  
 9 plants and animals die, they deposit into anoxic basins or  
 10 basins in the ocean, and then over time, temperature and  
 11 pressure, these plant materials change and are altered into  
 12 what we call hydrocarbons, and those are molecules which  
 13 contain a carbon molecule and a hydrogen molecule, so  
 14 they're called hydrocarbons.  
 15 Now, it is a natural product and, therefore, as a  
 16 natural product, it will biodegrade in the environment or  
 17 break down, which is a good thing with respect--as compared  
 18 to synthetic chemicals that maybe never break down in the  
 19 environment. So, crude oil is one of those products that  
 20 can actually break down naturally within the environment.  
 21 When we talk about crude oil, we break it down  
 22 into four distinct chemical groups, and I'm going to  
 23 discuss those here.  
 24 This is a barrel of crude oil Oriente. I measured  
 25 nine different production oils, and this represents an

03:15 1 average value, and what I want to walk you through is the  
2 composition of this.  
3         What we have here is about 80 percent of a barrel  
4 of crude oil. It's composed of saturate and aromatic  
5 hydrocarbons, and within those saturate and aromatic  
6 hydrocarbons called petroleum hydrocarbons, we measure  
7 different ranges, and you've heard many of those ranges  
8 discussed today. One of those ranges that you're familiar  
9 with is probably the GRO range, and this represents those  
10 light hydrocarbons that are present in the petroleum like  
11 gasoline range organics. That's where you measure the BTEX  
12 compounds, and the range is generally a carbon range from  
13 C6 to C10.  
14         Now, what does C6 to C10 really mean? That means  
15 we've got six carbon molecules attached to each other  
16 that's C6. And for C10 you might have ten carbon molecules  
17 attached to each other. So, the ones with the six are  
18 lighter and more volatile. The ones with the ten are  
19 heavier and less volatile. And generally as you increase  
20 the number of carbons, the degradation of those materials  
21 becomes more difficult.  
22         In addition to the GRO, analysis, we have a  
23 DRO-range material from which you find Polycyclic Aromatic  
24 Hydrocarbons, which are those toxic compounds that have  
25 been identified by the United States Environmental

03:17 1 Protection Agency as compounds of concern. We measure a  
2 number of other petroleum compounds as well called alkanes  
3 and biomarkers, which I'll talk to you about later, but  
4 they are compounds useful for forensics analysis.  
5         Now, within the DRO, you've heard many different  
6 ranges discussed, and I just want to walk you through  
7 those. And whenever you talk about TPH and measurements or  
8 TPH measurements, you need to know what method we're  
9 referring to, because the results that you get are highly  
10 method-dependent.  
11         So, in this case for DRO, there is the C10 to C28  
12 carbon range, and that's the carbon range that was  
13 specified in the Lago Agrio Court audit and analytical  
14 plan. There is C10 to C35 carbon range, which is something  
15 like a method called Texas 1006 or EPH methodology, and  
16 that is a method that was used on this program by Chevron  
17 as well. And then there is the C10 to C44 carbon range,  
18 which are a much broader range which I used in my  
19 biodegradation studies.  
20         So, that represents pretty much an overview of  
21 what hydrocarbons are and the ranges that we're working  
22 with.  
23         In addition to the hydrocarbons in a barrel of  
24 oil, you have a group of compounds called resins and  
25 asphaltene. Now, these are asphaltic materials, and

03:18 1 they're not total petroleum hydrocarbons. And, in fact,  
2 these very heavy materials are what we use to make  
3 highways, so they're fairly--they're not very mobile,  
4 they're very viscous. In fact, asphaltene are actually  
5 solids, and they're not considered to be an important  
6 environmental contaminant.  
7         Now, what happens to oil? The next question is  
8 what happens to the oil once it's released into the  
9 environment? And that's an important issue here. With  
10 regard to fresh crude oil, what I have in front of you is  
11 what's called a GC/FID chromatogram. And what this  
12 chromatogram represents is a fingerprint of the  
13 hydrocarbons that are present in any particular sample.  
14 Okay? So, on the left you see the yellow range. That's  
15 represents what's called the GRO range. In the middle in  
16 the green, it represents the DRO range, C10 to C28 in that  
17 case, and then in the blue range, that represents the C28  
18 plus range.  
19         So, you can see basically, number one, what kind  
20 of material you have and how weathered or degraded it is.  
21         Now, below that, what you have is just an example  
22 of biodegraded crude oil, and on the left again you can see  
23 the GRO range is very depleted, the DRO range is heavily  
24 biodegraded, and what happens is that you see an  
25 apparent--it's not an increase. What it is, what it

03:20 1 represents is what's left. It's not like you're increasing  
2 the C28-plus components, but those are the components that  
3 are most residual to degradation. So, they're what's left  
4 after you degrade the GRO and the DRO range components.  
5         Now, biodegradation is a very important part of  
6 oil spill remediation. And, in general, biodegradation  
7 decreases TPH concentrations, toxicity, and mobility, and  
8 what you end up with a successful biodegradation program is  
9 material the residual of which is viscous and immobile.  
10         Next, I'll talk to you about what analytical  
11 methods most accurately measure crude oil or TPH in the  
12 environment. I want to point out that there's a big  
13 difference between TPH and total oil. As I discussed back  
14 here, total oil represents the complete barrel. It  
15 includes the saturate and aromatic hydrocarbons as well as  
16 the resins and asphaltene. TPH includes only the Total  
17 Petroleum Hydrocarbons. Now, several methods have been  
18 used with regards to the Oriente program, and I'm going to  
19 walk you through those methods and talk to you about some  
20 of the applications and limitations of those methods in  
21 terms of their reliability and usefulness to interpret  
22 environmental data. We start with the bulk screening  
23 methods, and these are called, like total extractible  
24 material. Now, what is a TEM analysis? A TEM analysis is  
25 an analysis where you take a fairly aggressive solvent,



03:22 1 like it's called methylene chloride. It's very commonly  
 2 used in this field, and you extract the soil or sediment,  
 3 and you pull all the carbon molecules that are in that  
 4 sample into your extract. You then evaporate that extract  
 5 to a very small volume and weigh that residue that you get  
 6 with a gravimetric method, and then you get a number.  
 7 But the problem is you can't confirm the contents.  
 8 You don't know what you have, especially in the Oriente  
 9 where those carbon molecules could include not only  
 10 petroleum, but lots of plant material, humic acids, fulvic  
 11 acids, sulfur compounds--I can go on--the list is endless,  
 12 so you need to be able to use a chemical method that you  
 13 can identify what's in that sample in order for it to be  
 14 accurate and reliable.  
 15 So the TEM method also extracts asphaltenes and  
 16 resins, and it's prone to substantial interferences with  
 17 naturally occurring plant matter, which is a big problem in  
 18 the Oriente because we have lots of plant material here.  
 19 So, basically, the reason I'm bringing this issue up is  
 20 that Ecuador's experts say that the TEM measurement itself  
 21 is the best method to provide results for Total Petroleum  
 22 Hydrocarbons, but, in fact, that method measures not only  
 23 the petroleum hydrocarbons, but the resins, the  
 24 asphaltenes, and as you will see later, more important, the  
 25 plant material that's present in many of these sediments

03:25 1 carbon ranges for which to measure for this program, in  
 2 this case the hydrocarbon range from six to 12 as the GRO  
 3 component and the hydrocarbons from C-12 to 28 as the DRO  
 4 component. And these are the methods that Chevron relied  
 5 on for doing their JI studies. And basically they're  
 6 illustrated here in the remaining pyramid. As we move down  
 7 the pyramid to EPA Method 8015, that method is used to  
 8 identify carbon ranges. That method provides us with a TPH  
 9 value and it represents the results of a GC/FID analysis  
 10 after an extraction. So you extract, again, using an  
 11 aggressive solvent and then analyze your sample on an  
 12 instrument that provides a fingerprint of your sample, like  
 13 the fingerprint I showed you earlier for those crude oils  
 14 and degraded oils.  
 15 Now, the real advantage of the GC/FID method,  
 16 which is basically the work horse of oilfield studies is  
 17 that you can actually confirm the contents of your sample,  
 18 so, that way if you have interferences, you have plant  
 19 material, you have petroleum, or you have weathered  
 20 petroleum, you can simply look at those fingerprints and  
 21 identify it, and incorporate that into the interpretation  
 22 of the data that you'll end up--because you're going to use  
 23 this information.  
 24 As we move further down to a more even refined  
 25 methodology, we have what's called EPH methods and Texas

03:23 1 and soil samples.  
 2 The next bulk-screening method I will talk to you  
 3 about is EPA Method 418.1, and this is another method where  
 4 you use a solvent to extract your material, hydrocarbons,  
 5 plant material, whatever else is extractable by the  
 6 solvent, and then concentrate it down and analyze it by  
 7 infrared. Again, all you get is a value. It's a number.  
 8 You don't know what it is. You can't confirm the contents.  
 9 It extracts non-petroleum hydrocarbons and it's also  
 10 subject to plant matter interferences. In fact, I  
 11 published a paper on these problems and applications and  
 12 limitations exactly what I'm saying today back in 1992, so  
 13 we knew--this was a commonly observed problem with this  
 14 particular method.  
 15 Now, what does the Lago Agrio Court ordered  
 16 analytical plan say about EPA Method 418.1? What the plan  
 17 says is that Method 418.1 is also likely to obtain false  
 18 positive detections for non-petroleum sources likely to be  
 19 present in the Oriente Region. And this is totally  
 20 consistent with the literature, and there are many, many  
 21 publications which document this problem and the problem of  
 22 false positives.  
 23 In contrast, Method 8015 has been shown to provide  
 24 reliable and reproducible results. Now, not only does it  
 25 recommend the 8015 method but it provides us with the

03:26 1 1006 methods. Now, what this method does is it takes the  
 2 results similar to 8015 and then fractionates the  
 3 hydrocarbons into two separate groups, those aromatic  
 4 fractions which are considered to be more toxic in the  
 5 environment and the aliphatic fractions which are also of  
 6 potential concern.  
 7 And then carbon ranges can be determined from each  
 8 one of those fractions, and they're run by GC, so you  
 9 actually get two fingerprints for your analysis which gives  
 10 you even more information in terms of what's in your  
 11 sample, therefore you can confirm the contents of the  
 12 analysis that you performed.  
 13 And as I mentioned, you refine the carbon ranges  
 14 into saturate hydrocarbons and aromatic hydrocarbons, this  
 15 information can be used by regulators to calculate  
 16 risk-based screening levels at petroleum sites. And  
 17 because of the cleanup step, it captures the least amount  
 18 of plant materials.  
 19 Finally, and, of course, this is my favorite  
 20 method, individual compound analysis. We've got EPA Method  
 21 8260 which is a GC/MS method, which is a superior detector  
 22 system in that not only can you quantify a specific  
 23 compound, but you can actually identify that compound as  
 24 well. 8260 is for volatile components such as  
 25 BTEX--benzene, toluene. These methods are very useful

03:28 1 especially when you're working in petroleum because  
 2 petroleum is a complex mixture and you need a very specific  
 3 detector in order to identify that peak without a problem.  
 4 We also have an 8270 method which is used as a  
 5 GC/MS method, and that's used for the identification of  
 6 Polycyclic Aromatic Hydrocarbons, such as the 16 priority  
 7 pollutant PAHs that have been identified as compounds of  
 8 concern.  
 9 Wow. Okay, so here we get into the interesting  
 10 stuff. Now that we understand the analytical methods.  
 11 Well, what do we do with these results? Do we just put  
 12 them in a report? At the back of an appendix? Do we use  
 13 them? What I do is interpret data, and that's pretty much  
 14 what I do full time.  
 15 Now, when you look at this chromatogram, as you  
 16 know on the left, this is a GC chromatogram, and it  
 17 provides you with a fingerprint of the hydrocarbons that  
 18 are in your sample. So, the left one is a fingerprint of a  
 19 crude oil, and you can tell that by characteristic features  
 20 such as the hump that you see here--this is called the  
 21 unresolved complex mixture, and the envelope of normal  
 22 alkanes and isoalkanes that are present.  
 23 Now, what happens is when the oil degrades in the  
 24 environment, these compounds degrade first, so they will be  
 25 removed and all you will see is the hump.

03:31 1 extractable material--now, that's everything--is  
 2 23,000-milligrams per kilogram. TPH, for that analysis,  
 3 using the Ecuador's laboratories full range DRO analysis or  
 4 full range TPH analysis.  
 5 The TPH result is 9700-milligrams per kilogram.  
 6 It's about half of what you're seeing in the TEM, and  
 7 that's reasonable with regards to the way the GC/FID system  
 8 works, so it's from a chemical reasonableness perspective,  
 9 it makes sense that you would have about half or so of the  
 10 material detected by GC for crude oil.  
 11 Now, to confirm that that's a crude oil, we use a  
 12 group of compounds called biomarkers. Biomarkers are these  
 13 compounds that are characteristic of the oil itself, so  
 14 when the oil is in a--and they vary from oil to oil and  
 15 where the oil is produced, but they're very useful for  
 16 biodegradation studies but also to identify that when you  
 17 find biomarkers you find oil, so a good way to identify the  
 18 presence of oil is with the biomarkers. Now, they don't  
 19 tell you how much oil is in that sample. They only tell  
 20 you that oil is present. So it's quite possible to have  
 21 biomarkers with only 1 percent oil in a sample in a TEM  
 22 result or even much more.  
 23 Now, with the plant material, we have  
 24 Shushufindi 13, SE-002, the TEM is equivalent to that of  
 25 that crude oil sample. Now, the TPH for that sample is

03:29 1 Now, in addition, plant matter has a similar  
 2 fingerprint, not like crude oil, but it has its own  
 3 characteristic fingerprint. This is the typical  
 4 distribution of plant matter, and what it shows you is that  
 5 when you see this fingerprint, you should be able to tell  
 6 yourselves we've got plant matter in this sample.  
 7 Now, what you're seeing there, those peaks,  
 8 represent plant waxes such as--and plants tend to produce  
 9 not just the homologous group of waxes, like an envelope,  
 10 plants like to produce odd-chained alkanes as well, so they  
 11 like to produce C-27, 29, 31, 33. So that's how we  
 12 identify plant waxes from petroleum because there isn't  
 13 that kind of discrimination in petroleum.  
 14 Another point is that the GC/FID is not capable of  
 15 detecting all of the plant matter that's in a sample, and  
 16 I'm going to show you that later. It's been claimed that  
 17 all of the plant matter present in this sample is, in fact,  
 18 detected by a GC, but that's proven time and time again in  
 19 the literature as well as my own reports, where this only  
 20 reflects a small fraction of the plant matter that's  
 21 present in your sample.  
 22 So, what this does is it's an indicator of plant  
 23 matter.  
 24 How do we know that? Let's look at an example.  
 25 Shushufindi 55, SE-009, in that case, total

03:33 1 only 23-milligrams per kilogram, it's very low, and is not  
 2 a reasonable result for a TPH measurement. If that was  
 3 truly 26,000-milligrams per kilogram, you would expect much  
 4 greater values of TPH by GC/FID. So then what you do is  
 5 you can then compare the biomarkers in that sample, and as  
 6 you can see there are no biomarkers; therefore, there is no  
 7 oil. And the point being here is that all of this TEM is  
 8 in fact plant matter, and that the 23 only represents a  
 9 very small fraction, it's the small fraction of that plant  
 10 matter.  
 11 How do we know there was plant matter in these  
 12 samples? Well, the laboratory prepares preparation  
 13 records, and in those records they include observations.  
 14 So, for example, in many of these sediment and soil  
 15 samples, we see that comments like these samples had too  
 16 many fine roots to remove or in the case of the sample I  
 17 just showed you, Shushufindi 13, SE-002, this is defined as  
 18 a liquidy brown solid with vegetation. So, we have  
 19 confirmation there was vegetation in those samples, and we  
 20 can identify it using the GC/FID approach.  
 21 Here are some examples of samples, so this isn't  
 22 just an isolated situation. These represent a variety of  
 23 samples, you can see a range of TEM results here and a  
 24 range of TPH concentrations as reported by the full TPH  
 25 range recorded by Chevron's laboratory. And you can see

03:34 1 the percent of TPHe to TEM. And what this indicates is  
 2 that this is not 100 percent crude oil, these samples.  
 3 There may be some in here, but it's certainly not  
 4 100 percent. And that's why it's important to look at  
 5 those biomarker compounds.  
 6 Ecuador's Experts argue that if you find  
 7 biomarkers in your sample, then the TEM represents  
 8 100 percent TPH, and I can tell you quite honestly that is  
 9 just contrary to prior work that I have done and contrary  
 10 to the data that we see here.  
 11 Okay, so that's the problem with plant matter  
 12 because the methods they are using are impacted with plant  
 13 matter to a degree that require additional interpretation  
 14 whenever you try to use a TPH number, and it's particularly  
 15 a problem here in the Oriente just because of the biomass  
 16 that's present in these samples.  
 17 So the next issue is--are called blank samples,  
 18 and I'm going to talk to you about blank samples and why  
 19 blank samples are important when interpreting analytical  
 20 data.  
 21 First of all, how many people know what a blank  
 22 is? Blank samples are known clean samples, they are used  
 23 as quality control measures by laboratories. Okay? So,  
 24 for example there's two blank samples I will talk about  
 25 today, there's a blank called the field blank, and a field

03:36 1 blank means that you take your clean material--could be  
 2 clean sand, it could be clean water like distilled water,  
 3 and you take it out into the field, and you handle it in  
 4 the same way you handle your analytical samples, your field  
 5 samples. So you have a blank, and you collect it, and you  
 6 would handle it, and you would bring it back to the lab,  
 7 and it reflects any contaminants that you may introduce as  
 8 a part of the collection process, and that's called a field  
 9 blank.  
 10 We also have laboratory blanks, and a laboratory  
 11 blank is when you have a clean sample--in this case  
 12 distilled water--and you process it with all the field  
 13 samples that you have collected, and it will pick up any  
 14 contaminants that are introduced by the laboratory. Now,  
 15 laboratories run many kinds of samples through all this  
 16 glassware and equipment and all sorts of things that they  
 17 have to do. I mean, it could be--the sample could be  
 18 touched 50 times when you process a sample.  
 19 So, there's many places in the solvents, syringes  
 20 and handling where you could introduce some low level  
 21 contamination.  
 22 So, what happens is the blank is passed through  
 23 the laboratory and analyzed for the targets of concern, in  
 24 this case I will be talking about the Polycyclic Aromatic  
 25 Hydrocarbons. And then it's analyzed, and a report is

03:37 1 generated with those analytical results.  
 2 The next question is, well, what do you do with  
 3 the blank? Well, we stick it in the back of the Report and  
 4 ignore it. No. What you do with the blank is you then  
 5 evaluate the blank relative to your field samples. Okay?  
 6 The idea is that you want to determine if the blank is a  
 7 major contributor of the contamination that you're finding  
 8 in the field samples.  
 9 How do we do that? We have standard methods for  
 10 doing this. It's called the 5X Rule, and it says that  
 11 sample results must be greater than five times, and in some  
 12 instances ten times, the compound found in the blank for  
 13 the sample to be reliable and reported as a positive  
 14 finding.  
 15 Now, is this some new technique or some new  
 16 approach? No, this is standard practice, been using it for  
 17 decades. It's defined in USEPA National Functional  
 18 Guidelines for Organic Data Review. It's also identified  
 19 within LBG's own validator report, and it's also identified  
 20 in LBG's own laboratory's standard operating procedures.  
 21 So there's no question that using this approach is a  
 22 reasonable approach to compare blanks.  
 23 But as a chemist, I always start off with the raw  
 24 data, so the first thing I do is I take the results that  
 25 were interpreted--for example, this sample was identified

03:39 1 as containing a low level petroleum contamination, and I  
 2 want to make that point perfectly clear. We're talking  
 3 about problems with low levels of petroleum contamination  
 4 here that have been interpreted to indicate that petroleum  
 5 is present when maybe it isn't. Maybe it is. But in this  
 6 case, what you can see is the concentration of those--I'm  
 7 sorry--the concentration of those contaminants within that  
 8 sample Shushufindi SW-008 versus PAH concentration at  
 9 nanograms per liter. Nanograms per liter is parts per  
 10 trillion. It's very small. And these bars represent the  
 11 relative concentrations of those target compounds, those  
 12 target PAHs.  
 13 So, the next step, once you have this result, you  
 14 compare it to your blank, and that's called your laboratory  
 15 blank. Now, the blue bars represent the laboratory blank,  
 16 and you can see in this case up here, the laboratory blank  
 17 actually exceeds the concentration that's present in your  
 18 sample. The only conclusion you can make is that certainly  
 19 there is a blank issue with regards to that target compound  
 20 because the laboratory blank is actually the same as your  
 21 field sample. In some cases they're almost identical. If  
 22 you look at the C4 phenanthrenes you will see they're  
 23 one-to-one.  
 24 Now what about laboratory blanks that are only a  
 25 fraction of your sample? Well, that's why we use the five

03:40 1 times rule, and let me show you how that works.  
 2 The five times rule means that the field sample  
 3 must be five times greater than the blank concentration in  
 4 order to be used or be deemed reliable. So, you wouldn't  
 5 want to interpret data that failed the five times rule  
 6 because it would be unreliable and untrustworthy. So, what  
 7 you happens is, you can see here, the 5X represents the  
 8 range for the five times rule for that particular blank,  
 9 and that sample would have to be reported at 14 nanograms  
 10 per liter in order to be considered even reliable for use  
 11 in any interpretive purposes.  
 12 Next, we look at the field blanks, and in this  
 13 case you can see, in some cases the--oops, I'm sorry--the  
 14 field blanks exceed the method--the laboratory blanks, but  
 15 generally the field blanks follow the laboratory blanks.  
 16 And that's because the biggest source of contamination in  
 17 these samples is the laboratory itself, so the laboratory  
 18 blanks are the primary blanks of concern here.  
 19 Now, with water samples, it's very simple to  
 20 compare the various samples with the laboratory blanks.  
 21 For example, waters are analyzed generally at one liter  
 22 volumes. So, in order to make a comparison between blanks  
 23 and samples, you have to have the same volumes for that  
 24 comparison. The same weights, too, but that's another  
 25 story. But here it's very simple to do. You can do it

03:43 1 a soil sample, LA-16 SL002, and this was interpreted by  
 2 Chevron's experts as indicating low levels of petroleum  
 3 contamination. When they did that, they didn't normalize  
 4 the blank for that purpose. And you've got on the left  
 5 scale the PAH concentration and nanograms--micrograms per  
 6 kilogram, and then you've got the same list of PAHs on the  
 7 bottom scale.  
 8 Now, I'm using PAHs because PAHs are probably the  
 9 primary tool that we use to identify petroleum at low  
 10 concentrations because the methods are just so sensitive.  
 11 If done properly, you can actually use these to fingerprint  
 12 your sample, and they're very reliable and it's pretty much  
 13 a standard approach. And this is the approach that was  
 14 used by Ecuador's Experts.  
 15 But what you can see, now that you understand the  
 16 relationship between the red bar, which is the field  
 17 sample, and the laboratory blank, that more than 90 percent  
 18 of these compounds fail the five times rule.  
 19 Most laboratories would reject the sample if it,  
 20 in fact, only had a couple of compounds that failed the  
 21 criteria, two or three compounds. In this case, we've got  
 22 90 percent or more of the compounds failing the 5X rule.  
 23 Therefore, this soil sample is not a petroleum impacted  
 24 field sample when compared to the laboratory blank.  
 25 Indeed, the TPH value is not detect. And then the next

03:42 1 graphically and you can do it through the data validation  
 2 process as well.  
 3 But you can see that this sample is totally  
 4 rejected as being a valid result, and is totally  
 5 untrustworthy for any kind of interpretive usage. And, in  
 6 fact, it should have been re-extracted and reanalyzed under  
 7 clean conditions.  
 8 Now, soils are a little different. In some cases,  
 9 soils are measured at different weights. So, we have a  
 10 sample that is a--one weight and different from the blank  
 11 weight, and under the national functional guidelines,  
 12 blanks may not involve the same weights, volumes, or  
 13 dilution factors, and this must be taken into consideration  
 14 when applying the 5X or 10X criteria.  
 15 So, they must be basically normalized. If you do  
 16 not normalize your blank, you basically would be diluting  
 17 your blank, and you would always pass the five times rule  
 18 because you'd be diluting the blank from the laboratory.  
 19 So, for example, the laboratory releases so much  
 20 contamination into both samples and in one sample you're  
 21 dividing by one gram and in another sample you divide it by  
 22 ten. So, you're basically diluting your blank for  
 23 comparison. So, they have to be normalized for direct  
 24 comparison.  
 25 Now, why is this important? Here is an example of

03:45 1 question is well, what is the TEM? I believe that's plant  
 2 matter.  
 3 This isn't a new problem. This problem was  
 4 identified by the laboratory that performed the work back  
 5 in 2013. They recognized that they had a chronic petroleum  
 6 contamination issue that was moving through the whole  
 7 laboratory. And despite cleaning activities and following  
 8 standard operating procedures, the laboratory blanks  
 9 remained elevated. So, they had a chronic petroleum  
 10 contamination problem they needed to deal with. And we see  
 11 that in the blanks when we look at the data,  
 12 for--especially for surface water data--when we look at  
 13 that data we find those problems.  
 14 Now, why is--why are blanks important? Blanks are  
 15 important because you need to consider those blanks before  
 16 you interpret the data. Now, in addition to doing their  
 17 own validation at the laboratory, Ecuador's Experts had a  
 18 data validator review the laboratory data as well, and  
 19 these are the results in blue--I'm sorry--of the results  
 20 that you would get prior to validation.  
 21 Now, the red bar--the yellow bar, I'm sorry--for  
 22 those who are color blind, those are red--the red bars  
 23 represent the PAH distribution that is, in fact, validated  
 24 and is a reliable value, okay? And what you see here is,  
 25 instead of petroleum, you see a combustion material, and

03:46 1 it's creosote-like material. It's not petroleum at all.  
 2 This is, from my experience, this is absolutely not  
 3 petroleum. These PAH distributions of naphthalene,  
 4 acenaphthalene, phenanthrene, as well as fluoranthene and  
 5 pyrene ratios indicate that this is a creosote-like  
 6 material that's present in this sample. But you couldn't  
 7 see it because the blank basically made it more difficult.  
 8 And until you removed the rejected blank compounds, you  
 9 could then identify it.

10 Now, for this sample, the Ecuador Expert uses this  
 11 non-petroleum sample to calculate health risk.

12 Now, not only do you have to look at the  
 13 validator's results, but you also have to examine what the  
 14 validators are doing, okay? You have to review the  
 15 validator. So, the validator needs to be validated. Under  
 16 their--in their work plan or in their report, they claim  
 17 that they used the national functional guidelines 2008  
 18 criteria for reviewing the data. And that's an important  
 19 point, and I will make that in a minute.

20 This is a report from the Chevron's--not  
 21 Chevron--from the Ecuador's laboratory for a sample of  
 22 Shushufindi 43 groundwater 002, and I'm just going walk you  
 23 through what some of this information means. And this is  
 24 basically the compound you're look at, naphthalene. Over  
 25 here we have a concentration that was detected.

03:47 1 Now, the laboratory is kind enough, in the process  
 2 of doing their work, to flag the data so it tells the  
 3 person who is going to interpret the results that the data  
 4 is good, there might be problem, you want to look out for  
 5 it. In this case, a B stands for blank. That means that  
 6 there is a blank. Your blank has this compound present in  
 7 it. Whereas the J represents an estimated value.  
 8 Generally, it means that the concentration of that compound  
 9 is below what's called a quantitation limit, which is a  
 10 limit below the laboratory has defined as being an  
 11 estimated result. It's below its lowest calibration.

12 Now, the value of a U means that it's not  
 13 detected.

14 Now, carcinogenic risk was calculated by Ecuador's  
 15 Expert using a range of PAH compounds such as you see here.  
 16 These are the compounds that were used for the calculation.  
 17 And when you look at these, you will find that four of  
 18 those compounds are not detected, okay?

19 Now, under the national functional guidelines,  
 20 it's a very strict rule that when you have a compound that  
 21 has a blank present in it, and it's below the quantitation  
 22 limit, you must report it as a not detect. And that was  
 23 not done by the data validators for some reason. And when  
 24 you look at the data and you correctly correct and follow  
 25 the guideline, what you find is that all of the analytes

03:49 1 that were used for estimating carcinogenic risk were, in  
 2 fact, not detected. The Ecuador Expert used non-detect  
 3 data in their risk assessment.

4 And that's why blanks--this is why--the point I'm  
 5 trying to make is blanks are very important. They need to  
 6 be examined carefully and they need to be evaluated  
 7 relative to your field sample before you perform any  
 8 interpretive analysis.

9 Is this just a single issue? No. What I have  
 10 here are drinking water samples for these drinking waters  
 11 here, the number of compounds that Dr. Strauss used in  
 12 terms of her calculation of carcinogenic risk, the number  
 13 of PAH compounds that were actually flagged as a BJ and the  
 14 true detections of PAH compounds in these samples. Again,  
 15 calculation of carcinogenic risk based on not detects.

16 Again, is this problem with blanks just a single  
 17 issue? What I have here is just an example of a number of  
 18 samples that were used for interpretive purposes, and they  
 19 were evaluated by the--Ecuador's validator, and this number  
 20 here represents the number of target compounds that were  
 21 rejected just by their own validator.

22 Now, again, it's standard laboratory practice, and  
 23 it's written in many SOPs, including the SOP that's in the  
 24 record from me, that if you have more than two compounds,  
 25 three compounds, greater than three times your method

03:51 1 detection limit or so, you've got to re-extract the sample  
 2 and reanalyze it or reject it. This has, in some cases,  
 3 anywhere from 80 percent to 50-something percent which  
 4 could translate into ten compounds or 20 compounds. This  
 5 indicates a substantial and chronic blank problem. This  
 6 has to be addressed when you're interpreting information.

7 Now, when you add the BJ problem where these  
 8 values should have been reported as ND, you get as much as  
 9 100 percent of the target compounds rejected, using  
 10 standard national functional guidelines, 2008 vintage.

11 So, it's a real issue. It just needs to be  
 12 examined very carefully whenever you interpret data,  
 13 particularly, again, in the low level range. This is where  
 14 the problem lies. And the problem's here because what's  
 15 happening is the laboratory is pushing the envelope of its  
 16 instrumentation. They're going below. They're going lower  
 17 in detection, down in the low part per trillion range,  
 18 which they can't do because their blank level is much  
 19 higher than that, and that's why you see this extraordinary  
 20 number of rejected values.

21 Finally, I'm going to talk to you about some wipe  
 22 samples that were analyzed by Ecuador's Expert. Now,  
 23 what's a wipe? You've got to think of a wipe like a  
 24 handkerchief. A clean handkerchief. And it's very clean,  
 25 okay? And then you have--what you do is you wipe a solid

<p>Sheet 50</p> <p style="text-align: right;">1636</p> <p>03:52 1 in a certain area, and you wipe the solid and you remove  2 any contaminants that are on that solid. You then take  3 that now-contaminated handkerchief and you send it to the  4 laboratory with the blank handkerchief. It's called a  5 field blank, okay? You send it to the laboratory, and then  6 they analyze the sample and they report the results. And  7 I'm going to show you those results.  8 Ecuador's Experts took three wipe samples from  9 Lago Agrio 2 residences which they represent as ongoing  10 contamination. Am I okay? None of these three wipe  11 samples match the fingerprint of Oriente crude oil, and  12 none of these three wipe samples match the fingerprint of  13 the soil or sediment samples collected at Lago Agrio 2.  14 And let me show you how I came to that conclusion.  15 These are results from Chevron's--from Ecuador's  16 laboratory, and these represent the biomarker profiles for  17 the various samples. This represents Lago Agrio crude oil,  18 and you can see the biomarker pattern, and these are very  19 resistant to weathering and they're useful for  20 fingerprinting samples. So, you don't have to worry as  21 much that they will be altered as the oil is altered in the  22 environment, okay? And they're relatively small in  23 concentration in the oil. We use them routinely for this  24 purpose.  25 Comparison of the Lago Agrio oil to the wipe</p>	<p style="text-align: right;">1638</p> <p>03:55 1 the same laboratory, and we then plot the floor wipe  2 samples and the toy wipe samples. And the point here is  3 that we don't need sophisticated statistics to see that the  4 wipe samples are very different from those of the Lago  5 Agrio 2 oil-impacted soils and sediments and the Oriente  6 crude oil samples.  7 So, basically, what I want to--what I'm saying  8 here is that first, critical samples that were relied on by  9 Ecuador's Experts contained plant matter and laboratory  10 contamination rendering the analytical data unreliable.  11 And again, this mainly impacts surface water samples at low  12 concentrations. So, in fact, more than 50 percent of the  13 surface water samples have this problem.  14 Second, methods 8015 and EPH--not TEM--are the  15 most reliable methods for measuring TPH in the Oriente.  16 And again, I want to remind everybody, when someone says  17 TPH, the first thing you say is, what range? How did you  18 do it? What methodology?  19 And, finally, biodegradation has and continues to  20 occur in the Oriente, and the net product of biodegradation  21 over time is to reduce the TPH concentrations in the soils  22 and the toxicity and mobility of the residual oil.  23 Thank you very much.  24 PRESIDENT VEEDER: Thank you very much.  25 Any more questions?</p>
<p style="text-align: right;">1637</p> <p>03:54 1 sample, you can see particularly the proportion of these  2 compounds, T4 to T9, is very different than you can see in  3 the Lago Agrio oil, and same thing with the wipe sample  4 two.  5 And what this indicates is that these samples are  6 not related chemically. They're different. And when we  7 look at the--excuse me, when we look at the--there was a  8 third wipe sample which I think was taken from a toy wipe,  9 a toy sample--and when you compare the third wipe sample  10 for the biomarker pattern to its field blank you can see  11 that the field blank is also contaminated with similar  12 materials as well.  13 So, this wipe sample is heavily impacted by the  14 field blank itself.  15 Now, we also performed a second analysis to  16 confirm our first analysis to see if we--if it in fact made  17 sense. To do that, we performed what's called a  18 source-ratio analysis. And this is a standard methodology  19 within the forensics--petroleum forensics area. And what  20 we do is we perform--we generate a ratio of two classes of  21 PAHs, here on the "Y" axis and a ratio on the "X" axis,  22 which are characteristic of petroleum.  23 We then plot all of the information here, all of  24 the Lago Agrio 2 oil impacted soils and sediments, we  25 plotted the Oriente crude oils that were also analyzed by</p>	<p style="text-align: right;">1639</p> <p>03:56 1 MS. WOOD: Mr. President, I just have a couple of  2 clarification questions.  3 BY MS. WOOD:  4 Q. Dr. Douglas, would you go back to Slide 30.  5 MR. GARCÍA REPRESA: Mr. President, I just want to  6 put a marker on the record as to timing. I am--as you see,  7 I did not interrupt the Witness. And I just want to put a  8 marker. We went about 48 minutes-and-a-half. You set it  9 for 45. I'll ask the same indulgence when Ecuador's  10 Experts are presenting.  11 PRESIDENT VEEDER: Very well.  12 MR. GARCÍA REPRESA: And I think that this time,  13 if the Witness is going to present on direct, should be  14 added to that.  15 PRESIDENT VEEDER: Let's see how long it is.  16 MS. WOOD: Mr. President, we just had a  17 clarification, and then there was another question that I  18 thought would be helpful for the Tribunal, tying back  19 questions that were asked of Mr. Connor about weathering  20 versus biodegradation. I thought that it would be helpful  21 for the Tribunal as well as opposing counsel when he goes  22 to cross-examine Dr. Douglas that it will be clear on the  23 record.  24 PRESIDENT VEEDER: Please go ahead, but realize  25 that we may be adding the time to the Respondent's expert</p>

03:58 1 re-examination.  
 2 MS. WOOD: Certainly. Certainly.  
 3 BY MS. WOOD:  
 4 Q. Slide 30--just a clarification here,  
 5 Dr. Douglas--you said that Chevron's Experts relied on this  
 6 data, interpreted as low level contamination. Did you mean  
 7 Chevron?  
 8 A. No, I said that--I said--I meant Ecuador's  
 9 Experts. I'm sorry.  
 10 Q. Okay. Thank you.  
 11 Just very briefly, we did hear during Mr. Connor's  
 12 presentation the concept of weathering.  
 13 A. Yes.  
 14 Q. Can you just very briefly describe to the Tribunal  
 15 how weathering relates to biodegradation.  
 16 A. Sure.  
 17 There are three processes that are involved with  
 18 the loss of petroleum hydrocarbons when they are released  
 19 to the environment. Weathering represents the physical  
 20 processes of evaporation and solubilization.  
 21 Biodegradation is the next step after that. So, it's  
 22 basically the three processes.  
 23 Q. Thank you, Dr. Douglas.  
 24 MS. WOOD: No further questions now,  
 25 Mr. President.

03:59 1 PRESIDENT VEEDER: Thank you. Just one moment.  
 2 Break. How long do you need?  
 3 Let's take a 15-minute break. So, we will come  
 4 back at quarter past 4:00.  
 5 And again, we're not pressing you in any way, but  
 6 just give us some idea of how long you might be in  
 7 cross-examination?  
 8 MR. GARCÍA REPRESA: I think I can safely say that  
 9 we will not be done today.  
 10 PRESIDENT VEEDER: Fine. Okay. Fair enough.  
 11 (Brief recess.)  
 12 PRESIDENT VEEDER: Let's resume.  
 13 MR. GARCÍA REPRESA: Thank you, Mr. President.  
 14 CROSS-EXAMINATION  
 15 BY MR. GARCÍA REPRESA:  
 16 Q. Mr. Douglas, good afternoon.  
 17 A. (Off microphone) It's Doctor.  
 18 Q. That was going to be my next question, but then I  
 19 think you've answered it already. How should I address  
 20 you, and I understand it's as a Doctor?  
 21 A. Okay, as a doctor.  
 22 Q. Now, my name is José Manuel García Represa, and I  
 23 am, as you might have guessed, counsel for the Republic of  
 24 Ecuador in these proceedings. I will be asking you some  
 25 questions today and tomorrow, I believe.

04:15 1 Now, I have prepared a bundle of documents that I  
 2 will be distributing it, for now two volumes. I hope it  
 3 stays two volumes, but we may have more, and it's being  
 4 handed to you at the moment, and I will be calling the  
 5 documents in that bundle by a tab number.  
 6 I will try to keep my questions as short and  
 7 precise as possible, and I would appreciate if you could do  
 8 the same with your answers.  
 9 Now, if at any time you need clarification, by all  
 10 means please ask for it. And as you would have seen, all  
 11 of this is being recorded and transcribed, and therefore we  
 12 will need to speak slowly and try not to talk over each  
 13 other. So, please wait until I finish my question, and  
 14 I'll try to do so also with your answers. Is that all  
 15 okay?  
 16 A. Yes.  
 17 Q. Now, first of all, you told us a moment ago that  
 18 you're a partner at NewFields; is that correct?  
 19 A. Yes.  
 20 Q. And I understand that you have an ownership  
 21 interest in NewFields; correct?  
 22 A. Yes.  
 23 Q. Now, you have been retained by King & Spalding and  
 24 Chevron in this arbitration; correct?  
 25 A. Yes.

04:16 1 Q. And you were first retained in relation with the  
 2 contamination in the Concession Area sometime in 2004, I  
 3 believe you said in your direct; is that correct?  
 4 A. Yes.  
 5 Q. And 2004 was about the same time that you began  
 6 working at NewFields; correct?  
 7 A. I think we started at NewFields in February 2004.  
 8 Q. And were you retained--was NewFields retained  
 9 before or after February 2004?  
 10 A. I don't recall for sure. It was earlier in 2004,  
 11 yes. I wasn't--I wasn't working on the project until,  
 12 like, November or December.  
 13 Q. Okay. So, you have basically been involved with  
 14 this dispute for a bit over ten years by now; correct?  
 15 A. Yes.  
 16 Q. Have you ever been to Lago Agrio, sir?  
 17 A. No.  
 18 Q. Have you ever been to Ecuador?  
 19 A. No.  
 20 Q. Okay. And I notice that in the First Expert  
 21 Report that you submitted in these proceedings you  
 22 indicated that your work for Chevron over the past five  
 23 years--and that was in the Year 2010 Report--represented  
 24 less than 5 percent of the gross income of NewFields, but  
 25 you did not make similar statements in your two following

04:18 1 reports of 2013 and 2015.  
 2 MS. WOOD: Objection, counsel. Would you mind  
 3 referring him to a page in his First Report that you are  
 4 talking about.  
 5 MR. GARCÍA REPRESA: We could represent that it's  
 6 at Paragraph 5 of the First Report. We don't need to go  
 7 through that, because my question is about the Second and  
 8 Third Reports.  
 9 MS. WOOD: But if you're asking him to compare the  
 10 two, then would it be helpful for him--  
 11 PRESIDENT VEEDER: Show him the first passage.  
 12 BY MR. GARCÍA REPRESA:  
 13 Q. You can go to your First report at Paragraph 5,  
 14 sir, and confirm that there you make a note that NewFields'  
 15 revenues derived from your work over the last five years  
 16 have been less than 5 percent of the gross income of  
 17 NewFields.  
 18 Do you confirm that?  
 19 A. Oh, yes.  
 20 Q. Do you confirm that you do not make a similar  
 21 statement in your 2013 and 2015 Reports?  
 22 A. I don't know. I don't know if I made the  
 23 statement or not.  
 24 Q. Well, I will represent that to you, and if I'm  
 25 wrong, I'm sure my colleagues will point that out on

04:20 1 Q. Now, I understand that you are aware at least a  
 2 member of something called the Petroleum Environmental  
 3 Research Forum, or the PERF; correct?  
 4 A. Yes. Yes.  
 5 Q. And you actually mention in your Reports that  
 6 you're part or you were part of a working group within PERF  
 7 called the Total Petroleum Hydrocarbons Working Group;  
 8 correct?  
 9 A. I did participate in that, yes.  
 10 Q. Now, the PERF, as I understand, is a research and  
 11 development joint venture whose members are corporations  
 12 engaged in the petroleum industry; correct?  
 13 A. I didn't know--I don't recall if they were  
 14 corporations and Government agencies.  
 15 Q. Well, I just read what's on the Web, so we can all  
 16 confirm that.  
 17 Now, do you recall whether the following companies  
 18 are members of PERF:  
 19 British Petroleum?  
 20 A. Yes.  
 21 Q. Chevron?  
 22 A. Yes.  
 23 Q. ConocoPhillips?  
 24 A. Yes.  
 25 Q. ExxonMobil?

04:19 1 redirect.  
 2 Now, let me ask you the question. What percentage  
 3 of NewFields' gross revenues over the last five years is  
 4 associated with you or anyone else's work, anyone else's at  
 5 NewFields' work for Chevron both in this dispute and in  
 6 other disputes?  
 7 A. I'd be guessing at 5 percent.  
 8 Q. And do you have a dollar figure for that?  
 9 A. No.  
 10 Q. So, how do you--what's your guess based on?  
 11 A. Just on the amount of work that we do.  
 12 Q. Before 2004, had you done any work for Chevron?  
 13 A. I think--I think I had had years earlier. Yes.  
 14 Q. When, more or less? Do you know?  
 15 A. In the Nineties, I think I did some work for  
 16 Chevron.  
 17 Q. Was that as an employee of Chevron, as a  
 18 consultant of Chevron?  
 19 A. As a consultant.  
 20 Q. And who did you work with at Chevron before 2004?  
 21 A. I'm trying to remember his name. I'll have to  
 22 think about that. I'll get back to you. I forgot his  
 23 name. It's been so long.  
 24 Q. Okay. Was it anyone involved in this dispute?  
 25 A. No.

04:22 1 A. Yes.  
 2 Q. But you never mentioned in your Reports when you  
 3 referred to the PERF that this is an industry organization,  
 4 do you?  
 5 A. No.  
 6 Q. And actually the PERF was presided or chaired by a  
 7 Chevron employee by the name of Sara McMillen between 1997  
 8 and 2008; correct?  
 9 A. I don't know for sure on the dates, but that's--I  
 10 believe that's true.  
 11 Q. And can you tell us what Ms. McMillen's position  
 12 is at Chevron?  
 13 A. Senior Technical Adviser.  
 14 Q. And I understand that you know Ms. McMillen;  
 15 right?  
 16 A. Yes.  
 17 Q. How long have you known her?  
 18 A. I would say since the Nineties.  
 19 Q. Early Nineties, late Nineties?  
 20 A. Early to mid-Nineties.  
 21 Q. And I understand that you worked professionally  
 22 with Ms. McMillen for over 20 years by now; correct?  
 23 A. On some projects, yes, as a consultant.  
 24 Q. But you also co-authored certain articles with  
 25 Ms. McMillen; correct?



04:23 1 A. That is correct.  
 2 Q. How many would you say?  
 3 A. A couple.  
 4 Q. Well, I've counted three in your CV. Do you want  
 5 to take my word for it or--  
 6 A. I'll take your word for it. That sounds about  
 7 right.  
 8 Q. Now, you also published two books with  
 9 Ms. McMillen, either with her as editor or as co-author;  
 10 correct?  
 11 A. Yes.  
 12 Q. And those books were published in 1995 and in  
 13 2001; right?  
 14 A. I'll have to take your word for it. I don't  
 15 remember the exact dates of those books.  
 16 Q. Okay. Now, I understand that you also know  
 17 Ms. Elizabeth Harvey; correct?  
 18 A. Yes.  
 19 Q. She's also a scientist at Chevron, isn't she?  
 20 A. I don't think she is--I think she retired.  
 21 Q. She was a scientist at Chevron?  
 22 A. I believe so, yes.  
 23 Q. Was she at Chevron when you worked with her?  
 24 A. I believe so, yes.  
 25 Q. How long have you known her?

04:24 1 A. We worked on a paper that we presented at a  
 2 meeting at one time, so whatever the date of that paper  
 3 was, probably I'd have to say in the Nineties.  
 4 Q. Okay. And actually, if it may help, on the basis  
 5 of your CV that's attached to your Report, we see that in  
 6 2002 you published an article with Ms. Harvey and  
 7 Ms. McMillen titled "Total Petroleum Hydrocarbons Detected  
 8 in Naturally Occurring Materials."  
 9 Is that the article you had in mind or was there  
 10 another one?  
 11 A. No, that's the one I was thinking about.  
 12 Q. Now, in addition to this dispute, do you have any  
 13 other experience working in disputes for Chevron?  
 14 A. I believe I have a--I'm working on a gas station  
 15 site for Chevron.  
 16 Q. At the moment?  
 17 A. It's been delayed, but it's ongoing, yes.  
 18 Q. But that's not mentioned in your January 2015  
 19 Report, is it?  
 20 A. I don't think so.  
 21 Q. Now, in addition to this dispute, do you have any  
 22 other experience working with, for example, Dr. Connor of  
 23 GSI?  
 24 A. I worked with Dr. Connor once on a project in  
 25 Yemen.

04:26 1 Q. And that was it?  
 2 A. This project. There may be others. I don't  
 3 remember.  
 4 Q. Do you remember by any chance the arbitration  
 5 between Burlington and Ecuador?  
 6 A. I heard about it, but I think we may have done  
 7 some analysis for Mr. Connor.  
 8 Q. Do you recall authoring a sheen sample evaluation  
 9 report for GSI in the context of the Burlington versus  
 10 Ecuador arbitration?  
 11 A. I wasn't sure about--when you say Burlington, I  
 12 wasn't sure what you meant. I know that it was a report,  
 13 and I believe we did do a sheen analysis, yes.  
 14 Q. Now, Burlington is Burlington Resources--  
 15 A. Okay.  
 16 Q. --Inc., which is a subsidiary or an affiliate of  
 17 ConocoPhillips. Does that refresh your recollection?  
 18 A. No, no. It was just a sheen sample that came  
 19 through our lab--I mean, we had it analyzed, and then we  
 20 wrote a report about it. That's about the extent of it.  
 21 Q. And you authored that report, did you not?  
 22 A. I believe so.  
 23 Q. And you authored the same or a similar report  
 24 because in that respect the cases are similar in the case  
 25 by Perenco against Ecuador, did you not?

04:27 1 A. I'd have to see a copy of that. I don't recall  
 2 that.  
 3 Q. Okay. And in addition to this dispute, have you  
 4 worked in any other--do you have any other experience with  
 5 the law firm of King & Spalding?  
 6 A. No.  
 7 Q. Are you aware of any other individuals within  
 8 NewFields that would have worked in other disputes for  
 9 Chevron, GSI, or King & Spalding?  
 10 A. I believe one of our folks, Shahrokh Rouhani, had  
 11 done some work for King & Spalding.  
 12 Q. And that was in the Burlington v. Ecuador Case,  
 13 was it not?  
 14 A. I didn't know exactly what case it was.  
 15 Q. Now, before we move on to the more technical  
 16 topics, I'd like to confirm a few things about your area of  
 17 expertise, and I will try to move on quickly because you  
 18 probably recall that you were deposed, and I think we can  
 19 streamline the process if you can confirm for me a few  
 20 things.  
 21 First of all, I understand that you do not  
 22 consider yourself to be an expert in ecological or natural  
 23 resource impacts from petroleum operations; correct?  
 24 A. That's correct.  
 25 Q. And you're also not an expert on impacts from

04:29 1 petroleum operations on particular species; correct?  
 2 A. Yes, that's correct.  
 3 Q. Nor on human or animal health impacts from  
 4 petroleum operations; correct?  
 5 A. That's correct.  
 6 Q. You're also not an expert on human or animal  
 7 toxicology, are you?  
 8 A. No, that's correct.  
 9 Q. You're also not an expert in risk assessment, are  
 10 you?  
 11 A. That's correct.  
 12 Q. And you're also not an expert in what we know as  
 13 the TCLP method of analysis, are you?  
 14 A. No.  
 15 Q. And to be clear, the TCLP is a method that's  
 16 designed to determine the mobility of organic and inorganic  
 17 analytes present, for example, in liquids and soil;  
 18 correct?  
 19 A. Correct.  
 20 Q. So, you're not purporting to be expressing any  
 21 opinion on the efficacy of the TCLP method as it relates to  
 22 this case, are you?  
 23 A. No.  
 24 Q. Are you an expert in physical chemistry?  
 25 A. Only as it applies to my own work to some degree.

04:32 1 that, this is what I'm asking you to do, just raise a flag.  
 2 A. Okay.  
 3 Q. My question was, rather: Given your analysis of  
 4 fresh crude oils from the Oriente Region in Ecuador whether  
 5 you know what is the maximum mass of crude oil that will  
 6 dissolve in a liter of water.  
 7 A. The Oriente Crude?  
 8 Q. Yes.  
 9 A. I haven't done that study, so I don't know a  
 10 value.  
 11 Q. And you do not know what the range of values could  
 12 be, what would be the maximum, I guess the minimum will be  
 13 zero, but the maximum?  
 14 A. I couldn't tell you the maximum. It's in the  
 15 parts per million range. I mean, that's about what I can  
 16 tell you without doing the actual water solubility study to  
 17 measure it.  
 18 Q. Okay. Now, in your last report--and again, you  
 19 are most welcome to look at your Reports if you want that  
 20 I'm talking about, the one from January 2015--you described  
 21 the scope of your work as being to evaluate the  
 22 environmental chemistry expert opinion by Dr. Jeffrey Short  
 23 in his November 7, 2014 Report, and to review the integrity  
 24 and validity of environmental data collected by Ecuador's  
 25 Environmental Experts of LBG during their 2013 and 2014

04:30 1 Q. Okay. And part of your work in these proceedings  
 2 was to analyze, you said in your direct, various types of  
 3 Ecuadorian crude; right?  
 4 A. That is correct, yes.  
 5 Q. Now, would any of those Ecuadorian Oriente Crude  
 6 possibly lead to a dissolution of more than a thousand  
 7 milligrams per liter of crude oil in water?  
 8 A. Under what conditions?  
 9 Q. Let's say under standard temperature and standard  
 10 pressure.  
 11 A. So, basically, you would float the Ecuadorian  
 12 crude on a liter of water, and you'd say--  
 13 Q. What would be the maximum dissolution, the maximum  
 14 mass that would dissolve into one liter.  
 15 A. Okay. I haven't done that analysis. Are you  
 16 asking me to guess?  
 17 Q. I'm not asking you to guess.  
 18 A. Okay.  
 19 Q. If at any point you think that I'm asking you to  
 20 guess, just raise the flag because that's not what we are  
 21 here for. Okay. This is not a memory test.  
 22 A. Right.  
 23 (Pause.)  
 24 Q. I was asking you or rather clarifying that I will  
 25 not be asking you to guess at any point, and if you think

04:33 1 field investigations.  
 2 Do you see that?  
 3 A. Yes.  
 4 Q. Is that an accurate statement?  
 5 A. Yes.  
 6 Q. You represented in your Reports having performed  
 7 an independent third party peer review of Dr. Short's and  
 8 LBG's reports; correct?  
 9 A. I'm sorry, where is that?  
 10 Q. Well, let me ask in the affirmative. Are you--  
 11 PRESIDENT VEEDER: I think if you're reading, for  
 12 our sake, you've got to give the reference.  
 13 MR. GARCÍA REPRESA: Right. And I was not  
 14 reading. This is why I'm going to put it in the--  
 15 PRESIDENT VEEDER: You were earlier and you didn't  
 16 give us the reference.  
 17 MR. GARCÍA REPRESA: Yes, and you're absolutely  
 18 right, Mr. President. The reference was at Page 1.  
 19 PRESIDENT VEEDER: We found it, but for the  
 20 Transcript, we'd like you to say it.  
 21 MR. GARCÍA REPRESA: Yes, I will give you the  
 22 references as we go along.  
 23 BY MR. GARCÍA REPRESA:  
 24 Q. Are you sitting here today representing to this  
 25 Tribunal having performed an independent third-party peer

04:34 1 review of Dr. Short's and LBG's reports, are you not?  
 2 A. I have examined the data, yes.  
 3 Q. That was not my question, but I will repeat it.  
 4 Are you representing to this Tribunal, having  
 5 performed an independent third-party peer review of  
 6 Dr. Short's and LBG's reports? Yes or no?  
 7 A. I'm not quite sure I understand the question. I  
 8 mean, I reviewed the data. And from that data, I derived  
 9 this Report.  
 10 Q. Did you do an independent review of the data?  
 11 A. I'm kind of confused about your term  
 12 "independent."  
 13 Q. Well, as an expert, testifying Expert--  
 14 A. Right.  
 15 Q. --I having read your Reports--  
 16 A. Right.  
 17 Q. --I would have assumed that you viewed your  
 18 Mission as that of an independent expert, but I may be  
 19 wrong, but this is what I'm trying to clarify.  
 20 Do you consider yourself an independent expert in  
 21 these proceedings? Yes or no.  
 22 A. Yes, of course.  
 23 Q. Now, if you could please take a look at Page 6 of  
 24 your 2013 report, so we are changing the Report now. We're  
 25 going to your Second Report.

04:35 1 MR. GARCÍA REPRESA: If it's convenient to the  
 2 Tribunal, you will find it at Tab 2 of the bundle.  
 3 BY MR. GARCÍA REPRESA:  
 4 Q. Are you with me, sir?  
 5 A. Yes.  
 6 Oh, I have my Expert report here.  
 7 Q. Thank you.  
 8 Now, you indicate at Page 6, and I'm looking here  
 9 at the very first paragraph below Title 3, second sentence.  
 10 It says: "Having worked at other oil field sites, I can  
 11 say without exception that the Chevron environmental data  
 12 program is the most detailed and extensive environmental  
 13 chemistry program performed to date both with regards to  
 14 the number of sites tested and the chemical analyses  
 15 performed."  
 16 Do you see that?  
 17 A. Yes.  
 18 Q. Should I understand that you are referring to the  
 19 Chevron program performed for the Lago Agrio Litigation?  
 20 Is that what you're saying?  
 21 A. Yes.  
 22 Q. So, your Statement here is limited to that  
 23 litigation. You're not purporting to say, are you, that  
 24 what Chevron did is the most detailed and extensive program  
 25 that you have seen in your practice, is it?

04:37 1 A. It's certainly the most extensive that I've seen.  
 2 The number of sites that we performed biodegradation  
 3 studies on was extensive. The tools that were used were  
 4 cutting edge. I thought it was--yes, it was extensive.  
 5 Q. Okay. And you go on to say in the next paragraph  
 6 that, and I quote: "Chevron went to great lengths to  
 7 ensure the quality and transparency of all of the  
 8 laboratory analyses."  
 9 Do you see that?  
 10 A. Yes.  
 11 Q. Are you aware, sir, of the Pre-Inspections  
 12 performed by Chevron?  
 13 A. I wasn't aware of those, no.  
 14 Q. So, when you made this statement, you were not  
 15 aware that there were Pre-Inspections, were you?  
 16 A. I became aware of the Pre-Inspections after my  
 17 deposition or before my deposition and reading LBG Reports.  
 18 Q. That was after this Report of June 2013?  
 19 A. I don't know the date.  
 20 Q. Your deposition was September 2013.  
 21 A. Okay. So, I learned about the PI--the  
 22 preliminary--  
 23 Q. Pre-Inspection.  
 24 A. --Pre-Inspections from the LBG Reports. I wasn't  
 25 aware of those.

04:13 1 Q. So, when you made this statement you were not  
 2 aware; correct?  
 3 A. Yeah--well, let's look at the date.  
 4 September 3rd, 2010, and my deposition was what date?  
 5 Q. We will get to it. It's in your binder.  
 6 A. It was in preparation for Dr. Short's deposition  
 7 that I found that information.  
 8 Q. Okay. Fair enough.  
 9 Now, the first reason that you gave in your 2013  
 10 Report for the comments that we just read is, as we can see  
 11 at Title 3.1, your Statement that Chevron performed the  
 12 standard analytical methods that were defined in the  
 13 jointly prepared and Court-ordered Analysis Plan.  
 14 Do you see that?  
 15 A. Yes, I do.  
 16 Q. And you go on to explain in the first paragraph  
 17 below, that the analytical methods defined in the AP  
 18 (Analysis Plan) are consistent with methods recommended by  
 19 the American Petroleum Institute (API), and the TPH  
 20 Criteria Working Group (TPHCWG) and others for petroleum  
 21 impacted Exploration and Production E&P sites.  
 22 Do you see that?  
 23 A. Yes.  
 24 Q. Now, I would like to look now so that it's clear  
 25 where we're going at each of the sources that you cite

04:40 1 there.  
 2 Now, the first one is the American Petroleum  
 3 Institute, API, and we can see there is a footnote called  
 4 Footnote 15 that takes us to a 2001 document, Exhibit 2 to  
 5 your Report.  
 6 Do you see that?  
 7 A. Yes.  
 8 Q. And we will take a look at that document.  
 9 Before we do that, the API is a trade association  
 10 of the oil-and-gas industry in the U.S.; correct?  
 11 A. That is correct.  
 12 Q. And Chevron and Ms. McMillen, among others,  
 13 contributed to this source that you cite in here,  
 14 Footnote 15; correct?  
 15 A. Yes.  
 16 Q. Now, that is nowhere mentioned in your Reports, is  
 17 it, neither in this one nor in any other of your Reports  
 18 where you cite to the API; correct?  
 19 A. I don't believe so.  
 20 Q. You believe it is explained or you believe it is  
 21 not explained in your Report?  
 22 A. No, I mean it's not cited in my Reports.  
 23 Q. You do not think that would have been relevant to  
 24 this Tribunal to know that you're citing to a paper that  
 25 was actually prepared with the assistance of Chevron and

04:41 1 Ms. McMillen?  
 2 A. I didn't see the relevance, no.  
 3 Q. Okay. And we can go to Tab Number 9 of Volume 1  
 4 where we can see that paper.  
 5 Now, if you can please count with me because the  
 6 pages--or we can--actually the pages are numbered. We can  
 7 go to the Roman numeral five at very beginning, it begins  
 8 with "ACKNOWLEDGMENTS" at the top.  
 9 A. I don't have a Roman numeral five.  
 10 Q. Are you at Tab Number 9, sir?  
 11 A. Tab Number 9, yes.  
 12 Q. And within Tab Number 9, this is the article that  
 13 you cite at Footnote 15.  
 14 PRESIDENT VEEDER: Forgive me, there are two  
 15 fives, that's the problem.  
 16 MR. GARCÍA REPRESA: Roman numeral five. You have  
 17 two? It's true, you have two. It's the first--  
 18 PRESIDENT VEEDER: Let's go to the first--  
 19 MR. GARCÍA REPRESA: It's the first Roman numeral  
 20 five, it gets complicated but you should have the word  
 21 "ACKNOWLEDGMENTS" in capital bold.  
 22 BY MR. GARCÍA REPRESA:  
 23 Q. Are you on that page, sir?  
 24 A. Which page?  
 25 Q. Count with me from the very beginning, you will

04:42 1 turn one, two, and three pages.  
 2 A. Yes.  
 3 Q. And you will see a page that says  
 4 "ACKNOWLEDGMENTS" at top; right?  
 5 A. Oh, yes.  
 6 Q. So, here we have the acknowledgments. I  
 7 understand this is who contributed to this document;  
 8 correct?  
 9 A. Yes.  
 10 Q. And if we look at it from the top down, the second  
 11 block it says: "The API Production Waste Issue Group is  
 12 acknowledged for providing funding for this manual."  
 13 Correct?  
 14 A. Yes.  
 15 Q. Now, that issue group was actually chaired by  
 16 someone at Chevron, wasn't it?  
 17 A. It says at the bottom, yes, Sara McMillen,  
 18 Chairperson and Evan Sedlock, Chairperson.  
 19 Q. Exactly. We'll look at the line at the very  
 20 bottom of this, we can see that Evan Sedlock, Chairperson  
 21 of PWIG, which is that Production Waste Issue Group,  
 22 actually Chair of that group, and with someone at Chevron.  
 23 Is this someone with whom you have worked in the past, sir?  
 24 A. No.  
 25 Q. Now, we go back now to the top part. We also see

04:43 1 that the "API would like to thank the companies that  
 2 participated in the Petroleum Environmental Research Forum,  
 3 PERF Project 97-08 for their permission to publish this  
 4 manual."  
 5 Do you see that?  
 6 A. Yes.  
 7 Q. And that PERF was chaired by someone at Chevron;  
 8 correct?  
 9 A. I know this document was chaired by--  
 10 Q. Well, if you go to the very bottom, right above  
 11 the name we were looking at, Evan Sedlock, you will find  
 12 the name of Ms. Sara McMillen, Chairperson PERF 97-08.  
 13 (Overlapping speakers.)  
 14 PRESIDENT VEEDER: That's Rule Number 2. We can't  
 15 have people overtalking each other. Question, pause,  
 16 answer, pause.  
 17 MR. GARCÍA REPRESA: Apologies.  
 18 BY MR. GARCÍA REPRESA:  
 19 Q. So, let's try to go a bit slower. The PERF was  
 20 chaired by Ms. McMillen who was affiliated with Chevron;  
 21 correct?  
 22 A. Yes.  
 23 Q. Now, you can look at the rest of the document, but  
 24 I put to you that, in addition to those two persons that we  
 25 just saw from Chevron, there were another two employees of

04:45 1 Chevron who contributed to this manual. And we have their  
2 names further below, Renae Magaw, and someone by the  
3 name--rather someone from Texaco, Skip Dees.  
4 Do you see those names?  
5 A. Yes.  
6 Q. Now, this was, and we can go back to your Report  
7 where we were looking at, which was at Page 6 of your 2013  
8 Report. This is the first source that you cited for the  
9 proposition that the analytical methods defined in the  
10 Analysis Plan were consistent with recommended methods, so  
11 this is the first entity that recommended a method. And to  
12 confirm, this method here is being recommended in 2001, the  
13 paper that we're looking at, excuse me, was a 2001 paper;  
14 correct?  
15 A. Yes.  
16 Q. Now, the second source that you cite to in that  
17 paragraph at Page 6 of your 2013 Report is the TPH Criteria  
18 Working Group, TPHCWG.  
19 Do you see that?  
20 A. Yes.  
21 Q. Now, that group, as we saw before, is part of the  
22 PERF; correct?  
23 A. Yes.  
24 Q. Now, if you look at the first footnote there,  
25 Footnote 16, you're referring to a 1993--excuse me, to the

04:46 1 fact that the group was formed in 1993, and you are  
2 referring to Exhibit 5; correct?  
3 A. Exhibit 5, yes.  
4 Q. And you will find Exhibit 5 to your 2013 Report at  
5 Tab Number 10 of the bundle I just gave you, which should  
6 be the next tab.  
7 A. Yes.  
8 Q. The organization that published this paper was  
9 sponsored by Chevron; correct?  
10 A. Among others, yes.  
11 Q. And you will see that, if you turn the page once,  
12 we have the organization that sponsored or contributed to  
13 this document, the first of which is the API, American  
14 Petroleum Institute; correct?  
15 A. Yes.  
16 Q. You have two associations, and then you have  
17 British Petroleum, Chevron, Exxon, Retec, Shell, the U.S.  
18 Air Force and the University of Massachusetts; correct?  
19 A. That's correct.  
20 Q. Now, you do not mention anywhere in your Reports  
21 that this source had a contribution by Chevron, do you?  
22 A. No, I referenced the document, and the document  
23 contains the information if it's so needed.  
24 Q. This was a 1998 paper; correct?  
25 A. Yes.

04:48 1 Q. And if you turn the pages until you reach a page  
2 that's number--Roman numeral 11 at the bottom, you  
3 will--you should be finding acknowledgments on the very  
4 top.  
5 Do you see that?  
6 A. Acknowledgments, yes.  
7 Q. Okay. And we can see at the very top the  
8 paragraph that begins "with a special thanks to BP Oil for  
9 their strong support." Correct?  
10 A. Yes.  
11 Q. And we can see in the second paragraph that it  
12 says "additionally, the following persons and organizations  
13 contributed significantly"--excuse me--"significant amounts  
14 of in-kind support towards the completion of this  
15 document," and the third person that's mentioned is  
16 Ms. Harvey of Chevron; correct?  
17 A. Yes.  
18 Q. But you never specify in your Reports that you're  
19 signing to documents where Chevron participated?  
20 A. I really didn't see that it was necessary. I  
21 provided the documents and the references and the  
22 acknowledgments are in the documents.  
23 Q. Okay. And if we go back to your Report, 2013,  
24 where we were--you know how the exercise is working, I  
25 think the next one is going to be an easy one. Let's look

04:50 1 at the second footnote that you have right after the words  
2 "TPH Criteria Working Group."  
3 A. I can't see that.  
4 Q. You should have it on paper in any event.  
5 A. What tab is the Report, then? I will go to that.  
6 Q. Tab 2, but I think you have the--  
7 A. Now it's back, it's back.  
8 Q. As you wish.  
9 So, in that Page 6 at the bottom, you see at  
10 Footnote 17, which is the third source that you've cited in  
11 that paragraph that we were reading from.  
12 A. Yes.  
13 Q. McMillen, that's an employee of Chevron; correct?  
14 A. Yes.  
15 Q. S. Magaw, that's an employee of Chevron; correct?  
16 A. Yes.  
17 Q. And someone else.  
18 A. Yes.  
19 Q. This is at Exhibit 6 of your Report. Again, you  
20 do not mention anywhere in your Reports, that the two  
21 persons we just saw, the first two persons we just saw were  
22 employees of Chevron, do you?  
23 A. No. These are the references that I relied on, so  
24 I just reported the references.  
25 Q. Okay. And we keep reading the paragraph at the

04:51 1 bottom of Page 6 of your 2013 Report, after API and TPHCWG  
 2 you refer to others, and we have a footnote, Footnote 18,  
 3 that takes us to a document from the Canadian Council of  
 4 Ministers of 2008; correct?  
 5 A. Yes.  
 6 Q. And the title is "Canada-Wide Standards for  
 7 Petroleum Hydrocarbons in soil."  
 8 Do you see that?  
 9 A. Yes, I do.  
 10 Q. Now, do you agree that these standards apply in  
 11 Canada?  
 12 A. No, they had to do with the analytical methods  
 13 that they were using and the GC/FID approach was defined in  
 14 there.  
 15 Q. So, these standards do not apply in Canada?  
 16 A. Oh, I believe so, yes.  
 17 Q. Because that was my question.  
 18 A. It says "Canada-Wide Methods for Petroleum  
 19 Hydrocarbons in soil."  
 20 Q. And do you agree that these standards only apply  
 21 to soil?  
 22 A. I'd have to review the paper, it's been many  
 23 years.  
 24 Q. Fair enough. You will have it at Tab Number 13,  
 25 and you will see at the bottom right corner, you have the

04:52 1 page numbering. If you go to Page Number 2 you will see in  
 2 the second paragraph that the PHC-CWS, and I represent, and  
 3 represent and it's defined right above that the PHC is  
 4 Petroleum Hydrocarbons, and CWS is Canadian-Wide Standards.  
 5 So the second paragraph says, the Petroleum Hydrocarbons  
 6 Canadian-Wide Standards is a remedial standard for  
 7 contaminated soil and subsoil occurring in four land-use  
 8 categories.  
 9 Does this refresh your recollection as to the  
 10 scope of these standards?  
 11 A. Well, it refreshes my recollection on why I  
 12 referenced it, and I referenced it because of the  
 13 methodologies that they were using as an example of  
 14 methodologies that were consistent with those used in the  
 15 Oriente.  
 16 Q. You agree that these standards do not apply to  
 17 matrices other than soil and subsoil, do you not?  
 18 A. I'm not an expert in whether they're risk  
 19 assessment standards. I mainly focused on the  
 20 methodologies. That's pretty much what I looked at.  
 21 Q. Okay. And do you agree that the methodologies  
 22 that--before we go there--that these standards, what they  
 23 describe here expressly exclude from the scope of  
 24 application known carcinogens such as benzene, toluene,  
 25 ethylbenzene, and xylenes, otherwise known as BTEX? Do you

04:54 1 agree?  
 2 A. I need to spend a minute looking at this.  
 3 Q. You will find that at Page 3, it's the very next  
 4 page, top paragraph, "definitions," and you will see  
 5 fourth line down, I will read for the record: PHC  
 6 exclude--for purposes of this standard--known carcinogens  
 7 such as benzene, benzoapyrene, which are addressed as  
 8 target compounds. "Because of the relatively long history  
 9 of managing toluene, ethylbenzene and xylenes (TEX)."  
 10 A. Yes, and this would be consistent with the methods  
 11 I was referencing.  
 12 Q. Now, if you go back to--you should keep this open,  
 13 by the way, and take the spiral-bound volume you have in  
 14 front of you which has your three Reports.  
 15 A. This?  
 16 Q. No, right. In front of that black binder, you  
 17 have another volume.  
 18 A. Oh, this one.  
 19 Q. Exactly, that has your Reports. You can go to  
 20 Page 6 of your 2013 Report, is what we were looking at, and  
 21 I was focusing on the very last paragraph where you are  
 22 justifying the analytical methods that were defined in the  
 23 Analysis Plan, and we looked at the sources that you signed  
 24 for your opinion, and now let's look at the method that was  
 25 referred to in the Analysis Plan.

04:56 1 You said the Analysis Plan target compound list  
 2 focused on the USEPA SW846 Method 8270 priority pollutant  
 3 Polycyclic Aromatic Hydrocarbon (PAH) compounds.  
 4 Do you see that?  
 5 A. Yes.  
 6 Q. You cited, and we were looking at the Canada-Wide  
 7 Standards, you cited these standards for support for the  
 8 method we just read, USEPA SW846 Method 8270; correct?  
 9 A. No, mainly I cited them for the GC/FID  
 10 methodologies that are included in those methods, and I  
 11 believe some of them do have the 8270 present in them as  
 12 well.  
 13 Q. Now, I put it to you--and I will be happy to be  
 14 corrected--that the Canada-Wide Standards do not mention  
 15 anywhere Method 8270.  
 16 Let me complete that for the question.  
 17 Can you point me to anywhere in the Canada-Wide  
 18 Standards where I will find a reference to Method 8270?  
 19 A. No, I was referencing the Canada-Wide Standards  
 20 for the GC/FID analysis that they use.  
 21 Q. And that GC/FID analysis, what you are telling us  
 22 in your 2013 Report, is that it focused on the priority  
 23 pollutant Polycyclic Aromatic Hydrocarbon compounds;  
 24 correct?  
 25 A. What page is that? Yes, that's right.

04:58 1 USEPA SW846.  
 2 Q. Yes, that, to be clear, is 16 PAH compounds;  
 3 correct?  
 4 A. That is correct.  
 5 Q. And generally, PAHs, as I think you said on  
 6 direct, are the most persistently toxic class of  
 7 hydrocarbons in crude oil; correct?  
 8 MS. WOOD: Objection. I believe you've  
 9 mischaracterized his testimony.  
 10 MR. GARCÍA REPRESA: Well I don't think so, but I  
 11 can ask the question directly. No problem.  
 12 BY MR. GARCÍA REPRESA  
 13 Q. Are PAHs the most persistently toxic class of  
 14 hydrocarbons in crude oil?  
 15 MS. WOOD: I will also just object because I  
 16 believe--I know toxicology, as you established earlier when  
 17 you were cross-examining him, Dr. Douglas is not an expert  
 18 in toxicology, so I believe that this is an inappropriate  
 19 question for this Witness. There is a toxicologist who  
 20 will be testifying after Dr. Douglas.  
 21 PRESIDENT VEEDER: With this Witness, let's move  
 22 on.  
 23 MR. GARCÍA REPRESA: I will just point out for the  
 24 record that I heard this Expert speak about the toxic  
 25 nature of PAHs, and he does that in his direct and he does

05:01 1 Is this a document that relates to the Kalamazoo  
 2 River oil spill you were referring to during your direct?  
 3 A. No.  
 4 Q. And excuse me, you're absolutely right. I should  
 5 have said Delaware River, as it is said on the first page.  
 6 PRESIDENT VEEDER: Go ahead.  
 7 BY MR. GARCÍA REPRESA:  
 8 Q. Let's take a step back. You are one of the  
 9 Authors of this document, are you not?  
 10 A. Yes, I am.  
 11 Q. This is a 2005 paper evaluating the composition  
 12 and potential environmental fate and toxicity of heavy  
 13 Venezuelan crude oil released in the Delaware River;  
 14 correct?  
 15 A. This is a technical report prepared for industrial  
 16 economics, and there are three separate Authors with three  
 17 different areas of expertise.  
 18 Q. Correct.  
 19 If you can please turn the page until you reach  
 20 Page 13, and you will see the numbers at the top right  
 21 corner. If you're on the same page, you should be seeing a  
 22 title 4.2.2, Polycyclic Aromatic Hydrocarbons, otherwise  
 23 known as PAHs; correct?  
 24 A. Yes.  
 25 Q. And if we read from the first paragraph, "overall,

04:59 1 that in his Report. So, there is some limited and he can  
 2 always say that he doesn't know if that's his answer.  
 3 PRESIDENT VEEDER: You disqualified him as a  
 4 toxicology Expert. It's a little difficult now for you to  
 5 cross-examine him.  
 6 BY MR. GARCÍA REPRESA:  
 7 Q. I would like you to go to Tab 19. You mentioned  
 8 in your direct--  
 9 PRESIDENT VEEDER: Stop, stop, stop. We've got to  
 10 change bundles. What Tab is it?  
 11 MR. GARCÍA REPRESA: 19.  
 12 PRESIDENT VEEDER: Tab 19 relates to the Delaware  
 13 River M/T ATHOS I Oil Spill.  
 14 MR. GARCÍA REPRESA: I know it as the Kalamazoo  
 15 River spill. This is why I was a bit confused. And let me  
 16 establish that my understanding is correct.  
 17 BY MR. GARCÍA REPRESA:  
 18 Q. Dr. Douglas, you mentioned in your direct that you  
 19 were doing work in relation to the Kalamazoo River spill?  
 20 A. That's correct.  
 21 Q. Is that correct?  
 22 A. That's correct.  
 23 Q. And my indication was just wait until I complete  
 24 the question, give a two second pause, otherwise we will  
 25 hear David.

05:03 1 in our view," I understand this is a collective view, it's  
 2 the view of the Authors?  
 3 A. Yes, it is a collective--no, it's not a collective  
 4 view. I was on a Commission to evaluate the chemistry of  
 5 the oil, and I provided that data to the international--to  
 6 the group.  
 7 Q. Okay. So what we see here is the view of all  
 8 Authors but you; is that correct?  
 9 A. My understanding was that each person contributed  
 10 to this individually.  
 11 Q. Okay. Fair enough.  
 12 So, overall, in our view--this is what this  
 13 Article says: "PAHs are of potential concern with respect  
 14 to short-term water column impacts and short- and long-term  
 15 effects on sediment dwelling biota."  
 16 Do you see that?  
 17 A. Yes.  
 18 Q. If we can skip the next sentence, in the interest  
 19 of time, the third sentence reads: "Further, PAHs can  
 20 persist in the environment for months/years. While their  
 21 bioavailability can vary, in our view there is still a  
 22 toxicity risk associated with this class of compounds."  
 23 I understand that you're not an Expert, and I'm  
 24 not asking for an Expert Opinion on it--do you generally  
 25 agree with this statement?

05:04 1 MS. WOOD: Objection, Your Honor. I  
 2 think--objection, Mr. President. I believe we've already  
 3 gone through this, and you've ruled he's not an Expert and  
 4 should not be giving a layperson's opinion on toxicology  
 5 either.  
 6 PRESIDENT VEEDER: You got what you wanted some  
 7 time ago, he's not an Expert on toxicology, and what he  
 8 says about toxicology is not as an Expert. So, I'd move  
 9 on. We don't need to do this.  
 10 MR. GARCÍA REPRESA: Mr. President, I think there  
 11 is a point where I'm getting to with this document which I  
 12 believe falls within this Witness' expertise.  
 13 PRESIDENT VEEDER: Come to it quickly because this  
 14 is going to be objected to again and again.  
 15 MR. GARCÍA REPRESA: I know.  
 16 BY MR. GARCÍA REPRESA:  
 17 Q. Can you please turn to Page 15. If you look at  
 18 the top paragraph, beginning with the third line,  
 19 "methyl-substituted PAHs tend to be much more mutagenic  
 20 than the parent compound," and if you keep reading down, it  
 21 says--it refers to the effects.  
 22 Now, I want to ask you about methyl-substituted  
 23 PAHs.  
 24 Is it right to say that they are the same--they  
 25 can be referred to as also the alkyl PAHs--alkylated PAHs?

05:08 1 better pronunciation.  
 2 A. Okay. Okay.  
 3 Q. It's my fault. I meant, they are called parent  
 4 PAHs?  
 5 A. They can be, yes.  
 6 Q. By contrast with alkylated PAHs, which are as I  
 7 understand, and please correct me if I'm wrong, the parent  
 8 PAH with an added carbon atom; correct?  
 9 A. Yes.  
 10 Q. And alkylated PAHs are actually more abundant in  
 11 crude oil than the parent PAHs; correct?  
 12 A. Well, it's a relative term. There's a lot of--the  
 13 answer is yes, basically, but the quantitation of those  
 14 alkylated PAHs is questionable.  
 15 Q. Right. And we may want--we may go to Tab 27, now  
 16 that we're in this volume--this is an article that you  
 17 authored; correct?  
 18 A. Yes.  
 19 Q. And it's actually Exhibit 11 to your June 2013  
 20 Report.  
 21 Can you please go to Page--and you will find the  
 22 numbers at the bottom left--2337.  
 23 We have a series of graphs on the right column.  
 24 And let me see if I understand how these charts work.  
 25 At the bottom left, we have a chart that refers to

05:06 1 A. Methyl-substituted PAHs? Yes.  
 2 Q. And actually the alkylation process is adding a  
 3 carbon atom to a PAH; correct?  
 4 A. That is correct, yes.  
 5 Q. And that is within your field of expertise, is it  
 6 not?  
 7 A. From a chemistry perspective, yes.  
 8 Q. Now, the method we were looking at that you cited  
 9 in your Report, Method 8270, the one that was provided in  
 10 the Analysis Plan, it does not test for  
 11 methyl-substituted--also known as alkyl--PAHs; correct?  
 12 A. No. It can.  
 13 Q. It can, if it's modified to do so; correct?  
 14 A. Depending on the concentration of the oil or, you  
 15 know, yes, you could do it both ways, whether it be  
 16 modified or not modified.  
 17 Q. Now, the standard Method 8270 as provided in the  
 18 Analysis Plan does not target alkyl- or methyl-substituted  
 19 PAHs, does it?  
 20 A. No, it does not.  
 21 Q. And to be clear about the concepts, the 16 PAHs  
 22 that are targeted by that method are often referred to as  
 23 the parent PAHs; correct?  
 24 A. The priority pollutant PAHs.  
 25 Q. And I will try to ask the question again with a

05:10 1 Exxon Valdez crude.  
 2 Do you see that?  
 3 A. Yes.  
 4 Q. And on the vertical axis we have the PAH  
 5 concentration by milligrams per kilogram of oil weight;  
 6 correct?  
 7 A. Yes.  
 8 Q. And on the horizontal axis, we have the Polycyclic  
 9 Aromatic Hydrocarbons (PAHs); correct?  
 10 A. Yes.  
 11 Q. And what we see, if you look at the letters, is  
 12 that we have the parent compounds--for example, the one  
 13 that begins with N on the very left--and the alkylated PAHs  
 14 N1, N2, N3, N4.  
 15 Do you see that?  
 16 A. Yes.  
 17 Q. And if you look at the relative concentrations in  
 18 the Exxon Valdez Crude, you can see that the bar for N is  
 19 lower than the concentrations of N1, N2, N3, and N4;  
 20 correct?  
 21 A. That's correct.  
 22 Q. And if you look at the F--I understand that's  
 23 phenanthrene; correct?  
 24 A. I'm sorry, which one?  
 25 Q. F--phenanthrene?



05:11 1 A. Fluorine.  
 2 Q. Fluorine. Excuse me. My bad. F-1, F-2, F-3, are  
 3 also higher concentrations; correct?  
 4 A. Yes.  
 5 Q. And the same happens with the P and with the D and  
 6 with the C; correct?  
 7 A. Yes, that's correct.  
 8 Q. So, do you agree--and this is, to be clear, Exxon  
 9 Valdez Crude, but you have analyzed the Ecuadorian  
 10 crude--do you agree that generally alkyl PAHs are more  
 11 abundant in crude oil, not their parents' PAHs?  
 12 MS. WOOD: Objection. I just want to object to  
 13 the vagueness of the general term.  
 14 MR. GARCÍA REPRESA: You can strike generally.  
 15 BY MR. GARCÍA REPRESA:  
 16 Q. On the basis of your work here in the Exxon Valdez  
 17 and your work in--on the basis of the Oriente crude oils,  
 18 in those two cases were alkyl PAHs found in more  
 19 concentration, in higher concentrations, than their parent  
 20 compounds? Yes or no.  
 21 A. Yes, in this document. The problem is that it's  
 22 the way you quantify the compounds, where the parents  
 23 actually have unique standards that are appropriate for the  
 24 parent compounds for quantification, where the alkylated  
 25 PAHs are quantified using the parent response factors.

05:13 1 So, these concentrations are semi-quantitative at  
 2 best, and they're used for forensics purposes for  
 3 fingerprinting.  
 4 Q. Correct. And we will get to that point. I  
 5 appreciate--I think it's an interesting point.  
 6 Now, before we do that, I understand--and please  
 7 let me know if that's not the case--that alkyl PAHs, they  
 8 generally weather in the environment at a slower rate than  
 9 the parent PAHs; correct?  
 10 A. Yes.  
 11 Q. And you actually wrote about that in an article  
 12 that we will find at Tab 17--and apologies we have to  
 13 switch binders--last tab.  
 14 Now, I understand--and if you're--are you with me  
 15 yet? Tab 17?  
 16 A. Yes.  
 17 Q. This is Exhibit 28 to your June 2013 Report, and I  
 18 believe that this is the 1992 article that you referred to  
 19 during your direct examination; is that the case?  
 20 A. Yes.  
 21 Q. If you can please turn to Page 15--to the right on  
 22 Page 15, actually--we can see in the second full paragraph  
 23 below the graph that begins "petroleum distillate  
 24 products," it says, "petroleum distillate products released  
 25 into the environment are immediately subject to a variety

05:15 1 of physical, chemical, and biological changes. Water  
 2 washing of the spilled product will fractionate the light  
 3 end soluble aromatics into the water. The solubility of  
 4 alkylated PAH is inversely proportional to the number of  
 5 rings and extent of alkylation."  
 6 Do you see that?  
 7 A. Yes.  
 8 Q. Which I understand to mean that that the  
 9 solubility will be lower with the higher alkylation;  
 10 correct?  
 11 A. That's--yes, that's generally true.  
 12 Q. If you go now to the next paragraph,  
 13 "biodegradation rates of hydrocarbons are dependent on the  
 14 type of bacteria, presence of limiting nutrients,  
 15 temperature, and types of hydrocarbons."  
 16 You can skip the next sentence if you wish.  
 17 It goes on to say: "Within a PAH homologous  
 18 series, bacteria degradation rates generally are inversely  
 19 proportional to the degree of alkylation."  
 20 Do you see that?  
 21 A. Yes.  
 22 Q. So, I understand that the parent PAH will be  
 23 degraded by bacteria quicker than the alkylated PAHs;  
 24 correct?  
 25 A. That's the generally accepted, yes, rule.

05:17 1 Q. Now, do you agree that EPA Method 8270, the one we  
 2 have been discussing thus far, often lacks the sensitivity  
 3 and is deficient in petroleum analyte selectivity to  
 4 determine the fate and transport of petroleum in  
 5 environmental samples?  
 6 A. Can you repeat that question?  
 7 Q. Sure.  
 8 Do you agree that the method we were looking at,  
 9 8270, often lacks sensitivity and is deficient in petroleum  
 10 analyte selectivity to reliably determine the fate and  
 11 transport of petroleum in environmental samples?  
 12 A. It depends how it's applied.  
 13 Q. The standard Method 8270. Unless I specify, I'm  
 14 referring to the standard Method 8270 applied here. If you  
 15 want, I can repeat the question adding "standard." Would  
 16 that be better?  
 17 A. No, I understand.  
 18 Q. So, if we're talking about the standard method, do  
 19 you agree that it lacks sensitivity and is deficient in  
 20 analyte selectivity to reliably determine the fate and  
 21 transport of petroleum in the environment?  
 22 A. For forensics projects, yes.  
 23 Q. And this method--and again, the standard  
 24 method--does not measure the alkylated PAHs that we have  
 25 been discussing; correct?

05:19 1 A. Generally not, but it can.  
 2 Q. Okay. Let's go to Tab 16, if you will. This is  
 3 Exhibit 16 to your 2013 Report, and it's an article that  
 4 you wrote, I understand, in 1993; correct?  
 5 A. Yes.  
 6 Q. You will find the numbers at the bottom right-hand  
 7 corner, and I would like you to go to Page 50, five-zero.  
 8 Now, the discussion on Method 8270 begins at the  
 9 bottom left with a title that begins with Number 3: EPA  
 10 GC/MS methods, 625 and 8270.  
 11 Do you see that?  
 12 A. I'm sorry?  
 13 Q. To the very left--there are three columns on this  
 14 page. It's the left column at the very bottom.  
 15 A. Objective?  
 16 Q. Right above that, we see that there is a Number 3.  
 17 A. Yes.  
 18 Q. And I understand that that Number 3 is a title  
 19 discussing what comes next in the article.  
 20 Is that a fair representation?  
 21 A. I don't know if it's a typo. I would have to read  
 22 the discussion before that.  
 23 Q. Well, if you go to the column to the very right,  
 24 you will see that about 15 lines from the bottom we have  
 25 another title, four: Gasoline range organics, GRO; diesel

05:20 1 range organics, DRO, and the discussion that follows  
 2 relates to GRO and DRO.  
 3 Do you see that?  
 4 A. I'm looking for the four.  
 5 I mean, when you say "typo four" do you mean it's  
 6 a mistake?  
 7 Q. Title. Title.  
 8 A. Oh, I see.  
 9 (Laughter.)  
 10 Q. I knew we were going to get to that.  
 11 A. I thought you said typo, and I couldn't figure it  
 12 out. I'm sorry. It's all right. So, title. All right.  
 13 So, let's get back on track here.  
 14 GC/MS Method 625 and 8270. Okay. Three. And  
 15 then four, gasoline range organics, diesel range organics.  
 16 Yes.  
 17 Q. Okay. What we have in between is a discussion of  
 18 Methods 625 and 8270; correct?  
 19 A. Correct.  
 20 Q. And after the objective in the second column, we  
 21 find the limitations, a description of the limitations of  
 22 this method, and I will read it, and I would like you to  
 23 confirm whether that's your opinion or not. You say, "in  
 24 their standard form--" and this is why I was discussing  
 25 with you the standard method--"these methods often lack the

05:21 1 sensitivity and always are deficient in petroleum analyte  
 2 selectivity to reliably determine the fate and transport of  
 3 petroleum in environmental samples."  
 4 Is that your opinion?  
 5 A. As it regards to forensics studies, yes.  
 6 Q. And you go on to say: "The only petroleum-related  
 7 compounds detected by these standard methods are 16  
 8 priority pollutant PAHs."  
 9 Do you see that?  
 10 A. No, actually--I'm lost here.  
 11 Q. It was--I just--I continued reading.  
 12 A. Oh, 16--most of the 16--you said the first middle  
 13 column?  
 14 Q. Yes.  
 15 A. Most of the 16 priority pollutant PAH target  
 16 compounds--  
 17 I'm sorry. It's just the quotations. Hold on. I  
 18 can find it.  
 19 Oh, it's higher. It's up at the top, then.  
 20 Q. Yes.  
 21 A. Oh, I'm sorry. Okay. So, what is the question?  
 22 Q. You wrote: "The only petroleum-related compounds  
 23 detected by these standard methods are the 16 priority  
 24 pollutant PAHs."  
 25 That is still your opinion?

05:23 1 A. Yes.  
 2 Q. And if we keep reading down, now we go past that  
 3 citation. We see that you express the view that most  
 4 importantly, that PAH in petroleum often is denominated by  
 5 the C1 to C4 alkylated homologous of a parent PAH, none of  
 6 which are measured by the standard technique.  
 7 Is that your opinion?  
 8 A. That's correct, with regard to forensics analysis,  
 9 being able to identify a spilled oil in a complex  
 10 environment.  
 11 Q. And you go on to say in the next section--and I  
 12 refer to the section because there is a subtitle  
 13 modification that begins there--that says that "the  
 14 standard full scan GC/MS EPA 8270 method can be modified to  
 15 provide semi-quantitative data for the alkylated PAH  
 16 compounds."  
 17 Do you see that?  
 18 A. Yes.  
 19 Q. And that is a modification that could be done to  
 20 the method in order to semi-quantitatively assess alkylated  
 21 PAHs; correct?  
 22 A. Yes.  
 23 Q. And just to confirm with you that my understanding  
 24 is correct, if you go back a couple of pages in your  
 25 article, Table 1 is a list of PAHs, and the 16 that are

05:24 1 covered by standard Method 8270 are the ones that have a  
2 little A at the end of their name; correct?  
3 A. Yes.  
4 Q. And without modification to the method, do you  
5 agree that it is not appropriate to determine the fate and  
6 transport of petroleum in environmental samples?  
7 A. I would say that the modified methods are better.  
8 Q. And my question was about the standard method.  
9 The standard method is not appropriate, is it, to reliably  
10 determine the fate and transport of petroleum in  
11 environmental samples; correct?  
12 A. It depends on what you're looking for. If you're  
13 looking for the 16 priority pollutant PAHs, it's an  
14 appropriate method. If you're looking for forensic PAHs  
15 such as the alkylated PAHs, it wouldn't provide those.  
16 Q. Okay. Can we now turn--go back to your article at  
17 Tab 17.  
18 And I'm mindful of the time, and we're almost done  
19 with this line. If you can go to Page 2 in this article,  
20 towards the bottom of the page you will see the last  
21 paragraph beginning with "other EPA methods are used."  
22 A. Yes.  
23 Q. And if you count with me one, two, three, four,  
24 five lines down in that paragraph, you see a sentence that  
25 begins, "semi-volatile organic methods such as EPA GC/MS

05:26 1 Method 8270 and 625 often are required at petroleum spill  
2 sites, but they lack the sensitivity as well as the  
3 petroleum analyte selectivity to reliably determine the  
4 fate and transport of petroleum in environmental samples."  
5 Is that still your opinion?  
6 A. Yes. With regards to forensics analyses, yes.  
7 Q. And if you go on to the next page--excuse me, it's  
8 the same page in paper, but it's Page Number 3 in the  
9 layout that we have before us, and actually begins on the  
10 prior, at the very bottom, prior page--it says, "the  
11 ability to identify and track the transport and fate of  
12 the--WSF is the water-soluble fractions of PAHs--of PAHs  
13 in the water-soluble fraction, rather--so, "the ability to  
14 identify and track" those--the transport of those is  
15 "greatly enhanced when the petroleum-specific methods are  
16 used because of the increased number of measured analytes  
17 and a reporting limit three orders of magnitude lower."  
18 Do you see that?  
19 A. No.  
20 MS. WOOD: I apologize, counsel. I'm not sure  
21 what page you're on. If you wouldn't mind telling me that  
22 again.  
23 MR. GARCÍA REPRESA: Of course. It's Page Number  
24 2, second line from the bottom, begins "the ability to  
25 identify and track the transport and fate of the WSFs--"

05:28 1 MS. WOOD: Thank you.  
2 MR. GARCÍA REPRESA: "--is greatly enhanced when  
3 the petroleum-specific methods are used because of the  
4 increased number of measured analytes and a reporting limit  
5 three orders of magnitude lower."  
6 THE WITNESS: Yes, and again, from the forensics  
7 perspective, it's true, yes.  
8 BY MR. GARCÍA REPRESA:  
9 Q. And if you can just turn now the page physically,  
10 and we go to Page Number 5, we have a graphic on the right,  
11 Figures 1.3 and Figure 1.4, where we can see the  
12 difference. And I put it to you that the top graph shows  
13 the results measured under EPA Method 8270 and the bottom  
14 one using GC/MS method; correct?  
15 A. Yes.  
16 Q. And actually the explanation of Figure 1.3 says  
17 that Method 8270 has "limited utility for oil spill  
18 assessment owing to the relatively high reporting limits  
19 and lack of petroleum-specific alkylated PAH homologues."  
20 Correct?  
21 A. Again, with that sentence I'm referring to the  
22 forensics analyses that we do, yes.  
23 Q. Okay. And that forensics analysis was done in  
24 this case only for biodegradation studies, was it not?  
25 A. Yes, because we knew where the oil was coming from

05:29 1 in terms of we knew it was all Oriente crude oil, so we  
2 didn't view this as a forensics study, more of a--as a  
3 health risk study.  
4 Q. And you confirm that for the health risk study  
5 purposes you did not test for the alkylated PAH--excuse  
6 me--the Experts on behalf of Chevron doing the analysis did  
7 not test for alkylated PAHs, did they?  
8 A. My understanding that it was the 16 priority  
9 pollutant PAHs that were identified by the U.S. EPA as  
10 potential problems. That's the extent of my understanding.  
11 Q. So, I will put the question again.  
12 Do you confirm that for the health risk study  
13 purposes--for health risk study purposes--in this case,  
14 Chevron did not test for alkylated PAHs?  
15 A. I believe they followed what was required in the  
16 analytical plan and the Ecuadorian regulations.  
17 Q. And did they test for alkylated PAHs? Yes or no?  
18 A. No, not for that purpose.  
19 Q. And actually, only a subgroup of the samples that  
20 were collected during the Judicial Inspections was subject  
21 to petroleum biodegradation analysis; correct?  
22 A. Yes. My understanding that the high-level samples  
23 that had oil visibly present were analyzed for the  
24 additional analytes so that they could identify the  
25 relationship between the production oil and the field

05:31 1 samples.  
 2 Q. The rest of the samples were not tested for  
 3 alkylated PAHs; correct?  
 4 A. I don't believe so, no.  
 5 Q. Now, would you say that increasing the sensitivity  
 6 of an analysis to capture the alkylated PAHs allows for  
 7 petroleum to be detected and measured more accurately at a  
 8 distance from the source?  
 9 A. I think that has to do with the regulations and  
 10 the requirements of the regulations, what the  
 11 concentrations are.  
 12 Q. Okay. Now I'm asking for your opinion as an  
 13 expert.  
 14 Do you agree that, by increasing the sensitivity  
 15 of an analysis so as to capture the alkylated PAHs that  
 16 allows for petroleum to be detected and measured more  
 17 accurately at a distance from the source?  
 18 MS. WOOD: Objection. Mr. President, clearly  
 19 counsel is reading from a document, and I don't think it's  
 20 fair to read excerpts out of a document to this Witness  
 21 without referring him to the document that he is citing.  
 22 PRESIDENT VEEDER: Difficult also for the Tribunal  
 23 to follow. Are you reading from the document?  
 24 MR. GARCÍA REPRESA: I will-yes, I'm going to  
 25 that, and I was trying to cut it short, but I will go

CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

  
 DAVID A. KASDAN

05:33 1 through the document.  
 2 PRESIDENT VEEDER: Let's stop, because it's after  
 3 5:30. We wanted to stop at 5:30, but we gave you latitude  
 4 to come to the end of this topic.  
 5 Let's stop now, and I think you can reconsider  
 6 what you want to ask this Witness tomorrow.  
 7 MR. GARCÍA REPRESA: Yes. I was wondering, I  
 8 think I had about five or ten minutes more, but tomorrow.  
 9 Okay.  
 10 PRESIDENT VEEDER: No. No.  
 11 So, let's stop now tonight. We resume here at  
 12 11:15 tomorrow. And we ask you not to discuss your  
 13 testimony or this case with anyone until you come back  
 14 before the Tribunal.  
 15 THE WITNESS: Of course.  
 16 PRESIDENT VEEDER: Thank you very much.  
 17 (Whereupon, at 5:33 p.m., the Hearing was  
 18 adjourned until 11:15 a.m. the following day.)  
 19  
 20  
 21  
 22  
 23  
 24  
 25

IN THE MATTER OF AN ARBITRATION BEFORE A TRIBUNAL  
CONSTITUTED  
IN ACCORDANCE WITH THE TREATY BETWEEN THE U.S.A. AND THE  
REPUBLIC OF ECUADOR CONCERNING THE ENCOURAGEMENT AND  
RECIPROCAL PROTECTION OF INVESTMENT, SIGNED AUGUST 27, 1993  
(THE "TREATY")

and

THE UNCITRAL ARBITRATION RULES 1976

- - - - -x  
 In the Matter of Arbitration :  
 Between: :  
 :  
 CHEVRON CORPORATION (U.S.A.), :  
 TEXACO PETROLEUM COMPANY (U.S.A.), :  
 :  
 Claimants, : PCA Case No.  
 : 2009-23  
 and :  
 :  
 THE REPUBLIC OF ECUADOR, :  
 :  
 Respondent. :  
 - - - - -x Volume 8

TRACK 2 HEARING

Thursday, April 30, 2015

The World Bank  
700 18th Street, N.W.  
J Building  
Conference Room JB1-080  
Washington, D.C. 20003

The Hearing in the above-entitled matter convened  
at 11:15 a.m. before:

- MR. V.V. VEEDER, Q.C., President
- DR. HORACIO GRIGERA NAÓN, Arbitrator
- PROFESSOR VAUGHAN LOWE, Q.C., Arbitrator

## Registry, Permanent Court of Arbitration:

MR. MARTIN DOE, Secretary to the Tribunal

## Additional Secretary:

MS. JESSICA WELLS

## Court Reporters:

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1 PROCEEDINGS  
2 PRESIDENT VEEDER: Good morning, ladies and  
3 gentlemen. We'll start Day 8 of this Hearing.

[REDACTED]

13 PRESIDENT VEEDER: Thank you very much. Well,  
14 we'll continue with the cross-examination.

15 GREGORY S. DOUGLAS, CLAIMANTS' WITNESS, RESUMED

16 MR. GARCÍA REPRESA: Thank you, Mr. President.

17 CONTINUED CROSS-EXAMINATION

18 BY MR. GARCÍA REPRESA:

19 Q. Dr. Douglas, good morning.

20 A. Good morning.

21 Q. Now, I would like to pursue for a few minutes the  
22 topic we were discussing yesterday at the end. And to set  
23 the record straight, when we finished our conversation, you  
24 had confirmed that only a subgroup of the samples that were  
25 collected during the Judicial Inspections was subject to

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11:17 1 biodegradation studies; is that correct?  
2 A. Did you say that I had a concern?  
3 Q. No, that you have confirmed.  
4 A. Oh, yes, I think about 400 samples were analyzed  
5 for biodegradation analysis, yes.  
6 Q. Okay. And the rest of the samples were not  
7 submitted to biodegradation analysis; correct?  
8 A. My understanding is that the high-level oil  
9 samples were submitted for biodegradation because we can  
10 only evaluate biodegradation when there's oil in the  
11 samples.  
12 Q. So, the rest were not submitted to biodegradation  
13 studies?  
14 A. Not that I'm aware of.  
15 Q. Okay. And, therefore, the rest of the samples  
16 were also not submitted to tests to identify  
17 alkylated-PAHs; correct?  
18 A. Not that I'm aware of.  
19 Q. Now, one question that remained unanswered  
20 yesterday was whether, in your opinion, if you were to  
21 increase the sensitivity of the analysis to capture and to  
22 test for alkylated-PAHs, that would allow you to improve  
23 the accuracy of your detection and measure of petroleum at  
24 a distance from the source. Is that your opinion?  
25 A. I guess it depends on the purpose of the analysis.

11:18 1 If it's for regulatory purposes, as I mentioned, you really  
2 wouldn't need that kind of sensitivity. However, for  
3 biodegradation and for forensics work that I do, yes, I do  
4 use that sensitivity.  
5 Q. And would you also use that sensitivity, for  
6 example, for health-risk assessment?  
7 MS. WOOD: Objection, Mr. President. I believe  
8 we've already established that this Witness is not a  
9 toxicologist, so his opinions on health-risk assessment  
10 does not appear to be relevant to the Tribunal.  
11 Dr. McHugh, who is a toxicologist will be the next witness.  
12 PRESIDENT VEEDER: What's your answer to the  
13 objection?  
14 MR. GARCÍA REPRESA: My answer to the objection is  
15 that I'm not asking for a toxicological assessment but  
16 rather what you use the samples for, and in his field of  
17 expertise having looked at the data and having opined on  
18 what the data should be looked at for what purpose, I think  
19 it's perfectly valid to ask him what samples are used for  
20 what independently of what the assessment is of those  
21 sample results afterwards.  
22 PRESIDENT VEEDER: Well, you're taking up a lot of  
23 time on material impressions that might be better asked to  
24 another witness.  
25 But can you answer the question?

11:19 1 THE WITNESS: Well, with regards to the compounds  
2 that you're referring to, my understanding is the that 16  
3 priority pollutants are the compounds for health-risk  
4 assessment.  
5 Now, for the samples that we received, they were  
6 heavily oiled--oiled to some level to evaluate  
7 biodegradation, and what happens is that that oil makes it  
8 more difficult to measure those compounds.  
9 And so, I believe that for oil samples, clearly  
10 the methods are appropriate, yes. For the 16 priority  
11 pollutants that you're referring to.  
12 Q. No, I was referring to alkylated-PAHs, not to the  
13 16 priority pollutants.  
14 A. Well, I'm not--as you said, I don't know what the  
15 appropriateness is of alkylated-PAHs with regard to health  
16 risk.  
17 Q. Fine.  
18 If we can go to Tab 16 in your bundle--it's the  
19 first volume--this is an article that you wrote and that  
20 you referred to as Exhibit 16 to your 2013 Expert Report.  
21 A. Tab 16?  
22 Q. Tab 16, 1-6.  
23 A. Yes.  
24 Q. And I'm looking at Page 50, bottom left-hand  
25 corner. This is a document we already looked at yesterday.

11:20 1 A. Yes.  
2 Q. And it has three columns. I am looking at the  
3 right column towards the middle of the page.  
4 And I just want to be clear--and to put the  
5 context for my question--I am reading towards the middle of  
6 the page on the right, a sentence that begins with, "The  
7 increased sensitivity allows for petroleum to be detected  
8 and measured more accurately at a distance from the source  
9 and replaces the traditional not-detected results with a  
10 useful data point--often crucial information if any  
11 toxicological numerical modeling is intended for the site  
12 assessment."  
13 Do you see that, sir?  
14 A. Yes.  
15 Q. Is that your opinion?  
16 A. It is, yes. This basically suggests that the  
17 methodologies that we're providing in terms of the selected  
18 ion mode are more sensitive and could be more useful to  
19 people.  
20 Q. And if we keep reading, you also say that the  
21 increased sensitivity relative to the standard method full  
22 scan techniques also enables these methods to measure the  
23 water soluble fraction of petroleum in ground and surface  
24 waters.  
25 Do you see that?

11:22 1 A. They're very useful for that purpose, yes.  
2 Q. Okay. Now, if we can please go to your 2013  
3 Expert Report at Page 10--it's at Tab 2 of the first volume  
4 for those using the black binders--and I'm looking at the  
5 first paragraph right below the bullets, which begins, "As  
6 a marine biologist."  
7 Now, you commented here about Dr. Short's  
8 evaluation of the toxicity of weathered oil, and you were  
9 referring to his conclusion that alkylated-PAHs in  
10 weathered oil are still toxic even many years after the  
11 spill and at low parts per billion concentrations.  
12 Is that a fair characterization of what you were  
13 commenting on here?  
14 A. Yes. He said that the toxicity of weathered crude  
15 oil was significant at one part per billion concentration  
16 level in seawater.  
17 Q. Okay. And in the next paragraph you go on to say  
18 that the findings by Dr. Short--and unfortunately he hasn't  
19 been called--the findings by Dr. Short you say are  
20 considered highly controversial by the scientific  
21 community.  
22 Do you see that?  
23 A. Yes, and that is my understanding.  
24 Q. And to be clear, this study by Dr. Short was in  
25 connection with the Exxon Valdez spill; correct?



11:24 1 A. Yes.  
 2 Q. And you had been retained by Exxon or its counsel  
 3 in that very same case; correct?  
 4 A. I worked on the Exxon Valdez spill for Exxon, yes.  
 5 Q. Now, if you turn the page--so we are now at  
 6 Page 11--the source that you cite here for the criticism to  
 7 Dr. Short's conclusion is an article by Dr. Landrum, and we  
 8 can see there's a quote and we can see the reference at the  
 9 bottom of the page to Dr. Landrum's article which is at  
 10 Exhibit 24. Do you see that, sir?  
 11 A. I'm sorry, which page are you on in my Report?  
 12 Q. Page 11 of your Report.  
 13 A. Yes, I see that.  
 14 Q. You are quoting text of an article by Dr. Landrum;  
 15 correct?  
 16 A. Is that the top or the bottom?  
 17 Q. I'm looking at the top of Page 11.  
 18 A. Okay.  
 19 Q. You have two lines and then a block quote. I  
 20 understand that block quote to come from Dr. Landrum's  
 21 article cited at Footnote 55; correct?  
 22 A. That's Page, et al., 55.  
 23 Q. Yeah, and Dr. Landrum is cited there as one of the  
 24 authors, isn't he?  
 25 A. Yes, he is.

11:25 1 Q. And actually in the paragraph right below the  
 2 quote, you state that Dr. Peter Landrum is one of the many  
 3 internationally respected scientists who have refuted  
 4 Dr. Short's claims.  
 5 Do you see that?  
 6 A. Yes.  
 7 Q. Now, Dr. Landrum had also worked for Exxon, hadn't  
 8 he?  
 9 A. I don't know. I don't know.  
 10 Q. But the paper that you're citing to here, that  
 11 paper was funded by Exxon, wasn't it?  
 12 A. I'd have to see the paper and look at the  
 13 Acknowledgments in the back to see if it was.  
 14 Q. You going to have to change volumes now.  
 15 Volume 2, Tab 21, please. And you should find the  
 16 Acknowledgments at Page 253?  
 17 A. I'm sorry, two-five--  
 18 Q. Three.  
 19 Do you confirm, sir, that this article was funded  
 20 by Exxon?  
 21 A. Yes, it says, "The authors thank Ms. Karen  
 22 Humphrey of Aquatechnics, Inc. for her excellent critical  
 23 review of the draft of this article. Funding for this work  
 24 was provided by ExxonMobil Corporation, Houston, Texas.  
 25 However, the conclusions are those of the Authors and do

11:27 1 not necessarily represent those of ExxonMobil."  
 2 Q. Right.  
 3 And are you aware, in addition to this study that  
 4 you cite here, that there are other studies that you have  
 5 not cited in your Report that corroborate Dr. Short's  
 6 conclusions?  
 7 A. Well, the purpose of my comment in my paper was to  
 8 simply state that this is a controversial issue, and it is  
 9 a controversial issue. There are many papers on both sides  
 10 of the issue and publications, so the use of a  
 11 concentration of one part per billion as the toxic level  
 12 and that the alkylated PAHs are responsible for that  
 13 concentration of that toxicity of that effect is simply a  
 14 controversial issue. I'm not weighing in on it's right or  
 15 wrong, other than saying you wouldn't just want to accept  
 16 that number without looking at all of the information.  
 17 Q. I would like now to turn your attention to  
 18 Slide 12 of your direct presentation yesterday, and I will  
 19 show it to you if you need it.  
 20 A. No, I have a copy.  
 21 Q. You have it?  
 22 A. I have a copy, if I can just find it. Yes.  
 23 Q. Now, this is the slide that I understand  
 24 summarizes the various methods, analytical methods, that  
 25 have been discussed here, and here you're answering the

11:28 1 question which one of these is appropriate. Is that a fair  
 2 understanding?  
 3 A. Yes.  
 4 Q. And I understand that which one is appropriate  
 5 depends on the intended use of the data.  
 6 A. Yes.  
 7 Q. And to make sure I understood correctly, if we go  
 8 from the top to the bottom, we are narrowing down the  
 9 individual compounds that are being tested for; correct?  
 10 A. Yes. The top group has the most interferences,  
 11 and then we focus it down into individual compounds by  
 12 GC/MS.  
 13 Q. So, the top line--and I'm going to try to put this  
 14 in layman terms as we go through--the top line is the one  
 15 that will cover--let's say all organic compounds, but will  
 16 give us give us a higher risk of what is known as false  
 17 positives; is that correct?  
 18 A. Well, yes. The top line TEM, total extractable  
 19 material, that's the bulk screening method, and that's the  
 20 one that captures all the carbon molecules in a sediment or  
 21 in a soil sample. And again, what you end up with when you  
 22 do that is simply a number that could be--could be all oil,  
 23 could be very little oil. You don't know.  
 24 Q. And there in terms of--I want to understand how  
 25 the risk of false positives and false negatives works in

11:30 1 these methods because those concepts have been discussed in  
 2 your Reports and in Dr. Short's reports.  
 3 Now, to be clear, a false negative is a result  
 4 that shows no contamination with petroleum hydrocarbons,  
 5 but actually it is contaminated, so a false negative will  
 6 be a sample that is contaminated that is discarded and,  
 7 therefore, is not--is not detected or remediated; correct?  
 8 A. Yes.  
 9 Q. And a false positive on the reverse side is a  
 10 result that will show contamination, but actually it is not  
 11 contaminated with petroleum hydrocarbons; is that correct?  
 12 A. Yes, it is.  
 13 Q. And I understand that in this graph the top method  
 14 has the higher, if we just look at these methods here--the  
 15 higher risk of false positives and the lowest risk of false  
 16 negatives, and the bottom methods we are reversed: They  
 17 have almost no risk of false positives and a higher risk of  
 18 false negatives.  
 19 A. All right.  
 20 Q. Is that--I can break it down, if you want.  
 21 A. Break it down for TEM. Let's talk about TEM  
 22 first, and then we can go to the next one.  
 23 Q. I'm just mindful of the time, but fair enough.  
 24 Otherwise, I can break it down into questions.  
 25 A. Well--

11:31 1 MS. WOOD: Objection, Mr. President. The Witness  
 2 is clearly asked that he didn't understand the question and  
 3 would break like to break it down, and that's why I  
 4 ask--thank you.  
 5 PRESIDENT VEEDER: If counsel was suggesting he  
 6 would do that, so please do that, but also please don't  
 7 overspeak.  
 8 THE WITNESS: Oh, I'm sorry.  
 9 MR. GARCÍA REPRESA: Apologies, I did overspeak.  
 10 BY MR. GARCÍA REPRESA:  
 11 Q. Let's look now at the top line.  
 12 This is the method I understand that will give you  
 13 the less risk of false negatives; i.e., you're sure you  
 14 will cover everything in a way, and it will give you the  
 15 highest risk of false positives, the lowest risk of false  
 16 negatives; correct?  
 17 A. For semi-volatile organics, yes, I would agree  
 18 with that, very high risk of false positives.  
 19 Q. And very low risk of false negatives; correct?  
 20 A. Well, for the semi-volatile components.  
 21 Q. And if we now look at the bottom, where you're  
 22 analyzing individual compounds--and you actually list them  
 23 to the right of it, BTEX and the PAHs, the 16 priority  
 24 pollutants--there, you are lowering to a maximum the risk  
 25 of false positives, but you're also increasing the risk of

11:33 1 false negatives; correct?  
 2 A. I mean, it's a more accurate method, if that's  
 3 what you mean. It more accurately identifies and  
 4 quantifies what's actually in there, so in terms of false  
 5 positives and negatives, those are driven by the blanks  
 6 associated with the analysis.  
 7 Q. And we'll speak about blanks in a moment.  
 8 A. Um-hmm.  
 9 Q. I just want to understand. The fact that you are  
 10 narrowing down so much the process will help you reduce the  
 11 risk of false positives because you will know what's in  
 12 there, but it will also increase the risk of false  
 13 negatives because you may be leaving some compounds out of  
 14 your analysis; isn't that right?  
 15 A. No, I think that these methods are very accurate  
 16 and precise. I think that the fact that you can actually  
 17 identify and see the presence of those compounds in your  
 18 sample means that you get the most accurate values.  
 19 So, for example, the 16 priority pollutant target  
 20 compounds, I think this would be the most accurate way to  
 21 measure those.  
 22 Q. Right. And that is if you are testing  
 23 specifically for those.  
 24 A. Yes.  
 25 Q. But?

11:34 1 A. But--  
 2 Q. Let's not overspeak.  
 3 A. Oh, I'm sorry, excuse me.  
 4 Q. That is, if you're testing specifically for those,  
 5 and we agreed that that will not help you, for example,  
 6 identify the alkylated compounds; correct?  
 7 A. Yes, if you were just looking at the 16 priority  
 8 pollutants, you wouldn't necessarily quantify the  
 9 alkylated-PAHs in the sample.  
 10 Q. And the choice of a method within this range will  
 11 depend on the intended use of the data?  
 12 A. The purpose, yes.  
 13 Q. Now, you mentioned a moment ago the issue of  
 14 blanks, and I'd like to discuss that with you for a few  
 15 minutes.  
 16 Now, in your direct presentation, you described  
 17 two types of blanks: The field blanks and the laboratory  
 18 blanks, and you said that it was important to consider  
 19 them, and you indicated that to determine if a blank is  
 20 actually the cause of contamination that you find in indoor  
 21 samples, there's standard method called the 5X rule. Do  
 22 you recall that part of your presentation, sir?  
 23 A. Yes, I do.  
 24 Q. And you describe the rule as being that sample  
 25 results must be five times greater than the compound that

11:35 1 you found in your blank for the field sample result to be  
 2 reliable and reported as a positive finding. Is that a  
 3 fair summary?  
 4 A. Yes, as defined on Page 23.  
 5 Q. And in your Report, in your work in this case, you  
 6 applied that rule, and I believe you said that that led you  
 7 to disregard as unreliable about 90 percent of the compound  
 8 results from LBG data; is that correct?  
 9 A. No, no, that's not correct.  
 10 Q. What percentage would it be?  
 11 A. Most of the impacts by blanks were associated with  
 12 low level water samples. So, in fact, blanks would affect  
 13 about half of the surface-water samples and the  
 14 interpretation of those water samples.  
 15 Samples that LBG performed, for example, that were  
 16 above the blank level were not impacted by the blanks, so I  
 17 had no intentions of implying that 90 percent of the LBG  
 18 was unreliable. I was focused on the low level samples,  
 19 specifically a lot of water samples, for example, that were  
 20 being used for interpretive purposes where the blanks had a  
 21 significant impact on the interpretation.  
 22 Q. And at Slide 30 I believe it is of your direct  
 23 presentation, you showed a diagram comparing the  
 24 concentrations in a soil sample. It's soil sample LA, for  
 25 Lago Agrio, 16, I understand that's for the site, and SL

11:39 1 investigate it further because you have a more serious  
 2 problem.  
 3 And what we found was that, in cases where we had  
 4 over 50 percent of the compounds impacted by the blank and  
 5 the support of the laboratory with regards to their  
 6 identification of a chronic problem within the laboratory  
 7 operation, it certainly is very reasonable to reject that  
 8 sample 100 percent. That's what I intended to present.  
 9 Q. And when you referred to the blue columns being  
 10 the normalized figures, that is because the numbers that  
 11 you used for those blue columns, those are not found in the  
 12 LBG analytical results, are they? Those numbers are a  
 13 treatment of LBG's data that you did that you called  
 14 "normalization." Correct?  
 15 A. Well, what happened is, after we received the  
 16 validated results, the validation results from LBG--this  
 17 was after I provided my--I believe--well, I'm not sure of  
 18 that--I'm not sure--but we noticed that the validator did  
 19 not normalize the field results, the soil results, where  
 20 there were different weights for the soil sample and the  
 21 blank sample.  
 22 So, I'm simply following National Functional  
 23 Guidelines with regards to the fact that blanks may not  
 24 involve the same sample weights, and they need to be  
 25 normalized for direct comparison.

11:37 1 stands for soil 002. We have the result of that sample in  
 2 the red column, and you compare that to a laboratory blank  
 3 in the blue column; is that right?  
 4 A. Yes, I do. It's--the PAH concentration is  
 5 presented on the left in parts per billion. The PAHs are  
 6 listed on the bottom there that were reported by the  
 7 laboratory. The red bars represent the field results for  
 8 the sample, and the blue bars represent the normalized  
 9 laboratory blank results.  
 10 Q. Okay. And we'll get back to the concept of  
 11 normalized.  
 12 Now, to be clear, in this example that you put  
 13 here, because the red bars are lower than five times the  
 14 blue bars, this is why you consider the data to be  
 15 unreliable; is that correct?  
 16 A. Yes.  
 17 It is common practice that in the laboratory  
 18 environment for evaluating environmental samples, that if  
 19 you even have as many as two analytes within an analytical  
 20 run that exceed three times or five times what's called a  
 21 method detection limit--it's a very low concentration, but  
 22 if you find these blank compounds within your sample, you  
 23 may be required to reanalyze the entire batch of samples.  
 24 It's common practice.  
 25 And if you have more than that, then you have to

11:40 1 Q. And I could not help but notice that this graph  
 2 that you showed us yesterday is, in fact, an amended  
 3 version of a graph that you had in your latest report, and  
 4 you can take a look at Figure 1, Page 6, of your  
 5 January 2015 Report. I suggest we keep them both open, so  
 6 your Slide 30 in the graph at Figure 1, Page 6.  
 7 A. Figure 1, Page 6. Yes. I have both figures in  
 8 front of me.  
 9 Q. Thank you.  
 10 And to be clear, we are seeing figures that relate  
 11 to the very same soil sample; correct?  
 12 A. LA16-SL002 was one of the key samples relied on by  
 13 Dr. Short to identify the presence of low levels of  
 14 petroleum hydrocarbons in the environmental samples within  
 15 his Report. Yes, this is the correct sample.  
 16 Q. And the difference between the graph you showed us  
 17 yesterday and the graph you had in your Report is that in  
 18 your Report, you showed the concentrations of a soil blank  
 19 with the bar--with the black bars; correct? And we do not  
 20 see in the figure you showed us yesterday that soil blank  
 21 indicated.  
 22 A. Right.  
 23 And just so the Tribunal understands what we're  
 24 talking about, we should refer to my presentation of  
 25 figure--okay, Figure 22 in my presentation. And in that

11:42 1 figure I described in my presentation what a--when you say  
 2 soil blank, I just want to make sure it's clear that the  
 3 soil blank that you're referring to is actually called a  
 4 field blank; right? Are we in agreement? I mean, is that  
 5 what we're talking about, the field blank?  
 6 Q. I hesitate when a witness asks me a question, but  
 7 you're very right. This is field blank.  
 8 A. Field blank.  
 9 Q. Let's not overlap.  
 10 Yes, we're talking about a field blank which you  
 11 described yesterday separate from a laboratory blank.  
 12 A. Yes.  
 13 Q. And that you described I understand at Slide 22 of  
 14 your presentation.  
 15 A. That's correct.  
 16 And so, for the Tribunal, the field blank is a  
 17 sample where you send out a clean material--it could be  
 18 clean Sand or it could be clean water--and you take it out  
 19 into the environment that you're collecting the samples,  
 20 and then you handle it in the same way. You might put it  
 21 in a bowl, stir it up, the same bowl that you would use to  
 22 collect your field samples. And then what you would do is  
 23 put the sample in a jar and send it back to the laboratory  
 24 for analysis, and that sample would pick up any extraneous  
 25 contamination that could have been introduced during the

11:43 1 collection process.  
 2 And that is compared to the laboratory blank,  
 3 which is also presented in my Report, and the laboratory  
 4 blank is a clean sample that's run by the laboratory, and  
 5 that collects all the contaminants that would be associated  
 6 with the laboratory operation, okay?  
 7 Q. And you would expect that if there is a chronic  
 8 problem with laboratory contamination, the field blank that  
 9 is tested by that same laboratory will also show levels of  
 10 contamination similar to the laboratory blank, would you  
 11 not?  
 12 A. Well, they won't be exactly the same. They  
 13 weren't run necessarily at the same time under the same  
 14 conditions. And blanks move up and down, depending on how  
 15 the sample is handled by the individuals. So, there is  
 16 some variability.  
 17 And because of the variability, that's why they  
 18 have the 5X rule, so I wouldn't expect them necessarily to  
 19 be the same. For example, if all the field blank was from  
 20 the--if all of the field blank was from the laboratory  
 21 blank, they would look pretty similar, within the 5X rule.  
 22 Q. And you see, that is where I have an issue with  
 23 the graph that you showed us yesterday because, in Figure 1  
 24 of your 2015 Report, we can see that the lab blank and the  
 25 field blank show very different patterns, and I'm looking

11:45 1 at the blue and the black columns. So, I would have  
 2 expected that if we're talking about a problem with the lab  
 3 contamination, the field blank will also show levels of  
 4 contamination similar to the ones you find in the lab.  
 5 Would that not be a fair expectation?  
 6 A. No, it's not a one-to-one relationship. Blanks  
 7 are very complicated in terms of how they're handled, and  
 8 the field blank has both contamination from the field as  
 9 well as contamination from the laboratory.  
 10 Now, the way I used this type of information is  
 11 that I would take the field blank and correct it in the  
 12 same way as I would the laboratory blank, and then I would  
 13 compare the two. And if the field blank was some amount  
 14 higher than the laboratory blank, then I would then  
 15 investigate that further in terms of a field blank problem.  
 16 But under this condition, I relied primarily  
 17 on--you can see that the 5X rule is violated simply by the  
 18 laboratory blank, which it is a property to correct for  
 19 that.  
 20 Q. Would it be fair to say that if there is  
 21 laboratory contamination and a problem with the field  
 22 blank, the results of the field blank should be higher than  
 23 the results of the laboratory blank?  
 24 A. In some cases, but it's not a one-to-one  
 25 relationship. The field blank may have gotten a little

11:46 1 less from the laboratory, depending on how it was handled  
 2 or when it was extracted or analyzed and how it was  
 3 processed. So, it's not necessarily the case.  
 4 The primary blank that I rely on here is the  
 5 method blank, the laboratory blank.  
 6 Q. Right. When you say here, it's in your  
 7 presentation, not in your Report; right?  
 8 A. Well, it's presented here.  
 9 Q. Okay.  
 10 A. If you take the field blank, I was criticized in  
 11 Dr. Short's Final Report that you're not supposed to  
 12 correct the field blank, so what I did is I just simply  
 13 said, okay, let's put the field blank aside, but in his  
 14 discussion, he only mentioned a criticism of the field  
 15 blank. He never discussed, for example, that the  
 16 laboratory blank was not supposed to be normalized  
 17 appropriately. He never mentioned that in his Report,  
 18 which, by his silence, meant that he agreed with me that  
 19 the method blank should certainly be normalized  
 20 appropriately under the National Functional Guidelines.  
 21 So, what I did for the purposes of my presentation  
 22 today, is because of time and energy that I had for it, I  
 23 simply removed the field blank just so I didn't have to  
 24 discuss that issue for the Tribunal, but the method blank  
 25 is really the key blank because the laboratory runs it

11:48 1 specifically with those batches of samples, and it's the  
 2 blank that most closely connected to the problem of blank  
 3 contamination, which has been identified by the laboratory  
 4 itself. That's why I didn't discuss the field blank, I  
 5 didn't want to get into the fact of--I mean, when I look at  
 6 the blanks, I do correct the field blank, I routinely  
 7 correct the field blank, and I compare that to my method  
 8 blank, but it's not going to be a one-to-one relationship.  
 9 Blanks don't behave that way in the samples. Again, that's  
 10 why the EPA has decided that the 5X rule is appropriate to  
 11 be sure that you're not having a blank contamination  
 12 problem.  
 13 Q. Do you recall what my question was?  
 14 A. Well, with regards to the--your question was with  
 15 regard to the field blank and why would the field blank be  
 16 exactly the same as the method blank, and my answer is no,  
 17 it wouldn't necessarily be the same.  
 18 Q. That wasn't my question, but the record is clear,  
 19 and I just want to request, if you can, to try to keep your  
 20 answers a bit shorter.  
 21 A. Sure.  
 22 Q. We will try to advance that way if we can.  
 23 A. Okay.  
 24 Q. Now, for the record--and it's now being shown on  
 25 the screen--the graph I understand that you were referring

11:49 1 to from Dr. Short's latest Report is now being shown, it's  
 2 Figure 3 of Dr. Short's March 2015 Report, and we know that  
 3 he hasn't been called to explain that.  
 4 Now, you referred to a moment ago to the National  
 5 Functional Guidelines. I understand that that is a 1999  
 6 USEPA Guidance on which you rely for your 5X rule; correct?  
 7 A. I have been using the 5X rule for many, many years  
 8 in my work, so that's one version of the 5X rule.  
 9 Now, in the LBG Auditor's Report, they also apply  
 10 the 5X rule as well, so it's appropriate for both 1999 and  
 11 obviously, in 2008, given that LBG's laboratory applied it  
 12 as well.  
 13 Q. You were anticipating my questions but I think  
 14 that will facilitate the discussion.  
 15 To be clear, in your Reports, you only discuss the  
 16 1999 USEPA Guidance; correct?  
 17 A. Yes, those are the Guidelines that I rely on  
 18 primarily because it invokes the 5X rule which has been  
 19 used in standard practice in most laboratories around the  
 20 country.  
 21 Q. But you're aware--and this is why you mentioned it  
 22 now and you mentioned it yesterday--you're aware, are not,  
 23 that there are more recent EPA Guidance that apply to the  
 24 issue of blank contamination; correct?  
 25 A. Yes, I am.

11:50 1 The 2008 Guidelines were used by the LBG  
 2 validator. And if I had applied those Guidelines, I would  
 3 have even been more rigorous and had rejected more  
 4 compounds using the 2008 Guidelines.  
 5 Q. And there are also some 2011 Guidelines, are there  
 6 not?  
 7 A. Not for semi-volatile organic compounds. My  
 8 understanding is that the 2011 Guidelines were for the  
 9 dioxin compounds.  
 10 Q. Well, you have that discussion, have you not, in  
 11 Dr. Short's latest Report, but I just want to be clear that  
 12 you don't rely on the 2011 Guidelines, do you?  
 13 A. Oh, no.  
 14 Q. Okay. Now, let's look at the 1999 Guidelines, if  
 15 you will. It's at Tab 22.  
 16 Now, I would like you to look. It's a bit long,  
 17 but just to confirm on the basis of the first page, these  
 18 are the Guidelines we were looking at--you were referring  
 19 to, excuse me, from 1999; correct?  
 20 A. Yes, they are.  
 21 Q. And these are the only ones mentioned in your  
 22 Reports; correct?  
 23 A. I believe so.  
 24 I did discuss 2008, I believe, in my Second  
 25 Report.

11:52 1 Q. I'm sure my colleagues will be able to point that  
 2 out on redirect.  
 3 Now, I would like you to please take a look at  
 4 Page 60, 6-zero. And you may begin actually at Page 58, so  
 5 that we can see the titles, Page 58, begins with a section  
 6 a blanks; correct?  
 7 A. Yes, that is correct.  
 8 Q. And if you turn the page, we will see on Page 60  
 9 the examples that are provided of how to apply these  
 10 Guidelines; correct?  
 11 A. There are some examples, yes.  
 12 Q. And to understand this clearly, we're now looking  
 13 at Example Number 1. It says, Example Number 1, the sample  
 14 result is greater than the Contract-required quantitation  
 15 limit, but it's less than five times or ten times multiple  
 16 of the blank result.  
 17 Do you see that?  
 18 A. Yes.  
 19 Q. Now, a quantitation limit--I think you mentioned  
 20 that term yesterday--is the lower threshold that's defined  
 21 by the lab for considering that a result is precise or  
 22 accurate; correct?  
 23 A. My understanding is that it represents the lowest  
 24 standard in their calibration in this particular situation.  
 25 Q. Did you calculate any quantitation limit when you

11:53 1 did your data validation?  
 2 A. Yes, we did compare them to quantitation limits.  
 3 I don't recall what they were. I know that they had on the  
 4 order for waters, I think they concentrated to 100 micro  
 5 liters, they had a 10-nanogram per liter standard that that  
 6 would make it a 1 nanogram per liter detection mass wise,  
 7 and then divided by the volume.  
 8 Q. Is it your testimony that, in your data-validation  
 9 process, you looked before applying the 5X rule whether the  
 10 blanks were below or above a quantitation limit? Yes or  
 11 no.  
 12 A. Well, I have to recall.  
 13 I think that quite honestly, no. For the work  
 14 that I did, I include anything above three times MDL or a  
 15 little bit above the baseline, I include all of the data  
 16 beyond the quantitation limit for a 5X rule.  
 17 For example, if compound is present below a  
 18 quantitation limit, then you would still apply the method  
 19 blank associated with that in the 5X rule.  
 20 Q. Let me now understand because you said you  
 21 included all the data, and then you said "for the 5X rule,"  
 22 so I want to understand what your testimony is.  
 23 When you applied the 5X rule, did you consider  
 24 what impact a quantitation limit had on the treatment of  
 25 your blanks, or did you simply look at the blank

11:55 1 concentration and multiplied it by five?  
 2 A. I looked at the blank concentration that was  
 3 recorded by the laboratory and multiplied it by five and  
 4 compared that to the sample, yes, and that is my standard  
 5 practice.  
 6 Q. Okay. And if we look at the--go back to the  
 7 examples in 1999, all of these examples--one, two, and  
 8 three--show blank results above the quantitation limit;  
 9 correct?  
 10 A. In these examples, yes.  
 11 Q. And actually, there is no rule in these Guidelines  
 12 that tells you how to treat blanks when they are  
 13 below--excuse me--how to treat samples, field samples, when  
 14 the blanks are below the quantitation limit but the sample  
 15 result is above the quantitation limit; is that correct?  
 16 A. Well, not in these examples.  
 17 Q. And there is no rule outside of these examples in  
 18 these Guidelines that tells you what to do in that  
 19 situation, is there?  
 20 A. I can only tell you that it's standard practice in  
 21 the laboratory industry.  
 22 Q. But you're aware, are you not, that the 2008 Rules  
 23 do have a specific provision for the situation where the  
 24 blank result is below the quantitation limit but the field  
 25 result is above? Are you not aware of that?

11:57 1 A. Could we pull up the 2008 criteria?  
 2 Q. Of course. It's the very next tab.  
 3 A. Good.  
 4 Q. And you can go at Page 112. Yes, sir. And for  
 5 the record, that's Exhibit C-2094. Page 112 you should  
 6 normally find a table.  
 7 A. I'm sorry, I see Page 28--oh, I'm sorry, that's  
 8 for trace volatiles. Excuse me. Semi-volatiles.  
 9 So, for semi-volatile organics, 112, yes, I have  
 10 that page.  
 11 Q. Thank you. And so that the record is clear, at  
 12 Page 109, the section on blanks for semi-volatile organics  
 13 begins; correct?  
 14 A. That is correct.  
 15 Q. And if you turn the pages up to Page 112, there we  
 16 find Table 31 which tells us what the Guidance says,  
 17 depending on the combination of the blank result and the  
 18 sample result; correct?  
 19 A. Yes. My understanding is that these are the  
 20 Guidelines that were used by the validators for the LBG  
 21 data.  
 22 Q. And this is the guideline that was in force when  
 23 you submitted your Report, was it not?  
 24 A. Well, you have a selection of Guidelines that you  
 25 can use when you're interpreting laboratory data. I mean,

11:58 1 the Guidelines from 1999 don't mean they're invalid. All  
 2 the data that was generated or produced prior to that all  
 3 of a sudden doesn't just become unacceptable. I prefer to  
 4 use the Guidelines because they're common sense.  
 5 And, for example, with regards to your issue of  
 6 how do you deal with blanks below the quantitation limit  
 7 specifically, if you use data below your quantitation  
 8 limit, you certainly can't ignore the blank, and that's my  
 9 professional opinion.  
 10 Q. And to be clear, we confirmed yesterday that you  
 11 began working on this matter in 2004. Do you recall that?  
 12 A. Yes.  
 13 Q. And in 2004, you went to the--excuse me. I will  
 14 strike that--you issued some reports. In 2013, you  
 15 commented on LBG's data; correct?  
 16 A. I believe so, yes.  
 17 Q. By 2013, you were aware of the 2008 Guidelines;  
 18 correct?  
 19 A. Yes, I was.  
 20 Q. And LBG's data validation was not performed under  
 21 the 1999 Guidelines but was performed under more recent  
 22 Guidelines, was it not?  
 23 A. Yes, it was, under the validator's report, that is  
 24 the methodology that they relied on, yes.  
 25 Q. And you invalidate part of LBG's data applying the

<p>Sheet 11</p> <p style="text-align: right;">1732</p> <p>12:00 1 1999 Guideline; correct?  2 A. No, actually I invalidate the--because the  3 validators relied on the 2008 Guidelines, I then relied on  4 the 2008 Guidelines. These were the Guidelines that were  5 presented in their validation report. So, using these  6 results, many of the results were following these  7 Guidelines. So the rejections that they generated were  8 acceptable within these Guidelines, but there were a number  9 of rejections that they failed to identify that were not  10 within these Guidelines--  11 I'm sorry, let me just repeat that.  12 They didn't reject certain compounds in their  13 samples that were within these Guidelines, and that was my  14 issue with that, so I adopted these because that's what the  15 validator was using, so I had to compare--it was unfair for  16 me to compare my Guidelines to Guidelines that they had  17 already documented and stated that they had relied on.  18 Q. And that very explanation you just gave me is  19 nowhere in your Reports, is it?  20 A. I'd need to look at my Report for that.  21 MS. WOOD: Excuse me, counsel, I apologize for  22 interrupting you.  23 Just to be clear on the record, we did not receive  24 Ecuador's third-party data validation for its 2014 data  25 until after Dr. Douglas's January 2015 Report. It was</p>	<p style="text-align: right;">1734</p> <p>12:03 1 2013 validated--their third-party data validator's report  2 for the 2013 data prior to his 2015 Report, but we did not  3 receive the 2014 validated--third-party validators' report  4 until after his 2015 Report went in, and I hope that is  5 understandable to you.  6 PRESIDENT VEEDER: You made it very clear. Thank  7 you.  8 MS. WOOD: Okay, thank you.  9 MR. GARCÍA REPRESA: Thank you.  10 BY MR. GARCÍA REPRESA:  11 Q. So, to be clear, in your 2013 Report, I believe we  12 went through yesterday, you were asked to comment on the  13 chemistry opinions issued by LBG and Dr. Short; correct?  14 A. On what page, sir?  15 Q. I'm looking at the introduction of Page 4, for  16 example, on the bottom?  17 A. Page 4, 213?  18 Q. Right.  19 A. Yes, I see Page 4. What section are you referring  20 to?  21 Q. LBG had--did two field trips in 2013--  22 PRESIDENT VEEDER: Stop a second. Just help me,  23 where are you reading from?  24 MR. GARCÍA REPRESA: Excuse me, at the bottom I'm  25 reading--excuse me, it's Paragraph 1, 2, 3, and 4 after the</p>
<p style="text-align: right;">1733</p> <p>12:01 1 agreed by the Parties that the data would go in, and it is  2 25--I believe it's Record Number 2514 as to when that data  3 validator report was provided and then put into the  4 record--I believe it was March of this year, so he would  5 not have discussed LBG's third party data validator report  6 for the 2014 data in his 2015 Report.  7 MR. GARCÍA REPRESA: Right. And I'm just told  8 that he had that data for the 2013 Report. He had the LBG  9 data. And what I want to be clear about is when you, in  10 2013, tested the LBG data, you applied the 1999 Guideline;  11 correct?  12 MS. WOOD: Well, objection. Note lack of  13 foundation as to the 2013 data.  14 PRESIDENT VEEDER: If you're going to get into  15 this, take it a little bit more slowly.  16 MR. GARCÍA REPRESA: Sure.  17 PRESIDENT VEEDER: He didn't have the Report which  18 came after his Report, but you say he got the data before,  19 ask him about when he got the data and then we will work  20 backwards.  21 BY MR. GARCÍA REPRESA:  22 Q. Yes and we can maybe just take the 2013 Report, if  23 you wish, at Page 1.  24 MS. WOOD: And Mr. President, I want to be clear  25 on the record, I am not disputing that we received their</p>	<p style="text-align: right;">1735</p> <p>12:05 1 introductory title: "Because of my many years of  2 experience, I will review the environmental chemistry  3 opinions of Mr. Goldstein and Dr. Short that relate to  4 analytical methods and the validity, reliability and  5 integrity of the Concession Area environmental data."  6 MS. WOOD: Mr. García Represa, I apologize for  7 interrupting, but I just want to be clear for the Tribunal,  8 his June 2013 Report was written prior to our receiving any  9 of LBG's data, so he would not have been commenting on  10 LBG's data in his June 2013 Report.  11 MR. GARCÍA REPRESA: I appreciate, dear colleague.  12 I will make it clear, if I'm just allowed to walk through  13 the documents with the Witness so that we are clear about  14 the scope of his work.  15 PRESIDENT VEEDER: Well, you are making a point  16 about the timing, and are you moving away from that?  17 MR. GARCÍA REPRESA: No, I'm going now to the 2015  18 Report.  19 PRESIDENT VEEDER: Okay. Let's see where it goes.  20 BY MR. GARCÍA REPRESA:  21 Q. So, in your 2015 Report, you defined at the very  22 beginning on Page 1, the Scope of Work and qualifications,  23 and there you say at the very top paragraph, you were asked  24 to evaluate the environmental chemistry expert opinion by  25 Dr. Short and to review the integrity and validity of</p>

12:06 1 environmental data collected by Ecuador's environmental  
 2 expert, LBG, during the 2013 and 2014 field investigations;  
 3 correct?  
 4 A. Yes.  
 5 Q. So, when you did the data validation process for  
 6 your latest report, you had the LBG field data collected in  
 7 2013 and 2014; correct?  
 8 A. I believe so. I believe so, yes. It says  
 9 2013-2014.  
 10 Q. Okay. That, I think, is clear.  
 11 Now, we can go back, if we can go back to where we  
 12 were, Tab 23, we were looking at the 2008 Guidance from the  
 13 USEPA, and I was at Page 112.  
 14 A. Yes.  
 15 Q. And we were looking at what happens with  
 16 quantitation limits.  
 17 Now, I put it to you that what we see in Table 31  
 18 is that where the blank result is below the quantitation  
 19 limit--the CRQL--and the sample result is equal to or above  
 20 the CRQL, what these Guidelines call is for professional  
 21 judgment; is that correct?  
 22 A. So if the--  
 23 Q. I am looking at the--if you look at the blank  
 24 result.  
 25 A. Right. I see it.

12:09 1 at here because this table is very complicated.  
 2 If your blank is greater than the CRQL--and we're  
 3 going to go within that box, we'll go to the last line  
 4 where it says "and your sample result is greater than the  
 5 CRQL and greater than the blank concentration, use  
 6 professional judgment." And in this case, the professional  
 7 judgment was the 5X rule that the validators used, the  
 8 standard practice.  
 9 Q. And all of that depends on what quantitation limit  
 10 you actually use; correct?  
 11 A. That's right, as identified by a laboratory or as  
 12 a J value, which a J is generally indicative of a value  
 13 below the quantitation limit.  
 14 I should point out, too, sir, that if you look at  
 15 the blank result for the value where your blank is less  
 16 than the CRQL, so the blank is below that CRQL, but your  
 17 sample is also less than your CRQL, there is a requirement  
 18 here that is not professional judgment that says report the  
 19 CRQL value with a U. Now, a U means not detected. Now, in  
 20 the 1999 version, I would have used the 5X rule. So, in  
 21 some cases, I may not have rejected a value within that  
 22 criteria because the method blank--the sample may have been  
 23 greater than the method blank even below the CRQL.  
 24 In this case, you have no choice. It says here  
 25 report the value of the CRQL value with a U. That is not

12:08 1 Q. I apologize. Go ahead.  
 2 A. I see it.  
 3 You're saying here that if your blank is below the  
 4 CRQL and you have a sample greater than the CRQL, you would  
 5 use professional judgment, yes.  
 6 Q. And that professional judgment will require you  
 7 looking at what the intended use of the data is?  
 8 A. The professional judgment would require you to  
 9 deviate from standard practice, which in my opinion would  
 10 be the 5X rule. And if you use professional judgment, I  
 11 believe under ISO rules in terms of identification of the  
 12 definition of "professional judgment," you would need to  
 13 justify it in your Report. So, when the validators use  
 14 professional judgment, they need to tell you what they're  
 15 doing, why they're doing it, how they interpreted the data  
 16 and why they selected the methodology that they used  
 17 contrary to standard practice. I couldn't find that in  
 18 their Report, unfortunately.  
 19 Q. What we can see also in here, if you now go to the  
 20 row immediately below is that where the blank results,  
 21 excuse me, is above the CRQL, so even in that scenario, if  
 22 the sample result is equal to or greater than the  
 23 quantitation limit and the blank concentration, you can  
 24 still use professional judgment, can you not?  
 25 A. Let's make sure we understand what we're looking

12:11 1 detect. And I think that is the most important change  
 2 between the 1999 version and the 2008 version. They  
 3 provide you with the option of using professional judgment  
 4 for--in two situations which need to be documented, and  
 5 they require you to reject the values where your blank is  
 6 less than the CRQL and the sample is less than the CRQL,  
 7 rather than ignore the blank and just report it--you would  
 8 report that sample as a J had you ignored the blank, a J  
 9 being an estimated value.  
 10 Q. I would like to speak now about natural organic  
 11 material.  
 12 You said yesterday during your direct that LBG's  
 13 data is biased high because it incorrectly identifies  
 14 natural organic material. And for everyone's interest, I  
 15 will just refer to that as NOM, N-O-M.  
 16 A. That's one term we use, NOM, or just plant matter.  
 17 Q. Okay. It's easier, NOM, if you don't mind?  
 18 A. Okay. NOM works for me.  
 19 Q. Okay. So, you said that LBG's data is biased high  
 20 because it includes NOM as petroleum hydrocarbons in its  
 21 results.  
 22 A. And again, most aggressively with the TEM  
 23 analysis.  
 24 Q. Now, to set the premise, would you agree with me,  
 25 would you not, that in soils in the Oriente, NOM would



12:13 1 typically represent a few hundreds parts per million?  
 2 A. Absolutely not.  
 3 Q. And would you say that it can get as much as to a  
 4 thousand parts per million, that's a thousand milligrams  
 5 per kilogram?  
 6 A. NOM as measured by TEM can get as high as 26,000  
 7 milligrams per kilogram. NOM can get as high--can get into  
 8 the thousands of milligrams per kilogram.  
 9 Q. And we will get to that figure of 26,000 because I  
 10 understand that it relates to a specific sample that has  
 11 been discussed in these proceedings; correct?  
 12 A. Only one example. There is multiple examples.  
 13 Q. Now, if we can please go to Tab 25, the bundle we  
 14 were using. Now, you should normally find there a Judicial  
 15 Inspection Report for Sacha 6. And you should have, so  
 16 that there is no issue, both the original in Spanish at the  
 17 beginning and, separated by a blue-colored page, the  
 18 English translation.  
 19 And before we move on, do you recall having  
 20 authored an appendix to this JI Report?  
 21 A. I have to find the English version.  
 22 Q. Well, if it may assist you, you will see in the  
 23 English there's Bates numbers at the bottom right. And if  
 24 you look at the Bates numbers, I'm interested in page--the  
 25 page that finishes with 912, bottom right corner.

12:14 1 A. Unfortunately, I don't have Bates numbers.  
 2 Q. It's after--it's towards the end of your document.  
 3 You should have the Spanish version followed by an English  
 4 version at the end. And if not, we can have someone assist  
 5 you.  
 6 We will have someone assist you.  
 7 A. No, I see--  
 8 Q. You have it?  
 9 A. I see that.  
 10 Q. Okay.  
 11 A. It's separated by a blue tab here.  
 12 Q. Correct.  
 13 A. Okay.  
 14 Q. And if you look at the bottom right corner at  
 15 Page 912, you should normally--we didn't print it all  
 16 because it's humongous. It's about a bit more than 6,000  
 17 pages, I'm told, in the PDF file. Now, beginning at  
 18 Page 903, we can see an Appendix G; correct?  
 19 A. Yes, 903, Appendix G.  
 20 Q. Correct.  
 21 And you will it has two items there, G.1 and G.2,  
 22 and G.1 is your Report, Douglas G.S., 2004--that's a Report  
 23 you authored; correct?  
 24 A. Yes. Yes.  
 25 Q. And if you turn the page, you will see that we

12:16 1 actually have your bio and your signature on that,  
 2 Page 905; correct?  
 3 A. Yes, this is my Report.  
 4 Q. Okay. So, if you now turn to Page 912 in the  
 5 English version, at the bottom we find your recommendation  
 6 in relation to Sacha 6. And you could you please read for  
 7 the record the paragraph right below the "recommendation."  
 8 A. Well, in terms of these soils--and I have to make  
 9 sure we understand that there is a huge difference between  
 10 soils and sediments in terms of the amount of organic  
 11 matter they may have present--but "in terms of these  
 12 specific soils that have not been impacted by petroleum are  
 13 clean may contain a few PPM to as much as a thousand PPM  
 14 TPH that is not related to or caused by petroleum. When  
 15 evaluating TPH, the following steps should be taken to  
 16 minimize false positives and an overestimation of  
 17 environmental risk at the site."  
 18 Q. Okay. Do you stand by that opinion, sir?  
 19 A. Well, for these samples, if there was an  
 20 indication that there was a--they had no indication of  
 21 petroleum and they had a 10,000 PPM TPH value, then I don't  
 22 remember or recall these samples specifically, but it's  
 23 possible in these samples that a thousand PPM would be very  
 24 reasonable for background contamination of--at this site.  
 25 Q. Okay. And during your direct presentation

12:17 1 yesterday, you said that that NOM can be identified by its  
 2 characteristic fingerprints; do you recall that?  
 3 A. Yes, I do.  
 4 Q. And you showed us Slide 17. You can take--you are  
 5 most welcome to go to that Slide 17.  
 6 Now, in that slide, I understand that you were  
 7 showing to us, and I will just use the acronym, the GC/FTD  
 8 chromatogram; correct?  
 9 A. And for crude oil and for plant matter, in sample  
 10 SSF13-SE002, yes.  
 11 Q. And you said that the image on the right--and I'm  
 12 asking you to confirm if there's anything that we didn't  
 13 say, that's incorrect, we have the technical jargon--just,  
 14 feel free to correct me.  
 15 A. I understand.  
 16 Q. I understand you said the image to the right is a  
 17 typical distribution of plant matter, and you referred to,  
 18 and I will be reading what you said, that the peaks  
 19 represent plant waxes and that they produce alkanes C27,  
 20 29, 31, 33.  
 21 Do you recall that explanation you gave?  
 22 A. Well, yeah. I recall that. The purpose was to  
 23 show and to discuss the fact that plants produce  
 24 odd-chained waxes. So, I didn't mean that they only  
 25 produced those odd chains. They produce 21, 23, 25--they

12:19 1 produce a whole range of odd-chain plant waxes. They also  
 2 produced, at lower concentrations, some even-chain plant  
 3 waxes. And that's one piece of information you can use to  
 4 identify that you have plant matter present in your sample.  
 5 Q. And that is precisely what I wanted to understand  
 6 with you, that the--is it your testimony that we can  
 7 identify in a chromatogram whether we are dealing with only  
 8 plant matter when we see that the odd-numbered alkanes--21,  
 9 23, 25, et cetera--show higher concentrations,  
 10 significantly higher concentrations, than the even alkanes?  
 11 Is that a fair characterization?  
 12 A. So, what you're asking me is that, just based on  
 13 the fact that you have those odd-chained alkanes in your  
 14 sample, does that mean there is only plant matter in your  
 15 sample?  
 16 Q. Let me rephrase the question. And we may look, if  
 17 you wish, at the same document you were looking at,  
 18 now--Bates Number 920.  
 19 Are you with me, sir?  
 20 A. Yes.  
 21 Q. So, at the very bottom of your Report here from  
 22 2004, we see a Figure 10, chromatogram of plant waxes in a  
 23 pre-industrial sediment sample, and we have a chromatogram  
 24 where we see peaks at 25, 27, 29, 31, and 33; correct?  
 25 A. That would suggest that plant material was present

12:21 1 in that sample.  
 2 Q. Okay. But when you say "suggest," you have no  
 3 certainty. Is that what you want to express?  
 4 A. No. When we see plant waxes such as these  
 5 odd-chained plant waxes, they generally indicate the plant  
 6 material is present. It doesn't mean that it's 100 percent  
 7 plant material, but it is an indicator, among others that  
 8 we use, others being the boiling range of the sample  
 9 between C16 and C31, information such as that; the lack of  
 10 PAHs, for example.  
 11 So, you use multiple parameters when you're making  
 12 that analysis.  
 13 Q. And I'm now showing on the screen that same  
 14 Figure 10 we were looking at, and we superpose what's in  
 15 red so it's clear.  
 16 Is it normal or is it typical of plant matter to  
 17 have a bell-shaped form with the--in the alkanes between  
 18 the 25 to the 33 range?  
 19 A. It's depending on the plants. We have such a  
 20 diversity of plants in the Oriente. I have seen many  
 21 distributions of various odd-chained plant materials that  
 22 don't necessarily have that bell-shaped pattern.  
 23 Q. Okay. And to be clear--and I would like you to  
 24 confirm--C28 is the end of the DRO, otherwise, diesel range  
 25 organics; correct?--and C36 is the end of what we call the

12:22 1 extended diesel range; is that correct?  
 2 A. That's one definition, yes. C35, the C36 range.  
 3 Q. Okay. And that is relevant because of what we  
 4 will be covering now. If we can go to your Slide 17 again,  
 5 in the image we have plotted where the C28 to C36 range  
 6 should go.  
 7 A. I'm sorry.  
 8 Q. Yes. You can look at your--your slide is maybe of  
 9 better quality. We read on your slide, where you see the  
 10 arrow that says C28, diesel range organics.  
 11 Do you see that?  
 12 A. Yes.  
 13 Q. And where we see the C36, we have extended diesel  
 14 range organics; correct?  
 15 A. I'm not so sure that that identification indicates  
 16 the range itself, but it might be a function of the gas  
 17 chromatogram that puts it somewhere in the middle.  
 18 Q. So, where would you--  
 19 A. I don't know--this is not my gas chromatogram--but  
 20 what I would be interested in looking at...  
 21 (Pause.)  
 22 A. I'd need to--I mean, if you have the alkane  
 23 standard for this, I can just compare--overlay the alkane  
 24 standard and tell you exactly what that range is in that  
 25 chromatogram.

12:24 1 Q. Right. I'm sure we can have that conversation  
 2 afterwards. For now, I just have your slide. So, we will  
 3 have to work with that, if we can.  
 4 A. Um-hmm.  
 5 Q. If not, we will move on.  
 6 A. Okay.  
 7 Q. Would it be fair to say that with plant matter,  
 8 somewhere in between these two arrows, we should find peaks  
 9 with the odd alkanes?  
 10 A. I would say that generally you would see them  
 11 between C16 to C35.  
 12 Q. And can you tell me what the peak is of right up  
 13 to the C36. What are we seeing there?  
 14 A. Well, I can't, because it's a gas chromatograph.  
 15 And in a gas chromatograph, you don't have--it's not like a  
 16 GC/MS where you can actually identify those compounds.  
 17 I'm sure that if you would have provided me with  
 18 the bar chart for the GC/MS, I could identify them with  
 19 high accuracy.  
 20 Q. Okay. I would like to discuss now the last point  
 21 for the day in this scenario--I hope we can have a  
 22 conversation if you wish afterwards--which is the issue of  
 23 weathering that you mentioned in your presentation also  
 24 yesterday.  
 25 And in particular, I want to be looking at your

<p>Sheet 15</p> <p style="text-align: right;">1748</p> <p>12:26 1 2013 Report at Page 14. And I'm looking at the very top  2 paragraph which begins "in addition to."  3 And there you--  4 A. I'm sorry, the top of Page 15 or 14?  5 Q. It should be 14.  6 A. Okay, thank you.  7 Q. There you said that, in addition to the simple  8 examination of the gas chromatograms--so, what we were  9 looking at a moment ago--you said that, "for the  10 identification of biodegradation, quantitative measurements  11 were made for each study to calculate the percent of each  12 compound class that was lost from the fresh oil using  13 modern generally accepted methods for detailed  14 characterization of crude oil contamination."  15 Do you see that?  16 A. Yes.  17 Q. And the text between the inverted commas cites to  18 an article by yourself; correct?  19 A. Sixty.  20 Q. And it's in the prior page. I do not know why  21 that footnote--  22 A. Yes, it does.  23 Q. And--  24 A. I'm sorry, 60. 60.  25 Oh, yes.</p>	<p style="text-align: right;">1750</p> <p>12:29 1 A. That's right. It says "this research was funded  2 by Chevron Corporation. We are grateful to the reviewers  3 of the manuscript for their contribution to the technical  4 and editorial quality of this work."  5 Q. So, the Claimant in these proceedings funded that  6 article you're citing in 2012; correct?  7 A. Yes, that is correct. They provided--it was the  8 data that was generated as part of the JI biodegradation  9 program.  10 Q. And they funded the work.  11 A. They funded the work.  12 Q. They paid for that article, did they not?  13 A. Well, I don't know how much I paid for or how much  14 they paid for, to be honest with you. It took me a while  15 to write it and I did some of it on my own time.  16 Q. They paid something for that article?  17 A. I believe so, yes.  18 Q. Now, as to weathering, and you described it as  19 "the physical processes of evaporation and solubilization."  20 And also you described biodegradation as "the next step in  21 the weathering process."  22 Do you recall that?  23 A. Well, can you point me to where you are reading  24 it?  25 Q. I was just trying to connect the dots with your</p>
<p style="text-align: right;">1749</p> <p>12:28 1 Q. And that, to be clear, is the only source that we  2 have for the "modern generally accepted methods" that you  3 refer to in this paragraph; correct?  4 A. That's the only one I referenced here.  5 Q. Okay. And we can go to that, if you wish, at  6 Tab 29.  7 Now, we look at the top of this document, we see  8 various authors mentioned. I understand all of them were,  9 at the time of this article, employees of NewFields;  10 correct?  11 A. That is correct, yes.  12 Q. And if we look at the abstract, what you are  13 describing in this article is what you called "a new and  14 rapid quantitative approach;" is that right?  15 A. Yes.  16 Q. Do you recall the date of this article?  17 A. I would have to look at the bottom.  18 It was published in 2012.  19 Q. That was about eight years after you had begun  20 working in this matter; correct?  21 A. Yes.  22 Q. Do you recall who funded this article?  23 A. It says in the back that--the Acknowledgments--it  24 says--  25 Q. Page 8286?</p>	<p style="text-align: right;">1751</p> <p>12:30 1 direct presentation yesterday?  2 A. Okay.  3 Q. Where--and for the Tribunal's convenience, it's at  4 Page 1630, Lines 16 to 18 of the Transcript from  5 yesterday's.  6 But--  7 A. Okay.  8 Q. I was trying to just conceptually--I was trying to  9 conceptually make sure that we all are on the same page.  10 Would you say that weathering is the physical  11 processes that include evaporation, solubilization and  12 biodegradation?  13 A. Well, it's a generic term that's used in our  14 business. Sometimes it's used to explain physical  15 processes such as evaporation and biodegradation, and  16 sometimes you include biodegradation within the general  17 term. So, it's--it's the way it's used.  18 Q. Okay. Well, I'm going to be using biodegradation.  19 A. Okay.  20 Q. It speaks more to me.  21 And would you say that biodegradation depends on  22 five principal factors, which are temperature, the presence  23 of bacteria, the presence of nutrients, the supply of  24 oxygen, and the surface area of the oil compared to the  25 volume of the oil; is that correct?</p>

12:32 1 A. I think those are some of the major factors.  
 2 Now, was the first one bacteria?  
 3 Q. Temperature.  
 4 A. Oh, well, bacteria--you need bacteria, too, to do  
 5 this.  
 6 Q. That was my second one.  
 7 A. Oh, I'm sorry. Okay.  
 8 Q. Okay. And I would like to focus now on oxygen.  
 9 A. Yes.  
 10 Q. Now, would you agree that where oxygen is absent,  
 11 hydrocarbons will either not decompose or decompose slowly?  
 12 A. I would agree that in the absence of oxygen, that  
 13 hydrocarbons would decompose slowly.  
 14 Q. And would you also agree that the availability of  
 15 oxygen decreases in soils with the depth of the column;  
 16 correct?  
 17 A. I haven't personally measured it at the site, but  
 18 if you're talking about an impacted site where oxygen is  
 19 being consumed by the biodegradation process, then you  
 20 would expect the oxygen to become depleted.  
 21 Q. And let's now go to a real example.  
 22 In a pit in the Ecuadorian Oriente that has  
 23 hydrocarbons in it, would you agree that the availability  
 24 of oxygen is lower at the lower depth in that pit?  
 25 A. Is this a soil pit or a pit filled with oil and

12:35 1 correct?  
 2 A. Yes.  
 3 Q. Now, that weathering state, to be clear, is based  
 4 on the scale developed by Kaplan and Galperin; correct?  
 5 A. Yes.  
 6 Q. And we see, as we go to the right, your  
 7 calculations of the percent depletion depending on the  
 8 carbon ranges that you're looking at; correct?  
 9 A. That is correct, yes.  
 10 Q. Now, I would like to look at the very bottom line,  
 11 that--and I'll ask you to confirm--is my understanding is  
 12 the deepest sample collected within the pit Number 2;  
 13 correct?  
 14 A. The bottom line for JI-SAC-PIT2?  
 15 Q. Yes.  
 16 A. Okay. Yeah. According--well--  
 17 Q. Is 2.2M the depth?  
 18 A. Yes, but interesting enough, there is another  
 19 sample, JI-SAC-EST-SI-2.2 depth as well, so...  
 20 Q. EST means Estación, doesn't it?  
 21 A. I don't know what these mean, so--I don't--I just  
 22 report the data.  
 23 Q. Would you agree with me that pit means pit?  
 24 A. Oh, yes. If that means pit, then, so, it says  
 25 pit--so, SAC-PIT--okay--1 is--okay, 1 is just the pit. It

12:33 1 water or something?  
 2 Q. Let's say that it's a pit that has crude in it  
 3 that was covered by a clean layer of soil. Would the  
 4 availability of oxygen be lower with the depth at the  
 5 deepest end of that pit?  
 6 A. I would expect there to be less oxygen deeper in  
 7 that situation, yes.  
 8 Q. And therefore, it will also be normal for the  
 9 crude that is found at the deepest end of that pit to be  
 10 less weathered than the crude at the higher end of  
 11 the--closest to the surface end of that pit; correct?  
 12 MS. WOOD: Objection. Incomplete hypothetical.  
 13 BY MR. GARCÍA REPRESA:  
 14 Q. Well, let's take a look at Tab 32, if you will.  
 15 This is a report that you authored in April 2005 in  
 16 relation to the Sacha Central Production Station.  
 17 Do you recall that? And this, just for the  
 18 record, is part of Attachment 2 to your 2013 Report.  
 19 A. Yes.  
 20 Q. Now, if you can please go to Page 9, we have a  
 21 table with the results of the testing; correct?  
 22 A. Yes.  
 23 Q. And we have on the left column the various  
 24 samples. We have in the second column the chromatographic  
 25 features. The third column is the weathering state;

12:37 1 doesn't seem to say--it seems like it's a different pit, is  
 2 what I'm saying. I don't think these seem to be the same  
 3 samples.  
 4 Q. Right. There are some--the top one's taken at  
 5 Estación, the three right below at Pit Number 1, and the  
 6 bottom one at Pit Number 2; isn't that correct?  
 7 A. When you say Estación, what do you mean?  
 8 Q. Your Report is Sacha Central Production Station.  
 9 A. Okay.  
 10 Q. Station in Spanish is Estación.  
 11 A. Okay.  
 12 Q. It simply means--I understand--  
 13 A. Thank you. I'm sorry.  
 14 Q. No problem. So, just to wrap up, if you go to the  
 15 very last page of these documents, we are now looking--and  
 16 excuse me, we will have to do that--we are seeing two pits  
 17 being tested here, okay? Pit Number 1 and Pit Number 2.  
 18 ARBITRATOR LOWE: Page 13?  
 19 BY MR. GARCÍA REPRESA:  
 20 Q. At Page 13, which is the very last page, you have  
 21 a figure where you compare the percent DRO (diesel range  
 22 organics) and TPAH (Total Petroleum Aromatic Hydrocarbons)  
 23 depletion of Sacha Central crude oil in Pit Number 1;  
 24 correct?  
 25 A. Percent depletion versus soil depth, yes.

12:38 1 Q. And the vertical axis is the percent of depletion  
 2 and the horizontal axis is the soil depth; correct?  
 3 A. Yes.  
 4 Q. And what we can see, especially in the blue line,  
 5 is that as depth increases, depletion decreases; correct?  
 6 A. In these samples at this site, yes, that's  
 7 correct.  
 8 Q. Would you say that that's a general feature in  
 9 pits, that the deeper you go, the less depleted the crude  
 10 is?  
 11 MS. WOOD: Objection. Incomplete hypothetical.  
 12 MR. GARCÍA REPRESA: I would--  
 13 PRESIDENT VEEDER: Let's see if the Witness can  
 14 answer. If the Witness can't, then the Witness can say so.  
 15 MS. WOOD: Certainly.  
 16 THE WITNESS: Well, conceptually, that may be the  
 17 case, but you really do need to measure each pit and  
 18 compare the results depending on the qualities and the  
 19 characteristics of every pit.  
 20 BY MR. GARCÍA REPRESA:  
 21 Q. Do you recall how many of these Reports you  
 22 included in Attachment 2 to your June 2013 Expert Report?  
 23 A. I'm sorry?  
 24 Q. Yes. The Report I was showing you is just one--  
 25 A. Right.

12:40 1 come back at 20 to 2:00, or we could continue with the  
 2 re-examination. But give us some estimate of how long you  
 3 might be.  
 4 MS. WOOD: I don't think I will be very long,  
 5 Mr. President, but it would be nice to have a lunch break  
 6 now, if that's possible.  
 7 PRESIDENT VEEDER: Well, we could certainly do  
 8 that, but very long means...  
 9 MS. WOOD: Fifteen minutes. 15, 20 minutes.  
 10 PRESIDENT VEEDER: Why don't we come back at 20 to  
 11 2:00.  
 12 MS. WOOD: Thank you.  
 13 PRESIDENT VEEDER: Thank you.  
 14 (Whereupon, at 12:40 p.m., the Hearing was  
 15 adjourned until 1:40 p.m., the same day.)  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

12:39 1 Q. --Report that you did in 2005.  
 2 A. Right.  
 3 Q. Do you recall how many more of these Reports you  
 4 enclosed with Attachment 2 to your June 2013 Report?  
 5 A. This was just an example of those. I didn't--  
 6 Q. Um-hmm.  
 7 A. For example, we didn't always have samples that  
 8 were related to each other where we had maybe a surface  
 9 sample or a depth sample. And if we had, we would be  
 10 looking at it to see how that changed with depth.  
 11 Q. So, we could expect to see graphs like this one in  
 12 the other Reports?  
 13 A. If we had--well, it was--this presentation was an  
 14 evolving process. I think most of the Reports would  
 15 include everything up to Page 12. And then when we started  
 16 to look at it more deeply, we started to generate some  
 17 figures that would provide the JI Expert additional  
 18 information regarding, you know, if we had two samples that  
 19 we knew were, in fact, from the same pit, the same  
 20 location, then we would provide them with that information.  
 21 Q. Thank you, sir.  
 22 MR. GARCÍA REPRESA: And I have no further  
 23 questions.  
 24 PRESIDENT VEEDER: Thank you very much.  
 25 It's 20 to 1:00. We could break for lunch and

1 AFTERNOON SESSION  
 2 PRESIDENT VEEDER: Let's resume.  
 3 There will now be questions from the Claimants.  
 4 MS. WOOD: Thank you, Mr. President.  
 5 REDIRECT EXAMINATION  
 6 BY MS. WOOD:  
 7 Q. Dr. Douglas, just a few questions for you.  
 8 Could you turn in the binders that Mr. García  
 9 Represa handed out to Tab 23, the 2008 National Functional  
 10 Guidelines at Page 112.  
 11 A. Yes, I have it.  
 12 Q. And you discussed with Mr. García Represa the  
 13 chart that is on Page 112?  
 14 A. That is correct.  
 15 PRESIDENT VEEDER: I'm sorry, just pause a second.  
 16 112?  
 17 MS. WOOD: It's Tab 23, Page 112, Mr. President.  
 18 BY MS. WOOD:  
 19 Q. And could you explain to us--I believe you called  
 20 it the BJ rule in your direct testimony, and looking at  
 21 this chart, can you explain the BJ rule to us?  
 22 A. Sure.  
 23 Within the chart there are a number of actions for  
 24 samples. As you can see, some of them have different types  
 25 of reports, including no qualification, report CRL value

01:41 1 with a U or use professional judgment.  
 2 With regards to the BJ rule that I was discussing  
 3 in my presentation, I was referring to the situation where,  
 4 if you look at the top of the table, where it says "less  
 5 than CRQL," and then you go over to your right just below  
 6 not detected, it says less than CRQL. What that means, if  
 7 the blank is less than the CRQL and the sample result is  
 8 less than the CRQL, then you report the CRQL value with the  
 9 U, and U means not detected.  
 10 Q. And, Dr. Douglas, if I might stop you there for a  
 11 minute, where it says, "actions for samples," the Report  
 12 CRQL value with a U, is that a professional judgment, or is  
 13 that a mandatory requirement?  
 14 A. That's a mandatory requirement.  
 15 Q. Okay. Let me turn you back to Slides 34 through  
 16 36 of your direct presentation.  
 17 A. Yes.  
 18 Q. And I believe you used this as an example of the  
 19 application of this mandatory requirement in the 2008  
 20 National Functional Guidelines.  
 21 And before I ask you to demonstrate how this Rule  
 22 applies, can I first ask you, did LBG's data validators for  
 23 its 2014 data, did they apply this mandatory rule when  
 24 validating LBG's data?  
 25 A. No, they did not.

01:43 1 Q. Okay. Can you just walk us through what you mean  
 2 by "application of the BJ rule"?  
 3 A. If I had a pointer, that would be helpful, but  
 4 that's okay.  
 5 What I mean is if you look at the yellow compounds  
 6 represent the compounds that are used to calculate  
 7 carcinogenic PAHs, quantify carcinogenic PAHs in the  
 8 sample, and you can see that on Page 34, the U values stand  
 9 for "not detected," so those PAHs were not detected in the  
 10 sample. However, the lab flags for the other PAHs, like  
 11 the top one, benzo (a) anthracene, chrysene,  
 12 Indeno(1,2,3-cd)pyrene and 1-methylnaphthalene, those are  
 13 all associated with BJs, and what that indicates is that  
 14 the sample had a blank problem, and it was present at less  
 15 than the quantitation limit, which would fall within the  
 16 2008 National Functional Guidelines as a U or not detected.  
 17 Q. And, Dr. Douglas, I believe we've gone to  
 18 Slide 35, which reflects the U, the non-detect in lieu of  
 19 the BJ that the LBG data validators had flagged the data  
 20 with.  
 21 A. That's correct.  
 22 Q. And what does that mean when you put the U?  
 23 A. That means that that analyte was not detected.  
 24 Q. Okay. And then if you go to Slide 36, can you  
 25 just briefly describe Slide 36.

01:45 1 A. Slide 36 basically shows you all of the analytes  
 2 that were not detected and shows that Ecuador's Expert used  
 3 non-detect data in their risk-assessment calculation.  
 4 Q. Thank you.  
 5 Moving to a different topic, if you could turn to  
 6 Slide 17 of your direct presentation, you were asked a  
 7 number of questions by Mr. García Represa about this slide,  
 8 and you were requesting the alkane plots in order to  
 9 interpret this chromatograph further. Do you recall that  
 10 discussion?  
 11 A. That is correct.  
 12 Q. Okay. First off, can you just explain the  
 13 methodology, the multistep methodology, you used in  
 14 determining whether a sample contains plant matter.  
 15 A. It's a four-step process. The first process would  
 16 be to look at the GC/FID chromatogram.  
 17 Q. Is this what we have in front of us?  
 18 A. Yes, it is.  
 19 And it provides a pattern that is not  
 20 petroleum-related, but indicates plant matter.  
 21 The next process would be to look at the GC/MS  
 22 data for the alkanes, and this is a highly precise and  
 23 highly quantitative analysis of the distribution of the  
 24 alkanes, those normal alkanes in the sample that I was  
 25 speaking about before, and what we would see in this

01:46 1 situation was there was a distribution that was dominated  
 2 by those odd alkanes characteristic of plant matter.  
 3 Q. Now, let me ask you--  
 4 A. I'm sorry.  
 5 Q. Go ahead.  
 6 A. The third step would be to then look at the PAH  
 7 data and to evaluate the PAH data because we often use  
 8 Polycyclic Aromatic Hydrocarbon information to identify the  
 9 presence of oil in samples, so we looked at the PAH data to  
 10 determine if it was, in fact, a valid result, and we found  
 11 that all of the--I would say the vast majority of target  
 12 compounds were rejected because of blank problems. So,  
 13 there was no information with regards to the PAH data to  
 14 indicate that petroleum was present.  
 15 And then the final step would be to examine this  
 16 biomarker concentration, so distributions in the sample  
 17 where we looked for those biomarker distributions and see  
 18 if they were present or not. Now, the presence in this  
 19 case for this sample, there were no biomarkers present in  
 20 this sample, so based on all of the evidence, the material  
 21 that was present in the sample is plant material.  
 22 And another point I want to make while I have an  
 23 opportunity, is that even though the GC/FID does report  
 24 some plant material, it clearly does not reflect the entire  
 25 amount of material that's present when you extract that

01:48 1 sample and weigh it gravimetrically, you know. When you  
2 measure that residue and just weigh it, it includes many  
3 other larger compounds and polar compounds that are not  
4 detectable by GC/FID, yet they are still plant material and  
5 they end up in the TEM.  
6 Q. And, Dr. Douglas, on Slide 17, the chromatograms  
7 that are depicted there, is that something you created, or  
8 does this come from the LBG data?  
9 A. Oh, I'm sorry, this is from the LBG data report.  
10 Q. Okay. If you could turn to Page 18 in your 2015  
11 Report, and just very briefly, I would direct you to Figure  
12 14 on Page 18.  
13 A. Yes.  
14 Q. Is this the alkane distribution plot that you were  
15 referring to as one step in your multistep process?  
16 A. Yes, it is.  
17 And you can see the alkane distribution from C17  
18 to C36, indicating that those major components are, in  
19 fact, odd alkanes. They're odd-chained molecules. That is  
20 a clear indication of the presence of plant matter in your  
21 sample.  
22 Q. And then if you would turn to the prior page,  
23 Page 17, in your 2015 Expert Report.  
24 A. Yes.  
25 Q. Is this the PAH distribution plot that you were

01:50 1 referring to as one of the steps in your multistep process  
2 of determining whether a sample contains plant matter?  
3 A. Yes, it is.  
4 And you can see from this distribution, that the  
5 method blank in this sample is clearly similar to that of  
6 the concentrations of PAHs as detected in this sample. And  
7 therefore, if you apply the 5X rule to this, the vast  
8 majority of target compounds would be rejected.  
9 Q. Now, Dr. Douglas, I'd like to turn to a different  
10 topic very briefly, alkylated-PAHs.  
11 Mr. García Represa asked you a number of questions  
12 about alkylated-PAHs, and may I get you to turn to Page 9  
13 of your 2013 Report.  
14 A. Yes.  
15 Q. And I would direct you to the bottom of Paragraph  
16 B on that page.  
17 A. Yes.  
18 Q. What is your understanding of whether Ecuador's  
19 oilfield regulations require analysis for alkylated-PAHs?  
20 MR. GARCÍA REPRESA: Objection. Beyond the scope.  
21 We have not discussed at all--and I'll be happy  
22 for you to point me to the record--Ecuadorian regulations  
23 during the cross-examination of this Witness.  
24 MS. WOOD: Mr. President, may I respond?  
25 PRESIDENT VEEDER: Of course, yes.

01:51 1 MS. WOOD: There was quite a lengthy discussion  
2 with this Witness about alkylated-PAHs, whether to analyze  
3 for alkylated-PAHs, did he--did the Analytical Plan require  
4 analysis for alkylated-PAHs. I think it's important for  
5 the Tribunal to see, as set forth in Dr. Douglas's 2013  
6 Report, that the Republic of Ecuador does not require  
7 analysis for alkylated-PAHs, so I think it's highly  
8 relevant to the Tribunal, given the cross-examination, the  
9 lengthy cross-examination, that Mr. García Represa made of  
10 this Witness about alkylated-PAHs.  
11 PRESIDENT VEEDER: You may reply.  
12 MR. GARCÍA REPRESA: Thank you, Mr. President.  
13 I maintain the objection, and I will add that we  
14 saw, when we were interrogating Dr. Connor, that any  
15 questions relating to regulations were objected to on the  
16 ground that it would lead to a legal conclusion, and that  
17 was not put--that should not be put.  
18 PRESIDENT VEEDER: That's not what I think is the  
19 objection.  
20 MR. GARCÍA REPRESA: Well, I understand there's  
21 been a presentation being made in the question with which  
22 we disagree about Ecuadorian regulations. If the question  
23 that's being put to this Expert is whether Ecuadorian  
24 regulations require A or B, that calls for a legal  
25 conclusion in our view, and we have that same objection

01:52 1 levied against our questions to Dr. Connor.  
2 So, I think the fairness will require that these  
3 sort of legal questions not be put to an expert.  
4 PRESIDENT VEEDER: Yes, I don't think that's where  
5 the questioner is going. If you want to add any other  
6 objection?  
7 MR. GARCÍA REPRESA: No, that's it, Mr. President.  
8 (Tribunal conferring.)  
9 PRESIDENT VEEDER: The way you formulated the  
10 question invited the response, and if it was a question  
11 about what a regulation means or the effect of a legal  
12 regulation, we would stop you. But from the way you  
13 explained your question, I suggest you rephrase it, and  
14 we're minded to allow it for the time being.  
15 MS. WOOD: Thank you, Mr. President.  
16 BY MS. WOOD:  
17 Q. Dr. Douglas, in your experience as an analytical  
18 chemist and having reviewed regulations to know what is  
19 necessary to develop a Scope of Work, what is your  
20 understanding of what the Ecuadorian--whether the  
21 Ecuadorian 1215 requires, if you were putting together a  
22 Scope of Work--  
23 MR. GARCÍA REPRESA: I would object.  
24 PRESIDENT VEEDER: I think you're getting into the  
25 same trouble again.

Sheet 20	1768	1770
<p>01:54 1 MS. WOOD: Okay.  2 PRESIDENT VEEDER: Just forget about regulations  3 and ask a more open question. Can you do that?  4 MS. WOOD: I could do that, yes, sir.  5 BY MS. WOOD:  6 Q. Dr. Douglas, what is your understanding of whether  7 alkylated-PAHs in general are required in doing any type of  8 regulatory analysis?  9 MR. GARCÍA REPRESA: I would--  10 PRESIDENT VEEDER: Take out the word "regulatory."  11 "Analysis."  12 MS. WOOD: Analysis.  13 THE WITNESS: Okay. My understanding is that the  14 16 priority pollutants are the primary PAHs that are used  15 for those types of analysis, and those are what are  16 requested, generally not the alkylated ones.  17 But in addition, my understanding is that, of the  18 PAHs that are required within the Ecuador--by the Ecuador  19 Government is that they require only six of the 16 that we  20 actually measured.  21 BY MS. WOOD:  22 Q. Thank you.  23 If I could turn you to Tab 25 in the binder,  24 Mr. García Represa's binder, and I would ask you to turn to  25 the section that Mr. García Represa discussed with you on</p>	<p>01:57 1 44,000 milligrams per kilogram.  2 Q. Thank you.  3 Just one more document.  4 We're going to pass out an exhibit to LBG's 2015  5 Report.  6 MR. GARCÍA REPRESA: Can you point me to which  7 exhibit?  8 MS. WOOD: They're handing it out right now.  9 MR. GARCÍA REPRESA: No, no, which exhibit in the  10 LBG 2015 Report.  11 MS. WOOD: It's 30, RE-30 LBG exhibit.  12 MR. GARCÍA REPRESA: Thank you.  13 BY MS. WOOD:  14 Q. And let me ask you, Dr. Douglas, what is--  15 MR. GARCÍA REPRESA: Excuse me. I understand  16 RE-30 is a reference to the Report itself? What is this  17 reference to this particular document?  18 MS. WOOD: LBG does not provide exhibit numbers.  19 It was submitted to their Expert Report. This is the  20 Enbridge spill, the Kalamazoo study that was--  21 MR. GARCÍA REPRESA: No, no, I know what it is.  22 I'm just wondering whether it was actually attached to the  23 report or not. If you say that, it's fine. We can check  24 it, and we won't object.  25 MS. WOOD: Yes, it was.</p>	
<p>01:56 1 Bates GSI 0640912.  2 MR. GARCÍA REPRESA: Excuse me. I'm sorry to  3 interrupt. I'm just lost, Tab 25? Okay. Got it.  4 MS. WOOD: That's okay. I was lost the first time  5 you raised it, too.  6 THE WITNESS: I'm sorry, Tab 25, and the Bates  7 Number?  8 BY MS. WOOD:  9 Q. It is GSI Bates 0640912.  10 A. Yes.  11 Q. And this was a discussion that you had with  12 Mr. García Represa about whether background of TPH from  13 plant matter could be as high as 1,000 PPM. Do you recall  14 that discussion?  15 A. Yes.  16 Q. Okay. Now I'd like to direct you to Slide 20 of  17 your direct presentation.  18 A. Yes.  19 Q. Are these examples of where you have seen  20 background or basically natural material in TEM samples  21 much higher than 1,000 PPM TPH?  22 A. Yes.  23 Q. And what's the range that you have--you present  24 here?  25 A. The range I presented here was from 1800 up to</p>	<p>01:59 1 MR. GARCÍA REPRESA: Thank you.  2 BY MS. WOOD:  3 Q. Let me ask you, Dr. Douglas, what is this  4 document?  5 A. This is a letter to Mr. Ralph Dollhopf, who is the  6 Federal On-Scene Coordinator and Incident Commander for  7 U.S. EPA Region 5, Emergency Response Branch, in Traverse  8 City, Michigan. He was in charge of the emergency response  9 to the Kalamazoo River oil spill in Marshall, Michigan.  10 Q. And what was your role in this project with EPA in  11 Kalamazoo River?  12 A. I was the senior forensic scientist for the  13 Federal On-Site Coordinator and Incident Commander.  14 Q. And the first document in this package I believe  15 is where EPA is writing you accepting all of your  16 recommendations for an Analytical Plan.  17 A. That is correct.  18 Q. Okay. And then what is attached to this document  19 is the recommendations that you had made to EPA in your  20 role as advisor to EPA as far as the Analytical Plan that  21 you were recommending?  22 A. That is correct.  23 Q. Now, would this document--first off, the document  24 is dated what?  25 A. 2/10--February 10, 2012.</p>	



02:00 1 Q. Okay. And would this document have included  
 2 quality control requirements that you were recommending to  
 3 EPA for the project?  
 4 A. Yes.  
 5 Q. Okay. Let me ask you to turn to, it's  
 6 Table 6.1(a), Page 21 in your recommendations?  
 7 A. Yes, I have that page.  
 8 Q. And if you go down about ten rows, do you see the  
 9 reference to procedural blank?  
 10 A. Yes, I do.  
 11 Q. Okay. And what is meant when you have a  
 12 procedural blank here? Can you tell us what is meant by  
 13 procedural blank in comparison to the discussion that you  
 14 had in your direct testimony and with Mr. García Represa.  
 15 A. Sure.  
 16 Procedural blank represents the laboratory blank  
 17 that I presented in one of my figures. It's on Figure 22,  
 18 and it represents the laboratory blank that would be run  
 19 with every analytical batch of samples.  
 20 Q. And in this line, I'm assuming this is your  
 21 recommendation to EPA as to how they should handle their  
 22 laboratory or procedural blanks?  
 23 A. That is correct.  
 24 Q. Okay. Can you compare the recommendation you made  
 25 to EPA for blank--

02:04 1 you tried, yes.  
 2 MS. WOOD: Okay.  
 3 BY MS. WOOD:  
 4 Q. Dr. Douglas, how does your criteria for blank  
 5 comparison to field samples, how does that compare with  
 6 what you--the analysis that you applied to LBG's data?  
 7 A. It's the same. It basically involves that if an  
 8 analyte is detected in the associate samples--first of all,  
 9 it says that, "no more than two analytes can exceed five  
 10 times the MDL," so that would raise a flag and create a  
 11 quality control issue; and unless the analyte was not  
 12 detected in the sample, so if you found it in the blank but  
 13 you didn't find it in the sample, no problem.  
 14 The second part of this is all the concentration  
 15 of that material is greater than five times the blank  
 16 value, so it basically is a 5X rule application to the  
 17 method blank.  
 18 So, if the material that's in the sample is  
 19 greater than five times whatever is in the blank, then you  
 20 would reject that sample, which is the same approach I used  
 21 in my analysis.  
 22 Q. Thank you, Dr. Douglas.  
 23 MS. WOOD: No further questions, Mr. President.  
 24 PRESIDENT VEEDER: Thank you very much. We've  
 25 come to the end of your testimony. We have no questions

02:02 1 (Fire alarm and off the record.)  
 2 PRESIDENT VEEDER: I hope it's safe to continue.  
 3 (Laughter.)  
 4 MS. WOOD: Thank you. Let me re-ask my question.  
 5 BY MS. WOOD:  
 6 Q. In your recommendations to EPA in the Kalamazoo  
 7 River, I guess, three years ago, you made recommendations  
 8 on how to--what is the criteria for analyzing blanks and  
 9 how that would impact samples that were being collected in  
 10 that project, and what I'd like you to do is to compare for  
 11 us the recommendation that you made to EPA as their  
 12 analytical chemist advisor, compare that with the criteria  
 13 that you applied in this case to the LBG data.  
 14 MR. GARCÍA REPRESA: And I would just caution  
 15 against leading questions.  
 16 MS. WOOD: Thank you.  
 17 MR. GARCÍA REPRESA: I am not objecting to this  
 18 one, but I want you to do this or that is not appropriate.  
 19 PRESIDENT VEEDER: I think there has been a lot of  
 20 guilt from the beginning of this Hearing, but if you can  
 21 avoid it, it's obviously more credible if it's not too  
 22 leading.  
 23 MS. WOOD: Thank you.  
 24 Do you want me to re-ask the question?  
 25 PRESIDENT VEEDER: It would probably be wiser if

02:05 1 for you.  
 2 THE WITNESS: Thank you. Thank you very much.  
 3 PRESIDENT VEEDER: You may leave the table.  
 4 (Witness steps down.)  
 5 PRESIDENT VEEDER: Now, before we move on to the  
 6 next witness--  
 7 (Fire alarm.)  
 [REDACTED]



<p>Sheet 23</p> <p style="text-align: right;">1780</p> <p>02:18 1 Q. And do these Reports reflect accurately and 2 completely the opinions you have formed and the testimony 3 that you have given in this arbitration case? 4 A. Yes. 5 Q. Now, have you prepared a presentation to explain 6 your testimony? 7 A. Yes, I have. 8 Q. And with the permission of the Tribunal, I would 9 ask Dr. McHugh to make his presentation. 10 PRESIDENT VEEDER: Please. 11 THE WITNESS: Thank you. I appreciate the 12 opportunity to appear here in front of the Tribunal this 13 afternoon. 14 My name is Thomas McHugh. I'm going to talk about 15 my quantitative human health-risk assessment for the 16 Petroecuador-Texaco Concession Area. 17 I'm just going to start with just a little bit 18 about my background, I'm a toxicologist, I have a Ph.D. in 19 toxicology from the University of Washington. I'm a 20 board-certified toxicologist with the American Board of 21 Toxicology. 22 I have been working in the environmental 23 consulting field for 20 years, working on a wide variety of 24 projects, including toxicology and human health-risk 25 assessment, but also including site investigation and site</p>	<p style="text-align: right;">1782</p> <p>02:20 1 I'm going to finish my presentation discussing my 2 concerns with Dr. Strauss's risk assessment, and my 3 concerns regarding her assessment have been documented in 4 my 2013, 2014, and 2015 Reports that have been submitted to 5 this Tribunal. 6 So, starting with an overview of the quantitative 7 risk-assessment process, this process is defined in a 8 variety of regulatory guidance documents such as documents 9 developed by the USEPA, and these documents establish a 10 four-step process for evaluating risks at a contaminated 11 site. That involves hazard characterization, toxicity 12 assessment and exposure pathway analysis and risk 13 characterization. 14 The hazard characterization is the site 15 investigation part of the process. That's going out to a 16 site, collecting samples and having those samples analyzed 17 by a laboratory in order to measure the concentrations of 18 chemicals at the site. The toxicity assessment involves 19 evaluating the toxicity of those chemicals that are found 20 at the site. And for the regulatory process, the toxicity 21 is intentionally overestimated in order to provide a very 22 high level of protection for people who are potentially 23 accessing the site. 24 The exposure pathway analysis involves evaluating 25 how people might be exposed to chemicals present at the</p>
<p style="text-align: right;">1781</p> <p>02:19 1 cleanup. 2 As I mentioned, I have been working on the Lago 3 Agrio Case since 2003, and in 2008 I prepared a 4 Quantitative Risk Assessment Report on the Concession Area 5 that was submitted to the Court in the Lago Case. 6 In addition to my consulting work, I have worked 7 on a variety of research projects and I've published 8 findings from those research projects in a number of 9 peer-reviewed scientific journals. My research projects 10 have included collaborations with university Professors, 11 with State environmental regulators and with USEPA 12 regulators. 13 So, my presentation today is going to start with 14 an overview of human health-risk assessment as it's applied 15 to contaminated sites. 16 Next I am going to talk about my quantitative risk 17 assessment and explain how I reached my conclusion that 18 residents in the Concession Area do not face a risk from 19 the Concession Area conditions related to petroleum 20 activities. And that evaluation, as I said, was originally 21 presented in a 2008 Report that was submitted to the Lago 22 Agrio Court. It was also addressed in Mr. Connor's 2010 23 Report and in my 2013 Report that was submitted to this 24 Tribunal, and the 2008 Report was an attachment to my 2013 25 Report.</p>	<p style="text-align: right;">1783</p> <p>02:22 1 site. 2 And then the risk characterization combines the 3 results of the first three steps into an overall evaluation 4 of whether or not site conditions present a risk to people 5 who could be at the site. 6 I'm going to talk a little bit more about the 7 toxicity evaluation because that's a critical part of the 8 risk-assessment process. It's a tenet of toxicology that 9 all things can be poisons. The short saying is: The dose 10 makes the poison. That is any chemical can be harmful if 11 you're exposed to the sufficient dose. So an example is 12 alcohol. If you consume 20 beers in one night, that will 13 have severe health effects, but if you consume 20 beers 14 over an extended period of time, one beer a night, that 15 will not have adverse health effects. 16 So, when we are evaluating a contaminated site, we 17 need to understand the toxicity of the chemicals that are 18 being evaluated. That toxicity is evaluated through 19 laboratory animal testing. The laboratory animals such as 20 rats or mice are exposed to different amounts of the 21 chemical in order to evaluate the toxicity. We start with 22 a very high amount of the chemical that will result in 23 severe health effects, that's like the 20 beers that I 24 mentioned or it's like a person jumping off of a 5-meter 25 ledge. Either of those will result in severe effects. The</p>

02:23 1 test animals are also exposed to lower concentrations of  
 2 the chemicals that have minor effects, would be analogous  
 3 to consuming two beers or jumping off of a 1-meter ledge.  
 4 A lot of people jumping off a 1-meter ledge will be just  
 5 fine. Some people may sustain minor injuries, such as  
 6 spraining an ankle.  
 7 Animals are also exposed to lower concentrations  
 8 of the chemicals that have no adverse effects. That would  
 9 be like consuming one-quarter cup of beer or stepping off  
 10 of a 10-meter step. Either of those is a safe activity.  
 11 So, by testing these different concentrations of  
 12 chemicals or different amounts of chemicals with the  
 13 laboratory animals, we find this level that has no adverse  
 14 effect on the animal. And then for the regulatory process  
 15 to assure a very high level of protection, we add  
 16 additional safety factors. Those safety factors could be  
 17 ten or up to 1,000.  
 18 And the effect of that is that we observe that the  
 19 10-centimeter step was safe, but we now set the safe level  
 20 as 1-centimeter or as low as .1-millimeter step or just one  
 21 drop of beer. Well, we say that's safe. And for the  
 22 risk-assessment purpose, we assume that anything above that  
 23 could be of a concern and would require additional  
 24 evaluation.  
 25 So, in applying the risk assessment to a

02:26 1 on the investigations that were completed as part of the  
 2 Judicial Inspection process that you've already heard a lot  
 3 about. In my risk assessment, I utilized all of the data  
 4 that was collected as part of that Judicial Inspection  
 5 process. That included the Chevron Pre-Inspection results.  
 6 It included the Chevron and the Plaintiff Judicial  
 7 Inspection results that were collected under Court  
 8 supervision, and it included the samples that were  
 9 collected directly by the Court Experts in the case.  
 10 This resulted in a dataset that included  
 11 approximately 2,400 soil samples or sediment samples or  
 12 other solid samples that had been collected from the  
 13 Concession area. And it included approximately 1,200  
 14 surface water, groundwater or other drinking water samples.  
 15 So, this dataset was collected from 56 different Judicial  
 16 Inspection sites that were included in this inspection  
 17 process.  
 18 The samples were analyzed by a variety of methods  
 19 and Dr. Douglas talked about some of those methods. For  
 20 the risk-assessment purpose, the first two methods that  
 21 Dr. Douglas discussed are simply, in my experience, never  
 22 utilized for evaluating petroleum risks. And so those two  
 23 are grayed out on this slide.  
 24 The remaining analytical methods can be used to  
 25 evaluate risk at petroleum sites, but the different methods

02:25 1 contaminated site, we combined this toxicity evaluation  
 2 with the hazard characterization and the exposure analysis,  
 3 and combine those into a single value, often a hazard  
 4 index, and we use that as our decision threshold. If the  
 5 hazard index is below one or below this 1-centimeter step  
 6 that is very safe with this safety factor.  
 7 So, if we're below that hazard index of one, we  
 8 can conclude with a very high degree of confidence that  
 9 there is no health risk and, as a result, a cleanup is not  
 10 needed to protect health. If we're above this 1-centimeter  
 11 level, we cannot conclude that there is an actual health  
 12 impact or even a significant health risk. We can only  
 13 conclude that we're in this zone of uncertainty, we're  
 14 above the safety factors that have been established, and we  
 15 need some additional evaluation to better understand the  
 16 conditions.  
 17 That's an overview of the risk-assessment process.  
 18 I'm going to discuss my quantitative risk assessment for  
 19 the Concession Area and explain how I reached my  
 20 conclusions that the conditions are not a concern for local  
 21 residents, not a health risk.  
 22 So, I applied this four-step process that I just  
 23 described, the first step of which is the hazard  
 24 characterization. I haven't been down to the Concession  
 25 Area myself, so for the hazard characterization, I relied

02:27 1 provide different amounts of information for evaluating  
 2 those risks. The methods that have been referred to as TPH  
 3 methods measure--give you a total petroleum number, and  
 4 they give you less information for evaluating risks. The  
 5 individual compound analysis methods tell you the precise  
 6 concentration of individual chemicals that are in the  
 7 petroleum mixture, and that's the most specific information  
 8 for evaluating risk.  
 9 As I described my overall process, I'm going to  
 10 try and illustrate it with specific examples so it's easier  
 11 to follow along in how the process was implemented. And so  
 12 this slide shows a photograph illustrating--showing the  
 13 collection of two samples that were included in my risk  
 14 assessment. This is a photograph of the Guanta 6 site, and  
 15 it shows a spring at this site that's used by the local  
 16 residents for washing laundry.  
 17 The Chevron sampling team had a policy of testing  
 18 every water resource that was identified as being used by  
 19 the local residents during the inspection process. So,  
 20 during the Chevron Pre-Inspection, this Chevron technician  
 21 sampled the surface water and the sediment from this  
 22 spring. There was no evidence or complaints of petroleum  
 23 contamination in the spring, but it was tested because it  
 24 was being used by the local residents.  
 25 So, the next step in the process is the toxicity

02:29 1 assessment, and that's evaluating the toxicity of the  
 2 individual chemicals. And so, what are the individual  
 3 chemicals? For my risk assessment, I included chemicals  
 4 that are indicative of petroleum risk, so that included  
 5 BTEX, four volatile compounds, you've heard about the  
 6 gasoline portion of crude oil, and these are the four risk  
 7 chemicals associated with the gasoline portion of  
 8 petroleum, benzene, Ethyl benzene, toluene, xylenes.  
 9 I also included PAHs which are the risk chemicals  
 10 for the less volatile portion of petroleum, and I used the  
 11 16 priority pollutant PAHs that have been identified by the  
 12 USEPA.  
 13 Now, metals are not strongly associated with crude  
 14 oil, but they can be associated with oil production  
 15 activities, and so I included ten metals for completeness.  
 16 So, in total, I evaluated 30 individual constituents to  
 17 evaluate risks associated with oilfield contamination.  
 18 For the toxicity assessment, I used screening  
 19 values developed by the World Health Organization and the  
 20 USEPA. In the reports that I have submitted to this  
 21 Tribunal I used screening values that were developed in the  
 22 timeframe of the TexPet cleanup program that you've heard a  
 23 lot about, and those screening values provide a consistent  
 24 framework for evaluating conditions associated with that  
 25 cleanup program. As part of my assessment, I've also

02:30 1 considered more recent screening values. Those values are  
 2 similar to the ones from the 1990s era, and consideration  
 3 of those values does not change my evaluation in any way.  
 4 These screening values assume a high level of  
 5 toxicity. They incorporate this overestimation of toxicity  
 6 that I've talked about, and they assumed that exposure will  
 7 occur to the sampled locations; and, as a result, these  
 8 screening values are appropriate for application of a wide  
 9 variety of contaminated sites.  
 10 And so the screening value in this case is this  
 11 decision criteria that I talked about, that the level  
 12 that's equivalent to the 1-centimeter step--it's a very  
 13 safe concentration. So, in looking at an individual  
 14 sample, if the constituent concentrations are below these  
 15 risk-based screening values, then with a very heightened  
 16 degree of confidence, we can conclude that it's not a risk.  
 17 If the concentration is above the screening level, then  
 18 that sample location requires additional evaluation to  
 19 understand potential risks.  
 20 So, for the 3,600 samples that were collected  
 21 during the Judicial Inspection process, 97 percent of those  
 22 samples had no--none of these 30 constituents with  
 23 concentrations above the risk-based screening levels.  
 24 Three percent of the samples had at least one constituent  
 25 that was above the risk-based screening value and that

02:32 1 required additional evaluation.  
 2 So, for the additional evaluation, I move to the  
 3 exposure pathway analysis, and for those samples that had  
 4 constituent concentrations above the screening level, I  
 5 considered, at that sample location, a potential for  
 6 contact with soil or sediment or ingestion or other uses of  
 7 the surface water or well water.  
 8 And as I will explain, this exposure evaluation  
 9 indicated no locations with unacceptable risk.  
 10 So, how did I reach that determination? This  
 11 slide illustrates one of those evaluations that I did.  
 12 This is a sample that was collected, again during the  
 13 Chevron Pre-Inspection program, from the Shushufindi  
 14 Southwest Production Station, and the sample location is  
 15 shown by the yellow diamond that is on the aerial image  
 16 there. That yellow diamond is adjacent to a petroleum  
 17 pipeline. The pump symbol is the Shushufindi 71 well site,  
 18 and the pipeline carries the petroleum over to the  
 19 Shushufindi Southwest Production Station for processing at  
 20 that station.  
 21 During the Pre-Inspection, the Chevron sampling  
 22 team collected a sample from the location shown by the  
 23 yellow diamond, and that sample had benzo(a)pyrene at  
 24 3.4 milligrams per kilogram, which is a concentration above  
 25 this risk-based screening level.

02:34 1 COURT REPORTER: Repeat that number, please.  
 2 THE WITNESS: I'm sorry. That sample had a  
 3 benzo(a)pyrene concentration of 3.4 milligrams per  
 4 kilogram, which was above--yes.  
 5 PRESIDENT VEEDER: You are beginning to speak  
 6 quite fast, if you could just keep in mind, try and speak a  
 7 little bit more slowly.  
 8 THE WITNESS: Yes, I will try to do that. Thank  
 9 you.  
 10 So, this sample had a benzo(a)pyrene concentration  
 11 above the screening level, and so I needed to evaluate the  
 12 specific circumstances of that sample. As I said, I  
 13 haven't been down to the Concession Area, so I evaluated  
 14 the circumstances of this sample by reviewing the available  
 15 reports such as the Pre-Inspection Reports, the Judicial  
 16 Inspection Reports, and I also consulted the individuals  
 17 who had been down to the Concession Area, such as the  
 18 Court-appointed Experts, and the other members of the  
 19 sampling team who were down there.  
 20 And what I learned from this sample is that this  
 21 was an asphaltic material, it was associated with pipeline  
 22 spills that were reported in 1996 and 2000 during the  
 23 period when Petroecuador's operating the Concession area,  
 24 but the material had weathered to this asphaltic state, so  
 25 it was a solid material. And when crude oil weathers to

02:35 1 this solid state, the chemicals in the crude oil are bound  
 2 up in this solid matrix. And so, it's like an asphalt  
 3 road. An asphalt road can contain benzo(a)pyrene and other  
 4 PAHs, but you can be exposed to the asphalt road without  
 5 being exposed to those chemicals because the chemicals are  
 6 bound up in the solid matrix. And because of that, I  
 7 concluded this location was not a risk concern.  
 8 I performed a similar evaluation at other sample  
 9 locations that had risk exceedances, and other reasons why  
 10 those locations did not present a risk included samples  
 11 that were collected from below ground where they had a  
 12 clean soil cover above them that prevented exposure. Some  
 13 samples were collected within the active Production  
 14 Station, a location where the residents are not allowed  
 15 access, so the residents could not be exposed to locations  
 16 within the active Production Station.  
 17 Other samples were collected in remote locations,  
 18 such as within a swamp, that could not be routinely  
 19 accessed by the residents.  
 20 So, my overall risk characterization based on this  
 21 evaluation, I concluded that there is no evidence of risk  
 22 to residents living in the Concession Area, that's based on  
 23 this evaluation I discussed, that 97 percent of the samples  
 24 have no constituents above the screening levels. For the  
 25 remaining 3 percent of samples, the locations of those

02:38 1 that she evaluated in 2014, and at each site she evaluated  
 2 between one and four individual locations, and those  
 3 locations are described in the second two columns, but the  
 4 results of each evaluation are shown on each individual  
 5 row, so there are 16 rows of results corresponding to the  
 6 16 locations she evaluated.  
 7 She utilized this hazard index approach such that  
 8 the decision criteria is always tied to a value of one.  
 9 One corresponding to this 1-centimeter step that's very  
 10 safe. So, in her evaluations where her hazard index is  
 11 below one, below this 1 centimeter very safe level or this  
 12 one drop of beer, very safe level, she indicates those with  
 13 a white cell, so the white cells are her evaluations that  
 14 these locations are very safe. If she determined a hazard  
 15 index above one, above this 1-centimeter step or one drop  
 16 of beer, indicating that some additional evaluation is  
 17 required, she colors those cells, and those are her  
 18 locations that her evaluation indicates require additional  
 19 evaluation.  
 20 So, you can see scanning across individual rows,  
 21 she reaches very different answers for the different  
 22 methods that she utilizes.  
 23 And what I would like to explain to the Tribunal  
 24 is that her Method Number 1 is the only method that was  
 25 conducted in a manner consistent with an established

02:36 1 samples are such that there is not an exposure concern for  
 2 the residents.  
 3 So, I'm going to finish my presentation by  
 4 discussing my concerns with Dr. Strauss's risk assessment.  
 5 Dr. Strauss has submitted three Risk Assessment  
 6 Reports to the Tribunal. Well, I think four Risk  
 7 Assessment Reports to the Tribunal. In her first risk  
 8 assessment, she presented no quantitative evaluation of the  
 9 Concession conditions. In her Second Risk Assessment  
 10 Report, she presented the results of two different  
 11 evaluations such that she presented two different  
 12 conclusions for each location she evaluated. In her Third  
 13 Risk Assessment Report, she added an additional four  
 14 evaluation methods such that she presented six different  
 15 conclusions for each location that she evaluated. And  
 16 these different conclusions were based on different  
 17 laboratory methods for measuring petroleum in a sample and  
 18 three different evaluations of how toxic the crude oil is.  
 19 And she matched up the different methods with different  
 20 toxicity evaluations to come up with six different answers.  
 21 And she presents these evaluations in a table on  
 22 Page 20 of her 2014 Report, and that's shown here, and the  
 23 table is fairly complicated, so I am going to try and walk  
 24 through it carefully.  
 25 The first column of her table lists the six sites

02:39 1 regulatory framework. It's the only evaluation method that  
 2 you can look to a written document and step through the  
 3 process that she used. Her methods three--her Methods  
 4 Number 2 through 6 all depart from established regulatory  
 5 frameworks in a way that increase her risk estimates.  
 6 And this use of six different methods is  
 7 problematic because the answers that she gets using these  
 8 different methods vary quite dramatically. So on this  
 9 slide I'm showing one of her evaluation locations from the  
 10 Shushufindi 13 well site, and using her Method Number 1  
 11 that was conducted in accordance with an established  
 12 framework, she gets a very low risk value, 0.02, which is  
 13 well below this 1-centimeter step that's very safe. Using  
 14 her Method Number 6, she gets a value of 20 which is above  
 15 this level of one and indicates a need for further  
 16 evaluation.  
 17 Now, I'm going to discuss my concerns with her  
 18 different evaluation Methods 2 through 6, starting with  
 19 Method Number 6 and working backwards because  
 20 Method Number 6 provides the greatest exaggeration of risk.  
 21 And Method Number 6 is based on this TEM, Total Extractible  
 22 Material, analytical method that you've already heard some  
 23 about, that Measures a wide variety of organic  
 24 constituents, and I'm going to illustrate the problems with  
 25 that analytical method through the sample that was

02:41 1 collected at the Shushufindi well site SW004 and SE004,  
 2 that's a surface water sample and a sediment sample. And  
 3 this photograph from LBG shows the stream that was targeted  
 4 for that sampling, and LBG doesn't indicate the exact  
 5 location of the sample within this photograph, but you can  
 6 see the stream running through the middle of the  
 7 photograph. And based on the information provided, I think  
 8 the sample was collected somewhere in the middle of the  
 9 photograph.

10 So, the samples collected here were analyzed by  
 11 LBG or their laboratory using a variety of TPH methods, and  
 12 using this TEM method that measures a lot of materials  
 13 other than petroleum, the laboratory reported a fairly high  
 14 concentration: 39,000 milligrams per kilogram of total  
 15 material. And assuming that if that was all petroleum,  
 16 Dr. Strauss calculates a hazard index of 20 using her  
 17 Method Number 6.

18 Dr. Douglas explained that this analytical method  
 19 is particularly prone to measuring organic material that  
 20 has nothing to do with petroleum; and, for this particular  
 21 sample, the laboratory noted that this sample has a lot of  
 22 plant material in it, and commented that, this sample,  
 23 along with some others that they were looking at at the  
 24 same time, had too many fine roots to remove.

25 When this sample is analyzed by a more reliable

02:42 1 method and a method more suitable for evaluating petroleum  
 2 risk, the laboratory reported a much lower concentration.  
 3 Using the VPH/BPH method, they reported a much lower  
 4 concentration of petroleum, 154 milligrams per kilogram.  
 5 And when Dr. Strauss evaluated this result using her  
 6 Method Number 1, the only method that's tied to a  
 7 regulatory Protocol, she gets a hazard index of 0.02.

8 And so the risk evaluations conducted by  
 9 Dr. Strauss using her Method Number 6 are unreliable in  
 10 part because they use the TEM method which provides  
 11 unreliable results regarding the amount of petroleum in a  
 12 sample.

13 For her Methods 3 through 6, Dr. Strauss used a  
 14 toxicity value that she developed on her own. When we  
 15 conduct risk assessments, we always rely on toxicity values  
 16 that are developed by regulatory authorities, and we do  
 17 that because it provides a consistent framework for  
 18 evaluating contaminated sites. And we do that because it  
 19 provides a consistent framework for evaluating contaminated  
 20 sites. It ensures a consistency from site to site. For  
 21 Methods 3 through 6, Dr. Strauss departed from that  
 22 practice and utilized a toxicity value that she developed  
 23 on her own.

24 And she developed this toxicity value only for her  
 25 Third Risk Assessment Report that she submitted in 2014.

02:44 1 She developed the values specifically for this project.  
 2 That is a method that is not accepted by regulators. To my  
 3 knowledge, her toxicity assessment that she did in 2014 has  
 4 not been applied to other sites and has not been  
 5 peer-reviewed.

6 In doing this, she changed her position from 2013  
 7 when she only relied on toxicity values developed by  
 8 regulatory authorities, which, as I said, is the standard  
 9 practice in our field.

10 And, in addition, Dr. Strauss did not consider a  
 11 2008 Guidelines document issued by the EPA that establishes  
 12 toxicity factors for petroleum that are to be used if you  
 13 are evaluating the risk of petroleum using a TPH method.

14 So, that brings us to Method Number 2. And for  
 15 Method Number 2, Dr. Strauss did use a regulatory guidance  
 16 document, but the regulatory guidance document, the  
 17 Louisiana document that she cites, establishes this method  
 18 only for preliminary screening of a site. This evaluation  
 19 method uses the 8015 analytical method that gives us very  
 20 limited information about the petroleum, but it's less  
 21 expensive than some of the methods that give us more  
 22 detailed information. And because it's less expensive, the  
 23 Louisiana guidance document supports its use for initial  
 24 screening. But the Louisiana guidance document that I show  
 25 on this next slide, it says if you have the more detailed

02:46 1 TPH data and the more limited data, so the more detailed  
 2 data is what they call the TPH fractionation data, and the  
 3 more limited data that Dr. Strauss used for Method Number 2  
 4 is called the TPH mixture data, the Louisiana guidance  
 5 document that Dr. Strauss cites says explicitly "management  
 6 decisions shall be based on the fractionation data." And  
 7 the guidance document says that because the fractionation  
 8 methods more accurately characterize site conditions.

9 And in every case where Dr. Strauss utilized  
 10 Method Number 2, she also had this more detailed  
 11 information, the fractionation data that's specifically  
 12 referenced in the Louisiana Guide, and that is  
 13 Method Number 1. So, Method Number 1 is the only approach  
 14 Dr. Strauss used that is consistent with regulatory  
 15 framework, and it's the only method that should be  
 16 considered by this Tribunal. If the Tribunal evaluates  
 17 conditions in the Concession Area using Methods 2 through 6  
 18 presented by Dr. Strauss, the Tribunal will be creating a  
 19 new precedent because these methods are simply not used to  
 20 evaluate petroleum risk.

21 So, if you look at the results that Dr. Strauss  
 22 obtained using Method Number 1, she evaluated 16 locations.  
 23 And as I explained at the beginning of my discussion of her  
 24 work, the white cells are the cells where she calculated a  
 25 hazard index below one. That's a risk that's below this

<p>Sheet 28</p> <p style="text-align: right;">1800</p> <p>02:47 1 very safe level of a 1-centimeter step or one drop of beer.  2 And so at 13 of these 16 locations, Dr. Strauss found that  3 the conditions are very safe.  4 At the remaining three locations--those are the  5 colored cells on the table--she indicates that some further  6 evaluation is merited. But when you look at each of these  7 three locations, you find that there is not a current  8 exposure at these locations that indicates an actual health  9 concern.  10 I'm going to illustrate that by looking at just  11 one of them. This is at the Aguatico 6 site. And so, here  12 I show another aerial image. The green point is the  13 wellhead itself, and the yellow diamond is the sample  14 location. So, this is a water sample that was collected by  15 LBG. It was collected from a monitoring well that they  16 installed as part of their investigation process. There  17 was no well at this location before LBG installed their  18 sampling well, and it's a location with no nearby  19 residences.  20 And so, I show a photograph that was provided by  21 LBG showing this monitoring well location. This monitoring  22 well was installed in a swampy area that has visible oil  23 contamination. And so, Dr. Strauss calculated her risk  24 value assuming that a resident would drink water from the  25 location of this monitoring well at some time in the</p>	<p style="text-align: right;">1802</p> <p>02:51 1 Strauss included in her cancer-risk assessment, the PAHs  2 were detected at these very low concentrations and also  3 detected in the blank samples of these very low  4 concentrations such that a proper data validation would  5 have indicated that the concentrations in the samples from  6 the site should be considered non-detect, and that was not  7 properly accounted for in Dr. Strauss's cancer-risk  8 evaluation.  9 In addition, Dr. Strauss did not consider other  10 sources of PAHs. For the eight PAHs that Dr. Strauss  11 included in her cancer-risk assessment, there are many  12 other sources of these PAHs, including combustion  13 sources--so, the PAHs can originate from cooking fires used  14 by the local residents or from agricultural fires used to  15 clear land. And Dr. Strauss did not consider these  16 potential sources, particularly in the samples where these  17 PAHs were detected at very low concentrations.  18 But regardless of these concerns, if you look at  19 the actual drinking water sources that Dr. Strauss  20 evaluated, in every case, even accepting her data at face  21 value, the hand-dug wells comply with the World Health  22 Organization drinking water criteria. That's both for  23 individual constituents and for the total cancer risk.  24 So, Dr. Strauss's risk assessment, her overall  25 conclusion is that there's widespread petroleum</p>
<p style="text-align: right;">1801</p> <p>02:49 1 future. And the fact is that nobody today is drinking  2 water from this oily swamp, and so this is not a health  3 risk today.  4 I think Dr. Strauss and I would both agree that  5 this oily swamp should be addressed in accordance with  6 Ecuadorian regulations that would require a cleanup of this  7 swamp, but this swamp does not present a health risk.  8 I'm going to finish my discussion by briefly  9 discussing Dr. Strauss's cancer-risk evaluation. I have  10 many of the same concerns with her cancer-risk evaluation,  11 but specifically her cancer-risk evaluation evaluates  12 cancer risk based on eight individual PAH compounds that  13 were measured in the samples collected by LBG. And  14 Dr. Douglas explained some of the data quality problems  15 associated with that analysis, specifically the same PAH  16 compounds were detected in every laboratory blank sample  17 that was analyzed by this laboratory. So, when the  18 laboratory was sent--was provided with clean water, such as  19 in bottled water, they found the same constituents in the  20 blank samples.  21 And specifically for these PAHs, they were  22 detected in the blank samples and also in many of the site  23 samples at very low concentrations. There was a discussion  24 of quantitation limits that I'm sure was a little bit  25 difficult to follow, but for most of the samples that Dr.</p>	<p style="text-align: right;">1803</p> <p>02:52 1 contamination and widespread risk concerns. However, a  2 closer examination indicates that her evaluation relied on  3 flawed analytical methods that are not accepted for risk  4 assessment. She utilizes a toxicity value that she created  5 for this project, she assumed exposures that are not  6 actually occurring, and these issues result in risk values  7 that are exaggerated by as much as a thousand times.  8 In addition, I will point out that all of the  9 locations she evaluated are locations that were outside of  10 the TexPet cleanup program that you've heard about.  11 So, looking at my risk assessment and also an  12 appropriate evaluation of her risk assessment, they both  13 indicate no health-risk concern; and, as a result, the  14 evidence that's in the Lago record and that has been  15 presented to this Tribunal does not support the Judgment  16 Award for a \$1.4 billion healthcare system, an \$800 million  17 excess cancer Judgment, or a \$150 million potable water  18 system.  19 That's my presentation. I look forward to  20 questions from the Tribunal and from the Ecuador  21 representatives.  22 PRESIDENT VEEDER: Are there any more questions  23 from the Claimants?  24 MS. RENFROE: No, Mr. President.  25 PRESIDENT VEEDER: We may have questions later,</p>



02:54 1 but we will now have questions from the Respondent.  
 2 THE WITNESS: Thank you.  
 3 MR. SILVA ROMERO: Thank you, Mr. President.  
 4 CROSS-EXAMINATION  
 5 BY MR. SILVA ROMERO:  
 6 Q. Good afternoon, Dr. McHugh.  
 7 A. Good afternoon.  
 8 Q. My name is Eduardo Silva Romero. I am one of the  
 9 lawyers representing the Republic of Ecuador in this case,  
 10 and I'm here to ask you a few questions if you agree.  
 11 A. Okay.  
 12 Q. You will be given a Cross-Examination Bundle,  
 13 Dr. McHugh.  
 14 A. Okay.  
 15 Q. And we may refer to it from time to time to  
 16 discuss about some documents.  
 17 A. Okay.  
 18 Q. I understand you know how these examinations  
 19 proceed.  
 20 A. Yes.  
 21 Q. Dr. McHugh, first of all, I would like to discuss  
 22 about your experience generally, and perhaps the best way  
 23 to do it is to go to your CV, which is Appendix A to your  
 24 30th of May 2013 Report, I believe.  
 25 A. Yes.

02:55 1 Q. I must say at the outset that I'm a bit confused  
 2 with the dates because there are three dates on your  
 3 Reports. On the first page you have 3rd of June as issued,  
 4 then revised the 4th of September, then on the next page  
 5 you have the date of the 30th of May 2013. I'm not making  
 6 any argument or point on that, but I just want to agree on  
 7 the terminology. We can refer to it, if you agree, to the  
 8 September 2013 Report; is that correct?  
 9 A. Yes.  
 10 Q. All right.  
 11 MR. SILVA ROMERO: So, and for the Tribunal, you  
 12 can also find this Report at Tab 1 of the examination  
 13 bundle, if you prefer.  
 14 BY MR. SILVA ROMERO:  
 15 Q. The first question--  
 16 MR. SILVA ROMERO: Tab 2 of the examination  
 17 bundle. Apologies.  
 18 BY MR. SILVA ROMERO:  
 19 Q. The first question I had regarding the CV,  
 20 Dr. McHugh, is whether you're still a Vice President of  
 21 GSI.  
 22 A. Well, so, Vice President--when I was first  
 23 identified as Vice President with the company, it was  
 24 because I was a Shareholder and a part owner of the  
 25 company. And, at the end of 2012, I believe it was, I

02:56 1 relinquished my ownership share in GSI because I was  
 2 interested in reducing the amount of time that I invested  
 3 in the company. So, I still carry the honorary title of  
 4 Vice President, but I'm no longer an owner at GSI.  
 5 Q. So, if I understood your answer, you are still a  
 6 Vice President of GSI; correct?  
 7 A. Yes.  
 8 Q. But you're no longer a Shareholder of the company;  
 9 correct?  
 10 A. That's correct.  
 11 Q. And the President of GSI is, I understand,  
 12 Mr. Connor; correct?  
 13 A. Yes.  
 14 Q. And he's a Shareholder, is he?  
 15 A. Yes.  
 16 Q. Right.  
 17 If we go to Page 2 of the CV, Dr. McHugh, from  
 18 Page 2 onwards, you list what you call "representative  
 19 project experience;" you agree?  
 20 A. Yes.  
 21 Q. And if I got it right, you break down this  
 22 representative project experience into six different  
 23 categories. I see, first, vapor intrusion; then toxicology  
 24 and risk assessment; then--and I'm on Page 3 of the  
 25 CV--course development and training; then on Page 4,

02:58 1 education support; then on Page 5, environmental  
 2 engineering; and the last category is on the next page,  
 3 biochemistry and microbiology.  
 4 A. That's correct.  
 5 Q. Right.  
 6 Out of this representative project experience here  
 7 that you set out, how many of those projects involved site  
 8 investigations related to oil exploration and production  
 9 operations?  
 10 A. I don't know. I would have to go through and  
 11 count them individually. There's quite a number of  
 12 projects listed.  
 13 Q. If I say more or less ten, will you agree with  
 14 that?  
 15 A. I wouldn't dispute it.  
 16 I would--to give you a precise number, I would  
 17 have to go through and look at each individual one.  
 18 Q. Right.  
 19 Well, the first category, as we mentioned a moment  
 20 ago, of these projects is vapor intrusion; correct?  
 21 A. Yes.  
 22 Q. And from your CV, I got to the conclusion that you  
 23 are an expert on vapor intrusion issues; would you agree  
 24 with me?  
 25 A. Yes, I have done a lot of work on vapor intrusion,

02:59 1 yes.  
 2 Q. Could we say that this is your main specialty?  
 3 A. I wouldn't characterize it as my main specialty.  
 4 I've worked on a number of vapor intrusion projects in  
 5 recent years, but I've also worked on quite a number of  
 6 other projects.  
 7 Q. If we come back to Page 1 of the CV, Dr. McHugh,  
 8 the first section is the biographical summary.  
 9 A. Yes.  
 10 Q. And towards the end you say the following: "He is  
 11 a principal investigator for two vapor intrusion research  
 12 projects funded by the Department of Defense through their  
 13 Environmental Security Technology and Certification Program  
 14 Research Program. In addition, Dr. McHugh is a PI for  
 15 another project, demonstrating technologies to reduce  
 16 viability in groundwater monitoring data. He's the lead  
 17 author on several peer-reviewed journal articles,  
 18 peer-reviewed conferences, proceedings, and technical  
 19 documents on vapor intrusion and other topics related to  
 20 environmental site investigation and remediation."  
 21 So, when I read this paragraph, Dr. McHugh, I  
 22 noticed that you underlined your experience on vapor  
 23 intrusion issues.  
 24 Would you agree with that?  
 25 A. Yes. That's been an issue of--that's had a lot of

03:03 1 Q. And you describe this course or this project in  
 2 the following way: "Developed and taught two-day training  
 3 course on risk-based corrective action," and then you say,  
 4 "key topics included overview of corrective action,  
 5 environmental fate and transport, development of  
 6 site-specific cleanup standards, remedy selection,  
 7 monitored natural attenuation, and the use of RBCA  
 8 software."  
 9 Do you see that, sir?  
 10 A. Yes.  
 11 Q. And I understand this RBCA methodology is the one  
 12 you rely upon in your Reports; correct?  
 13 A. Yes.  
 14 Q. And this course that you list here, was it aimed  
 15 at explaining the ASTM Standard Guide for RBCA applied at  
 16 petroleum release sites?  
 17 A. Yes, that was the original focus of the course.  
 18 This specific course was a course that was developed by  
 19 myself and some other individuals at GSI. It sort of--it  
 20 followed on and was similar to a course that was developed  
 21 ASTM that explained the process that they developed. GSI  
 22 developed a software tool called the "Rebecca toolkit" that  
 23 helped users implement that evaluation process. And  
 24 because we were offering the software product, there was  
 25 also interest in training provided by GSI that described

03:01 1 interest in the United States over the last several years,  
 2 and I have done a lot of work in that area, so, that's one  
 3 of the areas that I've highlighted, yes.  
 4 Q. And then if we go to page--I believe, 6 and Page 7  
 5 of your CV, Dr. McHugh, my impression reading the different  
 6 publications that you list is that most of those  
 7 publications are on vapor intrusion issues.  
 8 Would you agree with me, sir?  
 9 A. Many of them are, many of them are not.  
 10 Q. Right. But you agree that the majority of  
 11 publications are related to the issue of vapor intrusion,  
 12 would you not?  
 13 A. I couldn't tell you without going through and  
 14 counting them.  
 15 Q. Okay. If we come back to Page 4 of the CV, on the  
 16 top of the page you list some course development and  
 17 training projects; correct?  
 18 A. Yes.  
 19 Q. And I believe it's the seventh project on this  
 20 page, it is a risk-based corrective action training.  
 21 Do you see that?  
 22 A. Yes.  
 23 Q. And risk-based corrective action is what is called  
 24 RBCA; correct?  
 25 A. Yes.

03:04 1 both the ASTM process and application of our software. And  
 2 so we developed this course, and I taught this course quite  
 3 a number of times.  
 4 Q. And when you mention "Rebecca," this is RBCA;  
 5 correct?  
 6 A. Correct.  
 7 Q. This is the way to mention in the business to  
 8 refer to the RBCA system?  
 9 A. Yes, thank you for that clarification. We call it  
 10 "Rebecca." "Rebecca" is sort of the pronunciation of RBCA.  
 11 Q. Well, I think we can agree to call it "Rebecca"  
 12 because it's probably nicer; okay?  
 13 A. It's certainly easier, yes.  
 14 Q. All right. Let's call it "Rebecca" from now on.  
 15 On Page 1 of the September 2013 Report,  
 16 Dr. McHugh, which is on Tab 2 of the bundle, you see the  
 17 title on the top of the page is "a scope of engagement."  
 18 Do you see that, sir?  
 19 A. I'm not sure exactly where you're referring to.  
 20 Q. I'm sorry, Page 1. I'm sorry.  
 21 A. Yes.  
 22 Q. You see the title, 1, "Introduction."  
 23 A. Yes.  
 24 Q. Then 1.1, "Personal Qualifications and  
 25 Experience."

03:06 1 A. Yes.  
 2 Q. In the second paragraph you say: "During my  
 3 20-plus years in the environmental industry, I have worked  
 4 on hundreds of environmental risk assessment, environmental  
 5 site investigation and remediation projects."  
 6 So, I take it from the CV that if you did ten-plus  
 7 assessments in relation to sites where exploration and  
 8 production of oil occurred, that's it, only ten?  
 9 A. No. My CV, as those headers you referred to  
 10 indicate, they list representative projects for each  
 11 category. So, the CV is not an exhaustive list of  
 12 projects.  
 13 Q. Right. You didn't find helpful for this Tribunal  
 14 to have all the list of the different oil production and  
 15 exploration projects you had?  
 16 A. I simply included the standard copy of my CV.  
 17 Q. Right.  
 18 And I understand that all the projects concerning  
 19 oil operations in which you worked--on which you worked  
 20 occurred in the U.S.; correct?  
 21 A. That may be the ones that I listed on my CV. I've  
 22 also assisted on some international projects.  
 23 Q. The ones I found in your CV happened in Texas and  
 24 in California.  
 25 A. Okay.

03:08 1 Q. Okay.  
 2 Leaving aside this Chevron versus Ecuador Case,  
 3 Dr. McHugh, have you undertaken any RBCA projects related  
 4 to oil operations in the Amazon?  
 5 A. No.  
 6 Q. Have you undertaken any RBCA projects in Ecuador?  
 7 A. No.  
 8 Q. Have you undertaken any RBCA projects in South  
 9 America?  
 10 A. Yes.  
 11 Q. Where was that?  
 12 A. In Mexico.  
 13 Q. Close to California and Texas, I find?  
 14 A. Yes. I guess--well, so, I guess Mexico is not  
 15 South America. Mexico is North America.  
 16 Q. In 1830, California--  
 17 (Laughter.)  
 18 Q. Well, please strike that.  
 19 COURT REPORTER: Too late.  
 20 BY MR. SILVA ROMERO:  
 21 Q. Have you ever been in the Amazon rainforest,  
 22 Dr. McHugh?  
 23 A. No, I have not.  
 24 Q. Very well.  
 25 Now I would like to turn to the Reports that you

03:09 1 have presented in this case. And I understand, Dr. McHugh,  
 2 that you have presented five Reports which are in the  
 3 record of this arbitration; would you agree with me?  
 4 A. I guess if you include the Report that was  
 5 authored by Mr. Connor that I--where I assisted on the  
 6 risk-assessment portion, then yes, five would be the  
 7 correct count--five would be the correct count if you  
 8 include the Report authored by Mr. Connor in 2010.  
 9 Q. Yes. So, Ms. Renfro mentioned three Reports  
 10 submitted for this arbitration, and you annexed to your  
 11 First Report submitted in this arbitration the 2010 Report  
 12 that you prepared with Mr. Connor, and your 2008 Report;  
 13 correct?  
 14 A. That's correct.  
 15 Q. And I understand that the 2008 Report was prepared  
 16 for the purposes of the Lago Agrio Litigation; correct?  
 17 A. That's correct.  
 18 Q. Do you recall how was the 2008 Report filed with  
 19 the Ecuadorian courts?  
 20 A. I'm not familiar with the details of exactly how  
 21 it was filed.  
 22 Q. Was it filed together with the Report of  
 23 Mr. Connor?  
 24 A. My recollection is that my evaluation was included  
 25 with--as a single report with a couple of additional

03:11 1 experts. It was sort of a package of three Reports. But  
 2 to my knowledge, I mean, I don't know if it was  
 3 submitted--how it was submitted in relation to Mr. Connor's  
 4 Report. I just don't know.  
 5 Q. Okay. But I understand that in 2008, you served  
 6 as an expert in the Lago Agrio Litigation before the  
 7 Ecuadorian courts; correct?  
 8 A. That's correct. That's my understanding.  
 9 Q. And my understanding is that Chevron hired you to  
 10 prepare and submit a report in 2008 for the consideration  
 11 of the Lago Agrio Court; correct?  
 12 A. That's correct.  
 13 Q. And this 2008 Report provided a quantitative risk  
 14 assessment of potential human health risk within the former  
 15 Petroecuador-Texaco Concession Area; correct?  
 16 A. That's correct.  
 17 Q. And I understood that you say "potential" because,  
 18 as a risk assessor, as a health-risk assessor, you are  
 19 assessing risk in the future, and you are not actually  
 20 establishing actual harms in the present time; correct?  
 21 A. You're correct that I'm not evaluating actual  
 22 harm. I'm evaluating both current and potential future  
 23 risk.  
 24 Q. Right. Now, in order to prepare your 2008 Report,  
 25 you exclusively relied on Chevron's Judicial Inspection

03:12 1 data; correct?  
 2 A. I quantitatively evaluated Chevron's Judicial  
 3 Inspection data. I also considered the data collected by  
 4 the Plaintiffs, but they had not provided to the Court or  
 5 to Chevron representatives the data quality documentation  
 6 needed to evaluate the quality of their data; and, as a  
 7 result, I did not include their dataset in my quantitative  
 8 evaluation in 2008.  
 9 Q. So, to be clear, you didn't include the  
 10 Plaintiffs' Judicial Inspection data in your analysis of  
 11 2008; correct?  
 12 A. I considered it and did not include it in my  
 13 quantitative evaluation.  
 14 Q. So, you didn't include it; correct?  
 15 A. I'm sorry? You're saying I did?  
 16 Q. You did not include the data taken by the  
 17 Plaintiffs in the Lago Agrio Litigation.  
 18 A. I did not quantitatively evaluate it.  
 19 Q. Right. Now, in your 2008 Report, potential risks  
 20 to human health were evaluated based on the RBCA process  
 21 published by ASTM; correct?  
 22 A. That's correct.  
 23 Q. Will you please tell the Tribunal what ASTM stands  
 24 for, Dr. McHugh.  
 25 A. ASTM stands for the American Society for Testing

03:15 1 Standard Guide for RBCA applied at petroleum release sites;  
 2 correct?  
 3 A. That was one of the documents I relied on, yes.  
 4 Q. And just to start looking at this document for  
 5 the--and to facilitate access to it for the Tribunal, this  
 6 guide is at Tab 9 of the bundle.  
 7 And is this the document we were discussing about,  
 8 Dr. McHugh?  
 9 A. Well, this is equivalent to the document that I  
 10 used in 2008, but you can see at the top here that this  
 11 document was re-approved in 2010. So, this standard was  
 12 originally developed in 1995, but the ASTM process requires  
 13 that these standards be reviewed roughly every five years,  
 14 and so they're reviewed by the same Committee that  
 15 developed them originally to ensure that standards have not  
 16 changed, to ensure that it's still a relevant and  
 17 appropriate standard. And this standard has been  
 18 re-approved a couple of times, most recently in 2010, but  
 19 clearly that re-approval occurred after my Report.  
 20 Q. Probably in 2008 you relied on the document  
 21 re-approved in 2002?  
 22 A. That's correct.  
 23 Q. And there is no substantial difference between the  
 24 document re-approved in 2002 and the document re-approved  
 25 in 2010; correct?

03:14 1 and Materials. It's a non-profit organization that brings  
 2 together experts to develop procedures for a wide variety  
 3 of activities. The procedures might include things such as  
 4 the strength and specification of hardware, such as screws,  
 5 you know, how much force can a screw take. But  
 6 specifically here they have a group that develops standards  
 7 for addressing environmental issues, and I utilized the  
 8 standard that they developed for evaluating petroleum  
 9 sites.  
 10 Q. Do you know who drafted this ASTM Guide?  
 11 A. It was a group. I don't recall the specific  
 12 individuals.  
 13 Q. Right. I understand that in the group of members  
 14 of ASTM there are industry representatives; correct?  
 15 A. Yes, there are typically both industry and  
 16 government representatives.  
 17 Q. And obviously industry representatives include oil  
 18 companies; correct?  
 19 A. That's correct--for issues that are of interest to  
 20 the oil companies, yes.  
 21 Q. Right.  
 22 A. For issues related to the screws, probably not.  
 23 Q. Fair enough.  
 24 I understand, Dr. McHugh, that more specifically,  
 25 for the purposes of the 2008 Report, you relied on the

03:17 1 A. That's correct.  
 2 Q. Now, maybe we can go to your 2008 Report, and more  
 3 specifically to Page 49. And I understand that this  
 4 document starts at Page 45 because there were other  
 5 chapters in the original Report; correct?  
 6 A. That's correct.  
 7 Q. And on Page 49, the second paragraph says: "For  
 8 this Report, the results from each Judicial Inspection site  
 9 have been compiled and reviewed to evaluate the potential  
 10 for exposure to petroleum-related contaminants. Potential  
 11 risks to human health associated with such exposures have  
 12 been evaluated based on the risk-based corrective action  
 13 RBCA process published by ASTM and endorsed by USEPA and  
 14 many other regulatory agencies worldwide," and you give the  
 15 example of the Colombia Ministerio Ambiente; correct?  
 16 A. Correct.  
 17 Q. And you said earlier that you relied on the ASTM  
 18 Standard Guide and other documents. I take it that the  
 19 other document is more specifically the guide by the USEPA;  
 20 correct?  
 21 A. That is one of--well, the EPA has a lot of guides,  
 22 so, I'm not sure what you're referring to.  
 23 Q. We will come to it later. But you relied on some  
 24 USEPA guidelines?  
 25 A. Yes.

03:20 1 Q. I understand, Dr. McHugh, that you also relied  
 2 upon the ASTM Standard Guide of 2000 for RBCA; correct?  
 3 A. I believe I mentioned that guidance document. I  
 4 don't think it was a central part of my evaluation process.  
 5 Q. Okay. And I understand that the difference  
 6 between the 1995, as re-approved, Guide and the 2000 Guide  
 7 is that the '95 Guide is specific to petroleum release and  
 8 the 2000 is more general; correct?  
 9 A. That's correct.  
 10 MR. SILVA ROMERO: Looking at the President, I  
 11 don't know, Mr. President, if you want to have a break.  
 12 PRESIDENT VEEDER: Let's have a break whenever  
 13 it's convenient for you.  
 14 MR. SILVA ROMERO: I think it's now.  
 15 PRESIDENT VEEDER: Let's break and then we will  
 16 come back at 25 to 4:00. But just give us some idea--  
 17 MR. SILVA ROMERO: Absolutely.  
 18 PRESIDENT VEEDER: How long you will be when you  
 19 get back.  
 20 You can do it--tell us later. Don't tell us now.  
 21 MR. SILVA ROMERO: I believe probably half an  
 22 hour, 45 minutes.  
 23 PRESIDENT VEEDER: Okay. Thank you.  
 24 So, we will break 15 minutes.  
 25 Please don't talk about the case or testimony away

03:21 1 from the Tribunal.  
 2 (Brief recess.)  
 3 PRESIDENT VEEDER: Let's resume.  
 4 MR. SILVA ROMERO: Thank you, Mr. President.  
 5 BY MR. SILVA ROMERO:  
 6 Q. Dr. McHugh, if we can go now to Page 49 of the  
 7 September 2008 Report, please.  
 8 A. Okay.  
 9 Q. And towards the middle of the page, you see the  
 10 title, "A Standardized Process to Evaluate Risk."  
 11 Do you see that, sir?  
 12 A. Above the header in the middle of the page or  
 13 below?  
 14 Q. Well, it's a title--  
 15 A. Oh, it's the title itself, yes.  
 16 Q. Yes.  
 17 And then the first paragraph under that title  
 18 towards the middle, says following: "The process consists  
 19 of four main steps."  
 20 Do you see that, sir?  
 21 A. Yes.  
 22 Q. And I take it that you say, "main," because there  
 23 might be more steps in a RBCA; correct?  
 24 A. There could be. I mean, these are the four broad  
 25 categories, and there are certainly a lot of specific steps

03:36 1 within those four categories.  
 2 Q. So, I understand that each of the four steps may  
 3 have different stages; correct?  
 4 A. That's correct.  
 5 Q. And you represent the four main steps at Page, I  
 6 believe, 55 of the Report, and this is the Figure 2-5.  
 7 A. That's correct.  
 8 Q. And here we see the four steps that you mentioned  
 9 in your direct presentation; correct?  
 10 A. Correct.  
 11 Q. Did you draw this table here?  
 12 A. This was drawn by support staff under my  
 13 direction.  
 14 Q. Understood. You didn't take it from one of the  
 15 guides we have been discussing about?  
 16 A. No.  
 17 Q. And, Dr. McHugh, you mentioned during your direct  
 18 presentation that the first step is the source hazard  
 19 characterization; correct?  
 20 A. That's correct.  
 21 Q. And I understand that this first step could also  
 22 be called site assessment; right?  
 23 A. That's correct.  
 24 Q. And I also understand that the purpose of the site  
 25 assessment is to identify contamination which could entail

03:38 1 risks to human health; correct?  
 2 A. That's correct.  
 3 Q. And my understanding is that, to undertake the  
 4 site assessment, you may rely on different sources of  
 5 information. For instance, you can rely on the history of  
 6 the site; correct?  
 7 A. Yeah.  
 8 The source hazard characterization you should  
 9 consider available information, yes.  
 10 Q. And some available information could be the  
 11 history of the sites that you can find in some documents;  
 12 correct?  
 13 A. That's correct.  
 14 Q. And I understand that you can also rely on  
 15 interviews of people who know the evolution of the site;  
 16 correct?  
 17 A. Correct.  
 18 Q. And in that sense, testimony from people who know  
 19 the evolution of the site may be relevant in a RBCA;  
 20 correct?  
 21 A. They may be relevant to provide a general  
 22 understanding of the site.  
 23 Q. And obviously, the first step, the site  
 24 assessment, also encompasses a sampling program; correct?  
 25 A. Correct.

03:39 1 Q. And during this first step of the RBCA, one, the  
2 assessor should select the chemicals of concern at the  
3 site; correct?  
4 A. Yes.  
5 Q. And the selection of chemicals of concern is based  
6 on the consideration of exposure routes, concentrations,  
7 mobilities, toxicological properties and esthetic  
8 characteristics such as taste, odor, and so forth;  
9 correct?"  
10 A. I would agree for the human health evaluation, the  
11 esthetic characteristics is not necessarily relevant.  
12 Q. Let's go to Tab 9 of the bundle, if you will,  
13 Dr. McHugh.  
14 A. Okay.  
15 Q. And this is a standard guide for RBCA re-approved  
16 in 2010, and if we can go to Page 14, one-four, of the  
17 document, towards the end of the page, you will find,  
18 Dr. McHugh, Article XI.4.1.  
19 Do you see that Article, sir?  
20 A. Yes.  
21 Q. And towards the middle of this article, it is  
22 stated: "The selection of chemicals of concern is based on  
23 consideration of exposure routes, concentrations,  
24 mobilities, toxicological properties, and esthetic  
25 characteristics such as taste, odor and so forth."

03:42 1 Do you see that?  
2 A. Yes, that's covering all of the constituents that  
3 would be involved in a comprehensive evaluation, including  
4 the human health-risk assessment, but the esthetic  
5 characteristics, taste, odor and so forth, do not directly  
6 relate to the evaluation of human health impacts.  
7 Q. And you didn't take into account esthetic  
8 characteristics in your analysis, did you, sir?  
9 A. For my evaluation of potential human health  
10 impacts, no.  
11 Q. If we go now to Page 4 of the same document, which  
12 is again the RBCA Bible, you will find Article 4.5 on the  
13 left of the page. Do you see that, sir?  
14 A. Yes.  
15 Q. And it is stated here that, in order to properly  
16 apply the RBCA process, the user should avoid the  
17 following. And if you go to Article 4.5.10, it says,  
18 "neglecting esthetic and other criteria when determining  
19 RBSLs or SSTLs.  
20 Do you see that, sir?  
21 A. That's right, because the RBCA process includes  
22 the human health-risk evaluation and consideration of other  
23 criteria, these esthetic criteria.  
24 Q. So, esthetic may be part of a qualitative risk  
25 assessment; correct?

03:43 1 A. It can be--it can be part of the quantitative  
2 assessment, but it does not relate directly to whether or  
3 not there is a human health risk.  
4 Q. Esthetic can give indications as to whether there  
5 is need to obtain more information on a site; correct?  
6 A. That's not what this is referring to here. This  
7 is referring to constituents that could affect the odor or  
8 other characteristics of the environmental media without  
9 posing a health risk. And so, as part of a comprehensive  
10 evaluation, it's pointing out that, in addition to  
11 evaluating health risk and in evaluating whether a cleanup  
12 is required, it's appropriate to include whether there are  
13 esthetic impacts that are unrelated to risk.  
14 Q. Esthetic may be used to determine whether there  
15 are hydrocarbons on a site; correct?  
16 A. Well, some hydrocarbons have odors.  
17 Q. And, therefore, esthetic may be used as a starting  
18 point for a RBCA process; correct?  
19 A. That's not what this is referring to. This is  
20 referring to conditions where there is a taste or odor  
21 impact that does not present health risk.  
22 Q. Esthetic determinations, Dr. McHugh, can prompt  
23 the assessor to take more samples; correct?  
24 A. It's not our standard practice in doing site  
25 investigations to rely on odor characteristics as a primary

03:45 1 method for identifying sample locations.  
2 Q. If we go now to Article VI.1.2.9, which is on Page  
3 5 on the left--on the right of page, VI.2.1.9 is the first  
4 article. VI.2.1 says, on the left, "The site assessment  
5 information for Tier I evaluation may include the  
6 following," and then VI.2.1.9, "a qualitative evaluation of  
7 impacts to environmental receptors."  
8 Do you see that, sir?  
9 A. That's correct. So, that's talking about the site  
10 assessment part of it, so that's the hazard  
11 characterization piece that we talked about, and a  
12 qualitative evaluation would be things like visual evidence  
13 of impacts, yes.  
14 Q. And a qualitative assessment may be the first step  
15 of a site assessment; correct?  
16 A. Well, I would agree that qualitative information  
17 is incorporated into the site assessment and can guide the  
18 site investigator to appropriate sampling locations.  
19 Q. And then on the basis of these qualitative  
20 assessment, the investigator can then undertake a  
21 quantitative analysis; correct?  
22 A. That's correct.  
23 Q. And do you agree with me, sir, or don't you, that  
24 a site visit could be a qualitative risk assessment?  
25 A. I'm not following you.

<p>Sheet 35</p> <p style="text-align: right;">1828</p> <p>03:47 1 Q. This Tribunal--maybe you don't know that,  2 sir--this Tribunal will go to the Amazon to see four sites.  3 You know that, sir?  4 A. Yes, that's my understanding.  5 Q. And I understand that site visit could be  6 characterized as a qualitative risk assessment, could it?  7 A. No.  8 Q. They will look at some impacts in the environment.  9 A. Yes. I expect when the Tribunal goes to the  10 Concession Area that they will be looking at the  11 conditions.  12 Q. The second step of the analysis, Dr. McHugh, is  13 what you call the toxicity assessment; correct?  14 A. That's correct.  15 Q. And as a layman, I understand this second step as  16 the application of some relevant standards to the  17 identified contamination to find out how toxic that  18 contamination can be. Do you agree with me?  19 A. That's correct.  20 Q. And hence, the choice of the relevant criteria,  21 what you call the health-based screening criteria, is  22 essential. Do you agree with me?  23 A. It's important to select appropriate values, yes.  24 Q. And I understand that the main difference between  25 you and Dr. Strauss is precisely the choice of those</p>	<p style="text-align: right;">1830</p> <p>03:51 1 Q. Are you with me, Dr. McHugh?  2 A. Yes.  3 Q. You say here, "For oil compounds for which the  4 World Health Organization guidelines didn't provide numeric  5 drinking water criteria, concentrations for the protection  6 of human health were developed according to the procedures  7 specified in the soil screening guidance issued by USEPA in  8 1996."  9 Correct?  10 A. Correct.  11 Q. And I understood from this sentence here that you  12 didn't rely for this Report on the supplemental guidance of  13 the USEPA of 2002.  14 A. That's correct.  15 Q. And if we can go, please, to Tab 14, which is the  16 last tab of the bundle. This is the supplemental guidance  17 for developing soil screening levels for Superfund sites?  18 A. Yes.  19 Q. Are you with me, Dr. McHugh?  20 A. Yes.  21 Q. And if you go, please, to Page--  22 MR. SILVA ROMERO: And again, the pages here are  23 weird, Mr. President--  24 BY MR. SILVA ROMERO:  25 Q. It's Page 3-1, so you need to finish with the</p>
<p style="text-align: right;">1829</p> <p>03:49 1 criteria; correct?  2 A. No, there are many differences that we have.  3 Q. And I understand that Dr. Strauss's criteria are  4 more protective of human health than your criteria;  5 correct?  6 A. No. I would say both sets of criteria are  7 protective of health.  8 Q. If we go now to your First Report in the  9 arbitration, the September 2013 Report, and more  10 specifically to Appendix C--and let me see if I can find  11 the page.  12 A. I'm sorry, which report are you referring to now?  13 Q. The September 2013 Report.  14 A. Okay.  15 PRESIDENT VEEDER: Might you be looking for the  16 2013 report, Appendix C?  17 MR. SILVA ROMERO: Correct. And more specifically  18 C.1.2, but I don't see page numbers.  19 PRESIDENT VEEDER: It's forbidden.  20 Just give us the first line of the page.  21 MR. SILVA ROMERO: Yes. The first line of the  22 page is, "Obtained from the USEPA integrated risk  23 information system."  24 And towards the bottom of the page--  25 BY MR. SILVA ROMERO:</p>	<p style="text-align: right;">1831</p> <p>03:53 1 Pages 1, then the Pages 2, and then you have the Pages 3,  2 and this is the first page of the three category, if I may  3 say. 3-1. And the title on the top is, "Exposure  4 pathways."  5 I understand that this supplemental guidance,  6 Dr. McHugh, updated the 1996 guide you relied upon in 2013  7 in relation to specifically exposure pathways; correct?  8 A. That's correct.  9 Q. And towards the end of the one, two--third  10 paragraph you can read the following at the beginning of  11 the third paragraph: "This chapter updates the 1996 in  12 three ways." And I am interested in the second, which  13 says: "It presents equations for a combined soil ingestion  14 dermal absorption SSL that includes a new quantitative  15 approach for evaluating dermal absorption." Correct?  16 A. That's correct.  17 Q. And I understood from your responses that you  18 didn't take into account this update of 2002; correct?  19 A. That's right. The 1996 guidance document says  20 they did not include dermal absorption because at that time  21 they did not have a procedure for it. The skin is a  22 natural barrier to contaminants. The skin is designed to  23 protect us from the environment, and so it's not a  24 significant exposure pathway. In this 2002 guidance  25 document, the USEPA does present a quantitative method for</p>

03:55 1 evaluating dermal exposure that intentionally overestimates  
2 the ability of skin to uptake contaminants, but even doing  
3 that, it has a very minor effect on the screening levels  
4 that they present, so that the change in screening levels  
5 from 1996 to 2002 is very small. And I've reviewed these  
6 2002 screening values, and they do not change my  
7 evaluation.

8 Q. So, you had available this supplemental guidance,  
9 and you didn't rely upon it?

10 A. That's correct.

11 Q. The third step of the analysis that you made,  
12 Dr. McHugh, is the evaluation of exposure pathways;  
13 correct?

14 A. Yes.

15 Q. And I understand that the analysis at this stage  
16 is how and how often humans could be in contact with a  
17 contamination found to be toxic on-site; correct?

18 A. That's correct.

19 Q. I understand that in your methodology, first one  
20 has to analyze toxicity and then exposure pathways;  
21 correct?

22 A. That's correct.

23 Q. But I understand that you can change the Order of  
24 these two steps. You can first evaluate exposure pathways  
25 and then evaluate toxicity; correct?

03:57 1 A. In my experience, the standard sequence is the  
2 toxicity evaluation followed by the exposure evaluation.

3 Q. So, you said, I believe, Dr. McHugh, that you  
4 didn't participate in the different inspections undertaken  
5 by Chevron in the Amazon; correct?

6 A. That's correct. I have not been to the Concession  
7 Area.

8 Q. So, you didn't visit the sites, obviously?

9 A. That's correct.

10 Q. That means that you didn't check yourself the  
11 different exposure pathways in the sites; correct?

12 A. That's--for my exposure evaluation, I relied on  
13 the Report documents that were generated, and I discussed  
14 the conditions with the members of the inspection team.

15 Q. So, you relied on what Mr. Connor told you;  
16 correct?

17 A. I've discussed the situations with Mr. Connor,  
18 with Mr. Baca, and with other individuals who have been  
19 down to the Concession Area and participated in those  
20 inspections.

21 Q. So, you interviewed the members of your team to  
22 know where to find exposure pathways in the different  
23 sites; correct?

24 A. That, combined with the documents that were  
25 generated, yes.

03:58 1 Q. And the fourth and last risk-characterization step  
2 is actually, I understand, a conclusion of the analysis of  
3 the three first steps; correct?

4 A. That's correct.

5 Q. Dr. McHugh, you don't refer in your description of  
6 the four steps of the ASTM RBCA methodology to any of the  
7 different articles in the Standard Guide that we were  
8 reviewing, do you?

9 A. I'm sorry, what do you mean by the articles?

10 Q. There is no reference in your Reports to a  
11 specific provision, articles, recommendations that one can  
12 find in the guide of the ASTM that we were reviewing;  
13 correct? You don't understand my question?

14 A. I'm sorry, I'm still not following.

15 Q. You referred to the ASTM Guide in a general way,  
16 but you are not citing specific provisions in the text of  
17 your Report saying, "I am doing this in accordance with  
18 Article VI.2 of the ASTM Guide," for instance?

19 A. That's correct. That's correct.

20 Q. Right. And, therefore, I understand that the four  
21 steps that you put forward are actually your interpretation  
22 of the methodology that you find in the ASTM Guide;  
23 correct?

24 A. Well, my Report refers to both the ASTM Guide and  
25 other documents, and I believe that the four steps that I

04:00 1 lay out are the four steps that are identified in the USEPA  
2 1989 document.

3 Q. So, you rely on the ASTM Guide, or you rely on the  
4 USEPA Guide?

5 A. As documented in the Report, I relied on the  
6 combination of documents.

7 Q. Right. It's a combination of the guides, but you  
8 don't make any reference to the different articles or  
9 provisions in those guides; correct?

10 A. That's correct. I tried to describe the  
11 step-by-step process that I followed in accordance with  
12 these guides.

13 Q. Correct. Let's try to see the USEPA Guide to try  
14 to understand this combination, and this is at Tab 11 of  
15 the bundle. And if we go, for instance, to Page 1-7, you  
16 will find here Exhibit 1-2 which seems to describe the four  
17 steps that you mentioned in your Reports; correct?

18 A. Yes.

19 Q. And the difference is that the first step is  
20 called "Data Collection and Evaluation." Correct?

21 A. Yes.

22 Q. And if we go to Page 1-4, there is a title called,  
23 "Site Characterization."

24 Do you see that?

25 A. Yes.



<p>Sheet 37</p> <p style="text-align: right;">1836</p> <p>04:02 1 Q. And I understand the site characterization is the 2 first step in the RBCA process; correct? 3 A. That's correct. 4 Q. And if you start reading there, it says: "During 5 site characterization, the sampling and Analysis Plan 6 developed during project scoping is implemented, and field 7 data are collected and analyzed to determine the nature and 8 extent of threats to human health and the environment posed 9 by a site." 10 Do you see that? 11 A. Yes. 12 Q. And if you go to Page 1.6--before, if you go back 13 to Page 1.4, it says: "The major components of site 14 characterization are collection and analysis of field data 15 to characterize the site, development of a baseline risk 16 assessment for both potential human health effects and 17 potential environmental effects and treatability studies as 18 appropriate." 19 Do you see that? 20 A. Yes. 21 Q. And I understand that you relied on the data 22 collected by the team of GSI in the Amazon; correct? 23 A. I relied on the data collected by Parties working 24 on behalf of Chevron. I relied on data collected by the 25 Plaintiffs, and I relied on data collected by the Court</p>	<p style="text-align: right;">1838</p> <p>04:06 1 source samples and perimeter samples. 2 Q. And I understand that for the purposes of the 2008 3 Report, no specific health-risk samples were taken; 4 correct? 5 A. No, I would not agree with that. 6 Q. When you identified contamination in some sites, 7 did Chevron take specific samples to confirm health risk? 8 A. Yes, I think every sample that was collected 9 during the Judicial Inspection process was collected and 10 analyzed in a way to allow the evaluation or the presence 11 or absence of a health risk. 12 Q. When samples indicated contamination, did Chevron 13 take additional samples to verify if there were threats to 14 health, to human health, in the sites? Yes or no. 15 A. I'm not following your question. During the 16 Judicial Inspection process, specific areas of concern were 17 identified. Those included pit features and spill areas 18 and other locations with evidence of contamination, and 19 those were sampled as part of the Judicial Inspection 20 process by Chevron, and the analytical results from those 21 samples provided the information needed to evaluate the 22 presence or absence of health risks. 23 Q. What you're saying is that, on the basis of the 24 samples taken by Chevron for delineation purposes, testing 25 for human health risk was undertaken; correct?</p>
<p style="text-align: right;">1837</p> <p>04:04 1 experts. 2 Q. In 2008, to prepare your First Report, you only 3 relied, we established, on the data collected by Chevron; 4 correct? 5 A. In 2008, the Chevron data collected during the 6 Judicial Inspection process is the only data I evaluated 7 quantitatively. The Plaintiffs' and Court Expert data was 8 evaluated in the 2010 Report, and the PI data was evaluated 9 in the 2013 report. 10 Q. And it is my understanding that Chevron's experts' 11 sampling program was aimed at finding clean samples; 12 correct? 13 A. The samples that were collected by Chevron through 14 the Judicial Inspection process included all of the sample 15 locations that were nominated by the Plaintiffs and 16 instructed by the courts and the sample locations nominated 17 by Chevron and instructed by the courts, so the samples 18 collected by Chevron included samples within the source 19 material, such as a closed pit or sometimes an open pit, 20 and it also included samples that were located to try to 21 find the edges of those impacts. 22 Q. And I understood from Mr. Connor's evidence that 23 these samples where he called them perimeter samples, 24 perimeter samples or delineation samples; correct? 25 A. The samples collected by Chevron included both</p>	<p style="text-align: right;">1839</p> <p>04:08 1 A. I'm saying that all of the samples that were 2 collected by Chevron, that includes the source 3 samples--that could be a pit or a spill--it included 4 delineation samples, and it also included additional 5 samples such as samples from hand-dug wells or from any 6 water resource that was identified by the residents as 7 being used as a water resource. 8 So, all of those samples were analyzed for the 9 health constituents and included in the risk assessment. 10 Q. Are you aware, are you not, sir, that the 11 methodology of RBCA in the ASTM 1995 Standard Guide 12 comprises a multi-tiered methodology? 13 A. Yes. 14 Q. And are you aware, are you not, sir, that this 15 multitiered methodology for RBCA implies that from one tier 16 to another additional information should be obtained? 17 A. As you move from one tier to another, it may be 18 required--it may be necessary to obtain additional 19 information. 20 Q. And you didn't follow, did you, sir, the 21 multi-tiered process provided for in the ASTM 1995 Standard 22 Guide? 23 A. Yes, I did. 24 Q. Did you take samples from one tier to another 25 during your RBCA analysis?</p>

04:09 1 A. Yes, so, I evaluated every individual sample  
 2 comparing that against the health-based screening values  
 3 that we've discussed, and then the samples that had  
 4 constituents above a health based screening value, I  
 5 obtained additional information to evaluate the specific  
 6 exposure circumstances associated with those samples. So,  
 7 I obtained the additional information I needed to complete  
 8 that evaluation.  
 9 Q. When you undertook the first step of your  
 10 analysis, you did it on the basis of the samples taken by  
 11 Chevron; correct? In 2008.  
 12 A. Correct.  
 13 Q. And then when you came to the conclusion that  
 14 there was some toxicity in the samples and there were some  
 15 potential exposure pathways, you didn't take additional  
 16 samples, did you?  
 17 A. I think you're misunderstanding the process. The  
 18 process does not require additional site sampling after the  
 19 initial evaluation. In fact, it's most common to complete  
 20 the site investigation and to do the evaluation, the tiered  
 21 evaluation after the site investigation is completed.  
 22 Q. If we come back to Tab 9, Dr. McHugh, and we go to  
 23 Page 4, towards the bottom of the page you find Article 5:  
 24 Tiered approach to Risk Based Corrective Action, RBCA, at  
 25 petroleum release sites.

04:11 1 Do you see that, sir?  
 2 A. Yes.  
 3 Q. And Article 5(1) says: "RBCA is the integration  
 4 of site assessment, remedial action selection, and  
 5 monitoring with USEPA recommended risk and exposure  
 6 assessment practices. This creates a process by which  
 7 corrective action decisions are made in a consistent manner  
 8 that is protective of human health and the environment."  
 9 And I am interested in Section or Article 5.2,  
 10 which says: "The RBCA process is implemented in a tiered  
 11 approach involving increasingly sophisticated levels of  
 12 data collection and analysis. The assumptions of earlier  
 13 tiers are replaced with site-specific data and information.  
 14 Upon evaluation of each tier, the user reviews the results  
 15 and recommendations and decides whether a more specific  
 16 analysis is warranted."  
 17 So, I put to you, Dr. McHugh, that the RBCA  
 18 process in this guide requires sophisticated levels of data  
 19 collection in the different tiers of the process.  
 20 Do you agree?  
 21 A. This doesn't say anything about additional data  
 22 collection from the site. It's simply explaining that the  
 23 Tier 1 evaluation can be completed considering less of the  
 24 available information because it's a simpler evaluation  
 25 process. As you move to the higher evaluations, you will

04:13 1 incorporate more of the available information in order to  
 2 refine that analysis. The process by which you obtain that  
 3 information is not specified. There certainly could be  
 4 situations where a person returns to the site to collect  
 5 more information, but that's certainly not a required  
 6 element. And it's absolutely not necessary for many of the  
 7 tiered evaluations.  
 8 Q. The last step of the analysis--  
 9 PRESIDENT VEEDER: Are you moving away from that  
 10 paragraph? Are you moving away from that page, that  
 11 paragraph?  
 12 MR. SILVA ROMERO: I am.  
 13 PRESIDENT VEEDER: Could I just draw your  
 14 attention to Paragraph 5.3, "Site Assessment," and it  
 15 begins: "The user is required to identify the sources of  
 16 the chemicals of concern," et cetera. But could you look  
 17 at the last sentence in Paragraph 5.3: "The site  
 18 assessment will also include information collected from the  
 19 historical records and a visual inspection of the site."  
 20 THE WITNESS: Yes.  
 21 PRESIDENT VEEDER: To what extent is that an  
 22 essential part of your work?  
 23 THE WITNESS: Well, historical records and visual  
 24 inspection is commonly used in the site assessment phase to  
 25 guide the locations where you collect individual samples

04:14 1 for analysis, so.  
 2 Again, I wasn't in the Concession Area for the  
 3 site investigation step, but from working closely with the  
 4 people who were, there was a lot of preparation for the  
 5 site investigation step, and that involved reviewing  
 6 historical records and aerial photographs to identify the  
 7 locations of the individual pits, which I think Mr. Connor  
 8 explained, sometimes were difficult to observe visually in  
 9 the field because of the changes in vegetation. So they  
 10 incorporated the historical records as one method to  
 11 evaluate specific features to be sampled, and then they  
 12 also utilized visual observations. If there was visual  
 13 evidence of a spill or an impact, that was also typically  
 14 included in the Judicial Inspection process for sampling.  
 15 PRESIDENT VEEDER: Thank you.  
 16 BY MR. SILVA ROMERO:  
 17 Q. The last step in your analysis, Dr. McHugh, is  
 18 what you call "risk characterization;" correct?  
 19 A. Yes.  
 20 Q. And in your 2008 Report, you concluded that 15  
 21 samples required risk characterization; correct?  
 22 A. Is there a page you're looking at for that?  
 23 Q. Oh, yes, Page 76 of the 2008 Report.  
 24 And I understand that for risk characterization,  
 25 you analyzed five soil samples; correct?

04:16 1 A. Yes.  
 2 Q. Two sediment samples; correct?  
 3 A. Yes.  
 4 Q. And eight surface water samples; correct?  
 5 A. Yes.  
 6 Q. So, let's examine a couple of these examples to  
 7 finish our conversation today, Dr. McHugh, if you will.  
 8 First, I would like to discuss about, on Page 77, one of  
 9 the soil samples, which is SSF38 well site.  
 10 Do you see that?  
 11 A. Yes.  
 12 Q. And you say here: "The soil sample exhibited  
 13 benzo(a)pyrene at a concentration of 1.2 both the  
 14 health-based screening criteria which is safe for daily  
 15 direct contact in a residential setting. However, the  
 16 sample was collected from the middle of a cornfield  
 17 60 meters south of the SSF38 platform at a location not  
 18 likely to be accessed by the residents on a daily basis."  
 19 My first question, Dr. McHugh, is on what basis you came to  
 20 the conclusion that this location is not likely to be  
 21 accessed by residents on a daily basis.  
 22 A. That was based on reviewing the Judicial  
 23 Inspection Report for the site, and the included sample  
 24 location maps and other information documenting the  
 25 location of the sample and the location of residences. And

04:19 1 sample SSF38, but this time I want to discuss about the  
 2 sediment sample, which is described on Page 78 of the  
 3 Report.  
 4 Are you with me, Dr. McHugh?  
 5 A. Yes.  
 6 Q. Here, you say the following: "Sediment sample  
 7 exhibited benzo(a)pyrene at a concentration of 1.3 above  
 8 the health-based screening criteria which is safe for daily  
 9 direct contact in a residential setting. However, the  
 10 sample was collected from an open pit at a non-RAP site  
 11 operated by Petroecuador."  
 12 Here, my first question is: Did you receive a  
 13 legal instruction not to consider open pits at a non-RAP  
 14 site, did you not, sir?  
 15 A. No, I considered all samples at all sites.  
 16 Q. Why do you refer here to a non-RAP site?  
 17 A. Well, this is my evaluation of the sample at this  
 18 non-RAP site.  
 19 Q. Is it relevant for a risk-characterization  
 20 analysis to include an observation as to the fact that the  
 21 open pit was not or was at a non-RAP site?  
 22 A. The location of the sample being at a RAP site or  
 23 a non-RAP site, does not affect the risk evaluation, but it  
 24 does provide context for the location of the sample.  
 25 Q. The problem, Dr. McHugh, is that here you say

04:18 1 as discussed here, the sample was from a cornfield, so it's  
 2 property being used for agricultural purposes, and not in  
 3 the immediate proximity of a residence, so that's the basis  
 4 for my evaluation.  
 5 Q. So, if I understood your response correctly, you  
 6 based your analysis on current exposure; correct?  
 7 A. This analysis was based on current, yeah, use,  
 8 yes.  
 9 Q. And you didn't analyze for this sample, future  
 10 exposure, did you?  
 11 A. This location would be safe for the current or  
 12 future agricultural use. As is documented, it's above the  
 13 screening value for a residential setting.  
 14 Q. But you didn't say here or you didn't include here  
 15 any analysis of future exposure; correct?  
 16 A. Yes.  
 17 Well, the text says that it is above the screening  
 18 level for residential use, and so it is above a value for  
 19 future residential--  
 20 Q. But this is a land use. I'm asking you a question  
 21 about exposure, Dr. McHugh. You didn't analyze future  
 22 exposure here, did you?  
 23 A. Well, I mean, the evaluation covers, yes, current  
 24 and future exposure.  
 25 Q. Then if we go to another example, which is also

04:21 1 "however." You are first of all describing a sample which  
 2 may have some threats to human health, and then you say  
 3 "however, this sample was collected from an open pit at a  
 4 non-RAP site."  
 5 Do you see that?  
 6 A. Yes.  
 7 The important information there is it's an open  
 8 pit. An open pit is not an environment suitable for a  
 9 residential setting.  
 10 Q. And here you didn't analyze either future  
 11 exposure, did you, sir?  
 12 A. Well, in this case, being an open pit, it would  
 13 not be suitable for residential use as long as it's open.  
 14 And if it were properly closed, then that would change the  
 15 conditions at that location.  
 16 Q. So, you simply don't know what would happen in the  
 17 future with that pit, do you?  
 18 A. I do not.  
 19 Q. Dr. McHugh, you showed during your direct  
 20 presentation, a Slide 21, if we can come back for the last  
 21 line of questions to Slide 21, and you showed a picture of  
 22 a spring being tested at Guanta 6. Do you recall that?  
 23 A. Yes.  
 24 Q. Do you know where that spring is located, sir?  
 25 A. Yes, I have a general understanding of where it's

<p>Sheet 40</p> <p style="text-align: right;">1848</p> <p>04:23 1 located.  2 Q. Do you know how close this spring is to the well  3 Guanta 6?  4 A. I don't know the exact distance. I know that  5 there is a stream between the wellhead and the spring, so  6 this spring is located on the other side of the stream, and  7 it may be up a hillside a little ways.  8 Q. Did you evaluate any of the samples you analyzed  9 to determine whether--to determine where they were located  10 relative to a pit?  11 A. For this specific sample?  12 Q. Yes.  13 A. I don't know the distance to the nearest pit.  14 Q. Did you evaluate any of the samples you analyzed  15 to determine where they were located relative to known  16 contamination?  17 A. I don't--no.  18 Q. Did you evaluate any of the samples you analyzed  19 to determine where they were located relative to expected  20 contamination?  21 A. No, I evaluated the analytical results for the  22 samples.  23 Q. You also showed a picture--and I believe it's  24 Slide 59, Dr. McHugh.  25 A. Yes.</p>	<p style="text-align: right;">1850</p> <p>04:26 1 screening values, I looked at the location of that sample  2 and evaluated the current use of those locations.  3 Q. Thank you, Dr. McHugh.  4 MR. SILVA ROMERO: I don't have any further  5 questions, Mr. President.  6 PRESIDENT VEEDER: Thank you very much.  7 Any re-direct from the Claimants?  8 MS. RENFROE: Briefly.  9 PRESIDENT VEEDER: Please.  10 MS. RENFROE: Thank you, Mr. President, and  11 Members of the Tribunal.  12 REDIRECT EXAMINATION  13 BY MS. RENFROE:  14 Q. Dr. McHugh, I will try to do this quickly but I  15 think it's important to do it properly.  16 So, you have been asked by counsel about the four  17 components of the risk-assessment process that you  18 followed?  19 A. That's correct.  20 Q. And you were also asked about differences between  21 your approach and the approach of the--the approach of  22 Dr. Strauss?  23 A. Yes.  24 Q. So, I would like to return to some of those  25 points, and I would like to start with the ASTM Standard</p>
<p style="text-align: right;">1849</p> <p>04:25 1 Q. And this is a picture of the monitoring well of  2 Aguatico 6; correct?  3 A. Yes.  4 Q. And you said that there was no well present there  5 before LBG installed their monitoring well; correct?  6 A. That's correct.  7 Q. So, you are evaluating that site based solidly on  8 current use of the site; correct?  9 A. Well, yes, I'm evaluating my exposure based on the  10 fact that there is not an actual well and nobody is  11 drinking that water.  12 Q. And generally, what year do you use, Dr. McHugh,  13 to identify current uses in the Concession Area?  14 A. I evaluated the available information, so for the  15 Judicial Inspection sites, it would have been the time of  16 the Judicial Inspection.  17 Q. So, it would be as of 2004?  18 A. The Judicial Inspection process, I believe, is  19 2004 through 2007.  20 Q. But will you agree with me and Mr. Connor that a  21 proper risk assessment, Dr. McHugh, evaluates current and  22 future use?  23 A. Yes, and I evaluated current and future use. So  24 the comparison against screening values was for any  25 residential use, and then for those samples that exceed</p>	<p style="text-align: right;">1851</p> <p>04:27 1 that counsel asked you about, and I believe it's Tab 9 in  2 the binders, and I would ask my colleague behind me if he  3 can open to McHugh 43, please, and I would direct--but,  4 first, let's just be clear on what we're looking at.  5 This is the ASTM Standard that you described that  6 you relied upon.  7 A. That's correct.  8 Q. And upon which Mr. Silva Romero has put a number  9 of questions to you?  10 A. Yes.  11 Q. And so, I would like to direct your attention to  12 Page 8, Paragraph 6.4.3.  13 A. Yes.  14 Q. That paragraph is entitled "Use of Total Petroleum  15 Hydrocarbons measurements."  16 Do you see that?  17 A. Yes.  18 Q. Now, in terms of understanding one of the  19 differences between your approach to the human health-risk  20 assessment and the approach of Dr. Strauss, can you review  21 this paragraph and tell us or explain to us the difference  22 between your approach and her approach.  23 A. Yes. So, this paragraph says that: "Chemical  24 analysis methods, commonly referred to as Total Petroleum  25 Hydrocarbons (TPH), are often used in site assessments."</p>

04:29 1 It explains that the methods usually determine the total  
2 amount of hydrocarbons present in a single number and give  
3 no information about the types of hydrocarbons present."  
4 It says: "TPHs should not be used for risk assessment  
5 because the general measure of TPH provides insufficient  
6 information about the amounts of individual chemicals of  
7 concern present."  
8 And my risk assessment focused on those individual  
9 chemicals of concern.  
10 Q. And that was the 30 chemicals that you described  
11 during your direct presentation?  
12 A. That's correct.  
13 Q. So, compare this approach to the approach used by  
14 Dr. Strauss, please.  
15 A. Well, as I explained in my presentation,  
16 Dr. Strauss used six different evaluation methods, and some  
17 of those methods relied on TPH analytical methods that are  
18 simply inappropriate for risk assessment, the methods that  
19 present a single number.  
20 She also used, as I tried to describe, a method  
21 that provides some information regarding the composition of  
22 the petroleum material, and there is a regulatory guidance  
23 she relied on, her Method Number 1, that does establish an  
24 evaluation process based on that information about the  
25 composition of the petroleum, but it's a less precise

04:31 1 method than the individual chemicals of concern approach.  
2 Q. And if we could go to the slide in your  
3 presentation that includes the pyramid--and I'm trying to  
4 find it--I believe it's your Slide 20. If we could have  
5 that put back up.  
6 MR. SILVA ROMERO: Mr. President, I hate to  
7 object, but I didn't put any questions to the Witness on  
8 this very slide, and I didn't ask any questions on the  
9 different methods that my friend Mr. García Represa  
10 discussed with Mr. Douglas.  
11 MS. RENFROE: Well, may I respond, Mr. President?  
12 PRESIDENT VEEDER: Of course.  
13 MS. RENFROE: You certainly did ask questions of  
14 this Witness about differences in the approach to risk  
15 assessment between Dr. McHugh and Dr. Strauss, and you did  
16 put questions to this Witness about the ASTM Standard, and  
17 the paragraph that Dr. McHugh just explained is illustrated  
18 by this slide. So, I think it would be helpful to the  
19 Tribunal, and fair to the Witness, to give him an  
20 opportunity to explain his answer, as it relates to the  
21 ASTM Standard that he used.  
22 PRESIDENT VEEDER: You can respond.  
23 MR. SILVA ROMERO: Mr. President, but I believe  
24 what is happening here is that you will hear again the  
25 direct presentation by Dr. McHugh and, frankly, I didn't

04:32 1 put any questions on this very issue, and I don't find  
2 helpful for the Tribunal to hear again the same explanation  
3 you already got at the beginning of Mr. McHugh's  
4 examination.  
5 (Tribunal conferring.)  
6 PRESIDENT VEEDER: I think we need to hear your  
7 specific question because it's true that this particular  
8 Slide 20 was not something on which this Witness was  
9 cross-examined, but let's just see where the question goes.  
10 What is your question precisely?  
11 MS. RENFROE: Right. So--and we don't have to use  
12 the slide. It's simply for--  
13 PRESIDENT VEEDER: Don't use the slide, then.  
14 MS. RENFROE: Fine. Fine.  
15 PRESIDENT VEEDER: Put it aside. Just give us the  
16 question, but don't answer until we've ruled.  
17 MS. RENFROE: So, in relation to the question I  
18 had previously asked about whether the use of Total  
19 Petroleum Hydrocarbons measurements is appropriate or not  
20 for quantitative risk assessment, I was asking Dr. McHugh  
21 to compare his approach to the approach used by  
22 Dr. Strauss.  
23 (Tribunal conferring.)  
24 PRESIDENT VEEDER: You come in just under the  
25 wire. You can put that question.

04:34 1 MS. RENFROE: Thank you.  
2 BY MS. RENFROE:  
3 Q. So, Dr. McHugh, as it relates to the provision in  
4 the ASTM Standard that you followed, Section 6.4.3, use of  
5 Total Petroleum Hydrocarbon measurements, and the guidance  
6 provided here, can you please compare your approach to that  
7 approach used by Dr. Strauss?  
8 A. If I recall correctly, Dr. Strauss used as many as  
9 four different TPH methods in her risk assessment, using  
10 these different analytical methods for the same individual  
11 locations, and so those TPH methods ranged from methods  
12 that are simply never used for petroleum risk assessment to  
13 methods that provide some information concerning the  
14 potential risks associated with petroleum but are less  
15 precise than the individual chemical approach that I used  
16 and is recommended in this ASTM Standard.  
17 Q. Now, I would like to move to a different component  
18 of your risk assessment that you were asked about by my  
19 colleague, and that is the toxicity value. I believe you  
20 were asked some questions about that. And so, can you--  
21 MR. SILVA ROMERO: I'm sorry, I don't recall any  
22 questions on toxicity value, I myself. I prefer to make  
23 the comment now than later, when a slide and a question is  
24 already put to the Witness.  
25 MS. RENFROE: You asked him questions. In fact,

<p>Sheet 42</p> <p style="text-align: right;">1856</p> <p>04:36 1 you asked about one of the principal differences between  2 his approach and Dr. Strauss's approach, and it had to do  3 with the toxicity value. That's exactly what you were  4 asking about. You may not have appreciated that, but  5 that's how I heard it.  6 So, with all due respect I would like to ask my  7 Witness and for him to have an opportunity to respond.  8 PRESIDENT VEEDER: Please pose the question, and  9 don't answer until we've ruled.  10 What is the question?  11 BY MS. RENFROE:  12 Q. The question is: Comparing your approach to that  13 of Dr. Strauss, with respect to the toxicity value, can you  14 please compare your approach to that of hers.  15 PRESIDENT VEEDER: Stop there. We will take it  16 one by one.  17 (Laughter.)  18 (Tribunal conferring.)  19 PRESIDENT VEEDER: I think it would be helpful if  20 we could find in the cross-examination the passage where  21 you say this particular matter was raised, even if the  22 particular word wasn't used. Can you do a search on the  23 Transcript? Have you got it in mind?  24 MS. RENFROE: Yes, if you can give me just a  25 moment.</p>	<p style="text-align: right;">1858</p> <p>04:41 1 PRESIDENT VEEDER: Well, Ms. Renfroe, again, in  2 regard to that passage you say you want to raise a question  3 based upon that passage. Does that change the question you  4 gave us earlier? Does it refine it?  5 MS. RENFROE: Well, I--actually, to refine, I  6 found another question that is getting even more precisely  7 to the point, and this question is at Page 131, beginning  8 at Line 25, and continues on to Page 132.  9 The question:  10 "And as a layman, I understand the second  11 step as the application of some relevant standards  12 to the identified contamination to find out how  13 toxic that contamination can be. Do you agree  14 with me?  15 "ANSWER: That's correct," and then there is  16 a word I can't read. And then,  17 "QUESTION: And hence, the choice of the  18 relevant criteria, what you call the health-based  19 screening criteria, is appropriate?  20 "ANSWER: It's important to select the  21 appropriate values, yes.  22 "QUESTION: And I understand the main  23 difference between you and Dr. Strauss is  24 precisely the choice of those criteria; correct?  25 "ANSWER: No, there are many differences that</p>
<p style="text-align: right;">1857</p> <p>04:38 1 PRESIDENT VEEDER: We will give you all the  2 moments you need.  3 MS. RENFROE: Thank you.  4 (Pause.)  5 MS. RENFROE: Okay. I found it. Page 127,  6 Line 18. And I'm sorry I'm not very facile with operating  7 this software. But the question was asked--although I  8 can't put it in context because I can't read the question  9 above it--but the question was:  10 "And the selection of chemicals of concern is  11 based on the consideration of exposure routes,  12 concentration, mobilities, toxicological  13 properties, and characteristics such as taste,  14 odor, and so forth; correct?"  15 So, that's the question I want to follow up on.  16 "Toxicological properties" goes right to toxicity value.  17 MR. SILVA ROMERO: If I recall well the  18 context--but apparently my friend Ms. Renfroe remembers my  19 questions better than I--I could--I put that question just  20 to test the esthetics that Dr. McHugh did not appreciate in  21 his analysis, as you may recall. And at the end of that  22 provision, there is a reference to the esthetics such as  23 taste, odor, and so forth, as we went through together, I  24 hope, during the examination.  25 So, I maintain the objection.</p>	<p style="text-align: right;">1859</p> <p>04:42 1 we have."  2 And that's exactly the question I want to go to  3 now, is those choice of toxicity values.  4 (Tribunal conferring.)  5 PRESIDENT VEEDER: Please proceed.  6 MS. RENFROE: Thank you very much.  7 BY MS. RENFROE:  8 Q. So, now, Dr. McHugh, back to my question. Can you  9 please compare--explain to the Tribunal what you mean or  10 what the term "toxicity values" means within the context of  11 a human health-risk assessment such as you have performed,  12 and then please compare your approach to toxicity values  13 with the approach of Dr. Strauss.  14 A. Yes. In applying risk assessment to a  15 contaminated site, in our industry, we always rely on  16 toxicity values that are developed by regulatory  17 authorities. And using my risk-based screening values that  18 were developed by the World Health Organization and the  19 USEPA, that's exactly what I did.  20 Dr. Strauss, for her evaluation method one, relied  21 on the toxicity values developed by the State of  22 Massachusetts for the procedure that they established. For  23 her evaluation methods three through six, she utilized a  24 toxicity value that she developed on her own, and that's  25 not how we evaluate risks at sites.</p>

04:44 1 Q. And do taste and odor criteria have anything to do  
 2 with setting toxicity values for human health risk?  
 3 A. No, they do not.  
 4 Q. All right. My last question is this: Is it  
 5 common in your field of risk assessment science to do  
 6 quantitative risk assessments without actually personally  
 7 doing a site visit?  
 8 MR. SILVA ROMERO: Objection. Leading.  
 9 PRESIDENT VEEDER: I think you're being unkind.  
 10 It's a long day.  
 11 (Laughter.)  
 12 MR. SILVA ROMERO: I withdraw my objection out of  
 13 kindness, Mr. President.  
 14 PRESIDENT VEEDER: You know very well that  
 15 question could be rephrased.  
 16 MS. RENFROE: I'm happy to rephrase it.  
 17 PRESIDENT VEEDER: Slightly rephrase it.  
 18 BY MS. RENFROE:  
 19 Q. What is--can you comment on the requirement or the  
 20 necessity of personally doing a site visit in order to do a  
 21 quantitative human-health risk assessment?  
 22 A. Yeah. Risk assessment is one part of the site  
 23 evaluation process. And so, the evaluation process is  
 24 always implemented by a team of personnel, and it's very  
 25 common that the risk assessor does not personally visit the

04:45 1 site, and in this case I did not visit the site. And it's  
 2 also illustrated by the evaluations completed by Dr.  
 3 Strauss. Dr. Strauss submitted her first risk assessment  
 4 to the Tribunal without visiting the site.  
 5 MS. RENFROE: Thank you.  
 6 I have no further questions.  
 7 QUESTIONS FROM THE TRIBUNAL  
 8 PRESIDENT VEEDER: Well, with some trepidation, I  
 9 have one question for you.  
 10 THE WITNESS: Okay.  
 11 PRESIDENT VEEDER: It relates to the PowerPoint  
 12 Slide 40 that you showed us earlier today. And as you  
 13 recall, you described how this came from Dr. Strauss's  
 14 Report, I think her Second Expert Report, and you showed us  
 15 the Figure 20 in Column 6 against the fifth pit,  
 16 Shushufindi 13.  
 17 Do you see that?  
 18 THE WITNESS: Yes.  
 19 PRESIDENT VEEDER: And if you read across, it  
 20 relates to "current exposure playing in the stream."  
 21 Do you see that?  
 22 THE WITNESS: Yes.  
 23 PRESIDENT VEEDER: Now, the Figure 20 on which you  
 24 made some comments has two asterisks. And if we look at  
 25 Dr. Strauss's Report, that indicates that she assessed the

04:46 1 risk from the sediment only, the water was not evaluated.  
 2 Now, I just wanted to ask you whether that made a  
 3 difference to your comment or not?  
 4 THE WITNESS: No. Let me try to provide a little  
 5 context for the Tribunal.  
 6 So, the samples collected from this location,  
 7 there was a surface-water sample collected and a sediment  
 8 sample collected. And if I understand Dr. Strauss's Report  
 9 correctly, the surface sample was analyzed using three  
 10 different methods to measure petroleum in a sample, and  
 11 that's the VPH/EPH method, the 8015 method, and the Texas  
 12 1005 method.  
 13 The sediment sample was analyzed using four  
 14 different methods: The VPH/EPH method, the 8015 method,  
 15 the Texas 1005 method, and then this TEM method that has  
 16 been the subject of some discussion.  
 17 So, I think Dr. Strauss is simply trying to  
 18 acknowledge that for her method number six, which utilizes  
 19 that TEM method, she could only conduct her risk assessment  
 20 based on the sediment result. But if you look right  
 21 adjacent to that, this Texas 1005 method, she has an ND,  
 22 which means not detected. In this case it means no  
 23 petroleum was detected in either the sediment sample or the  
 24 surface-water sample. And if I recall correctly, I believe  
 25 also the surface-water sample was non-detect by this

04:48 1 VPH/EPH method, although it's not shown on this table, but  
 2 that's my recollection, is that there was no petroleum  
 3 detected in the surface-water sample by that method.  
 4 And so, I think that, based on those analytical  
 5 results where petroleum was not detected in surface water  
 6 by those other methods, the absence of a surface-water  
 7 sample analyzed by this fourth method probably does not  
 8 affect the risk evaluation very much at that location.  
 9 PRESIDENT VEEDER: Thank you.  
 10 As a matter of fairness, if the Respondent have  
 11 any questions arising from this Tribunal, they can pose  
 12 them.  
 13 MR. SILVA ROMERO: No, Mr. President. Thank you.  
 14 PRESIDENT VEEDER: And the Claimants?  
 15 MS. RENFROE: No further questions. Thank you.  
 16 PRESIDENT VEEDER: Well, thank you very much for  
 17 coming to assist the Tribunal. We have come to the end of  
 18 your testimony.  
 19 THE WITNESS: Thank you for your time.  
 20 (Witness steps down.)  
 [REDACTED]

04:50

[REDACTED]

04:53

[REDACTED]

04:51

[REDACTED]

04:54

[REDACTED]

23 PRESIDENT VEEDER: Let's start at 9:00 tomorrow,  
24 and let's keep this under continual review, and if either  
25 of you think we are slipping behind, please tell us, and we



04:56 1 will have to adjust sitting hours accordingly. But as we  
 2 understand it, you are both confident we will finish by  
 3 Tuesday evening?  
 4 MR. BISHOP: Yes.  
 5 MR. BLOOM: There is one issue that I don't think  
 6 the Parties are prepared to bring to the Tribunal's  
 7 attention just yet because I think it's very premature, and  
 8 the Parties are talking about some other issue, unrelated  
 9 to the issues that we're talking about right now.  
 10 PRESIDENT VEEDER: Well, there is a certain amount  
 11 of housekeeping we've got to address, and we will fit that  
 12 in when we can and when we should.  
 13 But let's stop now, and we will start at 9:00  
 14 tomorrow. Thank you.  
 15 MR. BISHOP: I'm sorry, just one quick question  
 16 for the Tribunal, which is we had addressed the possibility  
 17 of the Tribunal giving us some guidance for closing  
 18 arguments, and we would very much solicit that guidance at  
 19 the earliest possible moment from the Tribunal.  
 20 PRESIDENT VEEDER: Yeah, no, we heard your  
 21 message. It's our intention to try and get you something  
 22 tomorrow night. Whether it's guidance, it's up to you, but  
 23 you will get something.  
 24 MR. BISHOP: Thank you.  
 25 (Whereupon, at 4:57 p.m., the Hearing was

CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

  
 DAVID A. KASDAN

04:57 1 adjourned until 9:00 a.m. the following day.)  
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IN THE MATTER OF AN ARBITRATION BEFORE A TRIBUNAL  
CONSTITUTED  
IN ACCORDANCE WITH THE TREATY BETWEEN THE U.S.A. AND THE  
REPUBLIC OF ECUADOR CONCERNING THE ENCOURAGEMENT AND  
RECIPROCAL PROTECTION OF INVESTMENT, SIGNED AUGUST 27, 1993  
(THE "TREATY")

and

THE UNCITRAL ARBITRATION RULES 1976

- - - - -x  
 In the Matter of Arbitration :  
 Between: :  
 :  
 CHEVRON CORPORATION (U.S.A.), :  
 TEXACO PETROLEUM COMPANY (U.S.A.), :  
 :  
 Claimants, : PCA Case No.  
 : 2009-23  
 and :  
 :  
 THE REPUBLIC OF ECUADOR, :  
 :  
 Respondent. :  
 - - - - -x Volume 9

TRACK 2 HEARING

Friday, May 1, 2015

The World Bank  
700 18th Street, N.W.  
J Building  
Conference Room JB1-080  
Washington, D.C. 20003

The Hearing in the above-entitled matter convened  
at 8:59 a.m. before:

- MR. V.V. VEEDER, Q.C., President
- DR. HORACIO GRIGERA NAÓN, Arbitrator
- PROFESSOR VAUGHAN LOWE, Q.C., Arbitrator

## Registry, Permanent Court of Arbitration:

MR. MARTIN DOE, Secretary to the Tribunal

## Additional Secretary:

MS. JESSICA WELLS

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1 PROCEEDINGS  
2 PRESIDENT VEEDER: Good morning, ladies and  
3 gentlemen. We will start Day 9 of this Hearing. I  
4 understand there's no housekeeping matters to be raised by  
5 either side. We'll come to those later.  
6 So, we welcome our next witness. If you could  
7 state your full name, and if you were willing to do so,  
8 please read the words on the Declaration before you.  
9 ROBERT E. HINCHEE, CLAIMANTS' WITNESS, CALLED  
10 THE WITNESS: I'm Robert Eric Hincee, and I  
11 solemnly declare upon my honor and conscience I shall speak  
12 the truth, the whole truth, and nothing but the truth, and  
13 that my statement will be in accordance with my sincere  
14 belief.  
15 PRESIDENT VEEDER: Thank you very much.  
16 As you probably heard already, everything that  
17 you're saying and what counsel is saying is being  
18 transcribed, so you need to speak slowly, and please don't  
19 overspeak counsel; they will not overspeak you. And  
20 secondly, all this is being translated into Spanish by an  
21 interpreter and then being put into a Spanish-language  
22 Transcript, and that needs time for which we need a break,  
23 a pause between the beginning of each question and the  
24 beginning of each answer. It's hard to remember, but try  
25 and bear that in mind, and please don't speak too fast.

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09:01 1 THE WITNESS: Yes, sir. I'll do my best.  
2 PRESIDENT VEEDER: We'll start with questions from  
3 the Claimants.  
4 MS. WOOD: Thank you, Mr. President, Members of  
5 the Tribunal. I just had a few preliminary questions for  
6 Dr. Hincee, and then he's prepared to make a presentation.  
7 DIRECT EXAMINATION  
8 BY MS. WOOD:  
9 Q. Good morning, Dr. Hincee?  
10 A. Good morning.  
11 Q. Were you involved in the Lago Agrio Litigation?  
12 A. Yes, I began working on it in 2006. My  
13 involvement included addressing issues such as Chevron's  
14 Judicial Inspection, TexPet's RAP remediation, cost of  
15 remediation in Ecuador and the Reports of Mr. Cabrera and  
16 the Plaintiffs.  
17 Q. Thank you.  
18 Now, you have authored three Expert Reports in  
19 this BIT proceeding; correct?  
20 A. Yes.  
21 Q. And just for the record, the dates of those are  
22 May 31, 2013; May 9, 2014; January 11, 2015.  
23 And you have those Reports in front of you at the  
24 table today?  
25 A. Yes, I do.

09:02 1 Q. Dr. Hincee, are these three Reports an accurate  
2 and complete summary of your opinions in this arbitration?  
3 A. Yes, they are.  
4 Q. Do you have any corrections to make to your three  
5 Expert Reports?  
6 A. No, I don't.  
7 Q. Okay. And just very briefly, what is the subject  
8 matter of your direct testimony today?  
9 A. I'll be talking about remediation, remediation  
10 costs in the former Concession Area, and particularly how  
11 it applies to the Judgment.  
12 Q. Thank you.  
13 With that, Mr. President, Dr. Hincee is prepared  
14 to make a presentation.  
15 PRESIDENT VEEDER: Please continue.  
16 THE WITNESS: Thank you.  
17 I'm Rob Hincee. I hold a Ph.D. in civil and  
18 environmental engineering. Since my first professional  
19 work assignment 40 years ago, which was studying the  
20 impacts of inshore-onshore impacts of outer continental  
21 shelf oil development in Louisiana. I have been involved  
22 working exclusively in the environmental field, primarily  
23 in the areas of petroleum hydrocarbons and the remediation  
24 of petroleum hydrocarbons in soil and water.  
25 In addition to having worked at thousands of sites

09:05 1 Additionally, I worked for Kuwait in the--worked  
2 on the world's largest oil spill that resulted from the  
3 Iraqi invasion of Kuwait, and provided support in  
4 determining the cost and appropriateness of remedial  
5 technologies. In doing that, I testified twice before the  
6 United Nations Compensation Commission.  
7 In addition to having worked for many oil  
8 companies and government agencies, I've worked for a number  
9 of national oil companies similar to Petroecuador. The  
10 Trecate work was done for AGIP, the Italian national oil  
11 company; there are some other examples on the slides.  
12 This is a summary of my opinions in the case, and  
13 today I'm going to focus on the First Opinion. The  
14 Judgment, 6 billion dollar soil and groundwater remediation  
15 Award simply is unreasonable and can't be supported either  
16 by information in the Lago Agrio record or information  
17 provided by Ecuador and its BIT experts.  
18 To understand the situation in the former  
19 Concession Area in the Oriente, you have to understand  
20 what's happened since the time of TexPet's departure from  
21 the Consortium operations in 1990. Petroecuador has  
22 continued to operate and substantially expand the oil  
23 field. This is a picture from your mapping tool, and what  
24 you can see here at the bottom, Sacha 65, is the original  
25 footprint of the TexPet era Concession's operations. One

09:03 1 worldwide, actual remediation sites, I've worked in the  
2 area of research. I've developed technologies that are now  
3 being applied to hydrocarbon remediation. That research  
4 work was funded by Government agencies, predominantly U.S.  
5 agencies such as the EPA as well as by the Mexican  
6 Petroleum Institute.  
7 I've authored numerous peer-reviewed articles on  
8 the subject. Additionally, I was the founding editor of  
9 the Bioremediation Journal, a peer-reviewed journal which  
10 publishes papers related to oil and hydrocarbon  
11 remediation.  
12 Additionally, I have co-authored or co-edited more  
13 than 30 books related to hydrocarbon remediation, some of  
14 which were peer-reviewed.  
15 Two specific remediation experiences I want to  
16 talk about, because they will be coming up later in my  
17 presentation are first the Trecate blowout. This is the  
18 largest terrestrial onshore oil spill in western European  
19 history. Trecate is located just north of Milan, and an  
20 oil well blew out there. You see a photograph of it here,  
21 kind of a grainy black and white, shooting oil several  
22 hundred meters into the air which then fell back to earth  
23 over an area of about seven square kilometers in places up  
24 to a meter deep. I was the Technical Director involved  
25 from beginning to end on that project.

09:07 1 oil well in green, less than a hectare in size.  
2 After the end of the Concession, Petroecuador, as  
3 part of its continued operation of the oil field, has  
4 substantially increased both the footprint of the operation  
5 to well over three hectares and drilled ten new wells. In  
6 your tool, you can flip back and forth and see other years  
7 and see a lot of this activity going on.  
8 The two yellow outlines that you see here  
9 represent pits that were remediated by TexPet as part of  
10 the RAP. And you could see that Petroecuador actually has  
11 built a platform over one of those pits.  
12 Another thing that I'll be talking a lot more  
13 about that you need to understand is that Petroecuador has  
14 been, and is, remediating pits and spills in the former  
15 Concession Area. This is an example from Shushufindi 38.  
16 I put this photograph in because this is one of the sites I  
17 visited and witnessed the ongoing Petroecuador remediation  
18 of these pits, the platform itself is near the green icon.  
19 The pits are immediately south of that. These are two pits  
20 that were remediated by Petroecuador in 2010 and 2011.  
21 These were non-RAP pits that were remediated by  
22 Petroecuador.  
23 Now I'm just going to focus on the Judgment, and I  
24 want to point out that the Judgment's \$6 billion Award  
25 ignores reality, and it ignores reality on many different

09:08 1 levels. Perhaps one of the most important is that it  
 2 ignores Petroecuador's ongoing remediation of the very pits  
 3 and spills upon which the Judgment makes its Award.  
 4 Petroecuador is not complete with the remediation of the  
 5 non-RAP pits and spills, but much work has been done. This  
 6 is confirming that Petroecuador is stepping up and taking  
 7 responsibility for the non-RAP features. It's reducing the  
 8 number of non-RAP pits and spills in need of remediation.  
 9 And most importantly, I'll be talking about in a minute, it  
 10 provides us with detailed information as to how these pits  
 11 are being remediated and what standards are being used, and  
 12 what it costs to remediate these pits. And all of this is  
 13 simply ignored in the Judgment.

14 There are literally hundreds of documents  
 15 available that describe Petroecuador's remedial effort.  
 16 Many of these documents are and were in the Lago Agrio  
 17 record. I have a few examples here, and I want to point  
 18 first to the PEPDA 2007 Annual Report. If you choose one  
 19 document to read in the record concerning Petroecuador's  
 20 remediation, this should be the document.

21 The quote from the Report says. "Petroecuador  
 22 essentially is in charge of remediation and cleanup of  
 23 environmental liabilities in the Amazon district." Now,  
 24 you'll see the term, "environmental liabilities," used in  
 25 these documents. That's defined by the Government of

09:11 1 is a pre-remediation photograph. This is an oil pit. And  
 2 I heard in Ecuador's opening remarks that somehow I had  
 3 suggested there was no contamination in need of cleanup in  
 4 the former Concession Area. That's simply not true. I  
 5 recognized in my Reports from the beginning in this case  
 6 that there are non-RAP features that require remediation.  
 7 Sacha 14 is a good example. This in 2005 required  
 8 remediation. This pit was subsequently remediated by  
 9 Petroecuador. Here's a slide--again, this is from the  
 10 Petroecuador presentation that describes the pit after it  
 11 was closed, and it's in Spanish, but what's important here,  
 12 this pit was created in 1971. That was during the  
 13 Concession operation period. This was a non-RAP pit that  
 14 was subsequently remediated and closed by Petroecuador,  
 15 just one example of it.

16 We've heard suggestion from the Government of  
 17 Ecuador that somehow these pit remediations are incomplete  
 18 or interim or something of that kind, and that simply isn't  
 19 true. All you need to do is look at these detailed reports  
 20 that I described--and there are 18 of them in the BIT  
 21 record. In the back of those is a certificate issued by  
 22 the Ecuadorian Ministry of the Environment, and they all  
 23 have similar wording and wording to this effect are in all  
 24 of them. Petroecuador performed the work of cleaning up  
 25 and eliminating the pit, and all Ecuadorian standards--and

09:10 1 Ecuador's Ministry for the Environment, DINAPA, as being  
 2 contamination both historic, the non-RAP TexPet era  
 3 contamination, and current, the contamination created by  
 4 Petroecuador. Petroecuador is in charge of cleaning these  
 5 up.

6 This 2007 report also provides substantial  
 7 information as to pits that had been remediated as of that  
 8 time, what it cost, what standards were being met. And  
 9 importantly, it forecast the cost of remediation to  
 10 complete the necessary remediation of the Concession.

11 The other five reports are examples of detailed  
 12 reports issued by Petroecuador following its remediation of  
 13 individual pits. These are something like hundred-page  
 14 reports. They contain a great deal of information as to  
 15 how the pits were remediated, concentrations both before  
 16 and after remediation. There's a five-page appendix,  
 17 average of five-page appendix near the back of most of  
 18 these Reports that in detail describes the costs. All of  
 19 these, everything pictured in this slide as well as many  
 20 other reports were available to the Lago Agrio Court and in  
 21 the record, and were simply ignored.

22 There are many other documents that describe what  
 23 Petroecuador was doing, and the example here, I've got a  
 24 couple of pictures from a slide show showing remediation  
 25 ongoing at Sacha 14. You can see in this photograph--this

09:13 1 they're referring to Decree 1215--were complied with. If a  
 2 pit is cleaned up to the point that it complies with all  
 3 standards, that's not an interim remediation. There is no  
 4 need to go back and re-remediate these pits.

5 It wasn't just Chevron and Chevron's experts  
 6 telling the Lago Agrio Court this. Gerardo Barros was an  
 7 independent expert appointed by the Court working for the  
 8 Court, not for Chevron, not for the Plaintiffs, who issued  
 9 a series of reports to the Court. And these are some words  
 10 from one of his Reports: "Unremediated pits and spills are  
 11 Petroecuador's responsibility given that TexPet completed  
 12 the part of the remediation assigned to it under the RAP.  
 13 Petroecuador should remediate all the accumulated  
 14 environmental liabilities."

15 And "accumulated environmental liabilities," again  
 16 this refers to the environmental liabilities, and  
 17 "accumulated," that's the word used in Ecuador to describe  
 18 the historic, the non-RAP pits from the TexPet era.

19 Petroecuador has issued numerous estimates of the  
 20 costs to remediate or complete the remediation in the  
 21 former Concession Area. The best detailed cost that was  
 22 available in the Lago Agrio Court was in this PEPDA 2007  
 23 annual report that I mentioned. And in that Report, they  
 24 estimated it would cost \$121 million to complete  
 25 remediation in the Amazon region. Now, the former

09:15 1 Concession is only a part of the Amazon region. The part  
2 of the Amazon region include the former Concession they  
3 estimated would cost \$70 million to remediate.  
4 Petroecuador, as quoted here in 2011, has  
5 continued to issue similar estimates and similar figures.  
6 2011, Marco Calvopiña, the General Manager of Ecuador  
7 (sic), made a statement that they planned to invest  
8 \$70 million more or less to clean up the environmental  
9 liabilities in the former Concession. Again, this applied  
10 not just to the former Concession Area, but the entire  
11 Amazon region applying both to Consortium and Petroecuador  
12 era contamination. Rather than using or recognizing these  
13 numbers which Petroecuador had provided and were in the  
14 Lago record, the Court determined to make its own  
15 calculation of remediation costs, and that calculation  
16 ignores reality at every step. This is the formula that  
17 was used: For soil remediation, a unit cost times the  
18 volume, times the number of pits, 5.4 billion dollars. For  
19 groundwater remediation, \$600 million. In total \$6 billion  
20 was the Lago Court's Award for remediation.  
21 I'll walk through these calculations, and I'll  
22 explain this. These calculations are flawed at every step.  
23 Beginning with the unit costs for remediation, the  
24 Lago Court knew what it was costing Petroecuador to  
25 remediate these same soils, and they knew what

09:17 1 Petroecuador's unit costs were. There are a number of  
2 different datasets that could have been looked at by the  
3 Lago Court. The highest average unit cost I could find in  
4 those datasets was \$67 a cubic meter. Many of the costs  
5 are less than that.  
6 Now, if the Court had questioned Petroecuador's  
7 costs for remediation, all they needed to do was look at  
8 information in the record about what it costs to remediate  
9 crude oil contaminated soil elsewhere in the world. And  
10 these are just some examples from the Lago record, but it's  
11 clear that Petroecuador's actual remediation cost is  
12 consistent with what it costs to remediate crude  
13 oil-contaminated soil elsewhere in the world.  
14 Rather, essentially out of thin air--and my Report  
15 provides more details--the Lago Court chose a value more  
16 than ten times what it should have known Petroecuador is  
17 actually spending to remediate these soils.  
18 Likewise, the Lago Court substantially  
19 overestimates the volume of soil requiring remediation.  
20 Using two planning documents which describe no pit which  
21 was ever actually constructed, the Lago Court determined  
22 that an average of 8,400 cubic meters of soil per pit  
23 required remediation. Again, in the record the Lago Court  
24 had available to it considerable information from  
25 Petroecuador from actual remediations, not estimates, which

09:18 1 told them how much soil per pit was being remediated. And  
2 there are again a number of different sources from  
3 Petroecuador, all of these substantially below the soil  
4 volume determined by the Lago Agrio Court.  
5 At this point, the Lago Agrio Court could have  
6 stepped back and done another reality check because again  
7 in the record there was substantial information as to what  
8 it cost to clean up the average pit in the former  
9 Concession Area. This is a summary of some of that  
10 information. The first two costs you see here, those that  
11 are over \$100,000, were from the earlier days of the  
12 Petroecuador remediation. In the 2007 report, Petroecuador  
13 explains that over time they had learned how to more  
14 efficiently remediate pits and that, as of 2007, based on  
15 having remediated over a hundred pits, knowing what these  
16 pits looked like and what it cost to remediate them, the  
17 reasonable cost to remediate a pit was \$85,000 per pit.  
18 This information was all in the Lago record, and yet the  
19 Judgment awards \$6.1 million per pit, two orders of  
20 magnitude above the actual pit remediation cost in the  
21 former Concession Area.  
22 Now, we've heard from the Government of Ecuador  
23 that somehow these costs are not all inclusive, and I don't  
24 think that's true. All you need to do is look at the  
25 detailed cost information provided by Petroecuador that was

09:20 1 in the Lago Agrio record to see what was included in these  
2 costs. This is a summary from the Sacha 14, the same site  
3 that I showed you photographs of earlier from the detailed  
4 report. I've taken the five pages in the Appendix in the  
5 back and condensed them to this table just to illustrate  
6 these costs are all inclusive. They include labor,  
7 professional labor, management. They include the  
8 equipment, materials, and supplies, fuel used by the  
9 equipment. Land farming is the process that Petroecuador  
10 uses to treat the soil that it's unable to wash to  
11 standards on-site. Laboratory costs, soil and water  
12 testing before and after remediation is included,  
13 documentation, reporting's included, even community  
14 relations are included. The Lago Court had this  
15 information. They knew that for this particular pit the  
16 full cost of remediation was \$80,000, not \$6.1 million.  
17 You'll hear a lot about the number of pits which  
18 were dug or created or constructed in the former Concession  
19 Area during TexPet's operation period. That's not really  
20 the important number. The important number is the number  
21 of pits that require remediation. And again, Petroecuador  
22 provides us and the Lago Court with the best count of the  
23 number of pits requiring remediation.  
24 In 2007, after having operated for 15 years on  
25 these sites, knowing these sites well, being out there

09:22 1 every day and having already remediated over a hundred  
 2 pits, Petroecuador determined that there were 370 pits in  
 3 need of remediation within the former Concession Area.  
 4 Now, we know that also includes pits that were  
 5 created by Petroecuador after TexPet's operation period, so  
 6 we know that the right number of pits, the number of  
 7 non-RAP pits that remained in the former Concession Area  
 8 was something less than that 370. To arrive at an 880 pit  
 9 count you have to count pits that don't need remediation,  
 10 water pits, storage--borrow pits, pits that aren't  
 11 contaminated, or you need to include pits that have already  
 12 been remediated. We know that TexPet remediated more than  
 13 150 pits. We know that Petroecuador had been remediating  
 14 pits. The 880 count simply is not supportable.  
 15 Additionally, the Government of Ecuador  
 16 has--despite the fact the Government of Ecuador has set  
 17 remediation standards under Decree 1215, their law which  
 18 was passed after the RAP had already taken place, setting  
 19 standards for soil cleanup in the former Concession Area.  
 20 You can see those numbers here. They vary according to  
 21 land use.  
 22 The most commonly applied standard in the former  
 23 Concession Area is the agricultural standard: 2500  
 24 milligrams per kilogram of TPH (Total Petroleum  
 25 Hydrocarbons). That's the standard that Petroecuador most

09:23 1 commonly cleans up to. And yet the Judgment uses a  
 2 standard which it provides no real support for of 100  
 3 milligrams per kilogram, 25 times lower than the standard  
 4 to which these pits are actually being cleaned up.  
 5 And if the Lago Court had questioned whether the  
 6 2500 standard was appropriate, again, all they needed to do  
 7 was to look into the record, look at these Reports that  
 8 were issued by Petroecuador; and, in those, there is a one  
 9 page in the back--I've already talked about it  
 10 once--certificate from the Ecuadorian Ministry of the  
 11 Environment declaring the pits clean, and this is some of  
 12 the wording, and you'll find wording similar to this in all  
 13 the certificates: "According to the lab results, permitted  
 14 limits for agricultural-use soils--that's the 2500  
 15 milligrams per kilogram--have been met; therefore, the pit  
 16 no longer contains harmful or contaminating materials." If  
 17 the pit no longer contains harmful or contaminating  
 18 material, there is no need for additional remediation, no  
 19 need to remediation to a lower standard.  
 20 In their early reports, Ecuador's experts appear  
 21 to agree that the 100 milligram per kilogram standard in  
 22 the Judgment wasn't reasonable--this is a quote from LBG's  
 23 First Report. I have seen, though, in their more recent  
 24 reports, particularly 2015, the Government of Ecuador's  
 25 experts are now trying to defend the 100 milligram per

09:25 1 kilogram standard as reasonable. In doing so, they cite  
 2 standards from a number of States in the United States in  
 3 the range of 100 milligram per kilogram for TPH cleanup.  
 4 Those standards are not for crude oil-contaminated soil  
 5 cleanup. Those are for cleanup of refined product:  
 6 Gasoline, diesel, that kind of thing. Refined product is  
 7 more problematic than crude oil, and typically does have a  
 8 lower Cleanup Standard. What they do not provide you is  
 9 any standard which is being applied to crude  
 10 oil-contaminated soil.  
 11 The only exception that I've been able to find in  
 12 all of the Government of Ecuador's discussions is Trecate,  
 13 the site on which I worked, I was technical Director, the  
 14 Trecate blowout in Italy, I was there within a few days of  
 15 the blowout through completion. And although initially a  
 16 50 milligram per kilogram screening standard was set, it  
 17 was used primarily for delineation purposes, that was not  
 18 the concentration to which the soil in Trecate was  
 19 remediated.  
 20 At the time that the Italian authorities accepted  
 21 the site as clean, certified the remediation complete, and  
 22 allowed return of unrestricted use of the land, there were  
 23 residual concentrations of petroleum hydrocarbons, much of  
 24 the soil over a thousand parts per million, even over 5,000  
 25 parts per million in places, that's the concentration to

09:27 1 which Trecate was actually cleaned up, not 50 micrograms or  
 2 milligrams per kilogram, not a hundred. Thousands.  
 3 As I've said, the Judgment's calculation of soil  
 4 remediation is simply flawed at every step. It ignores  
 5 reality. It makes no sense. The Judgment then awards  
 6 \$600 million for groundwater remediation without providing  
 7 any real basis, no explanation, no unit costs, nothing like  
 8 what's provided for soil remediation. When, in fact, the  
 9 evidence tells us that groundwater remediation is not  
 10 needed in the former Concession Area. The groundwater data  
 11 confirms this, and this isn't a surprise. As I explain in  
 12 my report, groundwater remediation at oil field sites is  
 13 rare. Oil field sites, the primary concern is crude oil,  
 14 crude oil that's spilled on the surface of the ground.  
 15 It's more viscous than refined product, it doesn't spread  
 16 as far, it creates fewer problems. As a result, we know in  
 17 the United States that less than 1 percent of our oil field  
 18 sites have contamination that requires remediation.  
 19 Ecuador is no exception.  
 20 We know that HBT Agra, the company that was hired  
 21 jointly by the Government of Ecuador and by TexPet, did an  
 22 investigation before the RAP to determine that groundwater  
 23 remediation wasn't necessary. The court expert Gerardo  
 24 Barros that I spoke of earlier agreed.  
 25 Maybe more importantly, despite being assigned



09:29 1 responsibility for groundwater concerns, under Decree 1215,  
 2 the Ecuadorian law, Petroecuador, in the hundreds of  
 3 documents that I've reviewed, I see no evidence  
 4 Petroecuador is undertaking any groundwater remediation or  
 5 plans any groundwater remediation. And appropriately so.  
 6 There simply is no need for groundwater remediation.  
 7 You'll always hear considerable discussion--and  
 8 the Government of Ecuador's reports about contamination  
 9 migrating or spreading in groundwater. There simply is no  
 10 evidence that that's occurring. First of all, no completed  
 11 pathway--there are no completed pathways in groundwater  
 12 from the pits to the streams or drinking water. You will  
 13 see a cartoon conceptual model in some of the Government of  
 14 Ecuador's Expert Reports showing a pit showing a stream and  
 15 a connection. Simply isn't there.  
 16 Now, the Government of Ecuador's experts have  
 17 placed some monitoring wells between pits and stream and  
 18 claimed to have observed petroleum hydrocarbons in those  
 19 monitoring wells. For some of the reasons that Dr. Douglas  
 20 explained earlier, I think that it's questionable how real  
 21 those detections are, but even setting that aside, and  
 22 assuming they're real, those are single digit part per  
 23 million or lower concentrations of petroleum hydrocarbons  
 24 they claim is in groundwater.  
 25 In order to require remediation, sediment in the

09:32 1 bacteriological contamination. It's unhealthy water to  
 2 drink, but that has nothing to do with oilfield operations.  
 3 The Government of Ecuador claims that the  
 4 groundwater remediation Award is somehow supported by the  
 5 need for sediment remediation. This makes no sense. First  
 6 of all, the Judgment provides no estimate of the extent or  
 7 volume of sediment remediation, no specific cost. Sediment  
 8 remediation has been understood and has been addressed for  
 9 quite some time in the former Concession Area. TexPet  
 10 remediated sediments as part of the RAP. Petroecuador  
 11 continues to remediate sediments, and Petroecuador's cost  
 12 estimates in the 2007 Report I spoke of include the costs  
 13 for sediment remediation. Sediment remediation--there is  
 14 need still for more sediment remediation, it's understood,  
 15 and its cost has been estimated by Petroecuador.  
 16 And, finally, we hear a lot of discussion  
 17 concerning produced water discharges. It is true TexPet  
 18 discharged produced water during its operations. Produced  
 19 water is simply the water that comes up with the oil and is  
 20 separated from the oil. Produced water is a very salty  
 21 brine water with trace levels of Petroleum Hydrocarbon in  
 22 it. When it's discharged to a stream, the brine, the salty  
 23 material, quickly dilutes and is washed downstream. Those  
 24 trace levels of oil rapidly biodegrade, and we know that  
 25 for a couple of reasons.

09:30 1 stream has to have more than a thousand part per million in  
 2 petroleum hydrocarbons. You can't get from a part per  
 3 million in groundwater to a thousand parts per million in a  
 4 stream. It's physically impossible. You can't get there  
 5 from here. There is no connection.  
 6 You will also hear the Government of Ecuador talk  
 7 about mobility. The fact that there may be some residual  
 8 viscous oil on this site does not mean that it's mobile or  
 9 that it's migrating. There is no evidence of that  
 10 migration in the field data. There are, however, some well  
 11 developed tests that we used to assess whether or not oil,  
 12 free-phase oil, is migrating or mobile. LBG, the  
 13 Government of Ecuador's Experts, undertook none of those  
 14 tests. They simply declared the oil to be migrating and  
 15 mobile.  
 16 The most important reason for groundwater  
 17 remediation is protection of drinking water supplies. We  
 18 know from over 10 years from the Judicial Inspection  
 19 through the recent Government of Ecuador investigations  
 20 that the groundwater, drinking water supply wells on the  
 21 site are free of oilfield-related contamination that  
 22 requires remediation.  
 23 Now, that doesn't mean these wells are safe to  
 24 drink from--they're not. It's unfortunate that there are  
 25 people drinking from these hand dug wells. They have

09:34 1 First of all, that's simply the nature of oil  
 2 ideal conditions for biodegradation. But there are also  
 3 tests--and I cited them in my Report--conducted by  
 4 Greg Douglas where he evaluated the biodegradation of the  
 5 oil in that produced water and found that it biodegrades  
 6 with a half-life of days. There is nothing left from  
 7 TexPet's discharge water discharged 25 years ago in those  
 8 sediments today that requires remediation, and there is  
 9 nothing in the Reports produced by the Government of  
 10 Ecuador that provides any evidence that sediments are  
 11 contaminated as a result of produced water discharge.  
 12 Sediments are contaminated. They were contaminated by oil  
 13 spills, not produced water.  
 14 Once arriving at the \$6 billion figure, the  
 15 Judgment could have looked to see how that compared to what  
 16 it actually cost to clean up or remediate an oilfield.  
 17 There are thousands of oilfields around the world, many of  
 18 which have been remediated or are in remediation. It's not  
 19 hard to compare those numbers to the real cost. Again, the  
 20 Petroecuador 2007 estimate was \$70 million to remediate  
 21 both the TexPet era non-RAP features and the more recent  
 22 Petroecuador pits and spills. The Lago Agrio Court had  
 23 available to it information from other oilfields, and I'll  
 24 talk about Schoonebeek. Schoonebeek was one of the largest  
 25 oilfields in Western Europe, in The Netherlands, operated

Sheet 9 1900	1902
<p>09:35 1 from the early 1940s into the 1990s when it was closed.  2 When it was closed, it was remediated. This is a 599 well  3 oilfield, roughly the same size as the former Concession at  4 the time of the Petroecuador 2007 Report, larger than the  5 oilfield that had been operated by TexPet.  6 Remediation of Schoonebeek cost less than  7 \$100 million.  8 Now, Schoonebeek was not only remediated, the  9 decision was made to return the land to its pre-industrial  10 condition to remove all evidence that oil operations had  11 ever been there. All equipment was removed, all wells were  12 plugged and abandoned, all tanks were removed, buildings  13 removed, pipelines--a thousand kilometers of pipeline were  14 removed. The total cost for that entire effort was  15 \$261 million. This isn't something that the Government of  16 Ecuador is likely to want to do in the former Concession  17 Area because it would mean cessation of their oil  18 production. None of these numbers are anything close to  19 the \$6 billion awarded by the Lago Agrio Court.  20 I'm going to talk to you about a case where there  21 was need for exceptional remediation cost. The only  22 terrestrial oil spill I'm aware of with a cost anywhere  23 close to the cost of the Judgment, and that was in Kuwait.  24 After the Iraqi Army was--invaded Kuwait, when they were  25 withdrawing, Saddam Hussein ordered the destruction of</p>	<p>09:39 1 perspective. This is a to-scale map, you can see  2 30 kilometers on the scale, about 80 kilometers right to  3 left. That purple square in the lower left-hand corner  4 represents 3.1 square kilometers, which the Judgment says  5 needs to be remediated in the former Concession. It's not  6 hard to compare that purple square to the Burgan oilfield  7 and see that it is far, far smaller.  8 I can tell you, I was there, I saw the Burgan  9 oilfield, you could drive for kilometers and see nothing  10 from horizon to horizon but oil-covered land, not a bit of  11 clean soil, not a bit of unimpacted soil from horizon to  12 horizon. You will see nothing like that in Ecuador.  13 In Kuwait, we know there were 385 square  14 kilometers of land covered with 100 percent oil.  15 Essentially, up to a million parts per million of oil. In  16 contrast, the Judgment's exaggerated volume or area of soil  17 requiring remediation in the former Concession Area was  18 only 3.1 square kilometers, and that's to 100 parts per  19 million. Kuwait didn't map the contamination to 100 parts  20 per million. There was really no reason to, but had they,  21 their number would have been far larger than 385 square  22 kilometers, and yet the Judgment awards more than twice the  23 cleanup cost in Ecuador for the former Concession than the  24 United Nations Compensation Commission determined were  25 necessary to clean up Kuwait.</p>
<p>1901</p> <p>09:37 1 every oil well in Kuwait, the blowing up of every oil well,  2 every pipeline, every tank, opening of every valve, the  3 creation, the intentional creation, of the largest oil  4 spill and the largest oil-related disaster in history.  5 The United Nations reviewed this case, claims were  6 made by Kuwait, and the United Nations determined that the  7 cost to clean up this, the world's largest terrestrial oil  8 spill--the world's largest oil spill--should be  9 \$2.5 billion.  10 Just for scale, this is a satellite photo of a  11 portion of Kuwait taken shortly after the Iraqi war. In  12 the upper right-hand corner, the dark area, is the Persian  13 Gulf. You can see three of Kuwait's oilfields, the Burgan  14 oilfield is the largest--Burgan oilfield is one of the  15 largest oilfields in the world. It alone produces more oil  16 than all of Ecuador.  17 You can also see parts of the Umm Gudair and the  18 Al Wahfra oilfield. There were many more oilfields in  19 Kuwait that are not in this photograph. This is only part  20 of the damage. You can see that blackened area in the  21 Burgan field. That's oil covered soil. The Judgment  22 determined that the area of contamination in the former  23 Concession that required remediation was 3.1 square  24 kilometers. Now, I disagree with that number, I think it's  25 greatly exaggerated, but put the Judgment's Award in</p>	<p>1903</p> <p>09:41 1 This is an appropriate comparison. Those are both  2 terrestrial oil cleanups. You've heard the Government of  3 Ecuador compare the Judgment to marine oil spills,  4 specifically in their opening to the Exxon Valdez and to  5 the BP spill in the Gulf of Mexico. Those are not  6 comparable numbers. Marine oil spills are a very different  7 problem. A marine oil spill can very rapidly spread over  8 very large areas, very difficult to contain and remediate,  9 and as a result the costs are substantially higher for  10 cleanup of marine oil spills.  11 What you haven't heard from the Government of  12 Ecuador is a single comparison to what it cost to clean up  13 an oilfield or an oil spill on land, a terrestrial oil  14 spill, an easier oil spill to clean up. That would be  15 comparable. This is comparable in terms of its costs,  16 certainly not in terms of its size.  17 You heard in the opening remarks Ecuador's Experts  18 have estimated that there are 3.4 million barrels of oil  19 still in the soil in the former Concession Area. I  20 disagree with those calculations. As explained in my  21 Report, I believe they are founded on bad statistics, and  22 they use the TEM estimate of Petroleum Hydrocarbons which  23 is an exaggeration. I think they're grossly exaggerated.  24 Setting that aside, 3.4 million barrels, if it was  25 true, is still less than the 1 percent of the oil released</p>

09:42 1 in Kuwait. The Judgment simply makes no sense, and is not  
2 supported by Ecuador's Experts' Reports.  
3 In summary, the Judgment ignores reality. The  
4 Judgment ignores the actual cost per pit to remediate the  
5 soil. They ignore the actual volume per pit. The Judgment  
6 ignores the pit count, it uses an unrealistic remediation  
7 standard, it awards remediation costs for groundwater when  
8 none is required. The result is that the Lago Court awards  
9 a number which is order of magnitude--orders of magnitude  
10 higher than costs determined by Petroecuador, Ecuador's own  
11 oil company.  
12 Thank you.  
13 PRESIDENT VEEDER: Thank you very much. Any  
14 further questions from the Claimants?  
15 MS. WOOD: No questions, Mr. President.  
16 PRESIDENT VEEDER: There will now be questions  
17 from the Respondent.  
18 CROSS-EXAMINATION  
19 BY MR. BLOOM:  
20 Q. Good morning, Dr. Hinchee. How are you?  
21 A. Good morning, fine, thank you.  
22 Q. I'm Eric Bloom, I will be asking you the questions  
23 on behalf of the Respondent this morning. You testified  
24 that you were at the site at ground zero within days after  
25 the Trecate spill?

09:44 1 A. Yes, that's true.  
2 Q. And the cleanup efforts and the investigation  
3 began even before you got there?  
4 A. Yes, began almost immediately.  
5 Q. And in Kuwait there were efforts almost  
6 immediately to investigate the damage caused by the  
7 destruction of the oil wells there?  
8 A. There were efforts that began early on. It took  
9 longer in Kuwait to begin what you think of as  
10 characterization of the oil spills. There were more  
11 immediate problems to deal with.  
12 Q. Given the war conditions?  
13 A. Yes.  
14 Q. Now, TexPet operated in Ecuador from the 1960s  
15 through the early 1990s; is that correct?  
16 A. I'm not sure when--I don't recall exactly the date  
17 that the operations began. I understand it ended  
18 June of 1990, yes.  
19 Q. The operatorship ended in June of 1990 and they  
20 left in 1992; do you understand that?  
21 A. The operatorship ended in 1990. I think there was  
22 still some ownership after that.  
23 Q. And the issue right now is remediation, some 25  
24 years after that operatorship ended; correct?  
25 A. Yes.

09:45 1 Q. Now, sir, you testified or it's in your Report  
2 that you worked for Integrated Science and Technology; is  
3 that correct?  
4 A. Yes.  
5 Q. If I could return for one moment in the Kuwait  
6 example that you gave. It's true, is it not, that Kuwait  
7 is currently asking for more money than the 2.5 billion;  
8 isn't that right?  
9 A. I'm sorry, I couldn't hear all of your question  
10 over all the noise behind you.  
11 Q. Certainly, I will repeat.  
12 Kuwait is currently asking for more than the  
13 \$2.5 billion; isn't that correct?  
14 A. I don't know what Kuwait is currently asking for,  
15 no.  
16 Q. Okay. Now, sir, you're a principal at Integrated  
17 Science and Technology?  
18 A. Yes.  
19 Q. And your title is...  
20 A. Principal Engineer.  
21 Q. And you have an ownership in that, do you not?  
22 A. Yes, I do.  
23 Q. And what is that ownership interest?  
24 A. Approximately 11 percent.  
25 Q. And to be clear, you're not an Expert in

09:46 1 toxicology; is that right?  
2 A. I know something about toxicology as we apply it  
3 in remediation, but I'm certainly not a toxicologist.  
4 Q. You're not representing yourself as an Expert in  
5 toxicology; correct?  
6 A. No, I'm not a toxicologist.  
7 Q. Nor are you representing yourself as an Expert in  
8 epidemiology; is that also right?  
9 A. Yes, I'm not an epidemiologist, no.  
10 Q. Nor are you a medical professional?  
11 A. No, I'm not a medical professional.  
12 Q. And you have not been qualified by a court to act  
13 as an Expert in the field of impacts of crude oil on human  
14 health?  
15 A. That is right, I have not.  
16 Q. And you have never been qualified by a court to  
17 act as an Expert in the field of risk assessments; correct?  
18 A. I've certainly testified to risk assessment. I  
19 don't know that I have ever been specifically qualified by  
20 a court to address risk assessment. Risk assessments often  
21 are an integral part of remediation.  
22 Q. Now, you've testified that you've had a  
23 relationship with Chevron and, before that, with TexPet as  
24 it relates to the Lago Agrio Litigation; isn't that right?  
25 A. I've had a relationship with Chevron. I didn't

09:48 1 have a relationship with TexPet.  
 2 Q. And you have also been offered as a witness in the  
 3 New York RICO proceeding?  
 4 A. Yeah, that's possible. I don't know whether I was  
 5 offered or not. I wrote a report.  
 6 Q. Okay. Now, your relationship with Chevron extends  
 7 back to what date?  
 8 A. With Chevron anywhere?  
 9 Q. Yes.  
 10 A. Oh, sometime in the mid-Eighties.  
 11 Q. So, it's about 30 years?  
 12 A. Approximately, yes.  
 13 Q. Now, to be clear, you never served as an Expert on  
 14 Chevron's behalf at a Judicial Inspection; correct?  
 15 A. That's right, that's right.  
 16 Q. But you are aware that in preparation for the  
 17 Judicial Inspections, Chevron had prepared two documents as  
 18 both a Sampling Plan and an Analysis Plan.  
 19 A. Yes, I have seen those.  
 20 Q. Now, you didn't draft either one; correct?  
 21 A. No, and I want to be clear: It wasn't simply  
 22 Chevron that prepared those. Those were prepared jointly  
 23 with the Plaintiffs, but no, I was not involved in their  
 24 drafting.  
 25 Q. But you reviewed them in connection with the 2006

09:49 1 Report that was submitted to the Lago Agrio Court; is that  
 2 not right?  
 3 A. Yes, I did.  
 4 Q. And I will be referring to this Report. So, let's  
 5 hand out some binders.  
 6 And if you want to at any time refer to that  
 7 Report, it's at Tab 4. And you may want to confirm that  
 8 Tab 4 is, in fact, your 2006 Report that was submitted in  
 9 Lago Agrio.  
 10 A. Yes, I see this.  
 11 Q. And I will represent to you that at Page 16, you  
 12 do represent that you relied on both the Analysis and  
 13 Sampling Plans.  
 14 A. Page 16?  
 15 Q. Correct.  
 16 A. Yes, I see the reference.  
 17 Q. Now, this Report was entitled "Evaluation of  
 18 Chevron's Sampling and Analysis Methods"; correct?  
 19 A. Yes.  
 20 Q. So, those two documents were, indeed, the  
 21 essential pieces of your review; no?  
 22 A. They were an essential part, yes.  
 23 Q. And you went on to write seven additional reports  
 24 in the Lago Agrio Litigation; isn't that also right?  
 25 A. I believe the count--your count is right, yes.

09:51 1 Q. Now, you've testified a number of times, both at  
 2 trial and at deposition, have you not?  
 3 A. Yes, I have.  
 4 Q. About 20 or 30 times you have been deposed?  
 5 A. Approximately, yes.  
 6 Q. And you've also testified at trial and in  
 7 arbitrations?  
 8 A. Yes, I have.  
 9 Q. And you've testified on behalf of Exxon?  
 10 A. Yes.  
 11 Q. On behalf of Plantation Pipeline?  
 12 A. Yes.  
 13 Q. On behalf of Kinder Morgan?  
 14 A. Yes.  
 15 Q. And Kinder Morgan is an oil-and-gas company?  
 16 A. Primarily a pipeline, an oil-and-gas transport  
 17 company.  
 18 Q. Can you tell us how many times you've actually  
 19 testified against an oil company?  
 20 A. Against an oil company? I've testified adverse to  
 21 Chevron.  
 22 Q. When was that?  
 23 A. Two years ago.  
 24 Q. And what case was that?  
 25 A. It was a case before the California Public

09:52 1 Utilities Commission concerning rates, shipping rates.  
 2 Q. And the nature of your testimony in that  
 3 proceeding?  
 4 A. I was working for Kinder Morgan, the company  
 5 who--the shipper, and Kinder Morgan had spills, done  
 6 remediation work, and I was testifying as to the  
 7 reasonableness of the remediation work being done by Kinder  
 8 Morgan.  
 9 Q. Have you ever testified against an oil company  
 10 when it was not on behalf of another oil company?  
 11 A. Not that I recall.  
 12 Q. Doctor, could I ask you to turn to Tab 3 of your  
 13 binder.  
 14 A. I would like to point out that my testimony in  
 15 Kuwait was against the country of Iraq, but the costs that  
 16 were being incurred, that were being paid to Kuwait, were  
 17 coming from the Iraqi oil company, so that could be  
 18 interpreted as adverse to the Iraqi oil company.  
 19 Q. You're at Tab 3 now?  
 20 A. Yes.  
 21 Q. Now, this is an e-mail from John Connor to  
 22 Doug MacKay, Pedro Alvarez, and to yourself; correct?  
 23 A. Yes.  
 24 Q. And can you, for the Tribunal's sake, can you  
 25 identify who Doug MacKay and Pedro Alvarez are.

<p>Sheet 12</p> <p style="text-align: right;">1912</p> <p>09:54 1 A. Yes. Doug MacKay and Pedro Alvarez were also  2 Experts who worked with me and co-authored several of my  3 Expert Reports in the Lago matter.  4 Q. And this e-mail is from August 2006, about three  5 weeks before you submitted your First Report; isn't that  6 right?  7 A. Yes.  8 Q. In the first line of this e-mail, Mr. Connor says  9 that he had reviewed the latest draft of your Report.  10 Do you see that?  11 A. Yes.  12 Q. And, in fact, this e-mail is about Mr. Connor's  13 comments to your First Report; right?  14 A. Yes, it appears to be.  15 Q. And you were shown this document in your  16 deposition; do you recall that?  17 A. Yes, I do.  18 Q. And you read your deposition in preparation for  19 today's proceeding?  20 A. I did.  21 Q. So, on this e-mail, Ernie Baca and Sara McMillen  22 are on the cc line. Could you identify who Ernie Baca and  23 Sara McMillen are?  24 A. Yes, Ernie Baca is an employee of GSI. He was one  25 of the Judicial Inspection Experts on a number of sites,</p>	<p style="text-align: right;">1914</p> <p>09:57 1 Q. So, did you accept his--strike that.  2 Did you ever interview people in connection with  3 this Report who were not affiliated with Chevron?  4 A. If you include as affiliated with Chevron  5 consultants who were working for Chevron, I don't recall  6 interviewing anyone else.  7 Over the course of my work in Lago, I have  8 interviewed other people, so I can't be certain that I  9 didn't interview someone not connected to Chevron for this  10 Report, but I don't recall any of those interviews, as I  11 sit here.  12 Q. I will refer you to your deposition testimony and  13 see if this refreshes your recollection. Your deposition  14 testimony is at Tab 2, and I would refer you to Page 152,  15 beginning at Line 7.  16 A. Yes.  17 Q. And there you say that you interviewed the  18 consultants who did the Judicial Inspections for Chevron  19 and other consultants working for Chevron, as well as Sara  20 McMillen, correct?  21 A. Yes.  22 Q. And you don't recall ever reaching out to anyone  23 who was not being paid by Chevron; is that also right?  24 A. Yes, that is what I said in my deposition. And,  25 as I said, I re-read this and giving it more thought, I'm</p>
<p style="text-align: right;">1913</p> <p>09:55 1 and has been working on this case for some time.  2 Sara McMillen is an employee of Chevron, and she  3 also has been working on this case for some time.  4 Q. Now, about halfway down the page you will see a  5 Number 1, and it says "objectivity/independence."  6 Do you see that?  7 A. Yes.  8 Q. Now, in the second paragraph under this heading,  9 Mr. Connor writes: "To the degree possible, I think you  10 need to be more diligent about sources so that you sound  11 objective."  12 Do you see that?  13 A. Yes, I see that.  14 Q. And then he references an attachment that  15 identifies the interviewees as 100 percent Chevron folks,  16 and he says "that begs the same question."  17 Do you see that also, sir?  18 A. Yes.  19 Q. Now, you would agree with me, sir, that there was  20 no--ultimately there was no attachment submitted with your  21 2006 Report; isn't that right? And feel free to take a  22 look, if you wish.  23 A. No, I have written a lot of reports. I have to  24 see what attachments were or weren't included.  25 The only attachment I see are key documents.</p>	<p style="text-align: right;">1915</p> <p>09:58 1 not 100 percent sure that I hadn't spoken to someone who  2 was not with Chevron at the time this Report was written,  3 but I believe this is probably accurate. I probably  4 didn't.  5 Q. Thank you, sir.  6 Now, Dr. Hinchee, how many pits did TexPet  7 remediate as part of the RAP?  8 A. I don't recall the exact number. I would have to  9 go to Woodward-Clyde 2000. It was something more than 160.  10 Q. And it's out of how many pits? How many pits did  11 TexPet construct?  12 A. I don't know. I haven't done that calculation.  13 As I said, that's not really relevant. What's relevant is  14 how many need remediating.  15 Q. Did you ever know how many pits that TexPet  16 constructed?  17 A. No, I haven't tried to do that calculation, and I  18 have not seen that number in any of the documents I  19 reviewed.  20 Q. Now, you understand that there were more than 300  21 well sites, I believe approximately 322?  22 A. Yes, that's right.  23 Q. And 22 Production Stations?  24 A. Yes.  25 Q. And given your own knowledge of oil extraction</p>

10:00 1 processes, do you have an educated opinion as to how many  
 2 pits TexPet reasonably should have constructed to support  
 3 an operation on this scale?  
 4 A. I haven't offered opinions concerning oilfield  
 5 operations. And, as I said, that's not an estimate or a  
 6 determination that I've made, and I haven't seen any  
 7 information concerning that in the documents I've reviewed.  
 8 Q. At any point, has Chevron provided you with  
 9 comprehensive historical records for the pits that TexPet  
 10 constructed?  
 11 A. I have seen historical records concerning the pit  
 12 TexPet--the TexPet pits, yes.  
 13 Q. Only insofar as those that were remediated or for  
 14 all of the pits?  
 15 A. I have seen information concerning pits that I  
 16 don't know whether or not were remediated.  
 17 I'm not sure what your question is.  
 18 Q. Well, I guess you may have already answered it.  
 19 If you don't know the universe of pits, presumably you  
 20 would not have all of the historical information with  
 21 respect to the universe of pits.  
 22 A. Right. I focused on the pits that need  
 23 remediating.  
 24 Q. And how can you determine which pits need  
 25 remediating if you don't know the universe of pits?

10:01 1 A. You look to Ecuadorian regulations today. You  
 2 look to the RAP at the time of the TexPet remediation.  
 3 There is information concerning pits that were contaminated  
 4 in the HBT Agra Report I referred to. And probably most  
 5 usefully is Petroecuador's own determination of the number  
 6 of pits that required remediating in 2007, so there is  
 7 substantial information available as to the number of pits  
 8 which require remediation.  
 9 Q. But I want to take you back to your work at the  
 10 Lago Agrio Case before the PEPDA project and go back to my  
 11 question: How do you know what pits need remediating if  
 12 you don't know what the universe of pits are?  
 13 A. Well, you have information, again, from the HBT  
 14 Agra audit, also Fugro-McClelland, you know which pits were  
 15 identified in the RAP as needing remediation which were  
 16 assigned to TexPet for remediation, and you know from  
 17 Judicial Inspection information that is available, and by  
 18 comparing those to Petroecuador practice and to Ecuadorian  
 19 regulations that were applicable at the time, you can  
 20 determine which pits need remediation.  
 21 Q. So, you're not getting it from TexPet, you're  
 22 getting it from other sources to the extent they have the  
 23 information from what source?  
 24 A. From having investigated the pits and the sites  
 25 where pits exist that need remediation.

10:03 1 Q. Now, other than aerial photos, Chevron did not  
 2 provide the Court with any historical documentation  
 3 regarding the size or location of the pits they  
 4 constructed; isn't that right?  
 5 A. I don't know what documents were provided to the  
 6 Court from Chevron. I know that the Court relied on for  
 7 its estimate of size, two documents which were generated by  
 8 TexPet. I don't know how they came into possession of  
 9 those documents.  
 10 Again, though, those didn't actually describe any  
 11 pit that was ever built.  
 12 Q. Now, sir, you understand that because you referred  
 13 in direct to the Judgment. In fact, you were quoting from  
 14 the Judgment. You understand that the Judgment said that  
 15 the Court could not apply current standards. It had to  
 16 apply the standards, the regulatory standards that existed  
 17 at the time; is that your understanding?  
 18 MS. WOOD: Objection. If Mr. Bloom is going to  
 19 refer to the Judgment and ask him about specific statements  
 20 in the Judgment, he should show him the Judgment and the  
 21 specific passage that he's talking about. I don't think  
 22 it's fair to the Witness otherwise.  
 23 PRESIDENT VEEDER: Well, if the Witness can answer  
 24 without a reference, so be it, but it's helpful for the  
 25 Tribunal also, I think, to see the particular passage.

10:04 1 MR. BLOOM: And I will return to that in a little  
 2 bit more detail in a few minutes, but if I can just--  
 3 PRESIDENT VEEDER: Just make it clear: If you  
 4 want to look at the Judgment, you can ask for it and you  
 5 will be shown the relevant passage.  
 6 THE WITNESS: Well, in general, the standard that  
 7 the Judgment was based upon was a 100-milligram per  
 8 kilogram TPH standard which to my knowledge has never  
 9 existed in Ecuadorian regulations and has no basis at any  
 10 time in Ecuadorian regulations.  
 11 BY MR. BLOOM:  
 12 Q. And sir, are you a lawyer or are you an expert in  
 13 Ecuadorian environmental regulations?  
 14 A. I'm certainly not a lawyer, but I am an engineer  
 15 who's cleaned up and worked on remediation of  
 16 oil-contaminated soils in the United States and many other  
 17 countries around the world. I understand how to read  
 18 regulations and understand how they apply to remediation.  
 19 Q. Thank you, sir. We will be returning to the  
 20 subject, then.  
 21 Now, Doctor, would you agree with me that  
 22 generally at oil well sites, at least before remediation,  
 23 it's possible that some contamination will exist under the  
 24 ground surface?  
 25 A. Yes, contamination can exist under the ground

10:05 1 surface.  
 2 Q. And, indeed, that's not really uncommon, is it?  
 3 A. It's not uncommon to find contamination below the  
 4 ground surface. It isn't all immediately on the ground  
 5 surface.  
 6 Q. And I think for the sake of the Tribunal, I want  
 7 to turn to a slide used by Mr. Connor earlier this week.  
 8 Keeping in mind the Republic does not agree with all of it,  
 9 but for purposes here, once we get it on the screen, I want  
 10 to ask you, Doctor, if you understand the depiction here.  
 11 And this is not the right slide.  
 12 There we go.  
 13 You can take a moment to look at this, and first  
 14 let us know whether you understand it, and if you don't, we  
 15 will move on. If you do, I'm going to ask you to explain  
 16 it.  
 17 A. Yes, I understand it.  
 18 MS. WOOD: Excuse me, Mr. Bloom. Excuse me.  
 19 Could you just tell me in the bundle where this is, so I  
 20 could look at it closer, in your slides?  
 21 MR. BLOOM: I don't know if you have it in the  
 22 bundle. Yeah, this is from Mr. Connor's slides.  
 23 MS. WOOD: Oh, okay. I just didn't know if--  
 24 MR. BLOOM: This is Slide 14 from Mr. Connor.  
 25 MS. WOOD: Okay. Thank you.

10:07 1 MR. BLOOM: Sure.  
 2 PRESIDENT VEEDER: The trouble is that it's  
 3 Slide 13 in our bundle.  
 4 MS. WOOD: Yeah. That's what I was confused  
 5 about.  
 6 MR. BLOOM: So, it's 13 of our bundle, it's 14 of  
 7 Mr.--Dr. Connor, Mr. Connor's bundle.  
 8 MS. WOOD: Thank you.  
 9 BY MR. BLOOM:  
 10 Q. So, could you explain this for the Tribunal? And  
 11 I want to focus specifically on where the contamination  
 12 would have been prior to the remediation.  
 13 A. This is a generalized cross-section that  
 14 represents a generalized condition in the Oriente showing a  
 15 remediated pit, the cross-section. It shows the remediated  
 16 material, the bottom of the former pit and probably  
 17 over-excavated somewhat, so, it's probably larger than the  
 18 original pit, and overlain by clayey soil, clean soil, top  
 19 soil, and then vegetation. And then it shows the  
 20 predominantly clayey soils around the pit.  
 21 Q. And the only point here is the area that was  
 22 remediated presumably was once contaminated or else there  
 23 wouldn't have been remediation in the first place; would  
 24 you agree with that?  
 25 A. Right. You remediate contamination.

10:08 1 Q. And would you also agree with me that before  
 2 remediation is conducted, there is oftentimes an  
 3 investigation of some kind to determine both whether and to  
 4 what extent contamination exists?  
 5 A. Yes, similar to the HBT Agra audit I discussed  
 6 earlier, that's very common.  
 7 Q. And are there instances where oil contamination  
 8 might be found in the subsurface, even where the  
 9 contamination might not be visually observable at the  
 10 surface?  
 11 A. Yes. It's not always visually observable at the  
 12 surface.  
 13 Q. And to perform a comprehensive remediation, one  
 14 obviously needs to know where the contamination is, and  
 15 what the boundaries are of that contamination; would you  
 16 agree with that?  
 17 A. You need at least some general idea, yes. When  
 18 you're remediating oil contamination such as this, oil's  
 19 visually apparent. So, as you do the remediation, as you  
 20 excavate, you can see where the oil is, and that's the way  
 21 it's normally done. You follow the visually contaminated  
 22 material.  
 23 Q. And that would necessitate exploring the site,  
 24 doing some tests?  
 25 A. Not necessarily. It's done during the

10:09 1 remediation. It's done observationally.  
 2 Q. But would you agree with me that there are times  
 3 it is done before remediation?  
 4 A. Yes, similar to the work that was done by HBT Agra  
 5 and Fugro-McClelland.  
 6 Q. And the purpose of such an investigation would be  
 7 to determine both the nature and the extent of the  
 8 contamination?  
 9 A. Yes. You need to understand where the  
 10 contamination is that needs remediating and have some idea  
 11 as to how much will require remediating.  
 12 Q. And you would want to identify the sources of  
 13 contamination; right?  
 14 A. Well, that's part of understanding where the  
 15 contamination is, yes.  
 16 Q. And that would also mean creating a plan to sample  
 17 the site?  
 18 A. That sometimes happens, yes.  
 19 Q. And for oil well sites with multiple pits, that  
 20 sampling plan could also involve--in fact, probably would  
 21 generally involve--sampling more than just one set a site;  
 22 isn't that right?  
 23 A. Well, not necessarily. In fact, if you look at  
 24 how this remediation work was done under the RAP, there  
 25 were sites where the Government of Ecuador and TexPet

10:11 1 agreed to begin remediation simply on the visual  
 2 observation of oil. If you see oil contamination, you can  
 3 agree that it's likely above the 5,000-milligram per  
 4 kilogram standard that was set in the RAP for soil that  
 5 required remediation and simply begin remediating it based  
 6 on visual observation. That's not uncommon, and, in fact,  
 7 that was done here.

8 Q. Nor is it uncommon of undertaking multiple test  
 9 samples at a given site to determine the extent of  
 10 contamination; would you not agree with that?

11 A. The number of samples will vary depending on the  
 12 remediation program and the sites.

13 Q. And if we don't know where all the pits are--well,  
 14 let me ask this question: Do you believe you have  
 15 sufficient information or ever had sufficient information  
 16 to know where all the pits are in the Concession Area?

17 A. Again, as I said, the important question to me is  
 18 which pits need remediation. And certainly, as remediation  
 19 progresses, you find conditions may vary from what was  
 20 determined before remediation began, but we certainly have  
 21 a reasonable idea of how many pits need remediating and  
 22 where those pits are. They're near the oil well. They're  
 23 near the oil platform.

24 Q. Well, some of the pits have been covered with high  
 25 growth vegetation; correct?

10:12 1 A. Yes, there's places there's dense vegetation.  
 2 Q. And others with dirt; correct?

3 A. There are pits that were covered with soil, yes.

4 Q. And it's not always so easy to find the pits in  
 5 the first place; correct?

6 A. Vegetation certainly makes it difficult to find  
 7 the pits. Under the RAP, if there was not visual oil  
 8 identified in a pit that had been closed prior to 1990, it  
 9 was determined that those pits didn't need remediation by  
 10 TexPet.

11 Q. Now, the Plaintiffs were not Parties to the RAP.  
 12 Did you understand that?

13 A. I don't know that the Plaintiffs were Parties to  
 14 the RAP, no.

15 Q. Okay. Now, you've referred, I believe, to  
 16 Woodward-Clyde. Could you explain who they are?

17 A. Woodward-Clyde was a company hired by TexPet to  
 18 essentially conduct or oversee the remediation work that  
 19 was done under the RAP.

20 Q. So, they studied the Concession Area sites in the  
 21 1990s; isn't that also right?

22 A. They studied--yes, they did some studies as well.  
 23 That was part of the remedial effort.

24 Q. And they conducted specifically what's called a  
 25 Remedial Investigation; isn't that right?

10:14 1 A. They did some investigations they called Remedial  
 2 Investigations, yes.

3 Q. And what is an R-I, a Remedial Investigation?

4 A. Remedial Investigation is a term we use to  
 5 describe investigation work that's done prior to the  
 6 initiation of remediation.

7 Q. And did Woodward-Clyde specifically investigate  
 8 where all the contamination had migrated to or otherwise  
 9 determined it hadn't migrated at all?

10 A. Woodward-Clyde undertook a Remedial Investigation  
 11 to determine where the features were and have some  
 12 understanding of those features before they began  
 13 remediation.

14 Q. Now, let me ask you to turn to Tab 6 of your  
 15 binder, and I'm going to ask you to turn to Table 3-6. And  
 16 for both the Witness and counsel and Members of the  
 17 Tribunal, the pages at which tables are located are not  
 18 paginated; however, it is immediately preceding Page 3-16.

19 MS. WOOD: You were prepared for our question.  
 20 Thank you, Mr. Bloom.

21 MR. BLOOM: I'm learning.

22 THE WITNESS: Sorry, what was the table number  
 23 again?

24 BY MR. BLOOM:  
 25 Q. 3-6.

10:16 1 A. Yes.

2 Q. And so that the Transcript is clear, this is  
 3 Claimants' Exhibit Number 43.

4 And Doctor, you're at that table now?

5 A. Yes, I see the table.

6 Q. And give you a moment to look at it.

7 A. This is--is this--which Woodward-Clyde document  
 8 does this come from?

9 Q. This is the 2000 Report.

10 A. The Remedial Action Report? Unfortunately, it has  
 11 the same acronym as the Remedial Action Plan. Is that what  
 12 you're talking about?

13 Q. Yeah, this is post-remediation.

14 A. Yeah, okay. Yes.

15 Q. Now, for Aguatico 2, the investigation discovered  
 16 a soil sample of 9800 milligrams per kilogram in Pit 3.  
 17 Do you see that at the third line of the table?

18 A. Yes, I see that.

19 Q. And there were no samples taken for Pits 1 and 2.  
 20 Do you see that also in the footnote or the NS?

21 A. Yes, I see--I think this illustrates exactly the  
 22 point I was trying to make that if there was an agreement  
 23 between TexPet and the Government of Ecuador that the pits  
 24 required remediation and the soil required remediation  
 25 based on visual evidence, they simply were remediated. No



10:17 1 need to collect samples before the remediation begins.  
 2 Q. So, just to put a fine point to what you just  
 3 said, Pits 2 and 3 were not sampled precisely because there  
 4 was a determination based on what they saw that there was  
 5 contamination that exceeded limits or otherwise required  
 6 remediation?  
 7 A. That's what this footnote says. I would have to  
 8 look elsewhere. You would need to provide me a full copy  
 9 of the Report to be certain that these pits actually were  
 10 remediated. This may have changed in the course of the  
 11 progression of the remediation, but certainly, reading the  
 12 footnote on this table, that's what it suggests.  
 13 If you want me to tell you if that's what  
 14 happened, you will need to provide me with a full copy of  
 15 this Report.  
 16 Q. Well, my points are going to be a little bit more  
 17 limited than that. There were three pits that the Parties  
 18 determined exceeded the RAP threshold. My question is, if  
 19 you can confirm, there were no samples taken down-gradient  
 20 from Pit 1; isn't that right?  
 21 A. It appears there were no samples collected from  
 22 Pit 1, based on this table.  
 23 Q. And there were no samples taken down-gradient from  
 24 Pit 2 or from Pit 3?  
 25 A. This table tells me about samples taken from the

10:20 1 looking at what the soil--you can see the soil. You can  
 2 determine whether or not you have reached the end of the  
 3 contamination. It's very common in an excavation,  
 4 particularly with crude oil because you can see the  
 5 contamination.  
 6 Q. Doctor, can you tell the Tribunal what the acronym  
 7 PEPDA, which we've been referring to, stands for?  
 8 A. It's a Spanish acronym. It's the--I don't recall  
 9 it. I would have to look it up. It has to do with  
 10 remediation of pits and spills in the Amazon region.  
 11 Q. Okay. I will give it a shot then for the purposes  
 12 of the Tribunal anyway. It's the project for the  
 13 elimination of contaminated pits in the Amazon district.  
 14 And that's at Tab 7. It's an exhibit to one of your  
 15 Reports.  
 16 Now, PEPDA is a non-profit project; correct?  
 17 A. I don't know.  
 18 Q. You don't know?  
 19 A. It's--I understand it's part of Petroecuador. And  
 20 I'm not certain that is what the acronym stands for. I've  
 21 seen other places where the D is defined as also standing  
 22 for "derrames," spills. But I'm not certain what the  
 23 acronym stands for. PEPDA is the arm of Petroecuador doing  
 24 remediation.  
 25 Q. And we will not--

10:19 1 pits, and there were no samples taken from the pits.  
 2 Q. And the question is: How does one determine  
 3 whether the contamination migrated?  
 4 A. It's a very straightforward process when you're  
 5 remediating the soil. Again, much of this is based on  
 6 visual observation. You can see oil. It's black. You  
 7 excavate until you can no longer see black oil, so you  
 8 excavate the extent of contamination. That's discussed in  
 9 this Woodward-Clyde Report. Again, if you give me a full  
 10 copy, I could point out where.  
 11 When they observed contamination beyond the pits,  
 12 they excavated it. A specific example that's called out in  
 13 the Report is when oil migrated through tree root holes,  
 14 and they would excavate those tree roots until they reach  
 15 the end of the contamination. That's the way it's normally  
 16 done. That's the way it was done in this case.  
 17 Q. Now, I understand if there is contamination that  
 18 is visual or that one can smell, one can deduce remediation  
 19 needs to be done.  
 20 A. Yes.  
 21 Q. The part I'm having difficulty with is, how do I  
 22 determine whether the contamination is now subsurface a  
 23 couple of meters down?  
 24 A. Because when you're doing the remediation, you're  
 25 excavating subsurface a couple of meters down, and you're

10:22 1 A. For a time. It's no longer. They haven't--they  
 2 have renamed and changed the organization several times  
 3 since.  
 4 Q. And we're not going to rely on my Spanish skills;  
 5 we've already established that.  
 6 A. They're no worse than mine.  
 7 Q. You would agree, sir, that the Reports describing  
 8 PEPDA's activities note its ability to perform tasks more  
 9 cheaply than other private contractor remediations; would  
 10 you not agree with that?  
 11 A. That is--you could find statements to that effect  
 12 in the PEPDA 2007 Report, yes.  
 13 Q. Why don't we turn to that, and that's at Tab 7.  
 14 A. Yes.  
 15 Q. And I think we will spend probably a little time  
 16 on this document.  
 17 And if you turn with me to Page 27--  
 18 A. Is the full document here?  
 19 Q. It's in--if you want to see the entirety, it's  
 20 attached to your Report.  
 21 A. Do you have a copy, a full copy of this? If  
 22 you're going to be referring to different pieces and asking  
 23 me questions about what they say and what they mean, I may  
 24 want to look to other parts of the Report.  
 25 Q. So, what Tab 7 is, it's the full Report as you

10:23 1 provided it to us, as attached to your Report.  
 2 A. I don't believe so. It's much shorter than the  
 3 Report that was Exhibit 1.  
 4 The full Report was provided, including the  
 5 attachments to my Third Report.  
 6 Q. We can check at break, and if you wind up having  
 7 trouble, we will take a break early.  
 8 A. Okay. All right.  
 9 PRESIDENT VEEDER: In the meantime, could the  
 10 Claimants help? Come back later, then we'll find out.  
 11 MS. WOOD: Yes, he did--there is one, as Dr.  
 12 Hinchee cited, that was an updated version with more of the  
 13 Report if not all of the Report translated attached to his  
 14 Third Expert Report.  
 15 And I would just object for the record, if--since  
 16 the Witness is asking for a full copy of the Report in  
 17 order to respond to Mr. Bloom's questions, I would ask  
 18 maybe we could get that on a break, and you could move on  
 19 to a different set of questions right now.  
 20 MR. BLOOM: Well, and just for the record, since  
 21 this is what he did provide to us, and that's been  
 22 reaffirmed to me in connection with this First Report, I'm  
 23 certainly entitled to ask the Witness about his Report as  
 24 he provided it to us.  
 25 PRESIDENT VEEDER: Please continue. In the

10:26 1 A. Tab 8. Okay. What page?  
 2 Q. Page 13.  
 3 A. Yes. Yes, I see this.  
 4 Q. All right. And you say that Petroecuador's 2007  
 5 PEPDA Annual Report makes clear that the \$70 million--makes  
 6 clear that the \$70 million Petroecuador estimate--includes  
 7 much more than pit remediation.  
 8 A. Yes.  
 9 Q. Okay. And that's towards the top of the page  
 10 under 3.4?  
 11 A. Yes.  
 12 Q. And then you specifically have stated that the  
 13 \$70 million estimate actually includes sediments and  
 14 spills.  
 15 Do you see that at the end of the first paragraph?  
 16 A. Yes.  
 17 Q. So, I would like to discuss spills with you.  
 18 And would you agree with me that a truly  
 19 comprehensive cleanup of spills is not very easy unless you  
 20 know where the spills occur?  
 21 A. You need to know where contamination is in order  
 22 to clean it up, yes.  
 23 Q. And would you also agree with me that it's not  
 24 always clear where the spill has occurred, especially when  
 25 you're looking years after the event, after the spill

10:25 1 meantime, could the consultants dig out what they think is  
 2 the fuller Report; and as soon as they have done that,  
 3 signal to us.  
 4 MS. WOOD: Yes, sir.  
 5 PRESIDENT VEEDER: If you have trouble answering  
 6 the question because you haven't got the full Report, do  
 7 tell us, but let's see how this goes.  
 8 THE WITNESS: Yes, sir.  
 9 BY MR. BLOOM:  
 10 Q. And the first question is not going to be  
 11 difficult. If you can just read for us what's highlighted  
 12 at Page 27, referring to the cost for PEPDA.  
 13 A. Yes: "The difference is basically due to the  
 14 social commitment that PEPDA maintains with the community  
 15 and also the fact that PEPDA is a non-profit project,  
 16 unlike other companies responsible for environmental  
 17 remediation."  
 18 Q. Now, you have stated in your 2015 Report--and if  
 19 you want to look at that, that's at Tab 18, and I'm  
 20 referring to Page 13--but you state: "Petroecuador's 2007  
 21 PEPDA Annual Report makes clear that the \$70 million  
 22 Petroecuador estimates"--I'm sorry--  
 23 A. I'm sorry, that's--yeah, at page--Tab 18 is not my  
 24 Report.  
 25 Q. Tab 8.

10:28 1 itself?  
 2 A. As I said, particularly with spills where's it's  
 3 surficial contamination, you can typically see oil. Over  
 4 time you have vegetation that grows, you have to disturb  
 5 the vegetation to look for it, but it can be seen.  
 6 Q. In all instances can it be seen?  
 7 A. Well, there's--yes, most instances. There's  
 8 certainly some conditions under which it can't be seen.  
 9 And that's the reason, when you're doing remediation of a  
 10 pit or a spill, that you take confirmatory analysis to  
 11 verify that, in fact, you've excavated and that you've gone  
 12 far enough to completely clean up to the standards the  
 13 spill or the pit that you're remediating.  
 14 Q. So if, 30 years ago in 1985, in the Oriente,  
 15 TexPet spilled oil at a site, did not report it, did not  
 16 record it or preserve the record, and let's say that spill  
 17 occurred to the side of the platform and went into the  
 18 rainforest-covered stream, you wouldn't necessarily see any  
 19 remnants of that spill today, 30 years after the fact,  
 20 would you?  
 21 A. You might or you might not. It depends on the  
 22 nature of the spill and the area that it was spilled into.  
 23 Q. And you would presumably also agree that it's not  
 24 uncommon, especially on marshy surfaces, that with the  
 25 passage of time, contamination above ground will diminish

10:29 1 or be obscured?  
 2 A. It's possible that the oil will become less  
 3 visible over time, yes.  
 4 Q. And would you also agree with me that  
 5 contamination can migrate beneath the surface?  
 6 A. Yes, contamination migration beneath the surface  
 7 is possible.  
 8 Q. And have you ever investigated how accurate  
 9 TexPet's records are with respect to spills?  
 10 A. I have not, no.  
 11 Q. Please look at Tab 10, which for the record is  
 12 Respondent's Exhibit 201.  
 13 A. I have it.  
 14 Q. And hopefully we have a slide, so we don't have to  
 15 strain our eyes on this one.  
 16 And it says--and this is an internal memo within  
 17 TexPet, and it says, in part: "No reports are to be kept  
 18 on a routine basis and all previous reports are to be  
 19 removed from"--is that "field"?  
 20 A. Where are you reading?  
 21 Q. I'm sorry, (c). Yeah:  
 22 "From field and division offices and destroyed."  
 23 A. I see that, yes.  
 24 Q. You see that?  
 25 A. Yes.

10:31 1 Q. And the only point here is the records may not be  
 2 perfectly accurate, and this was back from 1972.  
 3 A. Yes. Records, particularly from this era, were  
 4 typically not very accurate.  
 5 Q. Now, to be clear, is it your understanding that  
 6 PEPDA is intended to clean up all soil and sediment damage  
 7 by TexPet spills prior to 1990?  
 8 A. No. TexPet was assigned a very specific  
 9 responsibility or Scope of Work under the RAP which defined  
 10 its share of the remediation to be cleaned up. That did  
 11 not include all oil--all spills or all pits.  
 12 Q. So, the premise--let me ask you that this way:  
 13 Has the premise of all of your work for Chevron in  
 14 connection with Lago Agrio and the arbitration been  
 15 premised on the underlying assumption that Chevron had no  
 16 obligations to the Plaintiffs beyond the RAP?  
 17 MS. WOOD: Well, I'm going to object to that. It  
 18 calls for a legal conclusion. Also, I don't believe that  
 19 was a correct characterization of the RAP.  
 20 PRESIDENT VEEDER: You can ask the question. If  
 21 you can't answer the question, please say so.  
 22 MR. BLOOM: Yeah. I'm essentially asking him for  
 23 the scope of what he performed. I'm not asking him for a  
 24 legal conclusion.  
 25 THE WITNESS: No. Most of the work that I have

10:33 1 done has been independent of who was responsible for the  
 2 cleanup. For example, almost all of the costs that I  
 3 presented in my presentation this morning included costs  
 4 that were for pits and spills not assigned to TexPet under  
 5 the RAP. And, in fact, the \$70 million cost I talked about  
 6 includes pits and spills that occurred after TexPet  
 7 departed the country and were as a result of Petroecuador's  
 8 operations. So, no, that's not--wasn't the predicate of  
 9 most of the work that I have done.  
 10 Q. Okay. Thank you for that clarification.  
 11 Now, you've testified--and if you want to, you can  
 12 look at it or you can take my word--it comes from your  
 13 deposition, which is at Tab 2, Page 263--but I'm not sure  
 14 this is going to be controversial for you, but certainly  
 15 for counsel, Tribunal, Page 263, Line 15.  
 16 And sir, if you can just tell me when you're  
 17 there?  
 18 A. I'm there.  
 19 Q. Okay. You say: "I don't see any need for  
 20 remediation beyond the pits and spills because there is no  
 21 evidence of the need for remediation of these other media."  
 22 Do you see that?  
 23 A. Yes, I see that.  
 24 Q. Okay. And that's still your position today?  
 25 A. Yes. I think I explained in my presentation there

10:35 1 was no need for groundwater remediation, for example.  
 2 Q. Now, I would like to turn to the second component  
 3 which you say is included in the \$70 million PEPDA  
 4 estimate, and that's sediments.  
 5 A. Yes.  
 6 Q. Can you please describe what sediments are.  
 7 A. The way the term "sediments" are being used in  
 8 this case refers to essentially soil that's below surface  
 9 water, underneath a stream or a wetland, a marsh, something  
 10 like that. There is some confusion, however, over the term  
 11 because, technically, we often use the term "sediment" to  
 12 refer to soil samples collected from depth and terrestrial  
 13 samples, and in Ecuador I have seen no evidence that the  
 14 term "sediments" have been used either by TexPet or by  
 15 Petroecuador. They simply call all of the remediation soil  
 16 remediation.  
 17 But as I have been using it, and I believe most  
 18 people in this case have been using it, it refers to soil  
 19 beneath water.  
 20 Q. And sediments can also mean the material that  
 21 sometimes collects in the bottom of my red wine glass?  
 22 A. Yes, I'd call that sediment.  
 23 Q. Okay.  
 24 A. It probably doesn't need remediating.  
 25 Q. I'll remediate that.

10:36 1 Sir, you say that the estimate was for remediation  
 2 of all contamination in the former Concession, including  
 3 sediments and spills. Is that your position?  
 4 A. Yes. Yes.  
 5 Q. So, I would like you to look at the 2007 PEPDA  
 6 Annual Report at Tab 7, and if you turn to Page 9.  
 7 A. Yes.  
 8 Q. You are there? And do you see the bold with the  
 9 heading "Project Objectives"?  
 10 A. Yes.  
 11 Q. And there were four objectives listed there;  
 12 right?  
 13 A. Yes, yes.  
 14 Q. Could I have you read out loud the  
 15 fourth objective.  
 16 A. "To apply decontamination treatment to sediments  
 17 from tanks of production stations, of water reinjection and  
 18 treatment plants; and final containment of solid waste."  
 19 Q. So, the sediments in the tanks, were those  
 20 sediments similar to the sediments in the bottom of my wine  
 21 glass?  
 22 A. Hopefully not.  
 23 Q. I knew you were going to say that.  
 24 A. They are sediments--the material had settled to  
 25 the bottom of a tank somewhat the same way that your

10:38 1 sediments in your wine glass settled out.  
 2 Q. And more specifically, what you just read is not  
 3 describing the cleanup of sediment down at the bottom of a  
 4 lake or stream; isn't that right?  
 5 A. No, that wasn't what I was referring to when I was  
 6 talking about cleanup of sediments.  
 7 Q. Okay. Here, at least, we're only talking about  
 8 sediments from tanks of Production Stations. And again--  
 9 A. This does refer to Production Stations, yes.  
 10 Q. Yeah. Now, if you're looking--if you can take a  
 11 moment to look at the other three project objectives, you  
 12 won't see or find the word "sediment" in any of these other  
 13 objectives, will you?  
 14 A. No, sir. As I said, the term "sediment" in  
 15 Ecuador, either by Petroecuador or TexPet, doesn't tend to  
 16 be used the same way that we use the word in this case.  
 17 Q. Well, in your Report, you don't cite to any source  
 18 other than the PEPDA Report in support of your proposition  
 19 that PEPDA was intended to cover the cleanup of sediments;  
 20 correct?  
 21 A. I do cite to this Report. I also provide other  
 22 reports as attachments to my Expert Report that are  
 23 examples of sites where sediments were cleaned up by  
 24 Petroecuador.  
 25 Q. But that's not part of PEPDA, is it?

10:39 1 A. No. PEPDA is part of Petroecuador. It's the  
 2 other way around.  
 3 But I talk about Petroecuador remediation because  
 4 Petroecuador is the parent or the owner of all of these  
 5 organizations, or--that do remediation. And we have a  
 6 number of PEPDA Reports. Although PEPDA only survived for  
 7 a few years before it was reorganized and a new name was  
 8 given to it, there are quite a few Reports with the PEPDA  
 9 name on them. But they're Petroecuador.  
 10 Q. And ultimately here what we're talking about is  
 11 what are the components of the PEPDA estimate; correct?  
 12 A. Yes, yes.  
 13 Q. And we have what the four objectives are, do we  
 14 not?  
 15 A. Well, those are four objectives that are  
 16 identified on this page, yes.  
 17 Q. And the only reference in the objectives to  
 18 sediment is in the fourth point here, which refers to  
 19 sediments from tanks of Production Stations?  
 20 A. Yes.  
 21 Q. Correct?  
 22 A. Right. You have to look at the more detailed  
 23 costs deeper in the Report to see that they include  
 24 sediments.  
 25 Q. Now, is it your understanding that PEPDA is

10:40 1 intended to clean up every stream--I think you already said  
 2 no--that was impacted during TexPet's operations?  
 3 A. Well, PEPDA, as I quoted in my presentation, and  
 4 as I can find here if you give me a few minutes, is  
 5 assigned responsibility for cleanup of all the  
 6 environmental liabilities, which would include both  
 7 TexPet-era non-RAP features as well as more current  
 8 contamination, more current features.  
 9 MR. BLOOM: Mr. President, would now be a good  
 10 time for a break?  
 11 PRESIDENT VEEDER: It certainly would.  
 12 Let's take a 15-minute break, and we'll come back  
 13 at 11:00. Thank you.  
 14 (Brief recess.)  
 15 PRESIDENT VEEDER: Let's resume.  
 16 MS. WOOD: Thank you.  
 17 Just to clear up that one issue about the full  
 18 PEPDA report that Dr. Hinchee was asking about, I conferred  
 19 with Mr. Bloom during the break. We both recognize that  
 20 there was an updated translation, but it is 234 pages.  
 21 We're printing a copy. I believe Mr. Bloom is printing a  
 22 copy. I don't know that we can very quickly print seven  
 23 copies, but we will both have one in the event it becomes  
 24 necessary.  
 25 PRESIDENT VEEDER: Is it paginated?

10:59 1 MS. WOOD: I do not know. I assume so.  
 2 PRESIDENT VEEDER: If we need it, we'll get to  
 3 that.  
 4 MR. BLOOM: It's probably one very long sentence  
 5 for 234 pages.  
 6 BY MR. BLOOM:  
 7 Q. Turning to a new subject right now, Dr. Hinchee,  
 8 as part of your review during the Lago Agrio Litigation or  
 9 in this arbitration, have you ever had a chance to review  
 10 the Lago Agrio Complaint filed by the Plaintiffs?  
 11 A. Yes, I have seen it.  
 12 Q. And you understand that the Plaintiffs were asking  
 13 for, among other things, that the works be carried out to  
 14 restore the natural characteristics and features of the  
 15 land?  
 16 A. I don't recall the exact wording, but that seems  
 17 to be consistent with my recollection, yes.  
 18 Q. Now, in your Report, in your 2013 report, which we  
 19 have at Tab 5, at Page 4--and maybe you can turn to that  
 20 now. And again, Tab 5, Page 4.  
 21 A. Yes.  
 22 Q. In the middle paragraph, you say that the Judgment  
 23 bases the soil remediation Award on a 100 milligrams per  
 24 kilogram Total Petroleum Hydrocarbons standard, TPH  
 25 standard, without providing any scientific basis."

11:00 1 And then you go on and say: "In my experience, no  
 2 similar site anywhere has ever been cleaned up to 100  
 3 milligrams per kilogram TPH standard."  
 4 Do you see that?  
 5 A. Yes.  
 6 Q. And you testified about that this morning, did you  
 7 not?  
 8 A. Yes, this is my opinion.  
 9 Q. And then you also testified this morning about  
 10 your involvement with the Trecate blowout?  
 11 A. Yes, I did.  
 12 Q. And in your role there your job entailed  
 13 overseeing the characterization and remediation of the  
 14 blowout; correct?  
 15 A. Yes.  
 16 Q. So, if you turn with me now to Tab 18--and I will  
 17 represent that Tab 18 is an LBG exhibit to its  
 18 December 2013 report, and it's an article on the Trecate  
 19 site.  
 20 You've previously read this article, did you not?  
 21 A. Yes, I did.  
 22 Q. And if you turn with me to Page 5--and this is  
 23 described as a map showing the area corresponding to the  
 24 three remediation zones; correct?  
 25 A. Yes, it is.

11:02 1 Q. And we also have it up on a slide, if that's a  
 2 little bit easier for you.  
 3 Now, the largest surface area is the area inside  
 4 the blue square or circle; correct?  
 5 A. Yes.  
 6 Q. And you can see in the chart below the map that  
 7 the surface size for Zone 1 is 700 hectares; correct?  
 8 A. Yes, about seven square kilometers.  
 9 Q. And the area of the former Concession that  
 10 Claimants admit being occupied or used by TexPet operations  
 11 was a little over 4400 hectares; correct?  
 12 A. I don't know what the size is. That's not what's  
 13 relevant. What you need to look is the area contaminated,  
 14 and certainly there is not that much area contaminated.  
 15 Again, Trecate, if we had measured the entire oil  
 16 field and the inhabited area around it would have been far  
 17 larger than this.  
 18 Q. Well, if you can bear with me just for one moment,  
 19 and you could disagree as to the relevance, but would you  
 20 agree with me that the Concession Area is approximately six  
 21 times larger than at least the affected parts of the  
 22 Trecate blowout area?  
 23 A. The Concession Area is larger than the area  
 24 affected by the Trecate blowout; I believe that's true,  
 25 yes.

11:03 1 PRESIDENT VEEDER: Just pause one moment. We have  
 2 a technical problem.  
 3 ARBITRATOR LOWE: Simply that there's material  
 4 coming up on the screen, which I think is not being read  
 5 into the record, and I've now got an extract from  
 6 Claimants' Memorial on the Merits, 23, and there's going to  
 7 be no record of this in the Transcript unless somebody  
 8 mentions it.  
 9 MR. BLOOM: I think your screen is different than  
 10 my screen.  
 11 ARBITRATOR LOWE: It's now gone back to the map.  
 12 MR. BLOOM: Thank you.  
 13 BY MR. BLOOM:  
 14 Q. And just to clean up the record, the area of the  
 15 former Concession that Claimants admit being occupied by  
 16 TexPet operations was in excess of 4400 hectares; do you  
 17 agree with that?  
 18 A. I don't have that--I haven't seen that number, or  
 19 at least it doesn't come to mind.  
 20 Q. Okay. We'll move on, then.  
 21 Now, keeping with this map, you can see that the  
 22 chart below--and again, that's also on the screen--lists  
 23 the TPH concentration standards in this zone, meaning  
 24 within the blue zone, at less than 50 parts per million;  
 25 correct?

11:05 1 A. Yes.  
 2 Q. And just for clarity and for the Tribunal's  
 3 information, parts per million is equivalent to milligrams  
 4 per kilogram; right?  
 5 A. Yes, yes.  
 6 Q. So, that 50 parts per million is the same thing as  
 7 50 milligrams per kilogram?  
 8 A. Yes.  
 9 Q. Now, the Republic has pointed this out before, and  
 10 in response you stated that Trecate was not remediated to  
 11 50 milligrams per kilogram, and I think you said that again  
 12 today; right?  
 13 A. Yes, that's true, the more contaminated soil,  
 14 certainly.  
 15 Q. You said for the final soil concentrations  
 16 accepted by the Italian authorities varied up to and  
 17 exceeded 5,000 milligrams per kilogram?  
 18 A. Yes, that's true.  
 19 Q. Now, turning back to the article, if you could  
 20 turn to Page 9--  
 21 A. Yes.  
 22 Q. --at the bottom of the page, you can see it says  
 23 "land forming reduced surface soil TPH concentrations from  
 24 excess of 10,000 milligrams per kilogram to approximately  
 25 50 milligrams per kilogram soil, the designated target

11:08 1 A. Are you reading from somewhere in this article?  
 2 Q. No, I'm just asking you.  
 3 A. Yes.  
 4 Q. The blowout occurred in February of 1994; correct?  
 5 A. February, early March, something like that.  
 6 Q. And the point is the efforts to clean up began  
 7 immediately; correct?  
 8 A. Yes. And the institute you referred to is  
 9 Battelle. That's who I worked for. And I was at the time  
 10 working with the European Group, and that's why I was on  
 11 site so shortly after the blowout.  
 12 Q. Would you agree with me that a remedial process  
 13 occurring one month after the contaminating event is far  
 14 more preferable than a remedial process occurring many  
 15 years later?  
 16 A. I don't know about "preferable." In this case it  
 17 was certainly necessary. Oil had been sprayed into the  
 18 atmosphere, and had fallen on farmland. It was in March.  
 19 They were about to begin their spring plowing and planting.  
 20 It also fell onto communities and homes. That needed to be  
 21 cleaned off, so it certainly made sense to act quickly.  
 22 Q. Now, you were also once deposed in relation to a  
 23 hydrocarbon contamination case in the state of Mississippi?  
 24 A. Yes, that's true.  
 25 Q. And that was on behalf of an oil company; no?

11:06 1 cleanup level."  
 2 Do you see that?  
 3 A. I see that. You have to understand this was  
 4 written by people who had no involvement in the  
 5 remediation. They cite nothing for this, and I can tell  
 6 you that statement is wrong.  
 7 Q. And this Report also says that, by January 1998,  
 8 98 percent of the initially impacted surface returned to  
 9 agriculture for agricultural use; correct?  
 10 A. Yes, and I can't speak to the percentage.  
 11 But you have to understand that the seven square  
 12 kilometers, the area that we called, "initially impacted,"  
 13 was determined based on visual observation of oil droplets.  
 14 It turned out that much of that area was at or below 50  
 15 milligrams per kilogram without remediation, without the  
 16 need for remediation. So, simply stating that a large  
 17 percent of the land had been returned to agricultural use  
 18 doesn't suggest that it was actually remediated to those  
 19 concentrations. In places it was below those  
 20 concentrations to begin with.  
 21 Q. In March of 1994--it was about a month after the  
 22 blowout--the oil company responsible for Trecate hired the  
 23 European section of the Battelle or Battelle-ee (phonetic)  
 24 Memorial Institute to work out an Environmental Monitoring  
 25 Plan in a remediation project; right?

11:09 1 A. Plantation Pipeline.  
 2 Q. And you offered an expert report in that case?  
 3 A. Actually, I was involved in more than one case  
 4 with Plantation Pipeline, so I'm not--you'll have to be  
 5 more specific.  
 6 Q. Well, then, do you recall opining on the adequacy  
 7 of remediation by Plantation Pipeline in Mississippi?  
 8 A. Not specifically, but I may have. It's been a  
 9 number of years.  
 10 Q. I'm going to ask you to turn to Tab 20 in your  
 11 binder. It's an EPA document. This is also an exhibit to  
 12 LBG's 2015 Report?  
 13 A. Yes.  
 14 Q. And it contains a summary of cleanup standards for  
 15 various U.S. states for hydrocarbons from 1993--this is  
 16 alphabetized.  
 17 A. Yes.  
 18 And you'll note on the very first page this was  
 19 developed for EPA's Office of Underground Storage Tanks.  
 20 They regulated--they regulate refined product  
 21 releases--gasolines, diesel, that kind of thing--not crude  
 22 oil, so these are not crude oil.  
 23 Q. And we will get to that in a moment, actually.  
 24 If I can have you turn, again it's alphabetized,  
 25 so if you can take a look at Mississippi, and again I

11:11 1 apologize for the lack of page numbers. And if you could  
 2 kindly tell me when you're there.  
 3 And you'll see two charts on this page that should  
 4 be to your left there.  
 5 A. Okay. I see Mississippi now, yes.  
 6 Q. And one of the charts is a summary of Mississippi  
 7 cleanup standards for hydrocarbon-contaminated groundwater,  
 8 and the other is for soil.  
 9 Do you see that?  
 10 A. Yes.  
 11 Q. And if you'd look at the chart of soil  
 12 contamination, you'll see in the left-most column it lists  
 13 the crude oil products, either gasolines, diesel or waste  
 14 oil; do you see that too?  
 15 A. Well, certainly gasoline and diesel are crude oil  
 16 products. So, waste oil, it doesn't always come from crude  
 17 oil.  
 18 Q. Okay.  
 19 A. I don't know what the definition of waste oil is  
 20 here.  
 21 Q. And then you also see the column for action level  
 22 for each of these product types?  
 23 A. Yes, I do.  
 24 Q. Now, during the Lago Agrio Litigation, when  
 25 Chevron tested crude, they also tested for gasoline range

11:14 1 term "fraction" used in this context.  
 2 A. I think Dr. Douglas explained what crude oil was  
 3 earlier. Crude oil is a mixture of hydrocarbons that vary  
 4 from very light hydrocarbons, really as light as methane,  
 5 and then the GRO range tends to be the lighter range, all  
 6 the way through heavier hydrocarbons and out to eventually  
 7 resins and asphaltics.  
 8 So, the whole range of crude oil is quite broad.  
 9 Within that crude oil, there are fractions that correspond  
 10 to the diesel range organics, fractions that correspond to  
 11 the gasoline range organics, and it's a part of what's  
 12 found in a total crude oil mixture.  
 13 Q. Now, during the Lago Agrio Litigation, when  
 14 Chevron tested for DRO or GRO, those are the same  
 15 constituents that make up gasoline and diesel; right?  
 16 A. Not exactly, but they're the same carbon range,  
 17 yes.  
 18 Q. They're measuring the same class of compounds?  
 19 A. The same carbon range, yes.  
 20 Q. So, this chart indicates that in the early 1990s,  
 21 the action level for these oil products was 100 milligrams  
 22 per kilogram for the state of Mississippi; am I right? Can  
 23 you confirm that for me?  
 24 A. That is specifically for diesel, which is not the  
 25 same thing as the diesel range organic fraction for crude

11:12 1 organics also known as GROs; correct?  
 2 A. Yes.  
 3 Q. And Chevron also testified for DROs which is an  
 4 acronym for diesel range organics; right?  
 5 A. Yes.  
 6 Q. Now, DRO, for example, tests the hydrocarbon  
 7 organics that are in diesel; right?  
 8 A. Yes. They're the same range of hydrocarbons as  
 9 are commonly found in diesels.  
 10 Q. And diesel is also a component of crude; is that  
 11 right?  
 12 A. Well, diesel is distilled from crude.  
 13 Q. Something to the order of 40 or 50 percent?  
 14 A. It depends on the crude.  
 15 Q. What's the ballpark, if you know?  
 16 A. That would be a reasonable estimate for the  
 17 Oriente Crude. I've seen crudes that vary considerably.  
 18 Q. Okay. And so, when DRO results showed 200  
 19 milligrams per kilogram, that shows that there is that much  
 20 diesel fraction; right?  
 21 A. If your result is 200 milligrams per kilogram DRO,  
 22 then the fraction that corresponds to the fraction found in  
 23 diesel is there at that concentration. It doesn't tell you  
 24 that it's necessarily diesel.  
 25 Q. Can you, for the Tribunal's sake, also explain the

11:15 1 oil, but for diesel the refined product, which is much less  
 2 viscous and more mobile in the environment and more  
 3 problematic than most crude oils, a standard of 100  
 4 milligrams per kilogram or parts per million was set as an  
 5 action level, which isn't really thing as a cleanup  
 6 standard.  
 7 Q. But it's made up of the same hydrocarbons class,  
 8 is it not?  
 9 A. There are--yes, they're some of the same  
 10 hydrocarbons present in diesel as you find in crude oil.  
 11 Q. And they have the same toxic components, do they  
 12 not?  
 13 A. The distilled material may have more of the  
 14 polyaromatic hydrocarbons, particularly gasoline range  
 15 organics. They have certainly more of the benzene than  
 16 crude oil does. Concentrations are higher.  
 17 Q. But not in all circumstances?  
 18 A. No, that's a general rule, not in all  
 19 circumstances.  
 20 Q. Everything in the diesel comes from the crude oil,  
 21 does it not?  
 22 A. Not all diesels, there are bio diesels, but the  
 23 majority of diesel products come from crude oil, yes.  
 24 Q. And under the action level for gasoline, this also  
 25 notes that the standard is 100 parts per million; correct?

Sheet 23 1956	1958
<p>11:17 1 A. The action level is 100 parts per million, yes.  2 That's actually not the level to which, in my experience,  3 most gasoline in Mississippi is actually cleaned up. What  4 this simply tells you is you need to address the  5 contamination if you find more than 100 parts per million,  6 and then down the road, if remediation is pursued, you may  7 set a standard.  8 Q. Now, if we can go to that last column, the cleanup  9 level. Do you see that?  10 A. Yes.  11 Q. And you see the two stars, and that takes you  12 below the chart. What do the two stars mean?  13 A. The reference is 100 PPM or less if no sensitive  14 environmental receptors present.  15 Q. Okay, thank you.  16 And, Dr. Hinchee, you've had remediation  17 experience in climates found similar to that found in the  18 Oriente?  19 A. Yes.  20 Q. You would agree with me that Louisiana's  21 environment is similar to the environment in the Oriente?  22 A. It has similarities, yes.  23 Q. And that's what you've testified previously;  24 correct?  25 A. Yes.</p>	<p>11:20 1 California method, site-specific less than 300 parts per  2 million.  3 Q. And then for diesel?  4 A. For diesel, TPHd (diesel) California,  5 site-specific less than 300 parts per million.  6 Again, these aren't what are applied in Louisiana  7 to crude oil contaminated soils. These are for refined  8 products.  9 Q. And then if I can direct your attention to the  10 same chart, to the fifth column, the notification level.  11 A. Yes.  12 Q. There is a requirement for notification under what  13 circumstances for gasoline?  14 A. Any amount.  15 Q. And is that also true for diesel?  16 A. Yes.  17 Q. And then if you look at the top chart dealing with  18 groundwater contamination, you'll confirm for me that the  19 notification level for these same products, gasoline and  20 diesel, is triggered at any amount as well; correct?  21 A. That's what the chart says.  22 There is a note here pointing out that Louisiana  23 is currently revising their cleanup levels to reflect  24 risk-based levels, so these were standards that were  25 applied at one time, but have been revised.</p>
<p>11:18 1 Q. So, I ask you now to turn back to the same  2 document, the EPA document, summarizing the hydrocarbon  3 contamination standards in U.S. states. At Tab 20, at  4 Page 17.  5 Okay, let's do this alphabetically. Let's look up  6 Louisiana. And you can see these are the standards for  7 groundwater and soil for Louisiana.  8 Do you see that?  9 A. Yes, for petroleum products, not for crude oil.  10 Q. And what is the standard?  11 A. For what?  12 Q. For the petroleum products that are listed here.  13 A. There are a whole variety of them listed here.  14 Q. If I can take you to the soil at the bottom chart.  15 A. Yes.  16 Q. Okay. And you see for gasoline, and what we can  17 go down this item by item, but for gasoline, what does it  18 say?  19 A. Gasoline, BTEX that stands for benzene, toluene,  20 ethylbenzene, xylene, and it provides an EPA method number,  21 notification level any amount, cleanup site-specific less  22 than 100 parts per million.  23 Q. Okay. And then the next line?  24 A. TPHg, that would be Total Petroleum Hydrocarbons  25 gasoline range organics, and it provides a reference to a</p>	<p>11:22 1 Again, all of these are for refined product, not  2 crude oil. Louisiana has separate regulations for crude  3 oil which don't appear to be in this document.  4 Q. Okay. Turning to a different subject, sir, you  5 state that PEPDA's remediation standard is to clean up--I  6 think you did this on direct--to 2500 milligrams per  7 kilogram; is that correct?  8 A. That's the most commonly applied standard. It's  9 not uniform. Sometimes you can find sites that they use  10 the 4,000 for commercial, and sometimes a sensitive  11 ecosystem standard of a thousand. They always follow the  12 Decreto 1215 standards that are applied, most often 2500.  13 Q. And this standard is in the Ecuadorian regulations  14 that the RAOHE Standards for agricultural land? Do you  15 know that?  16 A. Yes, that was issued in 2001, I believe, 2002,  17 sometime after the RAP was complete.  18 Q. Now, you're aware that Dr.--I'm sorry, you're  19 aware that Mr. Connor testified in a different arbitration  20 about the remediation costs of oil sites in the Oriente;  21 correct?  22 A. Are you referring to the Burlington Case? I don't  23 know exactly where those sites are, but I know they are in  24 the same general region, yes.  25 Q. And one of the subject matters you've addressed</p>



11:23 1 already in this arbitration is remediation costs?  
 2 A. Yes.  
 3 Q. And you've reviewed Ecuador's discussion of the  
 4 expected remediation costs associated with the TexPet  
 5 Concession Area; correct?  
 6 A. Yes.  
 7 Q. And you've had an opportunity now to review  
 8 Ecuador's discussion relating to the Burlington costs?  
 9 A. Yes, I've seen Ecuador's discussion of the  
 10 Burlington costs in this case.  
 11 Q. And, in fact, in your Report, you rejected any  
 12 application of the Burlington evidence because in your  
 13 opinion, it was better to rely on PEPDA's projected costs  
 14 for its project; correct?  
 15 A. That's one of the reasons I reject the Burlington  
 16 costs. There are a number of others.  
 17 Primarily, Burlington was not to remediate oil or  
 18 at least most of the remediation wasn't oil-contaminated  
 19 soil. Most of the remediation that that cost was based on  
 20 was to clean up barium, barite, which is not being cleaned  
 21 up by Petroecuador, there was no requirement that it be  
 22 cleaned up under the Decreto 1215 you mentioned, and so  
 23 there is no experience in Ecuador on which the Burlington  
 24 costs could have been developed. Those are simply  
 25 projected costs built up using as discussed in the material

11:25 1 you provided, high end costs which, in Mr. Connor's report  
 2 in Burlington he points out would actually be lower if it  
 3 were bid and done in Ecuador.  
 4 So, they're not comparable. They're for a  
 5 different kind of cleanup, and in a situation where there  
 6 is no prior experience in Ecuador on which to base an  
 7 estimate for cleanup.  
 8 Q. Now, barium is not a component in TPH, is it?  
 9 A. No, it is not.  
 10 Q. And you understand that Mr. Connor, in connection  
 11 with the work done in Burlington, measured TPH?  
 12 A. Yes, he did.  
 13 Q. Okay. I want to walk you through a couple of  
 14 things, and if you could indulge me, and certainly feel  
 15 free to look at Tab 12, which is an excerpt from  
 16 Mr. Connor's 2010 Report. It's a map of the Burlington  
 17 blocks and the Concession Area. Here we go.  
 18 A. Which tab? I'm sorry.  
 19 Q. It's Tab 12, sir.  
 20 A. Tab 12. Yes, I see it.  
 21 Q. Okay. So, this is a map both of the former  
 22 Concession Area and the oil blocks at issue in Burlington,  
 23 and you will see that Block 7 is to the west of the former  
 24 TexPet Concession.  
 25 Do you see that?

11:26 1 A. I see Block 7, yes, to the west of the former  
 2 Concession Area.  
 3 Q. And Block 21 is to the west and the south;  
 4 correct?  
 5 A. Yes, I see that.  
 6 Q. And they're both actually adjacent to and border  
 7 the Concession Area?  
 8 A. I see those blocks do, yes.  
 9 Q. And in Burlington, Mr. Connor applied the  
 10 Ecuadorian RAOHE Standards; correct?  
 11 A. That was not the only standard he applied. I  
 12 don't know what his basis was for his barium standard.  
 13 That's certainly not a cleanup standard in Decreto 1215.  
 14 And I don't know for certain that these blocks are  
 15 the Burlington blocks.  
 16 Q. The RAOHE Standard is also the standard that PEPDA  
 17 applies; correct?  
 18 A. Yes, that's right, and that's why PEPDA doesn't  
 19 remediate barium barite.  
 20 Q. Now, if you'd look at Tab 14, which, for the  
 21 record, is Respondent's Exhibit 1248, it is a spreadsheet  
 22 listing the cost estimates done by Mr. Connor in  
 23 Burlington.  
 24 Is there a way of making the slide larger?  
 25 At the bottom, it says, and we have it

11:28 1 highlighted, "total estimated cost of Block 7 and  
 2 Block 21."  
 3 Do you see that?  
 4 A. Yes.  
 5 Q. And then right next to it, it gives an estimate of  
 6 a little bit under \$10 million; would you agree?  
 7 A. As I recall, some of the information on this table  
 8 was added by the Republic of Ecuador. The original table  
 9 in John Connor's document did not include these last two  
 10 columns with the numbers in red. If you could provide me a  
 11 copy of John Connor's actual table, I might be able to more  
 12 accurately answer your questions.  
 13 Q. Well, I appreciate that, and I agree with you so  
 14 that the record is clear, and I was actually going to  
 15 represent that, and we will go to that, that we have added  
 16 those last two columns, but I promise you I will get to  
 17 that.  
 18 In fact, you will see on the slide itself at the  
 19 bottom in red, we say "all text in red not in original  
 20 table but added by the Republic of Ecuador."  
 21 Do you see that, sir?  
 22 A. Yes, I do.  
 23 Q. So, that there's no misunderstanding, only the  
 24 material in red is from the Ecuador. Everything else is  
 25 from the original Connor. Do you understand?

11:29 1 A. I will accept your representation of that.  
 2 Q. Thank you, sir.  
 3 And based on this spreadsheet, there were 21 sites  
 4 that were included in Mr. Connor's estimate?  
 5 A. Yes.  
 6 Q. And TexPet drilled and operated at approximately  
 7 344 sites; correct?  
 8 A. Yes.  
 9 Q. So, for these 21 Burlington sites, Mr. Connor  
 10 estimates remediation costs to be almost \$10 million, and  
 11 using just a little bit of rough math, it comes out  
 12 relatively on average about two sites per million dollars  
 13 or a little bit less than \$500,000 a site. Would you agree  
 14 with my rough math?  
 15 A. Yes. This average is about \$500,000 per site, but  
 16 if you look in the last column in black, you can see that  
 17 more than half of the cost is associated with just one  
 18 site, and many of the other sites are a lower cost.  
 19 Q. Now, the Republic, as we just talked about, added  
 20 some information to this spreadsheet--and again, that is in  
 21 red.  
 22 A. Yes.  
 23 Q. We added the impacted volume for each site.  
 24 Do you see that?  
 25 A. Yes, I see that.

11:31 1 Q. And neither Claimants nor Mr. Connor to date has  
 2 disputed that we've accurately listed the volume for each  
 3 site, and just for purposes of the questions, I'm going to  
 4 ask you to assume that the volume is correct. So,  
 5 according to our calculations, when we add up all the  
 6 sites, we have total volume of 33,415 cubic meters.  
 7 Do you see that?  
 8 A. Yes, I see that.  
 9 Q. And I will also represent for you that if we take  
 10 the total cost here of about 9.8 or \$9.9 million, divide  
 11 that by the total volume, we get \$295 per cubic meter.  
 12 A. Yes, I see that.  
 13 Q. Okay. And that will be for--I will withdraw that.  
 14 To be clear now, Ecuador's position in Burlington  
 15 is that Mr. Connor's estimate was much too low, and we  
 16 don't have to get into that here, but you would agree with  
 17 me that his calculation here--and I understand that you  
 18 want to make distinctions, but that his calculation here  
 19 was \$295 per cubic meter, which is more than four times the  
 20 \$70 per cubic meter that you cited to by PEPDA; correct?  
 21 A. The \$295 figure, which is very much apples to  
 22 oranges, is larger. It's still well below the \$730 figure  
 23 assumed in the Judgment.  
 24 Q. And both of these Cleanup Standards or estimates  
 25 were aimed at achieving RAOHE Cleanup Standards; isn't that

11:32 1 right?  
 2 A. No. Much of the cost involved in this was aimed  
 3 at achieving some cleanup standard for barium or barite  
 4 which is not included in Decreto 1215.  
 5 There is--there is oil in some of these pits, and  
 6 those pits, I assume, were to be cleaned up to the Decreto  
 7 1215 Standard or some of these sites. These sites don't  
 8 all have pits, but the predominant cost here, the driver,  
 9 is the barium cleanup, which is not a cleanup being done by  
 10 Petroecuador, not cleanup required by Decreto 1215, so  
 11 these costs are not based on clean up to the Government of  
 12 Ecuador standards as I understand them.  
 13 Q. Barium is used for drilling, is it not?  
 14 A. Barium is an additive in drilling mud, yes. It  
 15 helps increase the density of the drilling mud.  
 16 Q. And, in fact, TexPet used barium when it drilled  
 17 in the Concession Area; isn't that right?  
 18 A. Right, barium sulfite, barite, a naturally  
 19 occurring mineral, which I understand certainly is  
 20 regulated as non-toxic, so therefore, Ecuador doesn't have  
 21 a Cleanup Standard for it in Decreto 1215.  
 22 Q. And in Burlington, the company did not drill most  
 23 of the sites there; isn't that also right?  
 24 A. I don't know that.  
 25 Q. Okay. Now, of course, the Lago Agrio Judgment set

11:34 1 the cleanup level for soil at something more stringent,  
 2 more protective, than the RAOHE Standards; correct?  
 3 A. Yes.  
 4 Q. Because it set it at 100 milligrams per kilogram;  
 5 right?  
 6 A. Yes.  
 7 Q. And the Court's 100 milligrams per kilogram  
 8 standard is about ten to 25 times lower than the standards  
 9 used by the PEPDA cleanup; wouldn't you agree with that?  
 10 A. Yes, as I said in my presentation, 25 times lower  
 11 than the standard typically applied to Petroecuador, PEPDA  
 12 and declared as free of harmful contamination by the  
 13 Government of Ecuador's Ministry for the Environment. It  
 14 is much lower.  
 15 Q. And also much more restrictive than Mr. Connor's  
 16 Burlington estimates?  
 17 A. I don't know for certain. I guess what  
 18 Mr. Connor's estimate in Burlington was for Cleanup  
 19 Standard.  
 20 Q. But you would agree with me, sir, that the  
 21 standard to which a party is required to remediate can  
 22 impact the cost of remediation?  
 23 A. Yes, it can impact the cost of remediation,  
 24 certainly not to the extent of going from \$100 million to  
 25 \$6 billion.

11:35 1 Q. I want to flesh out your answer. You would agree  
2 that if you remediate to a lower standard, sometimes that  
3 means you've got to remediate a larger volume of soil?  
4 A. Yes, you often do.  
5 Q. Sorry, and that can drive up the price?  
6 A. Yes, that increased costs.  
7 Q. And sometimes by trying to remediate to a lower  
8 standard will also require the use of a different  
9 technology?  
10 A. Not necessarily. The way that Petroecuador does  
11 its remediation is it excavates to the Cleanup Standard.  
12 Its remediation is done off-site, and I don't know to what  
13 standard, but off-site remediation of that kind often is to  
14 a different standard than the standard applied to the site  
15 because it's in a different place.  
16 Q. My question was whether it may necessitate a  
17 different technology, and you were asked this in deposition  
18 and I believe you then said yes?  
19 A. Yes, if your intention is to reduce the  
20 concentration in the excavated soil, certainly.  
21 PRESIDENT VEEDER: Just to be clear, in his  
22 deposition, and it's in your Slide 53, I think he said  
23 sometimes using a different technology.  
24 MR. BLOOM: Right. And that's why my question  
25 used the word "can," can require the use of different

11:39 1 page, third line, you say here: "This oil would have been  
2 visible if it had been present during the TexPet  
3 remediation and would have been cleaned up, as remediation  
4 of visible surface contamination was a requirement of the  
5 RAP.  
6 Do you see that?  
7 A. I see those words.  
8 Q. Do you want to take a moment to read that  
9 paragraph?  
10 A. Yes, this asphalt mat, had it been present and  
11 visible at the time of the RAP would have been something  
12 either that would have been required to be remediated or  
13 the Government of Ecuador could have added it to the RAP  
14 because they could see it, they were making those  
15 decisions, they were adding things to the RAP as they were  
16 cleaning up these sites. That wasn't--if it wasn't cleaned  
17 up, that wasn't done.  
18 Q. But you're essentially presuming that any visible  
19 contamination here would have been cleaned up because  
20 that's really what should have been done; correct?  
21 A. No. What should have been done was what was  
22 agreed to by TexPet and the Government of Ecuador, and that  
23 included, as I said, pits closed prior to 1990 where  
24 visible oil was present, and any other soil or pits that  
25 were observed to be contaminated during the RAP process and

11:37 1 technology.  
2 BY MR. BLOOM:  
3 Q. Now, you conclude in your Report that any  
4 contamination that was visually observable at any of the  
5 sites for which TexPet was obligated to remediate under the  
6 RAP would have been remediated; right?  
7 A. What are you referring to specifically?  
8 Q. Let me just ask it this way: Do you believe that  
9 any contamination that was visually observable at any of  
10 the sites for which TexPet was obligated under the RAP to  
11 remediate would have been remediated?  
12 A. TexPet was obligated to remediate the  
13 contamination that was assigned to it under the RAP,  
14 specifically for the pits that were closed prior to 1990,  
15 that included pits where there was visual evidence of oil  
16 contamination. And during the remediation process, the  
17 Government of Ecuador added additional pits and spills to  
18 the remediation requirement as they were discovered, I  
19 believe, based on visual evidence.  
20 Q. And I think I may not be as precise as I would  
21 like to be in my questions.  
22 In your 2013 Report, which is at Tab 5, and I will  
23 ask you to turn to Page 19.  
24 A. Yes, I'm on Page 19.  
25 Q. And if you would look at the second bullet on that

11:41 1 added by the Government of Ecuador.  
2 Q. Right, but you're still, I think, saying the same  
3 thing, are you not? Because it should have been cleaned  
4 up, you assumed it was cleaned up.  
5 A. I'm not just assuming that. The Government of  
6 Ecuador issued Actas accepting these sites as cleaned up,  
7 accepting that TexPet had met their obligation site by  
8 site, and then in the end issued a final Acta stating that  
9 TexPet had met its obligation. The same Government of  
10 Ecuador who had inspectors on these sites, adding  
11 contamination as it was seen, and they believed that it  
12 needed to be remediated.  
13 Q. But even that is presuming that Ecuador got it  
14 right back between 1995 and 1998; is that not correct?  
15 A. Well, if you couldn't--if they couldn't see it and  
16 didn't know it was there, it may not have been added.  
17 Q. And, in fact, isn't it true that the remediations  
18 were essentially blessed and confirmed, if 15 days passed  
19 and there was simply no objection?  
20 A. I'm sorry, ask that question again.  
21 Q. Certainly.  
22 You said that Ecuador, Petroecuador had the  
23 opportunity to review and bless and issue Actas for each of  
24 the remediations; correct?  
25 A. Yes.

<p>Sheet 27</p> <p style="text-align: right;">1972</p> <p>11:42 1 Q. And under the RAP, if they did not object within 2 15 days, that means that TexPet didn't have any further 3 obligation at that specific site; isn't that correct? 4 A. I don't recall that detail. What I can tell you 5 is that the Government of Ecuador issued Actas on every one 6 of these sites agreeing that TexPet had met its obligation. 7 Q. And I guess my question is: What does that have 8 to do with the Plaintiffs' lawsuit against Chevron? 9 MS. WOOD: I would object to that. 10 MR. BLOOM: I will withdraw that. I beat you to 11 it. I objected to my own question. 12 BY MR. BLOOM: 13 Q. Sir, could you please turn to Tab 22, which is the 14 Fugro-McClelland Report. 15 A. Yes. 16 Q. Now, you're familiar with this Report, are you 17 not? 18 A. Yes, I am. 19 Q. The Report was issued in 1993? 20 A. Well, the copy you have here is dated 21 October 1992. 22 Q. Fair enough. 23 And Fugro-McClelland conducted its work giving 24 rise to this Report, obviously, on or before that date; 25 correct?</p>	<p style="text-align: right;">1974</p> <p>11:45 1 auditors "seeping oil?" They saw visual evidence of oil 2 seeping from the pit; isn't that right? 3 A. That appears to be the case, yes. 4 Q. And these pits were declared NFA; correct? 5 A. You need to let me look into Woodward-Clyde to 6 verify that, but this pit that was closed by Petroecuador 7 after TexPet's departure in June of 1990, the pits were to 8 be declared NFA, so it certainly fits the description of 9 what was agreed to between TexPet and the Government of 10 Ecuador. 11 Q. Well, if I can ask you to turn to the next tab, 12 which is Respondent's Exhibit 610? 13 A. Yes. 14 Q. And I'm going to ask you to turn to the page, 15 again using the Bates stamp at the bottom of page, ending 16 in 0894. 17 A. Yes. 18 Q. I don't know how well the copy came out, but the 19 reason why these were designated no further action was 20 because the RAP stated they were closed after 1990 by 21 Petroecuador. 22 A. I'm sorry, where are you reading? 23 Q. If you look in the last column, it says "closed 24 post June 30, 1990." 25 A. Yes, yes, you're right. That means it was closed</p>
<p style="text-align: right;">1973</p> <p>11:44 1 A. Yes. 2 Q. And Fugro was hired by TexPet to audit the joint 3 auditor that TexPet and Petroecuador jointly hired? 4 A. I don't know that that was the case. I know they 5 were hired by TexPet. 6 Q. And if I could have you turn to Page 6-61, and 7 there is a Bates stamp in the lower-hand corner that is 8 CA111, ending in 4387. 9 MR. BLOOM: And for the record, this document is 10 Claimants' Exhibit 12. 11 THE WITNESS: Yes. 12 BY MR. BLOOM: 13 Q. Sir, I'm going to ask you to look at the table 14 where it says A.G. 06, Aguarico 6. 15 A. Yes. 16 Q. You see that line there? 17 A. Yes. 18 Q. And under the heading remarks for Aguarico 06, it 19 says: "pits recently closed. Seeping oil"; correct? 20 A. Yes, I see that. 21 Q. Now, you've not only read this document, you've 22 relied on this document for some of your work; isn't that 23 right? 24 A. Yes, I've cited this document. 25 Q. Now, how do you read this remark by the Fugro</p>	<p style="text-align: right;">1975</p> <p>11:47 1 by Petroecuador after TexPet's departure. 2 Q. And, therefore, no further action was required by 3 TexPet under the RAP; correct? 4 A. That's correct. 5 Q. But please turn with me at Tab 24, which is an 6 exhibit. It's an LBG exhibit, it's the GSI Aguarico 6 site 7 summary. 8 MS. WOOD: Mr. Bloom, I'm sorry to interrupt, but 9 there is some question as to whether this is in the record. 10 MR. BLOOM: It had better be. 11 It's an exhibit to LBG's 2013 site investigation. 12 MS. WOOD: The reason why I'm hesitant, Mr. Bloom, 13 is when we had requested to put Respondent's 2013 data into 14 the record, this was one of the documents that was--that we 15 requested to agree to in exchange for putting your 2013 16 data in the record, so that's why--I don't mean to question 17 you, but I'm just hesitant because obviously, if it was in 18 the record already, I'm not sure why we would be requested 19 to grant permission. 20 MR. BLOOM: I have confirmed it is in. 21 Apparently, we were mistaken in the private colloquy 22 between you and counsel. It is part of the LBG Report. 23 MS. WOOD: Okay. I will accept your 24 representation. 25 MR. BLOOM: Thank you.</p>

11:49 1 BY MR. BLOOM:  
 2 Q. So, Dr. Hinchee, have you now turned to Tab 24?  
 3 A. Yes.  
 4 Q. And could you identify this document?  
 5 A. The title of the page is "Summary of site-specific  
 6 information, Chevron Oriente Region, Ecuador."  
 7 Q. Do you know who prepared it?  
 8 A. Well, it has a GSI job number on it. That's about  
 9 all I know. Perhaps if you let me read through the  
 10 document, somewhere else it's more specific.  
 11 Q. And you understand that GSI is the company of  
 12 which Mr. Connor is a principal?  
 13 A. Yes, I do.  
 14 Q. Let me ask you to turn to the second page here  
 15 where you highlighted a portion at the bottom of the page?  
 16 A. Yes.  
 17 Q. And you can either read that if your eyesight is  
 18 better than mine or you can look at the screen. It says,  
 19 the pit appears to have been closed between 1986 and 1990.  
 20 And then it goes on to say, the area, which was apparently  
 21 marshy and encompassed at least 1500 square meters, became  
 22 revegetated by 1986.  
 23 A. Is it the second highlighting?  
 24 Q. The first and the second.  
 25 A. The first talks about Pit 1--portions of the pit

11:50 1 clearly visible--yes.  
 2 Yes, I see that.  
 3 Q. So, these pits were, in fact, closed by TexPet in  
 4 the 1980s? Isn't that right? That's what GSI found?  
 5 A. No. Fugro determined that it had been--that it  
 6 had been closed by Petroecuador, the pit that it was  
 7 referring to. There are two pits referred to here. I'm  
 8 not quite sure how these correspond to the Fugro Report,  
 9 but one of these pits is described as having been closed  
 10 by--during the TexPet operation period, 1986 to 1990.  
 11 The second pit, it's not very specific. It seems  
 12 to refer back to just simply a previously closed pit, which  
 13 could well refer to the pit that was closed by  
 14 Petroecuador, but it's hard to tell, you would have to  
 15 speculate. I can't match these pits up one for one.  
 16 Q. If the pit became revegetated by 1986, doesn't  
 17 that mean that the pit was already closed? Or should have  
 18 been closed?  
 19 A. Large area of cleared vegetation is visible to the  
 20 base of the Hill in 1976, although the pit is not--the area  
 21 was apparently marshy and encompassed 1500 square meters  
 22 and became revegetated. I'm not entirely sure if he's  
 23 talking about the pit or the area next to it or some  
 24 earlier disturbance in the area that later became a pit.  
 25 It's difficult to tell from this description.

11:52 1 Q. Okay. Let's go to a couple short subjects.  
 2 Dr. Hinchee, you have never asked another Expert  
 3 to publish an article relating to the environmental issues  
 4 in the Lago Agrio Litigation; isn't that correct?  
 5 A. You're asking if I have ever asked another Expert  
 6 to do that?  
 7 Q. Correct.  
 8 A. I don't recall ever having done that, no.  
 9 Q. But you do know that Chevron has asked Experts to  
 10 publish academic articles relating to the environmental  
 11 issues in the Lago Agrio Litigation; isn't that right?  
 12 A. I understand that Chevron asked Doug MacKay, who  
 13 co-authored several reports with me, to consider Authoring  
 14 a publication on metal contents of soils, but I do not  
 15 believe that article was ever written or published.  
 16 Q. Now, Dr. Hinchee, during the Judicial Inspection,  
 17 Chevron used a method of sampling called composite  
 18 sampling; right?  
 19 A. Yes.  
 20 Q. And composite sampling is a sample made up of a  
 21 composite of several samples mixed together.  
 22 A. Yes.  
 23 Q. And there is both vertical compositing and  
 24 horizontal compositing; correct?  
 25 A. Yes. And it's not always several samples

11:54 1 combined. Sometimes you take the entire length of the  
 2 sample and simply mix it. Sometimes you may skim the  
 3 entire length of the sample and do it that way. There are  
 4 numerous ways it can be done.  
 5 Q. Now, I would like to, just for a minute, focus on  
 6 vertical composite sampling.  
 7 A. Yes.  
 8 Q. Could you describe how it's done for the Tribunal.  
 9 A. Vertical composite sample is where a sample is  
 10 collected over some length of soil--perhaps a meter,  
 11 two meters, it could be much more--and somehow that sample  
 12 is mixed and composited and a single sample is analyzed.  
 13 Q. And how did Chevron take its vertical composite  
 14 samples during the Lago Agrio Litigation, if you know?  
 15 A. For the most part, they were taken and mixed in a  
 16 bowl, and then the single sample is collected from the  
 17 mixed soil.  
 18 Q. So, if there are areas of contamination within the  
 19 core--actually, let's back up. Could you explain what the  
 20 core is?  
 21 A. The core?  
 22 Q. The core.  
 23 A. Oh, I'm sorry. The soil core? It's the way you  
 24 collect the sample is you drive, essentially, a hollow pipe  
 25 into the ground, and then you open it up and you have a

Sheet 29 1980	1982
<p>11:55 1 soil core inside of it.  2 Q. And within that core, some parts of it might be  3 contaminated; correct?  4 A. It's certainly possible.  5 Q. And sometimes some might be clean?  6 A. It's certainly possible.  7 Q. And by compositing the otherwise clean samples  8 would become less clean?  9 A. Yes. You get an average.  10 Q. And the dirty components will come out less dirty?  11 A. You get an average concentration.  12 Q. And by compositing the level of contamination of  13 dirty samples could be lessened to a level that falls  14 within the acceptable standard, whatever that standard  15 might be?  16 A. Yes. In fact, the--but the standards as written  17 in Decreto 1215 for soils are to apply to composited  18 standards. So, that wouldn't be the case when you're  19 looking at the Decreto 1215, the Ecuadorian standards.  20 Q. I want to use a specific example, if I may. Let's  21 say the standard is 2500 milligrams per kilogram, which is  22 the RAOHE Standard--right?--that PEPDA is using.  23 A. Yes, that is the standard that PEPDA is using.  24 I'm sorry, I don't usually use the term RAOHE.  25 Q. And let's say that I took samples--let's say I</p>	<p>11:58 1 And then this would meet Ecuadorian standards for  2 remediation with agricultural soil, and this is exactly  3 what the standard is written and intended to do.  4 Q. Dr. Hinchee, how many visits did you make to the  5 Concession Area before submitting your 2006 Expert Report?  6 A. I didn't visit the Concession before submitting my  7 2006 Report.  8 Q. How about before your July 2007 Report?  9 A. I didn't visit the Concession until September of  10 2010.  11 Q. So, you had at least four Reports that you  12 submitted to the Lago Agrio Court prior to your visit to  13 the region; correct?  14 A. Yes, yes.  15 Q. How many times have you been to Ecuador?  16 A. That was my only trip to Ecuador.  17 Q. In your view, is it appropriate or possible for an  18 expert to come to reliable conclusions of the kind that you  19 reached without going to the region?  20 A. Yes, certainly it is, particularly since I have  21 seen many other oilfields in many similar settings, and  22 I've evaluated many other datasets very similar to the  23 dataset that I evaluated here.  24 Q. And are you able to comfortably and reliably use  25 data collected by others, let's say, in this case, in the</p>
<p>1981</p> <p>11:57 1 took one sample that shows an exceedance of 8,000 parts per  2 million. And we have that depicted here in red.  3 Do you see that?  4 A. Yes.  5 Q. And, of course, the 8,000 parts per million by  6 itself would exceed the threshold?  7 A. Yes.  8 Q. And then let's say there are three other samples  9 within this core, each at ten parts per million; correct?  10 A. Yes, yes.  11 Q. And then if I average this, we're going to come  12 out with a number that's under 2500; correct?  13 A. Yes, I think you're right.  14 Q. In fact, it's 2007.5, I'll represent. Below the  15 standard. And by compositing in this way and adding,  16 sometimes, a single sample or two exceedances could be  17 reduced to no exceedance at all?  18 A. Right. And this is exactly the way that the  19 Ecuadorian regulations are written for remediated pits.  20 You're required to do this compositing. The  21 regulations in Ecuador are for average concentration, not  22 for the highest concentration in some pocket.  23 Q. My colleague likes this animation.  24 A. That's pretty good. That's fairly accurate, yes.  25 Yes.</p>	<p>1983</p> <p>12:00 1 2004 to 2009 timeframe?  2 A. Yes, as long as that data is--you know, I have  3 documentation as to how the data was collected and how the  4 samples were analyzed, that kind of thing, yes. I do that  5 all the time.  6 Q. I'm going to ask you just to turn to Tab 31.  7 MR. BLOOM: And just for the record, this is an  8 excerpt from Claimants' Annex A--Annex A to Claimants'  9 Track 2 Reply.  10 And I'm just going to focus your attention at  11 Paragraph 4, where they state: "To portray a picture of  12 current widespread environmental problems caused by TexPet,  13 LBG provided not one new sample survey, test or measurement  14 nor even a new photograph to characterize current  15 Concession Area conditions. None of the LBG Experts  16 visited the Concession's operating sites, and three have  17 never traveled to Ecuador. Instead, LBG principally relied  18 upon data collected in 2004 to 2009--14 years or more after  19 TexPet's last operations in Ecuador, and after Petroecuador  20 had been operating the Concession Area throughout that  21 period."  22 A. Yes, I see that. That's what it says.  23 What is this document? I'm not sure I have ever  24 seen this.  25 Q. This was Annex A to Claimants' Reply that</p>

12:02 1 Claimants submitted in this arbitration.  
 2 And, sir, I also have a clip, a little video clip,  
 3 I would like to show you. If we could do that now.  
 4 (Video played.)  
 5 MR. BLOOM: I'm sorry, I should preface this.  
 6 This is a deposition of one of the LBG Experts, Kenneth  
 7 Goldstein, being deposed by counsel for Chevron, just to  
 8 give it some context.  
 9 THE WITNESS: Yes, I was there. I saw this.  
 10 (Video played.)  
 11 BY MR. BLOOM:  
 12 Q. Now, I take it, Dr. Hinchee, given your prior  
 13 testimony, in your view an expert is not disqualified from  
 14 offering expert testimony merely because he's not present  
 15 at the time samples are taken?  
 16 A. That's right. The need to visit the site varies  
 17 depending on the individual expert's experience and also on  
 18 the kinds of opinions that they're issuing.  
 19 Q. Turning to a different subject now, in your most  
 20 recent Report, your 2015 Report, which is at Tab 8, at--and  
 21 I'm going to specifically refer you now to a table located  
 22 at Page 13, so, if you can just take a moment and find  
 23 that.  
 24 A. What page number did you say?  
 25 Q. Thirteen.

12:06 1 A. Yes.  
 2 Q. You're there?  
 3 A. Yes, I am.  
 4 Q. Now, on this table, you say this shows that PEPDA  
 5 includes much more than pit remediation in its cost  
 6 estimate; correct?  
 7 A. Yes.  
 8 Q. And if you look at your table which we have on the  
 9 screen, you state that your table here, in fact, represents  
 10 actual cost data for Petroecuador's cost estimate.  
 11 A. These are Petroecuador's cost estimates, yes.  
 12 Q. And your footnote here says that this data is  
 13 coming from the PEPDA 2007 Annual Report; correct?  
 14 A. Yes, it is.  
 15 Q. But to be clear, this chart actually has been  
 16 modified from the chart that appears in the PEPDA 2007  
 17 Annual Report; right?  
 18 A. This is a condensation of a much longer chart. If  
 19 you give me the Report, I can explain to you how this was  
 20 derived. But all of this data comes from the PEPDA 2007  
 21 Report.  
 22 Q. Well, we're going to do that analysis or that  
 23 comparison right now. So we're going to compare your table  
 24 here at Tab 8, Page 13, so, I would ask you to keep your  
 25 finger on this page, and ask you to turn to Tab 11, Page 3,

12:07 1 and we may have to toggle back and forth just a bit, so, if  
 2 you would be patient as we proceed.  
 3 Do you have your finger on both of those pages?  
 4 A. Yes, I do.  
 5 Q. Okay. Now, since you didn't identify the changes  
 6 you made for the Tribunal, I would like us to walk through  
 7 that together, if I may. And in this respect, I would ask  
 8 you first to look at the title of your chart. And what is  
 9 the title of your chart?  
 10 A. "Environmental Liabilities Requiring Remediation  
 11 by Petroecuador."  
 12 Q. Okay. And the title that PEPDA used is  
 13 "Elimination of Environmental Liabilities"; correct?  
 14 A. Yes.  
 15 Q. Okay. And then, second, you changed the  
 16 right-hand columns; is that right?  
 17 A. The right-hand column.  
 18 Q. In the original it just listed the amount and the  
 19 costs. And then you added columns breaking down costs in  
 20 "all of Oriente" and "former Concession."  
 21 A. Yes.  
 22 Q. Now, looking at the categories of liabilities  
 23 listed, it looks like you changed some information here  
 24 too. The first category is the same in the original, if  
 25 you can confirm that for me. It's listed as "pits."

12:09 1 A. Yes, pits.  
 2 Q. And the second category you have here are "dry  
 3 pits"; correct?  
 4 A. Yes, it's what I call dry pits.  
 5 Q. Okay. So, the first two categories you listed,  
 6 they're both pits. Different categories, but they're both  
 7 pits. Next are what you state is "Emergencies--Cleanup of  
 8 Remediation of Spills."  
 9 Do you see that?  
 10 A. Yes.  
 11 Q. And presumably again we're talking about spills  
 12 actually known about since it would be very difficult to  
 13 remediate for spills we don't know about; would you agree  
 14 with me?  
 15 A. I don't know whether this was a forecast into the  
 16 future cost. Petroecuador had an ongoing history of  
 17 spills. I don't know whether this forecasts future spills  
 18 or simply applies to known spills. I don't know the  
 19 answer.  
 20 Q. Okay. Now, staying in that category, sir, you've  
 21 added a parentheses that says "includes sediment  
 22 remediation."  
 23 A. Yes.  
 24 Q. But to be clear, this was not in the original  
 25 chart; isn't that right?

12:10 1 A. No. You have to go other places within the Report  
2 to see that that's the case. I just simply wanted to make  
3 it clear--and it's because spills--Ecuador is a very wet,  
4 humid climate. There are many surface water features. Any  
5 time you have a spill, you're going to be close to a  
6 surface water. Spills often go across land and into  
7 creeks, streams, wetlands, and so part of many of these  
8 spill cleanups is--includes sediments. If you look  
9 elsewhere in this document, you will see, in fact, that the  
10 two spills they described being cleaned up are both in  
11 rivers, clearly sediment cleanup--sediment contamination  
12 cleanup.

13 I added the parentheses just to be clear, but this  
14 information all comes from the 2007 document.

15 Q. We made a copy of the 234-page Report, which we're  
16 handing up.

17 A. Thank you.

18 MR. BLOOM: If I may ask Claimants' counsel  
19 whether you got your copy back, too.

20 MS. WOOD: I do, thank you.

21 MR. BLOOM: Okay. And just for the record, we do  
22 have copies coming for the Members of the Tribunal. We  
23 don't want to leave you out or feel like we're leaving you  
24 out.

25 PRESIDENT VEEDER: Not sure we'd mind, unless it's

12:13 1 sediments at other sites, yes.

2 Again, the only spills referred to in this Report  
3 are sediment sites.

4 Q. But is that part of the 2007 PEPDA estimate?

5 A. Certainly. The estimate includes ongoing  
6 remediation, and the Conde River is only 10 percent  
7 complete. So, the balance of the 90 percent of the Conde  
8 River is in that estimate as are any of the other spills  
9 which include sediment remediation.

10 Q. The documents that you just referenced that you  
11 could pull out, you said you could pull out specific  
12 exhibits that discuss the PEPDA remediation.

13 A. Or Petroecuador. I don't recall whether it was  
14 PEPDA doing it or some other arm of Petroecuador.

15 Q. Right. So, I'm trying to confine the question and  
16 the scope of this Q&A to what was included in the PEPDA  
17 remediation as governed by the 2007 Annual Report, which is  
18 what provides the estimate.

19 A. Right. Yes.

20 Q. The estimate of the remediation cost.

21 A. And all of the spills discussed in this Report are  
22 sediments.

23 Q. What is your evidence of that?

24 A. The one I just provided to you, Page 24, Chart  
25 Number 2, two spills.

12:12 1 particularly relevant, and it may not be.

2 BY MR. BLOOM:

3 Q. Well, Dr. Hinchee, again we're relying on your  
4 Report. You don't cite to any particular page in the PEPDA  
5 Report from which you're getting this information. We have  
6 done a search. We have found nothing that suggests that  
7 sediment is included here.

8 A. Well, let me point you to where you can find that.

9 Q. That would be helpful.

10 A. Look at Page 25 of the Report, Chart Number 2:  
11 This is a description of the ongoing or completed  
12 remediation work. You will see that there are two spills  
13 listed. Only two. Both of those are rivers. Rivers have  
14 sediment contamination. Those are sediments. In fact,  
15 they don't list anything but rivers in this particular  
16 list.

17 And as I said, in the same document, Petroecuador  
18 takes responsibility for remediation and environmental  
19 liabilities, which under Decreto 1215 includes soils,  
20 surface water and groundwater.

21 Q. Are there any other rivers or streams for which  
22 PEPDA has committed to remediate?

23 A. We have documentation, I have documentation in my  
24 Report, and if you give me a minute, I can pull out the  
25 specific exhibits that discuss PEPDA remediation of

12:15 1 Q. Those two. And that's your--the entirety of your  
2 evidence that the PEPDA 2007 Report is intended to cover  
3 all sediment?

4 A. No. The entirety of my evidence includes PEPDA,  
5 Petroecuador agreeing that it's responsible for cleanup of  
6 all environmental liabilities, and the fact that we know  
7 they cleaned up other spills as evidenced in other exhibits  
8 in my Report. This is where you could find evidence in  
9 this particular document. There are other places to go.

10 Q. And looking at Page 24, where does it say that  
11 it's cleaning up anything more than the water? That it's  
12 actually extending to cleanup of sediment?

13 A. On Page 24. Approved cost estimates.

14 What's your question?

15 Q. Where in that table does it say that PEPDA is  
16 going to clean up the sediment as opposed to the water?

17 A. Well, all of the estimates on this table--and it's  
18 only a part of what PEPDA is doing--are for pits, not for  
19 spills. Except for the bottom one. It says: "For 60  
20 environmental liabilities, pits, spills, others in the  
21 Amazon district." As I said, spills contaminate both land  
22 and sediments.

23 Q. And we're not disagreeing that spills contaminate  
24 both land and sediments. My question is a little bit  
25 different. I'm looking at what you just referred me to,



12:17 1 and it says, under spills, it identifies two rivers, it  
2 identifies surface area worked on, and I don't see the word  
3 "sediments" there at all. And I did see in your revision  
4 of the PEPDA 2007 table that you threw in the words in the  
5 parentheses something to the effect of "includes  
6 sediments," and I just don't see that in what you're  
7 referring to.

8 A. The way that you remediate a river is by cleaning  
9 up the TPH contamination in the sediments. You won't find  
10 the word "sediment" in this document or in any other PEPDA  
11 document I know of referring to river bottoms. What you  
12 will find is soil contamination from below the water  
13 surface. In some documents you can take the GPS  
14 coordinates, look at those GPS coordinates for a soil  
15 sample and a water sample, they come from exactly the same  
16 location. PEPDA refers to sediments in streams and  
17 wetlands as soil.

18 Q. You would agree with me, sir, would you not that  
19 sediments are measured in cubic meters?

20 A. You could measure sediments in cubic meters, yes.

21 Q. And water is measured how?

22 A. Water is measured in liters or gallons, cubic  
23 meters.

24 Q. You have no idea what the volume of contaminated  
25 sediments, do you?

12:20 1 have to read the entire report to understand what these  
2 categories are. These are abbreviations. Sediments are  
3 included in these categories. It's apparent when you read  
4 the full document and when you read Petroecuador's other  
5 remediation documents that I have attached to my Report as  
6 exhibits.

7 Q. Now, you've testified, sir, that you found no  
8 evidence that PEPDA is actually conducting surface water  
9 remediation; right?

10 A. I have seen no indication of surface water  
11 remediation, that's right.

12 Q. Nor do any of these categories at least explicitly  
13 cover stream remediation?

14 A. Yes. The spills do. Sediment remediation in the  
15 streams.

16 Q. That's--okay, we have been through that.

17 How can you have stream remediation without  
18 surface water remediation?

19 A. The contamination in the stream, particularly from  
20 old or historic spills, is in the sediment. The way you  
21 clean up the stream is by cleaning up that contamination in  
22 the sediment. Surface water flows through quite rapidly.  
23 There are times in which you may dam up that surface water,  
24 capture it. Perhaps if you mix sediments into that  
25 material, that may require treatment. But what you are

12:18 1 A. Most Spill Reports that we get from Petroecuador  
2 talk about the surface area of the spill because that can  
3 be easily mapped. After the fact, sometimes they report  
4 how many cubic meters of remediation that turned into, and  
5 that's exactly what you see here, are the surface areas  
6 that were contaminated as a result of the spill in square  
7 meters.

8 Q. Turning back, sir, to your table.

9 A. Let's see, which tab? Oh, okay. I see it.  
10 Page 13 of my Report. Table 1, is that what you're  
11 referring to?

12 Q. Yes, sir.

13 The last category there is biotechnological  
14 treatment, sewage, and residual water in camps.

15 Do you see that?

16 A. Yes.

17 Q. And if you--if I can ask you to take a look at the  
18 PEPDA table, I just want you to confirm for me that you  
19 will not see the word "sediments" in any of these Line  
20 Items, either for pits, trenches or tanks, contingency  
21 cleanup and remediation of spills, cleanup and remediation  
22 of solids from pits in API tanks, as well as that last  
23 category, biotechnological treatment. You don't see the  
24 word sediments there; correct?

25 A. No. You don't see the word soils, either. You

12:22 1 treating are the sediments. That's how you clean--that's  
2 how you remediate surface water, as opposed to cleaning up  
3 the water itself.

4 Q. Now, sir, you've stated before that you don't need  
5 to actually sample at many of the oil sites in the Oriente  
6 to find contamination because you can see the  
7 contamination. It's visual.

8 A. Particularly someone who has worked on a number of  
9 oilfields and is familiar with what oil contamination looks  
10 like, visual inspection is very often sufficient. Before  
11 you confirm it and begin remediation, you may want to  
12 analyze some of those samples to make sure you were right.

13 Q. The more challenging task, in your view, is not  
14 finding the contaminated soil but rather determining where  
15 the contamination stops; isn't that right?

16 A. Yes, that can be more difficult.

17 MR. BLOOM: With the Tribunal's indulgence, can I  
18 just have five minutes? Because I'm going to only have  
19 about five or ten minutes left. I want to consolidate.

20 PRESIDENT VEEDER: Take all you need.

21 MR. BLOOM: Five minutes is fine.

22 PRESIDENT VEEDER: Five minutes. Let's break for  
23 five minutes.

24 MR. BLOOM: Thank you.

25 PRESIDENT VEEDER: Please don't discuss the case

12:23 1 or your testimony away from the Tribunal.  
 2 THE WITNESS: Okay. Can I get up and go for five  
 3 minutes?  
 4 PRESIDENT VEEDER: Of course.  
 5 THE WITNESS: Thank you.  
 6 (Brief recess.)  
 7 PRESIDENT VEEDER: Let's resume.  
 8 MR. BLOOM: That was a very productive five  
 9 minutes.  
 10 We have no further questions.  
 11 PRESIDENT VEEDER: Thank you very much.  
 12 Are there any questions from Claimants?  
 13 MS. WOOD: Mr. President, I will have a limited  
 14 direct, but would it make sense if we took our lunch break  
 15 now and I could condense my questions?  
 16 PRESIDENT VEEDER: Actually, it wouldn't be  
 17 because for other reasons we need to have a later lunch  
 18 break, but we could have a break now if you need to.  
 19 MS. WOOD: If we could. There is a question that  
 20 I've posed--  
 21 PRESIDENT VEEDER: Don't worry, don't explain. Do  
 22 you need fifteen minutes?  
 23 MS. WOOD: Fifteen minutes is fine.  
 24 PRESIDENT VEEDER: Let's take 15 minutes and come  
 25 back at quarter to.

12:29 1 (Brief recess.)  
 2 PRESIDENT VEEDER: Let's resume.  
 3 MS. WOOD: Thank you, Mr. President.  
 4 Before--I just have a couple of questions for the  
 5 witness, but I wanted to raise an issue that I have  
 6 discussed with counsel for Ecuador.  
 7 I had objected to the document at Tab 24.  
 8 PRESIDENT VEEDER: Tab 24 of the bundle?  
 9 MS. WOOD: Tab 24 of Ecuador's Cross-Examination  
 10 Bundle.  
 11 PRESIDENT VEEDER: I remember, yes.  
 12 MS. WOOD: As well as it was cited at Page 58 of  
 13 their PowerPoint presentation.  
 14 And it was my understanding that the document was  
 15 not in the record because when we had asked to supplement  
 16 the record with LBG's 2013 data, this was one of the  
 17 documents that counsel for Ecuador said, well, if you let  
 18 this and other documents in, then we would agree to put our  
 19 own data in the record. We did not reach agreement on  
 20 that, and so that was my concern and why I raised it. The  
 21 representation was made that the document was in the  
 22 record. The Witness was cross-examined about the document.  
 23 We then checked and now confirmed with counsel from Ecuador  
 24 that the document is not in their record. It is referred  
 25 to in the footnote in their Expert Report, but the document

12:44 1 itself is not in the record. And I would object to this  
 2 document becoming part of the record as well as object to  
 3 any testimony, any question or testimony given with respect  
 4 to that document because the document is not in the record.  
 5 PRESIDENT VEEDER: Mr. Bloom.  
 6 MR. BLOOM: Thank you, Mr. President.  
 7 And we have confirmed that that document was  
 8 inadvertently not provided, but I wanted to provide a  
 9 little bit of context.  
 10 Number one, it is a document that we specifically  
 11 cited to as Footnote 11 to the 2014 LBG Report as part of  
 12 its Annex A.  
 13 Number two, there is--and the practice has been  
 14 very different. When we're talking about either side  
 15 simply wanting to put new documents in the record for  
 16 strategic advantages versus a ministerial error, and in  
 17 just the last two or three minutes we began pulling up  
 18 e-mails from both within the firm and with counsel or  
 19 sometimes--it happened on the legal assistant level, where  
 20 one side or the other has informally, and in every instance  
 21 either asked for or provided documents that were either  
 22 cited or miscited or mistranslations, so I have an e-mail  
 23 of February 4, 2015, internal, can you please ask Chevron's  
 24 legal assistant tomorrow for this document, and it came  
 25 from Claimants' Exhibit 2084. The document on the share

12:46 1 with that number is essentially the wrong document, so it  
 2 was done informally, if we can turn to another one.  
 3 Another one attached is the correct translation.  
 4 The previous one--the previous C-2084 submitted corresponds  
 5 to C-2007. The Legal Assistant for King & Spalding will  
 6 submit this document with upcoming translation.  
 7 So, we would certainly ask that we be allowed to  
 8 include it. They had certainly been on notice. It is  
 9 specifically referenced.  
 10 What's supposed to happen is when either side  
 11 submits a report, what we do routinely is we gather up all  
 12 the documents, and you have been burdened with more than  
 13 your fair share. Both sides have inadvertently left some  
 14 out. In this particular case, it's actually a Chevron  
 15 document, so they've had the document. So, we don't  
 16 believe that they're prejudiced. And again, this is a  
 17 matter of the practice that both Parties have engaged in  
 18 for some time. And if there is any hiccup over this, I  
 19 would like to be heard after we've had a chance and compile  
 20 all of the e-mails that have gone back and forth over the  
 21 last couple of years.  
 22 PRESIDENT VEEDER: Just to ensure we've understood  
 23 you, this is an inadvertent mistake on your side, it's not  
 24 a mistake by the Claimants?  
 25 MR. BLOOM: That is correct. It should have been

12:47 1 submitted along with the LBG Report because the LBG Report  
 2 specifically cites to this.  
 3 PRESIDENT VEEDER: What date was that?  
 4 MR. BLOOM: It was the 2014 Report, in November.  
 5 MS. WOOD: Mr. President, we definitely have been  
 6 prejudiced by this document now coming forward and trying  
 7 to put it into the record. We had a specific discussion  
 8 with counsel for Ecuador asking if they would put their  
 9 2013 data into the record because we assumed it was in the  
 10 record; and, as we started examining the LBG documents, LBG  
 11 had not put its own data in the record.  
 12 So, we went to counsel for Ecuador and said, would  
 13 you please put in the 2013 data and your 2013 data  
 14 validation reports. The response we received was, we would  
 15 only do that if you agree to put these other documents into  
 16 the record. This is one of a handful of documents that  
 17 they wanted to put into the record.  
 18 We decided, and withdrew our request to put their  
 19 own data in the record and, therefore, we had no agreement  
 20 on this specific document or this other handful of  
 21 documents going into the record.  
 22 Because of that, our Experts did not put on in  
 23 their direct testimony evidence about the LBG 2013 data  
 24 because the 2013 data was not in the record. So, we  
 25 clearly have been prejudiced by this. Now they're coming

12:49 1 back and saying one of the documents that they wanted to  
 2 trade with us to agree to put their own data in the record,  
 3 is now they're trying to get in another way, so we clearly  
 4 have been prejudiced.  
 5 PRESIDENT VEEDER: What would it take to correct  
 6 the prejudice?  
 7 MS. WOOD: We would have to re-do direct  
 8 statements of all of our Experts.  
 9 PRESIDENT VEEDER: And what is the scope of that  
 10 exercise? Is it a large, middle or small one?  
 11 MS. WOOD: Well, with all due respect,  
 12 Mr. President, I feel like the horse is out of the barn.  
 13 They have made their presentations to this Tribunal, and I  
 14 know very specifically some of the Experts wanted to point  
 15 to problems in the LBG 2013 data. And because the data was  
 16 not in the record, we advised them you cannot do that  
 17 because we are not going to put anything and present  
 18 anything to the Tribunal that is not in the record. So,  
 19 therefore, they could not make that presentation. Coming  
 20 after the fact now and supplementing a direct presentation  
 21 slide does not at all have the effect of them being able to  
 22 discuss it with you as part of their direct testimony.  
 23 PRESIDENT VEEDER: We've got a logistical problem  
 24 at a moment. We have got to finish this Witness' redirect  
 25 on certain matters which could be done putting this dispute

12:50 1 aside. How long would that take you to do?  
 2 MS. WOOD: I have two questions for this Witness.  
 3 PRESIDENT VEEDER: Okay. Could you proceed with  
 4 those two questions? And then we will adjourn and try and  
 5 sort things out over lunch.  
 6 MS. WOOD: Certainly.  
 7 PRESIDENT VEEDER: Okay. I think if the Witness  
 8 is not catching a plane at lunchtime. Are you leaving?  
 9 THE WITNESS: No, I'm not leaving today.  
 10 PRESIDENT VEEDER: Okay. Then please go ahead  
 11 with your other questions.  
 12 MS. WOOD: Thank you, Mr. President.  
 13 REDIRECT EXAMINATION  
 14 BY MS. WOOD:  
 15 Q. Dr. Hinchee, does Decreto 1215 have separate  
 16 cleanup criteria for sediment versus soil?  
 17 A. No, the Cleanup Standards are for soil.  
 18 Petroecuador uses the soil Cleanup Standards whenever it  
 19 remediates sediments. There are no separate standards.  
 20 Q. Okay. And no separate discussion of sediment in  
 21 1215?  
 22 A. No, no, the soil standards in 1215 are routinely  
 23 applied to sediments.  
 24 Q. Could we pull up Slide 37 of your direct  
 25 presentation.

12:52 1 Now, Mr. Bloom asked you a series of questions  
 2 about the Burlington matter, the Burlington arbitration,  
 3 and cost estimates in that arbitration. And I'm pointing  
 4 you to Slide 37 and would like to ask you this question:  
 5 Why do you believe that the Petroecuador costs and data  
 6 presented on your Slide 37 is the most relevant comparison  
 7 to the Lago Agrio Judgment?  
 8 A. Because Petroecuador is remediating the very pits  
 9 and spills the Judgment is awarding costs to remediate.  
 10 These are the same environmental liabilities, the same pits  
 11 and spills as the Judgment uses to award damages. And in  
 12 the case of unit cost, the actual cost incurred by  
 13 Petroecuador for remediating those pits and spills is \$67 a  
 14 cubic meter, not what's in Burlington, not what's in the  
 15 Judgment. The Burlington is for a different kind of  
 16 remediation. I can provide more detail on that if  
 17 necessary. The reality here is how much volume of soil  
 18 actually requires remediation based on Petroecuador's  
 19 experience, how many pits require remediation based on  
 20 Petroecuador's knowledge, the fact that groundwater is not  
 21 undergoing remediation because Petroecuador is also not  
 22 doing groundwater remediation, despite being given that  
 23 responsibility because it's not necessary.  
 24 And, finally, the total cost Petroecuador provides  
 25 is less than 10 percent of the cost in the Judgment to

Sheet 35 2004

12:53 1 remediate the TexPet portion of the former Concession.  
 2 Petroecuador is doing the remediation, we know what it  
 3 cost, they know what it cost, and the Lago Court knew what  
 4 it cost.  
 5 Q. Thank you, Dr. Hinchee.  
 6 No further questions.  
 7 PRESIDENT VEEDER: Well, for the time being, no  
 8 further questions, but we may want to see you again, so  
 9 thank you very much for assisting the Tribunal, but you may  
 10 leave the table.  
 11 THE WITNESS: Thank you.  
 12 (Witness steps down.)  
 13 PRESIDENT VEEDER: I think he could be released as  
 14 a witness rather than being put in purdah as a contingency.  
 15 I think there is no objection from either side?  
 16 MR. BLOOM: No.  
 17 MS. WOOD: And with respect to when I was talking  
 18 about Experts who wanted to rely on the 2013 data, I'm not  
 19 talking about Dr. Hinchee. I was talking about witnesses  
 20 who have already appeared and who have been let go.  
 21 MR. BLOOM: Can I just address that one point?  
 22 PRESIDENT VEEDER: You know, we would rather come  
 23 back to it. Just give us time to digest what we've heard  
 24 so far and we'll come back.  
 25 We're going to need a bit of time to do that, so

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12:55 1 could we have an extra 15 minutes for lunch? We could come  
 2 back at 2:15?  
 3 MS. WOOD: That's fine.  
 4 PRESIDENT VEEDER: I take it we're on time? There  
 5 is no concern that--  
 6 MR. BLOOM: I had hoped to finish this morning and  
 7 I think we're done.  
 8 PRESIDENT VEEDER: So, 2:15, thank you very much.  
 9 (Whereupon, at 12:56 p.m., the Hearing was  
 10 adjourned until 2:15 p.m., the same day.)  
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1 AFTERNOON SESSION  
 2 PRESIDENT VEEDER: Let's resume.  
 3 First, the Claimants.  
 4 MS. WOOD: Mr. President, I just wanted to let you  
 5 know that the Claimants are withdrawing our objection to  
 6 the document that was used with Mr. Hinchee, the one behind  
 7 Tab 24.  
 8 PRESIDENT VEEDER: I'm glad you spoke first  
 9 because we were about to make our ruling, subject to  
 10 hearing Mr. Bloom once more.  
 11 MS. WOOD: I defer to Mr. Bishop.  
 12 MR. BISHOP: Yes, we've had some discussions over  
 13 lunch between the Parties, and we've reached an  
 14 accommodation. We are withdrawing the objection as  
 15 Ms. Wood mentioned, and we're offering another document  
 16 that we've agreed between the Parties will go into the  
 17 record which will be Exhibit C-1545A--R-1545A, which will  
 18 be a supplement to the record that was reviewed by  
 19 Mr. Juola; and as I said, so the Parties have agreed to  
 20 that, and so we've reached an accommodation, and I think  
 21 that we have resolved the issues the Tribunal would have  
 22 had to grapple with otherwise.  
 23 PRESIDENT VEEDER: Is the document relevant for  
 24 the next witness?  
 25 MR. BISHOP: Not for the next witness.

2007

02:16 1 PRESIDENT VEEDER: Well, give us a copy in due  
 2 course, as we'll insert it electronically and on paper, and  
 3 can I say we're very grateful for the way the Parties do  
 4 sort things out. We were going to make a ruling, I won't  
 5 tell you what it was, but can I say in a case like this,  
 6 inadvertent mistakes are bound to happen, and I think it's  
 7 a rather generous way to resolve it by consensus between  
 8 the Parties.  
 9 MR. BLOOM: And if I may, just to kind of round  
 10 out what the Parties had agreed to because just like we had  
 11 made a mistake, what had happened on their end was  
 12 Dr. Juola had reviewed, if you recall, the hard drive that  
 13 we had provided to you. He looked at 200 and some-odd  
 14 thousand pages. There was a second tranche to that that we  
 15 had not received until yesterday, so that's to make sure  
 16 the record's complete, we didn't object to them wanting to  
 17 put that record in, and that is the document that is going  
 18 in as R-1545A, and we're asking to do it as A so that the  
 19 Tribunal will understand it's part of the same record that  
 20 he submitted, and it's my understanding that he reviewed  
 21 everything on both those documents, 1545, the hard drive we  
 22 submitted; and 1545A.  
 23 And then the other piece of it is that we will  
 24 submit, without opposition, the six-page document that we  
 25 had thought was in the record that was not in the record,

02:18 1 and we will submit that as R-1546. And if we can do that  
2 hopefully by the end of today, we can submit it.  
3 PRESIDENT VEEDER: Just to make that clear, that's  
4 Tab 24 of your bundle?  
5 MR. BLOOM: That's right.  
6 PRESIDENT VEEDER: And we need to just adjust the  
7 name then on Slide 58 of your cross-examination PowerPoint  
8 to reflect that it's R-1546.  
9 MR. BLOOM: Thank you. We will do that.  
10 PRESIDENT VEEDER: We could do that in  
11 handwriting.  
12 MR. BLOOM: Very good.  
13 PRESIDENT VEEDER: Good. Well, thank you very  
14 much for that. You saved us a long ruling, but we'll move  
15 on.  
16 Any other housekeeping matters we need to raise?  
17 No.  
18 Well, we have--  
19 HARLEE STRAUSS, RESPONDENT'S WITNESS, CALLED  
20 PRESIDENT VEEDER: Could state your full name.  
21 And then, if you're willing to do so, read the words of the  
22 Declaration.  
23 THE WITNESS: Yes. My name is Harlee Sue Strauss.  
24 And I solemnly declare upon my honor and  
25 conscience that I shall speak the truth, whole truth, and

02:19 1 nothing but the truth, and that my statement will in  
2 accordance with my sincere belief.  
3 PRESIDENT VEEDER: Thank you very much. There'll  
4 first be questions from the Respondent.  
5 MS. SILVER: Good afternoon, Dr. Strauss.  
6 DIRECT EXAMINATION  
7 BY MS. SILVER:  
8 Q. I've placed before you a binder with your four  
9 reports and several exhibits.  
10 Do you see that?  
11 A. Yes, I do.  
12 Q. And before we begin the direct and your  
13 presentation, is there anything that you would like to  
14 amend in any of your Reports?  
15 A. Yes, I'd like to make two amendments to my  
16 Reports. The First Amendment is in response to  
17 Dr. Douglas's testimony yesterday. He pointed out what was  
18 an error in one of my calculations at one--in the drinking  
19 water sample at one site. I went back and looked at my  
20 calculations, and he was correct. There was an error. He  
21 was incorrect about the source of error, but that  
22 calculation contained a spreadsheet error, and I no longer  
23 consider that sample and that exposure pathway to have a  
24 significant risk of cancer.  
25 Q. And does it affect your findings with respect to

02:20 1 your non-cancer risk?  
2 A. No. The calculation had no impact on my findings  
3 about non-cancer health risk, nor does it have an impact on  
4 my overall findings regarding further action to be taken at  
5 that site.  
6 Q. And you said you had a Second Amendment?  
7 A. Yes. I have a Second Amendment, and that has to  
8 do--  
9 PRESIDENT VEEDER: Pause one moment.  
10 It may be helpful for you to go to the particular  
11 page to make the correction. Could you just help us on the  
12 first correction. Where do we find that?  
13 MS. SILVER: The particular site was for a  
14 particular groundwater sample at Shushufindi 43, and I'll  
15 have to find you the page number in the Report.  
16 PRESIDENT VEEDER: And for the second as well we  
17 need the page number.  
18 MS. SILVER: Well, I will let her tell you what it  
19 is first, and then I will. If she doesn't tell you, I will  
20 tell you.  
21 THE WITNESS: It has to do with the wipe samples  
22 that were taken in the house of the vicinity of Lago  
23 Agrio 2, the well site. Three samples were taken inside  
24 the house, and I had written, I think it's on Page 5 and 6  
25 of my November 2014 Report, although I may have the numbers

02:21 1 slightly wrong. I wrote on those pages of that Report that  
2 those samples contained oil from the Oriente. I've now  
3 come to understand that while those samples do have a  
4 fingerprint of oil, it is not the fingerprint of Oriente  
5 oil and, therefore, the contamination is not associated  
6 with TexPet in any way in those oil samples.  
7 I used those samples as an example of an exposure  
8 pathway. They were not part of any quantitative assessment  
9 in any way and do not at all have any impact on my  
10 ultimate--on the opinions in my Report.  
11 BY MS. SILVER:  
12 Q. And what about your other samples? Have you  
13 determined that the oil samples on which you relied also  
14 contained Oriente Crude?  
15 A. The other samples for which I conducted  
16 quantitative assessment do contain Oriente Crude based on  
17 the opinion of Dr. Jeffrey Short.  
18 Q. Dr. Strauss, I'd like to ask you a few questions  
19 before you begin your PowerPoint presentation. Is that  
20 okay?  
21 A. Yes.  
22 Q. You are a human health-risk assessor by  
23 profession; is that correct?  
24 A. That's correct.  
25 Q. Can you briefly describe your professional

02:23 1 background.  
 2 A. Yes, I've been conducting human health-risk  
 3 assessments since the mid-1980s, which is about the time  
 4 the methodology has been developed, and so I've watched it  
 5 evolve and in some small ways have contributed to that, so  
 6 I've been involved in the development of risk-assessment  
 7 methodology. I've conducted many site-specific risk  
 8 assessments mostly in the United States on contaminated  
 9 sites with a variety of media and pathways.  
 10 I've been involved with PAHs since late 1980--late  
 11 1970s.  
 12 Q. And are you considered an expert in human  
 13 health-risk assessment?  
 14 A. Yes, I am.  
 15 Q. Are you an expert in any other field?  
 16 A. I have expertise in general toxicology.  
 17 Q. And what were you asked to do for the Republic of  
 18 Ecuador?  
 19 A. I have been asked to evaluate the human health  
 20 risks in the Concession Area, and in so doing I've reviewed  
 21 a variety of reports, research articles, documents, site  
 22 data.  
 23 Q. And can you please tell us what sites you  
 24 evaluated in the Concession Area.  
 25 A. For a quantitative assessment, I've evaluated nine

02:24 1 sites. They're on the map that I guess is in front of you;  
 2 and as you can see, these sites are located widely  
 3 throughout the Concession Area.  
 4 Q. And what conclusions have you drawn from the nine  
 5 human health-risk assessments you've conducted?  
 6 A. Well, my overarching conclusion is that there are  
 7 sufficient health risks to warrant further action at all  
 8 the nine sites that I investigated via a quantitative human  
 9 health-risk assessment. To draw this overarching  
 10 conclusion, I found that oil was released from pits and  
 11 other sources and was located in places in the environment;  
 12 that is the soil, the sediment, the water, where people  
 13 could come into contact with it in sufficient quantities to  
 14 cause a health risk, and that these health risks are based  
 15 on both current and future exposures, and that they're in  
 16 both. In human health-risk assessment we only have two  
 17 buckets of health effects: Cancer and non-cancer. We  
 18 don't divide it any further, and I found that there are  
 19 both non-cancer and cancer health risks, although not  
 20 necessarily both at each site.  
 21 Q. And do HHRAs prove actual particular harm to a  
 22 particular person?  
 23 A. No, they do not. HHRAs are a regulatory tool to  
 24 make decisions, and they're meant to be protective of human  
 25 health, and they're meant to avoid actual harm.

02:26 1 Q. You filed four reports in this arbitration; is  
 2 that correct?  
 3 A. That's correct.  
 4 Q. Can you please identify the opinions in each of  
 5 your Reports that you would like this Tribunal to consider?  
 6 A. Yes. My First Report was a scoping report. It  
 7 was submitted in February 2013, and that Report basically  
 8 was a synthesis of my understanding of the site. It was  
 9 before I visited the site. The final three reports  
 10 contained quantitative information, and they were an  
 11 evolution where that First Report was the starting point,  
 12 but they went--I had quantitative site information that I  
 13 felt was reliable and could conduct a quantitative risk  
 14 assessment using it. And as time went on, I also went on  
 15 to develop more sophisticated evaluations for Total  
 16 Petroleum Hydrocarbons in crude oil, and so those are the  
 17 Reports that are most relevant, I think, to the Tribunal.  
 18 Q. Is your qualitative Report necessary for this  
 19 Tribunal to consider given your conclusions and findings  
 20 from your later-conducted quantitative HHRAs?  
 21 A. No, my opinions on the necessity for further site  
 22 investigation and cleanup are based on the quantitative  
 23 risk assessments in the final three reports.  
 24 Q. In your First Report, you reviewed several studies  
 25 discussing the link between adverse health effects and

02:27 1 exposure to oil. Do you recall that?  
 2 A. Yes.  
 3 Q. And you stated that toxic contaminants released  
 4 into the environment by Texaco resulted in or caused  
 5 immediate and delayed effects in children and adults living  
 6 in the Concession Area; is that correct?  
 7 A. Yes.  
 8 Q. Does that mean that you found that specific  
 9 persons have been harmed by TexPet's contamination?  
 10 A. No, I did not mean to imply any specific person  
 11 was harmed. I looked at no specific person. And I believe  
 12 that conclusion was inartfully worded, and perhaps should  
 13 have said risk of adverse effects rather than adverse  
 14 effect. I did not evaluate individual harms in the least.  
 15 Q. Dr. Strauss, do you consider yourself an expert in  
 16 epidemiology?  
 17 A. No, I'm not.  
 18 Q. And have you read the reports of the Republic's  
 19 health experts, Drs. Grandjean and Laffon?  
 20 A. Yes, I have.  
 21 Q. Is it your understanding that, in those Reports  
 22 they've cited to and have independently concluded that  
 23 exposure to Oriente crude oil will result in risk of  
 24 adverse health effects?  
 25 A. That's my understanding, yes.

02:29 1 Q. And given your understanding, what is your opinion  
2 as to whether or not this Tribunal will need to consider  
3 your review of epidemiology studies linking exposure to oil  
4 and human health risks?  
5 A. I believe the Tribunal can rely on the opinions of  
6 Dr. Grandjean and Dr. Laffon.  
7 Q. And I just have one last question for you. In  
8 your First Report, you gave an overview of various types of  
9 pathways that can exist at a given site; is that correct?  
10 A. Yes, I did.  
11 Q. Are you asking the Tribunal to consider or take  
12 into account pathways you did not evaluate in your nine  
13 later conducted HHRAs to determine whether cleanup is  
14 necessary?  
15 A. I believe that the pathways that I evaluated are  
16 sufficient to show a significant risk that requires further  
17 investigation and cleanup.  
18 The further additional pathways, if they were  
19 quantified, I think might show further risk, but those are  
20 not necessary for me to reach my conclusion.  
21 Q. Thank you, Dr. Strauss. You can begin your  
22 presentation.  
23 If it's helpful, I can direct you to where the  
24 site for Shushufindi 43 is. I believe Dr. Strauss gave you  
25 the cites for the wipe samples that she amended. It's her

02:30 1 November 7, 2014--that's for the wipe samples.  
2 PRESIDENT VEEDER: Give us that.  
3 MS. SILVER: The wipe samples are the 11/7/2014  
4 Report at Footnote 45, which is on Page 24.  
5 PRESIDENT VEEDER: I'm way behind you. Which tab  
6 is that in your bundle?  
7 MS. SILVER: Tab 3.  
8 PRESIDENT VEEDER: I've got Tab 3. Go ahead.  
9 MS. SILVER: It's Footnote 45, which is on  
10 Page 24.  
11 And I do believe there may also be discussion of  
12 them on Pages 5 and 6, as Dr. Strauss said.  
13 PRESIDENT VEEDER: I'm sorry, I'm being really  
14 slow. I don't see a footnote.  
15 I'm catching up. Okay. Footnote 45, what do I  
16 change?  
17 MS. SILVER: Nothing. She was just pointing out  
18 that--well, the main point is that the wipe sample did not  
19 contain a signature of Oriente Crude, and I believe that it  
20 stated that it did.  
21 PRESIDENT VEEDER: We'll just note that. We don't  
22 see that, but we'll note it.  
23 And the other correction?  
24 MS. SILVER: And the other correction is with  
25 respect to site Shushufindi 43, and that is in the same

02:32 1 report on Page 20, and there is a table that appears on  
2 that page, and it is the last row, and it's for a  
3 groundwater sample.  
4 Oh, no, no. I'm sorry, that's incorrect,  
5 actually. Let me get back to you with the right page.  
6 Sorry.  
7 PRESIDENT VEEDER: That's okay.  
8 Please start your presentation.  
9 THE WITNESS: Yes, sir.  
10 I want to talk to you about risk-assessing my  
11 results, and also I'm going to, throughout the  
12 presentation, I'm going to talk a little bit about why my  
13 results differ from Dr. McHugh's.  
14 The bolded statement pretty much comes from the  
15 EPA's Web site describing the purpose of USEPA human health  
16 risk assessment, and it's to characterize the nature and  
17 magnitude of health risk to humans basically from chemicals  
18 that may be present in the environment.  
19 The origin of this methodology is to be able to  
20 make decisions in the absence of complete information. In  
21 the environmental arena, we never have complete  
22 information. We never know exactly how much dirt people  
23 eat. We never know exactly how many times they're going to  
24 be one place or another. We never have exact toxicity  
25 values, so the idea is to be able to make decisions of

02:34 1 whether site cleanup is necessary, and we use  
2 risk-assessment policy to have a methodology to use  
3 inference to bridge the gaps in the data that we have.  
4 And ultimately, the purpose of the risk  
5 assessments is to answer the question: "is remediation  
6 necessary," and if it is necessary, how clean is clean  
7 enough?  
8 I want to point out also that risk assessors, at  
9 least in the EPA scheme of things, provide information to  
10 those who make cleanup decisions, and thus, it's the  
11 responsibility of risk assessors to provide some of the  
12 uncertainties that are involved in the risk  
13 characterizations and to be very transparent in those  
14 uncertainties.  
15 The methodology--this slide is quite similar to  
16 the one that Dr. McHugh showed you yesterday for the  
17 four-step process in an EPA-type risk assessment, and the  
18 steps are the same. The middle steps actually can be done  
19 in either order. They're really in parallel, the exposure  
20 assessment and the dose response or toxicity assessment,  
21 two names for the same thing. I'm going to talk about them  
22 in the order of exposure assessment and then toxicity  
23 assessment.  
24 I want to start with the step one, which is the  
25 hazard characterization step, and this is a really critical

<p style="text-align: right;">2020</p> <p>Sheet 39</p> <p>02:35 1 step. This is where you scope the problem, understand it,  2 try and figure out what are the chemicals of concern, what  3 are the pathways of concern and also within the context of  4 the site you're looking at, so a site in California and a  5 site in the Concession Area, there are clear differences in  6 how people use that site, so all of that comes in the  7 hazard identification step.  8 And all of that information is pieced together in  9 what's called a "conceptual site model." This is actually  10 something that Dr. McHugh omitted from his Reports, and I  11 think would have helped him organize--it helps me at least  12 to organize my thinking. And that's what it's intended to  13 do, it's part of risk-assessment methodology whether it's  14 from ASTM or from EPA to organize your thoughts, and here  15 is what it is.  16 You start with the source, and in our case it's in  17 the Concession Area. What I evaluated was generally from  18 an oil pit. The next step is to figure out where it goes  19 to where people may come into contact with it, and that we  20 called the primary exposure media. And if we just go  21 across the top line, that could be, for example, soil.  22 The next step is to identify the exposure route,  23 and that could be typically for soil it's ingestion or it's  24 dermal contact. It could be also inhalation. I didn't  25 evaluate inhalation in my quantitative assessments here.</p>	<p style="text-align: right;">2022</p> <p>02:39 1 I want to spend some time on this slide, which is  2 talking about--it's an example of exposure pathways that  3 one would find in the Concession Area, and this graphic is  4 meant to represent a composite of what we observed at the  5 various sites, so it's not particular to any particular  6 site. And what you can see in the center, that residence  7 there, is not atypical of the residences, and you may well  8 see them in your site visit when you go there.  9 On the left is what is intended to be surface  10 contamination. If it's from a pit, it would be much  11 larger. Those pits are large. In this slide it's much  12 smaller, and there's various sources of water supply here.  13 There is a dug well, and there is a stream or a river.  14 There is laundry. You always see laundry. There's some  15 chickens there and cattle. Cattle you see some places, not  16 others. Chickens are everywhere. So, you always see that  17 at these sites.  18 And to just talk a little more explicitly, with  19 respect to soil exposure, people can be exposed to soil,  20 say this is intended to be a farmer, and so during farming  21 activities, and that would involve direct contact with the  22 soil, and so dermal exposure and also ingestion exposure to  23 that soil.  24 There can also be indirect pathways, which I did  25 not quantify but could well be important input here. If</p>
<p style="text-align: right;">2021</p> <p>02:37 1 The final step is to determine whether this  2 affected population, and if so, who. So, it could be  3 residents who are children, residents who are adults, it  4 could be farmers. And all together, if you can go from  5 source to exposure media to exposure route to an affected  6 population, that is called a complete exposure pathway.  7 Now, life isn't quite as simple as that linear  8 model, and I just put in one small complication here--there  9 can be many--and that's the secondary exposure. So,  10 instead of the primary point of contact being the soil, say  11 near the pit, it could be that soil, that contamination can  12 get into water or sediment. And, for example, in the  13 Concession Area, that could happen. It's a very rainy  14 area, so the pits can fill up and overflow. That would be  15 one example.  16 I'm going to move to Step 2 to exposure  17 assessment, and this is EPA's definition of exposure  18 assessment, and it's the determination or estimation, and  19 it can be qualitative or quantitative, and it's  20 quantitative in my final three assessments of the  21 magnitude, frequency, duration, and route of exposure.  22 Exposure assessments may consider past, present, or future  23 exposures. I should say that guidance now, at this point,  24 basically requires you to consider present and future  25 exposure. That's a standard guidance.</p>	<p style="text-align: right;">2023</p> <p>02:41 1 the chickens or the cattle come into contact with those  2 contaminated soils, the same would be true of the  3 sediments, and then their meat or other products such as  4 eggs could become contaminated. Again, I didn't quantify  5 that pathway. It's one of the uncertainties of my risk  6 assessment.  7 The other pathway you can see here is that  8 contaminated soil is located quite close to that house, and  9 so you could--children and adults living near that house  10 could come into contact with it. And we saw this. There  11 were two sites that I quantified: Shushufindi 13 and  12 Shushufindi 34 both had pits in places where people would  13 come into contact with it, either be it agriculture use, or  14 children living--certainly at Shushufindi 13 there was a  15 child living in that house.  16 Groundwater exposure occurs primarily through the  17 use of dug wells as a domestic water supply. It also could  18 be discharged and contacted if springs are used as a water  19 supply. We observed both during the site visits there.  20 Groundwater--dug wells are very, very common in the area,  21 including at Lago Agrio 16, Shushufindi 43, and Shushufindi  22 25. They're quite common. Shushufindi 25 there is also a  23 former drinking water use at a spring.  24 The way exposure takes place for water supply is  25 all domestic uses of water, so it could be ingestion, it</p>



<p>Sheet 40</p> <p style="text-align: right;">2024</p> <p>02:43 1 could be dermal while showering. Ingestion includes not  2 only just drinking your water, but also when it's used  3 during cooking. It also can be via laundry, so if you're  4 washing your laundry in contaminated water, the  5 contaminants gets transferred to the laundry, and then  6 you're wearing the contamination, where it's available for  7 dermal absorption. Again, that's not a pathway I  8 quantified. I don't know how much it would contribute, but  9 it's one of the unquantified pathways.  10 Another important pathway, sediment exposure. We  11 encountered contaminated sediment in several sites; Lago  12 Agrio 2 will be one that you will be seeing at your site  13 visit. And you can come into contaminated sediment just  14 via the sediment or common layoff, so both sediment and  15 surface water at the same time. Surface water is used for  16 bathing, for laundry. And as a domestic supply, surface  17 water can also be used as a water supply without--in places  18 where there is not laundry, you will be at, I think,  19 Shushufindi--no, Aguarico 6. Aguarico 6, the farmer drinks  20 the stream water while he's working in this field, at least  21 according to what he said--according to an interview I had  22 with him. He claimed that.  23 And so, these resources are widely used, and  24 you're exposed to it in many ways.  25 I'm going to move to what is the goal of an</p>	<p style="text-align: right;">2026</p> <p>02:46 1 applying it differently.  2 One big difference is the drinking water ingestion  3 rate. I have used adult ingestion rate of 7.5 liters per  4 day, which I view and with evidence that that would be a  5 high end but not unreasonable rate to use in the Concession  6 Area where it's hot and it's a subsistence agriculture  7 population. Dr. McHugh used the then-EPA default of  8 2 liters per day. It's now 2.5 liters per day, but it was  9 two when he did his calculations.  10 Another difference is I included dermal absorption  11 in my evaluations. In his first two, he didn't include any  12 dermal absorption from either soil or water. And in his  13 final two or his last risk assessment, he did include  14 dermal contact with soil, but not from water.  15 I want to move to the toxicity assessment here.  16 This is actually Dr. McHugh's slide. And you may recall  17 that he talked to you about the effects of beer and the  18 impact of dose, and that if you consume a lot of beer in  19 one night, you could have severe effects, and if you  20 don't--if you have that dose over the course of the month,  21 you'll have fewer effects, if any.  22 The piece that Dr. McHugh didn't mention was that  23 risk assessment is basically concerned with long-term  24 lifetime exposure. Risk assessment methodology was meant  25 to evaluate the impacts of long-term exposure and to</p>
<p style="text-align: right;">2025</p> <p>02:44 1 exposure assessment, and now I'm sort of back to theory.  2 I'm taking you out of the Concession Area here.  3 The goal is to calculate the average daily dose to  4 which an RME is exposed to environmental concentrations,  5 soil, sediment, air. What's an RME? You might want to  6 know. RME is a reasonably maximally exposed receptor or  7 individual. It is the hypothetical individual to whom that  8 we calculate the exposure. And regulatory decisions are  9 made from exposure and risk to this hypothetical RME. The  10 intent is not to go over to worst, worst case, but to be a  11 reasonable maximal exposure because the intent is to  12 protect all populations.  13 The method of calculating an average daily dose is  14 to combine environmental concentrations in either  15 site-specific or default exposure factors. Exposure  16 factors can be things like soil and sediment ingestion  17 rate, drinking water ingestion rate, how long people live  18 at the site. I used a combination of default in one case,  19 a couple of cases some site-specific risk--site-specific  20 exposure factors.  21 What I've highlighted here is where Dr. McHugh and  22 I disagree. Largely, I think you can see this as a  23 comparison slide, and I think one message is we used  24 actually a lot of the same things, a lot the same exposure  25 factors. We are using the same methodology; we're just</p>	<p style="text-align: right;">2027</p> <p>02:48 1 protect against health-impacts of long-term exposure. And  2 you all know that there's different impacts. If you drink  3 beer over a lifetime, you are at risk of liver disease and  4 other diseases. Risk assessment is also intended to  5 protect susceptible populations, and so one beer to a  6 healthy adult is not the same as a dose to a pregnant  7 woman. We know that there's harmful effects of alcohol  8 ingestion during pregnancy and it certainly is not going to  9 be protective of a two-year old and a full bottle of beer,  10 so we're intended to protect everybody.  11 To go further with the toxicity assessment, the  12 point of the toxicity assessment and a quantitative risk  13 analysis is to identify data to quantify the relationship  14 between exposure and the adverse effect, and I mentioned  15 earlier in risk assessment we considered basically two  16 buckets of adverse effects: Non-cancer and cancer. And on  17 the toxicity assessment we used things called toxicity  18 factors, what we referred to as toxicity factors to  19 quantify this dose, and for non-cancer effects, we called  20 that a reference dose, and for cancer we called it a slope  21 factor. The difference is how we view what happened, the  22 response at low doses that I'm going--we can talk about  23 that, if you want.  24 But I also want--we also--one of the big issues in  25 assessing risk in the Concession Area is how do you assess</p>

02:50 1 risk of crude oil, a complex mixture that we're often  
 2 measuring as some measure of Total Petroleum Hydrocarbons,  
 3 and this is one of the big differences between Dr. McHugh's  
 4 and my risk assessment. He did not evaluate the Measures  
 5 of Total Petroleum Hydrocarbons, and I did. There's a  
 6 number of ways to do that, but one thing that you can't do  
 7 is ignore it. One of the things that Dr. McHugh said was  
 8 that the World Health Organization didn't have any  
 9 quantitative toxicity factor. They actually published  
 10 drinking water guidelines for Total Petroleum Hydrocarbons,  
 11 and that allowed him to not quantify it.

12 But the problem is, if you read that document on  
 13 how WHO quantifies Total Petroleum Hydrocarbons, what they  
 14 say is, and this is a quote from that document, that you  
 15 have to consider sensory assessment for taste and odor, and  
 16 that they're going to be detectable at concentration below  
 17 concern for health. And so, therefore, taste and odor are  
 18 the canaries in the coal mine. So, to ignore the odor and  
 19 taste is basically saying, well, we'll allow people to  
 20 drink that water, and because there is no standard, there  
 21 is no health risk. Well, that's not the case. They didn't  
 22 develop a health risk because they thought they had a  
 23 canary.

24 You have seen this slide--not this slide, but sort  
 25 of the elements of the slide before. Crude oil is a

02:54 1 you have the entire forest, and the forest is a much more  
 2 complicated ecosystem. And if you're just looking at  
 3 individual trees, you're going to miss a lot of important  
 4 information. And that's really my view of why it's much  
 5 more important to consider whole mixtures and use a TEM  
 6 approach and a comparable approach to toxicity evaluation  
 7 than just relying on the, you know, tip of the filter and  
 8 the 20 chemicals of 8270 and 8260.

9 And so, I want to come to the benchmark, how I  
 10 evaluated the toxicity of crude oil in my more  
 11 sophisticated 2014 evaluation. And I calculated a  
 12 reference dose, the appropriate toxicity factor for  
 13 non-cancer evaluation, a reference dose using industry data  
 14 and standard EPA methodology. The industry data was a  
 15 90-day study in which crude oil--actually, several crude  
 16 oils were painted onto the backs of mice--sorry, rats, and  
 17 the outcome of that study--well, there are a number of  
 18 outcomes, these were the four that occurred at the lowest  
 19 dose of the applied crude oil. And you can see a number of  
 20 effects on the thymus, the bone marrow, and the liver.

21 One of the points I wanted to make is Dr. McHugh  
 22 said the skin is a barrier, and it keeps the chemicals out.  
 23 Well, that's not really true. I mean, it doesn't allow as  
 24 much absorption as ingestion exposure, but chemicals still  
 25 get through.

02:52 1 complex mixture. It contains thousands of chemicals. It's  
 2 really hard to measure it.

3 This is another slide from Dr. McHugh's  
 4 presentation, but I've changed it a little bit because I  
 5 want to highlight where we differ, and this is really--we  
 6 interpret things differently here.

7 TEM, the total extractable materials, is the  
 8 Measure which measures the greatest majority of compounds  
 9 that are in crude oil. I'm not going to talk about 418.1,  
 10 but it's fairly similar in terms of what it covers. And  
 11 then there is the fraction methods, the 8015 method and the  
 12 and Massachusetts method and the Texas method that we  
 13 talked about that looks at fractions, and that covers a  
 14 little--that covers actually probably a third to a quarter  
 15 of what is in crude oil in terms of its components, and  
 16 then you're filtering down to what Dr. McHugh considered  
 17 the most precise measurements, which measures the volatile  
 18 organic compounds and some of the PAHs.

19 Well, what your--so, you do--it is true that you  
 20 have more exact measurements of maybe 20 or 30 of the  
 21 individual compounds, but you're losing all the information  
 22 about all the other stuff in the mixture which you're  
 23 basically assuming is non-toxic, because you don't have any  
 24 information about it, and so it's like down at the bottom  
 25 you have the tree or you have five trees, and at the top

02:56 1 Because remember, this study, the crude oil was  
 2 applied to the backs of the rats, and the effects that were  
 3 measured were the internal organs, clearly the components  
 4 of crude oil, the toxic components of crude oil, which are  
 5 the high end PAHs in this case, were internalized where  
 6 they caused damage.

7 Let me just go back and say one thing. In that  
 8 industry study, or it was reported by American Petroleum  
 9 Institute and industry trade group, there was a study  
 10 conducted by industry, and it was reported by the trade  
 11 group API to the USEPA, and this was the basis of my  
 12 calculation. I called it a benchmark dose as do others of  
 13 my reference dose calculation. And again I followed EPA  
 14 methodology to calculate a reference dose, and that  
 15 is--it's simply dividing the benchmark dose, which the  
 16 American Petroleum Institute calculated for me by a  
 17 composite uncertainty factor of 3,000.

18 And so, what is that? Well, remember, it's a rat  
 19 study, so how does it have an impact on humans? That  
 20 traditionally is a factor of ten, and I used a factor of  
 21 ten for that. How different are humans from each other?  
 22 Well, probably more different than a factor of ten, but  
 23 that's the commonly applied uncertainty factor, so I  
 24 applied that and so on.

25 So, I used again, following EPA methodology, to go

02:57 1 from an observed effect in an animal to an effect that  
2 should be a safe dose to which all humans can be exposed.  
3 Now, I talked to you now about the first three  
4 steps. I'm moving on to the fourth step and how to  
5 characterize the risk, and this is putting together the  
6 toxicity information and the exposure information, and for  
7 cancer it's simply a multiplication of the lifetime average  
8 daily dose times the toxicity factor, and there is a  
9 benchmark range that EPA and other organizations use of one  
10 in 10,000, that's one in ten to the minus four; to one in a  
11 million, that's ten to the minus six, by all chemicals, by  
12 all pathways. That's where you make decisions, depending  
13 on the particular thing you're evaluating. Above that  
14 number, above one to the ten minus four risk, you almost  
15 always take action, below one in a million you consider it  
16 an insignificant risk.

17 In my nine evaluations or my evaluations at the  
18 nine sites, I found that seven well sites had cancer risks  
19 in that risk range where one often looks further, so  
20 requiring more evaluation. And under current conditions,  
21 two risks one in Aguatico 6 and at Lago Agrio 2, two sites  
22 you're going to be going on the site visit as I understand  
23 it, where it was above the EPA risk range.

24 Going to the hazard index, so the non-cancer  
25 effects, again the reference dose is intended to be a safe

03:01 1 crude oil. And to me this is the apples to apples  
2 comparison because you're comparing all the toxicity of all  
3 of the crude oil with the concentration of all of crude  
4 oil, and that's why I used--that's why I think it's the  
5 most important one.

6 I want to end with just a couple of comments,  
7 other comments, on why Dr. McHugh and I had such different  
8 conclusions regarding risk. This is--I've talked about  
9 several of them.

10 On sample location, we used a very different  
11 sample set. The guidance requires samples from source  
12 areas. I believe Dr. McHugh used the delineation samples,  
13 which were intended to be--to surround the source area but  
14 not to test the source area. I used the LBG datasets,  
15 which were--looked at the source areas.

16 And again, quantitative risk assessment requires  
17 concentrations of contaminants in the source areas.

18 Again, I think another big difference in our  
19 analysis is the chemicals that we included in the analysis,  
20 actually our cancer risk assessments were virtually the  
21 same. We used the same PAHs. I did not apply a whole  
22 mixtures approach, so our results are fairly similar or  
23 would be if we used each other's dataset.

24 But for the TEM analysis, again, I included the  
25 entire range of components of crude oil. Dr. McHugh used

03:00 1 dose, and so it's just a comparison of the average daily  
2 dose to that safe reference dose. And it's considered that  
3 when the dose is greater than the reference dose, further  
4 action is required, further site investigation or cleanup.

5 This is a slide that Dr. McHugh showed. He showed  
6 a slightly more complicated version of it. I took out some  
7 of the middle columns, just to make it easier to  
8 understand.

9 I do want to say that I put them all in there for  
10 the sake of transparency, not for the sake of confusion. I  
11 wanted to be--to show clearly the uncertainty and the  
12 differences that would appear by the different methods of  
13 calculation. So, what remains on this slide is the  
14 Massachusetts method, which Dr. McHugh acknowledges is used  
15 in regulatory decision-making, the 8015 calculations which  
16 Dr. McHugh suggests are only good for screening, which, by  
17 the way, he had access to and did not use, but he did  
18 acknowledge that you could do that.

19 And the final column on your right is my method  
20 for combining the whole mixtures so the toxicity from the  
21 whole product of crude oil, which I just explained to you  
22 with TEM.

23 Now, I think this is the most reliable method. It  
24 does give the highest numbers, which in some ways you would  
25 expect because you're covering the entire range of the

03:03 1 just a few them, just to give an example of that, the whole  
2 mixture versus the fractional approach, and Dr. McHugh  
3 evaluated less than 1 percent of the chemicals in crude  
4 oil.

5 And I hope that clarifies risk assessment and what  
6 I did in my opinions, and that concludes my presentation.

7 PRESIDENT VEEDER: Thank you very much.  
8 Are there any more questions from the Respondent?  
9 MS. SILVER: No. Thank you.

10 PRESIDENT VEEDER: There will now be questions  
11 from the Claimant.

12 CROSS-EXAMINATION  
13 BY MS. RENFROE:  
14 Q. Good afternoon, Dr. Strauss.  
15 A. Good afternoon.  
16 Q. I appreciate the remarks that you made with your  
17 counsel at the beginning of your presentation about  
18 clarifying some of the points in your Reports--that may  
19 save us a little bit of time--but I would like to start  
20 with a point and make sure that the clarification you  
21 offered is, indeed, clear to everybody.

22 And so, if I might begin with our Slide 1, and  
23 while I'm doing this, I will ask if we can have passed out  
24 to you the first binder of documents.  
25 So, Mr. Johnson, may we have Slide 1, please.

03:05 1 What I have on the screen, Dr. Strauss, is a quote  
 2 from the Republic of Ecuador's counsel made during Opening  
 3 Statement, and please take a moment and get yourself  
 4 organized. I'm not trying to rush you through these  
 5 materials, but I don't know if you were here for the  
 6 Opening Statements, but this is a quote from, I believe,  
 7 Ms. Silver, who was presenting regarding health risks on  
 8 behalf of the Republic of Ecuador. So, take a moment, read  
 9 that, and then I have a few questions about it.  
 10 (Witness reviews document.)  
 11 A. Okay.  
 12 Q. Okay. So, I think that your comments at the  
 13 beginning in response to Ms. Silver's questions helped  
 14 clarify, but I want to make sure for this record we are  
 15 very clear because your Reports have spoken about actual  
 16 health impacts in the past and in the present. And I heard  
 17 you say earlier at the beginning of your introduction, that  
 18 those were, perhaps, inartful words on your part, and that  
 19 you were not intending to render opinions about actual  
 20 human health effects or impacts.  
 21 Do I have that correct?  
 22 A. You have that correct.  
 23 Q. All right. And so, as is stated in this portion  
 24 of counsel's Opening Statement--and I want to know if you  
 25 agree with this--that your task has been to look forward

03:08 1 question of whether there may be in the future a potential  
 2 human health risk, and that's the scope of what you have  
 3 done here; is that correct?  
 4 A. Well, I would characterize it looking at current  
 5 and future exposure scenarios and evaluating health risks  
 6 based on those scenarios to see whether they cause a  
 7 significant risk of harm, and again within the regulatory  
 8 context of making the decision about whether cleanup or  
 9 further investigation is required.  
 10 Q. And that's right. That takes us to the next point  
 11 that I wanted to make, which is, the question you're trying  
 12 to answer is whether further evaluation of a given site is  
 13 needed; correct?  
 14 A. In part.  
 15 Q. And/or whether remediation is needed?  
 16 A. That's correct.  
 17 Q. Those are the two questions that your work has  
 18 undertaken to answer; correct?  
 19 A. Those are the--yes, that's what I would like to  
 20 put before the Tribunal--for the Tribunal to consider.  
 21 Q. And to the extent someone characterizes your  
 22 Reports in a different fashion, that would be  
 23 inappropriate?  
 24 A. That would certainly be--yes.  
 25 Q. Right. That's not what you intend. That's not

03:06 1 and to evaluate the possibility that there may be a  
 2 theoretical human health risk from conditions in the  
 3 Concession Area.  
 4 A. Yes. The way I conducted my quantitative risk  
 5 assessments at the nine sites, I did not evaluate or  
 6 consider past exposures. They were present and future  
 7 exposure pathways with--consistent with the methodology of  
 8 EPA to determine whether cleanup is required or, at a  
 9 minimum, whether further investigation is required because  
 10 the dataset I had was not a complete dataset.  
 11 Q. And just to put a bow around this point, if you  
 12 will, to the extent that your Reports mention actual human  
 13 health effects, then we should--we should put those  
 14 comments aside. Those should not be--you're not intending  
 15 to convey that, and those should be dismissed?  
 16 A. That's correct. I would like the Tribunal to rely  
 17 on the quantitative risk assessments and the risk from now  
 18 going forward.  
 19 Q. Okay. So, that means that we should put aside  
 20 your very First Report, which was your qualitative risk  
 21 assessment; correct?  
 22 A. That is correct.  
 23 Q. All right. And then continuing to look at this  
 24 portion of the argument by counsel for the Republic, she  
 25 characterizes your work as determining or weighing on the

03:10 1 how you intend that they be used?  
 2 A. That's correct.  
 3 Q. Now, am I also correct that in undertaking your  
 4 analysis of conditions at the nine sites that you  
 5 evaluated, you did not take into account the Remedial  
 6 Action Plan between TexPet, the Republic of Ecuador and  
 7 Petroecuador?  
 8 A. I took no account of that. I accounted only for  
 9 the data as it sits now.  
 10 Q. Right. And so, that means that you performed your  
 11 quantitative human health-risk assessments as if the  
 12 Remedial Action Plan and the Settlement Agreement between  
 13 TexPet, Petroecuador, and Ecuador had never occurred?  
 14 A. That's correct.  
 15 Q. And so, that means that you did not concern  
 16 yourself with whether a given sample was from an area that  
 17 was not assigned to TexPet for remediation?  
 18 A. I neither concerned myself or most of the time had  
 19 knowledge of that.  
 20 Q. Right. You were oblivious to those facts--  
 21 With all due respect--and I didn't mean any  
 22 disrespect, but in undertaking your work, you did not seek  
 23 to focus on a sample or evaluate areas that had been  
 24 assigned to TexPet or not?  
 25 A. That's correct.

03:11 1 Q. Now, am I also correct that you acknowledge that  
 2 Petroecuador and/or affiliates of Petroecuador have  
 3 operated the former Concession Area continuously since June  
 4 of 1990?  
 5 A. That's my understanding. I don't have direct  
 6 knowledge of that.  
 7 Q. Right. And are you aware that Petroecuador has  
 8 not only operated in the former Concession Areas but in  
 9 many places it has actually expanded those operations?  
 10 A. I am generally aware of that.  
 11 Again, I'm not offering opinions on this area.  
 12 Q. I understand.  
 13 But, to the extent that you are offering opinions  
 14 about whether any of these nine sites that you examined  
 15 might need further evaluation or might need remediation, am  
 16 I correct that you are offering no opinion about whose  
 17 actions might have caused those impacts?  
 18 A. I am not offering that opinion, no. Let me  
 19 qualify it to say that I relied on data from Berger, from  
 20 LBG who have looked at that, so I will defer that to them.  
 21 Q. So, you're not providing any opinion to this  
 22 Tribunal about whose activities caused the impacts at a  
 23 given location at any of those nine sites?  
 24 A. No--that's correct.  
 25 Q. Is that correct?

03:14 1 sites in 2013 and 2014, that, of course, that data was not  
 2 available to the Lago Agrio Court in the Lago Agrio  
 3 Litigation, was it?  
 4 A. Not exactly the LBG data, no.  
 5 Q. Right. Now, were you involved--were you  
 6 personally involved in the collecting of that data; that  
 7 is, the LBG data?  
 8 A. Somewhat.  
 9 Q. Did you direct where the samples were to be taken  
 10 in any way?  
 11 A. Only a very limited number.  
 12 Q. At which sites, please?  
 13 A. Lago Agrio 2.  
 14 Q. Any other site?  
 15 A. Well, I conferred with LBG on the Sampling Plan  
 16 throughout. I was a part of that team, and so there were  
 17 conversations. I was not in the field and said take a  
 18 site--take a sample here, take a sample there. That was  
 19 not part of what I did, with the exception of Lago Agrio 2.  
 20 Q. And at Lago Agrio 2, were you involved in the  
 21 taking of those wipe samples?  
 22 A. Yes.  
 23 Q. Any other samples?  
 24 A. The surface soil sample in front and back of the  
 25 house.

03:13 1 A. That is correct.  
 2 Q. Okay. All right.  
 3 Now, another point of clarification, is it true,  
 4 Dr. Strauss, that you were not an Expert, and had no  
 5 involvement in the Lago Agrio Case?  
 6 A. Could you--I want to answer this one properly, so  
 7 could you please say it again.  
 8 Q. Let me see if I can give you a better question.  
 9 Did you serve as an Expert in the Lago Agrio Case?  
 10 A. No.  
 11 Q. And the quantitative risk assessments that you  
 12 have provided to this Tribunal were not provided to the  
 13 Lago Agrio Court for the Lago Agrio Case, were they?  
 14 A. Certainly mine were not.  
 15 Q. Right.  
 16 And, to your knowledge, the Plaintiffs in the Lago  
 17 Agrio Case did not provide any kind of quantitative human  
 18 health-risk assessment for that case, did they?  
 19 A. I don't know.  
 20 Q. None has been provided to you, has it?  
 21 A. No, I don't believe so.  
 22 Q. Right.  
 23 So--and I think this would be clear and implicit  
 24 in the questions I just asked, but for the record, the  
 25 sampling data that LBG collected from former Concession

03:16 1 Q. Okay. And I think we will be getting to your  
 2 calculation tables shortly, so when we get there, perhaps  
 3 you could flag for me which samples you actually were  
 4 involved in taking, but you said they were surface soil  
 5 samples?  
 6 A. There were two samples of surface soil, one sample  
 7 of surface soil from the patio area of Lago Agrio 2, and  
 8 then there was a sample from the back of that house, which  
 9 was exposed asphaltic material, which was then evaluated.  
 10 Q. Okay.  
 11 A. I think it has a soil label on it, but it is  
 12 not--it wasn't like what you consider soil.  
 13 Q. Okay. We may get there this afternoon.  
 14 A. I hope we don't get there Monday.  
 15 (Laughter.)  
 16 Q. Okay. So, let me switch gears just a little bit.  
 17 Do you agree with the conclusion that we've read  
 18 in one of the reports of LBG, that looking at an  
 19 environmental sample, just that sample itself, that one  
 20 cannot determine the source of the material in that sample?  
 21 A. Why don't you try that again. I don't think I got  
 22 it.  
 23 Q. I will be glad to.  
 24 So, in one of LBG's Reports--and I can find it if  
 25 we need it--but they acknowledged that if you're simply

03:17 1 looking at an environmental sample, the analytical result  
2 of a soil sample, for example, that just looking at that in  
3 and of itself, tells you nothing about whose action led to  
4 that particular impact; do you agree with that?

5 MS. SILVER: Excuse me, Ms. Renfroe, if you're  
6 going to ask her a question about an LBG Report, do you  
7 think you could give her a cite so that she could review  
8 it.

9 MS. RENFROE: I would be glad to do that, but  
10 maybe we can put that aside.

11 BY MS. RENFROE:

12 Q. Just independent of LBG, do you agree with me  
13 that, as it relates to your work at these nine sites?

14 A. I can only say that my practice is to evaluate the  
15 chemicals in a sample in the context of where that sample  
16 is taken, the depth of the sample, the location of the  
17 sample, if it's petroleum, actually the smell of the  
18 sample. If that's--or the staining, the logs, the field  
19 notes in association with it.

20 So, I try not to, if I have other data available,  
21 to try to look at things holistically.

22 Q. I understand, but that was really not my question.  
23 Let me try it again.

24 If you are presented with an analytical result  
25 from a laboratory for a soil sample, looking at that alone

03:20 1 think we've got it highlighted, and you see they've stated  
2 there: "As to the former, it is generally impossible to  
3 distinguish chemically between petroleum released by TexPet  
4 versus Petroecuador in most of the situations at issue in  
5 the Concession Area."

6 Do you see that?

7 A. Yes, I do.

8 Q. Okay. Do you agree with that?

9 A. I have no reason to disagree with it.

10 Q. No reason to disagree with it?

11 A. Correct.

12 Q. All right, thank you.

13 Now, let's move now to the topic of the  
14 quantitative risk assessments that you have done. And to  
15 be clear for this Tribunal, I'm going to focus on those  
16 quantitative risk assessments, since we are putting the  
17 qualitative risk assessment aside.

18 A. Okay.

19 Q. And if I'm counting correctly, I believe you've  
20 provided three different quantitative risk assessments; is  
21 that correct?

22 A. I don't know how you're counting. I provided  
23 quantitative risk assessments at nine different sites in  
24 three different reports.

25 Q. Okay. You've got your Reports there, and you've

03:19 1 doesn't enable you to determine whose or which entity's  
2 actions led to that particular impact; do you agree with  
3 that?

4 A. I think it just depends. If I don't know where  
5 the soil sample comes from, I obviously don't know where it  
6 is. If the soil is taken in the middle of my house that I  
7 have been living in for 30 years, maybe it's mine. I just  
8 can't answer that question exactly, as you phrased it.

9 Q. And so, if one said it's almost impossible to  
10 distinguish between Party A and Party B's actions in a  
11 given environmental sample, you would disagree with that,  
12 or you would agree with that?

13 A. I'm having trouble answering it because I've had a  
14 long career now, and I have been involved in a lot of  
15 forensics and looking at non--the weird chemicals that are  
16 involved to distinguish between one and another, so in a  
17 theoretical context, I think oftentimes you can find a  
18 means of distinguishing.

19 Q. Okay. Maybe we can pull up the LBG Report, the  
20 March 2015 Report, Page 7. I don't think I have that in  
21 your bundle, but let's see if Mr. Johnson can pull that up  
22 for us quickly. We will give him a little challenge for  
23 the afternoon.

24 A. I'm happy to share the burden.

25 Q. Now, I've got this quote from LBG's Report, and I

03:22 1 also got a bundle of documents in front of you. If you  
2 could look at Volume 1, and let's make sure we've got the  
3 right packet.

4 MS. RENFROE: And I believe the Tribunal has  
5 Volume 1 of our cross bundle.

6 BY MS. RENFROE:

7 Q. And in the inside pocket there are some charts  
8 that we have taken and blown up from your Reports.

9 Would you confirm, Dr. Strauss, that these are the  
10 tables from your Reports that contain--well, the results of  
11 your calculations of your quantitative risk assessments  
12 from your last three reports?

13 A. That is correct.

14 Q. And we are going to spend some time with these  
15 this afternoon, but just to make sure that we, just for  
16 orientation, your Table 5.1 and 5.2, which is the first two  
17 tables, actually first three tables, first three pages,  
18 those are from your December 2013 Report; correct?

19 A. Yes.

20 Q. And these are a combination of both a cancer risk  
21 assessment and non-cancer risk assessment; correct?

22 A. Correct.

23 Q. And then, if we turn further into the packet and  
24 we then come to your November 2014 Quantitative Risk  
25 Assessment, that is the results of it?

03:24 1 A. Yes.  
 2 Q. And these results are for the non-cancer  
 3 calculations; correct?  
 4 A. That's correct.  
 5 Q. And then finally, the last page is from your  
 6 March 2015 Report showing your most recent cancer risk  
 7 calculations; correct?  
 8 A. That's correct. And this is the correction, the  
 9 bottom line, on this one, Shushufindi 43, that should be, I  
 10 think, four times ten to the minus seven, or something like  
 11 that. That's the change.  
 12 Q. So, in the most right-hand column where it says  
 13 cancer risk, instead of five times ten to the minus six,  
 14 what should it say?  
 15 A. I believe it should be--this is off the top of my  
 16 head, but I believe it should say four times ten to the  
 17 minus seven.  
 18 Q. And that would--  
 19 A. For 4(e) minus 07.  
 20 Q. And in your opinion then, that means there is no  
 21 risk--no future cancer risk at this location, based on this  
 22 sample?  
 23 A. Well, the terminology I would use is "significant  
 24 risk," so, there is no significant risk, and that should  
 25 lose its yellow color.

03:25 1 Q. So, it would go to white?  
 2 A. Correct.  
 3 Q. Okay. Now, before we get into these calculations  
 4 and your results in some detail, my question to you is:  
 5 Did you do your own data quality evaluation of all of the  
 6 analytical data that you relied upon for these  
 7 calculations, or did you rely upon Dr. Short for that?  
 8 A. I actually relied on LBG for that.  
 9 Q. Okay. And, likewise, in the development or the  
 10 collecting of the samples and the compilation of the  
 11 database, did you also rely upon LBG for that?  
 12 A. Yes.  
 13 Q. And so, to the extent that LBG made an error in  
 14 presenting the data or in their data quality evaluation,  
 15 that would have an effect on your own calculations, would  
 16 it not?  
 17 A. I used the data that they provided me.  
 18 And, yes, it would, because if the data were  
 19 different, then my results would be different.  
 20 Q. Right, okay. And if it turns out that a sample  
 21 reported by LBG had some sort of data-reliability problem  
 22 with it, whether it was a blank, whether it had blank  
 23 contamination or it had some other problem from the  
 24 laboratory, to the extent that happened, then that would  
 25 have an effect on the reliability of your calculations that

03:27 1 depend on that sample?  
 2 A. That is correct.  
 3 Q. Right. Now, what I would like to do next,  
 4 again--I want to take a few steps before we dive into these  
 5 calculations--some of us might find them a bit daunting, so  
 6 I'm perhaps stalling a little bit, but I want to talk to  
 7 you just briefly about the methodology that you used to  
 8 develop the non-cancer calculations, and it may help just  
 9 to have in front of you and the Tribunal the middle set of  
 10 calculations where you have the six different methods, and  
 11 this would be the calculations from your November 2014  
 12 Report showing white, pink, and various shades of pink.  
 13 And we now have it on the screen.  
 14 A. Okay.  
 15 Q. Okay. So, you spoke a little bit earlier today,  
 16 and I believe you were here for the testimony of  
 17 Dr. McHugh, and what I want to talk about now is the  
 18 differences in the analytical methods that were used, some  
 19 of which you both used and some of which only you used.  
 20 Okay? That is the topic I want to go to now.  
 21 A. That's fine.  
 22 Q. Okay. So, when we're talking about this, we're  
 23 talking about the decision to use a fractionation approach  
 24 to analyzing an environmental sample or the approach that  
 25 you talked about meaning the TEM approach. Do you have

03:28 1 that dichotomy correct?  
 2 A. I believe I understand what you're talking about.  
 3 Q. And when you first did your quantitative risk  
 4 assessment in 2013, the very first three tables, you used  
 5 the fractionation approach which has also been described as  
 6 the VPH-EPH Method; correct?  
 7 A. That is one of the methods I evaluated.  
 8 Q. And the other method you used was the 8015 Method?  
 9 A. That's correct.  
 10 Q. And so, if we were to--if we wanted to understand  
 11 your calculations of non-cancer health risk using just  
 12 those two approaches, then we could go to your first three  
 13 tables; correct?  
 14 A. Well, you could go to Table 5-1 of both pages for  
 15 the first, what is it--from my First Report, from my  
 16 December 2013 Report, and then you could go to--I don't  
 17 think I numbered this table, but it's listed as Page 20,  
 18 the big colorful chart, complicated chart.  
 19 Q. Right.  
 20 A. For those that I evaluated in my November 2014  
 21 Report. I evaluated it--I evaluated Massachusetts EPH-VPH  
 22 and the Method 8015 in all of my quantitative assessments.  
 23 Q. Right. And going back to your first Quantitative  
 24 Assessment Report that you did in 2013, which is in the  
 25 first, I think you said it was Table 5-1.

03:30 1 A. Yes.  
 2 Q. Where there you used only the first two methods,  
 3 the VPH-EPH Method; correct?  
 4 A. Yes.  
 5 Q. And if we look at the very first page of your  
 6 tables--that is, Table 5-1, and if we look at the Lago  
 7 Agrio 2 site, for example, and looking at the sample  
 8 location T2A just as an example, we see that there are two  
 9 columns underneath that: EPH and DRO; correct?  
 10 A. Yes.  
 11 Q. And the EPH refers to the VPH-EPH Method that Dr.  
 12 McHugh spoke of yesterday?  
 13 A. That's correct.  
 14 Q. And the DRO column refers to the 8015 Method;  
 15 correct?  
 16 A. That's correct.  
 17 Q. And those two methods were the only two methods  
 18 that you used in 2013 in your risk assessment work for  
 19 2013; correct?  
 20 A. That's correct.  
 21 Q. And you presented those calculations to this  
 22 Tribunal with the expectation that the Tribunal would rely  
 23 upon your work?  
 24 A. Yes.  
 25 Q. And in presenting these risk calculations in 2013,

03:33 1 Q. And this is the one that you used in 2013 and  
 2 2014?  
 3 A. Yes.  
 4 Q. And so, if we can turn to Page 1, the  
 5 Introduction. The first paragraph.  
 6 A. The Preface?  
 7 Q. In the Introduction, Page 1. It's actually--no,  
 8 it's beyond the Preface. It says 1.0, Introduction?  
 9 A. I'm with you.  
 10 Q. You're with me. And the first paragraph.  
 11 And it says there, and if we could just read this  
 12 together: "A key component of the evaluation of petroleum  
 13 contaminated waste sites is the assessment of potential  
 14 human health risks from exposures to Petroleum Hydrocarbon  
 15 compounds, usually present as mixtures. An improved method  
 16 for the evaluation of health hazards posed by oral  
 17 exposures to these complex mixtures was developed and  
 18 described by the Massachusetts Department of Environmental  
 19 Protection in 1994," and then it goes on to say, "and  
 20 integrated into the Massachusetts Department of  
 21 Environmental Protections Bureau of Waste Cleanup." The  
 22 next sentence is the one I want to focus on. Are you with  
 23 me?  
 24 A. Yes, I am.  
 25 Q. "The method involves segregating the Petroleum

03:32 1 is it fair to say that you thought that your methodology  
 2 using the VPH-EPH approach was accurate and protective?  
 3 A. No, I think it's compliant with regulatory  
 4 guidance. That's a step beyond my conclusion. The EPH and  
 5 DRO only constitutes a fraction of the material in the  
 6 crude oil, but it was what I had, and I did the evaluation  
 7 that way.  
 8 These methods were developed for refined oil, for  
 9 refined petroleum products, and they're very good for that.  
 10 They're not as good for Crude, but, as a risk assessor, you  
 11 deal with the data that you have and live with uncertainty  
 12 for the rest.  
 13 Q. So, maybe we can take a moment and look at the  
 14 Massachusetts Method that you actually relied upon in 2013  
 15 and 2014. I think the Tribunal had a chance to look at  
 16 this briefly yesterday. Let me see if we can get it pulled  
 17 up. And it should be in your bundle.  
 18 A. I'm not sure what you're referring to here.  
 19 Q. Okay. Let me help you.  
 20 A. Okay.  
 21 Q. Right. And if you can look at Tab 10 in your  
 22 bundle there.  
 23 Is that the Massachusetts Method that I'm--for  
 24 shorthand purposes calling the VPH-EPH Methodology?  
 25 A. Yes.

03:35 1 Hydrocarbon compounds present in mixtures into broad  
 2 chemical classes (alkane, cycloalkane, alkene and  
 3 aromatics) and further into subgroups or fractions based  
 4 upon their size defined by number of carbon atoms in the  
 5 compounds."  
 6 Do I read that correctly?  
 7 A. Yes.  
 8 Q. And then the final sentence says: "These  
 9 designations were made upon consideration of the nature and  
 10 degree of comparative toxicity of compounds and structure  
 11 activity relationship considerations."  
 12 Do you see that?  
 13 A. Yes.  
 14 Q. And so, this is saying to us that the  
 15 fractionation method is the method to use for purposes of  
 16 evaluating crude oil in environmental samples, and this is  
 17 the method that you relied upon in your 2013 approach;  
 18 correct?  
 19 A. Well, I think that was a compound question, and  
 20 I'm having a hard time answering it. Perhaps you can  
 21 simplify it. There are two parts.  
 22 Q. I'm happy to do that.  
 23 First part is this paragraph and this method is  
 24 describing the fractionation approach which is called the  
 25 VPH-EPH Method?



03:36 1 A. That's correct.  
 2 Q. And, Number 2, this is the method that both you  
 3 and Dr. McHugh relied upon for your quantitative risk  
 4 assessments last year and this year?  
 5 A. That's also correct.  
 6 Q. And Number 3, when you wrote your Report in 2013  
 7 relying upon this method, you did not tell this Tribunal  
 8 that this method was not protective of human health, did  
 9 you?  
 10 A. No, I did not.  
 11 Q. Right. Now, let's move to the second point, which  
 12 has to do with the calculation of a toxicity value. That  
 13 is a second aspect in which you and Dr. McHugh have some  
 14 disagreement in approach; fair?  
 15 A. Fair.  
 16 Q. All right. So, let's move to that point, if we  
 17 may.  
 18 But actually before I move to that, I should cover  
 19 one more point. And that is the 8015 Method which you also  
 20 used.  
 21 So, now, to discuss that, let me take you to your  
 22 second set of tables, the one that is--that you did for  
 23 your 2014 Report which I have annotated, and this is the  
 24 set of tables that shows your six methods. The Tribunal  
 25 saw these yesterday during Dr. McHugh's presentation, and I

03:39 1 that discussion?  
 2 MS. SILVER: Ms. Renfro, if you're going to  
 3 reference or quote what he says, do you think you could put  
 4 it in front of her, please?  
 5 MS. RENFROE: Sure, I'd be glad to. Let's put up  
 6 McHugh's Slide 54 from Dr. McHugh's presentation.  
 7 PRESIDENT VEEDER: At some stage, we're going to  
 8 need a mid-afternoon break, so whenever it's convenient,  
 9 you say.  
 10 MS. RENFROE: I could go all afternoon on this, so  
 11 you tell me when you would like to take a break and perhaps  
 12 we should ask the witness.  
 13 PRESIDENT VEEDER: I'm glad it's only the  
 14 afternoon and not all night.  
 15 Well, we could do it now, if it's convenient.  
 16 MS. RENFROE: Now is perfectly convenient.  
 17 PRESIDENT VEEDER: We'll take a 15-minute break,  
 18 please don't discuss the case or your testimony away from  
 19 the Tribunal.  
 20 THE WITNESS: Thank you.  
 21 (Brief recess.)  
 22 PRESIDENT VEEDER: Let's resume.  
 23 MS. RENFROE: Thank you very much.  
 24 Can you hear me?  
 25 THE WITNESS: Yes, I can.

03:38 1 would like to focus on these for a moment.  
 2 As just to get us oriented if I could. As we look  
 3 at the screen and your table, we see that this is your  
 4 summary of non-cancer hazards sites investigated in 2014,  
 5 and when we look at the top row, we can see your first  
 6 column, which is actually your fourth column, but your  
 7 first column that has your calculation results, it says  
 8 VPH-EPH fraction; correct?  
 9 A. Yes, it does.  
 10 Q. And we just talked about that method; right?  
 11 A. Correct.  
 12 Q. Now, moving one to the right is your 8015 Method;  
 13 correct?  
 14 A. Oh, what you just put in green? Yes.  
 15 Q. Yes, it's just been highlighted.  
 16 And the 8015 Method is also one that you used in  
 17 2013 as well as 2014?  
 18 A. Yes.  
 19 Q. And that method is one that Dr. McHugh discussed  
 20 yesterday, and I believe you were here during his  
 21 presentation, and he discussed that there is a Louisiana  
 22 Department of Environmental Quality Guideline that says, as  
 23 between these two methods, VPH-EPH and 8015, if you have  
 24 the VPH-EPH data, the fractionated data, then that's what  
 25 you should use over and above the 8015 data. Do you recall

03:57 1 BY MS. RENFROE:  
 2 Q. So, before the break, I wanted to address one more  
 3 point about the analytical method and to talk about the  
 4 8015 method that you and Dr. McHugh used. And I think it  
 5 would be helpful to have in front of you, if you could,  
 6 your table from the 2014 Report, which we were looking at,  
 7 and then bear that in mind as we look to this.  
 8 So, I had asked you a question about the testimony  
 9 of Dr. McHugh yesterday, which I believe you heard, about  
 10 the regulatory guidance from the State of Louisiana that  
 11 says: When you have fractionation data, such as what you  
 12 get with VPH and EPH, versus 8015, if you have the  
 13 fractionation data, that should be used for management  
 14 decisions at contaminated sites. And my question is--I  
 15 know you see the guidance here, and you heard the testimony  
 16 of Dr. McHugh yesterday on this point; correct?  
 17 A. Yes.  
 18 Q. And you would agree that the fractionation data  
 19 provides, as between 8015 and the VPH-EPH, it provides the  
 20 more precise information about the specific components in  
 21 crude oil that potentially present the most risk?  
 22 A. I don't agree with that.  
 23 Q. But you do see this guidance from the Louisiana  
 24 Department of Environmental Quality that says, as between  
 25 the two, when you have fractionation data, that's what you

03:59 1 should use. Do you see that Dr. Strauss?  
 2 A. Yes, I see if those are your two choices, that's  
 3 what you should use.  
 4 Q. Right and--okay. So, that means that, as between  
 5 the calculations you provide in Column 1--actually, it's  
 6 your fourth column, but your Method Number 1, and your  
 7 fifth column, which is your Method Number 2, the Louisiana  
 8 Department of Environmental Quality is telling us that as  
 9 between those two, we should use the VPH-EPH, which would  
 10 be your method Number 1. That's at least what the  
 11 Louisiana guidance tells us, doesn't it?  
 12 A. That's what it would say, yes.  
 13 Q. Now let's move to the issue of the toxicity value,  
 14 which is another issue in which you and Dr. McHugh have  
 15 some disagreement, okay?  
 16 Now, on this point, I would like to direct your  
 17 attention--you have your Reports there, and I want to take  
 18 you to your Report of November 2014, specifically Page 37  
 19 and 38.  
 20 A. Am I looking at your bundle, or I have it in mine?  
 21 Q. You can look at it in your bundle. I knew you  
 22 would have your Report, so I didn't duplicate them.  
 23 A. That's fine. I just needed to know which pile to  
 24 look in.  
 25 Q. Sure, sure. Right. I will try to guide you a

04:02 1 A. I'm not sure about creation, but it's my method  
 2 for developing it, yes.  
 3 Q. And it's true, isn't it, Dr. Strauss, that the  
 4 toxicity value that you developed for crude oil in this  
 5 case, that you developed it for this case; correct?  
 6 A. I did develop it for this case. It can be used in  
 7 other places.  
 8 Q. But we would not find--and if we turn specifically  
 9 to Page 38--let's focus now very precisely on what your  
 10 toxicity value is.  
 11 These two pages explain how you derived the  
 12 toxicity value; correct?  
 13 A. That's correct.  
 14 Q. And then at the top of Page 38, we see the values  
 15 that you actually came up with, and I want to draw your  
 16 attention specifically to the last paragraph and the last  
 17 sentence, where you say: "Accounting for this reduction in  
 18 toxicity by the dermal route leads to an RfD (oral) of  
 19 .004 milligram per kilogram per day."  
 20 Did I read that correctly?  
 21 A. Yes, you did.  
 22 Q. And this is your toxicity value that you derived  
 23 for this case; correct?  
 24 A. Well, the 0.004 is the oral toxicity factor. I  
 25 derived a dermal toxicity factor as well.

04:00 1 little better next time.  
 2 November 2014? And I'd like to take you to--  
 3 MS. SILVER: Can you give me one second to catch  
 4 up?  
 5 MS. RENFROE: Certainly. Absolutely.  
 6 (Pause.)  
 7 BY MS. RENFROE:  
 8 Q. Dr. Strauss, can you tell us which tab you're  
 9 looking at in that bundle of your Reports?  
 10 A. Tab 3.  
 11 Q. Tab 3 of your collection of reports. Thank you.  
 12 MS. RENFROE: Counsel, let me know when you're  
 13 ready.  
 14 MS. SILVER: You said November; right?  
 15 MS. RENFROE: Yes.  
 16 MS. SILVER: Okay. Give me one more second.  
 17 MS. RENFROE: Sure.  
 18 MS. SILVER: And what page was it?  
 19 MS. RENFROE: Sure. It's Page 37 and 38.  
 20 MS. SILVER: Thanks.  
 21 MS. RENFROE: Of course. Happy to accommodate.  
 22 BY MS. RENFROE:  
 23 Q. Just quickly, this portion of your Report lays out  
 24 your method for the creation of your toxicity value;  
 25 correct?

04:03 1 Q. Right. And I want to focus on the oral toxicity  
 2 factor for a moment.  
 3 If we could now look at McHugh--and this is not in  
 4 your bundle, we're going to pull it up on the  
 5 screen--McHugh Exhibit 61, and which for the record is the  
 6 guidance from the Massachusetts Department of Environmental  
 7 Protection, entitled, "Characterizing Risks Posed by  
 8 Petroleum Contaminated Sites." And we see that this is the  
 9 implementation of the Massachusetts VPH-EPH approach.  
 10 Do you see that?  
 11 A. Yes.  
 12 Q. And if we turn to Page 3 of this guidance, you'll  
 13 see a table there that shows the toxicological approach for  
 14 non-cancer health effects, and we see there a group of  
 15 toxicity values for various fractions of crude oil;  
 16 correct?  
 17 A. Yes.  
 18 Q. And so just to understand what you have done,  
 19 instead of using these published reference doses or  
 20 toxicity values for crude oil for your health risk  
 21 calculations, instead of using these, instead you developed  
 22 a single toxicity value of .004, and you applied that  
 23 toxicity value to the entire crude oil in a given sample;  
 24 correct?  
 25 A. Yes, I did.

04:05 1 Q. And so what you're doing here is you're saying  
 2 you're going to treat all of the components of crude oil as  
 3 if all of them were equally toxic; correct? That is,  
 4 you're saying that you're going to apply one single  
 5 toxicity factor of .004 milligrams per kilogram per day to  
 6 the entire amount of crude oil in a given sample?  
 7 A. That's exactly what I did.  
 8 Q. Right. But if we compare your number of .004  
 9 milligrams per kilogram per day to these published toxicity  
 10 values to the various fractions of crude oil, isn't it  
 11 correct that your value, your toxicity value, is far  
 12 more--is far lower than the published toxicity values;  
 13 correct?  
 14 A. Yes, it is.  
 15 Q. And so, what's happening here is, by applying your  
 16 toxicity value rather than the value published by the  
 17 Massachusetts Department of Environmental Protection, you  
 18 have--you're saying that the entire crude oil sample is far  
 19 more toxic than any of these fractions that have been  
 20 identified by this regulatory agency; correct?  
 21 A. That is what the data say.  
 22 Q. And just to do a little bit of math here, if we  
 23 take the aliphatic hydrocarbons, that group of fractions,  
 24 and we compare your derived toxicity value to the published  
 25 toxicity value, we can see that yours is ten times--there

04:08 1 has concluded and published?  
 2 A. No. That's where I disagree with you.  
 3 Q. Let's move on to the next one, then: .004, your  
 4 .004 versus .03, seven and a half times difference, isn't  
 5 it?  
 6 A. Yes, and now we're approaching the toxic fraction  
 7 of that crude oil that that experiment that I based my  
 8 evaluation on measures. It is not based on these prior  
 9 examples.  
 10 Q. Now, we cannot find in any published authority or  
 11 any published guidance a toxicity value for the entire  
 12 fraction of crude oil of .004. There is no such  
 13 publication, is there?  
 14 MS. SILVER: Ms. Renfro, if you're going to  
 15 continue--I'm sorry to interrupt you, but if you're going  
 16 to continue to question the Witness on this, do you think  
 17 you could get her the document that you're referring to  
 18 rather than just having it on the slide?  
 19 MS. RENFRO: I'm referring to her Report,  
 20 Page 38, which she has in front of her.  
 21 MS. SILVER: But you're also referring to this  
 22 Massachusetts regulatory document.  
 23 MS. RENFRO: Well, now I'm moving away from that.  
 24 I moving away from it. It's a different question. I'll be  
 25 glad to repeat it.

04:07 1 is a ten times difference, isn't there?  
 2 A. Yes, there is.  
 3 Q. And if we made a similar comparison to the, let's  
 4 just take the aliphatic hydrocarbons, that C19 to C36  
 5 group, and if we compare the published toxicity factor to  
 6 the one that you've used, there is a 500 times difference,  
 7 isn't there?  
 8 A. Yes, there is.  
 9 Q. And what you're telling us with your toxicity  
 10 value is that, this group of hydrocarbons is 500 times more  
 11 toxic than what this public Health Authority in  
 12 Massachusetts has concluded and published; isn't that  
 13 correct, Dr. Strauss?  
 14 A. Why don't you ask me it again. I don't believe  
 15 that's correct, but let me hear the question again.  
 16 Q. Well, certainly. It's just a matter of math. I'm  
 17 comparing the published toxicity value for aliphatic  
 18 hydrocarbons, C19 through C36, which is 2.0. That's the  
 19 toxicity value that's been published by this public health  
 20 organization, and I'm comparing it to yours, and yours of  
 21 .004, that difference is a 500 times difference, isn't it?  
 22 A. Yes, it is.  
 23 Q. With the consequence that you are declaring that  
 24 this portion of crude oil is 500 times more toxic than what  
 25 the Massachusetts Department of Environmental Protection

04:10 1 PRESIDENT VEEDER: If I could just say to the  
 2 Witness, if ever you feel the need to call for a document,  
 3 please feel free to do so.  
 4 THE WITNESS: I've been around--I'm from  
 5 Massachusetts. I was at the meetings where these documents  
 6 were developed.  
 7 PRESIDENT VEEDER: I recognized your accent.  
 8 BY MS. RENFRO:  
 9 Q. And so, my question is: If we wanted to find a  
 10 publication or a guidance from a public health agency that  
 11 publishes a toxicity value for crude oil, like we have just  
 12 looked at from the State of Massachusetts as an example,  
 13 we're not going to find one that has a toxicity value as  
 14 low as .004 milligrams per kilogram per day, will we?  
 15 A. No.  
 16 Q. Now, with that, let's turn to your--let's turn to  
 17 your calculations, your non-cancer risk calculations of  
 18 November 2014, and let's see if we can get on the screen  
 19 that table. And let's now look at these in some detail.  
 20 I think this may be clear for the Tribunal, but  
 21 let's make sure it is clear since this is your--these are  
 22 your calculations, and just for convenience of the record,  
 23 convenience of all of us and clarity of the record, would  
 24 you mind if we put at the top of VPH-EPH Number 1, Method  
 25 Number 1, and then at the top of 8015 Method Number 2, and

04:11 1 then if you need a pen, there is one right to your right,  
 2 if you would like to--you don't have to, but if you'd  
 3 like--your third one, your VPH-EPH whole mixture, I'm going  
 4 to call that Method Number 3. The next one, 8015 whole  
 5 mixture, I'll call that your Method Number 4. The next  
 6 one, Texas 1005 whole mixture, I'll call that your Method  
 7 Number 5, and then finally your TEM whole mixture  
 8 calculation, I'll call that your Method Number 6; okay?  
 9 A. That's fine.  
 10 Q. Is that okay?  
 11 Now, let's just take an example and compare these  
 12 results and see what they tell us.  
 13 So, if we look at, for example, the site--the  
 14 first site, Aguatico 6 and the very first location,  
 15 Transect Number 5, which is the very top. And just to  
 16 again orient the Tribunal, what you have done with this  
 17 table, is with Aguatico 6, which is a well platform;  
 18 correct?  
 19 A. Well, there is a well platform there. That's not  
 20 where this location was.  
 21 Q. Right, I understand. But there are samples taken  
 22 from four locations that you've included in your  
 23 calculation.  
 24 A. That's correct.  
 25 Q. And you've described these as your exposure--well,

04:14 1 Method Number 1 using the VPH-EPH Method it says, ND, which  
 2 means non-detect.  
 3 A. That's correct.  
 4 Q. And that means that, using that analytical method  
 5 and applying your calculations using your methodology, you  
 6 come up with no risk--and this is no human health  
 7 risks--because there is no petroleum in that sample;  
 8 correct?  
 9 A. No.  
 10 Q. Well, the non-detect, doesn't that mean  
 11 non-detect, meaning there is not any detectable level of  
 12 petroleum in that sample?  
 13 A. No.  
 14 Q. What does the ND stand for then, Dr. Strauss?  
 15 A. There is not any detections using VPH-EPH. There  
 16 was a detection using TEM that was identified as petroleum  
 17 on the forensics.  
 18 Q. Right. And we'll come to that. That's your  
 19 Method Number 6.  
 20 A. But it's the same sample.  
 21 Q. I understand, but I'm just--  
 22 A. You just asked if there was petroleum in the  
 23 sample. There is petroleum in the sample. It was just not  
 24 picked up by EPH-VPH, which is a more limited method of  
 25 analyzing for petroleum than TEM.

04:13 1 you've described the exposure pathway that you use.  
 2 A. Yes.  
 3 Q. Which is an assumption on your part; correct?  
 4 A. Yes, consistent with guidance.  
 5 Q. And then the third column shows the sample  
 6 designation which tells us where the sample was taken;  
 7 right?  
 8 A. That's correct.  
 9 Q. And so, in the first case, we see that Transect 5  
 10 is a sediment sample--there are two samples there; right?  
 11 SE-05; right?  
 12 A. Yes.  
 13 Q. And SW-05? Those are two sediment samples, aren't  
 14 they?  
 15 A. No.  
 16 Q. The first one is a sediment and the second one is  
 17 what?  
 18 A. Surface water.  
 19 Q. Surface water near a field. So, we've got two  
 20 samples from approximately the same location?  
 21 A. Yes.  
 22 Q. And you're calling that Transect 5?  
 23 A. Yes, based on LBG's designations.  
 24 Q. Right, okay.  
 25 And then what you show us or in the first or the

04:15 1 Q. In your opinion?  
 2 A. In my opinion.  
 3 Q. Right. So, but just to understand what you're  
 4 telling us with the ND, you have not calculated any health  
 5 risk using the VPH-EPH Method for this particular sample  
 6 location; correct?  
 7 A. That is correct.  
 8 Q. And to be clear, every one of the white cells,  
 9 white cells on this chart, where there is an ND, that means  
 10 that that method, VPH-EPH or any other method says there is  
 11 no petroleum in the sample; correct?  
 12 A. No, it says none was detectable by that method.  
 13 Q. Non-detectable by that method. Okay. I  
 14 appreciate that clarification.  
 15 And so if there was no petroleum detectable by  
 16 that method, you then did not calculate a potential human  
 17 health risk; correct?  
 18 A. Correct.  
 19 Q. And that's why the cell here is white?  
 20 A. That is correct. The cells are white, if the  
 21 hazard index is less than one whether or not it was a  
 22 non-detect.  
 23 Q. Right. Okay. I appreciate you mentioning that.  
 24 So, the orientation of the colors in your chart is anything  
 25 that is in white means there is a hazard index of less than

04:16 1 one, which means it's safe.  
 2 A. Yes. One is the regulatory benchmark.  
 3 Q. Right.  
 4 A. This is a regulatory risk assessment.  
 5 Q. Right.  
 6 And then, if you have a calculated value over one,  
 7 you're not saying that there will be an actual adverse  
 8 health effect, are you?  
 9 A. No. This is a regulatory risk assessment. This  
 10 is a trigger for action of further investigation or  
 11 cleanup.  
 12 Q. Right, okay. And would you also agree that if you  
 13 have a hazard index of over one, that does not necessarily  
 14 mean that there will be an increased risk; rather, it means  
 15 that there might be an increased risk?  
 16 A. Well, we usually use the term "hazard" with  
 17 respect to non-cancer effects, but, yes. Again, it's part  
 18 of going back to my initial presentation. This methodology  
 19 was developed to make decisions in the midst of  
 20 uncertainty.  
 21 Q. Okay. All right. Let's take another example, if  
 22 we could. Let's go down to Shushufindi 13. I believe you  
 23 mentioned that site in your opening presentation. And if  
 24 we look at the first sample location, that is SW4 and SE4.  
 25 Are you with me?

04:19 1 Q. So, you're treating the entire forest as if they  
 2 were all equally toxic?  
 3 A. I'm treating the forest--I wouldn't characterize  
 4 it that way. The toxicity factor is based on the forest,  
 5 so I'm matching it to the forest.  
 6 Q. And then your Number 5, there that analytical  
 7 method showed no detectable petroleum in the sample?  
 8 A. I'm sorry, I lost the question.  
 9 Q. Sure, sure. It's Shushufindi 13, first sample  
 10 location, Method Number 5. It says ND?  
 11 A. Yes.  
 12 Q. I believe?  
 13 A. Yes, it does.  
 14 Q. Right, okay. And then finally we look to your  
 15 Method Number 6, which here you're combining two  
 16 differences between you and Dr. McHugh. You're using the  
 17 TEM analytical method; right?  
 18 A. Yes.  
 19 Q. And then you're using that single toxicity value  
 20 rather than the specific published toxicity values;  
 21 correct?  
 22 A. Yes.  
 23 Q. And when you combine those two approaches, you get  
 24 this hazard index of 20 with some asterisks next to it;  
 25 correct?

04:18 1 A. I'm with you, yes.  
 2 Q. And there using your six different methods, you  
 3 get--you calculate six different hazard indices; correct?  
 4 A. Well, five and one was--  
 5 Q. Right. I should have said that differently.  
 6 You get six different outcomes?  
 7 A. Each column is filled differently, yes.  
 8 Q. Right. So, moving from left to right, using the  
 9 VPH-BPH, your Method Number 1, you do calculate a number,  
 10 but it's below one, and so that means there is no--there is  
 11 a hazard index below one and no health risk?  
 12 A. There is no trigger for further action, yes.  
 13 Q. Same result with your second Method Number 2 and  
 14 Number 3.  
 15 A. That's correct.  
 16 Q. And then, though, when you use your whole mixture  
 17 approach, what that means is you're applying that toxicity  
 18 value that we looked at a few minutes ago, you're applying  
 19 that value to the entire array of everything in the sample?  
 20 A. Yes.  
 21 Q. Irrespective of the differentiation in toxicity  
 22 between the fractions in crude oil?  
 23 A. The toxicity number is based on the toxicity  
 24 evaluation of the entire mixture, so it's the forest, so,  
 25 yes.

04:20 1 A. That's correct.  
 2 Q. And so, we see, if we compare your outcome using  
 3 Method Number 1, to your outcome using Method Number 6, we  
 4 have--we see a margin of difference of a thousand, don't  
 5 we?  
 6 A. Yes, we do.  
 7 Q. And so--but you in your Report, in the narrative  
 8 portion of your Report, you have declared this site, this  
 9 location contaminated, haven't you?  
 10 A. I would like for you to refer me to what you're  
 11 talking about, please.  
 12 Q. Sure. Let's look at your Report, November 2014,  
 13 Page 7. I believe that's your Tab 3?  
 14 A. Oh, yes.  
 15 Q. Pardon me?  
 16 A. I'm with you.  
 17 Q. Yes.  
 18 MS. RENFROE: For the Tribunal, I believe it's  
 19 Tab 3 in your bundle of Expert Reports; is that correct,  
 20 Dr. Strauss?  
 21 THE WITNESS: Yes, this Report is in Tab 3.  
 22 Q. Okay. Thank you.  
 23 And we're looking at Page 7, and if we see it  
 24 towards the top of Page 7, there is a bullet point that you  
 25 have written, and it says Shushufindi 13. It has the

04:22 1 acronym of Shushufindi 13; correct?  
 2 A. This site, yes, I refer to it as Shushufindi 13 or  
 3 SSF13.  
 4 Q. Right. And you say there that the residents of  
 5 this farm obtained their drinking water from a stream  
 6 catchment area. A sample collected in the same stream  
 7 immediately downstream from the drinking water area  
 8 revealed petroleum contamination."  
 9 Then you go on to talk about how that is used.  
 10 And then you say: "The chickens and ducks are  
 11 caged to prevent them from coming into contact with  
 12 contaminated sediments and highly contaminated surface soil  
 13 in the former pit," and you go on; correct?  
 14 A. That's true, yes.  
 15 Q. So, am I correct that the location that we've just  
 16 been looking at, SW4 and SE4 in your table where it says  
 17 current exposure playing in stream, that corresponds to the  
 18 stream in the first couple of sentences of your Statement  
 19 there?  
 20 A. Yeah, it's the same stream. I'd have to consult a  
 21 map to see if that is adjacent to where that spring box is.  
 22 Q. Right. So, what you're telling us, comparing your  
 23 different approaches, is that even though, for example,  
 24 under your approach Texas 1005, it shows non-detect, you're  
 25 declaring the stream contaminated?

04:23 1 A. Yes, I am, because the petroleum--well, a couple  
 2 of things. One is if--in this text--can we go back to  
 3 here--back to my table.  
 4 Q. Your table?  
 5 A. Yeah, the table that you just took off.  
 6 Q. Sure. Let's get it back up.  
 7 A. I am--well, it is contaminated based on the TEM  
 8 measurement, and there is also--obviously, there is also  
 9 detections of EPH-VPH and 8015m, or else that would have  
 10 been a non-detect, and so there were petroleum contaminants  
 11 identified by three different methods and I can't  
 12 distinguish here between whether it was the sediment sample  
 13 or the surface water sample. It was most likely the  
 14 sediment sample, so yes.  
 15 Q. But even though you declared it contaminated, your  
 16 calculations show that there is no hazard index above one  
 17 with the exception of your Method Number 4 and Method  
 18 Number 6?  
 19 A. Yes, and I clearly showed the range of  
 20 uncertainty, which is what a risk assessor does. In an  
 21 effort of transparency, there are different methods of  
 22 calculating the hazard index. I've used the standard ones,  
 23 and I've used the one that I believe is most appropriate.  
 24 I put in a couple of others just to see what they look  
 25 like. I actually don't think anybody should rely on those.

04:25 1 I think the TEM whole mixture method which is  
 2 apples to apples, and if you want, the regulatory methods  
 3 are the ones to look at, and that's the range.  
 4 Q. And if this Tribunal concludes that the VPH-EPH  
 5 Analytical Method is protective of human health, as you  
 6 told us it was a few minutes ago, then they can rely upon  
 7 your conclusion in your Method Number 1, can't they?  
 8 MS. SILVER: Objection. I think that misstates  
 9 her testimony.  
 10 PRESIDENT VEEDER: That's an open question. The  
 11 Witness can agree or disagree.  
 12 THE WITNESS: Can you repeat it again?  
 13 BY MS. RENFROE:  
 14 Q. Sure, I would be glad to.  
 15 If this Tribunal concludes that the VPH-EPH  
 16 Method, which you used for your Method Number 1, if they  
 17 conclude that that method is protective of human health,  
 18 then they can rely upon your calculations of risk in your  
 19 first column, your Method Number 1 column, can't they?  
 20 A. If they--if the Tribunal chooses to rely on the  
 21 EPH-VPH Method, unless I've miscalculated, and I really  
 22 hope I haven't, they can rely on those numbers. If I have  
 23 presented what I believe is the most apples-to-apples  
 24 approach, which is the TEM whole mixtures and I've provided  
 25 the classic or--not traditional--a current regulatory

04:27 1 method, which they constantly evolved prior to the early  
 2 2000s, that was not a method--I mean, methods evolve. Risk  
 3 assessment is an evolving field.  
 4 I believe that looking at crude oil as a whole  
 5 mixture, which is completely consistent with guidance which  
 6 says look at the whole product, if you can do it. I  
 7 believe that this method is consistent with guidance. I  
 8 also, in my professional opinion, think that that's the  
 9 best apples-to-apples approach.  
 10 The Tribunal can choose. I've given them the  
 11 choice.  
 12 Q. And one of those choices being VPH-EPH you've  
 13 agreed with me is indeed protective of human health. You  
 14 have already told us that, haven't you?  
 15 A. Actually, I don't believe I said that.  
 16 Q. Okay. Well, we have the record. Let's move on to  
 17 another example, and that is why don't we go to Lago  
 18 Agrio 16, and let's look at--you've got two different  
 19 locations here, and one is a drinking water well called  
 20 ODW; right?  
 21 A. Correct.  
 22 Q. The second one is a new drinking water well, NDW;  
 23 right?  
 24 A. Yes.  
 25 Q. Let's focus on the first one. You show us here

04:28 1 again six different calculations of potential health risk,  
 2 and once again, if we look at the first method, VPH-EPH, we  
 3 see that there is not only--you have calculated not only no  
 4 hazard index, but according to your table, using this  
 5 method, this sample is non-detect for petroleum, isn't it?  
 6 A. Yes, that's correct, but I would like to go back.  
 7 I actually only had five samples there. NT means not  
 8 tested for TEM, so that was--there were no data.  
 9 Q. No data and, therefore, no calculation of any  
 10 risk, from this drinking water--  
 11 A. Correct.  
 12 Q. From this drinking water well; right?  
 13 A. There were no data. You can't calculate risk with  
 14 no data.  
 15 Q. So, then moving to the right, second method, you  
 16 calculate a risk but it's below the hazard index of one, so  
 17 no potential human health risk here using this method?  
 18 A. Correct.  
 19 Q. Third method, you show non-detect for petroleum  
 20 and no human health risk there using that method?  
 21 A. Yes.  
 22 The analytical chemistry methods on one and three  
 23 and two and four are the same, the only difference is the  
 24 toxicity factor that was applied.  
 25 Q. Right. And then Method Number 4, you do show a

04:29 1 hazard index over one applying that whole mixture toxicity  
 2 value; right?  
 3 A. Yes.  
 4 Q. Then you go to your last two methods, and there  
 5 you show either non-detect or not tested, no hazard index,  
 6 no human health risk; correct?  
 7 A. Well, I believe you can draw absolutely no  
 8 conclusion from not tested.  
 9 Q. Well, you have not presented or concluded that  
 10 there is a health risk at this location using your Method  
 11 Number 6?  
 12 A. That's correct.  
 13 Q. Now, if we go back to your Report, November 2014,  
 14 we had that up a moment ago, Page 7--let's look and see  
 15 what you told the Tribunal about Lago 16.  
 16 Here, you told the Tribunal that "an extended  
 17 family living in two houses uses petroleum-contaminated  
 18 water from a shallow dug well for drinking, cooking,  
 19 bathing and laundry."  
 20 Did I read that correctly?  
 21 A. Yes, you did.  
 22 Q. And then you talk about the family pouring water  
 23 over their young children several times a day and more  
 24 frequently when it is hot. And then you say this well is  
 25 also contaminated with petroleum.

04:31 1 A. Yes.  
 2 Q. And there you're talking about the new well. So,  
 3 first you're talking about the old well, and then the last  
 4 two sentences you're talking about the new well; correct?  
 5 A. Yes, yes.  
 6 Q. So, let's go back to your table and focus on the  
 7 old well, and so, in the old well, Lago 16, okay, and the  
 8 ODW, standing for old drinking water well, I presume?  
 9 A. Yes.  
 10 Q. Right.  
 11 A. It's not the world's best terminology, but it's  
 12 what we used. It was there before the second site visit.  
 13 Q. Understood, understood. You inherited it?  
 14 A. Yes, I did.  
 15 Q. So in these six different methods, six different  
 16 outcomes that you've presented in your table, we see that,  
 17 in only two instances do you show even a detection of  
 18 petroleum, but the other four you don't report even a  
 19 detection. You either didn't detect petroleum or you  
 20 didn't test for it; correct?  
 21 A. That is true.  
 22 Q. So, that's the result from four out of your six  
 23 methods, but yet, in the narrative portion of your Report,  
 24 you told this Tribunal that that well, that hand-dug well  
 25 was contaminated with petroleum, didn't you?

04:32 1 A. Yes, I did.  
 2 Q. And yet you've got six different outcomes that  
 3 suggest, four of which suggest it's not contaminated?  
 4 A. But I have additional information.  
 5 Q. But I'm looking at your calculations, what you  
 6 have presented, and that's what I'm focused on right now,  
 7 Dr. Strauss?  
 8 A. But that wasn't the basis for the statement.  
 9 Q. Okay. All right. Let's move on, then, to the  
 10 next--  
 11 MS. SILVER: Ms. Renfro, can I just point--I  
 12 don't believe the sections that you're directing her to  
 13 are--I believe they're there--I'm just looking at her  
 14 Report, and I believe they're there to show an exposure  
 15 pathway.  
 16 MS. RENFROE: I think you might want to take that  
 17 up with her on your redirect.  
 18 PRESIDENT VEEDER: Let me stop you. We've got her  
 19 answer to that effect, if you want to pick it up in more  
 20 detail in redirect, you can do so. She said that wasn't  
 21 the basis for the statement, so let's move on.  
 22 BY MS. RENFROE:  
 23 Q. Now, I would like to take you now to one of the  
 24 sites that you have focused on in here, and that's  
 25 Shushufindi 13. So, let me ask now if another bundle of

04:33 1 documents can be distributed, and you might--you're free to  
 2 keep those out, but I'm going to direct you to a different  
 3 group of documents.  
 4 A. That's fine.  
 5 Q. Dr. Strauss, let me tell you what I have passed  
 6 out. And for the convenience of the Tribunal and counsel,  
 7 I have collected together a series of documents about  
 8 Shushufindi 13. I've simply picked this site as an  
 9 example. I noticed that you mentioned it in your opening  
 10 presentation.  
 11 And so, what I would like to do now is walk  
 12 through some of these documents, time permitting--I'm going  
 13 to have to skip some, but I want to walk through these  
 14 documents as we understand, to help give us more context  
 15 and understand the conclusions that you have presented in  
 16 your health-risk calculations, okay?  
 17 So, in this packet, I have included an extra copy  
 18 of your tables in Tab 1 and we can probably skip that,  
 19 unless you prefer to use that copy, but it's the same  
 20 table. All right?  
 21 A. Okay.  
 22 Q. And then if we go to Tab 3, can you confirm that  
 23 Tab 3 is a map from the LBG Report, it's Figure 3.6.1;  
 24 correct?  
 25 A. Well--

04:38 1 Can you direct us a little bit more, or can we get you a  
 2 pointer. Would that help you?  
 3 A. It was enhanced right there.  
 4 Q. Okay. Can you take us there? Is it those two--  
 5 A. It's where it says SE004, transect four, right  
 6 above--it's where that point--that blue triangle--  
 7 Q. Right, "slight petroleum odor."  
 8 A. Right.  
 9 Q. Right. Okay. Good. Let's circle that.  
 10 Then can you show us the second location, SW1.  
 11 A. It's up in the top left--well, not top left, but  
 12 top central corner.  
 13 Q. Okay. Can we circle there as well?  
 14 A. And that's Transect 1.  
 15 Q. Transect 1, right there. Okay.  
 16 Now, let's look for your third location, which is  
 17 called SL11. Can you tell us where that is?  
 18 A. You know, I was just looking at that, where did it  
 19 go? It's in that green pit.  
 20 Q. Okay. Inside--well, I will let you point it out.  
 21 A. Well, you circled it, so it's that central blue  
 22 circle in the pit.  
 23 Q. Right. Now, based on your answers earlier, I take  
 24 it that you are not familiar with which of the features on  
 25 this map are the RAP features that were assigned to TexPet

04:36 1 Q. Or is this from your Report?  
 2 A. I don't--I don't think it's from my Report. I'm  
 3 willing to agree. I mean, it's LBG's Report.  
 4 Q. LBG's map, okay. All right.  
 5 So, and my purpose in presenting it to you is to  
 6 just help us understand the location of these samples at  
 7 Shushufindi 13 that you have--that you've developed  
 8 calculations for. And again, I'm just using this site as  
 9 an exercise. There's a number of sites that we can use,  
 10 but what we see in your table is that there are, as I see  
 11 it, three different locations where samples have been taken  
 12 and you have developed calculations of potential risk?  
 13 A. That's correct.  
 14 Q. Is that right?  
 15 A. Yes.  
 16 Q. All right. And so, just bear with me as I walk us  
 17 through this.  
 18 So, can you relate for the Tribunal and tell us  
 19 where on this map, if we look at the first sampling  
 20 location in your Shushufindi 13 chart, and you see it's SW4  
 21 and SE4, can you show us where that sample point is?  
 22 A. It's where it says "slight petroleum odor" of the  
 23 stream coming off of Pit Number 3.  
 24 Q. Okay. So, Pit Number 3, and if we look then to  
 25 the east of Pit Number 3, we will find your SW4 and SE4.

04:39 1 in the Remedial Action Plan?  
 2 A. I have no idea.  
 3 Q. Right. And so, it would not surprise you, then,  
 4 to know that the Pit 3, the green Pit 3, is not a RAP  
 5 feature that was assigned to TexPet for remediation?  
 6 A. I'm neither surprised nor unsurprised. I really  
 7 have no knowledge.  
 8 Q. Okay. And if I told you that the RAP features  
 9 that were assigned to TexPet for remediation were those two  
 10 blue pits and the blue area on the stream at the upper  
 11 portion of the map, you would have no reason to disagree  
 12 with me, would you?  
 13 A. No, I have no reason to disagree. I have no  
 14 knowledge one way or the other.  
 15 Q. Understood.  
 16 And based on that, can you confirm for us that, at  
 17 this site, there are no samples taken that you relied upon  
 18 for your risk calculations at any of the RAP features.  
 19 A. You have the samples that I relied on, whether  
 20 they were RAP features or not are immaterial to my  
 21 analysis.  
 22 Q. Understood. But can we agree that you didn't take  
 23 any samples or rely upon any data from any of those blue  
 24 features?  
 25 A. That is correct.



04:41 1 Q. Right. Now, did you investigate--in forming your  
2 opinions or reaching your conclusions about potential human  
3 health-risk at this site, did you investigate in any way  
4 the operations of Petroecuador?

5 A. Only as a general matter, not to form an  
6 understanding--not particularly Petroecuador, either, just  
7 oil facilities, to understand generally a scope of what to  
8 look for--a scope just to understand within the context of  
9 a conceptual site model, what contaminants to look for and  
10 where.

11 Q. If we could pull that map back up, please,  
12 Mr. Johnson. Thank you.

13 So, if, for example, if the historical records and  
14 recent records showed that Petroecuador has continued to  
15 operate at this site and has had spills at this site, that  
16 is not something that you considered in rendering your  
17 conclusions about future health risks from TexPet's  
18 operations?

19 A. That's correct, I did not consider it.

20 Q. And so, just to cut through some of this, if the  
21 documentation in this arbitration case shows a history of  
22 spills by Petroecuador at this site, if it further shows  
23 remediation of a pit by Petroecuador at this site, you have  
24 not taken that into consideration in forming your  
25 conclusions about potential human health-risk attributable

04:44 1 pit or remediated a pit or not, and the effects of that on  
2 that particular environment at a particular site is not  
3 something that you've considered in developing your  
4 calculations?

5 A. Why don't you try that one again. I'm not sure  
6 how to answer it.

7 Q. Sure. I'm sure I can do better. Let me try.

8 So, we know that Petroecuador has closed pits in  
9 some locations. Are you familiar with that?

10 A. That is my understanding.

11 Q. And in other locations, they've remediated pits.  
12 Are you generally familiar with that point?

13 A. Generally familiar, but not in any particulars.

14 Q. And you have no specific information about the  
15 standards or the criteria that they have used to remediate  
16 those pits, do you?

17 A. I have not--I am not offering any opinions in that  
18 regard.

19 Q. Okay. And I think I understand what your  
20 testimony is, and I want to ask one or two more questions,  
21 and then we will move on to a different topic.

22 But to the extent that there may be a site among  
23 the nine that you have evaluated, where Petroecuador has  
24 either not closed a pit or has closed it to a standard or  
25 criteria that is different than what the Republic of

04:43 1 to--which you attribute to TexPet?

2 A. I have not taken that information into account. I  
3 have evaluated the site conditions based on my knowledge of  
4 the site. I have been there and developed the exposure  
5 pathways. I know what those locations look like, and  
6 relying on the data that LBG provided.

7 Q. If I asked you that same question about all of the  
8 other eight sites upon which you have developed  
9 calculations of potential human health-risk, would your  
10 answer be the same?

11 A. Yes.

12 Q. So, to conclude or to summarize this point, your  
13 calculations of potential human health-risk in doing that  
14 work, you have made no attempt to differentiate between  
15 impacts caused by Petroecuador as opposed to historical  
16 operations?

17 A. I have used the data provided by LBG. It is my  
18 understanding they looked at those questions, but you would  
19 have to ask them. I have not.

20 Q. All right. Do you have any familiarity with the  
21 fact that Petroecuador has at some of these sites closed  
22 pits?

23 A. Just as a general nature. I'm not offering any  
24 opinions, and I haven't reviewed that specifically.

25 Q. And likewise, the manner in which they've closed a

04:46 1 Ecuador now contends TexPet should have done, you have not  
2 made any effort to differentiate those effects in your  
3 calculations, have you?

4 A. No, I'm not offering any opinion in that area  
5 whatsoever.

6 Q. Right. Okay.

7 Now, sticking with this site, Shushufindi 13, and  
8 going now specifically to that sample S--let's see. I  
9 believe you told us it was--let me find it. SE4. SE4,  
10 first one of your methods--first one of your sample  
11 locations, and you described this as "current exposure  
12 playing in a stream."

13 Are you with me?

14 A. Yes.

15 Q. Okay. Did you make any effort in--before you  
16 developed these calculations, did you make any effort or  
17 attempt to evaluate whether that sample reflected plant  
18 matter as opposed to petroleum?

19 A. Did I personally? No. It's my understanding that  
20 others have looked at that question.

21 Q. And if a sample--for example, SE4--if that sample  
22 contains plant matter in addition to petroleum, then your  
23 risk calculation, for example, under Method Number 4 or  
24 Method Number 6, if it turns out that that sample has plant  
25 matter in it, then your hazard index calculation would be

04:47 1 exaggerated, wouldn't it? It would exaggerate the health  
2 risk from that particular location.  
3 A. Well, I'm not sure about Method Number 4.  
4 Yes, if you're giving me a hypothetical, yes, it  
5 would reduce the total concentration that would be  
6 attributable to oil.  
7 Q. And you're not suggesting to this Tribunal that  
8 there would be a health risk from plant matter, are you?  
9 That's not what you're trying to convey, is it?  
10 A. It's not what I'm evaluating.  
11 Q. Right. So, with respect to that sample or the  
12 rest of the samples at this site, SW4, SW1, did you make  
13 any effort to satisfy yourself that those samples did not  
14 have blank contamination?  
15 A. I relied on the validated results of LBG for any  
16 issues related to data quality like that.  
17 Q. So, you did not independently satisfy yourself  
18 that the National Functional Guidelines were being met with  
19 respect to these samples?  
20 A. I relied on LBG in that regard.  
21 Q. All right. So, if we can just take another look  
22 at SW4, this is a surface-water sample. If it turns out  
23 that that sample has no petroleum in it, then your  
24 health-risk calculations across the row where you provide a  
25 number, whether it's below one or above one, then those

04:49 1 numbers would be unreliable?  
2 A. I'm not going to agree with that. This risk  
3 calculation was based on both sediment and water. I would  
4 have to look at the underlying portion of it, but I think  
5 it's more than likely that most of the risk was contributed  
6 by the sediment. But I would have to look to confirm that.  
7 Q. And that's not something you have done yet?  
8 A. Well, it's in my spreadsheets, it's not on this  
9 piece of paper here.  
10 Q. Okay.  
11 A. I could look in my spreadsheets, which are  
12 provided in a report and find that out.  
13 Q. Okay. So, then let's move on to SE4, in that same  
14 location. If Dr. Short, the Republic of Ecuador's Expert,  
15 if he concluded that that sample at SE4 contained plant  
16 matter, would you be in a position to disagree with that?  
17 A. No, I would rely on Dr. Short for that evaluation.  
18 Q. Okay. And then moving down to SL11 quickly, SL11,  
19 your third location where you have calculated across the  
20 board a hazard index using every one of your methods.  
21 Do you see that?  
22 A. Yes.  
23 Q. And again one more time, can we look at the map  
24 and let's orient ourselves where that sample is taken.  
25 A. It's taken in the green area.

04:51 1 Q. Right.  
2 A. The light green area.  
3 Q. The light green area, which is a pit, isn't it, of  
4 some sort? Or you may not know?  
5 A. I do know. I've been there.  
6 Yes.  
7 Q. Okay. Now, if you would go to Tab 22 in your  
8 booklet there, please, let's see what Dr. Short says about  
9 this sample SL11.  
10 So, we have Tab 22, which is an excerpt of the  
11 Report of Dr. Jeffrey Short. And if we look at Page 15,  
12 Dr. Short is discussing Shushufindi 13, Sample SL11.  
13 Do you see that, Dr. Strauss?  
14 A. Yes.  
15 Q. If then if we read to the bottom of the paragraph,  
16 he concludes that the results--"these results strongly  
17 suggest that petroleum was recently (less than a year)  
18 discharged to the soil that was sampled."  
19 Do you see that?  
20 A. Yes, I do.  
21 Q. And he's referring to SL11, which is the sample  
22 that you've relied upon to calculate a hazard index under  
23 all six of your methods.  
24 Do you see that?  
25 A. Yes.

04:53 1 Q. And he's telling us that this sample is from  
2 petroleum discharged less than a year before, isn't he?  
3 A. Yes, he is.  
4 Q. And you would be in no position to disagree with  
5 his conclusion on that, would you?  
6 A. No, I rely on Dr. Short for that sort of thing.  
7 Q. And so, if he's right about that, then the hazard  
8 index that you have calculated under all six of your  
9 methods, that would be attributable to the activities of  
10 Petroecuador rather than TexPet, wouldn't it?  
11 A. I have no idea who it would be attributable to.  
12 Q. Okay.  
13 MS. SILVER: Ms. Renfroe, I just noticed that this  
14 document said draft. I'm just wondering if it is a draft.  
15 I don't know, but--  
16 MS. RENFROE: That's how it was sent to us.  
17 MS. SILVER: That's how it was sent to you? All  
18 right.  
19 MS. RENFROE: From your Expert from your office.  
20 MS. SILVER: Okay. Just checking.  
21 MS. RENFROE: So, if I might, Members of the  
22 Tribunal, if I might take five minutes and evaluate where I  
23 am and how much more I have.  
24 PRESIDENT VEEDER: Let's take a five-minute break.  
25 MS. RENFROE: Thank you.

04:54 1 PRESIDENT VEEDER: Again, please don't discuss the  
2 case or your testimony away from the Tribunal.  
3 THE WITNESS: I will be very careful.  
4 (Brief recess.)  
5 PRESIDENT VEEDER: Let's resume.  
6 BY MS. RENFROE:  
7 Q. Dr. Strauss, I would move to a different topic  
8 now. And I'd ask our colleague, Mr. Johnson, if he could  
9 put what I'm going to call Slide 2 up on the screen.  
10 Slide 2 is another quote from Opening Statement of  
11 the Respondent, again describing the extent of your work  
12 and then our arguing about the effect of it. So, could I  
13 ask you to take a moment and read this, and then I'll have  
14 a few questions.  
15 (Witness reviews document.)  
16 Q. Are you ready?  
17 A. Yes, I am.  
18 Q. Right.  
19 And so, the point that I want to explore is the  
20 statement by counsel that there is no reason to believe  
21 that what you, referring to you, Dr. Strauss, that what you  
22 found at the nine sites that you examined, wouldn't be  
23 replicated at most all of the other 344 TexPet sites. I'd  
24 like to explore that for a moment.  
25 A. Okay.

05:02 1 Q. All right. So, I understand that the data  
2 developed by LBG for the nine sites that you examined  
3 purposefully excluded sample sites from Production Stations  
4 within the former Concession Area; is that your  
5 understanding?  
6 A. It's certainly my understanding that they did not  
7 include them.  
8 Q. Right.  
9 And so, you've not provided any health-risk  
10 calculations with respect to Production Stations, have you?  
11 A. No, I have not.  
12 Q. And likewise, another category of sites that was  
13 excluded for sampling by LBG were sites where LBG concluded  
14 that there were significant or active Petroecuador  
15 operations. Did you understand that?  
16 A. I understood it generally. I really think you  
17 should take up with LBG the sites that they selected.  
18 Q. I understand, and I will be glad to do that, and I  
19 appreciate that guidance from you.  
20 But the point that I want to make is that, to the  
21 extent that there are various differences in the conditions  
22 and in the operating history and in present-day operations  
23 at the other sites besides the nine that you went to, then  
24 we would not be able to use or extrapolate from your  
25 calculations to those other nine sites, would we?

05:04 1 A. Well, I don't quite agree with that, either.  
2 Would you like me to elaborate?  
3 Q. Well, let me see if I could understand the basis  
4 for that because you've told us that you've not sampled or  
5 you've not considered data from the Production  
6 Stations--that's one difference, one group of sites that's  
7 been separate from what you've done; right? We've  
8 established that.  
9 A. We have established that I have not evaluated  
10 Production Stations, yes.  
11 Q. Right. And we've also established that you've not  
12 evaluated sites where there's been significant expansion  
13 activity by Petroecuador?  
14 A. That's correct.  
15 Q. Or at least not insofar as LBG has represented  
16 that to you?  
17 A. Well, I have seen each of the sites.  
18 Q. All right. So--and then there may be other  
19 changes or contamination events, for example, at some of  
20 the other sites that you have not evaluated at the nine  
21 sites that you did consider?  
22 A. There I lost you. Ask me one more time.  
23 Q. Sure. So, for example, there was a major spill at  
24 Sacha 77 by Petroecuador, several hundred thousand--excuse  
25 me, several thousand barrels of crude oil, that the

05:05 1 information is in this record. So, you've not considered  
2 an event like that and the effects of that with respect to  
3 the nine sites that you did evaluate?  
4 A. My understanding of the source of the nine sites  
5 that I evaluated was mostly pits and a spill, I think, at  
6 Yuca 2.  
7 Q. Right. And so, to the extent that there have been  
8 pipeline leaks during Petroecuador's operations, those are  
9 very different factual circumstances than those that you  
10 considered at the nine sites you looked at?  
11 A. There are certainly some different facts; there  
12 may be some of the same facts. I'm having a hard time  
13 answering that question.  
14 Q. You haven't examined those other facts, have you?  
15 A. I have not; correct.  
16 Q. Now, moving to, if I might move to your cancer  
17 risk calculations, and so that will take us to a different  
18 chart, if we can turn to your final chart, the March 2015  
19 chart.  
20 Now, I believe you told us in your opening or your  
21 direct presentation that the method that you used is the  
22 same approach as the method that Dr. McHugh used?  
23 A. In terms of how we evaluated the toxicity, we  
24 differed in our exposure factors.  
25 Q. Right. So, here we don't have as many differences

05:07 1 perhaps between you and Dr. McHugh. You pretty much used  
 2 the same approach?  
 3 A. I believe we did, yes.  
 4 Q. Right.  
 5 And then can you explain or confirm to the  
 6 Tribunal that, as we look at the calculations in the  
 7 right-hand column that you have provided, those values in  
 8 white represent areas that--for which there is no concern  
 9 and need no further evaluation?  
 10 A. Yes, based on those exposure pathways and the  
 11 currently available data, that is correct.  
 12 Q. The areas in yellow or those estimates in yellow,  
 13 those do not represent your conclusions that there will be  
 14 an elevated risk of cancer, but rather, as you state at the  
 15 bottom of your table, yellow is simply, "risk in the range  
 16 of concern," and that, "further evaluation is necessary."  
 17 A. Yes. That continues to be my opinion.  
 18 Q. Right. So, you're not in a position to declare to  
 19 this Tribunal that there will be an elevated risk of cancer  
 20 from these locations, but rather more evaluation is needed?  
 21 A. Not exactly. What it says is that these are the  
 22 health risks that I calculate using my methodology and the  
 23 decision criteria; it's within the range of the decision  
 24 criteria.  
 25 Q. And as you say beneath, "risk in range of concern,

05:08 1 further evaluation is necessary."  
 2 A. That's right. So, it doesn't mean there's no  
 3 health risk. It means, as a regulatory matter, there is  
 4 some reason for concern. It's not a condition that I would  
 5 say would cause an immediate action.  
 6 Q. Right, okay.  
 7 And then with respect to the two red conclusions,  
 8 those two locations you are telling us that there is a  
 9 significant risk of an elevated or an elevated cancer risk;  
 10 correct?  
 11 A. Yes. That's above the range of which action is  
 12 almost always taken under any regulatory--environmental  
 13 regulatory regime.  
 14 Q. And the action to be taken, in your view, is that  
 15 some remediation may be needed at these two locations?  
 16 A. I'm not sure about the maybe, but yes.  
 17 Q. Okay. You're saying some remediation is needed?  
 18 A. Yes.  
 19 Q. But you have formed no opinions about the extent  
 20 of remediation that may be needed?  
 21 A. No, I think that needs to be determined.  
 22 Q. That's to be determined in another process?  
 23 A. Yes.  
 24 Q. Your Reports in no way tell us the extent of  
 25 remediation, the remediation standard, the area to be

05:10 1 remediated, you don't address those issues, do you?  
 2 A. No, I do not.  
 3 Q. Right. Nor do you, for any of the other  
 4 locations? That's just not something you're speaking to?  
 5 A. That is not something I tend to do, either.  
 6 Q. Right, okay.  
 7 So, now if we might turn to Tab 22 in the first  
 8 bundle that I gave you, the original one. And I'm not sure  
 9 if you were here for the testimony of Dr. Greg Douglas, you  
 10 may have heard it, but what I'm going to ask you about are  
 11 some of the conclusions he has reached about the data that  
 12 you relied upon for purposes of your cancer-risk  
 13 calculations, and so I'm showing you some of the slides  
 14 that he presented about problems with the reliability of  
 15 that data, and so I'll direct you for a moment to his  
 16 Slide 33 and ask you if you can confirm that the compounds  
 17 that are highlighted in yellow there are the--  
 18 (Pause.)  
 19 Q. Will you confirm, Dr. Strauss, that the compounds  
 20 highlighted in yellow on Dr. Douglas's slides are some of  
 21 the PAHs that you relied upon for your cancer risk  
 22 calculations?  
 23 A. This is the calculation that I said in the  
 24 beginning I had made a spreadsheet error on, and so I have  
 25 withdrawn my opinion that there's a cancer risk with this

05:12 1 location.  
 2 Q. At Shushufindi 43?  
 3 A. TW2, that's the one I was talking about.  
 4 Q. Okay, so we need to mark that out on your table.  
 5 So, that's one less site for which you are saying there's a  
 6 potential elevated risk of cancer?  
 7 A. Based on the data we have now, yes.  
 8 Q. Okay. Now, would you also, if you would, look  
 9 through the next couple of slides, and I guess all of these  
 10 deal with Shushufindi 43, and so perhaps you've already  
 11 conceded the point that I was going to make, and I  
 12 appreciate your candor there, but have you taken the steps  
 13 to evaluate whether the rest of the PAH data that you've  
 14 relied upon does not suffer from any blank contamination  
 15 problem?  
 16 A. Perhaps we're not understanding each other. The  
 17 mistake that I made was a spreadsheet error on my part.  
 18 Q. Oh?  
 19 A. And it was not that I used a non-detect or  
 20 whatever. I didn't really quite get what Dr. Douglas  
 21 inferred. There was a spreadsheet error in that  
 22 calculation that I own up to.  
 23 Q. I understand, and I appreciate your candor, so  
 24 we're talking about two different things, and thank you for  
 25 clarifying that.

05:13 1 A. You're welcome.  
 2 Q. The problem that Dr. Douglas is presenting in  
 3 these slides that are at Tab 22 is a problem of the fact  
 4 that the data validator who evaluated the data that you  
 5 relied upon did not follow the National Functional  
 6 Guidelines and, therefore, did not report the data as  
 7 non-detect or undetect as they should have. Have you  
 8 concerned yourself at all with that issue?  
 9 A. I know it's been raised as an issue. I have not  
 10 dealt with it. I have relied on the data of LBG and its  
 11 data validators.  
 12 Q. And to the extent that the data developed by LBG  
 13 suffers from blank contamination and/or is otherwise not  
 14 reliable because it doesn't comply with the National  
 15 Functional Guidelines, then you would not feel comfortable  
 16 relying upon those samples in calculating a potential  
 17 cancer risk, would you?  
 18 A. I would certainly--if the data were revised, I  
 19 would certainly revise my cancer risk. It doesn't pertain  
 20 at all, as I understand it, to my hazard index and my  
 21 non-cancer risk. It's only an issue with the level  
 22 concentrations of PAHs, which coming to the cancer risk,  
 23 but really are subsumed under the Total Petroleum  
 24 Hydrocarbons rubric for the non-cancer hazard.  
 25 Q. Right, but let's not confuse things. I'm not

05:17 1 the Republic of Ecuador has not published or does not  
 2 publish any protocols or requirements for even performing  
 3 human health-risk assessments in petroleum oil fields?  
 4 A. Well, I believe they have some regulations related  
 5 to petroleum, but I have not concerned--again, that's in  
 6 LBG's opinion and not in mine. I'm not aware of like a  
 7 human--I'm not aware of an equivalent to EPA risk  
 8 assessment guidance.  
 9 Q. Okay. And as far as you know, Petroecuador does  
 10 not perform human health risk assessments for the sites  
 11 that it operates and impacts, does it?  
 12 A. I have no idea what they do.  
 13 Q. Okay. Thank you very much, Dr. Strauss. I  
 14 appreciate it.  
 15 MS. RENFROE: I have no further questions.  
 16 PRESIDENT VEEDER: Thank you.  
 17 Are there any questions from the Respondent?  
 18 MS. SILVER: I believe I may have a few questions,  
 19 but if I could take maybe a 10-minute break and get back to  
 20 you?  
 21 PRESIDENT VEEDER: Let's take a 10-minute break.  
 22 MS. SILVER: Thank you.  
 23 (Brief recess.)  
 24 PRESIDENT VEEDER: Let's resume.  
 25 MS. SILVER: Thank you, Mr. President.

05:15 1 talking about your non-cancer calculations right now. I'm  
 2 only talking about your cancer calculations which are on  
 3 the table, your March 2015 table. And my question is very  
 4 focused on the PAH data that you relied upon to develop  
 5 these estimates or calculations of potential cancer risk.  
 6 If the data validator did not follow the National  
 7 Functional Guidelines and reported PAH values that were  
 8 actually non-detect, would that concern you about  
 9 presenting these cancer calculations?  
 10 A. Again, I relied on LBG. If they find that they  
 11 were--the validation was incorrect and there were different  
 12 data, I would be--then that would change my calculations,  
 13 my cancer risk estimates, yes.  
 14 Q. And to be very clear, you have not undertaken any  
 15 independent analysis of the validity of the PAH data?  
 16 A. I have not, no.  
 17 Q. Now, completely apart from your risk  
 18 calculations--and I'm now going to ask you this question  
 19 that has to do with either cancer risk or non-cancer  
 20 risk--am I correct that the Republic of Ecuador did not  
 21 provide you with any quantitative risk assessment for any  
 22 of the sites that Petroecuador has impacted in the former  
 23 Concession Area?  
 24 A. Did they provide that to me? No.  
 25 Q. Right. And, in fact, isn't it also correct that

05:27 1 REDIRECT EXAMINATION  
 2 BY MS. SILVER:  
 3 Q. Dr. Strauss, I'm sure you're going to be delighted  
 4 to hear I don't have a ton of questions for you, but I  
 5 would ask if you could please put up from Dr. Strauss's  
 6 presentation Slide Number 31. Thank you.  
 7 Dr. Strauss, could you clarify whether the VPH-EPH  
 8 Method is protective of human health.  
 9 (No microphone.)  
 10 A. My bad.  
 11 EPH-VPH, and I would say also Method 8015 measure  
 12 fractions of--fractions of crude oil. They don't measure  
 13 all of crude oil. In particular, they don't measure the  
 14 higher end and other components of crude oil, so it's my  
 15 understanding that these approaches measure between one  
 16 quarter and one third of the thousands of chemicals that  
 17 compose crude oil.  
 18 So, while it's considered a method that's  
 19 protective for refined fuels for which it's very good at  
 20 finding things, I think it's less applicable to crude oil  
 21 and may or may not be protective of crude oil. In my  
 22 opinion, it probably isn't, but you can see here the  
 23 difference in what the proportion of chemicals that are  
 24 evaluated and found and detected under those methodologies.  
 25 Q. Okay. Thank you.

<p>Sheet 61</p> <p style="text-align: right;">2108</p> <p>05:28 1 But in your Reports, you do use and rely on the  2 VPH-EPH Method; is that correct?  3 A. Yes, it is.  4 Q. Could you just maybe direct us to where in your  5 Reports you do rely on it.  6 A. Well, I think--well, I rely in the hazard  7 around--in the non-cancer hazard evaluations at all nine  8 sites, so in the tables that we've been discussing, I  9 present those calculations.  10 Q. And do you rely on it at all for your cancer  11 assessment?  12 A. No, the cancer assessment is based on PAHs and not  13 on VPH-EPH.  14 Q. Okay. And can you just explain for us briefly why  15 you rely on the whole mixtures approach, why you believe  16 that that is a better method.  17 A. Well, I believe that's a better method because,  18 well, the whole product approach, so the toxicity  19 evaluation, that's in accordance with guidelines from EPA,  20 from ASTM, and other organizations that really the best  21 approach to a complex mixture is to evaluate the toxicity  22 of the entire mixture.  23 The problem is we often don't have the data to do  24 that, and also once a mixture is in the environment and  25 you're just sampling chemicals, you don't always know the</p>	<p style="text-align: right;">2110</p> <p>05:32 1 Q. Okay. Thank you, Dr. Strauss. I think that's all  2 I have. Thank you.  3 QUESTIONS FROM THE TRIBUNAL  4 PRESIDENT VEEDER: There may be an objection to  5 this question, so please don't answer until we see whether  6 there is or not, but are you involved in any way with the  7 proposed site visit by the Tribunal? Obviously not.  8 THE WITNESS: No, I don't know whether to answer  9 it or not.  10 PRESIDENT VEEDER: Well, you mentioned sites, and  11 I think you suggested that some sites on your Slide 4 were  12 sites which would be visited by the Tribunal during its  13 site visit.  14 THE WITNESS: That's true.  15 PRESIDENT VEEDER: You do know that?  16 THE WITNESS: I do know that. I will be there  17 with you.  18 PRESIDENT VEEDER: That's what I wanted to ask  19 without asking.  20 Could I ask you to look at Slide 4.  21 If there is an objection to this, please make it,  22 but I don't think there need be, but if there is, you ask  23 the witness not to answer.  24 Could you just confirm which are the sites which  25 it is proposed the Tribunal will visit. I understand it's</p>
<p style="text-align: right;">2109</p> <p>05:30 1 source. In this case, we know the source. I mean, the  2 locations were sampled in relation to a particular source,  3 and so we know it's crude oil. And so, in my opinion, the  4 whole--one can use a whole-mixtures approach for this site  5 and others that might be similar because we have the  6 toxicity measure of whole oil, and I believe that's the  7 best approach.  8 You can't always do it, and I didn't do it in my  9 Initial Reports because the TEM measurement only was first  10 used in 2014. It wasn't used in 2013.  11 And to fully utilize the data I began thinking  12 about how to use a whole-mixtures approach, and the  13 appropriate data were there from the industry documents.  14 Q. And are there other institutions or organizations  15 that endorse the whole-mixtures approach?  16 A. Well, USEPA does; in its initial mixtures document  17 in 1986, it reiterated its support of it in a document  18 about PAHs, and I think it was 2011. ASTM, the petroleum  19 guidance document that Dr. McHugh relied on, endorses they  20 call it a whole-products approach and not a whole-mixtures  21 approach, but it's the same thing.  22 If you want to measure the toxicity of something,  23 you ought to measure the toxicity of the whole thing. The  24 problem is you don't often have the data here. We are  25 lucky enough to have the data.</p>	<p style="text-align: right;">2111</p> <p>05:33 1 Lago Agrio 16--I'm sorry, Lago Agrio 2.  2 THE WITNESS: Yes.  3 PRESIDENT VEEDER: It's here marked as Guanta 6,  4 but it has another name. And then also Shushufindi 34.  5 THE WITNESS: I don't think Guanta 6 is one of  6 them. I may not be the best person, but I believe it's  7 Aguarico 6, Lago 2, Shushufindi 34, and Shushufindi 55,  8 which is not on this list because I didn't conduct a  9 quantitative risk assessment of it, but LBG evaluated it.  10 PRESIDENT VEEDER: That's all I had to ask.  11 Thank you very much.  12 Are there any questions arising from the  13 Tribunal's questions?  14 We ask the Claimants first.  15 MS. RENFROE: No questions.  16 PRESIDENT VEEDER: And the Respondent?  17 MS. SILVER: No questions.  18 PRESIDENT VEEDER: Thank you very much.  19 We have come to the end of your testimony. Thank  20 you for coming to assist the Tribunal. You may leave the  21 table.  22 THE WITNESS: Thank you. It's been my pleasure.  23 (Witness steps down.)  24 QUESTIONS FROM THE TRIBUNAL TO THE PARTIES  25 PRESIDENT VEEDER: It's late in the day and late</p>

<p>Sheet 62</p> <p style="text-align: right;">2112</p> <p>05:34 1 in the week, but we did promise that we would give some 2 indication of the topics that we would wish the Parties to 3 address at some point subsequent to today. 4 Can I say, first of all, they're topics rather 5 than questions, and it would have been I think easier if we 6 had had time to put them in writing, but we don't, so 7 they're somewhat imprecise, but can I please ask you not to 8 read into the questions anything more than the question. 9 We have not started our deliberations. We have not formed 10 a view, and this is simply a Request for Information and 11 assistance. And you may think you already provided it, in 12 which case you need to draw attention to it, or, as we see, 13 you may have to clarify what you have given us already. 14 I shall be putting the topics, but, in fact, it's 15 the work of all three of us, and my colleagues will join in 16 if they think I have missed out anything or they wish to 17 add anything for themselves as we go through topic by 18 topic. 19 This will take about ten or 15 minutes. 20 The first thing relates to legal materials on 21 denial of justice under international law. As a matter of 22 general practice as arbitrators, the three of us don't like 23 referring or using legal materials that have not been cited 24 to us by the Parties. So, although we could have access to 25 these materials, we would rather raise it with the Parties;</p>	<p style="text-align: right;">2114</p> <p>05:38 1 look at the whole work. 2 I turn to the next topic, which is jurisdiction, 3 and this is primarily addressed to the Respondent, and the 4 question is a question this time: If TexPet had been sued 5 as a named Defendant in the Lago Agrio Litigation and had 6 been held liable as was Chevron under the Lago Agrio 7 Judgment, does the Respondent dispute that TexPet could 8 bring, as a matter of jurisdiction, a claim for denial of 9 justice or breach of the effective-means obligation under 10 the BIT? 11 A related question is the effect of this 12 Tribunal's Third Interim Award on Jurisdiction. We heard 13 submissions in opening on the status of Chevron as an 14 investor with or without a direct investment, but what is 15 the effect of our Jurisdiction Award on Chevron for its 16 status as an investor with an indirect investment--that is, 17 TexPet--under the BIT? 18 Another question more directed at the Claimants, 19 we know very well that the date of the Claimants' claims 20 for denial of justice--and by that I include effective 21 means--was made after this arbitration had commenced in 22 respect to the Judgment and subsequent actions omissions 23 which also took place after this arbitration had commenced. 24 Does this timing have an effect on our jurisdiction or the 25 admissibility of those claims under public international</p>
<p style="text-align: right;">2113</p> <p>05:36 1 and, if you think it appropriate, we will be asking you to 2 submit the materials to us. 3 The first set of materials relates to the Loewen 4 Case. We've heard a lot about the Loewen Case from the 5 Parties, and obviously we have the Decision or the Award 6 and its clarification. But we do know that there were some 7 interesting legal opinions submitted by the Parties in the 8 Loewen arbitration, in particular by, as he then was, 9 Mr. Christopher Greenwood, now Judge Greenwood, and as he 10 was already, Judge Jennings. There may well have been 11 other legal opinions on denial of justice and exhaustion of 12 local remedies, and if there were, we would like to see 13 them or at least get your permission for us to see them. 14 These are public documents. 15 As regards Judge Greenwood, the Respondents have 16 put in part of his Article, State responsibility for the 17 decisions of national courts in RLA-305, but we would like 18 the whole Article. 19 Similarly, we have multiple extracts from 20 Professor Paulsson's book on denial of justice, but we 21 would like your consent for us to refer, if we need to, to 22 the whole book. That is principally in RLA-61, but it's in 23 other places, too. 24 The Freeman work is in RLA-310, but again, I think 25 we would like more pages. Could we have your consent to</p>	<p style="text-align: right;">2115</p> <p>05:40 1 law, the BIT, the UNCITRAL Arbitration Rules or the lex 2 arbitri? 3 Another question addressed to both sides but more 4 perhaps to the Claimants: How does the Claimants' ripeness 5 theory, which was proposed by Professor Paulsson in the 6 Claimants' opening oral submissions at T-1, Page 143, he 7 called it a consummation; that is, the denial of justice as 8 a claim was consummated when the Lago Agrio Appellate Court 9 affirmed and certified the underlying Lago Agrio Judgment 10 as enforceable in Ecuador and elsewhere? How does that 11 work consistent with the Loewen Award? As you will recall 12 there, the Judgment was enforceable and effectively 13 enforced. But when, if we apply the ripeness theory 14 proposed in this case, does that work with regard to 15 Claimants, both of them, claims in the Loewen arbitration? 16 Next topic, which is the scope of the Respondent's 17 obligations under the BIT, the first one is perhaps again 18 more directed to the Claimants. In this particular case, 19 do the BIT's other standard of protection--FET, FPS--bring 20 any relevant additional protection to the Claimants' case 21 on denial of justice, or are we limited or concentrated on 22 denial of justice under public international law and the 23 provision on effective means? 24 Second question: Is the obligation under the BIT 25 regarding effective means a broader legal protection for an</p>

05:43 1 investor than denial of justice or the same? If it's  
 2 different, how does that affect the Claimants' case as  
 3 regards not the Lago Agrio Court itself but rather the  
 4 Appellate Court and the Cassation Court? And if so, how?  
 5 In that regard, the question address more to the  
 6 Respondent, as regards the claim for effective means under  
 7 the BIT, is it common ground between the Parties that the  
 8 requirement to exhaust local remedies is the same? We saw  
 9 the reference to the Commercial Cases Partial Award at  
 10 Paragraph 244.  
 11 I will now turn to the next topic, which relates  
 12 to the Lago Agrio Court and Judgment issues, and there were  
 13 a variety of queries.  
 14 Is it in evidence why Texaco and TexPet were not  
 15 pursued by the Lago Agrio Plaintiffs as Defendant Parties  
 16 as distinct from Chevron in the Lago Agrio Litigation? And  
 17 we say that in particular because we know that Texaco was  
 18 named as a Defendant, Texaco, Inc. in the Lago Agrio  
 19 Complaint. And it was suggested in opening by Mr. Bishop,  
 20 Day 1, Page 68, that the Lago Agrio Plaintiff's lawyers had  
 21 made a mistake, and this was either expressly or implicitly  
 22 acknowledged by Mr. Donziger. If that were so, could we  
 23 have the reference to that piece of evidence.  
 24 And whilst we're talking about Mr. Donziger,  
 25 again, I think it was Mr. Bishop, Day 1, Page 18, who

05:47 1 standard of proof--again, I'm using a common law  
 2 terminology--the "balance of probabilities," but there  
 3 should be perhaps a different term for public international  
 4 law, the UNCITRAL Rules, or lex arbitri, if it's a balance  
 5 of probabilities as regards an allegation which is not an  
 6 allegation of criminal conduct, does that standard of proof  
 7 change when the allegations are extremely serious  
 8 allegations amounting to or equivalent to criminal conduct?  
 9 Again, a question about the burden of standard of  
 10 proof. And all these questions are phrased under public  
 11 international law, the UNCITRAL Rules and the lex arbitri:  
 12 Is there, and if so what is it, an inference from a Party's  
 13 omission to produce relevant evidence either within its own  
 14 control or if not within its own control, with more  
 15 availability than its opponent? And in this case, we're  
 16 clearly looking at names such as Mr. Zambrano, Ms. Calva,  
 17 Mr. Fajardo and possibly Mr. Donziger himself.  
 18 We move to a different topic: Merger--that is the  
 19 merger between Texaco and Chevron. Now, the Lago Agrio  
 20 Judgment addresses the merger at some length--this is  
 21 Exhibit C-931--and in that consideration, it refers several  
 22 times to the concept of fraud or abuse as grounds to pierce  
 23 the corporate veil. Do we find in the Lago Agrio Judgment  
 24 or indeed in any allegation made by the Parties before that  
 25 Court, a statement that Chevron was guilty of fraud or

05:45 1 referred to Mr. Donziger's unforgettable words about going  
 2 over to the dark side. Again, if that's in evidence, could  
 3 we have the reference.  
 4 Next question: We would like it clarified as a  
 5 matter of Ecuadorian law and practice in evidence what is  
 6 the legal rule or rules that precluded Chevron or Texaco  
 7 from bringing a third-party claim in the Lago Agrio  
 8 Litigation against Petroecuador for consequential relief or  
 9 indemnity, that is in the same legal proceedings as those  
 10 that were brought by the Lago Agrio Plaintiffs? And if not  
 11 a third-party claim, what rule precluded Chevron or Texaco  
 12 to bring Petroecuador in as an additional Defendant facing  
 13 the Claims by the Lago Agrio Plaintiffs directly or  
 14 indirectly through Chevron?  
 15 Now, when we look at the allegations of  
 16 ghostwriting against Judge Zambrano, which are very serious  
 17 allegations, we need some assistance, as a matter of public  
 18 international law, the UNCITRAL Rules and the lex arbitri  
 19 as to the burden and standard of proof. Now, in my legal  
 20 system and other common law systems, the legal burden never  
 21 shifts. It's on the person who makes the allegation, but  
 22 the evidential burden can shift backwards and forwards.  
 23 Now, is that the same position under public international  
 24 law?  
 25 And a related question, when we look at the

05:49 1 abuse in merging with Texaco?  
 2 Same topic, different question. What if the  
 3 Fusión Memo was an accurate reflection of Ecuadorian law,  
 4 including its conflict of laws and laws of procedure? If  
 5 so, could that be a denial of justice by itself? Is it  
 6 arbitrariness for an Ecuadorian Court to take correct  
 7 account of an applicable foreign law, subject, of course,  
 8 to respecting the Parties' procedural rights? Again, we're  
 9 talking about denial of justice and irrationality.  
 10 What is the position as a matter of public  
 11 international law as regards punitive or multiple damages  
 12 amounting to a denial of justice per se?  
 13 We would like some factual explanation again from  
 14 the evidence as to what happened in regard to prosecutions  
 15 or professional disciplines for some of the individuals  
 16 involved in the Lago Agrio Litigation? For example, was  
 17 Mr. Cabrera, Judge Zambrano, or Mr. Fajardo, were any of  
 18 them investigated or prosecuted or otherwise disciplined in  
 19 relation for what did or did not take place in the Lago  
 20 Agrio Litigation? There may be other names which the  
 21 Parties should consider.  
 22 Next topic, the appellate courts. As we  
 23 understand the Claimants' pleading, they are alleging  
 24 independent denials of justice against the Appellate Court  
 25 and the Cassation Court. But are we right in understanding



05:52 1 that those allegations are allegations of omission only,  
 2 that these courts failed to do something, which it is said  
 3 they should have done because they could have done, or is  
 4 the position that they didn't have the power to do what  
 5 others might think they should have done?  
 6 And a related question, we understand there is an  
 7 outstanding appeal to the Constitutional Court. We would  
 8 like some information about the timing of those  
 9 proceedings.  
 10 Now, a different topic relating to the relief  
 11 sought by both sides in these proceedings. In the  
 12 Claimants' Track 2 Reply Memorial, Page 232, Paragraph 435,  
 13 Subparagraph (a)(v), the Claimants seek a declaration of  
 14 nullity as a matter of international law regarding the Lago  
 15 Agrio Judgment. What is the precedent for an arbitration  
 16 tribunal making such a declaration of nullity as opposed to  
 17 a declaration that there has been a breach of international  
 18 law, leaving others to work out the consequences of such a  
 19 breach? And in particular, what legal materials would  
 20 suggest that this Tribunal is competent with jurisdiction  
 21 to make such a declaration of nullity?  
 22 Another question on the Claimants' relief, what if  
 23 there were a partial denial of justice, for example, if it  
 24 were irrational, grossly irrational, for the Lago Agrio  
 25 Court to award non-compensatory damages to the extent that

05:54 1 it did but that it would not have been irrational to have  
 2 awarded a lesser sum for compensatory damages, say, of  
 3 500 million or \$1 billion? As a matter of international  
 4 law, does this Tribunal face an all or nothing decision?  
 5 And if there is to be something less than all or nothing,  
 6 how could that properly be achieved if the Tribunal wished  
 7 to do that?  
 8 If we can come to the Respondent's claim for  
 9 relief, and that is the status of the environmental claims.  
 10 As we understand the Respondent's Track 2 Supplemental  
 11 Rejoinder--there is a reference in Footnote 953--the  
 12 Respondents are raising these environmental claims only as  
 13 an offset or a setoff against liabilities to the Claimants  
 14 and not as an independent counterclaim. We understand this  
 15 is an issue between the Parties, but we would like that  
 16 clarified certainly as regards to the Respondent. And if  
 17 we're talking about a setoff at the likely time of our  
 18 award, what would the setoff be against?  
 19 Now, we're going to hear Expert evidence next  
 20 week, so we don't want to foresee too much what Mr. Andrade  
 21 will be telling us, but we have a debate in the Expert  
 22 Reports between him and Mr. Barros as regards causation as  
 23 it was addressed in the Lago Agrio Judgment, and Dr. Barros  
 24 makes a broader comment in his Fifth Expert Report about  
 25 the minimum requirements to establish causation in civil

05:56 1 law systems, Dr. Andrade, in his Third Expert Report,  
 2 replies to that, but we would like it clarified, not  
 3 necessarily before their evidence, obviously, but  
 4 afterwards, as to the relevance of such minimum  
 5 requirements to the Claimants' denial of justice claim to  
 6 the extent premised on the alleged failure by the Lago  
 7 Agrio Judgment properly to establish a factual or legal  
 8 causation link for the damages awarded to the Lago Agrio  
 9 Plaintiffs as alleged by the Claimants in these  
 10 proceedings?  
 11 Last topic are just factual matters. It would be  
 12 very helpful for us to have an updated and completed and,  
 13 dare I say it, agreed dramatis personae.  
 14 We would also request the names of the Lago Agrio  
 15 Plaintiff lawyers both in the United States and in Ecuador.  
 16 We would also request a list of all the Defendants  
 17 in the RICO proceedings in New York, including those who  
 18 settled with Chevron before the Judgment of Judge Kaplan.  
 19 We're interested in the evidence of Ms. Calva.  
 20 First, we would like to know a little bit more if it's in  
 21 the RICO Trial Transcript as to why when she was supposed  
 22 to be coming to give evidence orally she did not come, and  
 23 we would also like some explanation for our purposes of the  
 24 status of the two statements that we have in evidence  
 25 before us. They're very similar. One seems to have been


05:58 1 sworn before a notary in Ecuador, and the other looks as  
 2 though it's been produced in some different manner. That's  
 3 Ms. Calva.  
 4 We understand that Mr. Fajardo did not give  
 5 evidence in the RICO trial proceedings, but was he  
 6 requested to do so? Was an adverse inference sought  
 7 against the Defendants for Mr. Fajardo's omission to come  
 8 and give evidence in New York?  
 9 We would like to understand a little bit more  
 10 about the RICO proceedings. I'm certainly not familiar  
 11 with that particular form of legal process, and these  
 12 certainly took an unusual form, but what happens now,  
 13 assuming the Second Circuit does overturn or doesn't  
 14 overturn their Judgment?  
 15 A related question is: We understand the  
 16 transcripts of the RICO proceedings are evidence in this  
 17 proceeding, but that would not apply to the RICO Judgment  
 18 nor, indeed, to the Decision of the Second Circuit, but we  
 19 would like that confirmed because, in some of your  
 20 submissions, you cited the RICO Judgment as if it were a  
 21 piece of evidence, but I assume--we assume--that that is  
 22 not the case.  
 23 We would like to be informed a little bit more  
 24 about the status of the reinforcement proceedings in the  
 25 three jurisdictions in which we know, including, if any,

06:00 1 have reached an ex aequo stage.  
 2 (Tribunal conferring.)  
 3 PRESIDENT VEEDER: I didn't quite exhaust the  
 4 question with regards to the Respondent's case on the  
 5 environmental claims. Apart from the issue of responding  
 6 to the Claimants' claims for denial of justice and  
 7 irrationality, and I touched on the issue of setoff, we  
 8 need a better understanding how these environmental claims  
 9 fit into the legal structure of the BIT, but Professor  
 10 Vaughan will now explain in more intelligent terms than I  
 11 can possibly muster at this late hour.  
 12 ARBITRATOR LOWE: In addition to what our  
 13 President said quite rightly, I think it would be helpful  
 14 if you could say a few sentences at the end of next week  
 15 about where the technical evidence that we've heard over  
 16 the last two weeks, and we will hear at the beginning of  
 17 next week, fit into the case, just while it's fresh in our  
 18 minds so that we can get some kind of clear perspective on  
 19 the relevance in the overall context of each side's case.  
 20 PRESIDENT VEEDER: That exhausts the topics and  
 21 questions we had for you.  
 22 Can we say, again, please don't read too much into  
 23 it, even as to the questions we have not asked. Please  
 24 understand that these are on the table. Whether you want  
 25 to deal with them next week is up to you. It may require

CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

  
 DAVID A. KASDAN

06:03 1 more time, in which case take more time.  
 2 And lastly, it certainly won't exhaust our ability  
 3 and our right to ask further questions of the Parties. So,  
 4 we will have, I think, many more, but in response to what  
 5 you requested for the purpose of next Thursday and Friday,  
 6 we thought it helpful just to go through what was currently  
 7 on our mind.  
 8 Unless there is any more housekeeping, we will  
 9 bring this long day to an end. We will ask Claimants  
 10 first.  
 11 MR. BISHOP: The Claimants have nothing further.  
 12 And we are very grateful to the Tribunal for giving us some  
 13 guidance. Thank you.  
 14 PRESIDENT VEEDER: And the Respondents?  
 15 MR. BLOOM: We have nothing further. And we do  
 16 appreciate the guidance as well. Thank you.  
 17 PRESIDENT VEEDER: And again, I apologize for the  
 18 incoherence, but I hope the shorthand writers can clean it  
 19 up.  
 20 Thank you very much. We will see you Monday  
 21 morning. I think we're on good time, so 9:30 Monday. Have  
 22 a good weekend.  
 23 (Whereupon, at 6:04 p.m., the Hearing was  
 24 adjourned until 9:30 a.m., Monday, May 4, 2015 day.)  
 25

IN THE MATTER OF AN ARBITRATION BEFORE A TRIBUNAL  
CONSTITUTED  
IN ACCORDANCE WITH THE TREATY BETWEEN THE U.S.A. AND THE  
REPUBLIC OF ECUADOR CONCERNING THE ENCOURAGEMENT AND  
RECIPROCAL PROTECTION OF INVESTMENT, SIGNED AUGUST 27, 1993  
(THE "TREATY")

and

THE UNCITRAL ARBITRATION RULES 1976

- - - - -x  
 In the Matter of Arbitration :  
 Between: :  
 :  
 CHEVRON CORPORATION (U.S.A.), :  
 TEXACO PETROLEUM COMPANY (U.S.A.), :  
 :  
 Claimants, : PCA Case No.  
 : 2009-23  
 and :  
 :  
 THE REPUBLIC OF ECUADOR, :  
 :  
 Respondent. :  
 - - - - -x Volume 10

TRACK 2 HEARING

Monday, May 4, 2015

The World Bank  
700 18th Street, N.W.  
J Building  
Conference Room JB1-080  
Washington, D.C. 20003

The Hearing in the above-entitled matter convened  
at 9:30 a.m. before:

- MR. V.V. VEEDER, Q.C., President
- DR. HORACIO GRIGERA NAÓN, Arbitrator
- PROFESSOR VAUGHAN LOWE, Q.C., Arbitrator

## Registry, Permanent Court of Arbitration:

MR. MARTIN DOE, Secretary to the Tribunal

## Additional Secretary:

MS. JESSICA WELLS

## Court Reporters:

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MR. BRIAN CUMMINS
LitOptix

1 PROCEEDINGS
2 PRESIDENT VEEDER: Well, good morning, ladies and
3 gentlemen. We'll start day ten of this Hearing.
4 There are a couple of housekeeping matters we need
5 to address but not explore now.

[REDACTED]

18 So, we now move on to our next expert Witnesses.
19 These are witnesses from the Respondent. We understand
20 this is Dr. Garvey and Mr. Goldstein. And what we'd like
21 you to do, if you will, is to read the words on the
22 Declaration before you that we ask all expert witnesses to
23 make.

24 Perhaps, Dr. Garvey, you could start.
25 EDWARD A. GARVEY and KENNETH J. GOLDSTEIN,

C O N T E N T S

PAGE

WITNESSES:

EDWARD A. GARVEY and KENNETH J. GOLDSTEIN

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Cross-examination by Ms. Renfro 2166
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FABIÁN ANDRADE NARVÁEZ

Direct examination by Mr. Leonard 2286
Cross-examination by Mr. Coriell 2312

09:35 1 RESPONDENT'S WITNESSES, CALLED
2 THE WITNESS: (Dr. Garvey) I solemnly declare upon
3 my honor and conscience that I shall speak the truth, the
4 whole truth, and nothing but the truth, and that my
5 statement will be in accordance with my sincere belief.

6 PRESIDENT VEEDER: Thank you very much.
7 Mr. Goldstein.

8 THE WITNESS: (Mr. Goldstein) I solemnly declare
9 upon my honor and conscience that I shall speak the truth,
10 the whole truth, and nothing but the truth, and that my
11 statement will be in accordance with my sincere belief.

12 PRESIDENT VEEDER: Thank you very much.
13 So, first, there'll be questions from the
14 Respondent.

DIRECT EXAMINATION

15 BY MR. EWING:

16 Q. Good morning, Dr. Garvey and Mr. Goldstein.
17 My understanding is you submitted four reports in
18 this arbitration?
19

20 A. (Dr. Garvey) That's correct.

21 Q. And that also includes two Site Investigation
22 Reports?

23 A. (Dr. Garvey) That's correct.

24 Q. And could you briefly explain what those Site
25 Investigation reports include.

09:36 1 A. (Dr. Garvey) They include information that we  
2 gathered as a result of our two Site Investigations, one in  
3 2013 and the other one in 2014. We summarized a series of  
4 data samples that we collected and described our  
5 interpretation.

6 Q. And for your reference, I'd like to give you a  
7 copy of your Reports. They are coming now, and we have  
8 copies for Claimants as well.

9 Do you have any changes or updates to your Reports  
10 that you wanted to bring to the Tribunal's attention?

11 A. (Dr. Garvey) We have a short list of errata that  
12 we submit I believe is included with this binder.

13 Q. And you're both testifying today. Could you  
14 briefly explain how you'll be handling the fact that you're  
15 both at the table this morning.

16 A. (Dr. Garvey) Yes, I'll be first line of  
17 questioning or first line of answers to any questions that  
18 are raised, and I'll direct to my colleague when  
19 appropriate.

20 Q. And I understand you also have a presentation that  
21 you would like to give to the Tribunal as well?

22 A. (Dr. Garvey) Yes, we've prepared one.

23 MR. EWING: And with the Tribunal's indulgence, I  
24 would like to have them do that, and we will pass out those  
25 slides.

09:37 1 BY MR. EWING:

2 Q. So, Dr. Garvey, if you'd just let us pass these  
3 out, and then if you will proceed.

4 A. (Dr. Garvey) Thank you.  
5 (Pause.)

6 A. (Dr. Garvey) All right, good morning.

7 This morning, we'd like to present to you, Members  
8 of the Tribunal, our understanding, a brief explanation of  
9 our understanding of the contamination that we've observed  
10 in the Oriente, and I'd like to explain to you how we  
11 understand that data and what conclusions it leads us to.

12 But before I begin, let me talk a little bit about  
13 myself. I'm a geochemist with more than 30 years of  
14 experience in environmental work, environmental forensics  
15 in particular. What I mean by environmental forensics is  
16 basically the process of chasing down and understanding  
17 contamination in the environment, studying its sources,  
18 where it's going to, and how likely it is to stay there.

19 I have a bachelor of engineering as well as a  
20 Ph.D. My Ph.D. is in geochemistry. I'm a licensed  
21 professional geologist. I serve on the Environmental  
22 Engineering Committee of the USEPA's Science Advisory  
23 Board, and I've co-authored more than 75 presentations and  
24 journal articles, and I'll let my colleague introduce  
25 himself.

09:40 1 A. (Mr. Goldstein) Good morning, Members of the  
2 Tribunal. I'm Ken Goldstein, I also have over 30 years of  
3 experience in groundwater hydrology, contaminant hydrology  
4 and contaminant hydrogeology, groundwater supply  
5 development and protection. I've conducted and oversaw  
6 hundreds of Site Investigations similar to what we've  
7 conducted here over July 2013 and 2014, and Site  
8 Investigations and site remediation.

9 I am a certified groundwater professional by the  
10 National Groundwater Association of Scientists Engineers.  
11 I'm also on several committees of the NGWA, and I have also  
12 published and presented over 25 publications on groundwater  
13 contamination, site-investigation techniques,  
14 high-resolution sampling and Site Investigation,  
15 particularly on groundwater remediation.

16 A. (Dr. Garvey) So, to begin, then, I'd like to  
17 review LBG's Scope of Work as assigned by counsel and the  
18 Government of Ecuador.

19 Our scope included the following: Evaluate the  
20 environmental data and information that was presented in  
21 the Lago Agrio Record and opine on the reasonableness on  
22 the scientific basis of the Judgment, conduct investigation  
23 of TexPet features at well sites in the Concession Area,  
24 this was in part to respond to Claimants' criticisms that  
25 we formed our opinions without inspecting the site, but

09:41 1 also to test the Claimants' hypothesis that they put forth  
2 in their various documents regarding the Concession Area.

3 And then finally, our scope did not include  
4 apportionment of liability nor assessment of costs. Those  
5 are tasks that we were not given explicitly; and, as I  
6 understand it, the portion of the liability and costs are  
7 part of Track 3, but anyway we did not address that.

8 So, with that, then, to begin our presentation, we  
9 noted in reviewing the documents that the Claimants  
10 effectively posed a number of hypotheses. These are both  
11 in their earlier reports as well as in the Connor 2013,  
12 which I'll cite here.

13 Basically, these--I'm going to test and I will  
14 show you evidence to test these four hypotheses.  
15 Essentially, Claimants assert contamination is limited;  
16 that is, it's limited to the site, to the well sites  
17 themselves and does not extend beyond the immediate  
18 vicinity of the oil fields and the oil field facilities  
19 specifically. That the contamination is bounded; that the  
20 sufficient information actually bound the extent of  
21 contamination at each well site. That contamination is  
22 immobile, that the original crude that was spilled is  
23 effectively solidified. That the crude that was spilled  
24 during TexPet operations is now effectively asphalt-like.

25 And then finally, that clay soils present in the

09:43 1 Oriente prevent contaminant migration, so we're going to go  
 2 through each of these assertions and examine the evidence  
 3 that's available in the record as well as evidence that we  
 4 collected during our site inspections and see if we agree  
 5 with them.  
 6 So, before I begin, though, I'd like to present a  
 7 simple conceptual site model of how we think our  
 8 understanding of how the operation worked during TexPet's  
 9 time of control there, and then how conditions are now.  
 10 What I've shown before you here is a cartoon of conditions  
 11 in the Oriente during a well operation, a drilling  
 12 operation. What you see here on the right is a drill rig.  
 13 It's there. It's where the drilling is done, where the  
 14 waste is produced. The oil comes out from the drill rig,  
 15 waste and oil and drilling muds into various pits located  
 16 around the site. These are shallow earthen-lined pits that  
 17 were--basically we would assert that were available to  
 18 allow rainwater to collect in them as well as the waste  
 19 material and would potentially impact groundwater if they  
 20 were not impermeable.  
 21 In addition, this is oil--as a result of these  
 22 pits, because the ground underneath in many cases was  
 23 permeable, was allowed oil and water to pass into it, oil  
 24 entered the groundwater as a result of being displaced or  
 25 placed in the pits.

09:45 1 As a result of the filling of these pits, oil and  
 2 water would be able to leave the pits via siphons that were  
 3 installed, as well as overtopping the berm when the pits  
 4 were filled too much, or perhaps as a result of a rainfall  
 5 event where a significant amount of water would collect in  
 6 the pit and would displace the oil upward over the top of  
 7 the berm.  
 8 And then, finally, as a result of this overtopping  
 9 of the pits or the siphons or the groundwater, oil and  
 10 contaminated water would enter the local streams. Now,  
 11 it's important to recognize here that because of the large  
 12 amount of water that's needed for an oil drilling  
 13 operation, that these drill rigs tended to be located near  
 14 streams because they needed a lot of water. That's  
 15 understandable. But as a result, their waste disposal  
 16 practices also had the potential to impact streams in the  
 17 vicinity. Because streams are moving bodies of water, when  
 18 the oil reaches these streams, they can be transported for  
 19 long distances downstream and impact a relatively broad  
 20 area of contamination. So, these arrows here on the  
 21 diagram here show you our take on how contaminant transport  
 22 might have occurred around the operations conducted by  
 23 TexPet.  
 24 This is a conceptual site model of things  
 25 currently in an area that's been abandoned. There's no

09:46 1 longer any operating drill rig here. We have on the left a  
 2 pit; oil is still viable in it. We have found liquid oil  
 3 in some pits, and we think that oil from that pit can still  
 4 impact groundwater, can still enter the aquifer system  
 5 where it will contaminate groundwater. Contaminated  
 6 groundwater can migrate to the local stream, thank you, and  
 7 then oil as well can impact the local stream as a result of  
 8 overland runoff. Okay. So, overland runoff and  
 9 groundwater both continue to transport contamination away  
 10 from the pits and into the environment.  
 11 So, with those two conceptual site models, which  
 12 are based on our observations, we'd like to talk a little  
 13 bit about the information that's available. This map  
 14 presents to you locations of the 344 well sites and  
 15 production stations that are spread out across the Oriente.  
 16 There's a number of large well fields here, but I would  
 17 point out on this map that the symbol sizes are  
 18 approximately a half a kilometer in diameter. They  
 19 represent about 20 hectares. That is, in fact, our  
 20 estimate of the locally impacted area around each well  
 21 site. As we'll show evidence that has been collected, the  
 22 areas around these well sites are approximately half a  
 23 kilometer in diameter, so these dots actually represent the  
 24 amount of area impacted potentially by each well site.  
 25 Now, this is the spread of information across the

09:48 1 Oriente. This now represents the JI inspection sites, and  
 2 what you can see here by these blue symbols is that the JI  
 3 inspection sites are spread out across the entire Oriente.  
 4 They extend from north to south, east to west basically as  
 5 far as the well fields do, so the JI inspection sites  
 6 really captured a broad cross-section of the types of well  
 7 sites that existed in the Oriente. Each area is well  
 8 represented. And that's important because we use the data  
 9 from these different well sites to help us understand the  
 10 contamination in the Oriente and to extrapolate to the  
 11 areas that we haven't studied.  
 12 These are the sites in white that Louis Berger  
 13 visited during our various site visits. It is close to--I  
 14 believe there are 60 visits that we visited. Some of them  
 15 are JI sites, some of them are not. But again, in our  
 16 inspections, we also inspected a broad spectrum of sites,  
 17 and so we considered our inspections and our site visits to  
 18 have captured a broad range of conditions that might be  
 19 expected in the Oriente.  
 20 And, finally, these symbols in green represent the  
 21 sites where we did our investigations. Again, we are  
 22 capturing a broad area of coverage. It's not quite as  
 23 extensive as the overall Oriente coverage of well fields,  
 24 but we've covered, I think, the four or five most important  
 25 well fields.

09:49 1 So, with that, then, we used that--using the  
 2 information and our conceptual site models, we're going to  
 3 begin to test these hypotheses, and we'll put forth to you  
 4 what we understand about the information that's available  
 5 in the context of these hypotheses.  
 6 So, claimants' hypotheses basically address these  
 7 four items. Again, contamination is limited, so we begin  
 8 with that one. And we note the following: Based on our  
 9 site inspections, we saw oil seeping into wetland,  
 10 sediments at Guanta 6, we see here. We found oil seeping  
 11 from wetlands and in stream sediments at Guanta 6, which is  
 12 downstream now of that wetland, and you can see in this  
 13 photograph when we zoom in, these droplets of oil; they're  
 14 very clearly evident emanating from this core. This is  
 15 droplets of oil trapped within the sediment; this is at  
 16 Guanta 6 in a stream downstream of the site itself.  
 17 This is oil in sediment from a stream--I emphasize  
 18 stream again--at Shushufindi 55. Again, you can see  
 19 embedded in this sediment core; these black dots represent  
 20 droplets of oil that are embedded in the sediment.  
 21 So, we're finding here that we see oil, liquid oil  
 22 in the sediments in the streams off-site from these well  
 23 sites. That means that the streams are carrying oil away  
 24 from the sites and to regions downstream.  
 25 In addition, we would note this slide. This is a

09:52 1 To begin with the second one, contamination is  
 2 bounded. This is Claimants'--sorry. The Claimants'  
 3 assertions that the sites are bound by rings of clean  
 4 sediment samples, soil samples. The Claimants have used  
 5 these kinds of cartoons to represent the areas, typical  
 6 area and how they bounded it with their samples. I have  
 7 drawn in the upper left diagram there that red perimeter  
 8 around the pits, okay, where they assert here in that  
 9 exhibit that the area of contamination is surrounded and  
 10 the right-hand diagram the Claimants assert that they  
 11 stepped out the edges of pits in this fashion. We, in  
 12 fact, cannot find any sites that look like this, but I'll  
 13 show you some direct evidence for that.  
 14 This is a map of Lago Agrio 6. It has two pits in  
 15 it. You can see by the key, one is a RAP pit and one is an  
 16 unremediated pit. The colors represent radial distances  
 17 from the pit, zero to 50 meter, 50 to 100 meters, 100 to  
 18 200 meters. We zoomed in here on this particular site just  
 19 to show you the data. These dots now represent the  
 20 available JI data, the data that was available to the  
 21 Court. We've color-coded the symbols based on the  
 22 concentrations, and you can see that the colors range from  
 23 blue to deep red, meaning that concentrations range from  
 24 less than 100 milligrams per kilogram, or parts per million  
 25 as I'll probably say on occasion, to as much as greater

09:51 1 remediation that's going on at Sacha 86, but we note the  
 2 extensive area of oil contamination in the sediments as  
 3 well as oil contamination in the water.  
 4 What you see here in the foreground is a broad  
 5 area of oil-contaminated sediment as well as  
 6 oil-contaminated sediment downstream of it. You can see by  
 7 the scale of the backhoe on the upper left there, this is a  
 8 very large area of contaminated sediments. And again, this  
 9 represents an area of contaminated sediments that's being  
 10 remediated. There are certainly areas downstream of this  
 11 that would also need remediation. Okay? The extent of oil  
 12 contamination is fairly extensive.  
 13 So, what does this mean? Well, if we think about  
 14 the number of well sites that we have here and the  
 15 frequency of oil contamination reaching the streams and the  
 16 fact that most well sites are located near streams, then  
 17 this is the potential area that could be impacted as a  
 18 result of oil transport away from the sites. This is  
 19 widespread. Very clearly, this is not a small area of  
 20 impact. This is a very large area of impact potentially.  
 21 We don't have the details as to where it might be impacted,  
 22 but we considered these areas are potentially important,  
 23 potentially subjected to contamination.  
 24 Okay. So, we reject the first hypothesis that  
 25 contamination is limited.

09:54 1 than 10,000 parts per million or milligrams per kilogram.  
 2 If we decide to connect these points to create a  
 3 perimeter, those are the points that bound the site. You  
 4 will notice that there is a number of points on the  
 5 perimeter that exceed 3,000 PPM, or 3,000 milligrams per  
 6 kilogram, and one that exceeds 10,000 milligrams per  
 7 kilogram. There are also some points around the pits  
 8 themselves. In the case of Pit 1, there are two samples  
 9 that might suggest they were starting to step out and  
 10 trying to bound that particular pit, but it's only bounded  
 11 to the north, there are no samples that are bounded to the  
 12 east, west or south.  
 13 For Pit 2, there is one sample that's outside of  
 14 it, but it's only bounded, if you would, on the western  
 15 side, and it's clearly not a clean point.  
 16 Note as well that our perimeter does not include a  
 17 portion of Pit 1 because it's so far outside of the array  
 18 of points, and I've highlighted it there in red. So we  
 19 look at this display of data and we would say the pits and  
 20 site are unbounded.  
 21 We note as well that for this particular site that  
 22 there are PI data. If you draw attention to this sample  
 23 over here on the western side, it represents a value  
 24 greater than 3,000 PPM. It's clearly unbounded as well,  
 25 and it represents a sample that Claimants knew about but



Sheet 7 2148	2150
<p>09:55 1 didn't do anything about it to try to bound it. They 2 didn't resample this, if you would, as part of the JI 3 investigation. 4       So, we would note that these are all points of 5 concern with respect to bounding this particular site, 6 saying that this is essentially unbounded with respect to 7 its contamination. 8       So, the PI data show contamination beyond the JI 9 perimeter. And this site remains unbounded by the 10 available data. 11       Do the same thing for this example, this is 12 Sacha 13, this is a little bit bigger scale, so you are 13 seeing much more of the blue area, out between 100 and 14 200 meters beyond the pit edge. And we can do the same 15 thing, place the concentration, the available JI data on 16 the site, color-coded by concentration. It's the same 17 scale. We can connect the dots and draw a perimeter around 18 it, and again, here I've circled the values that are above 19 1,000 on the western side and above 3,000 on the eastern 20 side here. 21       So, again, the pits and sites are unbounded 22 because we don't have clean points that bound this 23 site--the pits themselves. 24       In addition, I would point out the following, in 25 the stream adjacent to the site, we find sediments that are</p>	<p>09:58 1 compounds escaping that oil surface as detected by my meter 2 there. 3       In this particular core--this is a core from Lago 4 Agrio 2 in a pit that was collected there. Remember now 5 that Claimants' assertion is that oil that's in the Oriente 6 will have been solidified, okay? This is, again, a pit 7 from Lago Agrio 2, and this is a core from that, and this 8 core clearly contains liquid oil. That's liquid flowing 9 out of the coring barrel and onto the table. Okay? So, 10 again, inside this pit--this is an untreated pit. It 11 has--the material has not solidified and remains liquid and 12 therefore available to interact with the environment, 13 either by rainwater in filtration, perhaps migration of the 14 oil itself, perhaps groundwater contact. 15       Finally, in terms of my line of evidence here, we 16 have oil droplets coming out from a siphon at Guanta 6. In 17 the upper left-hand diagram you see a pipe that's coming 18 out of the wall of the berm. Here. There is a berm behind 19 the observer here, and this pipe is stuck into the berm. 20 Well, the berm was designed to let water come out of 21 the--it was designed to allow water to leave the berm when 22 water would fill up the pit, but now it's effectively a 23 conduit for oil to leave the pit. And we see in the lower 24 photograph, oil droplets on the surface of the water that's 25 collected below this siphon.</p>
<p>2149</p> <p>09:56 1 over 3,000 parts per million. So, this is a direct 2 evidence for this specific site of the stream carrying 3 sediments and contaminated material away from the site to 4 regions downstream. 5       So, in fact, we were able to construct a truly 6 clean perimeter--that is, a perimeter with all values less 7 than 1,000--for only four of the 51 JI sites that had data, 8 and for those four sites, two of them had a stream crossing 9 their boundary, indicating that even for those, there is a 10 significant potential for downstream transport. So, on the 11 basis of this, we would reject the second hypothesis that 12 the sites are bounded. 13       Finally--well, not finally, with our third 14 hypothesis, we looked at contamination is immobile. 15       We observe from this that contamination exists in 16 multiple media, soils, surface water, sediment and 17 groundwater. And in particular, we continue to find as 18 part of our site inspections the presence of liquid oil or 19 mobile material in terms of contaminated sediment in these 20 environments. This is an example of myself, that's 21 actually my hand in the photograph, making an air 22 measurement of volatile organic material or organic 23 compounds being emitted off of the surface of this oil 24 that's exposed at a pit at Shushufindi 34. We're measuring 25 here significant volatility, significant amount of volatile</p>	<p>2151</p> <p>09:59 1       With that, I will let my colleague continue the 2 discussion. 3       MR. GOLDSTEIN: So, I will be addressing our 4 observations concerning the occurrence of groundwater and 5 groundwater contamination, and the Claimants' Experts 6 assert that groundwater is not contaminated and can't be 7 contaminated from the E&amp;P operations in the Oriente. So we 8 wanted to test that hypothesis, and we reviewed numerous 9 documents and data in the Lago Agrio Record. And as we 10 stated earlier, we conducted two Site Investigations, one 11 in 2013 and one in 2014. I participated in the 2013 Site 12 Investigations. 13       So, we investigated nine sites as part of those 14 two SIs--I call them, SIs, Site Investigation--and we 15 installed 38 monitoring wells. Some of those were 16 temporary well points. 17       And we also sampled that were available to us at 18 the time, three hand-dug wells. Three resident wells close 19 to the platform that were available to us. We took a total 20 of 45 groundwater samples over the two rounds of sampling, 21 that included the three hand-dug wells. And what we 22 observed is very shallow groundwater occurring at the sites 23 that we visited, typically less than 1.6 meters below 24 grade, so there is groundwater occurring at these sites, 25 and it's fairly shallow at seven of the nine sites that we</p>

10:01 1 visited.  
 2 I simply collected 45 groundwater samples. From  
 3 our analysis, we detected Total Petroleum Hydrocarbons at  
 4 or above the Ecuadorian standard at seven wells in 2013 and  
 5 then at 11 wells in 2014. And Dr. Short, Dr. Jeffrey  
 6 Short, submitted numerous opinions in this arbitration as  
 7 well. He did several analyses on the groundwater samples  
 8 and geochemistry by various methods, and I urge you to  
 9 again look at his Reports. And his analysis demonstrates  
 10 that, in fact, we do have oil in our groundwater samples,  
 11 oil droplets in our groundwater samples, and numerous other  
 12 compounds called alkylated-PAHs or Polycyclic Aromatic  
 13 Hydrocarbons. The likely transport mechanism for that, we  
 14 feel, is through more permeable Sand layers and silt  
 15 layers. And we also encountered fractured clay, that means  
 16 that there are macro pours or throats or cracks in the clay  
 17 that would allow water and fluids to migrate.  
 18 Next slide, please.  
 19 Claimants assert that most recently that we should  
 20 have filtered all our groundwater samples, but I would like  
 21 to note, that if we filtered our groundwater samples, we  
 22 would have removed the evidence and would not have known  
 23 that we would have had these compounds and these oil  
 24 droplets in the water. They would have effectively been  
 25 removed by the filter. And what I would like to urge is

10:03 1 that the residents who are living close to the E&P  
 2 facilities, the former E&P facilities, are digging shallow  
 3 hand-dug wells. These wells don't have screens, they're  
 4 not screened wells like some of us would have for our own  
 5 domestic use. They're exposed to the whole water sample.  
 6 There are no filters. That's what they're exposed to.  
 7 That's what they're bathing in, that's what they're using  
 8 for their water resource.  
 9 So, our conclusion is we have found groundwater  
 10 contamination, and it has been, I would say, contamination  
 11 to a limited extent around the oilfields that we have  
 12 investigated. The historical documents that we reviewed  
 13 would indicate that at the Production Stations, groundwater  
 14 may be of greater concern.  
 15 Given these observations, we see groundwater  
 16 migration, contaminated groundwater migrating tens of  
 17 meters from the pits and other structures facilities, and  
 18 this distance is sufficient for this groundwater to  
 19 discharge to the streams, as Dr. Garvey indicated, because  
 20 these streams are so proximate most of the time to where  
 21 the E&P operations were. Also within that limited  
 22 distance, we observed that the residents of the Oriente are  
 23 digging their wells within these areas, so they have the  
 24 potential to be exposed to this contaminated groundwater  
 25 within these limited areas.

10:04 1 So, with that, we would also reject that  
 2 hypothesis that contamination was, therefore, immobile, and  
 3 that there could be no groundwater contamination and  
 4 groundwater does not occur in the Oriente.  
 5 Our next hypothesis to test, as the Claimants  
 6 assert, the clay soils throughout the Oriente would prevent  
 7 migration, that we have clay, clayey soils, and that, in  
 8 fact, prevents migration of any contaminant from the E&P  
 9 sites.  
 10 What we've done is we've tested that through what  
 11 we call hydraulic conductivity testing. I'm not going to  
 12 bore you with that, but what it is is essentially a measure  
 13 of how easily water and fluids would move through the  
 14 subsurface. The graph that I put up in front of you is a  
 15 demonstration of the various layers of soil that you would  
 16 typical encounter in the Oriente at the well fields. And  
 17 the bar on the left demonstrates the degree of ease, for  
 18 simplistic sake, of how water and fluids would move through  
 19 these layers. The top being ten to the minus one means  
 20 water can move pretty freely through these layers all the  
 21 way down to ten to the minus ten, which is essentially a  
 22 clay, a firm clay, which would essential retard the  
 23 movement. Water would not move very freely through that  
 24 strata.  
 25 So, from our tests, we found from these seven

10:06 1 sites that the results lie within this ten to the minus  
 2 one, ten to the minus four range, which is indicative of  
 3 Sand, a silty sand, which would allow water and fluids and  
 4 any contaminants associated with it to move through the  
 5 substrata.  
 6 Note, that at these seven sites, we did not find  
 7 the hydraulic properties of clay. That's not to say that  
 8 at the other sites we didn't encounter clay. We did. And  
 9 we didn't test those because they would have a low yield,  
 10 but like I said before, we also observed that they were  
 11 fractured.  
 12 So, with that, we would say that, no, not all pits  
 13 or spill areas in the Oriente are underlined by impermeable  
 14 clay.  
 15 One thing to realize is that if we had this  
 16 impermeable clay everywhere in the Oriente, the Oriente  
 17 would essentially be one big swampy area and marsh. So,  
 18 there would be no way for the water to percolate and to  
 19 drain, and therefore we would have no agricultural  
 20 practices, but we know that there are agricultural  
 21 practices, and it's not a swamp, so we know in areas there  
 22 is percolation and there is recharge of water to the  
 23 subsurface.  
 24 So, with that, we would dismiss the last one that  
 25 clays, clayey soils prevent contaminant migration.

10:08 1 THE WITNESS: (Dr. Garvey) So, again. So, having  
 2 gone through those hypotheses, we would now like to present  
 3 to you our interpretation of the information that's  
 4 available.  
 5 One of the things that we noted is that there is  
 6 quite a large number of samples, and there is a lot of  
 7 contamination documented by those samples. We used that  
 8 information to try to integrate and estimate the amount of  
 9 petroleum mass that is in the soils of the Oriente. How do  
 10 we do this?  
 11 It's akin to throwing darts at a dart board. I  
 12 will give you my analogy here is I have a board here, whose  
 13 distribution of red and black areas is unknown. I have a  
 14 cover over it, I don't know where it might be black, I  
 15 don't know where it might be red, but I have the  
 16 opportunity to take some samples of it and figure out, at  
 17 least where I take the samples, whether or not it's black  
 18 or red. So, I'll throw a series of 20 darts like any good  
 19 statistician or geochemist might do at the site, and figure  
 20 out for those 20 sites which of them are red and which of  
 21 them are black.  
 22 From my example here, I have thrown 20 darts, I've  
 23 gotten 11 red ones, I've gotten nine black ones. So  
 24 arguably based on my sample set at least, I have a pretty  
 25 good estimate of what I might expect to find in terms of

10:10 1 draw the red/black divisions.  
 2 However, if I think about it again, but I put 20  
 3 darts near tells me something. It tells me I can expect,  
 4 if I continue to sample, that about 45 percent of my darts  
 5 will come back black, about 55 percent of my darts would  
 6 come back red, and in fact, this the underlying pattern.  
 7 It's a checkerboard. Look at how many darts I would have  
 8 to throw at it to actually delineate each square. But we  
 9 know from a checkerboard it's half black, it's half red, so  
 10 by throwing a simple 20 darts at this board, I got a good  
 11 estimate of the amount of black and red area, even though I  
 12 couldn't tell exactly where it was.  
 13 In the same fashion, the data that we have  
 14 available in the Oriente represents the same kind of  
 15 puzzle. We have lots of measurements, we probably can't  
 16 use them to delineate, but there is more than enough  
 17 measurements for us to estimate, if you would, the  
 18 distribution of black and red, the distribution of  
 19 contamination, in the soils of the Oriente. So we applied  
 20 this principle to that.  
 21 This is a principle that actually comes out of  
 22 microscopic work, using microscopes to do, for instance, a  
 23 white blood cell test. When a doctor does a white blood  
 24 cell test, or a pathologist does a white blood cell test,  
 25 he puts a smear of blood on a slide and he counts the

10:09 1 the overall area. I have thrown 20 darts, 11 of them came  
 2 back black--sorry, 11 came back red, nine black, that's  
 3 about 55 percent of the area or that 55 percent of the--of  
 4 my samples are red and 45 percent of my samples are black.  
 5 Okay, but now I'm subject to interpretation. Do I  
 6 have enough information in these darts to actually begin to  
 7 delineate contamination? We would assert no, and this is  
 8 why. I can optimize this distribution and say, okay, let  
 9 me optimize because I think the red areas are most  
 10 important, so I'm going to minimize the black areas and get  
 11 lots of red areas, and by connecting the dots from this  
 12 diagram, I can get about 90 percent of the area as red,  
 13 10 percent of the area as black. That might be one way to  
 14 interpret the information. Alternatively, I can say no, I  
 15 think black is most important, so I'm going to delineate to  
 16 optimize the black areas, so I get 10 percent red, about  
 17 90 percent black. Okay.  
 18 You can see that I haven't changed the darts that  
 19 I have on the board, but my interpretation of where it's  
 20 red and where it's black is really quite variable, pretty  
 21 uncertain.  
 22 Alternatively, I can say, no, let me make my  
 23 mapping match my percentages of my darts, I've got about  
 24 55 percent red, 45 percent black, but again, my boundaries  
 25 are not well-defined. Okay? I don't know exactly where to

10:11 1 number of white blood cells in a random distribution of  
 2 squares on his slide. This is effectively the same thing.  
 3 Okay.  
 4 So, in this way, we can use a limited number of  
 5 samples and get a very good estimate of the overall  
 6 integrated mass of contamination in the area.  
 7 So, doing that then, this is just an example of  
 8 how we might integrate a given site. This is again that  
 9 map with the pits at the center, the concentric rings of  
 10 zero to 50, 50 to 100 and 100 to 200, and the red points  
 11 show you how we would integrate the points based on which  
 12 area they belong to. So effectively, for each zone we  
 13 would use that available data for that zone across the 51  
 14 JI sites and come up with an average of what the  
 15 contamination is like in pits, for instance, or in the zero  
 16 to 50 meter zone for the 51 JI sites. So we use the  
 17 information from the 51 JI sites as an average basis to  
 18 estimate the inventory.  
 19 I would note again, just to bring it back to the  
 20 first map that I showed you, that the feature here that I  
 21 have drawn across 500 meters is half a kilometer. It's the  
 22 same size as the dots that are on that first map of well  
 23 sites in the Oriente.  
 24 So, if we do that for the 37 well sites, we get  
 25 the following, we note that the pits are pretty small in

10:13 1 terms of area, which I'm showing you on the left, but if  
 2 you look at the mass that they contain based on the numbers  
 3 of points that we have in there, and I believe there is  
 4 about 50 or 60 points in the pits across the JI sites, the  
 5 inventory is much more substantial. They represent about  
 6 1 percent--they represent about 1 percent of the area, but  
 7 they represent almost 8 percent of the mass. If we now  
 8 integrate the next two zones, they represent about a third  
 9 of the total area, but they represent over 80 percent of  
 10 the mass in the Oriente, around the well sites.

11 Final, if we go out between 100 to 200 meters,  
 12 that's about two-thirds of the area, but it represents less  
 13 than 10 percent of the total mass. From this distribution,  
 14 from this integration of points around the different well  
 15 sites around the different pits, we reached the conclusion  
 16 that the vast majority of TPH contamination, approximately  
 17 90 percent, lies outside the pits at the well sites. It's  
 18 not contained within the pits. The contamination lies  
 19 outside. This represents the escape of contamination from  
 20 the pits as well as just general operations, spilling and  
 21 general use of those areas for processing or collecting  
 22 oil. Okay.

23 We can do the same thing for the 14 Production  
 24 Stations that were investigated as part of the JI. And  
 25 again, you see on the left the distribution of areas and

10:14 1 then you see on the right, the distribution of mass.  
 2 Again, the area less than 100 meters but outside of the  
 3 pits represent the majority of oil contamination, and, in  
 4 fact, overall the vast majority of contamination is outside  
 5 the pits.

6 If we now take the information from the 51 JI  
 7 sites which, as I've argued, are representative in general  
 8 of the Oriente and scale it up to the 344 sites, we get the  
 9 following, that approximately 90 million kilograms of oil,  
 10 or about 660,000 barrels as measured by method 8015 would  
 11 be present--are present in the soils of the Oriente. The  
 12 distribution is primarily associated with well sites. Why  
 13 is that? The Production Stations were more contaminated,  
 14 but the Production Stations represent a much smaller total  
 15 area, and so since the vast majority of sites are well  
 16 sites, they end up representing the vast majority of  
 17 inventory.

18 If we now scale this inventory by the different  
 19 metrics that we've used, and you've heard that from  
 20 Dr. Strauss on this as well as in some of our Reports, we  
 21 scale this to represent the 418 method as opposed to 8015  
 22 and we get the following, that the inventory is not 90  
 23 million kilograms but 220 million kilograms. And if we use  
 24 our TEM method we, in fact, get 460 million kilograms or  
 25 about 3.4 million barrels of oil contained in the soils of

10:16 1 the Oriente.

2 The point here is that the TexPet soil site  
 3 inventories are massive by any measure, whether we use the  
 4 method that Chevron used or if we scaled up to the methods  
 5 that we think better represent Total Petroleum  
 6 Hydrocarbons, the inventories are huge. They spread out  
 7 across the Oriente.

8 And the other point is that this represents the  
 9 inventory in the period based on the data from 2004 to  
 10 2009. This does not represent the mass of oil that was  
 11 actually spilled. This represents the mass of oil that was  
 12 retained by the soils, an even larger mass might have been  
 13 spilled in order to generate these soil inventories. Okay.

14 Now, before I conclude, there has been quite a bit  
 15 of discussion on blank contamination in the past week or  
 16 so, and I would like to put--to give you a sample analogy  
 17 as to how we address, how we think about blank  
 18 contamination.

19 Blank contamination is effectively akin to white  
 20 noise on a radio.

21 (Audio played.)

22 THE WITNESS: (Dr. Garvey) It's a signal that's  
 23 there, is always there on the radio, if your radio is not  
 24 tuned to a channel.

25 (Audio played.)

10:17 1 PRESIDENT VEEDER: For the people listening on  
 2 headphones, the interpreters and shorthand writers, you're  
 3 going to become very, very, very unpopular if you continue.

4 THE WITNESS: (Dr. Garvey) I am finished with it.  
 5 I'm finished with my analogy.

6 PRESIDENT VEEDER: No more noises.

7 THE WITNESS: (Dr. Garvey) No more noises. I  
 8 apologize, no more noises. Okay.

9 But you get my point that a radio has a lot of  
 10 white noise until you properly tune it into the channel and  
 11 you can hear the signal very well despite the fact that  
 12 there is white noise underlying that. Okay. In the same  
 13 way we do chemistry, we know that there's always blank  
 14 contamination, there is always a blank present. It's  
 15 simply a question of whether or not your instruments are  
 16 sensitive enough to detect it. Okay. So, we detect, when  
 17 we do our chemical analysis, we recognize that we may have  
 18 blank contamination. We test for it, and we adjust our  
 19 signal, we adjust our data accordingly. Okay.

20 Louis Berger applied state of the art techniques  
 21 to enable detection to contamination to levels 1,000 times  
 22 lower than those achieved by Chevron. However, we adjusted  
 23 for blank concerns following the most stringent of EPA  
 24 protocols, okay. A Stage 4 data validation done by an  
 25 independent party. We didn't validate our own data. We

<p>Sheet 11</p> <p style="text-align: right;">2164</p> <p>10:18 1 had it done independently. That's a level of validation  2 that's used for legal enforcement. Okay. We do it  3 routinely, because we routinely work for the EPA, we know  4 how to do it, we have been doing it for a better part of 30  5 years. So, that's what I will say about the blank  6 contamination, and I won't turn the radio back on.  7 My apologies.  8 So, to summarize, then, our definition of  9 widespread, we find the contamination in the Oriente is  10 widespread. We find it around the pits, we find that the  11 pits are not bounded, and we find that there is significant  12 potential for streams to be impacted. In fact, we have  13 direct evidence, direct observations that show contaminated  14 sediments in the streams, therefore, representing migration  15 of contamination away from these sites to areas downstream.  16 We find that the Judgment was reasonable. We  17 basically arrived at a similar set of conclusions for our  18 own path just basically reviewing the data, not relying on  19 any of the documents in terms of how they describe their  20 logic but rather we examined the data ourselves and came to  21 the same conclusion that the Oriente is extensively  22 contaminated, and, therefore, that the Judgment is based on  23 a sound scientific basis.  24 Our opinions are consistent with those of the  25 Judgment. The Judge found that contamination exists across</p>	<p style="text-align: right;">2166</p> <p>10:21 1 the Claimants.  2 Do you need to have a short break to sort out the  3 bundles?  4 MS. RENFROE: That would be helpful, Mr.  5 President, just three or four minutes.  6 PRESIDENT VEEDER: Let's take five minutes.  7 MS. RENFROE: Thank you.  8 PRESIDENT VEEDER: We are going to ask you each  9 time we break not to discuss the case or your testimony  10 away from the Tribunal, starting now.  11 (Brief recess.)  12 PRESIDENT VEEDER: Let's resume.  13 There will now be questions from the Claimants.  14 MS. RENFROE: Thank you, Mr. President. Good  15 morning, Members of the Tribunal.  16 CROSS-EXAMINATION  17 BY MS. RENFROE:  18 Q. Good morning, Dr. Garvey and Mr. Goldstein.  19 A. (Dr. Garvey) Good morning.  20 Q. My name is Tracie Renfroe, and I have a few  21 questions this morning.  22 I'd like to start with making sure I understand  23 the division of labor between the two of you for our  24 discussion this morning. As I think you understand, we'll  25 only need one answer from one of you. Is that acceptable?</p>
<p style="text-align: right;">2165</p> <p>10:20 1 all environmental media. The data in the Lago Agrio Record  2 support this. Okay. Our interpretation of this data is  3 that there are massive amounts of contamination in the  4 soils and sediments of the Oriente.  5 The Judge awarded monetary relief to address these  6 damages. There is data available in the historical records  7 that demonstrate that TexPet oil operations resulted in  8 environmental damage, and I would point out as well that  9 our Site Investigations collected data that further support  10 the observations that were in the Lago Agrio Record.  11 Finally, the Judge establishes that soil  12 remediation--sorry, the cleanup level of 100 PPM is  13 required for his--the Judge required a 100 PPM cleanup  14 level. A criterion of 100 PPM is well above background  15 and, therefore, represents a reasonable basis to assess  16 background contamination and contamination that exceeds  17 background.  18 So, with that then, in closing we note that  19 widespread contamination persists to the present day. It  20 continues to impact people, domestic animals, and the  21 environment.  22 And that's the end of our presentation.  23 PRESIDENT VEEDER: Do you have any more questions?  24 MR. EWING: No further questions.  25 PRESIDENT VEEDER: There will be questions from</p>	<p style="text-align: right;">2167</p> <p>10:28 1 A. (Dr. Garvey) That's correct, yes.  2 Q. And then in terms of the areas that you will be  3 covering or the division of labor, can one of you describe  4 for me what topics Mr. Goldstein will be handling and what  5 topics you will be handling, Dr. Garvey?  6 A. (Dr. Garvey) I think in general I will be handling  7 the soils and surface water-related topics. Mr. Goldstein  8 will probably handle groundwater in general.  9 Q. And the Site Investigation, would that be Dr.  10 Garvey as well?  11 A. (Dr. Garvey) We both--I led the--well, I was  12 involved in the second one. Mr. Goldstein--Ken was  13 involved in the first one, so that was both depending on  14 the question.  15 Q. Okay. All right. I appreciate that  16 clarification, and--  17 A. (Dr. Garvey) Surface water I will handle as well.  18 Q. Okay. Now, you should each have in front of you a  19 copy of a binder that has some things that we're going to  20 cover this morning, and then you have also in front of you  21 placed by your counsel your Expert Reports, okay? So,  22 you're free to refer to those materials or anything else  23 that you may need as we go through this.  24 A. (Dr. Garvey) Okay.  25 Q. So, let me begin with just a few, I think,</p>

10:29 1 hopefully, matters that are not in dispute.  
 2 When Mr. Goldstein was deposed in this case and  
 3 was asked the question of whether he was an expert in  
 4 oilfield operations, he told us that he was not. You  
 5 recall that, Mr. Goldstein?  
 6 A. (Mr. Goldstein) Yes, I do.  
 7 Q. So, you admitted, and then--and the same is true,  
 8 you do not consider yourself an expert in oil field  
 9 operations?  
 10 A. (Mr. Goldstein) That's correct.  
 11 Q. Or in oil field contamination sites?  
 12 A. (Mr. Goldstein) What you do mean by that?  
 13 Q. Well, you were asked if you were an expert in oil  
 14 field Exploration and Production, and you said no?  
 15 A. (Mr. Goldstein) That's correct.  
 16 Q. And you were asked are you an expert in natural  
 17 attenuation or bioremediation, and you said no?  
 18 A. (Mr. Goldstein) I performed bioremediation and  
 19 natural attenuation studies.  
 20 Q. But you told us you didn't consider yourself an  
 21 expert in those matters?  
 22 A. (Mr. Goldstein) I wouldn't consider myself an  
 23 expert in bioremediation.  
 24 Q. Right. And then when you were asked the question,  
 25 "Is anyone on your team, any of the four people that you

10:30 1 identified [Mr. McDonald, Mr. Fidler, Mr. Bilimona, and Dr.  
 2 Garvey]," which I take it refers to Dr. Garvey sitting next  
 3 to you, are any of them "experts in E and P operations,"  
 4 meaning exploration and production operations, you said, "I  
 5 would not characterize that."  
 6 Do you recall that, sir?  
 7 A. (Mr. Goldstein) Repeat your question.  
 8 PRESIDENT VEEDER: Let's do it differently.  
 9 You've got a bundle in front of you. Please turn to Tab 1.  
 10 BY MS. RENFROE:  
 11 Q. Tab 1.  
 12 PRESIDENT VEEDER: And you will find the text, and  
 13 you could read it.  
 14 MS. RENFROE: Right. And we can put that up,  
 15 Mr. Johnson.  
 16 We need a quick technical moment. A quick moment  
 17 to make a technical revision.  
 18 Q. Here we are. Here is the excerpt of your  
 19 deposition where you were asked about members of your team  
 20 being experts in E&P, referring to exploration and  
 21 production operations. Do you see that?  
 22 A. (Mr. Goldstein) Oh, yes. Okay. In terms of E&P  
 23 operations, that's correct.  
 24 Q. Right. And that's referring to oil-and-gas  
 25 operations, isn't it?

10:32 1 A. (Mr. Goldstein) That's correct.  
 2 Q. Which is exactly what was going on and what we're  
 3 talking about with respect to the Concession Area?  
 4 A. (Mr. Goldstein) That's correct.  
 5 Q. Okay. Now, what I'd like to do is make sure that  
 6 I understand clearly the scope of the opinions that you and  
 7 Dr. Garvey have provided. And if I understand your Reports  
 8 and what you've told us this morning, you are not providing  
 9 any testimony about matters in the Judgment other than soil  
 10 and groundwater impacts and those Awards; is that correct?  
 11 A. (Dr. Garvey) Yes. We were providing opinions on  
 12 the technical basis for the Judgment.  
 13 Q. With respect to the soil remediation Award in the  
 14 Judgment?  
 15 A. (Dr. Garvey) I'm sorry, I really don't understand  
 16 your question. With respect to the presence of groundwater  
 17 contamination, presence of soil contamination, and presence  
 18 of surface water contamination.  
 19 Q. Right. And is it fair, then, that all other  
 20 topics for which the Judgment Awarded compensation, that  
 21 all those other topics are outside the scope of what you've  
 22 addressed?  
 23 A. (Dr. Garvey) Yes, I believe so.  
 24 Q. And that would also include potable water as well,  
 25 wouldn't it?

10:33 1 A. (Dr. Garvey) Not to the extent that groundwater is  
 2 potable water or should have been potable water. No, we  
 3 have opinion on that.  
 4 Q. And if you have said in your Report that you've  
 5 not addressed potable water, are you prepared to stand by  
 6 what you said in your Reports?  
 7 A. (Dr. Garvey) Certainly, we're prepared to stand by  
 8 our Reports.  
 9 Q. Okay. Now, I understand that you have not  
 10 provided any endorsement or opinion about the monetary  
 11 Awards in the Judgment; is that correct?  
 12 A. (Dr. Garvey) That's correct.  
 13 Q. And with respect to the--so, the amount of  
 14 \$5.4 billion that was awarded in the Judgment for soil  
 15 remediation, you've not addressed the adequacy of that  
 16 amount, have you?  
 17 A. (Dr. Garvey) No, we have not.  
 18 Q. And you've not addressed whether the  
 19 extent--you've not addressed the extent of soil impacts  
 20 throughout the Concession Area, have you?  
 21 A. (Dr. Garvey) We certainly examined the extent of  
 22 soil contamination throughout the Oriente based on the  
 23 available data; as we presented, we don't have enough data  
 24 to delineate it.  
 25 Q. So, you can't tell us for any particular site the

10:34 1 actual extent of soil impacts at any given site, can you,  
2 sir?  
3 A. (Dr. Garvey) Not in a definitive sense, no.  
4 Q. And the same would be true for the extent of any  
5 sediment impacts to any stream at any particular site?  
6 A. Again, we integrated the information to examine to  
7 site as a whole; we can infer from the magnitude and the  
8 extent of the data what it might be like in an individual  
9 one, but for an individual one, we cannot draw the  
10 individual boundaries.  
11 Q. Meaning that for any particular site you cannot  
12 tell us the extent of impacts to sediments, if there is a  
13 stream there?  
14 A. (Dr. Garvey) Not directly, no.  
15 Q. All right. And then with respect to impacts to  
16 groundwater, you also cannot tell us the extent to which  
17 groundwater has been impacted, if it has been impacted, at  
18 any particular site, can you?  
19 A. (Dr. Garvey) No, we cannot. That was not our  
20 scope, and that was not what we needed to do.  
21 Q. And likewise, to the extent that you think you may  
22 have spoken to the issue of potable water or drinking  
23 water, once again, you're not able to tell us the extent of  
24 any impacts to drinking water at any particular site if  
25 drinking water has even been impacted?

10:35 1 A. No, that's correct.  
2 Q. Correct?  
3 A. Yes.  
4 Q. All right. Now, would you also agree with me  
5 that--well, I'm going back to something I read in one of  
6 your Reports, which is that, when you look at an analytical  
7 result for a given environmental sample, that you cannot  
8 chemically distinguish between the source--between Party A  
9 or Party B as to the source of that impact?  
10 MR. EWING: Counsel, I would just object. If  
11 you're going to look at his Reports, could we give them a  
12 citation to where you're asking about?  
13 MS. RENFROE: I may be able to do that, but let  
14 just--well, let's look at Tab 2--actually, it's not Tab 2,  
15 sorry. It's not Tab 2.  
16 I can probably pull it up, but I wonder if we  
17 can--  
18 PRESIDENT VEEDER: Given the objection, why not  
19 ask it without reference to the report as a general  
20 question.  
21 MS. RENFROE: Sure. Okay. Thank you for that  
22 guidance.  
23 BY MS. RENFROE:  
24 Q. So, putting your Reports aside, would you agree  
25 that with respect to this case that you are not able to

10:37 1 chemically distinguish between Party A and Party B with  
2 respect to the source of an impact that may be measured in  
3 an environmental sample?  
4 A. (Dr. Garvey) That's correct. They're both  
5 producing the same oil.  
6 Q. Right. And, likewise, if you were to look at a  
7 photograph of what appears to be soil impacted with oil,  
8 you cannot tell by looking at that photograph whose  
9 operations led to that impact, can you?  
10 A. (Dr. Garvey) No, but why would we look at a  
11 photograph out of context. We would want to know what site  
12 it had come from. But by the photograph itself, no, we  
13 wouldn't know that.  
14 Q. And likewise, if you were in the field actually at  
15 a given site and you observe oil on the surface of the soil  
16 or on the ground, just by looking at that oil, you cannot  
17 necessarily tell whose actions caused it, can you?  
18 A. (Dr. Garvey) No, but in that case we would know  
19 what field we were on or what feature we were examining.  
20 We would know who had created it; but in and of itself, we  
21 wouldn't that, but we would know that in context because  
22 we'd know what site we were visiting, who had operated it,  
23 who is likely to be responsible. But the observation  
24 itself wouldn't tell you that. You'd have to know the  
25 history of the site.

10:38 1 Q. You'd have to know the history of the site,  
2 including both historical and current operations about the  
3 site, wouldn't you?  
4 A. (Dr. Garvey) Yes, that's correct.  
5 Q. All right. So, speaking of the history of the  
6 site, I'd like to sort of go back to some of the historical  
7 context for these Concession sites, and again, let's see if  
8 we have some points of common ground in our understanding  
9 about them.  
10 So, you would agree with me that TexPet was the  
11 Operator for the former Concession Area until June 30 of  
12 1990. Do we agree on that?  
13 A. (Dr. Garvey) Yes.  
14 Q. And the next month, July of 1990, Petroecuador  
15 took over as the operator of the Concession Area; correct?  
16 A. (Dr. Garvey) That's our understanding.  
17 Q. And you also understand that Petroecuador has  
18 operated the Concession Area continuously through the  
19 present?  
20 A. (Dr. Garvey) Yes.  
21 Q. And, in fact, it's also your understanding, is it  
22 not, that not only has Petroecuador or its affiliates  
23 operated these sites, but in many places they've actually  
24 expanded operations, haven't they?  
25 A. (Dr. Garvey) Yes, that's correct.

10:39 1 Q. While you were out there on your Site  
 2 Investigations, you saw some of those expanded activities,  
 3 I take it?  
 4 A. (Dr. Garvey) We didn't visit any of their sites,  
 5 but we certainly saw the sites--passed by some of the sites  
 6 they had developed.  
 7 Q. Right. Now, back to the actual period of TexPet's  
 8 operations, you're familiar with the fact that, after  
 9 TexPet completed its period of operatorship and handed over  
 10 operations to Petroecuador, that the Republic of Ecuador,  
 11 Petroecuador, and TexPet jointly engaged HBT Agra to  
 12 conduct an audit of the oil fields--pardon me, I apologize  
 13 for stepping over your answer.  
 14 A. (Dr. Garvey) Yes, we were aware of that.  
 15 Q. In fact, you have reviewed and relied upon the HBT  
 16 audit for your work in this case, haven't you?  
 17 A. (Dr. Garvey) That's correct.  
 18 Q. And did you note in the HBT audit that there were  
 19 numerous places where HBT recorded or documented operating  
 20 impacts at these sites by Petroecuador?  
 21 A. (Dr. Garvey) Ken, do you want to answer?  
 22 A. (Mr. Goldstein) Can you repeat the question again,  
 23 please.  
 24 Q. Yes, sir. In your review of the HBT Agra Audit  
 25 Report, did you notice that HBT documented operating

10:42 1 Q. And, in fact, if we--let me direct you to--let's  
 2 see if I can find it--right. If we go to Tab 5, and pull  
 3 up Slide 5, this is a slide that Mr. Connor presented in  
 4 his direct testimony, which you may have seen, and I put it  
 5 here just to help you recall that there were 157 sites  
 6 where some feature was assigned to TexPet.  
 7 Do you see that, sir?  
 8 A. (Dr. Garvey) Yes.  
 9 Q. And then 187 sites where there was no remediation  
 10 feature assigned to TexPet.  
 11 Do you see that?  
 12 A. (Dr. Garvey) Yes.  
 13 Q. And that's consistent with your understanding of  
 14 the Remedial Action Plan?  
 15 A. (Dr. Garvey) In general, that simply the work was  
 16 split between the two entities, yes.  
 17 Q. Right. And Mr. Goldstein, were you able to find  
 18 the slide?  
 19 A. (Mr. Goldstein) I have it.  
 20 Q. Okay. Very good.  
 21 A. (Mr. Goldstein) I'm keeping up.  
 22 Q. Also it's on the screen, obviously, if I get ahead  
 23 of you.  
 24 So, then do you both understand that pursuant to  
 25 the Remedial Action Plan that the Parties agreed, that

10:41 1 impacts by Petroecuador at these sites in the Concession  
 2 Area.  
 3 A. (Mr. Goldstein) Yes, that's correct.  
 4 Q. All right. Now, again, just trying to travel  
 5 through the chronology of what happened, after HBT  
 6 conducted its audit, the Parties--that is, Petroecuador,  
 7 the Republic of Ecuador through its Ministry of Energy and  
 8 Mines, and TexPet--then agreed on the Settlement Agreement  
 9 and the Remedial Action Plan; correct?  
 10 A. (Dr. Garvey) That's our understanding, but we  
 11 don't have any opinion on that, yes.  
 12 Q. And that Settlement Agreement and Remedial Action  
 13 Plan were agreed by the Parties in 1995. Is that generally  
 14 your understanding?  
 15 A. (Dr. Garvey) In general, yes.  
 16 Q. Right. Have you--do you also understand that the  
 17 Remedial Action Plan in that document, the Parties  
 18 allocated certain sites and certain features at certain  
 19 sites to TexPet for remediation?  
 20 A. (Dr. Garvey) Yes.  
 21 Q. Which meant that the balance of the features at a  
 22 given site remained with Petroecuador for remediation, to  
 23 the extent that remediation was needed; correct?  
 24 A. (Dr. Garvey) That was our understanding--that is  
 25 our understanding.

10:43 1 there was no single site that was assigned to TexPet in its  
 2 entirety for remediation?  
 3 MR. EWING: Counselor, are you asking for the  
 4 legal conclusions related to this or just their  
 5 understanding?  
 6 MS. RENFROE: Just their understanding, based on  
 7 the Remedial Action Plan.  
 8 THE WITNESS: (Dr. Garvey) I don't know that we  
 9 thought about it in that kind of context, to be honest.  
 10 BY MS. RENFROE:  
 11 Q. Well, if you--so, I take it, then, you have not  
 12 actually studied the tables that are contained in the  
 13 Remedial Action Plan to see which pits were assigned to  
 14 TexPet and which were not?  
 15 A. (Dr. Garvey) We used those tables to identify  
 16 features that we would investigate, but we didn't a priori  
 17 decide which sites--we didn't pick on the basis that this  
 18 was exclusively a TexPet site that we knew--I mean, we  
 19 picked some sites that we knew were exclusively  
 20 TexPet-operated but not TexPet-remediated.  
 21 Q. So, it doesn't surprise you, then, to recognize  
 22 that, at a given site within this population of 157 sites,  
 23 there would be a mix of features assigned to TexPet in the  
 24 Remedial Action Plan or what I might call RAP features,  
 25 with non-RAP features at that site. Do you understand



10:44 1 that?  
 2 A. (Dr. Garvey) Yes.  
 3 Q. Right. And then, as I've also, I think, we've  
 4 established, but let's make sure for the record, you  
 5 recognize that the entire Concession Area was not assigned  
 6 to TexPet for remediation in the Remedial Action Plan;  
 7 correct?  
 8 A. (Dr. Garvey) Yes.  
 9 Q. And so, is it also your understanding that  
 10 Petroecuador was continuing to operate these sites in the  
 11 Concession Area even after TexPet had begun Remedial Action  
 12 at the items assigned to it?  
 13 A. (Dr. Garvey) The ones that were still producing,  
 14 yes, some of the sites were closed, but the ones that were  
 15 still producing were transferred to Petroecuador and they  
 16 continued to operate.  
 17 Q. Right. So, then, let's go to the next slide,  
 18 Slide 6 here, and I think just to have a visual  
 19 illustration of the point I was making, this is  
 20 Shushufindi 45A, another slide that Mr. Connor used in his  
 21 presentation. And we see the differentiation between the  
 22 two pits, the two RAP pits that were assigned to TexPet,  
 23 that's Pit 1A and Pit 3. Do you see that, sir?  
 24 A. (Dr. Garvey) Yes.  
 25 Q. And then Pits 1 and 2 were not assigned to TexPet

10:46 1 and are therefore classified as non-RAP. Do you see that,  
 2 sir?  
 3 A. (Dr. Garvey) Yes, I see what's presented here,  
 4 yes.  
 5 Q. Right. And all of the other features at this  
 6 location, whatever they might be, none of those other  
 7 features were assigned to TexPet in the Remedial Action  
 8 Plan, and, therefore, would be non-RAP features; correct?  
 9 A. (Dr. Garvey) I don't know. I mean, I don't know  
 10 what was assigned and what wasn't, but I can--I will accept  
 11 your word at this point.  
 12 Q. Okay. And so, as you did your Site Investigation  
 13 work, I take it that you did not confirm that every sample  
 14 that you were taking was within a RAP feature assigned to  
 15 TexPet, did you?  
 16 A. (Dr. Garvey) No, in fact, we purposely targeted  
 17 areas that were not RAP in some instances.  
 18 Q. And, in fact, your data, the data that you  
 19 produced as a result of your Site Investigation, in fact,  
 20 measures the conditions at many non-RAP features in these  
 21 sites, doesn't it?  
 22 A. (Dr. Garvey) Yes.  
 23 Q. Now, if you turn to the next slide, that is  
 24 Slide 8 under Tab 5, you will see a picture or a slide that  
 25 depicts the eight step process used for remediation by

10:47 1 TexPet in remediating the RAP pits.  
 2 Do you see this, sir?  
 3 A. Yes.  
 4 Q. And I'm speaking to both of you. I don't mean to  
 5 be leaving anybody out of the discussion.  
 6 You have seen this image before, haven't you?  
 7 A. (Dr. Garvey) Yes.  
 8 Q. And it's your understanding that this was the  
 9 process that TexPet used pursuant to the agreement with  
 10 Ecuador and Petroecuador for remediating the RAP pits;  
 11 correct?  
 12 A. (Dr. Garvey) It's our understanding that this is  
 13 what--you've presented this as part of Mr. Connor's Report.  
 14 I have no reason to have any exception to it.  
 15 Q. Okay. And it is--would it also be your  
 16 understanding that the Remedial Action Plan was developed  
 17 at a time when the Republic of Ecuador had not yet  
 18 published any quantitative remediation standards? If you  
 19 have any understanding about that, one way or the other.  
 20 A. (Mr. Goldstein) The question was--  
 21 (Technical difficulties.)  
 22 Q. Let me withdraw the question and ask one that I  
 23 think is a little bit more simpler, or more direct, more  
 24 direct, and that is the Parties in the Remedial Action--  
 25 PRESIDENT VEEDER: Can I interrupt? We're not

10:48 1 very happy about the single microphone. At the next break  
 2 we are going to have a second microphone installed so we  
 3 don't have anybody touching the microphone unnecessarily.  
 4 It may be convenient to do that now, if you're having  
 5 trouble.  
 6 MS. RENFROE: I'm happy to accommodate, whatever,  
 7 Mr. President, you would like to do.  
 8 (Pause.)  
 9 PRESIDENT VEEDER: Let's continue.  
 10 MS. RENFROE: Thank you.  
 11 BY MS. RENFROE:  
 12 Q. Mr. Goldstein, I was asking, do you  
 13 understand--and asking both of you, but do you understand  
 14 that in the Remedial Action Plan, the Parties established  
 15 an agreed remediation criteria for treatment of  
 16 contaminated soils and pits?  
 17 A. (Mr. Goldstein) Yes.  
 18 Q. And that Agreement between the Republic of  
 19 Ecuador, Petroecuador, and TexPet with respect to pits  
 20 provided that the remediation standard would be 1,000 parts  
 21 per million TPH measured by the TCLP test; correct?  
 22 MR. EWING: I would object. Are we asking again  
 23 legal conclusions here? We're getting into interpretation  
 24 of the RAP.  
 25 MS. RENFROE: Well, I'm happy to take him to the

10:50 1 RAP, if that would be helpful.  
 2 BY MS. RENFROE:  
 3 Q. Would you like to look at the RAP document? Would  
 4 that be helpful?  
 5 A. (Mr. Goldstein) We could.  
 6 Q. I think it is at Tab 9.  
 7 And if you turn to Page 9 of Tab 9, you will find  
 8 the Parties' agreed remediation criteria.  
 9 Specifically, you might want to look at  
 10 Section 2.4.4.  
 11 Do you see that, sir?  
 12 A. (Dr. Garvey) I'm not there yet.  
 13 Q. Okay.  
 14 A. (Dr. Garvey) Yes.  
 15 Q. And in this section, the Parties have agreed that  
 16 the soil will be tested--will be treated and stabilized and  
 17 will be tested and treated until it has less than 1,000  
 18 parts per million TPH as measured by a modified TCLP  
 19 procedure.  
 20 Do you see that, sir?  
 21 A. (Dr. Garvey) Yes.  
 22 Q. And it's your understanding that was the first of  
 23 the criteria to be used for remediation of pits; correct?  
 24 A. (Dr. Garvey) I don't know that, but--  
 25 A. (Mr. Goldstein) That's correct. There was a

10:51 1 modification following that.  
 2 Q. There was a modification in March of 1997;  
 3 correct?  
 4 A. (Mr. Goldstein) Correct.  
 5 Q. And that modification added an additional criteria  
 6 and said that the soils in the pits or the contents of the  
 7 pits must have no more than 5,000 parts per million TPH;  
 8 correct?  
 9 A. (Mr. Goldstein) That's correct.  
 10 Q. And so, from March of 1997, there was that dual  
 11 remediation criteria; right?  
 12 A. (Mr. Goldstein) That's correct.  
 13 Q. But before March of 1997, there was only the  
 14 single remediation criteria which was the TCLP test; right?  
 15 A. (Mr. Goldstein) That's our understanding.  
 16 Q. And under either one of those criteria, whether  
 17 before March of 1997 or after March of 1997, you understand  
 18 that it was the Parties' agreement that the method of  
 19 remediation of pits would permit certain amounts of TPH to  
 20 remain in the closed pit post remediation?  
 21 A. (Mr. Goldstein) Well, I'm not going to make a  
 22 legal determination of what that agreement enforcement was,  
 23 but my understanding is the criteria for closure was 5,000  
 24 parts per million after, I think, March of 1997.  
 25 Q. Which meant that amounts of TPH, 5,000 or below,

10:53 1 were permitted by the Parties to remain in the pits;  
 2 correct?  
 3 A. (Mr. Goldstein) Yes.  
 4 Q. And prior to March of 1997, prior to when that  
 5 5,000 criteria was added, amounts of TPH greater than that  
 6 could remain in the pit or be left in the pit provided the  
 7 TCLP criteria was met; correct?  
 8 A. (Dr. Garvey) There is the potential for that since  
 9 it wasn't measured.  
 10 Q. Right. So, then, is it also your understanding  
 11 that, as the remediation process unfolded, inspectors for  
 12 the Republic of Ecuador, through their Ministry of Energy  
 13 and Mines, and inspectors for Petroecuador monitored  
 14 TexPet's remediation of these pits?  
 15 A. (Dr. Garvey) Yes.  
 16 Q. And I take it you've seen documents prepared by  
 17 those monitors and as part of the oversight process for the  
 18 remediation work, haven't you?  
 19 MR. EWING: Counsel, again, if we're going to be  
 20 looking at documents, could we please--  
 21 MS. RENFROE: Certainly.  
 22 BY MS. RENFROE:  
 23 Q. Let's go back to Tab 5, and if you look at  
 24 Slide 9. Do you have those, that slide in front of you?  
 25 A. (Dr. Garvey) Yes.

10:54 1 Q. And this slide, just quickly summarizes the  
 2 various Actas that were issued as part of the remediation  
 3 monitoring process. Do you understand that?  
 4 A. (Dr. Garvey) I guess, they're written in Spanish,  
 5 and I have to admit I don't speak any.  
 6 Q. Have you, Dr. Garvey, you have not read any of the  
 7 remediation Actas, even those that have been translated  
 8 into English?  
 9 A. (Dr. Garvey) I have read some. Mr. Goldstein has  
 10 read more than I have.  
 11 Q. Okay. So, fair to say you both understand that  
 12 these Actas documented the monitoring and oversight of the  
 13 remediation process by the Republic of Ecuador?  
 14 A. (Dr. Garvey) Yes.  
 15 Q. Is that correct, sir?  
 16 A. (Dr. Garvey) That's my understanding.  
 17 A. (Mr. Goldstein) Yes.  
 18 Q. Okay. And then you see this group of 19 Approval  
 19 Actas, that is--one of which is summarized in the middle of  
 20 this slide?  
 21 A. (Dr. Garvey) Yes.  
 22 Q. You understand that these Approval Actas were the  
 23 instruments issued by the Republic of Ecuador confirming  
 24 that pits remediated by TexPet had been properly remediated  
 25 to their satisfaction?

10:55 1 A. (Dr. Garvey) To the requirements laid out in the  
2 RAP. Is that--  
3 Q. Yes, sir, to the requirements laid out in the RAP  
4 and to the satisfaction of the Republic of Ecuador.  
5 A. (Dr. Garvey) That's--again, that's our  
6 understanding, yes.  
7 Q. Right. And then, finally if you move over to the  
8 right, you will see the Final Acta dated September of 1998,  
9 signed by various representatives from the Republic of  
10 Ecuador, and maybe we can blow this up on the right-hand  
11 side. Hopefully we could see that a little larger. Thank  
12 you, Mr. Johnson.  
13 And you see the various signatures from  
14 representatives of the Ministry of Energy and Mines at the  
15 top?  
16 A. (Dr. Garvey) Yes.  
17 Q. And on the left, the Petroecuador organization?  
18 A. (Dr. Garvey) Yes.  
19 Q. And representatives of TexPet having signed the,  
20 the two gentlemen on the left and right on the bottom;  
21 right?  
22 A. (Dr. Garvey) Yes.  
23 Q. And then just in the upper right, you see a  
24 representative of Petroproducción, who is one of the State  
25 oil companies that was involved in the oversight of the

10:57 1 Remedial Action program; correct?  
2 A. (Dr. Garvey) I see that, yes.  
3 Q. And so, what we see in this Final Acta is the  
4 final agreement in which these various entities with the  
5 Republic of Ecuador and Petroecuador and Petroproducción  
6 had concluded and were satisfied that TexPet had fully  
7 performed its obligations under the Remedial Action Plan?  
8 MR. EWING: Objection. It's calling for a legal  
9 conclusion.  
10 BY MS. RENFROE:  
11 Q. Is that generally your understanding about what  
12 this Final Acta accomplishes?  
13 A. (Dr. Garvey) I don't--I mean, in some general  
14 sense, I guess. I don't really have an opinion here.  
15 Q. All right. Now, are you familiar with the fact  
16 that even before TexPet began its remediation work that  
17 Petroecuador was not only operating these sites but, in  
18 fact, had environmental impacts at these sites? You've  
19 read that in the HBT Report, haven't you?  
20 A. (Dr. Garvey) Ken?  
21 A. (Mr. Goldstein) There has been documentation that  
22 Petroecuador was--so, you're saying that  
23 Petroecuador--before I guess, why don't you repeat your  
24 question.  
25 Q. Happy to do it.

10:58 1 A. (Mr. Goldstein) Thank you.  
2 Q. Sure.  
3 Even before TexPet completed its remediation work  
4 at the features and at the sites that were assigned to it,  
5 you recognized that Petroecuador was operating those sites  
6 and, in fact, had experienced spills and releases of oil at  
7 those sites?  
8 A. (Mr. Goldstein) Yeah, our review from the audit  
9 indicated such.  
10 Q. Right. Okay. And do you also recognize that  
11 Petroecuador did not undertake its own remediation program  
12 like TexPet's remediation program at that time?  
13 A. (Dr. Garvey) I don't know that we'd know that.  
14 Q. You haven't seen any documentation to that effect,  
15 have you?  
16 A. (Mr. Goldstein) That Petroecuador enacted its own  
17 remediation program?  
18 Q. Let me withdraw the question and give you a better  
19 one. I apologize. I think I can be more precise.  
20 The point I'm trying to explore with you is: Back  
21 in 1995 through 1998, when TexPet was undertaking and  
22 implementing its remediation program, you have not seen any  
23 information to suggest that Petroecuador was doing the same  
24 thing at that time?  
25 A. (Mr. Goldstein) We have no idea of that.

11:00 1 Q. Right. So, then, would you recognize that if  
2 Petroecuador was not remediating pits that were not  
3 assigned to TexPet but was continuing to operate at these  
4 sites, that it was causing impacts or it could be causing  
5 impacts at these sites; correct?  
6 A. (Dr. Garvey) Yes, that would be correct, yes.  
7 Q. All right. Okay. Now, moving forward in time,  
8 and I want to ask just one more question, and we may be at  
9 a good stopping point for a morning break.  
10 Moving forward in time after the 1998--after the  
11 remediation was complete in 1998 and the Final Release was  
12 issued, moving forward in time to 2001, are you familiar  
13 with the fact that the Republic of Ecuador adopted a set of  
14 environmental regulations governing oilfield operations  
15 that is sometimes referred to as Decree 1215, or the RAOH  
16 criteria?  
17 MR. EWING: Counsel, again, object to the legal  
18 conclusion or aspect of this. This is outside the scope of  
19 our Environmental Expert's expertise.  
20 MS. RENFROE: Let me respond, if I might,  
21 Mr. President. I'm not asking for a legal interpretation,  
22 only whether they are familiar with the fact that the  
23 Republic of Ecuador adopted oilfield regulations governing  
24 oilfield operations in 2001.  
25 PRESIDENT VEEDER: We will allow the question.

11:01 1 MS. RENFROE: Pardon me?  
 2 PRESIDENT VEEDER: We will allow the question.  
 3 MS. RENFROE: Thank you.  
 4 THE WITNESS: (Mr. Goldstein) Yes, it is our  
 5 understanding that, in 2001, the Decree 1215 was enacted, I  
 6 believe so.  
 7 BY MS. RENFROE:  
 8 Q. Is it also your understanding that that set of  
 9 regulations governed oilfield operations specifically?  
 10 A. (Mr. Goldstein) I don't recall if it's just  
 11 specifically or just exclusive to oilfield operations.  
 12 Q. Okay.  
 13 MS. RENFROE: Mr. President, this may be a good  
 14 time for a morning break.  
 15 PRESIDENT VEEDER: Let's take a 15-minute break,  
 16 and come back--we will come back in 15 minutes.  
 17 (Brief recess.)  
 18 PRESIDENT VEEDER: Let's resume.  
 19 MS. RENFROE: Thank you, Mr. President.  
 20 BY MS. RENFROE:  
 21 Q. Gentlemen, let's return to Tab 10 in your binder,  
 22 which is Decree 1215 that we were speaking about just  
 23 before the break.  
 24 And I had a chance to check your Report. And just  
 25 to refresh your recollection--and you can certainly look at

11:23 1 there are variable levels that are permitted by the  
 2 Republic of Ecuador?  
 3 A. (Dr. Garvey) Yes.  
 4 MR. EWING: Counsel, are we asking again for the  
 5 legal conclusions here?  
 6 MS. RENFROE: No. I'm certainly aware that these  
 7 gentlemen are not lawyers, and I'm not trying to bind  
 8 anybody. I'm simply trying to ask their understanding of  
 9 the regulatory criteria as they actually addressed them in  
 10 their First Report Section 2.2.5.  
 11 MR. EWING: And, Mr. President, I just would  
 12 raise--I asked similar questions of Mr. Connor regarding  
 13 regulations in Ecuador, and counsel objected, so if we  
 14 could just maintain parity in what we are addressing?  
 15 PRESIDENT VEEDER: It is being maintained. We're  
 16 not taking anything from the law from these people or,  
 17 indeed, from other factual or technical experts, but if  
 18 they deal with it in their Report, they can be asked  
 19 questions about it, but not for their legal conclusions, so  
 20 I think that clears it up.  
 21 BY MS. RENFROE:  
 22 Q. So, the only point that I want to make, and to do  
 23 so it might be easier for you if we look at Table 6 of the  
 24 RAOH criteria, and that's in your Tab 10, and I would  
 25 direct you to Page 70 of your Tab 10. The small binder.

11:21 1 your Report if you want to, but in your First Report dated  
 2 February 2013 at Page 11, you have a section in your Report  
 3 entitled, "Ecuadorian Regulations Currently In Effect."  
 4 And you cite there the RAOH and TULAS numerical criteria.  
 5 Do you recall that, Mr. Goldstein?  
 6 A. (Mr. Goldstein) Let's just check.  
 7 Q. Sure, go ahead. Page 11 of your First Report.  
 8 A. (Mr. Goldstein) I think we're going to run out of  
 9 room on this table.  
 10 Q. I'm sympathetic.  
 11 A. (Mr. Goldstein) Page?  
 12 Q. Right. Page 11.  
 13 And it's up on the screen as well.  
 14 A. (Mr. Goldstein) Okay.  
 15 Q. I just wanted to establish for the benefit of the  
 16 Tribunal that you in your First Report had addressed the  
 17 Ecuadorian numerical criteria for oil field operations?  
 18 A. (Mr. Goldstein) Correct.  
 19 Q. Right. Okay. So, now I'd like to just confirm  
 20 what I think is not controversial, but I just want to make  
 21 sure that you are aware that Ecuador has published in the  
 22 RAOH Decree 1215 regulations permissible limits for oil  
 23 field compounds that may be left in soils; correct?  
 24 A. (Dr. Garvey) Yes, that's our understanding.  
 25 Q. Right. And depending on the use of the land,

11:24 1 A. Page 70.  
 2 Q. Page 70, and what I want to direct you to begins  
 3 on Page 70, but it trails over to Page 71.  
 4 You see Table 6 is cited there? And let me know  
 5 when you're ready. Ready?  
 6 A. (Mr. Goldstein) Yes.  
 7 Q. Okay. So, if we look at Table 6, it says,  
 8 "permitted limits for the identification and remediation of  
 9 contaminated soils in all phases of the hydrocarbon  
 10 industry." Do you see that, sir?  
 11 A. (Dr. Garvey) Yes.  
 12 Q. And then just quickly, we see the three different  
 13 types of land use, agricultural, industrial, and sensitive  
 14 ecosystems.  
 15 A. (Dr. Garvey) Yes, we see that.  
 16 Q. And then for each of these various chemical  
 17 compounds that are used in petroleum operations, we see  
 18 there is a permissible limit established; right?  
 19 A. (Dr. Garvey) Yes.  
 20 Q. So, for example, total hydrocarbons stated as TPH  
 21 for agricultural land, the Government of Ecuador permits up  
 22 to 2500 parts per million of TPH to remain in soils;  
 23 correct?  
 24 A. (Dr. Garvey) Yes, that true.  
 25 Q. And then likewise for industrial use land such as

11:26 1 Oil Platforms, the Republic of Ecuador says that 4,000  
2 parts per million TPH may remain in soils; right?  
3 A. (Dr. Garvey) That's our understanding.  
4 Q. And then the third category of land use there is  
5 sensitive ecosystems which you may know is a specially  
6 earmarked category, and there the Republic says only 1,000  
7 parts per million of TPH can remain in soils.  
8 Do you see that?  
9 A. (Dr. Garvey) Yes, I see the thousand there, yes.  
10 A. (Mr. Goldstein) Right.  
11 Q. Now, it's your understanding, isn't it, that the  
12 Republic of Ecuador's environmental regulations for oil  
13 field operations are protective of the environment, aren't  
14 they?  
15 A. (Dr. Garvey) No, we're not really--we don't really  
16 opine on that.  
17 Q. You don't have an opinion on that?  
18 A. (Dr. Garvey) We haven't been asked to offer an  
19 opinion on that.  
20 Q. But you're not here telling this Tribunal that  
21 they're not protective of the environment, are you?  
22 A. (Dr. Garvey) Dr. Strauss offered that opinion, and  
23 I believe perhaps one of our earlier experts offered an  
24 opinion on that. That's really not our--we're not really  
25 planning to--we haven't planned to opine on that.

11:27 1 Q. And so, if someone characterized your Reports or  
2 your testimony as suggesting that you were saying that  
3 the--that Ecuador's environmental regulations for oil field  
4 operations are not protective of the environment, that  
5 would be an incorrect characterization of your testimony;  
6 is that correct?  
7 A. (Dr. Garvey) Can you restate that, please?  
8 Q. Sure.  
9 If someone were characterizing your testimony  
10 either today or in your Reports as if saying that Ecuador's  
11 environmental regulations in this Decree 1215 are not  
12 protective of the environment, that would be a  
13 misinterpretation or mischaracterization of your testimony,  
14 wouldn't it?  
15 (Witnesses conferring.)  
16 A. (Mr. Goldstein) We're not saying that the  
17 regulations here are not--if that's your question--are we  
18 saying that they're not protective?  
19 Q. Yes, sir, that's the question.  
20 A. (Mr. Goldstein) We're not opining on if these are  
21 protective or not, but we would say that--we don't think  
22 that they would not be protective if they promulgated these  
23 regulations.  
24 Q. Okay. And then--let's move on, then. You can  
25 close that page. We're going to move on to something else.

11:28 1 So, are you aware, sir, that the Judgment,  
2 notwithstanding the fact that Ecuador has its own  
3 environmental regulations for oil field operations, and  
4 notwithstanding the fact that TexPet had an agreement in  
5 the Remedial Action Plan for the permissible limits of TPH  
6 that could be in soils after remediation, you're aware of  
7 the fact that, notwithstanding those two things, the  
8 Judgment adopts a remediation criteria of 100 parts per  
9 million TPH for soils?  
10 A. (Dr. Garvey) Yes.  
11 Q. Now, are you also aware of the fact that when  
12 Petroecuador did begin to remediate pits at former  
13 Concession sites that were not assigned to TexPet, that it  
14 follows this Decree 1215 or RAOH criteria? Have you seen  
15 that in the documents you've reviewed?  
16 A. (Mr. Goldstein) What program are you referring to?  
17 Q. Sure. Let me see if I can take you to something  
18 that you told us about in your Report. Just bear with me  
19 while I find it.  
20 Okay. Let's look at Tab 13, actually Tab 13,  
21 Slide 2.  
22 So, what I have excerpted here is a portion of  
23 your December 2013 Report at Pages 59 and 60.  
24 (Witnesses conferring.)  
25 A. (Mr. Goldstein) Sorry, I'm just directing him.

11:30 1 Q. No problem.  
2 In your Report you observe, "for soils at well  
3 sites and Production Stations that are within the boundary  
4 of E&P operations, the RAOH Table 6 permissible limit for  
5 Total Petroleum Hydrocarbons or (TPH) of 2,500 milligrams  
6 per kilogram for agricultural land use is considered to be  
7 applicable to determine whether remediation was successful.  
8 This is the standard adopted by Petroamazonas under the  
9 PEPDA program."  
10 I read that correctly?  
11 A. (Dr. Garvey) Yes.  
12 Q. From your own Report?  
13 A. (Dr. Garvey) Yes.  
14 Q. And so you recognized that, at least under the  
15 PEPDA program, Petroecuador has remediated sites in the  
16 Concession Area applying these RAOH or Decree 1215  
17 standards; correct?  
18 A. (Dr. Garvey) It's our understanding that they  
19 apply the RAOH Standards. It's not always 2,500 milligrams  
20 per kilogram, but, yes.  
21 Q. It would depend on the land, the particular site  
22 and the use that that land is being put to, wouldn't it?  
23 A. (Dr. Garvey) Yes.  
24 Q. But where the land is considered agricultural,  
25 then 2500 parts per million TPH is what they use?

11:32 1 A. (Dr. Garvey) Yes, that's our understanding.  
 2 Q. Right. And so, that means that, in places where  
 3 Petroecuador has remediated soils applying these same  
 4 criteria, that means that they are permitted to leave up to  
 5 2500 parts per million TPH in soils at those sites they've  
 6 remediated; correct?  
 7 A. (Dr. Garvey) That would be our understanding.  
 8 A. (Mr. Goldstein) Right.  
 9 Q. Now, on this issue that you spoke about in your  
 10 presentation about the use of 100 parts per million TPH as  
 11 the remediation criteria in the Judgment, you're not saying  
 12 that 100 parts per million TPH would be necessary to  
 13 protect the environment, are you?  
 14 A. (Dr. Garvey) No, we did not offer an opinion on  
 15 that.  
 16 Q. Right. In fact, I think you observed that in one  
 17 of your prior reports--and we could look at your own  
 18 language if you look at the slide before--that would be the  
 19 first slide of Tab 13--didn't you observe in one of your  
 20 prior reports that 1,000 parts per million TPH would be  
 21 sufficient to promote restoration of E&P facilities to  
 22 pre-oil production conditions?  
 23 A. (Dr. Garvey) I'd like to look at our Report.  
 24 Q. Certainly, sir. I think if you look at your  
 25 Second Report, December 2013, Page 60.

11:34 1 A. (Dr. Garvey) Sorry, which tab?  
 2 Q. Well, that's your bundle, so I'd have to defer to  
 3 your counsel, but it's your Second Report?  
 4 A. (Dr. Garvey) Third tab. And what page did you  
 5 say?  
 6 Q. Yes, sir, it's Page 60, second paragraph, I  
 7 believe?  
 8 A. (Dr. Garvey) Sorry, I'm just trying to find it.  
 9 Q. Oh, certainly. I think it's in the second  
 10 paragraph.  
 11 Actually, first full paragraph. It's the  
 12 paragraph that says, "It should be noted."  
 13 A. (Dr. Garvey) Right.  
 14 Q. Right. So, what you're saying here--have you  
 15 found the language?  
 16 A. (Dr. Garvey) Yes.  
 17 Q. Right. So, what you're seeing here and which I  
 18 just quoted on the slide, is that in your view, the  
 19 sensitive ecosystem limit of 1,000 parts per million would,  
 20 to quote you, "effectively allow environmentally  
 21 unconstrained land use in the restored area and promote  
 22 restoration of the E&P sites to pre-crude oil production  
 23 conditions."  
 24 A. (Dr. Garvey) I think we're stating here that it  
 25 was the Republic's intention to achieve that, and that by

11:35 1 achieving this, they would--they would satisfy this. I  
 2 don't think this is our opinion. This is our  
 3 interpretation of their approach.  
 4 Q. So, you're telling us, you're not advocating 1,000  
 5 parts per million TPH as the remediation standard?  
 6 A. (Mr. Goldstein) We are not making any  
 7 legal--that's a legal determination as to what regulations  
 8 would apply.  
 9 Q. Right.  
 10 A. (Mr. Goldstein) Simply and as you read the other  
 11 reports and we refine our opinions, we take our data and we  
 12 compare it to all the criteria, that this was for putting  
 13 the data into context, but we are not--we are not offering  
 14 opinion as to which regulation, which permissible limit  
 15 would apply. That, I believe, is a legal determination.  
 16 Q. Understood. So, you're not advocating either the  
 17 use of 100 parts per million that's used in the Judgment?  
 18 A. (Dr. Garvey) No, no.  
 19 Q. Am I correct?  
 20 A. (Dr. Garvey) No, we're not advocating.  
 21 Q. Nor are you advocating the use of a 1,000 parts  
 22 per million TPH criteria, either?  
 23 A. (Dr. Garvey) No, we're not.  
 24 Q. You're not advocating any particular criteria to  
 25 be used, are you?

11:37 1 A. (Dr. Garvey) No, because that's again a legal  
 2 decision.  
 3 Q. Okay. Now, would you--I'm going to change topics  
 4 just a little bit. I want to go back to now a point that  
 5 I've observed in your Reports about your use of criteria in  
 6 declaring certain samples to be contaminated. So, I'm  
 7 switching gears just a little bit.  
 8 A. (Mr. Goldstein) Okay.  
 9 Q. But hopefully we've got some foundations  
 10 established about what Ecuador's environmental regulations  
 11 actually are.  
 12 So, am I correct that, at times in your Reports,  
 13 you have concluded that certain samples are  
 14 contaminated--and I'm using that word in quotes now,  
 15 "contaminated"--even if they are below Ecuador's Decree  
 16 1215 criteria?  
 17 A. (Dr. Garvey) Yes, that's correct.  
 18 Q. Okay. And to illustrate this, let's look at an  
 19 example, and so let's go back to Tab 5 of the small bundle  
 20 in front of you. And specifically, why don't we look at  
 21 Slides 31 and 32.  
 22 This is another slide from--sorry.  
 23 (Pause.)  
 24 Q. You want to go to Slide 31. This is another slide  
 25 from Mr. Connor's presentation in which he was observing

11:39 1 that your approach--in your approach, you conclude samples  
 2 are contaminated, even if they are below Ecuador's Decree  
 3 1215 criteria, so that's what this slide is about. And you  
 4 just told me, I believe, that, in fact, you have concluded  
 5 certain samples are contaminated, to use that word, even if  
 6 they are below Ecuador's Decree 1215 criteria.  
 7 A. (Dr. Garvey) Right. I mean, the background level  
 8 of soils, the background level of Total Petroleum  
 9 Hydrocarbons in these soils is on the scale of 20 parts per  
 10 million. Essentially anything that analytically confirms  
 11 that the actual concentration is 50 to 100 parts per  
 12 million or higher is unequivocally contaminated. It is  
 13 simply whether or not it meets some legal threshold as to  
 14 what you need to do about it, but from the chemical  
 15 perspective, a sample of 100 million per million Total  
 16 Petroleum Hydrocarbons is unequivocally contaminated. It's  
 17 only a question of whether or not you could live with it at  
 18 that level.  
 19 Q. And you're not superseding or second-guessing the  
 20 judgment of the Republic of Ecuador and its Ministries as  
 21 to what they have concluded is tolerable and permissible  
 22 for oil field operations, are you?  
 23 A. (Dr. Garvey) No.  
 24 Q. All right. And so, when we read your Reports,  
 25 it's important that we should recognize that when you use

11:42 1 A. (Dr. Garvey) No. No. I'd like to see our Report,  
 2 but I can state we would declare them contaminated if they  
 3 are above background, not if they are detected.  
 4 Q. Okay. And then would you recognize, though--and I  
 5 think that perhaps we already have this established, but  
 6 let's just complete this thought--would you recognize that  
 7 on the right-hand side, if you applied Ecuador's Decree  
 8 1215, let's say the agricultural criteria, then those ten  
 9 samples that you declared to be impacted or contaminated on  
 10 the left would be considered not contaminated on the right?  
 11 A. (Dr. Garvey) I don't think we would agree with the  
 12 use of the word "contaminated." The samples on the right  
 13 would show that only one of them exceeds a specific  
 14 standard. I don't know that that's the definition of  
 15 "contaminated." I would agree it exceeds the standard, or  
 16 it would exceed the standard.  
 17 Q. Okay. I think we're on the same page. I believe  
 18 we are. The fact is using a different set of criteria as  
 19 you do, on the left you declare something impacted, and on  
 20 the right, if you apply Ecuador's Decree 1215 criteria,  
 21 they do not exceed those criteria except the one red  
 22 sample?  
 23 A. (Dr. Garvey) That's correct.  
 24 Q. Now, let's see if we can look at the effect of  
 25 this in another way, another illustration, so why don't go

11:40 1 the word, "contaminated," you are using that in a different  
 2 fashion than the Republic of Ecuador pursuant to its  
 3 published Decree 1215 criteria; correct?  
 4 A. (Dr. Garvey) I don't know the wording of the  
 5 Government of Ecuador's regulations, so I don't know if  
 6 they used the word contaminated, even, but we use  
 7 contaminated to mean it's not naturally occurring, so if  
 8 that helps try to clarify. That's how we use the word.  
 9 Q. But that's completely independent of Ecuador's own  
 10 permissible standards for oil field operations, isn't it?  
 11 A. (Dr. Garvey) Yes, yes. It's based on the data and  
 12 what we find to be background or not background  
 13 contamination.  
 14 Q. All right. Now, let's turn to the next slide, 32,  
 15 in Tab 5, and another slide from Mr. Connor's presentation  
 16 in which I simply want to discuss with you the effect of  
 17 your approach to how you declare a sample to be  
 18 contaminated as compared to whether it would be viewed as  
 19 contaminated under Ecuador's Decree 1215 regulations. So,  
 20 let's just review this for a moment. On the left is an  
 21 image from one of your Reports, a map, and you show there a  
 22 number of yellow, 10 of 12 samples that have detections of  
 23 TPH in soils, and you've declared them contaminated because  
 24 they are above the detection limit. That would be your  
 25 approach, wouldn't it?

11:43 1 to Tab 14.  
 2 And what you have in front of you, gentlemen, is a  
 3 slide from the Republic of Ecuador's Opening Statement for  
 4 this Hearing. It's their Slide 43. And then the second  
 5 page behind the slide is a table from your--one of your  
 6 data tables that I've created an excerpt of it, and your  
 7 full data table is just behind that slide, just to orient  
 8 you.  
 9 So, now let's go back to the paragraph, and on  
 10 this slide where we see two photographs and the statement  
 11 is: The Oriente population is at risk."  
 12 Do you see that?  
 13 A. (Dr. Garvey) Yes.  
 14 Q. And that's the statement--this slide was actually  
 15 presented by the Republic's counsel in their opening. And  
 16 on the slide it says: "At Lago 16, the residents use  
 17 contaminated water when drinking, bathing, and washing  
 18 their clothes."  
 19 Do you see that?  
 20 A. (Dr. Garvey) Yes.  
 21 Q. And I suspect that your firm took these  
 22 photographs; would that be correct?  
 23 A. (Dr. Garvey) Yes, I was there when we actually saw  
 24 these photographs.  
 25 Q. And these photographs were included in one of your

11:45 1 Reports, weren't they?  
 2 A. (Dr. Garvey) Yes.  
 3 Q. And so here the Tribunal has been told that this  
 4 water where--and these are hand-dug wells, aren't they?  
 5 A. (Dr. Garvey) This one is, yes.  
 6 Q. Right. And that this water from this hand-dug  
 7 well is contaminated. That's what the Tribunal was told in  
 8 Ecuador's opening; right?  
 9 A. (Dr. Garvey) Yes.  
 10 Q. And, in fact, I believe you said something to that  
 11 effect in your Report, didn't you?  
 12 A. (Dr. Garvey) Yes.  
 13 Q. Now, if you turn the slide, go to the next page,  
 14 and we're looking at excerpts of your data table, from your  
 15 Table 5.3-2, "Summary of Groundwater Results," and you see  
 16 at the top--just to orient us, you see the two groundwater  
 17 wells: LA16 NDW, and then to the right, LA16 ODW? You see  
 18 those?  
 19 A. (Dr. Garvey) Yes.  
 20 Q. And those are the two hand-dug wells that can be  
 21 found at the Lago Agrio 16 well site; correct?  
 22 A. (Dr. Garvey) Do you remember the numbering scheme?  
 23 A. (Mr. Goldstein) Yes. Just give us a second.  
 24 Q. Certainly.  
 25 (Witnesses conferring.)

11:46 1 A. (Dr. Garvey) Okay.  
 2 Q. So, let's go back now. Can you confirm for me  
 3 that the photograph represents Lago 16 NDW?  
 4 A. (Dr. Garvey) Can you confirm that?  
 5 A. (Mr. Goldstein) I'm sorry, please repeat the  
 6 question.  
 7 Q. Sure.  
 8 Let me tell you what I'm asking.  
 9 A. (Mr. Goldstein) Okay.  
 10 Q. And would you agree that the photograph represents  
 11 either NDW or ODW? It's one of those two hand-dug wells?  
 12 A. (Dr. Garvey) Yeah, that's what we're not  
 13 remembering, the nomenclature that ties the individual well  
 14 samples to the individual well.  
 15 Q. Right.  
 16 A. (Mr. Goldstein) Well, the well--permit me for a  
 17 second.  
 18 (Witnesses conferring.)  
 19 A. (Mr. Goldstein) The question is whether that is  
 20 the old one or the new one that we're looking at.  
 21 A. (Dr. Garvey) this is the old well.  
 22 Q. Okay. So, then let's go back to your data table,  
 23 and that would mean that we should look at the column on  
 24 the far right; correct, that says Lago 16 ODW?  
 25 A. (Dr. Garvey) That's--partially that's the problem

11:47 1 I'm having is I don't remember, and I don't have a key to  
 2 link the sample ID that can describe it here with that  
 3 location. This name here just links it to Lago Agrio 16,  
 4 the GW-005 or the old GW we're look at in this bunch of  
 5 reports. Somewhere in there there's a key that links one  
 6 to the other. I don't have it memorized. That's the  
 7 problem.  
 8 Q. All right. Maybe we can shortcut through this.  
 9 Let me ask this question.  
 10 As you look--and can we highlight the TPH criteria  
 11 on the table, Mr. Johnson, please? Okay. We've circled in  
 12 red what the Ecuador regulatory standards are for TPH for  
 13 groundwater.  
 14 Do you see that?  
 15 A. (Dr. Garvey) Yes.  
 16 Q. And would you agree with me that Ecuador's  
 17 environmental regulations under the TULSMA, that those  
 18 regulations provide that you can have up to .325 micrograms  
 19 per liter of TPH in groundwater in Ecuador?  
 20 A. (Dr. Garvey) Yes, that's our understanding.  
 21 Q. And anything below that is permissible, isn't it?  
 22 A. (Dr. Garvey) Yes.  
 23 Q. And so, would you look at the results for both of  
 24 these two hand-dug wells and confirm for me that both of  
 25 them are below that regulatory criteria?

11:49 1 A. (Dr. Garvey) Again, I currently certainly can  
 2 confirm that the numbers on this table are below that  
 3 criteria. What I can't confirm is that these two samples  
 4 were taken from the well in question. I don't have a key  
 5 to do that.  
 6 Q. So, perhaps then you could go to your Tab 10 of  
 7 your--okay. Go to Tab 10 of the small bundle.  
 8 A. (Dr. Garvey) I'm not trying to be difficult.  
 9 There are hundreds and hundreds of samples, and I don't  
 10 know the keys of all of them.  
 11 Q. Right. I understand, and you're not being  
 12 difficult. I just want to have a clear record, and I want  
 13 you to have what you need to be certain.  
 14 I'm sorry, look in your large bundle that has your  
 15 own reports, and you might look at Tab 10?  
 16 MS. RENFROE: Why don't we stop and take a break.  
 17 Just one second. May we, Mr. President?  
 18 PRESIDENT VEEDER: Of course we may. I'm just  
 19 wondering whether bottles of water aren't a danger. Can we  
 20 put them on the floor? We might need another table after  
 21 the next break just to extend your room for maneuver.  
 22 (Pause.)  
 23 BY MS. RENFROE:  
 24 Q. Okay, let me know when you're ready.  
 25 May I proceed, Mr. President? Thank you.



11:52 1 BY MS. RENFROE:  
 2 Q. Perhaps you now have in front of you from your own  
 3 Report Figure 5.3-2 from your June 2014 Report.  
 4 A. (Dr. Garvey) Right.  
 5 Q. And this is a figure of the Lago Agrio 16 site  
 6 that you provided; correct?  
 7 A. (Dr. Garvey) Yes.  
 8 Q. And I think this is what you wanted to consult to  
 9 satisfy yourself that the photograph of the stream that we  
 10 were just looking--or, excuse me, the hand-dug well that we  
 11 were looking at correlates or corresponds to one of these  
 12 two analytical results in your table?  
 13 A. (Dr. Garvey) Yes.  
 14 Q. So, which one is it? Is it NDW or ODW?  
 15 A. (Dr. Garvey) In terms of the sample that was in  
 16 the pit that was hand-dug?  
 17 Q. Okay. Let's just clean this up. Let's step back  
 18 to the photograph of the hand-dug well that you took and  
 19 that was shown to the Tribunal?  
 20 A. (Dr. Garvey) Quite.  
 21 Q. It's just the one slide before you. It's Tab 14.  
 22 A. (Dr. Garvey) Correct, um-hmm.  
 23 Q. Okay. You have that?  
 24 A. (Dr. Garvey) Yes.  
 25 Q. And that is a hand-dug well that you photographed?

11:53 1 A. (Dr. Garvey) Correct.  
 2 I didn't photograph. I was there when the  
 3 photograph was taken.  
 4 Q. Okay. It's being characterized as contaminated;  
 5 right?  
 6 A. (Dr. Garvey) Right.  
 7 Q. And now I want to ask you, if you look at your  
 8 data table for the results that's right behind the slide,  
 9 for the results of the groundwater that was taken that was  
 10 sampled by your team from this hand-dug well. Would you  
 11 please confirm that the TPH results are within the TULAS  
 12 regulatory criteria?  
 13 A. (Dr. Garvey) Yes, they are.  
 14 Q. And so, under these regulations, then, this  
 15 hand-dug well is not considered--it doesn't have an  
 16 exceedance of Ecuador's regulations, does it?  
 17 A. (Dr. Garvey) Not for these criteria. There are  
 18 also questions of taste and smell, and at times we could  
 19 smell--I believe the field crew could smell oil or scent of  
 20 that oil at this particular well. I have that anecdotally.  
 21 Obviously and that's not quantitative.  
 22 Q. Right. And you would agree with me, Dr. Garvey,  
 23 wouldn't you, that there's times when anecdotal information  
 24 can be disproven by analytical results from the laboratory?  
 25 A. (Dr. Garvey) Yes.

11:55 1 Q. And this is exactly one of those instances,  
 2 isn't it?  
 3 A. (Dr. Garvey) No, I wouldn't assert that.  
 4 Certainly the samples that were collected on this  
 5 particular day did not exceed the TULSMA standard.  
 6 Q. Pardon me. I want to make sure I heard you--  
 7 A. (Dr. Garvey) These two examples when they were  
 8 collected on this day did not exceed the criteria for  
 9 groundwater.  
 10 Q. And to be clear, then, this hand-dug well shown in  
 11 the picture and which is described--it's the page  
 12 before--shown in the picture and described by Ecuador's  
 13 counsel as "contaminated" does not have an exceedance of  
 14 Ecuador's environmental regulations, does it?  
 15 A. (Dr. Garvey) No, but--Ken, did you want to make a  
 16 point?  
 17 A. (Mr. Goldstein) Yes, it does not exceed the TPH,  
 18 but again, I urge you to take a look at Dr. Jeffrey Short's  
 19 Report because he did additional analyses on these wells  
 20 and he detected the presence of alkylated PAHs, other  
 21 compounds and actually oil droplets in the well. I wasn't  
 22 there, I'm not sure if oil droplets were observed or not on  
 23 this particular one.  
 24 A. (Dr. Garvey) Again, actually one of my colleagues  
 25 did report it on this well. But in addition, while this

11:56 1 well does not exceed Ecuadorian criteria, it is  
 2 contaminated. 150.15 milligrams per liter of TPH in this  
 3 well is contaminated. It's not there. It's not above the  
 4 threshold, but it is certainly not natural.  
 5 Q. And this is, I think, perfectly illustrates the  
 6 disagreement between you and LBG on the one hand and  
 7 Mr. Connor and GSI on the other hand, when you apply  
 8 Ecuador's environmental regulations to environmental  
 9 samples like this groundwater sample. Mr. Connor concluded  
 10 that it was not exceeding Ecuador's criteria, but on the  
 11 other hand, you have concluded that it's "contaminated";  
 12 correct?  
 13 A. (Dr. Garvey) Yes, we don't need the quotations,  
 14 but yes, I would definitely use the word "contaminated."  
 15 Q. Right. Even though, as we've seen in your own  
 16 data table, it does not exceed Ecuador's criteria?  
 17 A. (Dr. Garvey) That's correct. Does not exceed the  
 18 criteria for TPH, yes.  
 19 Q. And, in fact, if you look at the next page of your  
 20 data table and check the Reported data for the Polycyclic  
 21 Aromatic Hydrocarbons, those PAHs that you mentioned, would  
 22 you also confirm that there are no exceedances of PAHs  
 23 either?  
 24 A. (Dr. Garvey) I'm having a hard time reading it,  
 25 even with my reading glasses.

<p>Sheet 24</p> <p style="text-align: right;">2216</p> <p>11:58 1 A. (Mr. Goldstein) Can you see it?  2 (Witnesses conferring.)  3 Q. One thing that might help you, do you recall that  4 your Reports would indicate with yellow highlighting where  5 there was an exceedance?  6 A. (Dr. Garvey) Yes.  7 Q. That was your methodology; wasn't it?  8 A. (Dr. Garvey) Yes.  9 Q. And there's no yellow highlighting in this data  10 table for any of the PAH compounds, is there?  11 A. (Dr. Garvey) The answer is no.  12 Q. So, are you now satisfied that there is no PAHs--  13 (Technical difficulties.)  14 A. (Mr. Goldstein) Excuse me, would it be possible to  15 take a two-minute bio break?  16 PRESIDENT VEEDER: Of course. Any time.  17 (Witness Goldstein steps out of the room.)  18 MS. RENFROE: I will be glad to repeat it.  19 PRESIDENT VEEDER: Hang on, we're missing a  20 witness.  21 MS. RENFROE: Thank you. I appreciate that.  22 (Laughter.)  23 PRESIDENT VEEDER: Let's resume.  24 Q. Thank you very much.  25 BY MS. RENFROE:</p>	<p style="text-align: right;">2218</p> <p>12:04 1 PRESIDENT VEEDER: I think you need to rephrase  2 the question. But don't take it--restate the question.  3 (Pause.)  4 BY MS. RENFROE:  5 Q. One more time. I'm not asking you for any  6 interpretation of legal regulations. I'm asking you to  7 confirm your understanding that the Republic of Ecuador  8 does not require measurement or monitoring of  9 alkylated-PAHs?  10 A. (Dr. Garvey) I don't--we don't know that it's  11 spelled out that it does require that. We really don't  12 know that much about the standard in and of itself as to  13 how it regulates Total Polycyclic Aromatic Hydrocarbons. I  14 believe the standard is simply for Total Polycyclic  15 Aromatic Hydrocarbons without a specified method, but I'm  16 not a lawyer, so I don't know that.  17 Q. Right. And are you also familiar with the fact  18 that Dr. Strauss did not provide any quantitative analysis  19 of alkylated-PAHs in her risk assessments? Are you  20 familiar with that one way or the other?  21 A. (Dr. Garvey) No, I'm not. Ken?  22 A. (Mr. Goldstein) No, I'm not.  23 Q. All right. Let's then move on, if we can, to a  24 different topic, and I would like to direct you to Tab 2 in  25 the smaller binder.</p>
<p style="text-align: right;">2217</p> <p>12:03 1 Q. Thank you very much. So, I think we lost the last  2 question and answer, so I would like to repeat it, and we  3 were talking about the fact that in your data tables, your  4 practice is to indicate an exceedance of the regulatory  5 criteria with a yellow highlighting of the cell?  6 A. (Mr. Goldstein) Correct.  7 Q. And I'd asked you if you could confirm that for  8 the PAH, the Reported PAH results from these two hand-dug  9 wells, there are no exceedances of Ecuador's groundwater  10 criteria.  11 A. (Dr. Garvey) For the individual PAH compounds,  12 that's correct.  13 Q. At this point, I'm asking you about these data  14 tables?  15 A. (Mr. Goldstein) The alkylated-PAHs.  16 A. (Dr. Garvey) These data tables do not indicate any  17 exceedances of the PAH standard.  18 Q. Right. And while you've just mentioned  19 alkylated-PAHs, Mr. Goldstein, would you confirm for us  20 that the Republic of Ecuador and its Ministries do not  21 require monitoring or measurement of alkylated-PAHs, do  22 they?  23 A. (Dr. Garvey) We don't know that.  24 MR. EWING: Objection.  25 MS. RENFROE: Asking for his understanding.</p>	<p style="text-align: right;">2219</p> <p>12:07 1 And the topic that I want to visit with you about  2 now is a statement that we find in the Republic's  3 Supplemental Rejoinder and which you also spoke to in your  4 Reports and even to some extent this morning, and that is  5 your--or the view that all of the sites in the Concession  6 Area are generally similar and that conditions that you  7 found at the 13 sites that you investigated are  8 representative of conditions that would be found elsewhere  9 in the Concession Area. That's what I would like to visit  10 with you about now. And so, just to orient you, I have put  11 on the slide an excerpt from Ecuador's Rejoinder, all  12 right? So, are you with me on the topic that we are going  13 to cover now?  14 A. (Dr. Garvey) Yes.  15 Q. So, I believe that I've seen in your Reports that  16 there are some 344 sites that TexPet operated until 1990;  17 correct?  18 A. (Dr. Garvey) Right. We get that number from  19 Mr. Connor's Report.  20 Q. Okay. And thereafter, Petroecuador took over  21 operations of those sites?  22 A. (Dr. Garvey) Yes.  23 Q. Now, and, in fact, you also understand that it has  24 built or it's constructed additional oil wells within the  25 Concession Area; correct?</p>

12:08 1 A. (Dr. Garvey) Yes.  
 2 Q. And would it be consistent with your understanding  
 3 that since taking over, Petroecuador has constructed over  
 4 740 new oil wells in the last several years?  
 5 A. (Dr. Garvey) I'm not aware of the number. I know  
 6 they have constructed wells. I don't know the number.  
 7 Q. And likewise, with the construction of new oil  
 8 wells, they have also constructed new pits, haven't they?  
 9 A. (Dr. Garvey) I would assume so, but I don't know  
 10 that.  
 11 Q. Right. And so, would you also recognize that, in  
 12 the process of operating these oilfields at these 344 plus  
 13 sites, Petroecuador has had spills and leaks over the  
 14 course of the last 25 years?  
 15 A. (Dr. Garvey) Yes.  
 16 Q. All right. And in conducting your work and taking  
 17 the samples and doing your Site Investigation, did you  
 18 investigate the extent of Petroecuador's operations at each  
 19 of the sites that you evaluated?  
 20 A. (Dr. Garvey) We used the available data to  
 21 investigate the sites--well, we looked at--to the extent  
 22 that we could, we looked at TexPet-operated facilities or  
 23 structures or TexPet-operated sites to the extent that it  
 24 was only TexPet-operated, we examined--we looked at the  
 25 data that was available for the various sites.

12:10 1 Q. Okay. So, let's take a look at some things that  
 2 might bear on this issue.  
 3 So, if we look at Slide 16 in the small  
 4 bundle--sorry, Tab 16. Tab 16. I want to show you a  
 5 couple of photographs, and this is of the Shushufindi 55  
 6 well site. On the left is an aerial photograph, and if you  
 7 look at it, you can see the date, and it says  
 8 July 26, 1990.  
 9 Do you see that, sir?  
 10 A. (Dr. Garvey) Yes.  
 11 Q. So, we can see in this aerial photograph that  
 12 there was an open pit to the right of the road as of  
 13 July 26, 1990, at Shushufindi 55.  
 14 A. (Dr. Garvey) I see that.  
 15 Q. You see that?  
 16 A. (Dr. Garvey) Yeah.  
 17 Q. And, of course, that's a month after Petroecuador  
 18 has taken over operations; correct?  
 19 A. (Dr. Garvey) That's correct.  
 20 Q. And so--and then the photograph on the right is  
 21 taken from Claimants' geo-spatial mapping tool, which is  
 22 C-2444, and it's the same site, and you can see the little  
 23 green icon with the well.  
 24 Do you see that?  
 25 A. (Dr. Garvey) Yes.

12:11 1 Q. The green icon represents the wellhead?  
 2 A. (Dr. Garvey) Okay.  
 3 Q. And you see that the site--excuse me, the pit, the  
 4 open pit, is no longer there?  
 5 A. (Dr. Garvey) Right. It's no longer black.  
 6 Q. Right. And is it fair to conclude from comparing  
 7 these two photographs that some time between July 26 of  
 8 1990 and 2014, which I will represent to you is the date of  
 9 the photograph on the right, that sometime in that period,  
 10 Petroecuador closed the pit that is shown in the aerial  
 11 photograph on the left?  
 12 A. (Dr. Garvey) I would certainly agree that between  
 13 those two dates, somebody closed the pit in between.  
 14 Certainly it could have been Petroecuador, but we don't  
 15 know that.  
 16 Q. But we do know TexPet was not operating at that  
 17 time?  
 18 A. (Dr. Garvey) That's correct, but they did do RAP  
 19 work--I don't know if they did RAP work at this site.  
 20 Q. Right. And so, to the extent that someone  
 21 characterizes this pit as having been closed by TexPet  
 22 before June of 1990, we know from this aerial photograph on  
 23 the left that that would not be correct?  
 24 A. (Dr. Garvey) I don't know that you can tell the  
 25 real status of that pit at the time of July 1990. It

12:12 1 certainly is a black--darkened area, but I'm not--I'm  
 2 really not an expert in interpreting these aerial  
 3 photographs, so I don't know the status of that pit at the  
 4 time of this photograph.  
 5 Q. But, if it turns out that this pit was closed by  
 6 Petroecuador between July 1990 and sometime in 2014, would  
 7 you have any information about the manner in which  
 8 Petroecuador closed that pit?  
 9 A. (Dr. Garvey) You're pre-supposing that it was  
 10 Petroecuador that closed it. No, I personally don't have  
 11 it. It might be available in Petroecuador's records, but I  
 12 don't--I guess I don't understand the point of the  
 13 question.  
 14 Q. Right. Well, you've told us that Shushufindi 55,  
 15 which is one of the 13 sites you've investigated; correct?  
 16 A. (Dr. Garvey) Yes.  
 17 Q. And you've told us that it's one of those sites  
 18 that you characterize as a TexPet-only site; right?  
 19 A. (Dr. Garvey) Yes, in terms of the operation of the  
 20 well.  
 21 Q. Right. But when we look at this photograph, we  
 22 can see that there is a pit that is open, that was open  
 23 during Petroecuador's period of operation.  
 24 Do you see that? We've already established that,  
 25 haven't we?

12:14 1 (Witnesses conferring.)  
 2 A. (Mr. Goldstein) Just to clarify, there is no oil  
 3 production going on here. TexPet vacated this site,  
 4 stopped producing oil--I don't remember the date, I don't  
 5 recall, but I don't believe that Petroecuador is operating  
 6 at this site. You see a pit here at that time.  
 7 Q. But you would accept that, even though there may  
 8 not have been actual oil production, that if Petroecuador  
 9 closed that pit sometime after July 1990, that it would be  
 10 Petroecuador who would be responsible for the effects of  
 11 the manner in which it closed the pit. That would not be  
 12 TexPet's responsibility, would it?  
 13 A. (Dr. Garvey) That's a matter of legal issue. It  
 14 was certainly TexPet created the pit and put the oil in it  
 15 that Petroecuador may or may not and it could have been the  
 16 local landowner as well, we have seen where local  
 17 landowners have modified the pits, that whoever it was that  
 18 modified it after the case certainly wasn't  
 19 TexPet--whatever this is, it changed between the two  
 20 photographs, so that's not TexPet's, unless it's a RAP  
 21 related operation--TexPet is not responsible for this  
 22 change, but that doesn't mean they're not responsible for  
 23 putting the oil in the pit in the first place.  
 24 Q. Fair enough, but to the extent that your criticism  
 25 is the manner in which the pit was closed or covered, we've

9 Q. And you would acknowledge that Petroecuador has  
 10 actually actively operated the Lago Agrio 2 well; correct?  
 11 A. (Dr. Garvey) Yes.  
 12 Q. Including having impacts at that well site,  
 13 haven't they?  
 14 A. (Dr. Garvey) I don't know the history of their  
 15 operation to know they had impacts but I know they operated  
 16 it.  
 17 Q. So, you have not investigated the details of  
 18 Petroecuador's impacts at the Lago 2 well platform; is that  
 19 what you're telling us?  
 20 A. (Dr. Garvey) We have some indication of the  
 21 records, it's in our Reports, I don't know it off the top  
 22 of my head.  
 23 Q. Let's take a look, if we could, at some additional  
 24 information about Petroecuador impacts. If we could look  
 25 at Slide--excuse me, Tab 18 in your bundle.

12:15 1 established that it was not done by TexPet before June pf  
 2 1990.  
 3 (Witness conferring.)  
 4 A. (Dr. Garvey) Ken, do we know about the RAP history  
 5 for this site?  
 6 A. (Mr. Goldstein) Not off the top of my head.  
 7 A. (Dr. Garvey) so, I don't know what the RAP history  
 8 is for this, so is it possible it was closed under the RAP,  
 9 I don't know.  
 10 MR. EWING: Counsel, if you're directing them to a  
 11 specific criticism, would you be able to point to the  
 12 Report where they made that criticism?  
 13 MS. RENFROE: I think it was made in the Hearing,  
 14 but we can move on. For the sake of time, I suggest we do  
 15 that.  
 16 BY MS. RENFROE:  
 17 Q. What I'd like to do now is explore with you some  
 18 later in time operations of Petroecuador, [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]

12:18 1 Now, you told us a moment ago that you had  
 2 reviewed some information about Petroecuador impacts and I  
 3 wonder if you have examined what I'm going to call the  
 4 SIPAS database, which is one of several databases that  
 5 Petroecuador has used to document and publish spills during  
 6 its operation.  
 7 A. (Dr. Garvey) I believe that our staff have  
 8 reviewed this, but--  
 9 Q. And on this slide, I have an excerpt of the SIPAS  
 10 database, just one page of it, and I have quoted from the  
 11 Expert Report of Pedro Alvarez, who is an Expert on behalf  
 12 of Claimants in this case. I just want to tell you what  
 13 you're looking at.  
 14 A. (Dr. Garvey) All right.  
 15 Q. And he states in his Expert Report that from the  
 16 review of this one database, that over 125,000 barrels  
 17 associated with Petroecuador well operations has been  
 18 spilled inside the Concession Area between 1990 and 2009.  
 19 Do you see that, sir?  
 20 A. (Dr. Garvey) Yes, I see that.  
 21 Q. And so, have you examined these Reported spills in  
 22 any detail before rendering your opinions in this case?  
 23 A. (Dr. Garvey) We have, because we've used some of  
 24 this information to help us select sites for investigation.  
 25 Q. Okay. Then let's take a look at the next slide,

<p>Sheet 27</p> <p style="text-align: right;">2228</p> <p>12:19 1 which is in the tab. Here is Guanta 7. Here is a 2 photograph of a crude oil spill at Guanta 7 that was 3 reported in 2003 or 2004. 4 Do you see that? 5 A. (Dr. Garvey) Yes. 6 Q. And we can find this photograph in the clickable 7 database which is in this record at R-938. 8 And you've looked at the clickable database, 9 haven't you? 10 A. (Dr. Garvey) Yes. 11 Q. And seen photographs like this one of significant 12 oil spills by Petroecuador? 13 A. (Dr. Garvey) I have certainly seen pictures of oil 14 spills. The word "significant" is--what you define by 15 that. I'm not sure what you define by that. 16 Q. Right. And you see here teams of workers are 17 vacuuming crude oil and water from the stream that's next 18 to the Guanta 7 well platform? 19 A. (Dr. Garvey) Yes. 20 Q. Okay. Let's look at the next paragraph, next 21 example. 22 This is an image also from the clickable database 23 of a flare pit at the Guanta Production Station taken in 24 2004. 25 Do you see that?</p>	<p style="text-align: right;">2230</p> <p>12:21 1 Q. And here we have Petroecuador workers in this 2 spill area. 3 Do you see that, sir? 4 A. (Dr. Garvey) Yes, I see the workers there. 5 Q. And in forming your opinions and forming your 6 opinions in this case, have you taken into account impacts 7 like these by Petroecuador where significant oil spills 8 have occurred and pipeline breaches have occurred, leaving 9 TPH in the ground? 10 A. (Dr. Garvey) If you will remember, our analysis of 11 the inventory did not differentiate between the nature of 12 the sources, the responsible Party. We documented simply 13 that there was extensive contamination in the sites around 14 the Oriente. 15 Q. Okay. Let's look at the next slide. This is an 16 image of contamination and oil spill from a flowline at the 17 Sacha Norte 1 Production Station in 2005, and you can see 18 the oil has been sprayed all over a variety of equipment 19 and what looks to be like some sort of set of buildings. 20 Do you see that? 21 A. (Dr. Garvey) Yes. 22 Q. And are you familiar, sir, with the fact that this 23 particular spill was not reported by Petroecuador and not 24 documented in the SIPAS database? 25 A. (Dr. Garvey) No, I was not aware.</p>
<p style="text-align: right;">2229</p> <p>12:20 1 A. (Dr. Garvey) Yes. 2 Q. And you can see the impacts on the ground from the 3 flare pit. 4 Do you see that, sir? 5 A. (Dr. Garvey) I see the impacts on the ground. I 6 don't know that it's the result of the operation of the 7 flare. 8 Q. If that's what was reported in the clickable 9 database, you wouldn't have any reason to disagree with 10 that, would you? 11 A. (Dr. Garvey) These pits, from my understanding 12 these pits have had multiple uses, so it would be unclear 13 to me that we could reliably say that these flares are 14 responsible for this damage. 15 Q. You don't have any information about that one way 16 or the other? 17 A. (Dr. Garvey) No. 18 Q. Let's look at the next image, a flowline spill at 19 the Sacha 14 well site in 2004. 20 Do you see that? 21 A. (Dr. Garvey) Yes. 22 Q. And again, from the clickable database, we know 23 that there was crude oil flowing through this flowline 24 which was then released when the flowline was breached? 25 A. (Dr. Garvey) Yes.</p>	<p style="text-align: right;">2231</p> <p>12:23 1 Q. Are you familiar with the fact that not all of the 2 spills and pipeline breaches that have been experienced by 3 Petroecuador have been reported? 4 A. (Dr. Garvey) It's my understanding that generally 5 speaking Petroecuador does report its spills, although I 6 note that there are no records of spills prior to the 7 takeover--prior to 1990, to a large degree, there was 8 little recording beforehand as to the thoroughness of 9 Petroecuador reporting spill post 1990, I do know that they 10 do it. I don't know how exhaustive it is. 11 Q. Let's look at another example. The next slide-- 12 PRESIDENT VEEDER: Could I just pause you. Did I 13 understand you to say that this was not in the clickable 14 database? 15 MS. RENFROE: No, Mr. President. It is in the 16 clickable database as is shown on the bottom of the slide, 17 but it is not found in the SIPAS spill summary. 18 BY MS. RENFROE: 19 Q. Now, if we go to the next slide, we see an image 20 of another flowline spill at Guanta 6 in 2006. 21 Do you see that? 22 A. (Dr. Garvey) Yes. 23 Q. And again, this photograph comes from the 24 clickable database? 25 A. (Dr. Garvey) Okay.</p>

12:24 1 Q. And was available for you in your work in this  
 2 case; correct?  
 3 A. (Dr. Garvey) Yes.  
 4 Q. And Guanta 6 is one of the sites that you've  
 5 included in your group of 13 where you have done sampling;  
 6 right?  
 7 A. (Dr. Garvey) Yes.  
 8 Q. And one of those sites that you've characterized  
 9 as TexPet only, meaning TexPet was the only company that  
 10 operated that site?  
 11 A. (Dr. Garvey) I need to review the records to see  
 12 if Guanta 6 was one of those. I don't remember, no.  
 13 Q. So, you recognize, then, that Petroecuador has  
 14 operated this site and, as we can see from this paragraph,  
 15 has had--has caused environmental contamination at this  
 16 site, hasn't it?  
 17 A. (Dr. Garvey) Yes. Certainly this--certainly this  
 18 pipe looks like it was spilled recently.  
 19 Q. Pardon me?  
 20 A. (Dr. Garvey) Yes, I would agree. This pipe shows  
 21 that it looks like there has been a recent spill at this  
 22 location and then since it's 2006, it would have been  
 23 Petroecuador.  
 24 Q. Right. And once again, if you check that SIPAS  
 25 database of all the spills, I think you will find that

12:25 1 there is no report in that database of this spill at  
 2 Guanta 6.  
 3 A. (Dr. Garvey) If that's your assertion.  
 4 Q. Well, I will direct you to Tab 19 now, where I've  
 5 included for you, a copy, a printout of the SIPAS database.  
 6 Some of it is in Spanish, and I have included behind some  
 7 of the English translations. Maybe the English is on top,  
 8 and the Spanish is in the back, but if you've looked at  
 9 these at this database, Dr. Garvey, you would agree with me  
 10 that this database shows hundreds of spills reported by  
 11 Petroecuador throughout the Concession Area during its  
 12 period of operation, wouldn't you?  
 13 A. (Dr. Garvey) I don't know the authenticity of the  
 14 table, not that I have any reason to doubt you per se, but  
 15 I don't have access to the original database. Certainly  
 16 there are--I don't know how many pages represent the first  
 17 half of this, so to speak, the English half.  
 18 Q. Well, just to orient you a little bit, if we look  
 19 at the English--one of the English translation pages, the  
 20 very first page, we see in about the fourth column it says  
 21 "spill area" and "spill volume."  
 22 Do you see that?  
 23 A. (Dr. Garvey) Yeah.  
 24 Q. And so if you read throughout, you can find spills  
 25 that have been reported about the various sites among the

12:26 1 344 sites operated by Petroecuador. That's what's in here,  
 2 isn't it?  
 3 A. (Dr. Garvey) Again, I don't know that. I have not  
 4 looked at this information in this form before.  
 5 Q. Well, if you accept my representation that that's  
 6 what this Report is telling us, then we can see from this  
 7 Report and from the photographs that I have just shown you  
 8 that there have been numerous oil spills and pipeline  
 9 breaches at various sites operated by Petroecuador since it  
 10 took over 25 years ago?  
 11 A. (Dr. Garvey) Yes.  
 12 Q. And you don't dispute that, do you?  
 13 A. (Dr. Garvey) No.  
 14 Q. All right. Now--  
 15 MS. RENFROE: Actually, Mr. President, I'm about  
 16 to hit a new topic, so if we want to have a lunch break,  
 17 this would be a good time to do it.  
 18 PRESIDENT VEEDER: Let's do that. It's 12:30.  
 19 Let's come back at 1:30. We will break for lunch. Please  
 20 don't discuss the case or your testimony away from the  
 21 Tribunal.  
 22 MR. EWING: Can I ask how much more?  
 23 MS. RENFROE: I would hope to be finished in one  
 24 more hour, but I don't want to be held to that. I'm doing  
 25 the best I can.

12:28 1 MR. EWING: For planning purposes.  
 2 MS. RENFROE: Sure. Okay.  
 3 PRESIDENT VEEDER: Thank you very much. 1:30.  
 4 (Whereupon, at 12:30 p.m., the Hearing was  
 5 adjourned until 1:30 p.m., the same day.)  
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1 AFTERNOON SESSION  
 2 PRESIDENT VEEDER: Apparently, we're being  
 3 restricted in our use of the red light, and the suggestion  
 4 is that if we can turn it off, we should, and that one of  
 5 the Witnesses should turn the microphone off, and yours  
 6 stays on. Yours will have to be clicked on and off. We'll  
 7 see if that works.  
 8 Let's resume.  
 9 MS. RENFROE: Thank you, Mr. President, Members of  
 10 the Tribunal.  
 11 CONTINUED CROSS-EXAMINATION  
 12 BY MS. RENFROE:  
 13 Q. Good afternoon, gentlemen.  
 14 A. (Dr. Garvey) Good afternoon.  
 15 Q. Let's return if we can briefly to one topic that  
 16 we were talking about just before the break, and if I could  
 17 direct you to your slide, in your slide packets, do you  
 18 have a copy of the slides that you presented?  
 19 A. (Mr. Goldstein) This morning, no.  
 20 A. (Dr. Garvey) No.  
 21 Q. Could we trouble your counsel to give you a copy,  
 22 and I'd ask you to look at your Slide 21.  
 23 MS. RENFROE: Thank you, Mr. Ewing.  
 24 And at the same time, I'm going to ask my  
 25 colleagues to distribute some copies of excerpts from the

01:32 1 translation, I believe, in the bundle, but I think we can  
 2 do this quickly, and maybe we can pull this up on the  
 3 screen, Mr. Johnson, if that's possible, please. Right.  
 4 And what we want to do is highlight an entry in  
 5 the SIPAS database, and it's entry--you may need to turn to  
 6 the next page or maybe we're there. 251--251, there we  
 7 are--and I want to draw your attention, Dr. Garvey and  
 8 Mr. Goldstein, to this entry which shows for the well site,  
 9 well site Sacha 112.  
 10 Do you see that?  
 11 A. (Dr. Garvey) Yes.  
 12 Q. And if you look to the right, you can see where it  
 13 says Column E. Do you see that sir?  
 14 A. (Dr. Garvey) Yes.  
 15 Q. And it says volume, and it says derrame, which is  
 16 spill volume, and then you see below 800. Do you see that,  
 17 sir?  
 18 A. (Dr. Garvey) Yes.  
 19 Q. And from your review of these Reports, you know  
 20 that that's reported in barrels; correct?  
 21 A. (Dr. Garvey) Yes.  
 22 Q. So, this entry is telling us that 800 barrels of  
 23 oil were spilled at the Sacha 112 platform; correct?  
 24 A. (Dr. Garvey) Yes, that's correct.  
 25 Q. And if you look at column D, it tells us the area

01:30 1 SIPAS database which I've already given you in your bundle,  
 2 but to save you the trouble of having you flip through a  
 3 lengthy document, we're handing out just the excerpts that  
 4 you would want to look at for my questions.  
 5 BY MS. RENFROE:  
 6 Q. Do we have the photograph?  
 7 Okay, so let me proceed if everybody's ready. all  
 8 right.  
 9 So, just to be clear, the document I've just  
 10 handed you is an excerpt of what was already in Tab 19?  
 11 A. (Dr. Garvey) Correct.  
 12 Q. All right. Now, let's walk through this together.  
 13 So, we start off looking at your Slide 21 that you  
 14 presented this morning, and do you have it, sir?  
 15 A. (Dr. Garvey) Yes, we do.  
 16 Q. And I don't have it electronically or I would put  
 17 it on the screen. But in this image, this is your  
 18 photograph where you describe stream contamination below  
 19 Sacha 86, and you show oil contaminated sediment, oil slick  
 20 on water and so on; correct?  
 21 A. (Dr. Garvey) That's correct.  
 22 Q. Right. And then, if we look now into that excerpt  
 23 from the SIPAS database which I have given you, and if you  
 24 look to I believe it's the first page of what I've given  
 25 you, it is in Spanish, and you can find the English

01:33 1 that's been impacted, and it shows about 17,000 cubic  
 2 meters--square meters, excuse me, 17,000 square meters.  
 3 Do you see that?  
 4 A. (Dr. Garvey) Yes, I do.  
 5 Q. And then if you look all the way to the right,  
 6 Column J, we see that that spill happened in 2005; right?  
 7 A. (Dr. Garvey) Yes.  
 8 Q. Now, do you have or have you considered the  
 9 proximity between the Sacha 86 well site that you were  
 10 portraying in the photograph in your Slide 21 and this  
 11 Sacha 112 well platform where there was an 800-barrel  
 12 spill?  
 13 A. (Dr. Garvey) Not explicitly. That wasn't the  
 14 point of the slide, but go ahead.  
 15 Q. Okay. So, now, if we have a copy of the  
 16 photograph, we're going to distribute a copy of a  
 17 photograph that is a screenshot taken from the mapping  
 18 tool, and I'd like to ask Mr. Johnson to put the mapping  
 19 tool--this photograph up on the screen, please.  
 20 And what I'm showing you now, gentlemen, is a  
 21 screenshot from the geo-spatial mapping tool, and I'm  
 22 showing you an image from the August to September 2014  
 23 satellite image, and on the left you can see Sacha 112.  
 24 Do you see that well platform?  
 25 A. (Dr. Garvey) Yes, I do.

01:35 1 Q. And then on the right-hand side of the image, you  
 2 see Sacha 86?  
 3 A. (Dr. Garvey) Yes.  
 4 Q. And then if you look just above the white legend,  
 5 you can see an area that looks like it's a wetland area  
 6 that's been somewhat cleared.  
 7 Do you see that, sir?  
 8 A. (Dr. Garvey) Is that what you're indicating there  
 9 with the mouse?  
 10 Q. Yes, sir.  
 11 A. (Dr. Garvey) Yes.  
 12 Q. All right. And would it surprise you to know that  
 13 this area that you have presented in your photograph, your  
 14 Slide 21, of stream contamination below Sacha 86, this is  
 15 the area that was impacted by that 800-barrel spill at the  
 16 Sacha 112 well platform which is only about 300 meters  
 17 away?  
 18 A. (Dr. Garvey) I need to understand something about  
 19 the photograph and the hydrodynamics of the system. I  
 20 can't tell from this photograph which way the water flows.  
 21 Q. But I guess my point is, when you presented your  
 22 photograph, your Slide 21--  
 23 A. (Dr. Garvey) Yes.  
 24 Q. --showing this stream contamination below  
 25 Sacha 86, you weren't suggesting that this was a

01:36 1 contamination event caused by TexPet, were you?  
 2 A. (Dr. Garvey) I was indicating that the streams  
 3 downstream--the areas downstream of the well sites in  
 4 general are extensively contaminated, whether this is due  
 5 to activity at 86 or due to Sacha 112 or most likely a  
 6 combination of both, the point is that the streams are  
 7 contaminated with oil. I don't know the history  
 8 explicitly. Certainly the spill at Sacha 112 was of  
 9 significant magnitude, but I don't know its spatial extent,  
 10 how far down it went into the stream, et cetera, but that  
 11 wasn't the point of the slide. The point of the slide was  
 12 simply to say streams contained contamination, and the  
 13 contamination that reaches them travels downstream. This  
 14 is a case in point, assuming now that we have the  
 15 connection between Sacha 112 on the left and the wetland on  
 16 the right. My point precisely, the contamination from that  
 17 site is emanating downstream. Contamination from other  
 18 spills that have historically reached their respective  
 19 streams and traveled downstream as well, so this is just an  
 20 example; not this was the site to clean up or an area that  
 21 explicitly represented TexPet's specific operations.  
 22 Q. So, just to be very, very clear, sir, you've just  
 23 told us that you can't--you're not in any way representing  
 24 that this Sacha 86 contamination that you've shown in your  
 25 Slide 21, that it has anything to do with TexPet? You're

01:38 1 not representing that, are you?  
 2 A. (Dr. Garvey) What I'm representing is that this  
 3 contamination that's downstream of Sacha 86 is undoubtedly  
 4 a combination or the integration of impacts to the stream  
 5 that have been caused by sites that are upstream of it. It  
 6 could be Sacha 86, it could be Sacha 112, if it's on the  
 7 same stream. I can't tell that from here, given this  
 8 diagram. But in any case, the point is simply that  
 9 contamination that reaches the streams from the well sites  
 10 travels downstream and impacts the sediments. Whether  
 11 it's--which specific site it is, is not really particularly  
 12 relevant. It's examples of the kind of contamination we  
 13 would expect to find in the Oriente.  
 14 Q. But what is relevant is the extent to which you  
 15 are trying to support or offer your support to the Judgment  
 16 which is supposed to be concerning or purportedly concerns  
 17 actions of TexPet. And what you're telling us is that you  
 18 don't have any ability to differentiate between actions of  
 19 Petroecuador or actions of TexPet; and in presenting this  
 20 picture to the Tribunal and suggesting that this is  
 21 contamination that justifies the Judgment, you're not  
 22 suggesting that, are you?  
 23 A. (Dr. Garvey) There are ways to tell which is  
 24 TexPet and which is Petroecuador based on the history of  
 25 the sites and their usage. As to who operated what site

01:39 1 when. There are sites that are explicitly operated by  
 2 TexPet as well as those that were operated by both.  
 3 There's 25 or 30 years of legacy operations by TexPet in  
 4 this system. I don't for a moment believe that there were  
 5 no spills during that time, okay? But that said,  
 6 Petroamazonas--Petroecuador also operated many of these  
 7 sites afterwards, so they're both--there are  
 8 responsibilities to be shared, although we're not involved  
 9 in the allocation, but certainly both entities spilled oil,  
 10 both entities have impacts. This is simply an example of a  
 11 stream that has been severely impacted.  
 12 As to exactly which part of this is due to who,  
 13 I'm not making any differentiation here.  
 14 Q. Okay. And we looked earlier today at the  
 15 Settlement Agreement and the Remedial Action Plan and the  
 16 Final Release between the Republic of Ecuador,  
 17 Petroecuador, and TexPet that resolved TexPet's share of  
 18 these impacts. We saw that earlier, didn't we?  
 19 MR. EWING: Counsel, you're asking for a legal  
 20 conclusion again.  
 21 MS. RENFROE: No, I'm asking for a fact that we've  
 22 already discussed.  
 23 THE WITNESS: (Dr. Garvey) What we established was  
 24 TexPet's responsibility for cleaning up the pits. That's  
 25 all, not any other responsibility. That was the Agreement



<p>Sheet 31</p> <p style="text-align: right;">2244</p> <p>01:40 1 between Ecuador--the Government of Ecuador and TexPet  2 regarding the pits. I don't have an opinion about streams  3 and the rest. That's really not a part of our realm.  4 BY MS. RENFROE:  5 Q. So, now, let's look at your Slide 32 in which, if  6 you could turn to that, please.  7 A. (Dr. Garvey) Sure.  8 Q. Slide 32 of your presentation this morning.  9 Do you have that, gentlemen?  10 A. (Dr. Garvey) Yes, we do.  11 Q. Now I believe your presentation to the Tribunal  12 today was that this picture showed oil droplets on water  13 below a siphon at Guanta 6?  14 A. (Dr. Garvey) That's correct.  15 Q. And are you familiar with the fact that  16 Petroecuador installed this flre and the siphon at Guanta 6  17 and not TexPet?  18 A. (Dr. Garvey) I believe that the historical  19 evidence on that particular pit is unclear. We see  20 evidence in the aerial photographs that there was, in fact,  21 a disturbance there prior to Petroecuador taking over the  22 operations, so that it's not clear to me who is responsible  23 for the pit that's upstream of this particular siphon.  24 Q. Or the oil droplets in the photograph?  25 A. (Dr. Garvey) Right.</p>	<p style="text-align: right;">2246</p> <p>01:44 1 Look at the third page under the tab.  2 Do you have it?  3 A. (Dr. Garvey) 5.5-1?  4 Q. Yes, sir, 5.5-1. And would you confirm, please,  5 that this is your figure from your Report for the  6 Shushufindi 34 well platform, and this is your presentation  7 of your soil sampling results using your total extractable  8 method, material method, TEM for short; is that correct?  9 A. (Dr. Garvey) I believe so. This looks like the  10 reproduction from my Report.  11 Q. Okay. You recognize it?  12 A. (Dr. Garvey) Yes.  13 Q. Okay. And what I'd like to examine with you is, I  14 want to test your theory a bit about--that the pits are  15 leaking and that material is migrating from them; all  16 right, sir?  17 A. (Dr. Garvey) Okay.  18 Q. Now, this is one of the sites that LBG  19 investigated in its 2013-2014 investigation; correct?  20 A. (Dr. Garvey) Yes.  21 Q. And you took samples at this site in 2014?  22 A. (Dr. Garvey) That's correct.  23 Q. And what we see on this map is a pit which is  24 indicated in the purple?  25 A. (Dr. Garvey) That's correct.</p>
<p style="text-align: right;">2245</p> <p>01:42 1 Q. Now, let's move to a different topic, if I might,  2 and that is the Conceptual Site Model that you presented to  3 the extent that it's your theory or your concept that pits  4 are leaking, so that's where I want to go now, okay?  5 A. (Dr. Garvey) That's fine.  6 Q. Now, if I understand your presentation and your  7 prior reports, it's your theory that the pits are leaking  8 and that I believe you told us earlier today that  9 approximately 90 percent of their contents would be on the  10 outside of a pit as opposed to the inside of a pit.  11 A. (Dr. Garvey) The current inventory of  12 contamination in the soils of the--around the well sites  13 exists outside of the pits.  14 Q. And that's based on a calculation that you have  15 made?  16 A. (Dr. Garvey) That's correct.  17 Q. So, let's take a look at one of the sites that  18 you've sampled and that you've presented among the 13, and  19 I would direct you now to Tab 30 in the smaller bundle.  20 MS. RENFROE: And for the record, this is a map  21 of--it's Figure 5.5-1 of Shushufindi 34.  22 BY MS. RENFROE:  23 Q. Have you found that map?  24 A. (Dr. Garvey) Figure 3.7-1?  25 Q. No, sir, it's Figure 5.5-1.</p>	<p style="text-align: right;">2247</p> <p>01:45 1 Q. All right. And then in the squares, the little  2 orange squares, those indicate your TEM sample locations.  3 A. (Dr. Garvey) Yes.  4 Q. Would you also confirm, Dr. Garvey, that this  5 purple pit is a non-RAP pit under the Remedial Action Plan?  6 A. (Dr. Garvey) That I can't confirm from this. I  7 would need to look at the Report. I don't remember.  8 Q. Well, if you recall the way that you prepared your  9 maps for other cases, you would indicate in blue if it was  10 a RAP-remediated pit?  11 A. (Dr. Garvey) Yes.  12 Q. And this one see is in purple, and you described  13 it as undocumented?  14 A. (Dr. Garvey) Right.  15 Q. So, let's now look at the sample results. And  16 again, what we're exploring here is the extent to which you  17 say that the pits are leaking and that 90 percent of their  18 contents would not only migrate outside of the pit, but I  19 think you told us earlier today you thought that they would  20 move radially outside of the pit to some 20 hectares, I  21 thought you said. Do I have that right?  22 A. (Dr. Garvey) What we said was not that the  23 contamination from the pit would necessarily emanate out  24 radially, but that the contamination in the soils  25 effectively radiates outward radially from the pits because</p>

01:47 1 of the activities that would be associated with it. So,  
2 it's not a requirement per se that the pit leak into the  
3 environment surrounding it and that is the basis for all  
4 the soil contamination outside of the pit. What it says,  
5 what we're asserting is that, simply because the pits were  
6 the center of this kind of disposal activity, that we would  
7 expect either loss from the pit via various mechanisms or  
8 by operations that would have occurred around the pits;  
9 that the areas closest to the pits would be the most  
10 contaminated, and that contamination would be less intense  
11 as you moved away from the pit and away from this kind of  
12 activity.

13 This is not a geochemical model that says the pit  
14 starts the contamination, and it spills and disturbs in all  
15 directions under simple geochemical processes. This is a  
16 model that says the pits are where we tried--where they try  
17 to get rid of the contamination or try to store the  
18 contamination. Sometimes it got there, sometimes it  
19 didn't. Sometimes there were other activities associated  
20 with this pit that might have spilled material in the  
21 vicinity. The hose didn't make it to the pit, the hose  
22 fell out of the pit. Who knows. There's all kinds of  
23 possible explanations. It does not require that the  
24 contamination start in the pit and come out of the walls  
25 and affect the areas around it.

01:48 1 Q. And the conceptual model that you've  
2 described--the conceptual model that you've described,  
3 would you agree with me that as between data and a  
4 conceptual model that you would--that we ought to rely upon  
5 the actual measured data as opposed to a model prediction?

6 A. (Dr. Garvey) That's correct.

7 Q. Because, after all, valid data really is the gold  
8 standard, isn't it?

9 A. (Dr. Garvey) We've relied on the data in our  
10 analysis, yes.

11 Q. Right. And if there is a conflict between what  
12 your model is telling us or what the data is telling us, we  
13 should be guided by what the data is telling us; correct?

14 A. (Dr. Garvey) In general, that's the rule one  
15 applies.

16 Q. Right. So, then let's look at the data and see  
17 what it is telling us here.

18 If we look at the sample results on the outside of  
19 the pit--oh, by the way, before I ask that question, let's  
20 see if we can both agree that, as compared between your TEM  
21 sampling results and the 8015 sampling results, you're  
22 generally going to have higher concentrations measured by  
23 your TEM method than the 8015 method, aren't you?

24 A. (Dr. Garvey) That's correct.

25 Q. Now, this map is presenting your TEM result,

01:49 1 isn't it?

2 A. (Dr. Garvey) Yes.

3 Q. And if we look at the sample results that you've  
4 put on your map, outside the pit, would you look at SL-002,  
5 which is in the northwest corner of the pit. Do you see  
6 that, sir?

7 A. (Dr. Garvey) Yes.

8 Q. That tells us that your TEM measurement is  
9 non-detect in the soil?

10 A. (Dr. Garvey) That's right.

11 Q. Looking then to the right at sample SL-006, do you  
12 see that, sir?

13 A. (Dr. Garvey) Yes.

14 Q. And that's just on the edge of the pit, and it  
15 also is a non-detect under the TEM method?

16 A. (Dr. Garvey) That's correct.

17 Q. And then we look to the next sample, SL-001, and  
18 it reports 640 parts per million TEM; right?

19 A. (Dr. Garvey) That's right.

20 Q. Which is below even the sensitive ecosystem  
21 standard of Decree 1215, isn't it?

22 A. (Dr. Garvey) Yes, it's less than 1,000.

23 Q. Less than 1,000.

24 So, then, continuing down south, you see the  
25 SL-004 sample that you have taken there?

01:50 1 A. (Dr. Garvey) Yes.

2 Q. And that also confirms that it is a non-detect for  
3 TPH using your TEM method in soils; right?

4 A. (Dr. Garvey) That's correct.

5 Q. And then we continue around the pit going to  
6 SL-012 on the edge of the pit about 7:00.

7 Do you see that, sir?

8 A. (Dr. Garvey) Yes, I do.

9 Q. And that's also a non-detect, isn't it?

10 A. (Dr. Garvey) Yes.

11 Q. Continuing then clockwise around the pit, if you  
12 go out to SL-003, some distance from the pit, we see that's  
13 a non-detect also?

14 A. (Dr. Garvey) That's correct.

15 Q. And then continuing, I think we have now gone all  
16 the way around the pit and we're looking at the samples  
17 that you and your team took, and we can see from your own  
18 data that the sample results are showing us largely  
19 non-detections of TPH using the TEM method; correct?

20 A. (Dr. Garvey) There are several non-detect samples  
21 surrounding this site--in the vicinity of the site, I  
22 should say.

23 Q. And so, what this data is telling us is that the  
24 contents of the pit have not gone--

25 A. (Dr. Garvey) No.

01:51 1 Q. --materially beyond the walls if you use your TEM  
 2 method?  
 3 A. (Dr. Garvey) No, that's not correct. Each of  
 4 these points represents a sample that's approximately  
 5 3-inches in diameter, okay? And you're spanning distances  
 6 of tens of meters.  
 7 Q. And so, if you look at your scale, we see a scale  
 8 here of zero to 8 meters, don't we?  
 9 A. (Dr. Garvey) Yes.  
 10 Q. And, so, if you look at your sample SL-003 on the  
 11 southwest side, that's about the most remote sample you  
 12 have, isn't it?  
 13 A. (Dr. Garvey) That's correct.  
 14 Q. And under your scale, that looks to be about ten  
 15 to 15 meters; right?  
 16 A. (Dr. Garvey) That's right.  
 17 Q. And it's non-detect, isn't it?  
 18 A. (Dr. Garvey) Yes.  
 19 Q. And then if you then go counter clockwise, SL-001,  
 20 right on the edge of the pit, right on the edge of the pit  
 21 it's non-detect?  
 22 A. (Dr. Garvey) Yes.  
 23 Q. So, we can continue this exercise, but I think  
 24 it's apparent to everyone who looks at this that this pit  
 25 is not showing--or your own soil measurements are not

01:54 1 a simple trough. It may travel via groundwater. It's not  
 2 clear at all that you can discern that from this pit. This  
 3 is the problem with trying to delineate contamination with  
 4 a limited number of samples. As extensively as we have  
 5 studied this, there are still fine scale details that are  
 6 not captured by these very small points. Again, it's  
 7 3-inches in diameter--sorry, it's 9-centimeters in  
 8 diameter, versus distances of many meters. This is not  
 9 supported at all to debunk, if you would, our hypothesis  
 10 here.  
 11 Q. But if we apply Ecuador's own environmental  
 12 regulations under Decree 1215 and applied the agricultural  
 13 standard, we can see that there is not one data point, not  
 14 one soil sample measurement outside of this pit that  
 15 exceeds the agricultural standard of 2500?  
 16 A. (Dr. Garvey) That's correct.  
 17 Q. Let's move now to your mass calculation.  
 18 A. (Dr. Garvey) Sure.  
 19 Q. And I would like to go to the slide you presented  
 20 at Slide 50.  
 21 A. (Dr. Garvey) Our Slide 50?  
 22 Q. Yes, sir, your Slide 50.  
 23 A. (Dr. Garvey) Okay.  
 24 Q. And just to set the context, you told us this  
 25 morning that you had calculated this Petroleum Hydrocarbon

01:52 1 suggesting that there is "widespread migration from this  
 2 pit?"  
 3 A. (Dr. Garvey) No, I don't agree with you. I don't  
 4 believe this data set is sufficient to assess that.  
 5 Q. You can't say one way or the another from this  
 6 map, you can't say that there is widespread contamination  
 7 from this pit, can you?  
 8 A. (Dr. Garvey) It wouldn't make it a basis for that  
 9 finding on the basis of a single pit. We base that finding  
 10 of the basis of the integration of all of the available  
 11 data, our data, the Plaintiffs' data, the Claimants' data,  
 12 the various reports, and our site evaluations. We did not  
 13 base it on a single series of samples around a pit.  
 14 Q. But if we go back to the point that we just  
 15 established, that the data rules over a model, the data in  
 16 this case for this pit at this site does not support your  
 17 model, does it?  
 18 A. (Dr. Garvey) No, that's not true. You don't have  
 19 data to dispute or support the model in this particular  
 20 case. You don't have sufficient information to discern  
 21 whether or not contamination is migrating from this pit. I  
 22 mean, you have a series of values, some are high, some are  
 23 low, you have values outside the perimeter of the pit that  
 24 are as high as 1700 parts per million on the SL-008. Once  
 25 the material leaves the pit, it may follow a stream bed or

01:55 1 inventory and that it was your estimate under your 8015  
 2 method on the bottom, that there were some 660,000 barrels  
 3 of oil on the outside of the pits in the Concession Area.  
 4 A. (Dr. Garvey) No, that's not correct.  
 5 Q. Okay, please correct me then.  
 6 A. (Dr. Garvey) The 660,000 barrels refers to the  
 7 entire inventory--I apologize, I know I talk too  
 8 fast--refers to the entire inventory of material. It  
 9 includes the pits. These numbers are the integration of  
 10 the pit masses as well as the mass of contamination outside  
 11 the pits.  
 12 Q. And as you told us this morning, this is a  
 13 calculation that you've made; right?  
 14 A. (Dr. Garvey) That's correct.  
 15 Q. Based on the Judicial Inspection data from 2003  
 16 to--what was the ending year that you used?  
 17 A. (Dr. Garvey) I believe it's 2009.  
 18 Q. Okay. Whatever the JI data said.  
 19 A. (Dr. Garvey) That's correct.  
 20 Q. Whatever the dates of that are.  
 21 So, you took that dataset and you simply  
 22 calculated to develop this estimate of 660,000 barrels.  
 23 A. (Dr. Garvey) We used the numbers and integrated  
 24 them. I wouldn't call it a simple calculation.  
 25 Q. Okay. But I do want to be very clear, when you

01:57 1 use the word "inventory," inventory is a calculation that  
2 you have developed?  
3 A. (Dr. Garvey) No. Inventory is a measure of the  
4 amount of mass that's present in the environment. It's our  
5 estimate of the amount of mass that's present there.  
6 Q. And based on the Judicial Inspection samples?  
7 A. (Dr. Garvey) That's right.  
8 Q. And you've used only the soil samples; correct?  
9 A. (Dr. Garvey) We've used--actually to be specific,  
10 we've use soil and sediment samples as defined by the  
11 various investigators, but we've used exclusively the  
12 Chevron data for this purpose.  
13 Q. Okay. If we can now, if I could ask you to turn  
14 to Tab 8 and to Slide 12 in Tab 8.  
15 Now, this is--are you there?  
16 A. (Dr. Garvey) I think so. Slide 12, Tab 8. Yes.  
17 Q. Yes, sir.  
18 And this is an image from Dr. Hinchee's  
19 presentation of a pit that has not been closed as of the  
20 time of this photograph. It's at the Sacha 14 well site.  
21 Do you see this?  
22 A. (Dr. Garvey) Yes.  
23 Q. And, so, if I understand your mass calculation  
24 theory, it is that some 80 to 90 percent of the pits'  
25 contents are actually outside of the pit?

01:58 1 A. (Dr. Garvey) No, that's not correct.  
2 Q. So, you didn't say that. You didn't tell us that  
3 this morning?  
4 A. (Dr. Garvey) No, you're not stating what I said  
5 correctly. What we said this morning is that if you  
6 integrate the mass across the Concession Area, that you  
7 will find that the majority of the Petroleum Hydrocarbon  
8 contamination lies outside of the pits. The pits, despite  
9 their high concentrations and obvious presence of oil, are  
10 sufficiently small in their footprint, that the areas  
11 outside when you integrate them actually represent a  
12 greater mass. That is, most of the oil that has been  
13 spilled in the Oriente lies outside the pits. That's not  
14 the same as the pit's contents have been dumped outside per  
15 se.  
16 Q. So, you're not saying that 80 percent--well, I  
17 thought you were saying that 80 to 90 percent of the oil is  
18 outside the pits?  
19 A. (Dr. Garvey) That is what I'm saying, but that's  
20 not how I understood your first question.  
21 Q. Okay. So, I'm sorry if I have misunderstood.  
22 So, let's see if we are in the same place.  
23 Your position is that 80 to 90 percent of the oil  
24 that originated from the pits is now outside of the pits?  
25 A. (Dr. Garvey) No, our position is that 80 to

02:00 1 90 percent of the oil that is present in the Oriente as  
2 waste or spilled material lies outside the pits. It does  
3 not require that it originated in the pits. It could have  
4 been a hose break, a spill directly on to the ground. It  
5 doesn't require that it originated from the pit. That's  
6 the distinction I think I'm trying to make.  
7 Q. Okay. I appreciate that. Now, if we can look at  
8 your large bundle, Tab 18. I want to go to a portion of  
9 your Report where you're providing some of the information  
10 that you used to develop the calculation.  
11 A. (Dr. Garvey) This is Appendix A?  
12 Q. Yes, sir. It's Appendix A. And if you might,  
13 turn to A-2, please.  
14 Are you there?  
15 A. (Dr. Garvey) Yes.  
16 MS. RENFROE: Let's give the Tribunal an  
17 opportunity to catch up with us.  
18 Okay, Mr. Johnson, can you bring that up on the  
19 screen, please.  
20 Thank you.  
21 BY MS. RENFROE:  
22 Q. So, gentlemen, I've placed or I've asked you to  
23 look at Appendix A from your Report, your March 2015  
24 Report, and we're looking at Table A-1. And what I wanted  
25 to point out is that to develop your calculation of the

02:02 1 660,000 barrels of oil that you hypothesis is in the  
2 Concession Area outside of the pits, if I can draw your  
3 attention to the mean column.  
4 MS. RENFROE: And let's highlight that for the  
5 distance from pit perimeter. And I would like to highlight  
6 the 2300, the 1500 and the 360. And if we can also  
7 highlight the zero to 50 meters, 50 to 100 meters. Right.  
8 Let's highlight that entire cell, please, Mr. Johnson.  
9 BY MS. RENFROE:  
10 Q. So, I believe this is your area, Dr. Garvey, if  
11 I'm correct?  
12 A. (Dr. Garvey) That's correct.  
13 Q. And so, what you're saying here is that the  
14 working assumption that you've developed is that--between  
15 zero to 50 meters from a pit, you have concluded that the  
16 mean concentration in soils is 2300 parts per million TPH?  
17 A. (Dr. Garvey) That's correct.  
18 Q. And then between 50 to 100-meters from a pit, you  
19 are assuming that there is a mean concentration of 1500  
20 parts per million TPH?  
21 A. (Dr. Garvey) No. Well, to be clear, the 1500 PPM  
22 is the average of the data that was collected in that  
23 interval. We are assuming that that value applies to that  
24 interval, but it, in fact, is the average of the data for  
25 that interval.

02:03 1 Q. Right. And then the third interval that you've  
 2 used for your calculation is 100 meters to 200 meters from  
 3 the pit?  
 4 A. (Dr. Garvey) That's correct.  
 5 Q. Where, according to your approach, you conclude  
 6 that the mean concentration of TPH is 360 parts per  
 7 million?  
 8 A. (Dr. Garvey) That's correct.  
 9 Q. Right. And so, just as a starting point, would  
 10 you confirm that the 360--in fact, all three of these  
 11 levels of TPH are all below the Decree 1215 standard for  
 12 agricultural use of land?  
 13 A. (Dr. Garvey) Yes, the average is below.  
 14 Q. Right. So, even if hypothetically your  
 15 calculation were correct--hypothetically--all of the  
 16 concentrations that you would be presenting in your  
 17 calculation would all be below the Decree 1215 standard for  
 18 agricultural land use?  
 19 A. (Dr. Garvey) Your question doesn't make sense to  
 20 me. Can you rephrase it?  
 21 Q. Well, if--and I'm not--I haven't accepted your  
 22 calculation.  
 23 A. (Dr. Garvey) I appreciate that. That's fine.  
 24 Q. Right. But just hypothetically, even if we did,  
 25 if we were looking at the zero to 50 meters and your

02:07 1 you using, 100 to 200?  
 2 Q. Yes, sir. 100 to 200.  
 3 A. (Dr. Garvey) The model says that, on average,  
 4 around all of the pits in the JI sites, the average for  
 5 that interval is 360 parts per million.  
 6 Q. Right. And in your case of Shushufindi 34, where  
 7 you took soil samples anywhere you wanted to, you don't  
 8 have any data here that would confirm your model, do you?  
 9 A. (Dr. Garvey) No.  
 10 Q. And then likewise, if we go to the 50 to 100-meter  
 11 ring and your assumption there that there would be 1500  
 12 parts per million TPH, you don't have any data at this  
 13 site, Shushufindi 34, to confirm that portion of your  
 14 model, do you?  
 15 A. (Dr. Garvey) No, our objective here was not to  
 16 confirm the Chevron database. It was to examine this  
 17 particular pit.  
 18 Q. Right. But I'm asking you about your model and  
 19 whether your own data can ground-truth it.  
 20 And so, then, if we look at the final ring of your  
 21 assumption, zero to 50 meters from this pit where you've  
 22 assumed the concentrations would be 2300 parts per million  
 23 on average, none of your datapoints meets that standards or  
 24 meets that assumption, do they?  
 25 A. (Dr. Garvey) None of--the average of the values in

02:04 1 calculation would tell us that soils in that ring would be  
 2 2300 parts per million TPH?  
 3 A. (Dr. Garvey) On average.  
 4 Q. On average?  
 5 A. (Dr. Garvey) Yes.  
 6 Q. And if that was the average and if you were  
 7 correct, then that would be below the agricultural standard  
 8 of Decree 1215?  
 9 A. (Dr. Garvey) Right, the average is below, yes.  
 10 Q. And the same would be true for the average  
 11 concentrations in the next two rings?  
 12 A. (Dr. Garvey) That's correct.  
 13 Q. Okay. Now, if we go back to, if we can possibly  
 14 pull up or ask you to look at the image that we were just  
 15 looking at, your map, Shushufindi 34, Figure 5.5-1.  
 16 And let me help you get there.  
 17 That's Tab 30, and it is the third page of Tab 30.  
 18 If we wanted to ground-truth your calculation using  
 19 Shushufindi 34 as an example, we would see that, according  
 20 to your estimates, you've predicted that there should be  
 21 100 to 200 meters away from this pit, there should be TPH  
 22 concentrations of 360 parts per million. That's what your  
 23 model predicts?  
 24 A. (Dr. Garvey) No, the model says that the average  
 25 of all of the soils that falls between--what interval were

02:08 1 this diagram do not appear to exceed 2300 in the zero to  
 2 50-meter interval. But this is not a basis to ground-truth  
 3 it, you would have to investigate a comparable number of  
 4 well sites and a comparable number of pits to ground-truth  
 5 the study that we did. That's the basis part, we can't do  
 6 it at this scale.  
 7 Q. In fact, not a single measurement that you report  
 8 on this map comports with the model assumptions that you  
 9 have made for any of these distances from your pit; isn't  
 10 that correct?  
 11 A. (Dr. Garvey) No. These are fine observations of  
 12 zero to 50-meter concentrations. We have plenty of  
 13 non-detects in the zero to 50-meter interval at other well  
 14 sites, so they make perfect sense. It's just that some of  
 15 what we didn't find is any of the very, very high values.  
 16 But you don't find very, very high values at all of the  
 17 well sites, you find them at some, you don't find them at  
 18 others, but you are throwing darts at a dart board.  
 19 Sometimes you get a red one, sometimes you get a black one.  
 20 We are doing the same thing here with concentrations and  
 21 sometimes you get it, sometimes you don't. The point is  
 22 that by throwing enough darts at enough well sites, you get  
 23 the spectrum of contamination. To ground-truth what we had  
 24 done, you would need to throw comparable numbers of darts  
 25 at comparable numbers of well sites. To do it at one, you

02:09 1 are comparing apples to oranges.  
 2 Q. Would you agree with me that for your dartboard  
 3 analogy to work and for this calculation, this model that  
 4 you've developed, that that presumes at a minimum that the  
 5 data is the result of random sampling?  
 6 A. (Dr. Garvey) That the data are representative of  
 7 the area, which is not quite the same thing. You can also  
 8 be--a gridded sample set would also work.  
 9 Q. Okay. All right. Just a few more questions about  
 10 this mass calculation of oil outside the pits. In  
 11 developing this calculation, did you make any deductions  
 12 for the oil that was spilled in these various sites by  
 13 Petroecuador?  
 14 A. (Dr. Garvey) No, we did not.  
 15 Q. And you recognize that the JI data measured places  
 16 where oil had been spilled by Petroecuador?  
 17 A. (Dr. Garvey) Yes.  
 18 Q. All right.  
 19 A. (Dr. Garvey) At least potentially. I don't know  
 20 exactly where Petroecuador spilled their oil versus where  
 21 the points that Chevron and the Plaintiffs placed, so I  
 22 don't know that, but it's certainly a possibility.  
 23 Q. Thank you, Dr. Garvey. I have no further  
 24 questions.  
 25 PRESIDENT VEEDER: Are there any questions from

02:21 1 samples taken that day?  
 2 A. (Dr. Garvey) Well, as I recalled previous in the  
 3 week, when some of our staff had visited the site, they  
 4 smelled and saw oil on the surface of that well, that was  
 5 my understanding; and so had that well been sampled on  
 6 another day, it might have shown an impact that might have  
 7 exceeded the standard, certainly that the well was  
 8 contaminated.  
 9 In addition, there are other wells in the area  
 10 that documented the presence of groundwater contamination.  
 11 That red symbol there at MW-01, MW-01 shows groundwater in  
 12 exceedance of the standard. So, we're only talking about a  
 13 short distance from a well that's clearly impacted to the  
 14 well that the local people were using.  
 15 Q. And if I could step to another site that counsel  
 16 asked you about, they showed you a picture of a pipeline  
 17 spill at Guanta 6. Do you know where that alleged or that  
 18 pipeline spill occurred in relation to the area that you  
 19 investigated?  
 20 A. (Dr. Garvey) No, I don't.  
 21 Q. And if we could turn to Tab 5 of your  
 22 Report--sorry, Tab 5, and this is your 2013 Report, and if  
 23 you could look at Figure 5.2-1. 5.2-1. It's not on the  
 24 screen yet.  
 25 A. (Dr. Garvey) Okay. We have it.

02:10 1 the Respondent?  
 2 MR. EWING: I do have some questions, if I could  
 3 just have five minutes.  
 4 PRESIDENT VEEDER: Let's take a five-minute break.  
 5 MR. EWING: Thank you.  
 6 (Brief recess.)  
 7 PRESIDENT VEEDER: Let's resume.  
 8 There will be questions from the Respondent.  
 9 MR. EWING: Thank you, Mr. President.  
 10 I think we will be brief today.  
 11 REDIRECT EXAMINATION  
 12 BY MR. EWING:  
 13 Q. If I could pull up on the screen--this is Tab 10;  
 14 this is your November 2014 SI Report, and it's Figure 3-2.  
 15 This is Tab 2. 5.3-2. This is Tab 10, and it is your  
 16 November 14 SI Report?  
 17 A. (Dr. Garvey) Right.  
 18 Q. And it is Figure 5.3-2.  
 19 A. (Dr. Garvey) It's the end of the volume.  
 20 Q. And this is the same picture that counsel earlier  
 21 had presented to you with Lago Agrio 16. I'm just using it  
 22 straight from your Report.  
 23 You mentioned during counsel's questions about the  
 24 results of Lago Agrio 16's groundwater analysis that the  
 25 results from that day did not violate. Why did you mention

02:23 1 Q. Do you remember earlier counsel showed you a  
 2 picture at Lago Agrio 2 of an oil-water separator?  
 3 A. (Dr. Garvey) Yes.  
 4 Q. Where is that located on this map?  
 5 A. (Dr. Garvey) It's shown on the eastern--sorry, the  
 6 western side of the platform area about halfway down the  
 7 length of the platform. It's labeled on the map.  
 8 Q. And did that oil-water separator in any way affect  
 9 your conclusion at Lago Agrio 2?  
 10 A. (Dr. Garvey) No, no, because the majority of the  
 11 contamination at Lago Agrio 2 is in the wetlands to the  
 12 north of the area, and generally speaking, not downhill, so  
 13 to speak, from the oil-water separator. The contamination  
 14 is around the other side of the hill so to speak from where  
 15 the oil-water separator was. You can see that on the map.  
 16 The oil-water separator is on the west. The bulk of the  
 17 contamination is to the north associated with the pit  
 18 that's found there.  
 19 Q. And if I were to walk through the rest or the  
 20 remainder of the slides and pictures of Petroecuador's, the  
 21 contamination that counsel claims that Petroecuador caused,  
 22 would that alter your opinion?  
 23 A. No. I mean, to the extent that some of the areas  
 24 may be outside of our ring of where ended, the inventoried  
 25 area, that would be useful, but not in general because the

02:24 1 activities that were occurring as part of Petroecuador's  
2 activities presumably with the same kinds of activities  
3 that occurred when TexPet was operating--spills,  
4 accidents--these things happen as a result of the  
5 operations. So, again, we expect that both operating  
6 Parties spilled oil and that the soils and samples that we  
7 saw in the area were generally characteristic of the kinds  
8 of contamination that exist in the Oriente, in the  
9 Concession Area.

10 Q. Counsel also asked you a series of questions about  
11 RAP versus non-RAP features and asked you to look at the  
12 RAP.

13 How, if at all, did the RAP affect your  
14 determination of groundwater impacts?

15 A. (Mr. Goldstein) Well, we saw impacts of  
16 groundwater at both RAP and non-RAP sites.

17 Q. How, if at all, did the RAP versus non-RAP  
18 distinction affect your determination of soil impacts in  
19 the Concession Area?

20 A. (Dr. Garvey) It really doesn't factor into it per  
21 se in the sense that soil contamination is soil  
22 contamination. When we inventoried the soils, we treated  
23 the remediated pits as its own group, and we calculated  
24 mass for those separate from the mass that we calculated  
25 for non-remediated pits and for the soils.

02:28 1 that was available for these streams and said, the data  
2 that's available for these streams shows impacts.  
3 Q. And how, if at all, did the RAP versus non-RAP  
4 distinction affect your determination that the Judgment's  
5 finding of contamination was reasonable?

6 A. (Dr. Garvey) Again, the Judge's determination was  
7 that 100 parts per million was an acceptable level for  
8 background. We, in fact, assigned background close to ten,  
9 so his threshold is already ten times greater than what we  
10 would consider to be pristine or undisturbed. The RAP  
11 versus non-RAP issue is really a question of who is  
12 responsible for what piece, to some degree, but the fact  
13 remains that the areas surrounding these pits remained  
14 contaminated, and so identifying the Judge's decisions that  
15 these areas needed to be cleaned up is really independent  
16 of whether or not some of the pits have been addressed.  
17 The vast majority of the area in this area, in this  
18 Concession, has not been addressed.

19 Q. And, Dr. Garvey, we just finished up some  
20 questions about your overall estimate for the amount of oil  
21 that you estimate to be around the sites, the Concession  
22 Area sites. Do you remember those questions?

23 A. Yes.

24 Q. Whose data did you use for those estimates?

25 A. (Dr. Garvey) We exclusively use the Chevron data

02:26 1 So, the presence or absence of a RAP-treated pit  
2 really doesn't tell you anything about the surrounding area  
3 as to whether or not it's clean or not. In the RAP they  
4 remediated various pits, but the soils surrounding those  
5 pits remained unaddressed, as we understand it, and again,  
6 we effectively treated those areas around RAP pits or  
7 non-RAP pits in the same fashion, saying this is simply  
8 characteristic of soils in the vicinity of operational pits  
9 because there was no evidence to suggest that they were  
10 remediating beyond the pit perimeter.

11 Q. How, if at all, did the RAP versus non-RAP  
12 distinction affect your determination of sediment impacts?

13 A. (Dr. Garvey) There again, pits in operations  
14 spills, the various processes that went on at these sites  
15 would cause contaminants to migrate to the surrounding  
16 streams. To the extent that groundwater was carrying it or  
17 it was running as a result of surface runoff or as a result  
18 of direct spillage into the streams, the remediation of the  
19 RAP pits is just a small portion of the footprint of the  
20 impact of these sites. So, these streams would--we would  
21 expect these streams to show these kinds of impacts with or  
22 without knowing what the RAP pits were. We were just  
23 assessing to see what was found. We weren't basing our  
24 conclusions on what we found in the stream as to what not  
25 the local area was remediated or not. We looked at data

02:30 1 that was obtained, the PI and the JI data, the Rebuttal  
2 data, as well as what's sometimes called "shadow data,"  
3 basically all the information that we could glean from the  
4 Chevron databases we use for this purpose.

5 Q. And do you believe that using Chevron's results  
6 would affect your analysis?

7 A. (Dr. Garvey) No. We took the data to be valid  
8 measurements of 8015-related Total Petroleum Hydrocarbons,  
9 so we thought that the data was a good--internally  
10 consistent from an analytical perspective and from a  
11 collection perspective dataset that we could use to make  
12 this assessment.

13 Q. And do you believe that Chevron's data is an  
14 accurate reflection of the current conditions in the  
15 Oriente?

16 A. (Dr. Garvey) Yes, yeah.

17 Q. Have you ever done this type of estimate of  
18 contamination or of spread of contaminants before?

19 A. (Dr. Garvey) Oh, yes.

20 Q. Where have you done it?

21 A. (Dr. Garvey) On several major Superfund sites for  
22 the USEPA. We've inventoried PCB contamination in the  
23 Hudson River over a distance of 200 miles. Well, the  
24 inventory was for 40 miles. We traced contamination for  
25 200. We did it for the Passaic River in New Jersey. Our

02:31 1 estimates have been pretty good. For the Hudson River we  
 2 estimated approximately 2.7 million cubic yards of  
 3 contaminated sediment. They just are about to finish the  
 4 remediation of the river this summer. The estimate that  
 5 they would come up is that they would remove  
 6 2.9 million cubic yards. We were off--with data that was  
 7 available close to 16 years ago, we were off by 10 percent.  
 8 So, we have done similar calculations for the Passaic River  
 9 for docks and related contamination and the volume of  
 10 contaminated sediments there. So, we've inventoried both  
 11 contamination and the volume of material that needed to be  
 12 remediated.

13 Q. Thank you. I have no further questions.

14 PRESIDENT VEEDER: Thank you.

15 Any questions?

16 QUESTIONS FROM THE TRIBUNAL

17 ARBITRATOR LOWE: Just one point of clarification  
 18 on the record, if you could help with it. On your  
 19 Slide 54, the bottom right-hand cell says a criterion of  
 20 100 milligrams per kilogram in soils is close to background  
 21 in the Concession Area.

22 When you were speaking about it, and it's at  
 23 Page 40, Line 1 of the Transcript, you said that the  
 24 criterion of 100 parts per million is well above  
 25 background. Could you just explain those two points,

02:34 1 THE WITNESS: (Dr. Garvey) I apologize for the  
 2 lack of clarity here. It's close in the sense that it's  
 3 five times better, five times higher than background, but  
 4 certainly, I guess where we're coming at it is that you  
 5 would not want to clean up--if you were trying to clean up  
 6 the background, you run the problem saying I have a sample,  
 7 let's say, at 30 parts per million, 30 milligrams per  
 8 kilogram. Is that background or isn't it? Well, sometimes  
 9 it might be because the background has a variance, it's not  
 10 uniquely ten or uniquely 15. It ranges with an average of  
 11 ten or 15, so your problem is that a value of 30 is like,  
 12 well, I'm not sure if I've got contamination or not. I'd  
 13 have to do further analysis and so on. By picking a value  
 14 of a hundred, you're close enough to background so say,  
 15 yeah, I'm getting pretty close, but I'm comfortable that  
 16 values above this are clearly impacted and clearly  
 17 contaminated, so that's the ambiguity.

18 PRESIDENT VEEDER: Are there any questions arising  
 19 from the Tribunal's questions from counsel?

20 We ask the Claimants first.

21 MS. RENFROE: Yes, Mr. President, if I might.  
 22 It's perhaps not so much of a question as an observation  
 23 that I'd like to share with the Tribunal in light of the  
 24 question, and that is the Expert Report of Dr. Jeffrey  
 25 Short, one of the Respondent's Experts, his Report of

02:33 1 please.

2 THE WITNESS: (Dr. Garvey) Sure. To be clear, we  
 3 find, and actually so do the Claimants find, that  
 4 background levels in the soils of the Oriente are about  
 5 under 20 parts per million, so the choice of--sorry--100  
 6 milligrams--sorry, I'll start again.

7 Both we and the Claimants find that concentrations  
 8 of background levels of TPH in the soils are between ten  
 9 and 15 milligrams per kilogram in the soils. So, this  
 10 criterion here of a hundred means that it's relatively  
 11 close to background, but readily distinguishes being  
 12 different from background. You may have an occasional  
 13 sample that might have ten or 20 or even 30 milligrams per  
 14 liter--I'm sorry, milligrams per kilogram, but the average  
 15 of background soils is around 10 to 15. Okay? By using a  
 16 hundred here, you have a reasonable expectation that  
 17 anything that you're finding at this level and higher is  
 18 clearly due to Total Petroleum Hydrocarbons as a result of  
 19 the TexPet--as a result of oil operations in the Oriente.

20 ARBITRATOR LOWE: Thank you.

21 PRESIDENT VEEDER: If I can follow that up, I  
 22 mean, the wording that we got in Slide 54 was close to  
 23 background. Is the terminology the same? Does it have the  
 24 same meaning whether it's close to or well above  
 25 background?

02:36 1 November 7, 2014--

2 MR. EWING: Counsel, is this appropriate for  
 3 question?

4 PRESIDENT VEEDER: Well, it may be, because it's a  
 5 Tribunal inquiry, so let's see where it goes. Please  
 6 continue.

7 MS. RENFROE: Right. At page 4--

8 PRESIDENT VEEDER: You may need to dig it out--oh,  
 9 you've dug it out.

10 MS. RENFROE: At Page 4--I hope this is the same  
 11 document. The copy I'm looking at does not have a draft,  
 12 but in any event, we did get a draft of it from Dr. Short  
 13 and then we got a document that didn't have a draft. But  
 14 in any event, if you look at Section 3.2, the first bullet  
 15 says: "The average natural background of organic material  
 16 extractable," et cetera, et cetera, et cetera, "is about  
 17 160 milligrams per kilogram and is almost certainly less  
 18 than 400 milligrams per kilogram." So, using the TEM  
 19 method, according to Dr. Short, the background is this  
 20 range, 160 to 400, but then two bullets later if you use  
 21 the 8015 method, he says the background is 50 to a hundred.

22 So, I just think that that's an appropriate piece  
 23 of information for the Tribunal as you have this--as you  
 24 ponder this question.

25 PRESIDENT VEEDER: I think it's only fair if you



02:37 1 want to comment on this, you should be given a chance to do  
 2 so. If you wish to, please proceed.  
 3 THE WITNESS: (Dr. Garvey) Just briefly. Those  
 4 are differences between the two methods, and we've talked  
 5 about here the value of 100 milligrams per kilogram was  
 6 based on the methods that were available to the Tribunal at  
 7 the time, which was primarily Method 8015. The TEM method  
 8 really has a lower background level so, it represents a  
 9 different basis to establish background. The context here  
 10 is to establish background essentially based on the 8015  
 11 method. We would point out that of the dataset that's  
 12 collected by Chevron, approximately 425 or so samples are  
 13 non-detect but detection limits averaging between 10 and 20  
 14 milligrams per kilogram. So, clearly for 8015,  
 15 100 milligrams per kilogram is far above what would be true  
 16 background by Method 8015, so we would just offer that.  
 17 PRESIDENT VEEDER: Thank you very much.  
 18 Do you have any other questions arising from the  
 19 Tribunal's inquiry?  
 20 MS. RENFROE: No, Mr. President.  
 21 PRESIDENT VEEDER: And the Respondent?  
 22 MR. EWING: No, Mr. President.  
 23 PRESIDENT VEEDER: Well, thank you very much,  
 24 we've come to the end of your testimony. We thank you for  
 25 coming here to assist the Tribunal. You may leave the

02:40 1 chilling effect subject. I was unfortunately not here when  
 2 that comment was first made. I was presenting during the  
 3 Burlington site visit myself at the 12 sites that were  
 4 visited.  
 5 I was watching the video this week. I did not  
 6 feel any chilling effect, and I have to say that I have  
 7 less experience than Ms. Renfroe in hearings, but certainly  
 8 it's no different than a hearing in that respect, and I  
 9 actually found it extremely helpful to see that video  
 10 afterwards.  
 11 I think it's a unique opportunity that we will  
 12 have of recording what is happening. There may be multiple  
 13 uses for that information afterwards. If there is no video  
 14 now, there will never be a video. I think those are  
 15 important items.  
 16 I did not understand and, I certainly didn't see  
 17 Ms. Renfroe in any way limited in her brilliant  
 18 presentations at that site visit. So, I'm just puzzled by  
 19 that statement.  
 20 MS. RENFROE: Well, Mr. President--  
 21 PRESIDENT VEEDER: Let's just make sure there is  
 22 nothing else.  
 23 Nothing else from the Respondents on this matter?  
 24 MR. EWING: Yes, Mr. President, just to make sure  
 25 our proposal is very clear, we would propose or ask that

02:38 1 table.  
 2 A. Thank you for listening.  
 3 (Witnesses step down.)  
 [Redacted text block]

02:41 [Redacted text block]

02:43

[Redacted text block]

02:45

[Redacted text block]

02:44

[Redacted text block]

02:47

[Redacted text block]



03:08 1 Q. If you don't mind, would you be so kind to repeat  
 2 your answer, please. We're not having an English  
 3 translation.  
 4 PRESIDENT VEEDER: Can I also suggest you speak  
 5 slightly more slowly. Just remind yourself to slow down.  
 6 THE WITNESS: My pleasure.  
 7 Do I have to repeat everything?  
 8 BY MR. LEONARD:  
 9 Q. Yes.  
 10 A. Of course, no problem.  
 11 I have a degree in juridical sciences. I'm a  
 12 lawyer, I have a doctorate in jurisprudence by the  
 13 Pontificia Universidad Católica of Ecuador. I have also  
 14 pursued a doctorate from the Universidad Competencia of  
 15 Madrid, I have a Master's degree from the San Francisco de  
 16 Victoria University. I conducted studies at the Master's  
 17 level at the Universidad Andina Simón Bolívar. I also have  
 18 a diploma from the University of Salamanca. I conducted a  
 19 research visit during my doctorate program at the  
 20 University of Bologna at the Antonio Cicu Institute I was  
 21 telling you that I am a professor at the San Francisco de  
 22 Quito University. I teach a class in connection with legal  
 23 research methodology, reasoning, and I also participate in  
 24 the methodological director--direction that is conducted at  
 25 the university.

03:12 1 approximately.  
 2 And, currently, I practice my profession in the  
 3 private sphere, in the private sphere in issues that have  
 4 to do with these matters.  
 5 Q. Have you served as an expert for the Republic in  
 6 any other matter besides this case?  
 7 A. Yes. In connection precisely with tort liability  
 8 for environmental damages, I have been an expert in the  
 9 Burlington v. Ecuador Case, Perenco v. Ecuador as well.  
 10 Q. Have you ever acted as counsel in litigation  
 11 adverse to the State or any State entity?  
 12 A. Yes.  
 13 In my professional practice, I have worked in a  
 14 number of cases against the State and its  
 15 instrumentalities. The Attorney General of the State has  
 16 also participated as the representative of the State of  
 17 Ecuador.  
 18 Q. Are you currently acting as counsel in litigation  
 19 against the State represented by the Attorney General's  
 20 Office?  
 21 A. Yes. I have a number of cases that are still  
 22 pending as one of the litigant lawyers, and the Attorney  
 23 General of the State is also involved in those cases,  
 24 representing the country of Ecuador.  
 25 Q. Thank you.

03:10 1 I was also Professor of the general theory of  
 2 legal proceedings at the Universidad Pontificia Católica of  
 3 Ecuador.  
 4 These are the main issues that have to do with my  
 5 educational background.  
 6 BY MR. LEONARD:  
 7 Q. Thank you.  
 8 What can you tell us about your professional  
 9 experience?  
 10 A. Well, I have been practicing my profession for the  
 11 past 17 years. In my professional activities, I have  
 12 rendered services as an adviser to the National Congress at  
 13 the time precisely when the environmental management law  
 14 was being discussed. Later on, I served at the Supreme  
 15 Court of Justice as an adviser in the administrative  
 16 division presided over by Hernan Salgado Pesantez. He was  
 17 a professor, one of the Professors that was cited during  
 18 the Opening Statements in these proceedings.  
 19 In that context, I was involved in the preparation  
 20 of resolutions in about 800 cases that were adjudicated  
 21 before the Court during that period of time and at that  
 22 division, and then I rendered services for the municipality  
 23 of the City of Quito. I was the Attorney General for the  
 24 city; and, in that context, I adjudicated cases that had to  
 25 do with the city, and we're talking about 4,500 cases,

03:13 1 Dr. Andrade, I'm going to ask you to address the  
 2 Tribunal today on issues relating to general tort law in  
 3 Ecuador. The microphone is yours.  
 4 A. Thank you very much.  
 5 Indeed, I have been requested to make a short  
 6 presentation and to talk to you about the tort law system  
 7 under the legal structure of Ecuador. My presentation will  
 8 be divided into two different sets of issues.  
 9 First, we're going to talk about the substantive  
 10 aspects of tort liability in Ecuador; and, in that regard,  
 11 we are going to talk about the general principles and how  
 12 liability is generally attributed in the Civil Code.  
 13 I'm going to then talk about two types of specific  
 14 rules that entail specific matters related to activities  
 15 that are inherently dangerous.  
 16 And also I'm going to talk about the tort  
 17 liability related to contingent harm.  
 18 Then I'm going to make reference to protected  
 19 legal interests under these sets of rules.  
 20 And, finally, I'm going to talk about the joint  
 21 and several liability system that is used in Ecuador.  
 22 Now, in connection with procedural aspects, I have  
 23 taken as a referent the Year 1999 when the Environmental  
 24 Management Law was passed and the procedural system was  
 25 structured, this in connection with Article 43.

<p>Sheet 43</p> <p style="text-align: right;">2292</p> <p>03:16 1 I'm going to talk about the procedural situation  2 in Ecuador before Article 43 of the EMA was passed and  3 after the Environmental Management Law was adopted.  4 First, I'd like to say to you that the tort system  5 provided for in the Civil Code dates back to 1861. In 1861  6 in Ecuador, the 1852 Constitution was current. The Civil  7 Code was published on 1st January 1861, and a few days  8 later--ten days later, in fact, García Romeno took over as  9 President. He created a Constituent Assembly, and passed  10 the Constitution of 1852, and then in the concept of these  11 two constitutions we were in presence of classical  12 constitutionalism in connection with individual rights, et  13 cetera.  14 Now, the Civil Code was born out of that process,  15 and there is a very well-known general principle reflected  16 in Article 2214 of the Civil Code that says that,  17 practically speaking, whoever commits an offense because of  18 its conduct that harms third-parties is obligated to repair  19 that harm. This is the general principle that is enshrined  20 in our regime.  21 Now, the system of allocation of liability that is  22 provided for in the Civil Code entails a number of elements  23 in connection with the allocation of harm. First, you need  24 a conduct.  25 You also need harm to exist. That harm needs to</p>	<p style="text-align: right;">2294</p> <p>03:19 1 objective elements; for example, the harm itself or the  2 conduct itself.  3 Now, according to this system, we have a damage  4 that is typical, normal, natural, in connection with  5 certain activity.  6 Now, the individual performing that activity has  7 to be rendered liable when that activity creates a harm.  8 The origin of this form of establishing a  9 causation link between the harm and the activity, arises  10 precisely from the fact that the activity performed has  11 hazardous traits not commonly present in human activity.  12 This is the way in which the Supreme Court of Justice has  13 explained this concept as to how this system of the  14 allocation of responsibility is created.  15 The conduct, the activity, and the harm, the  16 objective elements are underscored. It is a kind of strict  17 liability of sorts.  18 Clearly, the initial problem that has come about  19 in connection with this matter has to do with those  20 elements of causation. What we're looking at here is the  21 fact that the system creates a way of linking the harm to  22 the conduct.  23 Now, we're not talking about common elements  24 because the activity that we're dealing with here is not a  25 common activity. When I allocate liability and attribute</p>
<p style="text-align: right;">2293</p> <p>03:18 1 be connected or linked to that conduct. It has to be in  2 relationship of cause and effect. This is called  3 causation. And this characterizes the general regime as  4 well. Well, we're not talking about any conduct. We're  5 talking about a conduct that was created on the basis of  6 malice or in violation of the due diligence or negligence  7 as well.  8 This characteristic of our system has led to it  9 being named a subjective system of allocation of liability.  10 i.e., the element of intent present in that conduct is, in  11 practice, what characterizes our system for allocation of  12 liability.  13 Next slide, please.  14 Now, out of this general system of allocation of  15 liability which is, like I said, a subjective system, if  16 you will, there are specific provisions that modify this  17 regime according to the different circumstances.  18 I'm going to talk about the system of allocation  19 of liability in the case of inherently dangerous  20 activities. The Supreme Court of Justice in connection  21 with these inherently dangerous activities, has stated that  22 the system of allocation of liability is based on the  23 theory of the created risk.  24 Now, subjective elements are no longer important  25 in this case, and other elements become more relevant,</p>	<p style="text-align: right;">2295</p> <p>03:21 1 it to the conduct of the individual conducting the  2 inherently dangerous activity, what should happen for that  3 individual not to be determined as liable is that that  4 causation link has to be severed.  5 And how can he do it? Showing, alleging that the  6 detected and verified harm was not the product of the  7 inherently dangerous activity, but of any external element.  8 These are the traditional statutory exemptions from  9 liability: force majeure or unforeseeable circumstances,  10 the exclusive fault of the victim, or the exclusive act of  11 a third party.  12 This is the manner in which a party performing a  13 hazardous activity can be released from liability for those  14 damages that are ordinarily produced by the type of  15 activity performed.  16 Now, generally speaking, we have talked about the  17 criteria of allocation of liability and causation.  18 Mr. Barros, in his Report of January 2015, says that the  19 criteria in order to determine this causation is based on  20 two different theories. One has to do with the necessary  21 cause, the sine qua non cause, or the equivalent causes,  22 and this is Paragraph 49 of his Report, and then together  23 with this theory, according to Mr. Barros, there is another  24 theory that should be applied to determine causation which  25 has to do with proximity, the proximate cause.</p>

03:23 1 These are two theories that we can discuss in  
 2 legal doctrine but the Ecuadorian system has discarded  
 3 these two theories explicitly. In the case of Delfina  
 4 Torres specifically at the Whereas Number 20, well, a  
 5 number of causation theories have been analyzed. The  
 6 Supreme Court of Justice has discarded each one of the  
 7 theories put forth by Mr. Barros, and here you can see the  
 8 reasons that were put forth by the Court. This comes from  
 9 the Delfina Torres case, and first the theory of necessary  
 10 cause or *condicione sine qua non* has been discarded because  
 11 it was considered that if we apply this theory, I could  
 12 find a cause of the cause *ad infinitum*. And the theory of  
 13 the proximate cause was discarded, as a general rule,  
 14 because then we would face the issue of determining what is  
 15 the adequate cause to create the harm.  
 16 Now, instead of these theories that have been put  
 17 forward by Mr. Barros in connection with these matters, the  
 18 Court has chosen the theory of the appropriate cause or  
 19 adequate cause.  
 20 The adequate cause is a very simple proposition.  
 21 It mandates that it is the judge's duty, in the exercise of  
 22 his or her own discretionary powers, to determine in each  
 23 case how to determine, how to establish that causal nexus  
 24 between the harm and the alleged harmful activity. The  
 25 explanation by Dr. Barros is that one cannot leave it to

03:25 1 the Judge's arbitrariness to determine causation. The  
 2 initial problem here is that the concept of discretionality  
 3 is confused with the concept of arbitrariness.  
 4 Arbitrariness in Spanish means a mere whim, something done  
 5 voluntary.  
 6 In Spanish, now, discretionality means something  
 7 completely different from that. It means that you're  
 8 acting prudently, you're acting reasonably. You are acting  
 9 according to the rules of logic, and you're providing due  
 10 justification. This is not something that I'm saying. The  
 11 Supreme Court of Justice in a number of decisions has  
 12 indicated over and over again the mechanism to be used in  
 13 order to determine causation.  
 14 In the case of Andrade Medina versus CONELEC has  
 15 has again explained that the judge is responsible for  
 16 determining in each specific case the causation  
 17 relationship that exists between the harmful event and  
 18 harm, and this has to be determined under the rules of  
 19 reasonableness. This is the explanation of what the  
 20 discretionary power means. Of course, all other theories  
 21 are just a set of guidelines for the Court and for the  
 22 Court to be able to make a decision in connection with the  
 23 existence of this element of causation for purposes of  
 24 determining the allocation of liability.  
 25 But of course. Look at Dr. Barros' observations

03:27 1 and invitation to use a number of theories that do not  
 2 exist in the legal system and that clearly are discussed in  
 3 the opinion of legal scholars but not applied in Ecuador.  
 4 So, he has talked about this in general. It has to do with  
 5 the whole system of tort liability.  
 6 If these theories are not applied in the system as  
 7 a whole, they're much less applied in the case of  
 8 inherently dangerous activities. Let me give you an  
 9 example which is very simple and that comes out of  
 10 Article 2229(2). The Supreme Court has structured the  
 11 whole system of inherently dangerous activities and the  
 12 liability thereof on the basis of this provision. I'm  
 13 going to take numeral 1 of Article 229. This list, the  
 14 Supreme Court tells us, is a list of activities that when  
 15 the Civil Code was created were determined as inherently  
 16 dangerous activities. We have many more today that we  
 17 could also consider, but let's just take an example just to  
 18 illustrate this concept.  
 19 Let us assume that right now I start handling  
 20 explosives right here in this room. A pause is made, a  
 21 coffee break as you will, and when you come back, you find  
 22 this room completely destroyed. Common sense and  
 23 experience would indicate that the reason why this room has  
 24 been destroyed is because Mr. Fabian Andrade was handling  
 25 explosives in this room. This indicates experience,

03:28 1 something that is reasonable.  
 2 And clearly, in order to release myself from  
 3 liability because of the damage done to this room because  
 4 of an inherently dangerous activity--that is to say, the  
 5 handling of these explosives--I'm going to have to provide  
 6 a justification in the sense that the damage was not born  
 7 of my conduct, but it was born of an external factor, for  
 8 example, a gas pipeline exploded. This is to be alleged  
 9 and justified as well.  
 10 As you can see in connection with inherently  
 11 dangerous activities, what happens is that the burden of  
 12 proof is reversed with the purpose of breaking the causal  
 13 link. A causal link that is established for the mere fact  
 14 that the harm is typical, it's natural of the abnormally  
 15 dangerous activity.  
 16 Now, let us use the same example, but in  
 17 connection with activities that are relevant to us.  
 18 For example, let's suppose that there is a forest  
 19 that has no human activity whatsoever, it's pristine, and  
 20 in the forest you have rivers, you have wildlife. Well,  
 21 now, we place oil facilities in the forest, the activities  
 22 are conducted with no problem whatsoever, and then as time  
 23 goes by, I look at the conditions in the forest. In the  
 24 forest we find contaminants that are typical of oil  
 25 activities: Oil, for example, chemicals. What does

03:30 1 experience tell us and common sense, according to this  
 2 system as put forth by the Supreme Court of Justice? Well,  
 3 that those chemicals and the substances are the ordinary or  
 4 regular effect of hydrocarbon activities. I have not said  
 5 so far that hydrocarbon activities are inherently dangerous  
 6 activities.  
 7 The Supreme Court dealt with this issue when it  
 8 decided the Delfina Torres case. It reached the conclusion  
 9 that today one must say that hydrocarbon activities are  
 10 inherently dangerous activities.  
 11 Now, those who carried out hydrocarbon activities  
 12 in that forest become responsible for the damage caused to  
 13 that forest for the harm that is born of the regular  
 14 activity that, as was said, was inherently dangerous.  
 15 The way through which the operator of the oilfield  
 16 could release itself from liability is showing that the  
 17 substances to be found in the forest and the natural  
 18 environment do not have to do with its own activities, but  
 19 they have to do with an external factor, and it has to  
 20 argue and prove the different events that would release  
 21 itself from liability.  
 22 Let us look at the other specific system that we  
 23 have.  
 24 Our tort liability system does not only deal with  
 25 harm that has already been produced. It also establishes a

03:35 1 fall onto the street. There is a harm that I would like to  
 2 avoid, which is that the passerby that is walking down the  
 3 street receives this hit from the blunt plant object, and  
 4 his or her health may be impaired.  
 5 And then we have an indeterminate number of  
 6 people, which is this group of passersby that cannot be  
 7 identified, and that walk down the street.  
 8 Now, let us think that that building has a rooftop  
 9 but does not overlook the street, but it overlooks the  
 10 interior of a building.  
 11 Now, we have the same number of elements: The  
 12 plant pot that can fall on to the interior of the building.  
 13 We have a damage that we would like to avoid--that is to  
 14 say damage to life or health--but in this case there is a  
 15 determinate number of individuals, which is the people who  
 16 live in the building. Under this scenario, the person who  
 17 can bring an action to remove the plant pot and avoid  
 18 damage to the passersby is no longer any individual;  
 19 rather, it has to exclusively be an individual who lives in  
 20 the building. These are the rules of Article 2236, and  
 21 these are the different events that can be assumed here,  
 22 the different assumptions.  
 23 As I told you, I was going to go back to explain  
 24 this concept of popular action, it's also called collective  
 25 action. That's what legal scholars call it as well. What

03:32 1 regime to prevent contingent harm. We're trying to do away  
 2 with risk factors to avoid damage from existing. This is  
 3 what we call the regime of contingent harm liability. The  
 4 specific rule is contained in Article 2236. What this  
 5 provision does is to grant a popular action, and we're  
 6 going to talk about the popular-action article in the  
 7 context of the Civil Code, but the popular action is  
 8 granted, is granted in two events. When the threat of harm  
 9 is related to an undeterminate number of individuals that  
 10 cannot be determined at the time when the action is put  
 11 forth, because anyone can put forth an action to take away  
 12 the risk that can potentially damage this indeterminate  
 13 group of people. The other rule is that when the group of  
 14 potentially affected is determined, only a member of such  
 15 group or class must bring the action.  
 16 Let me give you an example which is used in law  
 17 school classrooms and that may be useful to illustrate this  
 18 idea. Let us imagine that we have a building, and the  
 19 building has a terrace, a rooftop, and the rooftop is  
 20 overlooking the street. Now, we have a large object there  
 21 that has been placed there, a pot, a plant pot. And that  
 22 plant pot, if it falls on the street, can hit a passerby on  
 23 the head, can affect this person physically, and the person  
 24 is going to be sent to the hospital. So, as you can see,  
 25 there is a risk factor which is this plant pot that can

03:36 1 does this mean in our system? In our system, it is a  
 2 representation granted by law and that has two  
 3 characteristics: first, it is a procedural representation,  
 4 purely procedural representation; that is to say, the law  
 5 has attributed to an individual in accordance with the two  
 6 rules that I have explained before under Article 2236,  
 7 where the law has allowed this individual to bring the case  
 8 to a court for the Court to hear the case and for the Court  
 9 to make a decision. These are procedural steps. This is  
 10 only done in order to bring the action.  
 11 The second feature here is that this is a limited  
 12 right. It only has to do with procedural aspects. The law  
 13 allows any person to represent other individuals in the  
 14 case of an undetermined group of individuals, or to a  
 15 certain person in the case of a determined group of  
 16 individuals. Well, that does not mean that the person  
 17 bringing the action can dispose of the substantive rights  
 18 of that group of individuals. For example, it cannot make  
 19 arrangements in connection with substantial rights, it  
 20 cannot settle, it cannot bring the case to a panel of  
 21 arbitrators. Why? Because, of all these purposes, our  
 22 legislation, according to Article 44 of the Code of Civil  
 23 Procedure, indicates that there has to be a Power of  
 24 Attorney that is given voluntarily. A Power of Attorney  
 25 will specifically provide powers of representation to the

03:38 1 agent.  
 2 Now, to end with this matter, I wanted to talk  
 3 about the evidence requirements related it Article 2236 in  
 4 connection with activities that may bring about a  
 5 contingent harm. This is easy when we're talking about  
 6 inherently dangerous activities. In that case I need to  
 7 determine evidence that there is an actual risk that a harm  
 8 may be caused to a group of individuals. For example, in  
 9 the case of the forest, I would have to show that, for  
 10 example, the presence of environmental pollution in the  
 11 forest may affect adversely the rights of the forest  
 12 dwellers. We're talking about, for example, 278  
 13 families--this was the case of Delfina Torres, and  
 14 1,000-odd individuals in the case of Delfina Torres as  
 15 well.  
 16 I would have to show that the contamination of the  
 17 environment may impair the rights of those 1,057  
 18 individuals and bring this to justice.  
 19 The other matter I would like to discuss in  
 20 connection with the substantive aspects of this matter, I  
 21 wanted to also say that we need to talk about the legal  
 22 interest. I have been asked not to talk about specifically  
 23 the word "right" or legal right, which has a specific  
 24 meaning that is well understood in Spanish and that can be  
 25 translated to protected interest. To address this subject,

03:40 1 first, we have to understand what harm means from the  
 2 viewpoint of the tort system.  
 3 Now, harm means that a legal protected interest is  
 4 impaired or it's affected adversely.  
 5 Now, from the report of Mr. Coronel that was  
 6 submitted on June 3 2013, at Paragraph 92, he proposes and  
 7 states that the legal regime I just commented on, Article  
 8 2214 which establishes the general rule, Article 2229,  
 9 which talks about abnormally dangerous activities I talked  
 10 to you about, and even Article 2236, which refers to  
 11 contingent harm, could not be applied--he states--to  
 12 collective harm or included within environmental harm. I  
 13 think it's the fourth line of this text here. Mr. Coronel  
 14 asserts this, but as you can see, this finds support in no  
 15 provision, no norm, nothing. This is just an opinion.  
 16 Now, if one tries to justify this concept from a  
 17 positive viewpoint, the easiest thing is to go back to  
 18 2214, and to find that 2214, when it makes reference to the  
 19 harm that must be repaired and that must be caused by the  
 20 conduct of the individual does not make a difference among  
 21 the different categories of damage or protected legal  
 22 interest.  
 23 Now, Article 2229 establishes, in its first  
 24 paragraph, the general rule related to the element of  
 25 intention in the torts regime, says explicitly any harm,

03:42 1 any impairment any adverse effect to a legally protected  
 2 interest must be compensated.  
 3 Now, 2236, when it talks about contingent damage,  
 4 draws no distinction also, and what is usually said here is  
 5 that when the legislator does not draw any distinction, the  
 6 individual applying the provision must not draw a  
 7 distinction, either.  
 8 Now, 2229 and 2214, these two provisions were  
 9 invoked in the Delfina Torres case. In that case, there  
 10 were damages produced in connection with an event that had  
 11 to do with environmental contamination, now an impairment.  
 12 These two provisions were established.  
 13 Now, if a legal system does not distinguish  
 14 between the kinds of damages and the legally protected  
 15 interest, one must understand that this system applies to  
 16 property impairments, for example, impairment of the right  
 17 to property, the right to realty, or the impairment of  
 18 personal rights--credits, for example--and also impairments  
 19 that don't have to do with property things, for example,  
 20 life, health, physical integrity, honor. All of these are  
 21 legally protected interests in our legal system.  
 22 If these legally protected interests are harmed,  
 23 then the legal regime provided for in the Civil Code is  
 24 also useful.  
 25 And I would like to end this part regarding the

03:45 1 legally protected interest, by telling you that also none  
 2 of the provisions therein established draws a distinction  
 3 in connection with the mechanism to provide a remedy.  
 4 Thus, the mechanism for compensation is not useful criteria  
 5 to indicate distinctions or modifications to the placing of  
 6 the legal interest that is being vindicated through this  
 7 regime.  
 8 In the case of Delfina Torres, the Plaintiff  
 9 itself put forth a number of protective measures as a  
 10 mechanism to compensate for impaired rights. This  
 11 mechanism did not change the allegations related to the  
 12 harm suffered and the liability of those who carried out  
 13 the activities that brought about the harm.  
 14 Next, please. Next one, please.  
 15 Now, in connection with these substantive matters,  
 16 I wanted to talk about how the joint and several liability  
 17 regime works in Ecuador. So, I wanted to also talk about  
 18 the concept that we're going talk about.  
 19 Now, let us imagine that there is a rock, right?  
 20 A stone, and also that a number of individuals drop water  
 21 for a long time on that rock. Finally, that rock breaks.  
 22 The pertinent question there is which one of the drops  
 23 broke the rock? The first one or the last one or the  
 24 second one? The Ecuadorian legislators chose a solution  
 25 for events such as these. These are joint causes, if you



03:46 1 will, so we call them there, and that is what Article 2217  
 2 provides for. When a number of individuals contribute to a  
 3 certain harm, all of them are jointly and severally  
 4 responsible.  
 5 Now, the solution of the Ecuadorian legislator in  
 6 1861 seems unjust if we don't really understand the system  
 7 as a whole. The system states that, of course, the victim,  
 8 the sufferer of the harm, may choose amongst all the  
 9 individuals that contributed jointly and severally to bring  
 10 about the harm, and a claim may be brought against one of  
 11 these individuals, and the full payment of the obligation  
 12 may be asked of only one of them.  
 13 And to complete the system, the joint and several  
 14 debtor paying for the obligation has the right to obtain  
 15 from the joint and several co-debtor, the corresponding  
 16 amount, in the corresponding proceedings and with the  
 17 corresponding evidence, related to such amount that he is  
 18 entitled to. This regime is established, not because I say  
 19 so but because it is provided for in the Civil Code since  
 20 1861, in Article 1530, regarding the possibility or ability  
 21 that the victim has to sue all or any of the joint and  
 22 several debtors, and Article 1538, regarding the right that  
 23 the joint and several debtor who paid that obligation has  
 24 to come after the other debtors to pay the amount to which  
 25 they are obligated.

03:50 1 the Court could protect the individual's right.  
 2 In the case of my example, the forest, where these  
 3 272 families lived and the 1,057 individuals also lived, in  
 4 principle, each one of these individuals could have brought  
 5 a claim to the extent that the impairment of the  
 6 environment generated a harm for each one of them, a direct  
 7 harm to each one of them.  
 8 Now, in practice, what will we get? We would have  
 9 1,057 severed claims; right? Based on the same legal  
 10 system and in the cases of pollution, it will be based on  
 11 the same facts. This is what the legal regulations allowed  
 12 for.  
 13 Now, this was a mechanism that was going against  
 14 procedural economy, and it was very complicated from the  
 15 viewpoint of legal certainty because each one of the courts  
 16 considering the different allegations, the strategies put  
 17 forth by the parties in each one of these cases, the  
 18 evidence submitted by the Parties, well, different judges  
 19 could have made different decisions. There could have been  
 20 an inconsistency amongst all of these Court decisions. The  
 21 Ecuadorian procedural system allowed for a joinder of  
 22 cases, so all of these cases could have been joined that  
 23 would otherwise have been proposed independently so that  
 24 the Judge who heard the first case could decide on all of  
 25 the cases. These are joinder of cases, and this joinder of

03:48 1 And also, there is another Article that has to do  
 2 with the right that the payor of the obligation has in  
 3 order to go after his co-debtors and ask for the amount  
 4 that he paid.  
 5 So far we have reviewed these substantive aspects  
 6 that have been emphasized with respect to torts under  
 7 Ecuadorian law. Now, let us talk about procedural aspects  
 8 right now.  
 9 Okay. First, what happened before the EMA in  
 10 connection with procedural regulations? Now, any  
 11 individual that sees his or her rights impaired in this  
 12 legally protected interest could put forth an action in  
 13 ordinary proceedings. This was the right kind of case to  
 14 bring. Why? Because the Civil Code of procedure,  
 15 according to a very old rule, established that in every  
 16 single case where a specific proceeding has not been  
 17 stated, all claims must be done through the ordinary  
 18 proceedings. This is Article 59 of the Code of Civil  
 19 Proceedings. This is a very simple rule.  
 20 Any individual that may have seen his or her  
 21 rights impaired could bring a claim under ordinary  
 22 proceedings for the Court, whether, according to the  
 23 general regime or because of an inherently dangerous  
 24 activity or in order to avoid contingent harm, well, via  
 25 the ordinary proceedings, that claim could be brought, and

03:52 1 cases is regulated under Articles 108 and 109 of the Code  
 2 of Civil Procedure.  
 3 Think of the Delfina Torres case. In the case of  
 4 Delfina Torres we had there 278 families, we had 1,057  
 5 individuals. Now, these 1,057 individuals--I don't think  
 6 it was all of them, but at any rate, let's just say that  
 7 the 1,057 individuals think of it as individuals bringing  
 8 different cases. So, instead of doing this, they decided  
 9 to create an entity that is different from themselves, and  
 10 it's called the Delfina Torres Committee. So, the Delfina  
 11 Torres Committee acting by its legal representative is the  
 12 one who brought the action based on his own rights and  
 13 based on rights of this entity, this legal person.  
 14 In the Delfina Torres case, as you know, in  
 15 Whereas Number 5, the problem was dealt with in connection  
 16 with the right to bring a claim procedurally, the ability  
 17 to bring a claim, and it was said that the underlying legal  
 18 relationship and the purpose of the litigation is  
 19 completely different. So, this is what happened to the  
 20 community that lived in the Delfina Torres case.  
 21 Now, the 1,057 individuals could have brought  
 22 their own individual actions, and we could have found a  
 23 solution vis-à-vis this multiplicity of cases based on the  
 24 same legal grounds.  
 25 Now, under Article 43 of the EMA, without

03:53 1 modifying the substantive system, the same regime we have  
 2 had in the Civil Code dating back to 1861 and the same  
 3 system of tort liability, well, we would have a number of  
 4 civil actions. So, this is an article that's called,  
 5 "civil actions." Well, the civil actions are those actions  
 6 that are provided for in the legal system.  
 7 Now, Article 43 wanted to bring order to  
 8 procedural matters. One no longer needs a claim, an  
 9 individual claim, that each one of the impaired parties  
 10 would bring because of an event, an environmental event,  
 11 but what it can be done is that since all of them are  
 12 connected because of the common interest and impaired by  
 13 the same environmental event, well, all of them can bring a  
 14 claim. This is a procedural joinder of cases that is  
 15 legislatively ordered.  
 16 I don't need a judicial proceeding that heard the  
 17 first case by motion of a party, brings together all the  
 18 cases and makes a decision now, because of the legislative  
 19 order under Article 43, that joinder of cases, procedurally  
 20 speaking, has been provided for under Article 43(1).  
 21 Now, what else does Article 43 do? Well, this is  
 22 no longer an ordinary proceeding, but we will be using a  
 23 summary verbal proceeding. Article 59 that we talked about  
 24 a moment ago, says that when the law does not establish a  
 25 specific proceeding, then the ordinary proceeding will be

03:57 1 the first copy of the document is in English. There is a  
 2 pink divider, and then the second copy of the document is  
 3 in Spanish for you to look at.  
 4 And while we're doing that, you mentioned in your  
 5 direct testimony earlier that it was in connection with  
 6 precisely some of these issues of tort liability that  
 7 you've discussed this afternoon that you also appeared as  
 8 an expert for Ecuador in the Burlington case; is that  
 9 correct?  
 10 A. Yes, that is correct.  
 11 And good afternoon, Mr. Coriell. A pleasure to  
 12 see you again.  
 13 Q. Thank you.  
 14 And in the Burlington Case in which you appeared  
 15 and discussed these issues of tort liability, you're aware  
 16 that the State was bringing environmental counterclaims  
 17 against Burlington for environmental impact or  
 18 environmental harm in the blocks that it had operated in  
 19 Ecuador. Do you recall that?  
 20 A. Yes, I do remember that.  
 21 Q. And in the Perenco Case, which you also appeared  
 22 in as an expert brought by the Republic of Ecuador, you did  
 23 so at a counterclaims Hearing where the State was bringing  
 24 claims for environmental harm against Perenco for its  
 25 operations in Ecuador; correct?

03:55 1 applied. This is a verbal or an oral summary proceeding.  
 2 The regime established in Article 43 applies to  
 3 all damages arising from an impact to the natural  
 4 environment, whether the harm is actual or contingent.  
 5 Article 43 does not bring about any innovation in the  
 6 substantive law in connection with tort liability. What it  
 7 does is that it Orders the different proceedings, it puts  
 8 order into different proceedings when the harm is  
 9 originated by an event that affected adversely the  
 10 environment.  
 11 Sir, you have the floor.  
 12 Q. Thank you, Doctor. I believe that we have  
 13 exceeded the time we had for direct examination, so I will  
 14 tender the Witness now.  
 15 PRESIDENT VEEDER: Thank you very much.  
 16 There will now be questions from the Claimants.  
 17 MR. CORIELL: Thank you, Mr. President.  
 18 CROSS-EXAMINATION  
 19 BY MR. CORIELL:  
 20 Q. Dr. Andrade, good afternoon. Good to see you  
 21 again. I'm Wade Coriell. We spoke, as you recall, law  
 22 June during the Burlington environmental counterclaims  
 23 Hearings which you referenced in your direct testimony. My  
 24 colleague is going to be handing out two binders to you.  
 25 The tabs in the binders are numbered, and behind each tab,

03:59 1 A. That is correct.  
 2 Q. Okay. I'd like to move first, if we could, to a  
 3 discussion of the Collusion Prosecution Act, which you  
 4 bring up in your Second Report, and you can find it at  
 5 Tab 2 of your binder.  
 6 And I think this will be uncontroversial. I just  
 7 want to get a sense of what precisely you are opining with  
 8 respect to the Collusion Prosecution Act.  
 9 It's my understanding--and I'm reading from Page 4  
 10 in the English, but I think it's Page 5 in the Spanish...  
 11 A. I'm sorry, what tab? Two? Did you say two?  
 12 Q. Tab 2, yes, which is your Second Report dated  
 13 November 7th of 2014. Do you recall that?  
 14 A. Yes.  
 15 Q. And so, on Page 5 of the Spanish, I think near the  
 16 top, you say that, "Ecuadorian law provides for an action  
 17 under the Collusive Prosecution Act specifically designed  
 18 to address cases of judicial fraud such as the one Chevron  
 19 alleges here." That's your opinion; right?  
 20 A. That is correct.  
 21 Q. And then if we look at the bottom of Page 5 in the  
 22 English--and I think it's on Page 6 in the Spanish, you  
 23 have a paragraph that begins, "In this case," and you say:  
 24 "The CPA provides the only proper remedy in Ecuador for  
 25 Chevron to air its allegations of fraud and to adduce

04:01 1 evidence purportedly in support of those allegations."  
 2 Do you see that?  
 3 A. Yes, I do see that.  
 4 Q. And so I understand this right, what you're saying  
 5 here is two things; right? The only--the CPA is the only  
 6 proper remedy first for airing fraud allegations; correct?  
 7 A. No, it is not correct.  
 8 Q. There are, in fact, other proper remedies for  
 9 fraud allegations in the case of judicial fraud; right?  
 10 A. Yes, there are other mechanisms which are not  
 11 useful for the presentation of this extrinsic of evidence.  
 12 Q. I understand. What I'm trying to understand here  
 13 is that you say that the CPA is the only proper remedy for  
 14 Chevron to air its allegations of fraud and to adduce  
 15 evidence purportedly in support of those allegations. So,  
 16 let me ask you this way: Do you believe that the CPA is  
 17 the only proper remedy for Chevron to air its allegations  
 18 of fraud in Ecuadorian courts?  
 19 A. Let me repeat it. It is the only mechanism where  
 20 Chevron could introduce new evidence to prove fraud.  
 21 Q. So, you would agree with me that any fraud  
 22 allegation that Chevron were to make that did not require  
 23 new evidence could be heard by the ordinary courts, and  
 24 there would be no need for a CPA action; is that correct?  
 25 A. I agree. Due process--is the concern of every

04:05 1 one is referring to the evidence, the rule is that evidence  
 2 that has been improperly presented is of no value to the  
 3 proceeding, so the Judge cannot assign any value to that  
 4 evidence when issuing a decision. But it is a different  
 5 thing to have a violation in the procedure that leads to a  
 6 nullity in that proceeding. Agree?  
 7 There is a humongous difference here. So the  
 8 Judge in this case has to separate this tainted evidence  
 9 and do not consider it for the decision-making process.  
 10 When there is a violation of the due process that leads to  
 11 nullity, the Judge should consider the record of the  
 12 proceeding, whatever was introduced correctly or properly.  
 13 For example, the proceeding could be declared null and void  
 14 and then returned to the point where the due process  
 15 violation occurred.  
 16 Q. I appreciate your explanation, that wasn't my  
 17 question. Let me see if I can get at it a different way.  
 18 Let's go back and talk about the Collusion Prosecution Act,  
 19 which you say that in the case of the allegations of fraud  
 20 that Chevron is making in this case, is the only proper  
 21 remedy; correct?  
 22 A. That is the only mechanism to introduce evidence,  
 23 and clearly obtain what Chevron is expecting to receive in  
 24 connection with the process.  
 25 Q. Now, you would agree with me that there is an

04:03 1 judge in Ecuador.  
 2 Q. So, the question isn't the type of allegation.  
 3 The question is whether or not new evidence is required in  
 4 order to prove the allegation; right?  
 5 A. Yes, indeed, that is the problem because you  
 6 cannot try to protect due process based on a violation of  
 7 due process. This is like that.  
 8 Q. And to be clear, just so that the record is clear,  
 9 you said yes, indeed, that is the problem, you agree with  
 10 my proposition that the question is not whether the  
 11 allegation is fraud or not. The question is whether new  
 12 evidence outside the trial court record has to be adduced  
 13 in order to prove the allegation?  
 14 A. Yes.  
 15 Q. So, in a hypothetical scenario--and I'm not  
 16 telling you that this is the scenario in fact, I'm just  
 17 asking you to assume these facts for purposes of the next  
 18 couple of questions--if there is proof within a trial court  
 19 record that a report of a court appointed global damages  
 20 Expert was ghostwritten as the result of fraudulent acts,  
 21 it would be appropriate for the courts, and it would be  
 22 required of the courts, to look into that fraud allegation  
 23 as long as that proof was on the trial court record; is  
 24 that a fair statement?  
 25 A. I think that these are two different things. When

04:06 1 ultima ratio requirement under Ecuadorian law; correct?  
 2 The CPA is only an available remedy if there is no other  
 3 available remedy under Ecuadorian Law?  
 4 A. Yes. The rule to apply is that the Collusion  
 5 Prosecution Act shall be used whenever there is no other  
 6 means to be used for the presentation of these allegations.  
 7 Q. And it should not be used when there is another  
 8 means available for the presentation; correct?  
 9 A. Whenever there are other mechanisms to be used in  
 10 response to the claim under this Collusion Prosecution Act,  
 11 yes, the collusion claim should be discarded.  
 12 Q. Right. And I'm referring to Paragraph 95 of your  
 13 Second Report, you might not have to go there, but your  
 14 view is that Chevron could have pursued a CPA action as of  
 15 the time it became aware of the purported evidence of the  
 16 fraud in this case; right? It's the second to last  
 17 sentence of your Paragraph 95.  
 18 A. Yes, I do see the text at Paragraph 95.  
 19 PRESIDENT VEEDER: Stop a second.  
 20 (Pause.)  
 21 PRESIDENT VEEDER: Please continue.  
 22 BY MR. CORIELL:  
 23 Q. And your view is that Chevron could and should  
 24 have pursued a CPA action at the time that it became aware  
 25 of the purported evidence of fraud that's at issue in this

04:09 1 proceeding; right?  
 2 A. Yes, indeed, because, in this case, what it had  
 3 through the normal course was an appellate instance, in  
 4 which you could not produce evidence. It had a cassation  
 5 appeal which explicitly does not have an evidentiary phase  
 6 and you cannot produce evidence. And it has an  
 7 extraordinary action for protection in which you also  
 8 cannot produce evidence. So, if I discovered and I had the  
 9 right element to file an action because of fraud, because  
 10 of collusion, then the reasonable thing in a well-thought  
 11 strategy would have been to immediately file a collusion  
 12 action.  
 13 Q. And the Appellate Courts couldn't look at it  
 14 because the Judge can't look at evidence that's not in the  
 15 record. That's basically what it comes down to; right?  
 16 A. Yes, the issue is not that they could not  
 17 analyze--is that they could not take as valid evidence  
 18 external to the proceeding, that was not ordered and had  
 19 not been contradicted by the other party. In a nutshell,  
 20 due process rules.  
 21 Q. Because it's a requirement of due process that  
 22 evidence external to the proceeding has to be treated by  
 23 the Court as not existing for the purposes of that Court's  
 24 Judgment; right?  
 25 A. Yes, indeed. Evidence that is not properly

04:11 1 produced should be treated as if it did not exist. It  
 2 could not be the grounds for a judgment. It's a very  
 3 simple rule.  
 4 Q. And you were here during Ecuador's opening  
 5 presentation two weeks ago; is that right?  
 6 A. I was here, yes, during the Opening Arguments of  
 7 Chevron and Ecuador.  
 8 Q. And you may recall during Ecuador's Opening  
 9 Arguments that it took the position that Chevron could have  
 10 pursued the CPA action that you and I have been talking  
 11 about as of February 14th of 2011, when the Lago Agrio  
 12 Judgment was issued; do you recall that?  
 13 A. To be honest, I do not remember.  
 14 Q. Okay. We have been talking about your Second  
 15 Report in which you discuss the Collusion Prosecution Act,  
 16 and I would like to turn to your First Report, which was  
 17 issued in February of 2013. Does that timing sound  
 18 correct? I think it was February 18th, and it's behind  
 19 Tab 1 of your binder.  
 20 Do you recall that report, and do you recall  
 21 issuing it in February of 2013?  
 22 A. Yes.  
 23 Q. And you recall that the Cassation Decision in this  
 24 case, the Chevron-Aguinda Case, was issued by the National  
 25 Court of Justice some nine months later, which was I

04:13 1 believe mid-November of 2013. Do you recall that?  
 2 A. I remember that it was after the Report, yes.  
 3 Q. So, I would like to look at Page 4 of your First  
 4 Report, and it's the first full paragraph in the English  
 5 version, the paragraph that begins "however," if you're  
 6 looking in the Spanish version.  
 7 A. What paragraph? Are you saying Number 4?  
 8 Q. I'm sorry, I misspoke. It's Page 4. It's Page 4  
 9 of both the English and Spanish versions, and it's the  
 10 paragraph beginning "However, Ecuadorian law provides."  
 11 And you see that what you say to the Tribunal here  
 12 is that Ecuadorian law provides for at least two effective  
 13 remedies to address the alleged fraud or comparable  
 14 violations of due process and other constitutional rights,  
 15 and then you list those two remedies with a lower case (i)  
 16 and a lower case (ii) as the cassation appeal to the  
 17 National Court of Justice, and the extraordinary action for  
 18 protection before the Constitutional Court. You didn't  
 19 mention the Collusion Prosecution Act as availability  
 20 remedy for, in your words, the alleged fraud or comparable  
 21 violations of due process, did you?  
 22 A. That is correct. And the reason is that at that  
 23 time we were discussing whether we could get to see  
 24 violations of due process. We never discussed whether I  
 25 wanted to introduce external evidence to that proceeding to

04:15 1 get to a decision. In fact, if you look at this,  
 2 Mr. Coriell, you are going to see a full chapter on the  
 3 valuation of evidence, and you're also going to find the  
 4 previous paragraph, the one before where you read that it  
 5 said that that cannot be used.  
 6 Q. I would like to look at the previous paragraph  
 7 because it will walk us through what allegations of fraud  
 8 you were referring to when you talked about these two  
 9 effective remedies.  
 10 If you go back to Page 3 of the English version,  
 11 it's the paragraph before the one we've been looking at,  
 12 Dr. Andrade, it begins "Chevron." Do you see where I am,  
 13 "Chevron submitted." It's the paragraph right before the  
 14 one we just looked at. It says: "Chevron submitted  
 15 voluminous documentary evidence to the trial court in  
 16 support of its allegations of ghostwriting of the Judgment  
 17 by the Lago Agrio Plaintiffs and fraud surrounding the  
 18 Cabrera Report and the Calmbacher Report."  
 19 Do you see that?  
 20 A. Yes, I do see that.  
 21 Q. Okay. So, that's Chevron's submissions.  
 22 And then you go on to say: "The submissions were  
 23 untimely and largely comprised of inadmissible evidence  
 24 under applicable rules of procedure. The appellate panel  
 25 was therefore barred from considering them."

04:16 1 Do you see that?  
 2 A. I see that, yes.  
 3 Q. Okay. So, we have the submissions, we have the  
 4 inability of the Appellate Court to consider them, and then  
 5 you say: "However"--and I'm using your words--"Ecuadorian  
 6 law provides for at least two effective remedies," and you  
 7 say that's the Cassation Court and the Constitutional  
 8 Court. That word "however" seems important. You're saying  
 9 that the new evidence was inadmissible for the Appellate  
 10 Court, however, the cassation appeal and the Constitutional  
 11 Court are the two appropriate remedies; correct?  
 12 A. Not exactly. As I said before, in connection with  
 13 that topic, we are discussing the value of evidence--you  
 14 can see this above. We are under the numeral dealing with  
 15 summary of the considerations in the Report, right? We  
 16 have to first look at where we are for the context.  
 17 Second, we are summing up what the weighing of the  
 18 evidence means and the appellate standard of review,  
 19 correct? And we are saying, if you look at it starting  
 20 from Paragraph 63 of the same report, how the weighing of  
 21 the evidence works in the Ecuadorian system, and I am  
 22 telling you that that evidence could not be considered  
 23 valid under the standard. And, of course, fraud is not  
 24 only based on evidence, you will remember that there have  
 25 been allegations of violation of breach of due process in

04:18 1 connection with lack of jurisdiction, competence, breach of  
 2 procedure, and a series of elements. So, Chevron's  
 3 allegations in this area and those originating from the  
 4 proceeding could easily be analyzed by any judge in the  
 5 Republic, and also the various levels. But what cannot  
 6 happen is that improperly produced evidence be used as  
 7 grounds. And if I would like to use that evidence, what I  
 8 need to do is go through the convenient course, the right  
 9 course.  
 10 Q. Dr. Andrade, if you could confine your answers now  
 11 to these two paragraphs, which as I understand it are  
 12 entitled Section E of your Report. "Assessment of evidence  
 13 and standard of review of the appellate level." Am I right  
 14 that this is a summary of your full conclusions in this  
 15 report in February of 2013 as to that issue?  
 16 A. Yes, Mr. Coriell, the only thing I hope is that my  
 17 answer is not taken out of context. It is convenient that,  
 18 for the understanding of both paragraphs, be so kind as to  
 19 refer back to the explanatory bases provided in the rest of  
 20 the Report. Yes  
 21 Q. Well, let me ask you one more question about this  
 22 summary, and then I will move to the place where you  
 23 address these two effective remedies in detail. The very  
 24 middle sentence in that paragraph beginning "however," you  
 25 say; "in fact"--this is after you've told us what the two

04:20 1 effective remedies are--you say: "In fact, the National  
 2 Court can and presumably will review Chevron's allegations  
 3 of fraud."  
 4 Am I to understand that when you say "Chevron's  
 5 allegations of fraud," you are not referring to the  
 6 ghostwriting of the Judgment; you are not referring to the  
 7 Cabrera Report, you're referring to those due process  
 8 violations that you just gave to me in your last answer?  
 9 Is that your distinction?  
 10 A. Basically the concept of fraud as used in this  
 11 proceeding and also the one mentioned here is quite broad.  
 12 No? Indeed, I was not referring to the allegations of  
 13 fraud that are based on external evidence.  
 14 Q. Okay. So, you were referring to allegations of  
 15 fraud based on internal evidence, but you're not referring  
 16 to allegations of fraud based on external evidence; is that  
 17 correct?  
 18 A. That is correct.  
 19 Q. You didn't mention that distinction here or, in  
 20 fact, anywhere in your First Report, did you?  
 21 A. That is completely correct because I did not refer  
 22 in detail to the facts, rather the applicable law.  
 23 Q. Okay. You did not refer in detail to the facts  
 24 but rather to the applicable law.  
 25 Can we go--let's go to Paragraph 1 of this First

04:21 1 Report, and that's where you discuss the scope of your  
 2 Declaration. And you say you have been asked by the  
 3 Republic's legal counsel to issue a legal opinion  
 4 addressing several of Claimants' allegations of judicial  
 5 error and due process violations in the Lago Agrio  
 6 Litigation; right?  
 7 A. Correct.  
 8 Q. Okay. And then if you go--let's go to the section  
 9 of your Report where you then do that in detail. It's on  
 10 Page 25 of the English, beginning at Paragraph 78 in both  
 11 versions.  
 12 You see that?  
 13 And Paragraph 79 is just a repeat of the  
 14 conclusion that you made earlier on about the two effective  
 15 remedies being the cassation appeal and the extraordinary  
 16 action before the Constitutional Court; right?  
 17 A. I'm sorry, in what part of 78?  
 18 Q. Paragraph 79. You repeat your conclusion that  
 19 Ecuadorian law provides for at least two effective remedies  
 20 to address the alleged fraud and consequent violations of  
 21 due process, and then you say the Constitutional Court and  
 22 the National Court cassation appeal; right?  
 23 A. Yes, Paragraph 79 refers to the summary of this  
 24 Report. Yes.  
 25 Q. Okay. And if you could turn now to Paragraph 81,

<p>Sheet 52</p> <p style="text-align: right;">2328</p> <p>04:24 1 you have two sentences there. The first you say:  2 Claimants assert that the cassation appeal is not an  3 effective remedy because it is limited to legal issues and  4 cannot be bought on the basis of factual matters.  5 Do you see that?  6 A. Did you say 81?  7 Q. Yeah.  8 And then you say: "The violation which Chevron  9 alleged--"  10 A. Yes.  11 Q. And then the next sentence you say: "the  12 violations which Chevron alleged in its cassation appeal  13 and also described in Claimants' memorials in the  14 arbitration proceedings, fall squarely within each of the  15 grounds established in Article 3 of the law on cassation."  16 Do you see that?  17 A. Yes, I see that, at Paragraph 80. In fact, I  18 mentioned each of the grounds invoked. Uh-huh.  19 Q. You actually mention them, I think, more  20 specifically, if you look over to Paragraph 83, you say:  21 "The main grounds asserted by Chevron to invalidate the  22 Lago Agrio proceeding can be summarized" and then you list  23 Chevron's allegations.  24 Do you see that list (a) through (f)?  25 A. Yes, I do see the list.</p>	<p style="text-align: right;">2330</p> <p>04:27 1 why: First, the list, (a) through (f), refers to a very  2 specific allegation. It states, the violation of the right  3 of defense. (I), is what Article 83 states, the main  4 grounds, it refers to the violation of procedural  5 requirements, due process. Number 2 refers to the right of  6 defense, and Chevron bases itself on those allegations.  7 And then at Paragraph 84, what I'm saying is that the Court  8 can review those allegations pursuant to its powers under  9 Article 3. And Article 3 basically grants powers to review  10 the legality. This is the role of the cassation court.  11 That is say, to look at the legality of the decision rather  12 than the facts, the facts are already reflected in the  13 Judgment under review. And it is interesting to see your  14 interpretation, but clearly, that is not the meaning.  15 Q. Well, I didn't mean to make an interpretation.  16 The last sentence in Paragraph 83 says: "Chevron makes the  17 following allegations," and then it lists them, and the  18 only sentence in Paragraph 84 says: "The National Court  19 can review these allegations pursuant to its powers." I  20 understood that to mean that that list of allegations,  21 including ghostwriting, could be reviewed by the National  22 Court; correct?  23 A. I apologize if I didn't say it correctly or you  24 understood me wrong but the truth of the matter is that  25 article--Paragraph 84, what I am saying that all of these</p>
<p style="text-align: right;">2329</p> <p>04:25 1 Q. And (d) is Chevron's allegation that the Judgment  2 was drafted by a third party; right?  3 A. Yes, this is the list. As you can see, it's  4 basically a partial cite--well, let's say a paraphrasing of  5 Chevron's allegations, yes.  6 Q. Okay. One of which is drafting of the Judgment by  7 a third party. Can we just agree to refer to that as  8 ghostwriting as we continue this discussion?  9 A. In what sense?  10 Q. I'm just asking if you and I can agree that  11 drafting of the Judgment by a third party, I will now call  12 ghostwriting so that I don't keep repeating the seven or  13 eight words in this line.  14 A. No problem.  15 Q. You see in (e), another allegation that you looked  16 at by Chevron was procedural fraud; right?  17 A. Yes.  18 Q. And then right after this list in Paragraph 84,  19 you have a one-sentence paragraph that says: "The National  20 Court can review Chevron's allegations pursuant to its  21 powers under Article 3 of the Law of Cassation." So, you  22 were telling the Tribunal with this sentence that the  23 National Court could review Chevron's allegations of  24 ghostwriting and of procedural fraud; correct?  25 A. No, no, that is not correct, and let me tell you</p>	<p style="text-align: right;">2331</p> <p>04:29 1 allegations may be considered within the framework of  2 Article 3 of the Law of Cassation. And Article 3 of the  3 Law of Cassation clearly shows you the grounds. Chevron,  4 the Appellant Party, clearly knows the grounds and that's  5 the reason why they referred to it as lack of application,  6 improper application or wrong application of a law. What  7 I'm trying to say, that Article 3 of the Law of Cassation  8 grants specific power to the Cassation Court, and that is  9 to review the legality of the decision based on the grounds  10 under Article 3.  11 At Paragraph 80 you see the grounds invoked by the  12 appellant party and all of them have to do with the lack of  13 application or the lack of interpretation or the improper  14 application of substantive rules, procedural rules, rules  15 on the weighing of the evidence, coherence.  16 Q. Can we go back, then, to that section of the  17 Report? Let's look at Footnote 91 of the Report where you  18 say: "The allegations brought by Chevron before the  19 National Court comprise nearly all of the same issues that  20 are mentioned by Claimants in their Memorial on the Merits  21 for this arbitration."  22 Do you see that?  23 A. Yes, yes, I do see it.  24 Q. Now, as we have established, you have filed this  25 Report, you wrote those words in February of 2013. You</p>

04:30 1 were responding to a March 2012 Memorial on the Merits that  
 2 Chevron had submitted in this arbitration proceeding;  
 3 correct?  
 4 A. Yes, in connection with the issues that I was  
 5 consulted on. Yes? It was not that I was answering the  
 6 Memorial. I suppose that is the job of the representatives  
 7 of the Republic.  
 8 Q. I understand that, but your footnote that we just  
 9 looked at, Footnote 91, says that these allegations that  
 10 you listed and that you're purporting to describe the  
 11 proper remedy for in this Report are nearly all of the same  
 12 issues--your words--that are mentioned in this Memorial;  
 13 right? So, presumably you looked at this Memorial to  
 14 determine that the issues were nearly all the same; right?  
 15 A. The allegations on the violation of due process  
 16 and the right to defense, yes. They're detailed starting  
 17 at Paragraph 80, yes.  
 18 Q. So, let's look to the Memorial, which is behind  
 19 Tab 8 of your binder. It's only in English. It was only  
 20 submitted in English.  
 21 When you reviewed this Memorial, did you review it  
 22 in its English version, or did you have a translation?  
 23 A. The truth is I don't recall. I have seen a number  
 24 of documents in English, and a number of documents in  
 25 Spanish.

04:32 1 Q. Okay. So, I will just read to you the few points  
 2 that I want you to look at, and it can be interpreted into  
 3 Spanish, and I just want you to flip the page over to the  
 4 Table of Contents so that we can see the allegations in  
 5 this Memorial that you say were nearly the same as the  
 6 cassation appeal allegations.  
 7 You see the Table of Contents?  
 8 A. I'm looking at the Table of Contents, yes.  
 9 Q. And you see how the first sentence in the Table of  
 10 Contents says: "The Lago Agrio Judgment is Fraudulent"?  
 11 A. Yes. It's Page 3.  
 12 Q. Right. And then the next sentence right under  
 13 that says: "The Plaintiffs colluded with the Court to  
 14 draft the Judgment." So, you see that? You looked at that  
 15 as well; right?  
 16 A. Yes.  
 17 Q. Okay. And then let's turn to Page 4, the actual  
 18 text of the Memorial, which is the beginning of Chevron's  
 19 allegations of fraud in this document.  
 20 And you see that section titled "1, The Plaintiffs  
 21 Colluded with the Court to Draft the Judgment," and you  
 22 know there are several paragraphs on that that I am not  
 23 going to read you through, but I'll point you, you see in  
 24 Footnote 15, at the end of it, you see how there's a  
 25 citation to the Declaration of Patrick Juola? It's at the

04:34 1 ends of Footnote 15?  
 2 A. Yes.  
 3 Q. And you see in Footnote 16, it's a footnote to  
 4 some text and it cites to the Expert Report of  
 5 Robert A Leonard.  
 6 Do you see that?  
 7 A. I do see that, yes.  
 8 Q. And then we turn over to Page 6 of the same  
 9 document. It's in the same section on collusion, and you  
 10 see Paragraph 24 has a discussion--I'm sorry, you see that  
 11 Footnote 24 is a citation to the Expert Report of  
 12 Gerald R McMenammin.  
 13 You see that; right?  
 14 A. I'm looking at it, yes.  
 15 Q. And you're aware that these are all Expert Reports  
 16 that have been relied on in Chevron's cassation appeal and  
 17 also in these arbitration proceedings, obviously as to the  
 18 latter; right?  
 19 A. No, I did not know that, no.  
 20 Q. You knew they were being relied on in these  
 21 arbitration proceedings at least because you read them in  
 22 the Memorial that you reviewed in these arbitration  
 23 proceedings?  
 24 A. I'm sure I did not do the kind of reading that was  
 25 done by those who prepared the Memorial or those who have

04:35 1 to answer the Memorial. I was interested there in looking  
 2 at the fact that whether these allegations like fraud, et  
 3 cetera, are included in the grounds related to the  
 4 violation of the right to defense for purposes of a  
 5 National Court to review a cassation appeal. I didn't  
 6 really--I didn't look at each and every one--  
 7 Q. I understand that you didn't look at those  
 8 Reports, and that's not what I had asked.  
 9 You did, however, I assumed you looked at the  
 10 Table of Contents at least of this Memorial that you  
 11 claimed was consistent with the grounds in Chevron's  
 12 cassation appeal? You were aware of the allegations that  
 13 were being made in this Memorial that you described as  
 14 "nearly all of the same issues that are mentioned by  
 15 Claimants in their cassation appeal"?  
 16 A. We looked at a pertinent paragraph where we  
 17 described the allegations made by Chevron to bring the  
 18 cassation appeal. When one looks at the cassation appeal  
 19 and one finds allegations of fraud or whatever, and the  
 20 contents of whatever it may be, and this has to do with the  
 21 violation of a specific provision that has to do with the  
 22 violation of due process, what I have done here is to  
 23 compare the Memorial and the cassation appeal on the basis  
 24 of the grounds invoked, and I conclude that there was an  
 25 allegation of fraud that has been described in the Report,

04:37 1 and this is the grounds used by Chevron to consider that a  
 2 specific provision of due process has been violated, and  
 3 that is what has been submitted in the cassation appeal. I  
 4 think the reasoning is very simple. I have not looked at  
 5 the facts, and that is the thing.  
 6 Q. And I'm not asking you about these particular  
 7 facts. I'm asking you about the allegations that you  
 8 reviewed that you then testified to this Tribunal could be  
 9 remedied by the National Court of Justice on the cassation  
 10 appeal, so let's go back to Paragraph 83 of your First  
 11 Report, where you say in support of the general--of what  
 12 you called the main grounds of Chevron's cassation appeal,  
 13 at Paragraph 83 you said: "In support, Chevron makes the  
 14 following allegations," then you listed six of them. The  
 15 fourth one, (d), is drafting of the Judgment by a third  
 16 party.  
 17 So, you understood when you wrote these words that  
 18 Chevron was making a ghostwriting allegation to the  
 19 National Court of Justice. Can we agree on that?  
 20 A. Yes, we agree on that. It says here, the  
 21 violation to the right of defense based on--  
 22 Q. I asked you what was a yes-or-no question. You  
 23 understand that Chevron was making an allegation that the  
 24 Judgment had been drafted by a third party. Yes or no?  
 25 A. Yes, as a justification of the violation of the

04:40 1 the grounds to maintain that there has been a violation of  
 2 due process is the same. I didn't have to consider even  
 3 whether the grounds were correct or not. I had to consider  
 4 only whether the allegations made by Chevron are included  
 5 or not within the regime of due process for a due process  
 6 case to come under Point 2 of the cassation law.  
 7 Q. Dr. Andrade, we may be having a translation issue,  
 8 but I think it would help if you could just answer my  
 9 precise question. Let me represent to you, I am in none of  
 10 these questions am I suggesting that you did or were asked  
 11 to or should have reviewed the substance of the facts to  
 12 determine whether the allegations are true. So, at any  
 13 point going forward where I'm referring to these  
 14 allegations and you are looking at them, I'm only referring  
 15 to the question whether you realized that certain  
 16 allegations were being made, okay?  
 17 A. Okay, we agree.  
 18 Q. We agree that you knew that Chevron had raised in  
 19 its cassation appeal an allegation that the Judgment was  
 20 drafted by a third party. Yes or no?  
 21 A. Yes.  
 22 Q. We agree that you knew--and we have seen it in  
 23 this Memorial on the Merits in this arbitration--that  
 24 Chevron had raised an allegation that the Judgment had been  
 25 drafted by a third party. Yes or no?

04:39 1 right to defense. It's right there. You have to look at  
 2 83, that's it.  
 3 Q. I see that it's there. And if we look at 91, it  
 4 also says that the allegations brought by Chevron,  
 5 including the allegation of drafting of the Judgment by a  
 6 third party, as we have just agreed, comprise nearly all of  
 7 the same issues that are mentioned by Claimants in their  
 8 Memorial on the Merits for this arbitration. So, this  
 9 footnote would indicate that you understood that in its  
 10 Memorial on the Merits, that Chevron was making an  
 11 allegation that the Judgment was drafted by a third party;  
 12 correct?  
 13 A. Again, yes. Chevron submitted in its cassation  
 14 appeal as a grounds for the allegation of the violation of  
 15 the right to defense a provision, that may be reviewed by  
 16 the Cassation Court amongst other things fraud, and this is  
 17 what has been put forth in the Report, yes.  
 18 Q. Now, to have been able to say that Chevron alleged  
 19 ghostwriting of the Judgment, and also to be able to say  
 20 that that allegation was reflected in this Memorial that we  
 21 have been looking at, you must have looked at least at  
 22 Chevron's ghostwriting allegations in the Memorial;  
 23 correct?  
 24 A. No. I only had to look at what the cassation  
 25 appeal said and what the Memorial said, and to find that

04:42 1 A. Yes.  
 2 Q. And we agree that Paragraph 84 of your First  
 3 Report says the National Court can review Chevron's  
 4 allegations. Yes or no?  
 5 A. 84?  
 6 Q. Yes.  
 7 A. Again, within the context of Article 3 of the  
 8 cassation law, and the reading is very simple. The  
 9 National Court may examine the allegations made by Chevron  
 10 on the basis of the powers granted to it by Article 3 of  
 11 the cassation law. What are these powers granted by  
 12 Article 3 of the cassation law? The review of the aspects  
 13 of legality in the Judgment, not others. It doesn't review  
 14 factual issues. This is a Cassation Court. It is not an  
 15 additional instance that can review factual issues, rather  
 16 it is on the ground that there is a violation of a legal  
 17 rule that establishes the way evidence must be submitted.  
 18 Again, cassation is a review of the legality of  
 19 the Judgment. That is what Article 3 says.  
 20 Now, all of the allegations made by Chevron, all  
 21 of those had been submitted in the cassation appeal on the  
 22 basis of the invocation of one ground, and that ground is  
 23 under Paragraph 80. That is what Chevron's cassation  
 24 appeal says. All of these are allegations--  
 25 Q. Do you believe that drafting of the Judgment by a



04:44 1 third party is what you refer to as a factual issue or what  
 2 you refer to as an issue of legality?  
 3 A. The drafting for these purposes and any other  
 4 element that is factual in nature is just the grounds to  
 5 allege, as Chevron itself says, the violation of a  
 6 provision that defines due process and to allege Ground  
 7 Number 2 of Article 3 of the cassation law. That is what  
 8 Chevron does in its appeal of cassation. We agree?  
 9 Q. It's not whether we agree. I don't think I  
 10 understand your answer. You have made a distinction  
 11 between factual arguments that a court cannot consider and  
 12 legal arguments that a court can consider. You have listed  
 13 six allegations that you said the National Court could, in  
 14 your words, review. One of those allegations is drafting  
 15 of the Judgment by a third party. Is drafting of the  
 16 Judgment by a third party a factual issue that the Court  
 17 cannot review, or does it raise a legal issue that the  
 18 Court can or can in certain circumstances review?  
 19 A. Let's see I repeat: The Court is going to review  
 20 all Chevron's allegations within the context of its powers.  
 21 The powers are put forth in Article 3 of the cassation law.  
 22 I can allege whatever it is that I know, right? But the  
 23 Court is not going to review any circumstance whatsoever  
 24 that is factual in nature, right? What the Court is going  
 25 to do is to review legality issues, so much so that

04:46 1 Chevron, for each one of its allegations, included in  
 2 Article 83, well, Chevron included all of these under the  
 3 umbrella of a legal allegation regarding the Judgment, and  
 4 used one by one, the five grounds of Article 3 of the  
 5 cassation law. This is what it did and what I'm trying to  
 6 explain to you in the report. Any other interpretation of  
 7 this matter, well, what you are saying to me is that at  
 8 Paragraph 84 I'm saying that all of those allegations must  
 9 be reviewed by the National Court. That is not what I'm  
 10 saying at 84. What I'm saying is that all those  
 11 allegations may be considered by the National Court within  
 12 the context of the powers that have been granted to it  
 13 under Article 3 of the cassation law.  
 14 Q. So, your view, what you understood your  
 15 one-sentence Paragraph 84 to mean was simply that anything  
 16 Chevron alleges the National Court has to consider, but you  
 17 were not expressing in one way or another whether these six  
 18 allegations that you listed were appropriate grounds for  
 19 potential overturning of the case on cassation?  
 20 A. No. The grounds--we will see again--of the  
 21 judgment; of the instance judge, must originate from some  
 22 illegality ground...  
 23 Q. I don't mind if you explain yourself, but can you  
 24 at least begin with an answer to my question, and then if  
 25 you need to explain, I am not going to interrupt you.

04:48 1 Are you saying when you listed these six  
 2 categories and when you said the National Court can review  
 3 these allegations, by "review," did you mean, well, they  
 4 have to consider anything that Chevron says, but, of  
 5 course, we don't know whether they are allowed to actually  
 6 rule on that basis, or did you mean these were legitimate  
 7 grounds that, if proved, could result in a successful  
 8 cassation appeal?  
 9 A. Let's see: None of the two. First, because these  
 10 allegations could not be proven at the cassation level.  
 11 No, I repeat: There is no evidentiary period at the  
 12 cassation period. That is not the concept. These  
 13 allegations that give grounds for Chevron's allegations in  
 14 connection with its cassation appeal, are allegations  
 15 regarding Procedural Rule violations. These were the ones  
 16 presented at the cassation level. Right?  
 17 Then, what are you saying? For example, what is  
 18 the cassation appeal saying? Lack of jurisdiction.  
 19 Violation of Article--I don't remember exactly but let's  
 20 say...  
 21 Q. Can we stay focused on the one ground that I have  
 22 been asking you about, which is drafting of the Judgment by  
 23 a third party? I'm not asking you about lack of  
 24 jurisdiction. Can you confine your answer to the one  
 25 ground that I'm asking you about? Can someone successfully

04:49 1 win a cassation appeal in Ecuador on the basis that the  
 2 original Judgment was drafted by a third party? Yes or no.  
 3 A. At the cassation level, what Judgment? Well, it  
 4 depends, you will see. Let me give you a context.  
 5 I'm going to assume that this fact took place at  
 6 the trial level. The appeal of the trial level has an  
 7 evidentiary period. Okay? During the evidentiary period,  
 8 I could submit evidence. If the evidence was correctly  
 9 presented, then a judgment was going to be handed down, and  
 10 a decision was going to be made. The evidence was  
 11 correctly submitted. It was timely.  
 12 Can I win a cassation appeal with that argument  
 13 under those circumstances? Possibly, yes. Everything is  
 14 in order. Okay, do we agree?  
 15 Q. So, if I understand correctly your answer is,  
 16 Number 1, and I'm going to try to walk through these in  
 17 steps. Number 1, you would agree that drafting of--that  
 18 you can win a cassation appeal in Ecuador on the basis of  
 19 proving drafting of the Judgment by a third party in  
 20 certain circumstances; is that correct? And we'll get to  
 21 what those are?  
 22 A. That depends on the case, yes. That depends on  
 23 the case.  
 24 Q. And that circumstance would be when the drafting  
 25 of Judgment by a third party can be proved by reference

04:51 1 only to documents legitimately admitted into the trial  
2 court record?  
3 A. Let us say that in the proceeding and at the  
4 relevant stages, evidently, yes.  
5 Q. Okay. So, the distinction that you're making is  
6 Scenario 1 you can put--if you have documents that are duly  
7 admitted to the trial court record, and on those bases you  
8 can conclude that the Judgment was drafted by a third  
9 party, in that scenario, you can win a cassation appeal in  
10 Ecuador?  
11 A. Yes, hypothetically, according to your statement,  
12 I would require that the appellate judgment, the second  
13 instance had failed to estimate, for example, duly  
14 submitted evidence, violating a rule and a rule in  
15 connection with the drafting of the Judgment; correct?  
16 That is to say, the evidence regarding the ghostwriting of  
17 the Judgment was set aside without grounds for doing so, in  
18 violation of evidentiary rules. For example I will present  
19 a cassation appeal. Surely, I will allege Ground 3 of  
20 Article 3 that has to do with violating rules regarding the  
21 weighing of the evidence, and surely the court if it finds  
22 that the allegation is well-founded in accordance with  
23 everything in the proceedings, it will say whether the  
24 violation of the evidentiary rule existed, in relation to  
25 these documents which were improperly produced in the

04:52 1 proceeding, and then the trial court Judgment will be  
2 quashed, and the court will issue another Judgment in its  
3 place. That is how the system works.  
4 Q. I appreciate the explanation again, but I want to  
5 clear up the record just so that we're talking, and so if  
6 you could try to give a shorter answer so that I make sure  
7 we're on the same page.  
8 Assume a first-instance Judgment that is appealed  
9 to the Provincial Court, and one of the allegations made on  
10 appeal to the Provincial Court is that the Judgment was  
11 drafted by a third party. Okay?  
12 A. Okay.  
13 Q. Assume that the Provincial Court denies the  
14 appeal, and then there is a cassation appeal on the same  
15 basis, obviously under a different law, Law 3 on Cassation,  
16 but the same allegation is made: Ghostwriting of the  
17 Judgment. Okay? Assume that.  
18 A. Okay, I'm going to assume that. I would like to  
19 assume that but you need to add what the legal rule  
20 violated was, and then I'm going to be able to answer with  
21 no problems in connection with what would happen at the  
22 cassation level. Up to what you've said, everything is  
23 clear. All these factual circumstances, you see?  
24 Q. So, do you believe--let's explore that. Do you  
25 believe that drafting of the Judgment, a first-instance

04:55 1 Judgment, by a third party--let's say the Plaintiffs who  
2 win the Judgment--do you believe that that violates a legal  
3 rule under Ecuadorian law?  
4 A. Assuming the fact, yes, if there is a  
5 violation--imagine, there is a due process violation, there  
6 are criminal offenses committed, a number of legal  
7 provisions would be violated, of course.  
8 Q. Okay. So, let's take the due process one as the  
9 basis in my hypothetical, and now we are before the  
10 Cassation Court, okay? You agree with me that, in that  
11 situation--and again, I'm not asking you obviously to talk  
12 about the facts being right or wrong--in that situation, it  
13 is appropriate for the Cassation Court to review the  
14 question of whether the Judgment was drafted by a third  
15 party, and potentially, depending on its analysis, overturn  
16 the Judgment on due process grounds?  
17 A. Perfectly, yes.  
18 You have put to me a violation of a legal  
19 provision, and that is exactly what happens in Chevron's  
20 cassation appeal. That legal provision is reviewed on the  
21 basis of the case file, and then the problem of the  
22 external evidence arises. If I would like to ground the  
23 violation of the due process, which is exactly what's  
24 stated there--right?--with external pieces of evidence  
25 then, surely the Cassation Court is going to say no, you

04:56 1 have to go to the right course, why? Because you're going  
2 to have to show the fact. And what is the fact? The fact  
3 is that someone else has drafted that ruling; correct?  
4 Q. So, to be clear, in that scenario that I gave you,  
5 we agree if that can be shown based on the existing record,  
6 it can be overturned on cassation for that reason that we  
7 were discussing; right? And the reason for that--the  
8 reason for that distinction is because Ecuadorian courts  
9 can only rely on evidence that's duly admitted into the  
10 record?  
11 A. Exactly. That is the difference. It's not  
12 anything that is included in the case file. Rather, the  
13 things that have been added to the case file in accordance  
14 with procedural rules, okay?  
15 MR. CORIELL: Mr. President, we have been going  
16 for some time. I don't know if--I'm getting a head signal  
17 that this might be a good time for a break.  
18 PRESIDENT VEEDER: We're going to break at  
19 5:00 o'clock for 15 minutes but before we do, we're not  
20 pressing you in any way because we're ahead of schedule,  
21 but can you give us some idea whether you will finish  
22 tonight or will we go into tomorrow morning?  
23 MR. CORIELL: Can I reflect on that and let you  
24 know after the break?  
25 PRESIDENT VEEDER: Absolutely.

04:58 1 Come back in 15 minutes.  
 2 MR. CORIELL: Okay, thank you.  
 3 PRESIDENT VEEDER: We say this to all witnesses,  
 4 we ask you not to discuss the case or your testimony whilst  
 5 you're away from the Tribunal. Do you understand?  
 6 THE WITNESS: Yes, I will do that, Mr. President.  
 7 PRESIDENT VEEDER: Thank you.  
 8 (Brief recess.)  
 9 PRESIDENT VEEDER: Let's resume.  
 10 (Overlapping interpretation.)  
 11 MR. CORIELL: I'm not going to be able to finish  
 12 tonight. I suspect I have 2, 2.5 hours left to go, and I  
 13 wonder if it might--rather than starting a new, topic it's  
 14 been fairly slow-going, so I'm a little reluctant to start  
 15 a new topic so late in the day, and I would be happy to  
 16 break now and resume in the morning, if that makes the most  
 17 sense, but I'm in your hands.  
 18 PRESIDENT VEEDER: The proposal is that we stop  
 19 now. It's been a long day for most of us, and we will  
 20 start again tomorrow at 9:30, but clearly we will finish  
 21 tomorrow without any doubt whatever.  
 22 MR. CORIELL: Absolutely.  
 23 PRESIDENT VEEDER: Is that inconvenient or  
 24 agreeable to the Respondent?  
 25 MR. LEONARD: It is agreeable to the Respondent.

CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

  
 DAVID A. KASDAN

05:10 1 PRESIDENT VEEDER: Well, it's agreeable to  
 2 everybody, so we will stop today's Hearing, and we will  
 3 come back tomorrow at 9:30 to hear more questions put to  
 4 you. Again, we ask you not to discuss the case or your  
 5 testimony over night away from the Tribunal, not until you  
 6 come back at 9:30.  
 7 Do you understand that?  
 8 THE WITNESS: I will be isolated.  
 9 PRESIDENT VEEDER: You don't have to be isolated.  
 10 You can meet anybody you like, but just don't talk about  
 11 the case. See you tomorrow at 9:30.  
 12 THE WITNESS: See you tomorrow then.  
 13 PRESIDENT VEEDER: Then tomorrow we must come back  
 14 to the site visit Draft Order.  
 15 (Whereupon, at 5:11 p.m., the Hearing was  
 16 adjourned until 9:30 p.m. the following day.)  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

IN THE MATTER OF AN ARBITRATION BEFORE A TRIBUNAL  
CONSTITUTED  
IN ACCORDANCE WITH THE TREATY BETWEEN THE U.S.A. AND THE  
REPUBLIC OF ECUADOR CONCERNING THE ENCOURAGEMENT AND  
RECIPROCAL PROTECTION OF INVESTMENT, SIGNED AUGUST 27, 1993  
(THE "TREATY")

and

THE UNCITRAL ARBITRATION RULES 1976

- - - - -x  
 In the Matter of Arbitration :  
 Between: :  
 :  
 CHEVRON CORPORATION (U.S.A.), :  
 TEXACO PETROLEUM COMPANY (U.S.A.), :  
 :  
 Claimants, : PCA Case No.  
 : 2009-23  
 and :  
 :  
 THE REPUBLIC OF ECUADOR, :  
 :  
 Respondent. :  
 - - - - -x Volume 11

TRACK 2 HEARING

Tuesday, May 5, 2015

The World Bank  
700 18th Street, N.W.  
J Building  
Conference Room JB1-080  
Washington, D.C. 20003

The Hearing in the above-entitled matter convened  
at 9:30 a.m. before:

- MR. V.V. VEEDER, Q.C., President
- DR. HORACIO GRIGERA NAÓN, Arbitrator
- PROFESSOR VAUGHAN LOWE, Q.C., Arbitrator

## Registry, Permanent Court of Arbitration:

MR. MARTIN DOE, Secretary to the Tribunal

## Additional Secretary:

MS. JESSICA WELLS

## Court Reporters:

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1 PROCEEDINGS
2 PRESIDENT VEEDER: Good morning, ladies and
3 gentlemen. We'll start Day 11 of this Hearing.

[Redacted text block]

15 Any other housekeeping matters? We ask the
16 Claimants first.
17 MR. CORIELL: Nothing for the Claimants.
18 PRESIDENT VEEDER: For the Respondent?
19 MR. LEONARD: Just one minor recommendation. It's
20 for the sake of the interpreters, for the Expert to slow
21 down a little bit in order to making his recommendations
22 since yesterday.
23 PRESIDENT VEEDER: Mr. Andrade, I hope you can
24 hear me through the interpreter.
25 THE WITNESS: I'm listening to you, Mr. President,

C O N T E N T S

PRELIMINARY MATTERS: 2358
WITNESSES:
FABIÁN ANDRADE NARVÁEZ
Continued cross-examination by Mr. Coriell 2359
Redirect examination by Mr. Leonard 2409
Questions from the Tribunal 2439
Further redirect examination by Mr. Leonard 2450
Recross-examination by Mr. Coriell 2453
PROCEDURAL DISCUSSION 2456

09:28 1 yes. Good morning.
2 PRESIDENT VEEDER: I'm being asked to remind you,
3 but also to remind all others that because your questions
4 and answers are being translated, it's very important to
5 speak slowly and also to leave a break between the question
6 and the answer. This applies to counsel just as much as to
7 witnesses. So, if you could bear that in mind, we may get
8 on more quickly with less difficulty.
9 FABIÁN ANDRADE NARVÁEZ, RESPONDENT'S WITNESS, RESUMED
10 PRESIDENT VEEDER: Well, we return to the
11 questions from the Claimants.
12 MR. CORIELL: Thank you, Mr. President.
13 CONTINUED CROSS-EXAMINATION
14 BY MR. CORIELL:
15 Q. Good morning, Dr. Andrade. I want to pick up with
16 just a few final questions on where we ended yesterday
17 because we stopped a little early, and you'll recall that
18 we were discussing a ghostwriting of a judgment by a
19 Plaintiff is a serious allegation; right?
20 A. Good morning.
21 Yes, of course, it is quite a serious allegation.
22 (Technical difficulty.)
23 (Pause.)
24 Q. And ghostwriting of a judgment is illegal in
25 Ecuador because it violates due process; correct?

09:30 1 A. That is correct.  
 2 Q. And we agreed yesterday that any court hearing  
 3 that allegation has to decide that allegation as long as it  
 4 can do so based on evidence duly admitted to the  
 5 trial-court record; right?  
 6 A. That is correct, yes.  
 7 Q. So, I'd like for you to assume a hypothetical  
 8 situation with me, okay?  
 9 A. With pleasure, yes.  
 10 Q. Okay. Number one, a first-instance court issues a  
 11 judgment against a Defendant, and that judgment relies on a  
 12 document that I will call, "Document A," okay?  
 13 A. Very well, yes.  
 14 Q. Number two, the Defendant appeals that judgment,  
 15 and it loses at the Provincial Court, okay?  
 16 A. Very well, yes.  
 17 Q. Number three, the Defendant files a cassation  
 18 appeal, and one of its allegations is that Document A is  
 19 not in the original trial-court record, okay?  
 20 A. Correct.  
 21 Q. In that situation, you would agree that the  
 22 Cassation Court is required to consider and decide upon  
 23 that allegation; correct?  
 24 A. If it is under a rule, then, yes.  
 25 Q. Okay. And you would agree that the Cassation

09:33 1 it's going to find that document; correct?  
 2 A. Yes, of course, in connection with the case put  
 3 forth to the Cassation Court. And if the document, the  
 4 specific document, is relevant, it is going to review it,  
 5 and it is going to find it in the case file.  
 6 Q. And if it doesn't find it, then, obviously, it  
 7 would sustain the appellant's allegation that it's not  
 8 there?  
 9 A. I think so. I believe so.  
 10 Q. Okay. I'd like to go back to your First Report,  
 11 which we were discussing yesterday. This is behind Tab 1,  
 12 and it's the February 2013 Report. And just to refresh  
 13 what I think we agreed to yesterday, if I need to point you  
 14 to the discussion we had, I can do that, but you already  
 15 testified that as of the time you wrote this Report, you  
 16 had reviewed the violations that Chevron had alleged in its  
 17 cassation appeal; correct?  
 18 A. In connection with the contents, yes.  
 19 Q. And you had reviewed the violations described in  
 20 Claimants' Memorials in the arbitration proceedings; right?  
 21 A. Yes, the statements of the Memorial, I did review  
 22 them, and I compared them with the cassation writ.  
 23 Q. And then you described those allegations in the  
 24 Memorial and in the cassation writ as the same issues,  
 25 nearly the same I believe was the terminology you used?

09:31 1 Court, in doing that, couldn't determine whether Document A  
 2 is in the trial-court record by simply looking at the  
 3 trial-court record; correct?  
 4 A. Yes, of course. If this was an allegation in  
 5 connection with a provision related to matters in  
 6 connection with the weighing of the evidence--that's what  
 7 is important. And if a cassation appeal has been submitted  
 8 and if the violated rule relates to the weighing of  
 9 evidence, and if the appellant states that this is a  
 10 specific document that was involved, Document A, the Court  
 11 is going to consider the violation of the provision, and  
 12 it's going to make specific reference to the document that  
 13 is included in the case file, yes, that is the case.  
 14 Q. So, by definition, it would not have to consider  
 15 evidence extrinsic to the record in this hypothetical;  
 16 correct?  
 17 A. Yes, exactly.  
 18 Q. Because, if a document is duly admitted to the  
 19 trial-court record, and if you review that trial-court  
 20 record, you'll find the document in the record; is that  
 21 fair?  
 22 A. Could you please repeat the question?  
 23 Q. Sure.  
 24 If a document is duly admitted to the trial-court  
 25 record, and if the Cassation Court reviews that record,

09:35 1 A. Exactly, these are the allegations that are put  
 2 forth in connection with a series of violations of  
 3 provisions, legal provisions, that were put to the  
 4 Cassation Court, yes.  
 5 Q. And then you said that those allegations fell  
 6 squarely within each of the grounds established in  
 7 Article 3 of the Law of Cassation; right?  
 8 A. Yes. In fact, I describe the grounds under  
 9 Article 3. I state the different legal arguments that are  
 10 put to the Court, and these allegations fall squarely  
 11 within the concepts of due process and right to defense.  
 12 Essentially, these are the two notions that have to do with  
 13 legal arguments put to the Court, yes.  
 14 MR. CORIELL: Okay. And just for the Tribunal's  
 15 reference, that's at Paragraph 81 of the First Report.  
 16 BY MR. CORIELL:  
 17 Q. But if you bear with me, Dr. Andrade, I'd like to  
 18 turn you to Pages 3 to 4 in the English, I believe it  
 19 starts on Page 4 in the Spanish. It's in the Executive  
 20 Summary of your opinions in this Report, and it's Section  
 21 E, "Assessment of Evidence and Standard of Review at the  
 22 Appellate Level." And if you could let me know when you're  
 23 there.  
 24 A. Starting on Page 3; right?  
 25 Q. I'm not sure on the Spanish if it starts on 3 or

09:37 1 4, but it's Section E, "Assessment of Evidence."  
 2 A. Yes, I found it perfectly, well.  
 3 Q. And if you'll bear with me, I'm going to read this  
 4 into the record because I have just a few questions about  
 5 it.  
 6 You say: "A court hearing an appeal in a summary  
 7 oral proceeding may consider only evidence that has been  
 8 lawfully requested, ordered, and submitted during the  
 9 proceedings before the lower court. There is no  
 10 evidentiary phase at the appellate level of an oral summary  
 11 proceeding. The Appellate Court thus has no competence to  
 12 hear and rule on an issue if it does not form a merits of  
 13 the proceeding."  
 14 And then there is a second paragraph where you  
 15 say: "Chevron submitted voluminous documentary evidence to  
 16 the trial court in support of its allegations of  
 17 ghostwriting of the Judgment by the Lago Agrio Plaintiffs  
 18 and fraud surrounding the Cabrera Report and the Calmbacher  
 19 Report. These submissions were untimely and largely  
 20 comprised of inadmissible evidence under applicable rules  
 21 of procedure. The appellate panel was therefore barred  
 22 from considering as evidence the 'fraud' documents that  
 23 Chevron unilaterally submitted to the lower court, and  
 24 those submitted post-judgment in the course of its appeal  
 25 from the Judgment below." So, that's the Appellate Court.

09:40 1 of your Report as you sit here today as well; correct?  
 2 A. Yes, of course, that's correct.  
 3 Q. Now, I'd like you to imagine for me another  
 4 hypothetical, okay? I want you to imagine that this  
 5 three-paragraph Executive Summary that I just read into the  
 6 record from your First Report, that you wrote it not to  
 7 summarize for this Tribunal your expert opinion, but  
 8 instead that you wrote it as a memo for a client in Ecuador  
 9 for whom you were doing legal work, okay?  
 10 A. Yes, correct.  
 11 Q. And I want you to imagine that the purpose of the  
 12 memo, which is the purpose of this section of your report,  
 13 was to talk about the effective remedies--and I'm using  
 14 your words--for the alleged fraud--again using your  
 15 words--in the Lago Agrio Litigation, okay?  
 16 A. Okay.  
 17 Q. Would you blame your client after reading these  
 18 three paragraphs for accepting your advice that it file a  
 19 cassation appeal to remedy the alleged fraud?  
 20 A. I would not. Of course not.  
 21 Q. Would you blame your client for not filing a  
 22 collusion prosecution action to remedy the alleged fraud  
 23 since you never even mention it as a remedy anywhere in  
 24 this Report?  
 25 A. What actions do the initials you mentioned stand

09:38 1 And then you have a third paragraph: "However,  
 2 Ecuadorian law provides for at least two effective remedies  
 3 to address the alleged fraud or comparable violations of  
 4 due process and other constitutional rights by way of (1)  
 5 the cassation appeal to the National Court of Justice, and  
 6 (2) the extraordinary action for protection before the  
 7 Constitutional Court. In fact, the National Court can, and  
 8 presumably will, review Chevron's allegations of fraud and  
 9 procedural misconduct pursuant to its powers under  
 10 Article 3 of the Law of Cassation. Should the National  
 11 Court deny Chevron's cassation appeal, Chevron would have  
 12 an opportunity to file an extraordinary action for  
 13 protection before the Constitutional Court, which can and  
 14 would conduct an examination of, and redress any alleged  
 15 violation of due process during the course of the Lago  
 16 Agrio Litigation."  
 17 Now, before I ask you a couple of questions about  
 18 that, do you stand by this two-paragraph  
 19 summary--three-paragraph summary that you wrote in your  
 20 First Report? Do you stand by that today?  
 21 A. Yes, I do. Those three paragraphs are a summary  
 22 of Paragraphs 63 to 92 of my Report, and for each  
 23 paragraph I provided an explanation and details in this  
 24 section of my Report.  
 25 Q. And you stand, of course, by Paragraphs 63 to 92

09:42 1 for?  
 2 Q. Well, I used CPA instead of saying Collusion  
 3 Prosecution Act.  
 4 Q. So, let me repeat the question.  
 5 Would you blame your client for not filing a  
 6 Collusion Prosecution Act case to remedy the alleged fraud  
 7 since you never even mentioned that as a possible remedy in  
 8 this Report?  
 9 A. No. In this Report, I do make specific reference  
 10 to parallel measures that go beyond the line that a lawyer  
 11 would follow to present these things in Ecuador. Following  
 12 an appeal, he would file a cassation appeal, presenting his  
 13 arguments. He would then file an extraordinary action of  
 14 protection, if such allegations are related to due process  
 15 and fundamental rights. And this is completely independent  
 16 from parallel actions that could be taken, and reference of  
 17 that is made specifically, I think, at Paragraph 74 of my  
 18 First Report. As you must understand, there has to be a  
 19 logical order to be followed in proceedings. At this time  
 20 we were not discussing those parallel measures, but we were  
 21 discussing those measures that were at the same  
 22 hierarchical level. First, after an appeal, you have a  
 23 cassation appeal, because I have legal arguments that I  
 24 need to put to the Court.  
 25 Then I'm going to go to the Constitutional Court



09:44 1 because I had legal constitutional arguments to put to the  
 2 Court, this regardless of the parallel measures that I may  
 3 take.  
 4 Q. Well, let me break your answer into two pieces.  
 5 Let me start with where we currently are in the document,  
 6 the paragraphs that I just read that you concluded that  
 7 these two remedies could, "redress any alleged violation of  
 8 due process during the course of the litigation." You  
 9 didn't make the distinction--and I'm talking right now  
 10 about this Executive Summary--you didn't make the  
 11 distinction here between these two remedies and some other  
 12 sorts of parallel measures that might need to be taken, did  
 13 you?  
 14 A. I did not.  
 15 Q. And you didn't use--you didn't mention the  
 16 Collusion Prosecution Act as something relating to fraud,  
 17 due process, or even collusion in this Executive Summary,  
 18 did you?  
 19 A. Not in the Executive Summary, I did not.  
 20 Q. And you did not specifically mention the Collusion  
 21 Prosecution Act anywhere in your entire--  
 22 A. You don't have to look for it because--you don't  
 23 have to look for it. Indeed, I did not specifically  
 24 mention the CPA or any other action that may be used in a  
 25 parallel manner, if you will.

09:47 1 time in a report in which you discussed, "effective  
 2 remedies to address the alleged fraud"? Do you understand  
 3 why I find that odd?  
 4 A. I understand.  
 5 In this Report, I am addressing whether, in  
 6 practice, we had at that time additional mechanisms that  
 7 Chevron could have in order to put forth its legal claims  
 8 according to a logical sequence that would be used by any  
 9 lawyer in Ecuador. If I submit an appeal to the Provincial  
 10 Court, the natural thing is to go to a cassation appeal if  
 11 I have legal claims. The legal claims were evidence in the  
 12 cassation appeal, and we see that those are the ones put  
 13 forth in this case.  
 14 Now, the natural thing after that is that if my  
 15 legal claims have a constitutional rank, for example, such  
 16 as a violation of due process, any lawyer in Ecuador would  
 17 submit an extraordinary protection action.  
 18 So, I was answering the question: Are there  
 19 mechanisms or additional means for these claims to be put  
 20 to the courts of Ecuador? The answer is yes, and this is  
 21 the logical order in which those should have been raised.  
 22 I also say that there are parallel measures and  
 23 that are different in nature, and they're varied in nature  
 24 as well. That's what I said in my Report. We were not  
 25 discussing that the fact that the only basis and the most

09:46 1 Q. And you understand, because I know that you sat  
 2 through Ecuador's opening two weeks ago--you understand  
 3 that Ecuador's position is that the Collusion Prosecution  
 4 Act was the only proper remedy for large portions of  
 5 Chevron's allegations of fraud and ghostwriting with  
 6 respect to the Lago Agrio Judgment; right?  
 7 A. Yes, because of a specific reason: The evidence  
 8 that wants to be used as evidence is evidence that the  
 9 other Party cannot contradict. It cannot submit new  
 10 evidence. It cannot discuss that evidence. For that to  
 11 happen, what I need is a process where we can have  
 12 evidence, we can listen to the other party and in which a  
 13 decision can be made in connection with matters that are  
 14 not necessarily related to the violation of a legal  
 15 provision, but the determination of a specific fact.  
 16 Q. Dr. Andrade--  
 17 A. This was stated...  
 18 Q. And, Dr. Andrade--and if we can again stick to my  
 19 question because I wasn't asking what you were trying to  
 20 put forth there, but I appreciate the distinction that you  
 21 just made about new evidence. And you, in fact, talk about  
 22 evidentiary rules in this First Report: So, don't you find  
 23 it odd that if that is the important distinction with  
 24 respect to why Chevron needs to use the Collusion  
 25 Prosecution Act that you did not mention that mechanism one

09:49 1 relevant basis in the weighing of the evidence by Chevron  
 2 had to do with the demonstration of factual elements. And  
 3 in order to evidence factual elements, I need a specific  
 4 proceeding where I can explain to the other Party to which  
 5 I'm presenting those arguments, well, I have to indicate  
 6 that, the Judge has to weigh the evidence, notice has to be  
 7 made to the other party, everything has to be aired out,  
 8 and then the facts need to be characterized, and then a  
 9 decision of fact--a decision of law--a decision of law  
 10 needs to be made. That is all. At the time, we were not  
 11 talking about which was the most important element in the  
 12 weighing that was being made in connection with the  
 13 violations of due process. There were a number of  
 14 allegations of violations of due process. Many of them  
 15 have to do with a violation of legal provisions rather than  
 16 the determination of specific facts.  
 17 Q. And we can all look afterwards at Paragraph 74 of  
 18 your First Report and what you say about parallel measures.  
 19 I'd like to move to a different subject, if I  
 20 might, which is corporate separateness and piercing of the  
 21 corporate veil, and in particular I'm going to ask you some  
 22 questions about a portion of your Second Report, which is  
 23 behind Tab 2 at Paragraph 78, where you're responding to  
 24 certain allegations that were made at Paragraph 225 of  
 25 Chevron's Track 2 Reply Memorial?

<p>Sheet 7</p> <p style="text-align: right;">2372</p> <p>09:51 1 A. Let me look for Paragraph 78, please.  2 Q. Okay.  3 A. I have found Paragraph 78, sir.  4 Q. And you see that you're responding to a series of  5 allegations that Chevron made at Paragraph 225 of its  6 Track 2 Reply Memorial?  7 A. Are you making reference to paragraph 78 collusive  8 acts? I'm lost. You're talking about the second report,  9 Tab 2; right?  10 Q. I'm at Tab 2, which is your Second Report,  11 Paragraph 78, at which you respond to a series of  12 allegations in Paragraph 225 of Chevron's Track 2 Reply.  13 Are you with me?  14 A. I found it, yes, thank you.  15 Q. And if you go to Tab 9, I'm going to show you the  16 particular accusation that Chevron made that I would like  17 to discuss with you. This is, in fact, the Track 2--it's  18 an excerpt from the Track 2 Reply, and I'm looking at  19 Page 102, the second bullet point. If you let me know when  20 you're on Page 102 of Tab 9.  21 A. I have found Tab 9, sir, yes.  22 Q. And you see in that second bullet point: One of  23 Chevron's allegations is that on October 15 of 2012, the  24 Lago Agrio Court issued an order against numerous assets of  25 Chevron and its subsidiaries, including the \$96 million</p>	<p style="text-align: right;">2374</p> <p>09:55 1 A. Yes, I've seen it.  2 Q. And you understand, as a general matter, that in  3 this Order, the Lago Agrio Court declares that the Judgment  4 may be enforced against the assets of dozens of direct and  5 indirect Chevron subsidiaries across the world; right?  6 A. That is the decision made, a series of assets are  7 seized, and these are subsidiaries of Chevron's, is my  8 understanding.  9 Q. And if you look at the bottom of Page 2 and most  10 of Page 3, you see a long list of all of those Chevron  11 subsidies whose assets are being seized to satisfy this  12 Judgment; right? Do you see that long list of companies  13 that takes up a page around Page 3 of the Order?  14 A. Yes, I see it. It is a long list, and the heading  15 of the Order says: "it is decreed that the enforcement of  16 this Judgment be enforced against the whole of the assets  17 of Chevron Corporation," and there is a list of  18 subsidiaries with the understanding that they belong to  19 Chevron Corporation.  20 Q. And then we can see that one of the companies that  21 this Order declares the Judgment may be enforced against is  22 actually Texaco Petroleum Company or TexPet. And we can  23 see that, I think, on Page 4, unfortunately, it's all one  24 paragraph, but it's a little more than halfway down, where  25 it says "the attachment also extends to all the Funds</p>
<p style="text-align: right;">2373</p> <p>09:53 1 Arbitral Award issued in the earlier Chevron versus Ecuador  2 BIT arbitration.  3 Do you see that?  4 A. I do see that, yes.  5 Q. Okay. So, let's go back to where you address that  6 contention which, just for reference, it's at Page 32 of  7 your Second Report. And you referred to that October 15th  8 Order as the "Seizure Order." And if you let me know when  9 you're ready, I can point you to the Order itself.  10 Do you understand the Seizure Order that I'm  11 talking about?  12 A. You're talking about the Seizure Order, yes, yes.  13 Q. Yes.  14 A. An attachment order, yes. Yes, that is an order  15 that is handed down at the enforcement stage, yes.  16 Q. Right. So, let's look at that, and I'm sorry, but  17 it's--the Order itself is in your Volume 2 binder behind  18 Tab 18.  19 A. It's only in English; right?  20 Q. There should be a Spanish translation right behind  21 the pink divider.  22 A. Yes, I found it, yes.  23 Q. And you understand generally, you have seen that  24 Order before; right? You reviewed it in working on your  25 Second Report?</p>	<p style="text-align: right;">2375</p> <p>09:57 1 deposited and existing in a certain account as well as any  2 other account, investment or fund owned by Texaco Petroleum  3 Company or TexPet."  4 Do you see that?  5 A. Yes, yes, I do see that.  6 Q. So, this Order by purporting to seize the assets  7 of TexPet to satisfy this Judgment, made TexPet a debtor on  8 this Judgment; correct?  9 A. No, that is not correct. This is the enforcement  10 stage of a decision that determines who the debtor is.  11 Now, at the enforcement stage, what must be  12 ordered here--and this is what is ordered here--well, the  13 attachment of the assets of Chevron, Chevron is a debtor  14 determined by the Judgment. On the basis of the  15 information provided to the Court by the creditor, I  16 understand, the Court understands that Chevron has property  17 and assets related to all of the subsidiaries.  18 Now, the normal thing to do at the enforcement  19 stage, if Chevron has no property in connection with these  20 companies, the owner of the assets, what they do is they  21 submit an action called "third-party actions by legitimate  22 owner" to exclude assets from enforcement proceedings, so  23 that they exclude from enforcement what does not belong to  24 Chevron at that stage. That is what goes on in those  25 proceedings.</p>

09:59 1 Q. I think we may be misunderstanding each other, so  
2 let me try that again.  
3 This Order attaches assets that belong, in part,  
4 to Texaco Petroleum Company; would you agree with that?  
5 And I can point you to the specific reference if that would  
6 help.  
7 A. Yes, that would be a good idea, yes.  
8 Q. So, on Page 5, about 10 lines up or so, you see a  
9 Number 6, and it says: "Likewise, and with the same  
10 content, the Ministry of Economics and Finance shall be  
11 notified of the attachment decreed over the total amount of  
12 the Award of U.S. \$96 million owed by the Government of  
13 Ecuador to Chevron Corporation as a result of an  
14 arbitration award." And then it says, "shall be notified  
15 of the attachment decreed" on the entire award of that  
16 amount against the Government.  
17 Do you see that?  
18 A. I do see that. In this ruling, reference is made  
19 to Chevron Corporation. That is to say--  
20 Q. Did you know that one of the Claimants with an  
21 interest in that whole U.S. \$96 million Award is Texaco  
22 Petroleum Company?  
23 A. I did not know that, Mr. Coriell. In fact, if it  
24 has interest, Texaco is going to be able to submit a  
25 third-party action by legitimate owner to exclude assets

10:01 1 from enforcement proceedings, so as to exclude from  
2 enforcement assets belonging to Texaco. No rights are  
3 declared at the enforcement stage. Right?  
4 What happens is that the mechanism is established  
5 for the debt to be, indeed, collected, and those that are  
6 affected by a Seizure Order over assets that do not belong  
7 to the debtor, can file a third-party action by legitimate  
8 owner to exclude assets from enforcement proceedings, thus,  
9 preventing that assets that do not belong to Chevron, be  
10 part of the assets seized and over which a debt is being  
11 enforced.  
12 Q. Well, let's go back, then, to the previous page,  
13 Page 4, which talks about TexPet's property in particular,  
14 okay? And what it says is that the attachment extends to  
15 all the Funds in a particular bank account as well as over  
16 any other bank account, investment or fund owned by Texaco  
17 Petroleum Company or TexPet.  
18 Are you aware that the Government of Ecuador has  
19 seized TexPet's Ecuadorian bank accounts pursuant to this  
20 Seizure Order?  
21 A. No, I didn't know this. As I said before, if this  
22 is what actually happened, any subject that is interested  
23 in removing from this enforcement procedure any of his  
24 property, may file a third-party action by legitimate owner  
25 to exclude assets from enforcement proceedings. This is

10:03 1 how it works. If you want, we can give an example. Let's  
2 say that the Judge--  
3 Q. Dr. Andrade, let me ask you my next question.  
4 Because I asked if you were aware that TexPet had had its  
5 bank accounts seized, and you said that you were not, and  
6 that's fair.  
7 And I think what you're telling me, as far as how  
8 the process works, is that if TexPet's bank accounts were  
9 seized, that would not be proper; correct?  
10 A. No--  
11 Q. In this Order.  
12 A. What I'm telling you is that if the enforcement of  
13 a judgment is declared on assets that do not belong to that  
14 debtor, what I'm saying is that those third-party actions  
15 by legitimate owner to exclude assets from enforcement  
16 proceedings may be presented, thus excluding those assets  
17 from enforcement. That's what I am saying. If, indeed,  
18 there has been a situation like this--and Texaco is not a  
19 debtor based on the Judgment, they may use that action and  
20 exclude those assets from the enforcement proceeding.  
21 Obviously...  
22 Q. And if they're not--and if they're not a debtor on  
23 the Judgment, and that if they bring forward that action,  
24 then they should succeed in that action; correct?  
25 A. It seems reasonable if they are able to prove

10:04 1 ownership. Yes, that's like that.  
2 Q. Okay. Let's move to another subject, then, which  
3 is related to some of the topics that you were discussing  
4 yesterday about tort law in Ecuador, okay? Environmental  
5 tort law.  
6 You would agree with me that the Lago Agrio Case--  
7 A. We don't need this anymore, do we? Or do we still  
8 need these binders?  
9 Q. We may. Depending--we may still need the binders.  
10 You would agree with me that the Lago Agrio Case  
11 is a case about harm to the environment; correct?  
12 Environmental impact.  
13 A. It has to do with environmental harm and all of  
14 the harmful events derived from that act.  
15 Q. Okay. And my understanding from your presentation  
16 yesterday was that you interpreted it to be about both  
17 actual harm to the environment and contingent harm to the  
18 environment; right?  
19 A. No, that is not correct. What I said in  
20 connection with this is that these are damages that  
21 actually happened in connection with the environment and,  
22 for sure, to individuals, and contingent harm as a result  
23 of the environmental harm to the rights of people who live  
24 in that place or in the impaired area.  
25 Q. Does the Lago Agrio Judgment vindicate contingent

10:06 1 harm?  
 2 A. I think it does.  
 3 Q. Does the Lago Agrio Judgment vindicate actual  
 4 harm, existing harm?  
 5 A. Also. Actual harm and contingent harm. That is  
 6 what is expressed in the Judgment.  
 7 Q. Now, you agree with me that the Environmental  
 8 Management Act of 1999 is what provides us the standard for  
 9 determining whether environmental harm exists or not;  
 10 correct?  
 11 A. No, that is not correct.  
 12 What are you referring to? Are you referring to  
 13 the identification of environmental harm? Is that what  
 14 you're referring to?  
 15 Q. I'm asking if you agree that the Environmental  
 16 Management Act provides the standard for determining  
 17 whether there is or is not environmental harm. Do you  
 18 agree with that?  
 19 A. The Environmental Management Act--  
 20 Q. Would you tell me if you agree with me first, and  
 21 then given your explanation, please.  
 22 A. I do not agree. It is not accurate. What the  
 23 Environmental Management Act does is to capture as part of  
 24 the glossary what environmental harm means. That's what it  
 25 does.

10:07 1 Q. Okay. We're going to have to look to the binder,  
 2 unfortunately. It's behind Tab 20. And what this is is  
 3 your testimony from the Burlington Hearing, Page 466 in the  
 4 English, Page 478 in the Spanish.  
 5 A. At what tab, Mr. Coriell?  
 6 Q. 20.  
 7 And Page 478 of the Transcript in Spanish.  
 8 A. Yes, I got it.  
 9 Q. And if you'll look to where I asked the question:  
 10 "So, let's move on to the specific definition of harm." I  
 11 think it's Line 14 in the Spanish. I say: "You agree with  
 12 me that the Environmental Management Law of 1999 is what  
 13 provides us the standard for determining whether or not  
 14 environmental harm exists?"  
 15 And you answered: "Yes, yes, we get the reference  
 16 values from them, yes."  
 17 So, do you stand by that testimony in the  
 18 Burlington Case, that the Environmental Management Law  
 19 defines "environmental harm"?  
 20 A. What I just told you is that this Environmental  
 21 Management Act includes the definition of "environmental  
 22 harm," and you may recall that during that chat, we  
 23 discussed that environmental harm is not an abstract  
 24 determination, rather a specific actual fact; and what the  
 25 Environmental Management Act does is explain what

10:09 1 environmental harm is, that is the definition of the term,  
 2 lexicographic definition of the term.  
 3 Q. Dr. Andrade, I can promise you that I think this  
 4 will go easier if we can go through what I think are some  
 5 uncontroversial views about the definition rather than  
 6 trying to pack the entire anticipated discussion all up  
 7 front in response to my introductory questions. So let  
 8 me--I appreciate the clarification you made. We've agreed  
 9 that the Environmental Management Act is the source of the  
 10 definition for "harm," and let's try to go forward from  
 11 there.  
 12 My next question for you is: You agree that the  
 13 legal standard in the Environmental Management Act for harm  
 14 is significant negative impact; right? That's what  
 15 constitutes a harm, if it's a significant negative impact?  
 16 A. Yes, negative environmental impact, correct.  
 17 MR. LEONARD: Mr. President, excuse me. I  
 18 understand that Procedural Order Number 35 specifically  
 19 states that the cross-examination may not be limited to the  
 20 four corners of what is written in the respective Expert  
 21 Reports, but just so that the record is clear, I will make  
 22 an objection to this line of questions as exceeding the  
 23 scope of the Expert's Report.  
 24 PRESIDENT VEEDER: You may want to go a little bit  
 25 further and tell us why.

10:11 1 MR. LEONARD: The grounds for my objection?  
 2 PRESIDENT VEEDER: Yes.  
 3 MR. LEONARD: I believe that we're getting into a  
 4 subject matter that the Expert did not address in these  
 5 proceedings. If I understand the line of questions  
 6 correctly, we're going to get into issues of standard for  
 7 definition of what exactly is the meaning or the notion of  
 8 environmental harm based on technical values established by  
 9 statutes in Ecuador that are not in the record of these  
 10 proceedings. Or, at least I understand they are not in the  
 11 record of these proceedings.  
 12 PRESIDENT VEEDER: I think you better try and sort  
 13 this out now. Is that where you're going?  
 14 MR. CORIELL: Two things, Mr. President. That's  
 15 not where I'm going but just to respond to the objection as  
 16 to going through this general subject, we had a direct  
 17 presentation yesterday for a little under an hour that  
 18 discussed the substantive standards in the procedural rules  
 19 for general environmental tort liability under this  
 20 particular Act that I'm asking the Expert about.  
 21 We also had the Expert testify he had  
 22 testified as to these same standards for environmental tort  
 23 liability in the Burlington and Perenco Cases, which  
 24 testimony I'm now taking him to. So, I think that even  
 25 aside from the Procedural Order, I think that this is fully

10:13 1 in response to the scope of what was a rather expansive  
 2 direct presentation.  
 3 PRESIDENT VEEDER: There is no issue about you  
 4 referring to the Burlington Transcript--I think that's not  
 5 in controversy. Can you confirm that?  
 6 MR. LEONARD: I can confirm that, to the extent  
 7 that one aspect relevant to the presentation that Professor  
 8 Andrade--Dr. Andrade gave yesterday. One aspect is the  
 9 fact of environmental contamination, that was assumed for  
 10 purposes of presentation. I would object to any questions  
 11 about standards, technical standards, that are applied or  
 12 not applied, depending on the case, to define whether  
 13 environmental harm exists or not. For purposes of  
 14 yesterday's presentation, Dr. Andrade assumed the fact of  
 15 damage as a fact that needs to be determined by the Court  
 16 in a given case, Delfina, Lago Agrio, whatever the case  
 17 might be. He did not testify as to the standards to define  
 18 what "environmental damage" means, and that's what I would  
 19 object, again, with the caveat that Procedural Order  
 20 Number 35 might render my objection moot, but in any event,  
 21 I would like to state it for the record.  
 22 PRESIDENT VEEDER: Just give us one second.  
 23 (Tribunal conferring).  
 24 PRESIDENT VEEDER: We will note the Respondent's  
 25 objection, but we're going to allow these questions to

10:15 1 continue because we understand that the Claimants are not  
 2 going to take this Expert Witness into technical standards  
 3 as such.  
 4 MR. CORIELL: That's correct.  
 5 PRESIDENT VEEDER: Please continue.  
 6 BY MR. CORIELL:  
 7 Q. And, in fact, I think we're almost finished with  
 8 the discussion of the general standard. We've agreed that  
 9 the Act, the Environmental Management Act, defines harm.  
 10 We've agreed that the legal standard in the Act is  
 11 "significant negative impact."  
 12 So, my third question, Dr. Andrade, you agree that  
 13 a negative impact is significant if it affects the  
 14 functioning of the ecosystems or the renewability of  
 15 resources; correct?  
 16 A. That is the rule stated under the Environmental  
 17 Management Act. It captures the real meaning of  
 18 "environmental harm."  
 19 Q. Okay. So, with that general background in mind, I  
 20 would like to discuss improper joinder, which is a topic  
 21 that you have opined on in your Reports in this case;  
 22 correct?  
 23 A. Yes, correct.  
 24 Q. And to begin, I would like to discuss joinder of  
 25 third parties under Ecuadorian law, so joinder of Parties.

10:16 1 And I just want to confirm your understanding of  
 2 where you and Dr. Coronel agree and where you disagree on  
 3 this particular issue, okay? So, I have some questions  
 4 about that.  
 5 A. Excuse me, joinder of third parties? Joinder of  
 6 individuals because that is the concept they have  
 7 translated; right?  
 8 Q. I'm talking about joint--right, you are correct.  
 9 I'm talking about joinder of Parties and where you and  
 10 Dr. Coronel disagree on that subject. I just have a couple  
 11 questions for you about that, okay?  
 12 MR. LEONARD: May I suggest--may I make a  
 13 suggestion to the interpreter. You are referring to the  
 14 joinder of third parties; is that correct?  
 15 MR. CORIELL: Yes.  
 16 MR. LEONARD: That would be "llamamiento de  
 17 terceros."  
 18 PRESIDENT VEEDER: Let's proceed on that basis.  
 19 BY MR. CORIELL:  
 20 Q. Okay. Thank you for the clarification.  
 21 A. No problem. Gracias.  
 22 Q. Now, you and Dr. Coronel both agree that in a  
 23 verbal summary proceeding like the Lago Agrio Case, joinder  
 24 of third parties is not permissible; right?  
 25 A. Correct.

10:18 1 Q. You understand that Dr. Coronel believes that  
 2 joinder of third parties is permissible in ordinary  
 3 proceedings; right? That's what he thinks.  
 4 A. According to some of the assumptions under the  
 5 law, it is possible under ordinary proceedings to have this  
 6 joinder of third parties. The rule is the opposite.  
 7 Q. Before we go to the rule, I'm just trying to  
 8 define where you and Dr. Coronel agree and where you  
 9 disagree. You agree that there is no joinder of third  
 10 parties in a verbal summary proceeding; right?  
 11 A. Correct.  
 12 Q. Your view is that, in an ordinary proceeding, the  
 13 general rule is that there is no joinder of third parties;  
 14 right?  
 15 A. Correct.  
 16 Q. His view is that there is--Dr. Coronel's view is  
 17 that there is?  
 18 A. I am not understanding your assertion very well.  
 19 Q. Do you understand that Dr. Coronel's opinion is  
 20 that third parties may generally be joined in an ordinary  
 21 proceeding? I know you disagree with it. Do you  
 22 understand that that is his opinion?  
 23 A. Yes, I--yes.  
 24 PRESIDENT VEEDER: Can I stop you? You must wait  
 25 until the end of the translation because you're making it

10:19 1 very difficult for the transcribers. I can guess you speak  
 2 some English, but just wait until the Spanish finishes  
 3 before you say yes or no. Thank you.  
 4 BY MR. CORIELL:  
 5 Q. Now, your view is that, in general, joinder of  
 6 third parties is not permissible in ordinary proceedings,  
 7 but that there are a few exceptional circumstances where it  
 8 is; right?  
 9 A. That is correct.  
 10 Q. And, in your view, none of those exceptional  
 11 circumstances apply in the Lago Agrio Case?  
 12 A. That is correct.  
 13 Q. Okay. Now, we have been talking about joinder of  
 14 third parties. I now want to move to joinder of claims,  
 15 and before I do that, we may want to make sure that we have  
 16 an agreed translation for that, so that we don't have the  
 17 same confusion. All right.  
 18 PRESIDENT VEEDER: Is that agreed?  
 19 MR. LEONARD: Yes.  
 20 PRESIDENT VEEDER: Let's proceed.  
 21 BY MR. CORIELL:  
 22 Q. And you know that the joinder of claims in a  
 23 single action, that issue was discussed by the National  
 24 Court of Justice in the Lago Agrio Cassation Decision;  
 25 right?

10:23 1 use imply that these must be individual actions."  
 2 So, let's break that passage down.  
 3 Is it your understanding that if environmental  
 4 harm occurs, the Court will have jurisdiction to hear  
 5 lawsuits for two things: Degradation to health or  
 6 degradation to the environment? Is that fair?  
 7 A. That is correct. There is environmental harm, and  
 8 from that you have actual and contingent harm, that is the  
 9 concept under the law.  
 10 Q. Okay. I understand. And so, then these lawsuits  
 11 for environmental harm will be handled by means of summary  
 12 verbal proceedings; right?  
 13 A. Correct.  
 14 Q. And the Lago Agrio Case, as we discussed earlier,  
 15 is a case of environmental harm, and it proceeded under  
 16 Article 43 of the Environmental Management Act; correct?  
 17 A. Correct.  
 18 Q. And it was handled by means of a summary verbal  
 19 proceeding; right?  
 20 A. Correct.  
 21 Q. Now, in the passage I just read, the National  
 22 Court says that the Civil Code provisions--I assume like  
 23 Article 2214, Article 2236--have been auxiliary to the Lago  
 24 Agrio proceeding. You saw where it says that; right?  
 25 A. Yes, I do see it.

10:21 1 A. Yes.  
 2 Q. I would like to walk through a little of that  
 3 reasoning, if I might, to test this issue, and so the  
 4 Cassation Decision is behind Tab 19, which is in your  
 5 second binder, and we will be looking at Pages 73 and 74 in  
 6 both the English and Spanish versions, and in particular  
 7 the paragraph that begins "the Environmental Management Act  
 8 in effect at the time."  
 9 Can you let me know when you're there.  
 10 A. Seventy-three, last paragraph, yes.  
 11 Q. And let me read the passage that then I would like  
 12 to just break down and discuss with you. It says: "The  
 13 Environmental Management Act, in effect at the time the  
 14 lawsuit was filed, allows for individuals, legal entities  
 15 (individual interests), or to social groups (collective  
 16 interest) to be heard in proceedings of a civil,  
 17 administrative or criminal nature. The President of the  
 18 Superior Court where the environmental harm occurs will  
 19 have jurisdiction to hear these lawsuits for damages and  
 20 lawsuits for the degradation to health or the environment.  
 21 Lawsuits for damages resulting from environmental harm will  
 22 be handled by means of summary verbal proceedings. The  
 23 procedural rules established in the Civil Code have been  
 24 auxiliary to this proceeding, but their use does not mean  
 25 that there has been a joinder of actions, nor does their

10:25 1 Q. But then the Court is saying that the fact that  
 2 those provisions are used in the Lago Agrio proceeding does  
 3 not mean that there has been a joinder of actions; right?  
 4 A. Correct. That's what the text says.  
 5 Q. And it also says that the fact that those  
 6 provisions have been used does not imply that these must be  
 7 individual actions; right?  
 8 A. That's what you can read here in the text.  
 9 Q. Okay. Now, we're going to go back to the  
 10 Cassation Decision, so I wouldn't put your binder away, but  
 11 I would like to look at a reference that you made in your  
 12 Second Report, behind Tab 2 in the first binder, and I'm  
 13 going to be looking at Footnote 78. So, if you could let  
 14 me know when you get there.  
 15 PRESIDENT VEEDER: Page 20?  
 16 MR. CORIELL: Page 20 of the English, yes. It's  
 17 the bottom footnote.  
 18 BY MR. CORIELL:  
 19 Q. You see what I'm referring to, Dr. Andrade? It's  
 20 Footnote 78, and you're quoting a paragraph from a  
 21 Declaration of Drs. Eguiguren and Albán.  
 22 Do you see that?  
 23 A. Yes.  
 24 Q. And what they say is that the popular action,  
 25 Article 2236, would proceed as an ordinary action while an

10:27 1 action under Article 43 of the EMA would be heard through  
 2 summary oral proceedings.  
 3 Do you see where they say that?  
 4 A. Yes, I see it. This is a quote from his Report,  
 5 the Report by Dr. Eguiguren.  
 6 Q. So, don't you understand Drs. Eguiguren and Albán  
 7 to be saying that the use of Civil Code provisions like  
 8 Article 2236 does mean that there has been a joinder of  
 9 actions, does mean that these must be individual-rights  
 10 actions?  
 11 A. That was not my understanding in my Report.  
 12 Q. Okay. So, you disagree with me, and what you're  
 13 saying and your understanding of what the Cassation Court  
 14 is saying is that the mere fact that a Civil Code claim has  
 15 been made does not mean that it has to be heard in an  
 16 ordinary proceeding. That's your position?  
 17 A. Correct. Exactly, the rules under the Civil Code  
 18 are general rules. In terms of procedure, Article 43  
 19 exclusively applies to harm of an environmental origin or  
 20 nature.  
 21 Q. So, what you're saying and what you understand the  
 22 Cassation Court to be saying is that no matter the  
 23 particular cause of action that's used, the question is  
 24 whether the subject matter of the case relates to  
 25 environmental harm; is that your position?

10:29 1 A. Would you please repeat the question?  
 2 THE INTERPRETER: Says the Witness.  
 3 BY MR. CORIELL:  
 4 Q. Sure.  
 5 What you're saying and what you understand the  
 6 Cassation Court to be saying is that regardless of what  
 7 particular cause of action is being alleged, the question  
 8 for what proceeding it's supposed to be heard in is whether  
 9 the subject matter of the case relates to environmental  
 10 harm or not?  
 11 A. I think that there is a translation issue. What  
 12 I'm really saying is that the National Court here is not  
 13 saying that because the Civil Code provisions are used in  
 14 this case, you can say that this is an ordinary case under  
 15 the Civil Code provisions because this refers to the  
 16 environmental problem, the environmental harm, and  
 17 environmental issues are decided under Article 43 in terms  
 18 of procedure, and this would be my understanding, and this  
 19 is what it is said when they--when he refers to individual  
 20 actions or individual-right actions.  
 21 Q. Okay. So, I think I understand what you're  
 22 saying: Any action that substantively deals with  
 23 environmental harm or environmental impact is heard in a  
 24 single summary verbal proceeding, no matter what cause of  
 25 action is relied upon; is that a fair statement?

10:31 1 A. My statement is that when the tort system is  
 2 applied because of environmental impact, the summary oral  
 3 proceedings must be used because that is what Article 43 of  
 4 the EMA establishes.  
 5 Q. Okay. So, if it's an article--if it's an Article  
 6 2236 case alleging environmental harm, then it is required  
 7 to be heard in a summary verbal proceeding; right?  
 8 A. That is my idea. If the risk factor is  
 9 environmental damage, in order to avoid contingent harm,  
 10 one must resort to the summary oral proceedings.  
 11 Q. And that's true for contingent harm, it's true for  
 12 actual existing harm, either way; right?  
 13 A. I agree, yes.  
 14 Q. Okay. And so I would like to move back to the  
 15 Cassation Decision, and now I'm going to be on Page 200.  
 16 THE INTERPRETER: Where is it, sir? This is the  
 17 Interpreter.  
 18 MR. CORIELL: Yes, I'm sorry. It's behind Tab 19,  
 19 Page 200.  
 20 BY MR. CORIELL:  
 21 Q. And the middle paragraph at the page, I'm starting  
 22 at the Number 2 where the Court says "we must reiterate."  
 23 So, if you can let me know when you're there, Dr. Andrade.  
 24 A. I found it, yes.  
 25 Q. And so, I think this is the Cassation Court

10:33 1 describing what you just told me. It says: "We must  
 2 reiterate that the application of the Civil Code and the  
 3 Environmental Management Act is not unusual, since, as said  
 4 above, Article 43 of the Act regulates the procedure in  
 5 civil actions provided to a collective for environmental  
 6 harm." Right? So, you're saying and you understand the  
 7 Court to be saying that Article 43 takes every type of case  
 8 for environmental harm and puts it in a summary verbal  
 9 proceeding; right?  
 10 A. That is correct, yes.  
 11 Q. And so, with respect to the allegation of improper  
 12 joinder, you disagree with Chevron. You're telling us that  
 13 the mere fact that Article 43 deals with the collective  
 14 right to reparation for environmental harm means that Civil  
 15 Code actions based on the same collective right may be  
 16 heard in the same action; is that a fair statement of your  
 17 position?  
 18 A. The joinder of claims or actions takes place in  
 19 this case in the same kind of proceeding which is the  
 20 summary oral proceeding.  
 21 Now, that note regarding collective rights  
 22 concerns me a little bit, but let's say that we agree as to  
 23 procedure. That is my criteria.  
 24 Q. Okay. Maybe there is an easier way for me to  
 25 phrase it without using the concerning term "collective

10:35 1 rights."  
 2 Are you saying and are you understanding the  
 3 National Court to be saying that the substantive right at  
 4 issue in Lago Agrio is the right to a clean environment and  
 5 that Article 43 simply provides the procedure for  
 6 vindicating that right? Is that a fair statement?  
 7 A. Not really, because it is not only the right to  
 8 live in a healthy environment, what is dealt with in the  
 9 Lago Agrio Case, but it has to do with all of the rights of  
 10 each one of the inhabitants of the area insomuch as they  
 11 have been affected by an event such as environmental  
 12 contamination.  
 13 Q. Okay. Well, you began your answer by saying "it  
 14 is not only the right to live in a healthy environment,"  
 15 so, just to clear that up, you would agree that it is in  
 16 part the right to live in a healthy environment that is  
 17 what is substantively being vindicated in the Lago Agrio  
 18 Case; right?  
 19 A. It is one of the rights that is being vindicated,  
 20 yes.  
 21 Q. Okay. And let's look to how the National Court  
 22 explains it in a little more detail, and this is the  
 23 beginning of the next paragraph, "a plaintiff's standing."  
 24 Do you see that?  
 25 A. Yes, I do see that.

10:36 1 Q. And it says: "A plaintiff's standing, as we have  
 2 said, corresponds to diffuse interests must be considered  
 3 as general interests, meaning that they are interests held  
 4 by all members of a collective or a large part thereof, the  
 5 object of which consists of goods of general or collective  
 6 importance."  
 7 And then it says at the end: "The procedure in  
 8 this case is dictated by the Environmental Management Act,  
 9 complementing the Code of Civil Procedure."  
 10 So, do you understand the Court here to be saying  
 11 that the interest being vindicated substantively in the  
 12 Lago Agrio Case is a, to use its words, "general interest,  
 13 a diffuse interest" in a clean environment, at least in  
 14 part?  
 15 A. Yes. This is dealing with procedural legal  
 16 standing, and it is indicating the origin of that legal  
 17 standing in connection with the environmental problems.  
 18 Q. And if we turn the page to Page 202, the paragraph  
 19 at middle of the page that begins "As noted"--and just for  
 20 reference you will see this is Section 9.9 of the Cassation  
 21 Decision, "actions (the right to sue) existing before 1990.  
 22 Individual suits for personal injury or economic  
 23 harm."--and then you see that paragraph beginning "As  
 24 noted"?  
 25 A. I do see it, yes.

10:38 1 Q. And it says: "When a case involves damage to the  
 2 environment, it is always a collective that will be harmed,  
 3 so the Environmental Management Act itself contemplates  
 4 group actions in order to enforce the Claims of a given  
 5 group and achieve the corresponding remedies and to  
 6 exercise the fundamental right to live in a healthy  
 7 environment."  
 8 So, in the first sentence I read, you understand  
 9 the Court to be saying, when a case involves damage to the  
 10 environment, it's held by a collective, this right. It's  
 11 held by a collective; correct?  
 12 A. What it's actually saying here is that when there  
 13 is harm to the environment, generally what happens is that  
 14 there is a plurality of individuals, the collective, and  
 15 that collective is impaired, ultimately. That is what it  
 16 is saying. They're not talking about right-holding.  
 17 They're talking about the ordinary effect of the impact to  
 18 the environment, and this is effectively what happens.  
 19 Usually a collective is affected. It is not usually one  
 20 person that is affected.  
 21 Q. Well, they're talking--well, they do talk about  
 22 right-holding, don't they? Because they say it's a  
 23 collective that will be harmed, the Act contemplates group  
 24 action to enforce the Claims of the group and achieve and  
 25 exercise the fundamental right to live in a healthy

10:40 1 environment. So, you are achieving and exercising the  
 2 fundamental right to live in a healthy environment through  
 3 the collective because the collective is what's harmed with  
 4 environmental harm. Is that what you understand the Court  
 5 to be saying?  
 6 A. I do not understand that out of the paragraph that  
 7 you're citing. I am sorry to disagree, Mr. Coriell.  
 8 Q. Well, let's break it down, then.  
 9 Do you agree with the Court that, when a case  
 10 involves damage to the environment, it is always a  
 11 collective that will be harmed? Do you agree with that  
 12 statement by the Cassation Court?  
 13 A. I agree that when the environment is harmed, there  
 14 is a group of individuals, a collective, that will be  
 15 affected. That is regular, I think.  
 16 Q. I'm not--we may be saying the same thing, but just  
 17 to be clear for the record, do you agree with the Court  
 18 that, when there is environmental harm, it is always a  
 19 collective that will be harmed?  
 20 A. Yes. I think that's natural.  
 21 Q. And do you agree with the Court that the  
 22 Environmental Management Act contemplates group  
 23 actions--let's stop there. Do you agree with the Court  
 24 that the Environmental Management Act contemplates group  
 25 actions?



10:42 1 A. Yes. As I indicated, you have a group there, a  
 2 determinative group of people that are directly impaired,  
 3 and they're held together by a common interest. That is  
 4 the first part of Section 43, yes.  
 5 Q. Do you agree with the Court that the purpose of  
 6 these group actions is to enforce the Claims of a given  
 7 group?  
 8 A. Yes, of course.  
 9 Q. And do you agree with the Court that another  
 10 purpose of these group actions is to achieve the  
 11 corresponding remedies for that group?  
 12 A. Of course, the corresponding remedies as a  
 13 function of the legal interest that has been impaired, the  
 14 legally protected right that has been impaired.  
 15 Q. And do you agree with the Court that a third  
 16 purpose of these group actions is to exercise the  
 17 fundamental right to live in a healthy environment?  
 18 A. Yes, indeed. As an individual right to live in an  
 19 environment that is healthy, that is ecologically balanced  
 20 and free of contamination, yes.  
 21 Q. And am I right that, when we speak of the  
 22 fundamental right to live in a healthy environment, that is  
 23 the right that used to be contained at Article 19.2 of the  
 24 Ecuadorian Constitution?  
 25 A. 19.2, the right to live in a healthy environment,

10:44 1 ecologically balanced and free of contamination. That is  
 2 what the 1998 Constitution put forth.  
 3 Q. And your understanding--because we have been  
 4 looking at the portion of the Cassation Decision that talks  
 5 about the joinder of Civil Code claims and Chevron's  
 6 objection to that--your understanding that when the  
 7 Court--is that when the Court sets out this reasoning that  
 8 you and I have just walked through, they're saying that  
 9 this--and I know you said that there are other rights being  
 10 vindicated as well--so, they're saying, in part, that this  
 11 fundamental right to live in a clean environment is simply  
 12 being vindicated procedurally by the Environmental  
 13 Management Act; right?  
 14 A. Yes, the right to live in a healthy environment is  
 15 a large umbrella that includes a series of  
 16 rights--secondary-rank rights, if you will--that have to do  
 17 with health, with the control of pollution, yes. If you  
 18 are vindicating, let's say from a procedural standpoint, a  
 19 number of rights and legally protected interests are being  
 20 vindicated, rights and interests that are spread out  
 21 throughout the legal system. Yes, that is the mechanism  
 22 and nothing more.  
 23 Q. And your point is that the substance of the rights  
 24 does not come from the Environmental Management Act. The  
 25 Environmental Management Act is merely a procedural vehicle

10:45 1 for vindicating those rights; right?  
 2 A. Article 43, yes. Article 43. What the EMA does  
 3 is to establish or arrange the procedural matters for the  
 4 exercise of rights; in this case, rights that have to do  
 5 with vindication via the tort-liability system that is  
 6 general in nature.  
 7 Q. And just to close this point on improper joinder  
 8 since we have been walking through what the Cassation Court  
 9 said about it, if we go to the next paragraph on Page 202  
 10 of the Cassation Decision, the one that begins with the  
 11 word "further," are you with me?  
 12 A. Yes, I'm looking at the paragraph right now.  
 13 Q. The National Court of Justice concludes its  
 14 analysis saying "it is mistaken to state that Article 2214  
 15 of the Civil Code only contemplates individual actions,  
 16 considering that Title XXXIII, Intentional and  
 17 Unintentional Torts, provides for a popular-action lawsuit  
 18 in all cases of contingent damages in which indeterminate  
 19 persons are threatened by a party's imprudence or  
 20 negligence."  
 21 So, in other words, the Civil Code doesn't just  
 22 contemplate individual actions, it contemplates collective  
 23 actions for environmental harm like the Lago Agrio Case;  
 24 correct?  
 25 A. We have spoken about this. It does not only refer

10:47 1 to tort liability in connection with damages to individuals  
 2 considered independently. It also takes into account cases  
 3 where a number of individuals are impaired, and we can  
 4 think about this from this idea of group or collective  
 5 actions. I agree with what the Court says. It's very  
 6 clear.  
 7 Q. Okay. But just so that we're clear on the record,  
 8 the Court is referring to indeterminate persons--you see  
 9 that in this passage that I just read you--and so your  
 10 understanding of what it's saying is that the Civil Code  
 11 does not just contemplate individual actions, it also  
 12 contemplates collective actions for environmental harm like  
 13 the Lago Agrio Case; is that a fair statement?  
 14 A. Yes, that is correct.  
 15 Q. Okay.  
 16 MR. CORIELL: Mr. President, this may be a good  
 17 time for a break, at which point I think I can be very  
 18 short when I get back.  
 19 PRESIDENT VEEDER: Let's take a break now of 15  
 20 minutes. We will come back at 10 past 11:00.  
 21 Again, as always, please don't discuss the case or  
 22 your testimony away from the Tribunal. Thank you.  
 23 (Brief recess.)  
 24 PRESIDENT VEEDER: Let's resume.  
 25 Would you please give us some indication as to how

11:06 1 long you might be.  
 2 MR. CORIELL: I think it could be 20 to 30  
 3 minutes.  
 4 PRESIDENT VEEDER: Take your time. We've got  
 5 plenty of time.  
 6 BY MR. CORIELL:  
 7 Q. Dr. Andrade, I'd like to look at Article 397 of  
 8 the current 2008 Constitution. That's the Constitution  
 9 that's currently in force in Ecuador; correct?  
 10 A. Yes.  
 11 Q. And it's the Constitution that was in force when  
 12 the Lago Agrio Judgment was issued in February 2011; right?  
 13 A. That is correct.  
 14 Q. And the Lago Agrio Judgment was required to apply  
 15 and did apply the principles set out in the 2008  
 16 Constitution; correct?  
 17 A. I assume that they must have considered the  
 18 Constitution of 2008 in connection with principles. I  
 19 assume so.  
 20 Q. Okay. And I said I'd go to Article 397. It's at  
 21 Tab 13, which is in Volume 1 binder. It's Exhibit C-288.  
 22 And I think behind Tab 13 will be at Page 8 in the English,  
 23 and Page 178 in the Spanish.  
 24 A. I'm sorry, what tab?  
 25 Q. The English is not numbered, but it's Page 8.

11:10 1 is that, if the State finds that the natural environment  
 2 was impaired, it's not going to wait for long proceedings  
 3 before adopting a measure that avoids the situation. When  
 4 the State adopts the Measure, obviously, it has to recover  
 5 the costs incurred by going against the individual that  
 6 caused the harm. This is the regime established on  
 7 Article 397 of the Constitution in force starting in 2008.  
 8 And by the way, this is not a principle. It's a rule that  
 9 has been incorporated into the Constitution.  
 10 Q. So, I want to do one more hypothetical with you,  
 11 Dr. Andrade.  
 12 Assume with me that, in 2009, which was two years  
 13 before the Lago Agrio Judgment, the Ecuadorian State became  
 14 aware of environmental harm in the former Concession Area;  
 15 okay?  
 16 A. Yes, okay.  
 17 Q. Under Article 397 of the Constitution then in  
 18 force, Ecuador had the obligation to act immediately to  
 19 ensure the health and restoration of the ecosystems in the  
 20 former Concession Area; right?  
 21 A. Pursuant to this rule in the Constitution, yes,  
 22 that is the duty that the State has.  
 23 Q. And then, after it did that, it could seek  
 24 restitution from the Operator of the activity that produced  
 25 the harm; right?

11:08 1 It's behind the backside of the fourth physical page, and  
 2 it's 178 in the Spanish.  
 3 Will you let me know when you read Article 397,  
 4 Dr. Andrade?  
 5 A. I found it, yes.  
 6 Q. And this article of the Constitution says that, in  
 7 the event of environmental damage, the State shall act  
 8 immediately and subsidiarily to ensure the health and  
 9 restoration of the ecosystems; right?  
 10 A. Yes, that is what the provision says.  
 11 Q. And so what this is saying is that the State has  
 12 to act immediately in a case where it sees environmental  
 13 harm; correct?  
 14 A. It is a general rule, yes, that is the case.  
 15 Q. And then it goes on to say that, in addition to  
 16 whatever sanction there is for environmental harm, the  
 17 State shall seek restitution from the Operator of the  
 18 activity that produced the harm; right?  
 19 A. That is correct, yes. That is what the provision  
 20 says.  
 21 Q. So, what that does is it creates a right, the  
 22 right to receive compensation for whatever the State had to  
 23 invest in order to protect the natural environment. That's  
 24 what the Constitution says; right?  
 25 A. Yes. Starting in 2008, the purpose of this system

11:12 1 A. Theoretically it could, yes.  
 2 Q. If in this hypothetical it believed that TexPet  
 3 produced the harm, it could seek restitution from TexPet  
 4 for whatever it had to invest in order to protect the  
 5 natural environment. That's what the Constitution says;  
 6 right?  
 7 A. Yes. The Constitution, when it makes reference to  
 8 issues that are environmental in nature and the damages  
 9 caused to the environment, in the abstract, well, the State  
 10 could do that, and it could go after any operator that  
 11 caused the damage and seek restitution. In this case,  
 12 we're talking about rights and duties that are different.  
 13 The State has nothing to do with this matter, though.  
 14 Q. I understand, but, Dr. Andrade, you are aware  
 15 that, if Ecuador sought restitution from TexPet for  
 16 environmental harm in the former Concession Area, it would  
 17 be barred from doing so by the 1995 Settlement Agreement  
 18 and the 1998 Final Release, wouldn't it?  
 19 A. I didn't understand the question. Excuse me.  
 20 What couldn't the State do?  
 21 Q. If Ecuador sought restitution from TexPet for  
 22 environmental harm in the former Concession Area, it would  
 23 be barred from doing so by the 1995 Settlement Agreement  
 24 and the 1998 Final Release, wouldn't it?  
 25 A. I don't know the details of that Agreement.

<p>Sheet 16</p> <p style="text-align: right;">2408</p> <p>11:14 1 Q. You've read the Cassation Decision in this case?  2 A. I did, yes.  3 Q. And you're aware that the Cassation Decision spent  4 a lot of time discussing this Agreement?  5 A. From the viewpoint of the system of res judicata  6 and the system related to settlement, the details of the  7 commitments made by the State institutions under that  8 Agreement, well, those details, I don't know them  9 specifically, but if you're saying that, I accept your  10 comment.  11 Q. And if we could just put up on the screen,  12 Mr. Johnson, the Track 1 Counter-Memorial from Ecuador in  13 this case, it was from October 2012, and I'm looking at  14 Paragraph 133. It's not in your binder, but I'll read it  15 to you once we get it up on the screen.  16 THE INTERPRETER: Mr. Coriell, read slowly,  17 please.  18 BY MR. CORIELL:  19 Q. It's just the very last--second-to-last sentence:  20 "The Republic and Petroecuador agreed not to bring suit  21 against the Releasees."  22 Assuming that's true, Dr. Andrade, then Ecuador  23 could not seek restitution from TexPet for environmental  24 harm in the former Concession Area under Article 397 of the  25 Constitution; isn't that correct?</p>	<p style="text-align: right;">2410</p> <p>11:27 1 allowed in oral summary proceedings?  2 A. No, it's not.  3 Q. And as a general rule, is a joinder of third  4 parties allowed in ordinary proceedings?  5 A. No.  6 Q. Are there exceptions to this rule?  7 A. Specific rules provide for when a third party may  8 be called to appear in a proceeding. There are very few  9 exceptions.  10 Q. And do I understand correctly that your position  11 is that none of those exceptions apply to this case?  12 A. That is correct. None of those provisions under  13 the law applied to this case.  14 Q. So, at the Lago Agrio Litigation, if that  15 litigation had been tried in ordinary proceedings, and the  16 assumption, if it was an ordinary proceeding as opposed to  17 an oral summary proceeding, would any other Parties have  18 been able to join third parties to the litigation?  19 A. Not at all.  20 Q. Would it have been possible for Chevron to log a  21 claim for restitution against Petroecuador as part of the  22 same proceedings?  23 A. No, not at all. It is not possible. It would be  24 a violation of due process.  25 Q. Can you elaborate as to why it would be a</p>
<p style="text-align: right;">2409</p> <p>11:15 1 A. That is what the text says.  2 MR. CORIELL: I have no further questions,  3 Mr. President.  4 PRESIDENT VEEDER: Thank you very much.  5 There will now be questions from the Respondent.  6 Do you want a short break, or are you ready to  7 proceed?  8 MR. LEONARD: If I could have a five-minute break.  9 PRESIDENT VEEDER: Let's take a five-minute break.  10 MR. LEONARD: Thank you.  11 (Brief recess.)  12 PRESIDENT VEEDER: Let's resume.  13 MR. LEONARD: Thank you, Mr. President.  14 REDIRECT EXAMINATION  15 BY MR. LEONARD:  16 Q. Dr. Andrade, I'm going to ask you a few questions  17 about a variety of topics, so I'm going to start with the  18 topics that we have fresh in our minds.  19 You were asked questions about the notion of the  20 joinder of third parties in Ecuador. Do you recall that  21 line of questions?  22 A. Yes, I do.  23 Q. So, I would like to make some points of  24 clarifications so that the record is clear.  25 As a general rule, is a joinder of third parties</p>	<p style="text-align: right;">2411</p> <p>11:29 1 violation of due process?  2 A. Because under Ecuadorian system, Procedural Rules  3 are public; and, as I mentioned in my Report, the Supreme  4 Court of Justice has said that procedural rules are  5 obligatory for the Parties. Well, under the ordinary  6 proceeding, there are also specific rules. And it is the  7 Plaintiff the one that will determine who will be--who is  8 the Party that is being claimed, and the Defendant is the  9 one that answers through the complaint; and, in this way,  10 the points at contention in the litigation are established.  11 There is an evidentiary stage that is opened up, and then  12 the Judge has to decide based exclusively on the subject  13 matter of the litigation as established by the Parties.  14 And, once in the enforcement stage, whenever there  15 are third parties affected, those affected third parties,  16 in full exercise of their rights, they can request the  17 judge that they be heard, for example, through what I had  18 talked about, a third party action by legitimate owner to  19 exclude assets from enforcement proceedings. Any variation  20 in this procedure should first be rejected by the Judge;  21 and if, in fact, something like this occurred, then this  22 would be a violation of procedure; and, in this case, that  23 could lead to the nullity of the proceeding.  24 Q. Just so we're clear, whose prerogative is it to  25 determine who is going to be the Defendant in any given</p>

<p>Sheet 17</p> <p style="text-align: right;">2412</p> <p>11:31 1 proceeding?  2 A. The Plaintiff is the one that is actually bringing  3 forward the case.  4 The Defendant, if it is not the right party in  5 this substantive legal relationship, the goal of the legal  6 proceeding, what it will do is to present its defense and  7 say to the Judge that that Defendant is the wrong party.  8 That is what will happen in the proceeding.  9 Q. Thank you.  10 You were asked questions by Mr. Coriell about  11 joinder of actions. Can you very briefly describe the  12 concept, the notion of joinder of actions and when could  13 that take place, in what circumstances?  14 A. The rule is that, in general, actions may be  15 joined as part of the same claim, what is called the  16 joinder of actions, except--and this is under the Civil  17 Code--they are not compatible or they are contradictory or,  18 in general, they require different proceedings. And, in  19 this case, claims that originate on harm to the  20 environment, regardless of the protected legal interest,  21 all of them are subject to the summary oral proceedings.  22 So, as part of the same claim, various claims that  23 originate on environmental harm may be joined according to  24 the article under the Environmental Management Law,  25 Article 43.</p>	<p style="text-align: right;">2414</p> <p>11:35 1 of the damages as a result of an environmental claim. That  2 is what Article 43 does.  3 Q. Let me take you back to one of the hypotheticals  4 or examples that you used during your presentation  5 yesterday. You used the example of a forest. You also  6 used the example that is, according to your presentation,  7 typically used in law schools to teach the concept of  8 popular action to students. And you described the example  9 of a plant pot at the edge of a building, and there is a  10 possibility that that--for different circumstances, that  11 plant pot might fall on the street. And you explained that  12 that gives rise to the popular action under Article 2236.  13 So, if in 1861 I were one of the people who every  14 day walked past that building, would I be entitled to file  15 a claim under 2236 to remove that plant pot?  16 MR. CORIELL: Mr. President--  17 PRESIDENT VEEDER: One moment.  18 MR. CORIELL: I'm not sure, and maybe there could  19 just be some clarification on this. I'm not sure exactly  20 what line of cross this relates to. It seems to be going  21 back to a hypothetical that Dr. Andrade gave in his direct  22 presentation, so if you can clarify that this arises from  23 the line of cross, I'm fine with it, but otherwise I would  24 object.  25 MR. LEONARD: I intend to get there in a minute,</p>
<p style="text-align: right;">2413</p> <p>11:33 1 Q. And you recall that it is Claimants' position that  2 the Lago Agrio Court improperly allowed the joinder of  3 claims under Civil Code tort provisions on the one hand and  4 under Article 43 of the EMA, on the other hand? Are you  5 aware of that? Do you recall that that's the Claimants'  6 position?  7 A. Yes, I do.  8 Q. And you did talk about Article 43 at some length  9 yesterday during your presentation. Where is Article 43  10 found in the text of the EMA?  11 A. It is under the heading of civil actions.  12 Q. Civil actions. Are those tort actions?  13 A. That is correct. Those are all the actions that  14 have to do with tort liability under the Code, yes.  15 Q. And I understand that--I know that you addressed  16 this yesterday, but I just want to clarify a few points.  17 Is this civil action a new action--civil action  18 created by Article--or set forth by Article 43, is that a  19 new kind of civil action?  20 A. No. Civil actions in connection with tort  21 liability have been applied starting in 1861. This is the  22 regime that is still in force in Ecuador.  23 Article 43 does not refer to any of the  24 substantive elements for tort liability. It just fixes  25 procedural problems so as to address the particular aspects</p>	<p style="text-align: right;">2415</p> <p>11:37 1 so it may be longer than it should, but it relates directly  2 to the line of questions by Mr. Coriell about the nature of  3 the Lago Agrio Litigation.  4 PRESIDENT VEEDER: Stop there. We'll get it go  5 and then we'll see where it comes to, so please go on.  6 BY MR. LEONARD:  7 Q. So, let's cut to the chase. What are the  8 evidentiary requirements of my claim under that popular  9 action, 2236?  10 A. There is a risk factor. Correct? I need to prove  11 that there is a risk factor, and I also need to determine  12 how this risk factor may have an impact on a protected  13 legal right, and that is what I need to do. In the case of  14 Lago Agrio, I should prove that there is environmental harm  15 or impact, and that that harm may also impair the rights of  16 the residents where that contamination has taken place;  17 and, in that way, I would be meeting the requirements under  18 2236 for activities that are abnormally dangerous.  19 Q. All right. Assume that the Lago Agrio Complaint  20 was filed in 1950. What would have been the proper  21 procedure to hear that claim?  22 A. From the procedural point of view, there would be  23 a need for an ordinary proceeding. Article 2236 would be  24 invoked, and there would be a need to prove the risk  25 factor--the same elements in practice going back to 1950, I</p>

11:39 1 think you just said.  
 2 Q. That is correct.  
 3 So, what about Articles 2214 and 2229? I  
 4 understand--do you understand that those are also referred  
 5 to in the Complaint and in the Judgment that's the basis  
 6 for the Complaint and the relief? So, let's just assume a  
 7 hypothetical identical to the Delfina Torres case in 1950,  
 8 where Article 2236 is out of the picture, and it's only  
 9 about Articles 2214 and 2229.  
 10 What would have been the proper procedure for a  
 11 claim under those provisions?  
 12 A. According to this regime, this is a claim due to  
 13 actual harm for activities that are abnormally dangerous  
 14 and the action would have been filed as an ordinary  
 15 proceeding.  
 16 Q. So, in your hypothetical of yesterday, you used  
 17 the Delfina case to choose the number of families or  
 18 individuals that live in that forest in your hypothetical.  
 19 Can you explain again how environmental harm  
 20 affects those residents?  
 21 A. Given an instance of contamination, contamination  
 22 as such leads to actual damage in the case of a protected  
 23 legal right; in this case, it is nature in itself or it  
 24 could be a more abstract concept, the right all of the  
 25 inhabitants of the country have, all of the inhabitants of

11:43 1 as to have on the one hand a reparation of the actual  
 2 damage and, on the other hand, an elimination of the risk  
 3 factors that may also have an impact on other legally  
 4 protected rights. This is the concept. The only thing  
 5 that was different was the procedure, and also the way to  
 6 avoid a dissemination of claims, and here under Article 43  
 7 that's what we have. We are just joining these  
 8 proceedings.  
 9 Q. So let's take us back to the issue of the joinder  
 10 of claims. So, in your opinion, any claim under Civil Code  
 11 tort provisions and the source--in circumstances where the  
 12 source of the tort, of the harm, is environmental  
 13 contamination must be heard through oral summary  
 14 proceedings by amendment of Article 43 of the EMA?  
 15 A. That is correct, yes.  
 16 Q. That would not be an improper joinder of claims  
 17 under the Civil Code and claims under Article 43?  
 18 A. Not at all because there is a specific proceeding  
 19 for all of the actions that originate from environmental  
 20 impact.  
 21 Just as an example of how I could do things  
 22 improperly, let's think that there is an event that entails  
 23 environmental contamination, and I am bringing forward an  
 24 action to have that contamination or pollution removed  
 25 because I see that my neighbors are becoming sick and I

11:41 1 the world to have no impairment of our rights. That is on  
 2 one hand.  
 3 But, on the other hand, contamination as such may  
 4 directly impact rights for the people that live there.  
 5 That is the human group that is directly affected or  
 6 impaired. And that impairment also entails, for example,  
 7 that people may die or become sick, and there are some  
 8 legal interests that are also protected because, finally,  
 9 if I drink from the water in that river, I will become  
 10 sick. I will die. Finally, they will bury me under the  
 11 ground. There will be a name, a date of birth, and a date  
 12 of death.  
 13 There are some different additional interests.  
 14 So, contamination as such is an actual damage. It is an  
 15 impairment of a protected legal right, and that protected  
 16 legal right can be seen from a universal perspective, but  
 17 it can also be seen from the perspective of direct  
 18 impairment of each of the individuals in that place.  
 19 So, as I mentioned before, each of those  
 20 individuals may--even before Article 43 and even now, may  
 21 bring forward an individual action so as to obtain the  
 22 restatement of their rights that also have an impact on  
 23 them as individuals. But also with Article 43, we can  
 24 bring forward the same action to protect each of the legal  
 25 interests for each of the members of this affected group so

11:45 1 want to avoid sickness for my children. I'm going to  
 2 assume that. And I go to the place, and let's say that  
 3 there is a security guard, and that security guard has a  
 4 bad reaction, I get hit, and some harm is caused. I cannot  
 5 invoke Article 43 because there has been environmental  
 6 contamination and also claim under the same action the harm  
 7 caused to me by the security guard when he hit me because  
 8 of that event.  
 9 So, this is an improper joinder of claims because  
 10 the damage that was caused to me did not originate from  
 11 environmental harm; correct? So, this is an improper  
 12 joinder of actions. All of the actions that come from  
 13 environmental harm that followed the regime, the tort  
 14 regime, should be in this case--should follow in this case  
 15 the summary oral proceedings.  
 16 Q. A small portion of your response may have been  
 17 lost in translation, so what--if I understand correctly,  
 18 what you're explaining to me is that I would not be able to  
 19 join a tort claim for the harm that I suffered as a result  
 20 of the assault that I suffered by the guard, who would not  
 21 be able to join that claim to claims arising from the  
 22 environmental contamination?  
 23 A. That is correct, and that is because under  
 24 Article 43, all of the actions need to have a direct link  
 25 to environmental pollution. The assault by the guard, even

<p>Sheet 19</p> <p style="text-align: right;">2420</p> <p>11:47 1 within the context of this environmental harm, it is not a 2 damage that results from the environment. 3 Q. I understand, thank you. 4 Now, I would like you to take you to Tab 19 of the 5 second binder that Claimants' counsel provided to you this 6 morning. Page 73, please, the last sentence. 7 A. Is it in Spanish? 8 Q. The English version. I'm not sure what the page 9 number in the Spanish version is. Also 73. 10 I would like you to pay attention to the Spanish 11 version, though, so this particular sentence is found at 12 the second-to-last paragraph, halfway through that 13 paragraph. And it begins-- 14 A. I see the page, and I am also looking at the 15 second-to-last paragraph. 16 Q. Perfect. 17 Mr. Coriell asked you a question this morning 18 about the language that begins with, "the norms prescribed 19 in the Civil Code, established in the Civil Code." 20 Do you see that language? 21 A. Yes, towards the end. 22 Q. Could you please read that language for the record 23 slowly so the interpreter can correctly interpret that 24 language. 25 THE INTERPRETER: The procedural rules</p>	<p style="text-align: right;">2422</p> <p>11:51 1 make a note. It's an objection to the translation of the 2 document that we have at Tab 19. This is at Page 73, the 3 last paragraph in the English version, and the language 4 starting with, "the procedural rules established in the 5 Civil Code." This is incorrect aspect to this translation. 6 These are not procedural rules; these are substantive 7 rules. 8 MR. CORIELL: We disagree with that objection on 9 the procedural and substantive grounds, which I'm happy to 10 explain. 11 PRESIDENT VEEDER: Let's take it slowly. I think 12 we can't take it further with this Witness, but after this 13 Witness is completed, please talk to each other. We have 14 enough Spanish speaker, because this more a question 15 Spanish legal translation into English legal translation, 16 but I think we need to get beyond the interpreter. Let's 17 see how it goes, if you can sort this out. If you can't, 18 we'll deal with it later. 19 MR. LEONARD: Let me ask just one follow-up 20 question. 21 BY MR. LEONARD: 22 Q. Dr. Andrade, are you aware of Procedural Rules in 23 the Civil Code? 24 A. There are some. None of those have been applied 25 or discussed in this case.</p>
<p style="text-align: right;">2421</p> <p>11:50 1 establish--I was on the wrong channel, sorry. 2 PRESIDENT VEEDER: Let's start again. 3 Do you want to put your question again? Because 4 we've got to get this right. 5 MR. LEONARD: Yes, we will. 6 The interpreter, please, this language, if you can 7 interpret what the Expert is reading and not what appears 8 on this document. 9 BY MR. LEONARD: 10 Q. So, if you could please start again reading this 11 language that begins with, "The norms established in the 12 Civil Code." 13 A. Very well: "The rules established by Civil Code 14 have been ancillary to this proceeding, without this 15 meaning that there is a joinder of actions or that by 16 invoking them, they refer to individual claims. The claim 17 is clear in connection with this process. 18 This is a quote. 19 And on the other hand, since there are no special 20 provisions regarding the environmental Civil Liability, 21 there is a need to resort to the Civil Code and also to the 22 oldest and best known principle such as the ones to repair 23 damage caused by negligence." 24 Q. Thank you. 25 MR. LEONARD: Mr. President, I would just like to</p>	<p style="text-align: right;">2423</p> <p>11:53 1 Q. And to be clear, which are--which ones are the 2 Civil Code rules that have been applied in this case? 3 Which are the Civil Code rules that have been applied in 4 this case? 5 A. The general rule that establishes risk liability 6 under Article 2214; the specific rule on inherently 7 dangerous activities, Article 2229; the specific rule on 8 contingent harm, 2236 mainly; and there is an incredible 9 number of rules on joint liability, joint and several 10 liability, but these are basically the ones I mentioned. 11 Q. Are any of those rules of a procedural nature? 12 A. Not in particular. There may be some procedural 13 content when you're referring to a popular action under 14 2236, but this is the rule that governs contingent harm, 15 and that goes back to a more general concept that has to do 16 with popular action. And from the procedural point of 17 view, we need to understand the meaning of popular action, 18 and that's the reason why yesterday I referred to that 19 concept. 20 Q. Thank you. 21 Let me change subjects, and let me take you back 22 to the exchange that Mr. Coriell and you had yesterday 23 afternoon concerning your First Report. That's RE-9, and I 24 believe that's at Tab 1 of either of the binders, either 25 the one that we provided to you or the one that Claimants</p>

<p>Sheet 20</p> <p style="text-align: right;">2424</p> <p>11:55 1 provided to you.  2 A. First Report?  3 Q. Let me know when you're there.  4 A. Where in the Report?  5 Q. Well, I'm going to take you to Page 4 of the  6 Spanish version.  7 MR. LEONARD: Mr. President, this is on Page 3 and  8 Page 4 of the English version.  9 THE WITNESS: I'm there at Page 4.  10 BY MR. LEONARD:  11 Q. Thank you.  12 So, I'm looking at the second paragraph of Section  13 E. There, you referred to voluminous evidence, documentary  14 evidence, that Chevron submitted to the trial court in  15 support of its allegations of ghostwriting of the Judgment,  16 and also allegations of fraud concerning the Cabrera Report  17 and the Calmbacher Report.  18 Do you see that?  19 A. Yes.  20 Q. In the next sentence you explained that the  21 evidence that Chevron submitted is inadmissible evidence  22 under applicable Rules of Procedure.  23 A. That is correct.  24 Q. How is that evidence inadmissible under applicable  25 Rules of Procedure?</p>	<p style="text-align: right;">2426</p> <p>11:59 1 finds that the evidence has probative value and, in fact,  2 shows the alleged fraud affecting the Cabrera and the  3 Calmbacher Reports. What remedy would Judge Zambrano have  4 to apply in respect of that evidence in respect of those  5 Reports?  6 A. Simply, he has to eliminate that evidence, and he  7 cannot resort to that for the Judgment to refer to the  8 facts cited in that evidence. This is what he has to do.  9 This is evidence that cannot be taken into account by the  10 Judge and cannot be the grounds for a judgment for the  11 facts that are intended to be proved through that evidence.  12 Q. And based on your review of the Judgment, the Lago  13 Agrio Judgment, isn't that what Zambrano ordered?  14 A. I think so. That is what he did, I think, in  15 connection with the Report prepared by Mr. Cabrera.  16 Now, in connection with Mr. Calmbacher, I don't  17 remember. I don't recall this connection.  18 Q. Fair enough.  19 Let's move on to the appellate level.  20 And assume as a fact that Chevron has grounds for  21 appeal in connection with those two Reports. Chevron  22 argues that Judge Zambrano relied on the Cabrera Report and  23 also argues that the Report has been procured by fraud.  24 So, the first question that I have for you is:  25 Does the Court of Appeal have competence to examine</p>
<p style="text-align: right;">2425</p> <p>11:57 1 A. The legal regime of Ecuador clearly, clearly  2 starting with the Constitution as a rule of due process,  3 provides for evidence that is properly presented as the  4 only one to be used in the proceeding. And what is the one  5 that is properly presented? The one that has been  6 requested at the right stage that has been ordered by the  7 Judge in the proceeding after hearing or listening to the  8 opposing party and that has been also presented according  9 to the Judge's instructions. This is key for the evidence  10 to be properly presented.  11 That is to say, the other Party has to be heard in  12 connection with the evidence so that this Party may present  13 arguments, but at the same time present evidence opposing  14 the content of the other evidence and documents that are  15 introduced to the file outside these basic rules by the  16 Parties has no value for the proceeding. And this complete  17 explanation can be found in the Report.  18 Q. All right. Now, let's focus on the evidence  19 concerning the fraud allegations in respect of the Cabrera  20 Report and the Calmbacher Report.  21 Suppose, hypothetically speaking, that the  22 materials that Chevron submitted to the trial court are, in  23 fact, admissible evidence and that the Court can properly  24 consider it.  25 Assume further that the Court, Judge Zambrano,</p>	<p style="text-align: right;">2427</p> <p>12:01 1 Chevron's evidence of fraud in respect of that Report?  2 A. Following the hypothesis that the evidence was  3 duly submitted or how?  4 Q. I should clarify that: We are not operating on  5 the basis of that hypothesis.  6 In real life, does a court of appeal have  7 competence to examine and rule upon that evidence of fraud?  8 A. If they had been unduly submitted, it must be  9 thought that they do not exist, although evidently the  10 Court is going to look at the documents to see if they had  11 been submitted duly or not. This is what should happen.  12 If it reaches a conclusion that that is not duly submitted,  13 the Court cannot consult them. The Appellate Court or any  14 other Court in Ecuador, they cannot consider any evidence  15 that has been unduly submitted.  16 Q. So, you're referring to the trial court record.  17 What prevents Chevron from producing that evidence at the  18 Appellate Court level?  19 A. In the verbal summary proceedings, according to  20 Article 838 of the Code of Civil Procedure, it is provided  21 that the Judge of the Provincial Court that hears the  22 appeal must rule on the basis of the merits of the  23 proceedings.  24 What does that mean? Well, it means whatever was  25 legally and duly submitted in the summary oral proceedings</p>

<p>Sheet 21</p> <p style="text-align: right;">2428</p> <p>12:03 1 at the appeal level, there is no new evidentiary phase.  2 You cannot open up an evidentiary period during the appeal  3 at the summary oral proceeding.  4 Now, the Appeal Judge must consider the arguments  5 put forth at the appeal level only on the basis of those  6 elements that had been legally incorporated into the  7 proceedings.  8 Q. Is there any exception to this rule?  9 A. None.  10 Q. And do you recall where this rule is set forth?  11 A. I think I said, I think it's Article 838 of the  12 Code of Civil Procedure. Perhaps the number is wrong. I'm  13 sorry.  14 Q. No, I apologize. I missed that on the Transcript,  15 your response.  16 Now, let's move on to the cassation level, and I  17 would like to turn to Paragraph 80 of your Report. So,  18 there you explain the various grounds on which a cassation  19 appeal could be grounded, could be based. Now, suppose  20 that Chevron alleges that the Court improperly applied  21 applicable rules of evidence by relying on the fraudulent  22 report of Cabrera and the Calmbacher Report. My first  23 question is whether the Cassation Court could review these  24 allegations pursuant to its powers under Article 3 of the  25 cassation law.</p>	<p style="text-align: right;">2430</p> <p>12:06 1 regular proceeding that takes place in those circumstances.  2 Q. Thank you for that explanation.  3 You may have answered the question that I intended  4 to pose to you, so let me--just to be clear, let me  5 rephrase.  6 So, if the allegation is that the Court violated  7 the rules of evidence, regardless of the factual basis for  8 the allegation, is there allegation appropriately grounded  9 in one of the bases provided for in Article 3 of the  10 cassation law?  11 A. Of course, it is. Yes, surely. I'm alleging the  12 violation of a legal provision that has to do with the  13 weighing of the evidence, and on that basis, I am invoking  14 Ground 3 of the cassation law, and that is how I am put--I  15 am putting my allegation to the Court. That is the way  16 this is done.  17 Q. So, it would be within the Court's mandate to  18 address my allegation?  19 A. Yes, that is correct.  20 Q. Now, let's assume that the Cassation Court, the  21 National Court has not issued the cassation appeal in the  22 Lago Agrio Litigation. Given what we just discussed about  23 Judge Zambrano having dismissed or rejected the Cabrera  24 Report, what would be your prediction as to the outcome of  25 the cassation appeal on that basis? Is the question clear?</p>
<p style="text-align: right;">2429</p> <p>12:04 1 A. Yes. Let's see. Just a moment ago, we were  2 saying that there are specific rules in the sense that  3 evidence that was duly submitted, only that evidence can  4 have full faith and credit at a proceeding.  5 Now, let's assume that a judge applied evidence  6 that was unduly submitted. Now, what can the appellant do?  7 He can say, okay, the rule was violated. The rule that  8 says that the evidence that the Judge could consider in  9 order to make a decision is only the legally submitted  10 evidence. The other requirement that the Court asks for is  11 that the violation of the legal norm refers to a specific  12 documents that is included in the case file and that  13 explains its relevance.  14 For example, Judge Zambrano, in his Judgment,  15 cited a report that has been unduly submitted. The Court,  16 on the basis of Ground 3 of Article 3 of the cassation law,  17 will consider this argument, will see whether that piece of  18 evidence was duly submitted and, if it was not duly  19 admitted, it will say Article--and I forget the number of  20 the Article--Article whatever the number was, was violated.  21 The Article says that only duly submitted evidence has full  22 faith and credit during a proceeding.  23 So, it will quash the Judgment and, according to  24 Article 16 of the cassation law is going to hand down a  25 judgment that is relevant in that case. That is the</p>	<p style="text-align: right;">2431</p> <p>12:08 1 A. Not really, no.  2 Q. Let's go back in time before the National Court  3 issued--rendered the decision. And we know that Judge  4 Zambrano struck the Cabrera Report from the record.  5 Chevron files a cassation appeal, nonetheless, alleging a  6 violation of the rules of evidence under Article 3. So, we  7 don't know how the Court will rule on that matter, but what  8 would be your opinion as to the likely outcome of that  9 aspect of the cassation appeal?  10 A. The National Court was not going to admit the  11 allegation. And as I had said before, what the trial court  12 does is to do exactly what must be done in connection with  13 evidence that has been unduly submitted. It will not  14 consider it for purposes of its decision. That is the  15 common regular effect whenever you have a situation such as  16 that.  17 Q. If I could take you back to Page 4 of your Report?  18 THE INTERPRETER: This is in the First Report?  19 (Pause.)  20 PRESIDENT VEEDER: Let's continue.  21 MR. LEONARD: Thank you.  22 BY MR. LEONARD:  23 Q. So, you just predicted that the National Court  24 would reject that aspect of the cassation appeal on the  25 basis of the facts as we know them?</p>



12:11 1 A. Yes.  
 2 Q. And are you back at Page 4 of your Report? Again,  
 3 this is RE-9, in the First Report.  
 4 A. I'm there, yes.  
 5 Q. All right. There you refer to the cassation  
 6 appeal as an effective remedy.  
 7 Did you mean to suggest that effective necessarily  
 8 means an outcome favorable to the appellant?  
 9 A. I would not be able to do that, although I may  
 10 have a personal opinion in the sense that in connection  
 11 with certain subject matters, those allegations should have  
 12 been rejected. I cannot be certain as to what the result  
 13 of the future judgment is going to be. When I prepared  
 14 this Report at that date, I didn't consider under any  
 15 circumstance what the result or the outcome could have been  
 16 in each one of the assumptions or how the Court would have  
 17 conducted itself in connection with each of the allegations  
 18 made. I wouldn't have been able to suggest that I was  
 19 going--that Chevron, rather, was going to obtain a  
 20 favorable Judgment.  
 21 In our legal system, there are a number of  
 22 mechanisms that have to do with getting decisions off and  
 23 deciding the issues that will be put forth in this case.  
 24 Q. All right. Now, I would like to focus on the  
 25 evidence of ghostwriting. And I believe that we've

12:13 1 established it, but could the Court of Appeals examine and  
 2 rule upon such evidence?  
 3 A. No. These were documents or pieces of evidence,  
 4 instruments that were foreign to the proceedings.  
 5 Q. Same result in respect of the Cassation Court?  
 6 A. That is right. Article 15 of the cassation law  
 7 also prohibits the evidentiary stage at that phase in  
 8 connection with all the proceedings of that nature, and the  
 9 National Court could not consider in its decision-making  
 10 process evidence that was external to those proceedings.  
 11 Q. All right. Let's turn to Paragraph 83 of that  
 12 same report. It's the paragraph that begins with "The main  
 13 grounds asserted by Chevron in its cassation appeal."  
 14 There was an extensive back and forth yesterday  
 15 about Item D?  
 16 A. Yes, I recall.  
 17 Q. By a third party.  
 18 I would like to ask you a few questions so the  
 19 record is clear, and I have two hypotheticals for you. And  
 20 these are questions concerning the first hypothetical.  
 21 Who is the competent Court to hear a claim under  
 22 Article 43 of the EMA?  
 23 A. The Presiding Judge of the Provincial Court of the  
 24 location where the contamination event took place.  
 25 Q. All right. And assume that a judgment issues in a

12:15 1 case under Article 43 of the EMA, and it is signed by a  
 2 judge other than the Presiding Judge of the Provincial  
 3 Court--are you with me?  
 4 A. Yes, I do.  
 5 Q. And let's assume that the Defendant or--let's  
 6 assume the Defendant appeals, and the Court of Appeals  
 7 affirms the Judgment, that Judgment is against me. Do I  
 8 have grounds for cassation appeal under either of the  
 9 grounds such as you described at Paragraph 80 of your  
 10 Report? Eighty.  
 11 A. Was this a statement or a question on your part?  
 12 Q. I will state it again.  
 13 So, I have a Judgment in a case under Article 43  
 14 that is signed by a judge other than the Presiding Judge of  
 15 the Provincial Court. Do I have grounds for appeal under  
 16 Article 3 of the cassation law?  
 17 A. Yes, you do.  
 18 Q. In your opinion, which of the grounds listed in  
 19 Paragraph 80 could I invoke on the basis of these facts?  
 20 A. Yes, of course.  
 21 If the signor of the Judgment or the preparer of  
 22 the Judgment is not a judge, we could allege lack of  
 23 jurisdiction. If the Judge handing down the ruling is not  
 24 the one that had to hand down the Judgment, we could  
 25 alleged lack of competence of the Court. One thing has to

12:17 1 do with jurisdictional powers, and the other has to do with  
 2 the distribution of the jurisdictional powers amongst the  
 3 Judges of the Republic. We could use the grounds of lack  
 4 of jurisdiction and lack of competence.  
 5 And also, this is an event that brings about  
 6 procedural nullity. This is a solemn--this is a  
 7 substantial formality so, we should go to Grounds 2 of  
 8 Article 3 of the cassation law in connection with events  
 9 that create nullity, procedural nullity.  
 10 Q. Are these violations are the kind that would  
 11 require me to produce extrinsic evidence?  
 12 Let me ask the question again.  
 13 MR. CORIELL: Can we get an answer to the  
 14 question?  
 15 THE INTERPRETER: The interpreter didn't really  
 16 hear the question properly. Can you please rephrase it?  
 17 MR. LEONARD: Or ask it again.  
 18 BY MR. LEONARD:  
 19 Q. Are these violations that you're referring to of  
 20 the kind that I would have to prove by submitting extrinsic  
 21 evidence?  
 22 A. As I have said, at the cassation level, you cannot  
 23 present extrinsic evidence. It doesn't work that way. But  
 24 there are violations of this nature that derive clearly  
 25 from the proceedings. In the case you are proposing, if

12:19 1 we're talking about a judge that's different from the judge  
 2 that had to hand down the Judgment, there is going to be,  
 3 for example, the certificate of the lottery that would  
 4 establish who should have heard the cause.  
 5 Now, if the argument is that the writer of the  
 6 ruling was not a judge, it would be a little bit more  
 7 difficult to prove that at the cassation level. This is a  
 8 piece of information that goes beyond that proceeding.  
 9 Q. In your opinion, what would be the chances that  
 10 the Court would accept my cassation appeal on the basis of  
 11 these facts?  
 12 A. The facts described under 83?  
 13 Q. We're talking about a judgment issued by a  
 14 different judge.  
 15 In your opinion, what are my chances of success in  
 16 my cassation appeal?  
 17 A. If it's a different judge and the reason has to do  
 18 with lack of competence, for example, that is going to be  
 19 included in the case file, and the Cassation Court will  
 20 have that very clear in its mind.  
 21 Now, if what I'm putting forth is that the writer  
 22 of the Judgment is not the signor of the Judgment, I don't  
 23 think I'm going to be successful at the cassation level  
 24 because I'm asking the cassation level to do something that  
 25 it will not do because it is specifically prevented from

12:24 1 legal provisions; validation, which means that there are  
 2 certain nullities that are not effective anymore because  
 3 they had been admitted or accepted by the Parties because  
 4 of the own conducts of the Parties--and this is the  
 5 estoppel in common law, that is my understanding, we call  
 6 it preclusion in our system; or--well, when those behaviors  
 7 or conducts are validated. And the most used in our system  
 8 is the principle of transcendence.  
 9 For something to create nullity of an act or a  
 10 proceeding, it could be an administrative act or act  
 11 between private parties, one has to have transcendence.  
 12 Transcendence means that in practice, without that element,  
 13 no effects would have existed or the effects pursued in  
 14 such proceedings, and there would be transcendence, for  
 15 example, if a document that is extrinsic to the proceedings  
 16 would have been taken. And if, on the basis of that  
 17 document, the judge would have issued his decision, and  
 18 without that document the judge would have never been able  
 19 to make that decision in that way. That's an example.  
 20 There would be transcendence if the violation in  
 21 the proceedings would have generated the impossibility for  
 22 the opposing party to defend itself. These three  
 23 principles show the possibility for a proceeding to declare  
 24 null; and, according to this same logic, well, we can apply  
 25 this same logic to other areas of the law.

12:21 1 doing that by the legal provisions.  
 2 Q. I was going to turn to the second hypothesis, but  
 3 I believe that you have just addressed it.  
 4 MR. LEONARD: Mr. President, if I could have a  
 5 minute to go over my notes.  
 6 PRESIDENT VEEDER: Please do.  
 7 (Pause.)  
 8 MR. LEONARD: Just a couple more questions.  
 9 BY MR. LEONARD:  
 10 Q. I would like to direct your attention to probably  
 11 the second tab on that binder, your Second Report, RE-20.  
 12 If you could go to Page 25, Footnote 102.  
 13 Today, you talked about what is the meaning, the  
 14 significance of the merits of the proceedings and what  
 15 evidence is admissible, what evidence is inadmissible. And  
 16 Mr. Coriell asked you a question about a judgment that  
 17 references a document that does not appear to be in the  
 18 record.  
 19 Could you explain whether that would lead to the  
 20 nullity of the proceedings and under what circumstances.  
 21 A. Let's see, in general terms, it would not only  
 22 entail the nullity of the process but the general system of  
 23 nullity in Ecuador. There are three principles in this  
 24 regard: Specificity--that is to say, the reason whereby  
 25 the nullity is declared, is expressly established in the

12:26 1 In the case put forth by you, one would have to  
 2 see the relevance that that document has in the Final  
 3 Decision made by the Court, by the Judge. That is what  
 4 would happen.  
 5 Q. Thank you.  
 6 MR. LEONARD: I have no further question,  
 7 Mr. President.  
 8 PRESIDENT VEEDER: Thank you very much.  
 9 The Tribunal may have questions.  
 10 QUESTIONS FROM THE TRIBUNAL  
 11 ARBITRATOR LOWE: I have one or two questions  
 12 which I would like to ask to crystallize and clarify the  
 13 record for my purpose.  
 14 I know that there are matters that you've already  
 15 gone over in your Reports and have addressed in  
 16 cross-examination, but it will be helpful if you could be  
 17 patient with me and deal with them.  
 18 The first question is in two parts.  
 19 Assume that there is an allegation that a document  
 20 that is in the record of a hearing of a case has been  
 21 fraudulently prepared. First, can the Cassation Court  
 22 consider that issue on the basis that it concerns material  
 23 that is in the Report, or must the Cassation Court refuse  
 24 to consider it on the grounds that proof of the fraud  
 25 involves reference to materials that are extrinsic to the

12:27 1 record?  
 2 THE WITNESS: The Cassation Court will surely  
 3 reject that allegation insofar as the claim of violation of  
 4 the legal provision that applies in connection with the  
 5 weighing of evidence could only be proven by elements that  
 6 are extrinsic to the proceedings. I'm convinced that the  
 7 Cassation Court would reject that kind of claim.  
 8 ARBITRATOR LOWE: That is what I had understood  
 9 your testimony to be, so my real first question is this:  
 10 Is there any legal consequence under the law of Ecuador of  
 11 the fact that it is known that a key document in a case has  
 12 been alleged to have been procured as a result of a serious  
 13 fraud, or do the Courts simply carry on as if the document  
 14 is a perfectly proper document and the Judgment that was  
 15 based upon it is one which can be allowed to stand like any  
 16 other Judgment?  
 17 THE WITNESS: The Judges that hear a case and that  
 18 have external knowledge of a fact cannot make decisions in  
 19 connection with things that do not have value in the  
 20 process. They must continue to hear the case because  
 21 that's a legal obligation.  
 22 Now, at the same time, they can notify the  
 23 Competent Authorities if one of the Parties requires so, or  
 24 if they are convinced that there is a problem of that  
 25 nature, then they are going to notify the Competent

12:31 1 or bringing a report.  
 2 Now, in the case of judges, those obligations  
 3 derive from the conviction that the Judge has that there is  
 4 enough evidence of the fact because when the Judge hands  
 5 down a judgment, and when he's convinced that something  
 6 like this has happened, it can send the whole case file to  
 7 the Prosecutor General's Office for a criminal action to be  
 8 brought, or it can notify the Council of the Judiciary for  
 9 the Council of the Judiciary to take the administrative or  
 10 disciplinary measures that may be in order.  
 11 And also the Parties. If they know that a  
 12 violation has existed, they have to notify via a claim or a  
 13 report by the Prosecutor General's Office if it's a  
 14 criminal case or the Council of the Judiciary to impose  
 15 sanctions, and are also there are remedies in the  
 16 proceedings to deal with their situation in connection with  
 17 the case that is taking place.  
 18 I hope I answered your question.  
 19 ARBITRATOR LOWE: That's helpful.  
 20 Can I press you to the very specific point in my  
 21 question, which is whether there is a legal duty. What  
 22 you've described are a number of possible procedures that  
 23 might be pursued. Is there, as a matter of Ecuadorian law,  
 24 an actual legal duty on anyone to take any action in these  
 25 circumstances? This may be outside the scope of your

12:30 1 Authorities of the fact. For example, the Prosecutor  
 2 General's Office or, for example, the Council of the  
 3 Judiciary, if this is in connection with a judicial officer  
 4 or a judicial assistant, fully independently of the powers  
 5 and rights that attorneys may have and the Parties may have  
 6 in connection with the existence of a relevant violation,  
 7 okay?  
 8 ARBITRATOR LOWE: That starts to answer my  
 9 follow-up question to that, which is that if there is prima  
 10 facie evidence of a serious fraud in the administration of  
 11 justice, is there under the Constitution or under any other  
 12 law in Ecuador, a duty either on the State as such or on a  
 13 particular agency of the State to take action in respect to  
 14 that fraud?  
 15 THE WITNESS: Well, let's say that the  
 16 responsibility in these matters falls on many on the basis  
 17 of the belief of many. The first duty falls on the  
 18 parts--on the Parties to the proceeding and also on the  
 19 lawyers to the proceedings. There is an ethical duty that  
 20 lawyers have, where if they gain knowledge of an event that  
 21 may entail an illegal act, a fraudulent act, they have to  
 22 notify the Prosecutor General's Office so that the  
 23 Prosecutor General's Office may bring a public action.  
 24 Also, they have to notify the disciplinary authorities--for  
 25 example, the Council of the Judiciary, by stating a claim

12:33 1 expertise or your evidence; and, if it is, then please say  
 2 so.  
 3 THE WITNESS: The way you are presenting it to me,  
 4 Professor, as if there is any legal duty for someone to  
 5 adopt a specific measure giving evidence, I will tell you  
 6 that, no, it doesn't exist. As for the Judges, it depends  
 7 on the discretionality of the Judge and also the conclusion  
 8 reached by the Judge, and in the case of the Parties,  
 9 clearly it is different, but based on your question, no,  
 10 the answer is no.  
 11 ARBITRATOR LOWE: If I can be allowed one further  
 12 backup question on that heading, I notice in Tab 13 of the  
 13 first Cross-Examination Bundle, which is the tab which has  
 14 in the provisions from the Constitution, we were taken to  
 15 Article 397, which concerns the State's duty to take action  
 16 in respect of environmental harm, and I noticed that, on  
 17 the opposite page in the English translation, though it  
 18 won't be in the Spanish, Article 437 sets out a  
 19 constitutional right in loose terms to due process.  
 20 And I guess one way of putting my question is  
 21 whether the State has, in relation to the constitutional  
 22 right to due process, a duty to take action that is similar  
 23 to the duty that the State has to take action to protect  
 24 the environment.  
 25 THE WITNESS: Are you referring to using this

12:35 1 extraordinary action for protection? 437 under the  
 2 Constitution refers to what we called the "extraordinary  
 3 action for protection." This is a constitutional action  
 4 that has to do with key rights, with essential fundamental  
 5 rights. And in the case of a legal person, whether public  
 6 or private, thinks that the rights have been impaired, may  
 7 bring forward a claim. But this has nothing to do with the  
 8 duty the State has to protect some rights such as the  
 9 environment. It's a general duty, such as health, housing,  
 10 et cetera. Let's say this is not--this is not the place of  
 11 regulation. The extraordinary action for a protection has  
 12 to do with a specific Judgment where there is a violation  
 13 of a constitutional right, and any of the Parties to that  
 14 proceeding has standing to bring forward the extraordinary  
 15 action for protection; and, in this case, we cannot have a  
 16 third party.  
 17 For example, the State, to bring forward an  
 18 extraordinary action for protection to protect some rights  
 19 that allegedly were violated as part of the underlying  
 20 proceeding.  
 21 ARBITRATOR LOWE: Thank you. That's helpful.  
 22 It's a point which I guess might get taken up in the  
 23 closing.  
 24 There are two other short points. One is simply a  
 25 matter of clarification in relation to your First Report,

12:39 1 this answer.  
 2 ARBITRATOR LOWE: Clarified, but not brought to a  
 3 complete resolution. Let me put it another way.  
 4 Is abuse an essential component of the  
 5 justification for piercing the corporate veil in every  
 6 case?  
 7 THE WITNESS: Yes. There is a need to have abuse  
 8 of this concept.  
 9 ARBITRATOR LOWE: Thank you.  
 10 My last question changes topic, and again, this is  
 11 a case of clarifying in my mind evidence that you've  
 12 already given. But assuming that both Chevron and  
 13 Petroecuador would be liable in tort or delict for  
 14 environmental harm, and assuming that there was  
 15 environmental harm, and assuming that the claim is brought  
 16 against Chevron alone and not against Petroecuador, what  
 17 are the procedures that are available to Chevron to have a  
 18 court in Ecuador determine two things: First, that Chevron  
 19 is liable only for a part of the harm and, second, that  
 20 Petroecuador is also liable for a part of the harm?  
 21 THE WITNESS: Let's say that the normal proceeding  
 22 would be a claim against the joint and several obligor,  
 23 with the assumptions that you have mentioned, this would  
 24 have to be filed before the administrative contentious  
 25 jurisdiction, the claim should be filed there. And this is

12:37 1 and it concerns the section in which you deal with piercing  
 2 the corporate veil, and it relates to Paragraph 95 of your  
 3 First Report.  
 4 In that paragraph, you say that Ecuadorian law  
 5 recognizes the Court's prerogative to lift the corporate  
 6 veil of a business organization when the corporation is  
 7 used as a vehicle to promote abuse of the law or to  
 8 defraud, or where recognition of corporate separateness  
 9 would lead to an inequitable result.  
 10 Now, as I read your Report, you give examples of  
 11 the lifting or piercing of the corporate veil in order to  
 12 prevent abuse, but is it your testimony that, as a matter  
 13 of Ecuadorian law, even in the absence of abuse, a court  
 14 has the right to pierce the corporate veil in order to  
 15 secure an equitable result in a case before it?  
 16 THE WITNESS: I apologize if the language is not  
 17 clear, but the regime for the piercing of the corporate  
 18 veil in Ecuador is intended to protect third parties  
 19 vis-à-vis the abusive use of the corporate identity. I  
 20 think that this is a good summary for the concept, and what  
 21 I tried to say when I referred to an inequitable result has  
 22 to do with avoiding or preventing any damage to a third  
 23 party. I cannot use the corporation to damage third  
 24 parties. That would be an abusive of the corporate form in  
 25 this case. And I don't know if I was able to clarify with

12:42 1 not a knowledge proceeding [one of the parties has to prove  
 2 the existence of a right], this is a declaratory proceeding  
 3 [the judge simply recognizes the existence of a right].  
 4 And, in this proceeding the obligation of  
 5 Petroecuador would be declared, for example, of assuming  
 6 first, that it is a joint and several obligor, and in  
 7 second place, to assume its corresponding share of the  
 8 joint and several obligation to which it was found liable,  
 9 for example Chevron; this would be the normal proceeding  
 10 and certainly article 1538 of the Civil Code will be  
 11 raised, which as I have mentioned before establishes the  
 12 applicable regime to the joint and several debtor that  
 13 Chevron may propose a claim before the judicial branch, in  
 14 this case the administrative contentious jurisdiction,  
 15 because this would be a claim against Petroecuador.  
 16 ARBITRATOR LOWE: Let's assume for the sake of  
 17 argument without wishing to be uncharitable to Petroecuador  
 18 that it does not accept that it is liable and that it is  
 19 not a willing participant in proceedings, and suppose that  
 20 the action has been brought against Chevron alone. What  
 21 procedures are available under the law of Ecuador under  
 22 which Chevron could compel, under which Chevron has a right  
 23 to have a court in Ecuador determine that it is only liable  
 24 for part of the harm and that Petroecuador is also liable  
 25 for part of the harm?

12:43 1 MR. LEONARD: If I could reiterate my request for  
2 the Expert to slow down to allow for a more accurate  
3 translation of his responses.  
4 THE WITNESS: Perfect.  
5 Chevron may propose a claim. In this case, this  
6 is the--in the administrative area of the law because this  
7 would be a claim against Petroecuador. As part of that  
8 proceeding, it may be--there might be an invocation or  
9 declaration of the liability of Petroecuador. And finally,  
10 there would be a determination of the amount that  
11 Petroecuador would have to pay. Then Chevron would be able  
12 as part of that claim to obtain a declaration of liability  
13 by Petroecuador, and even the determination of the amount  
14 to be paid by Petroecuador given a liability that was  
15 previously declared against Chevron, to be more specific.  
16 ARBITRATOR LOWE: So, to make sure that I've  
17 understood it, in a case where liability is founded upon  
18 tort or delict, one party which is found liable has a right  
19 to proceed against a third party which could have been sued  
20 but which was not sued in essence for a contribution  
21 towards the damages that had been ordered against it, and  
22 that would be given effect through the institution of a  
23 separate proceeding by the party which was found  
24 responsible in the first place; is that right?  
25 Actually, I think my question was less clear than

12:45 1 your answer.  
2 (Laughter.)  
3 THE WITNESS: I think I understand what you say.  
4 When Chevron is declared--is found liable, Chevron  
5 may propose a claim before the judicial branch, in this  
6 case the administrative contentious jurisdiction, because  
7 this would be a claim against Petroecuador, so that  
8 Petroecuador is considered also co-liable and also the  
9 participation in the damages is determined because here  
10 this is a different problem. We're not referring to the  
11 liability arising from the original case, rather the  
12 co-liability as co-obligor and how--or joint obligor and  
13 how this will be distributed based on the participation in  
14 the harmful act.  
15 So, yes, this could be part of a separate  
16 proceeding. And since this is a claim against a public  
17 institution, there is a specific judge that has  
18 jurisdiction, and this is a proceeding where evidence will  
19 be presented, and that's when the situation will be  
20 explained, so that Chevron can explain why Petroecuador is  
21 the joint obligor and also the part to be paid by  
22 Petroecuador given their participation in the generation of  
23 harm. This is the organized--the ordered proceeding.  
24 As I told you, Chevron has the right, based on  
25 Article 1538, if as the joint obligor Chevron pays their

12:47 1 portion. This is the idea behind the proceeding. That is  
2 to say, this is completely independent of any other sort of  
3 allegation and claim that may be brought forward that is  
4 not based on that Article; rather, in general, presented  
5 against the State as co-liable or co--or joint obligor as  
6 part of this situation or case.  
7 ARBITRATOR LOWE: That's very helpful. I think I  
8 was confused because your answer was translated to say that  
9 Chevron may propose that claim. Another way of making that  
10 point is to say that Chevron can initiate a separate claim  
11 against Petroecuador. Thank you, that's fine.  
12 PRESIDENT VEEDER: That brings to an end the  
13 questions from the Tribunal. But as a matter of fairness,  
14 we give the floor to the Claimants if they wish to ask any  
15 questions arising from the Tribunal's questions.  
16 MR. CORIELL: Just one, Mr. President, arising  
17 from Professor Lowe's initial line of questions.  
18 RECROSS-EXAMINATION  
19 BY MR. CORIELL:  
20 Q. Dr. Andrade, if the Attorney General of Ecuador  
21 possesses prima facie evidence of judicial fraud, does he  
22 have a legal duty to investigate and remedy that fraud?  
23 MR. GALINDO: I don't know to whether you're  
24 referring to Procurador General del Estado Attorney General  
25 or the Fiscalía General del Estado.

12:49 1 MR. CORIELL: Both, as to each one.  
2 THE WITNESS: The Attorney General has a duty  
3 within a specified area to represent the State, and also  
4 some other responsibilities in connection with this topic.  
5 He has no specific duty in connection with a case of fraud  
6 or something like this. The Prosecutor General of the  
7 State is the Party that heads the agencies that are in  
8 charge of the public criminal action, and he is the one  
9 that has to find the evidence to sustain in front of a  
10 Court, and also to defend the right, the interest of  
11 society, given a crime before the competent Judge or the  
12 Judge with jurisdiction.  
13 MR. GALINDO: I'm sorry to interrupt again. The  
14 Attorney General has asked me to intervene, Mr. President.  
15 PRESIDENT VEEDER: Of course. Please.  
16 MR. GALINDO: When the interpreter is referring to  
17 Solicitor General, the right institution is the Prosecutor  
18 General of Ecuador.  
19 PRESIDENT VEEDER: That's an important correction.  
20 Is that agreed by the Spanish speakers on the  
21 Claimants' side?  
22 MR. CORIELL: Yes.  
23 PRESIDENT VEEDER: Let's have that corrected in  
24 the Transcript. Thank you for raising that to the  
25 Tribunal's attention.

12:50 1 MR. GALINDO: Thank you, Mr. President.  
 2 BY MR. CORIELL:  
 3 Q. So, is your answer that the Attorney General does  
 4 not have the duty that I asked you about and that the  
 5 Prosecutor General does have the duty that I asked you  
 6 about?  
 7 A. As I just mentioned, their roles are completely  
 8 different. The duties and the obligations of the  
 9 Prosecutor General are to investigate and also to look into  
 10 all of the crimes that have been committed, and then the  
 11 Attorney General has to do with the legal representation.  
 12 Now, if this has to do with any public authority  
 13 that has knowledge of a crime, what you're telling me is  
 14 that, yes, indeed, any public authority that is convinced,  
 15 that is completely convinced, that there is crime may  
 16 inform this to the Office of the Prosecutor General, so  
 17 that the process continues to be investigated. There is an  
 18 important difference here.  
 19 Q. Is a public authority so convinced required to  
 20 inform that to the Office of the Prosecutor General?  
 21 Required to inform that?  
 22 A. That is correct.  
 23 Q. And the Prosecutor General is required to  
 24 investigate and required to remedy that judicial fraud?  
 25 A. I wouldn't say "remedy." What they're going to do

12:54 1 being gathered to obtain the evidence, this first stage is  
 2 not public. It's reserved. There are only some  
 3 individuals that may have access to this information.  
 4 Q. And if as a result of these preliminary  
 5 investigation the Prosecutor General reaches the conclusion  
 6 that there is not enough indicia or evidence of a crime and  
 7 decides not to proceed with an investigation or not to  
 8 prosecute the relevant subjects in this case, would that  
 9 decision become public?  
 10 A. As a matter of fact, the prosecutor communicates  
 11 to the judge that the prosecutor decided not to continue  
 12 with the proceeding and what he requests is the closing of  
 13 the case, and this is more or less the end of the process.  
 14 That's basically the relevant information, yes.  
 15 MR. LEONARD: Then I have three comments of a  
 16 translation nature. The first one is, with the one  
 17 exception of Mr. Coriell's question, I have been asked to  
 18 instruct the Tribunal that every reference to the  
 19 "Prosecutor General" is actually a reference--the "Attorney  
 20 General" is actually a reference to the "Prosecutor  
 21 General."  
 22 THE WITNESS: Since I am a judicial prosecutor,  
 23 the level of risk is different, so my title was changed,  
 24 and I ended up with life insurance that I shouldn't have  
 25 had.

12:52 1 is to investigate, they will determine whether there is  
 2 enough evidence to be able to bring forward this public  
 3 criminal action until the Final Decision is reached. This  
 4 is not going to be done through the Prosecutor General,  
 5 rather the Judge hearing the case.  
 6 MR. CORIELL: Thank you.  
 7 PRESIDENT VEEDER: Does the Respondent have any  
 8 further questions arising from the Tribunal's questions?  
 9 MR. LEONARD: Yes, Mr. President. And I would  
 10 like to begin first with a follow-up question to  
 11 Mr. Coriell's questions. And again this may be beyond the  
 12 scope of your area of expertise.  
 13 FURTHER REDIRECT EXAMINATION  
 14 BY MR. LEONARD:  
 15 Q. But do you know whether in a case where the  
 16 Prosecutor General commences an investigation, and the term  
 17 is in Spanish "indagación previa," whether that aspect of  
 18 the proceedings before the Prosecutor General's Office or  
 19 by the Prosecutor General's Office, is that public or  
 20 public knowledge?  
 21 A. No. During this stage--that is called a  
 22 preliminary investigation--which is the search for grounds  
 23 to begin the actual--the formal investigation, this is a  
 24 secret stage. There is a secrecy of the case so that this  
 25 information is not made public. The information that is

12:57 1 MR. LEONARD: Well, the translation is different.  
 2 Two last points, Mr. President. There is, in  
 3 connection with the responses to Mr. Lowe's questions, the  
 4 abuse of the corporate form was translated as "abuse of the  
 5 corporation." I'm not sure how appropriate this is. Maybe  
 6 perhaps we could discuss it with opposing counsel.  
 7 And there was also a response to the duties of a  
 8 judge to refer a certain matter in the event of prima facie  
 9 evidence of a crime, and the response spoke about the  
 10 conviction of the Judge, and that was not the--the term  
 11 "conviction" did not appear in the translation.  
 12 I do not want to restate the answer. I just want  
 13 to make this point, and perhaps we will discuss it with  
 14 opposing counsel and make the appropriate revisions to the  
 15 Transcript.  
 16 PRESIDENT VEEDER: Well, thank you for that.  
 17 Generally, there may be, after this week, time for  
 18 everyone just to check the interpretation and, indeed, the  
 19 transcription, and we will have a procedure with a time  
 20 limit where this can be done, first of all, by the Parties  
 21 cooperating with each other because often these can be  
 22 agreed very quickly. If they can't be, then obviously  
 23 there is a tape-recording, and if that can't resolve the  
 24 issue, it will come to the Tribunal. So, thank you for the  
 25 comments, but there will be another opportunity to correct

12:58 1 the Transcript--not to change it, but just to correct it.  
 2 Is there anything else from the Respondent that we  
 3 need to hear at this stage?  
 4 MR. LEONARD: Nothing from the Respondent.  
 5 PRESIDENT VEEDER: We've come to the end of your  
 6 testimony. We thank you for coming here to assist the  
 7 Tribunal, and you may leave the table.  
 8 THE WITNESS: Pleasure, thank you very much,  
 9 Mr. President.  
 10 (Witness steps down.)  
 11 PRESIDENT VEEDER: Well, it's now 1:00. We've  
 12 probably extended the interpreters and the shorthand  
 13 writers almost as far as they can take this morning. But  
 14 given that we will break after the housekeeping, it may be  
 15 helpful if we tried to do the housekeeping over the next  
 16 ten or so minutes, but if it's going to take longer, we  
 17 should take a break and then come back after lunch.  
 18 But can we, first of all, establish that both  
 19 Parties have completed the evidential phase of this Hearing  
 20 and that on Thursday and Friday we will start with the  
 21 closing oral submissions? We would like, in that regard,  
 22 to have a better understanding of when you would like us to  
 23 start the Hearing on Thursday and Friday and how you  
 24 foresee each side going through the day with perhaps the  
 25 usual breaks or fewer breaks or more breaks, and when we

01:01 1 to 5:30 p.m.  
 [Redacted text block]

01:00 1 might finish.  
 2 We ask the Claimants first.  
 3 MR. BISHOP: Yes, Mr. President, we have finished  
 4 the evidence. We are--we will be prepared to proceed on  
 5 Thursday and Friday with the Closing Statements. From the  
 6 Claimants' standpoint, we would ask that we start at 9:00  
 7 on Thursday. We believe we will be done--with the normal  
 8 breaks and the normal lunch hour--we believe we will be  
 9 done approximately 5:30. That would be our proposal, and  
 10 that's the way we would plan to go forward on Thursday.  
 11 PRESIDENT VEEDER: Thank you.  
 12 And the Respondent?  
 13 MR. BLOOM: We can confirm what Mr. Bishop said.  
 14 We, too, are fine beginning at 9:00, concluding at 5:30,  
 15 both Thursday and Friday.  
 16 It does dawn on me as we're talking about being  
 17 completed with the evidentiary phase, we owe the Tribunal  
 18 the two exhibits that Mr. Bishop and I spoke about the  
 19 other day whereby we both agreed to allow additional  
 20 evidence that had been inadvertently omitted, so we have  
 21 that housekeeping measure to do. But other than that the  
 22 evidentiary phase should be completed.  
 23 PRESIDENT VEEDER: Well, that's satisfactory for  
 24 the Tribunal. We will start again Thursday 9:00. We'd run  
 25 to 5:30 p.m., and on Friday we will start at 9:00 and run

01:03 [Redacted text block]

01:04

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03:01

[Redacted text block]







03:15

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] more we could can do?

8 It's now 3:15. I'm sure you've got better things to do,  
 9 but let's ask the Claimants first.

10 MR. BISHOP: The Claimants have nothing further,  
 11 Mr. President. Thank you.

12 PRESIDENT VEEDER: And the Respondent?

13 MR. BLOOM: Nothing further.

14 PRESIDENT VEEDER: Well, you will, I hope, get  
 15 later today the final, final, final, final draft, so  
 16 helpfully monitored by the Tribunal's Secretary, Mr. Doe.  
 17 And if you any comments on it or corrections, please come  
 18 back to us tomorrow, and we will take those into account,  
 19 because the idea is that we would have this ready to be  
 20 signed on Thursday morning.

21 So, until Thursday morning at 9:00. Thank you all  
 22 very much.

23 (Whereupon, at 3:16 p.m., the Hearing was  
 24 adjourned until 9:00 a.m., Thursday, May 7, 2015.)  
 25

CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

  
 DAVID A. KASDAN

IN THE MATTER OF AN ARBITRATION BEFORE A TRIBUNAL  
CONSTITUTED  
IN ACCORDANCE WITH THE TREATY BETWEEN THE U.S.A. AND THE  
REPUBLIC OF ECUADOR CONCERNING THE ENCOURAGEMENT AND  
RECIPROCAL PROTECTION OF INVESTMENT, SIGNED AUGUST 27, 1993  
(THE "TREATY")

and

THE UNCITRAL ARBITRATION RULES 1976

- - - - -x  
 In the Matter of Arbitration :  
 Between: :  
 :  
 CHEVRON CORPORATION (U.S.A.), :  
 TEXACO PETROLEUM COMPANY (U.S.A.), :  
 :  
 Claimants, : PCA Case No.  
 : 2009-23  
 and :  
 :  
 THE REPUBLIC OF ECUADOR, :  
 :  
 Respondent. :  
 - - - - -x Volume 12

TRACK 2 HEARING

Thursday, May 7, 2015

The World Bank  
700 18th Street, N.W.  
J Building  
Conference Room JB1-080  
Washington, D.C. 20003

The hearing in the above-entitled matter convened  
at 9:00 a.m. before:

- MR. V.V. VEEDER, Q.C., President
- DR. HORACIO GRIGERA NAÓN, Arbitrator
- PROFESSOR VAUGHAN LOWE, Q.C., Arbitrator

## Registry, Permanent Court of Arbitration:

MR. MARTIN DOE, Secretary to the Tribunal

## Additional Secretary:

MS. JESSICA WELLS

## Court Reporters:

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LitOptix

1 PROCEEDINGS  
2 PRESIDENT VEEDER: Good morning, ladies and  
3 gentlemen. We'll start Day 12 of this Hearing.

[REDACTED]

20 PRESIDENT VEEDER: Thank you very much. We give  
21 the floor to the Claimants for their closing oral  
22 submissions. We'll take our usual breaks. We anticipate  
23 finishing, I think as the Parties said, by 5:30 today.  
24 MR. BISHOP: Yes, Thank you, Mr. President.  
25 CLOSING ARGUMENT BY COUNSEL FOR CLAIMANTS

C O N T E N T S

CLOSING ARGUMENTS ON BEHALF OF THE CLAIMANTS:

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By Mr. Kehoe	2708
By Mr. Paulsson	2735
By Mr. Pate	2753

08:59 1 MR. BISHOP: I'm going to try in the next 15  
2 minutes to put the Lago Agrio Case into some perspective  
3 and to give you a roadmap as to where our presentation will  
4 go today.  
5 The Lago Agrio Case was fatally defective at its  
6 very inception. All diffuse environmental claims had  
7 already been settled, TexPet had properly remediated its  
8 share of the sites, and the government had approved that  
9 remediation at every site. The case was filed against the  
10 wrong party in Chevron, and the Plaintiffs had agreed not  
11 to sue the Government or Petroecuador, so they tried to  
12 ignore their responsibility.  
13 Now, when Steven Donziger took over as lead  
14 counsel in 2005 for the Lago Agrio Case, the case quickly  
15 turned into an extortionate scheme involving an aggressive  
16 public relations campaign, falsified data, the falsified  
17 Expert Reports of Dr. Calmbacher, the bribery of Cabrera,  
18 and the ghostwriting of his supposedly independent expert  
19 reports, intimidation of judges, and the bribery of Judge  
20 Zambrano, and the ghostwriting of both his Court Orders and  
21 the Judgment.  
22 In this process, the laws and the Constitution of  
23 Ecuador were trampled. But what was lost even more was any  
24 semblance of the truth, the objective facts, ethical  
25 restraints in any sense of proportion in the case.

09:00 1 The Lago Agrio Plaintiffs' lawyers' descent into  
 2 an ethical hell is rather astounding, but what's most  
 3 shocking about this case has been the State's role in it.  
 4 President Correa adopted the Plaintiffs' case as a national  
 5 cause. He committed the Government to that case, and he  
 6 began an aggressive campaign to influence the Court's  
 7 decisions, and it's clear that successive judges were  
 8 influenced as every judge after President Correa was  
 9 elected made clearly biased decisions that denied due  
 10 process to Chevron.  
 11 When the \$18 billion Judgment was issued and the  
 12 fraud and the corruption was revealed, the State, through  
 13 both the Government and its courts, refused to stay the  
 14 enforcement of the Judgment, despite that evidence and  
 15 despite the Interim Awards of this Tribunal. The  
 16 Government also refused to investigate Chevron's claims or  
 17 to prosecute or punish any of the principals behind the  
 18 scheme. And the appellate courts affirmed the Judgment and  
 19 certified it as enforceable without ever reviewing or  
 20 deciding the claims of fraud and corruption.  
 21 And the Government has even adopted and  
 22 aggressively promoted the enforcement of the Judgment as a  
 23 matter of Government policy.  
 24 Now, a commonsense view of the evidence, and even  
 25 of the Judgment just on its face, indicates bias and the

09:03 1 key evidence in this case is undisputed. For example,  
 2 Ecuador said in the Opening Statement, and I quote it: "To  
 3 be clear, the Republic does not dispute the text from some  
 4 of the Plaintiffs' documents appears in the Judgment as  
 5 Claimants have identified."  
 6 So, it's undisputed that the Plaintiffs' own  
 7 internal documents are copied into the Judgment. And no  
 8 one has found those documents that we pointed to anywhere  
 9 in the Court Record.  
 10 So, Ecuador goes further and also says in the  
 11 Opening Statement, and I quote it again: "It's quite  
 12 impossible under these circumstances for any person to know  
 13 the universe of the lawfully submitted documents."  
 14 The ghostwriting of the Judgment is clear; and, as  
 15 a result, Ecuador is forced to resort to an opportunistic  
 16 any port in the storm defense, that the Court record was  
 17 kept by the Clerk in such a sloppy manner that no one could  
 18 know what documents were filed or were not filed.  
 19 But what's not clear about this is why Ecuador  
 20 could possibly believe that's a defense. It would not be a  
 21 defense at a \$9,000 case, and it's certainly not a defense  
 22 in a \$9 billion case.  
 23 Dr. Velasquez, a former judge on the Ecuadorian  
 24 Constitutional Court, confirms in his Expert Reports that a  
 25 Judgment cannot be based on documents not in the Court

09:02 1 ghostwriting of that judgment, and I refer you to Slide 3  
 2 in that regard. \$18 billion in damages, despite  
 3 Petroecuador's remediation for the same sites of  
 4 \$70 million.  
 5 \$8.5 billion in punitive damages in manifest  
 6 violation of Ecuadorian law which doesn't permit or  
 7 recognize punitive damages, and conditioned on an  
 8 unprecedented public apology which would have effectively  
 9 been an admission, and based on Chevron's attempts to  
 10 defend itself in the face of pervasive fraud and  
 11 corruption.  
 12 The factual absurdities of the environmental  
 13 findings and damages with no grounding in scientific  
 14 evidence but based instead on the fraudulent Cabrera  
 15 Reports and the legal absurdities of trying to justify  
 16 suing the wrong party and ignoring Petroecuador's  
 17 operations and impacts.  
 18 Now, each of these, along with the Cabrera fraud  
 19 and the bribery and ghostwriting of the Court Orders and  
 20 the Judgment evidences a denial of justice and a breach of  
 21 the Bilateral Investment Treaty.  
 22 Now, much of Claimants' case rests on un rebutted  
 23 evidence. For example, the concessions which Ecuador made  
 24 in the Opening Statement which reflect generally what they  
 25 had already said in their Memorials, demonstrates that the

09:05 1 Record. And Mr. Andrade confirmed that same principle in  
 2 his testimony on Tuesday. A judgment based on unfiled  
 3 documents is a nullity under Ecuadorian law.  
 4 Now, in the Opening Statement, I told you that  
 5 there were at least four central characters in the Lago  
 6 Case, but you would only hear from one of them, and that's  
 7 Mr. Guerra. And you've now had the opportunity to see and  
 8 hear Mr. Guerra. And since you've seen his demeanor and  
 9 you've heard his forthright answers, you can judge his  
 10 credibility for yourself. But very importantly, his  
 11 testimony is largely corroborated by independent and  
 12 documentary evidence.  
 13 By contrast, however, the Witness you didn't hear  
 14 from is former Judge Zambrano. We challenged Ecuador to  
 15 bring him, since he currently works for a company  
 16 controlled by Petroecuador, the national oil company of  
 17 Ecuador, and you invited him to appear. But Ecuador  
 18 refused to bring him.  
 19 So, we might ask why. Why isn't he here? Why  
 20 didn't they bring him to testify in this case? Well,  
 21 there's a simple answer to that question, and the answer is  
 22 that his testimony in the RICO case was so dismal and so  
 23 devastating and his demeanor so lacking in credibility that  
 24 it was clear he didn't author the Judgment. So, he's not  
 25 here.

<p>Sheet 5</p> <p style="text-align: right;">2511</p> <p>09:06 1 Now it's unfortunate that you didn't get to see  2 him and draw your own impressions from watching him  3 testify, but fortunately, Judge Kaplan in the RICO case did  4 get to see Zambrano in person and did get to hear from him,  5 and he concluded that Zambrano was not a credible witness.  6 And although his conclusion is not binding on you, it's the  7 best evidence that you have as to the demeanor and  8 credibility of Zambrano as a witness.  9 Now, what is Ecuador's defense to this case?  10 There seems to be no coherent defense on the facts of the  11 case. Ecuador has not brought you a single fact witness in  12 Track 2. Its primary defense seems to be exhaustion of  13 local remedies, but with Ecuador's highest court, the  14 National Court of Justice now having spoken, Ecuador  15 struggles to find a way to preserve its now exhausted  16 exhaustion defense. So, it casts about, and it points to a  17 new and oblique vehicle: The Collusion Prosecution Act.  18 But that doesn't work. The direct remedy for Chevron was  19 appealed, and Chevron fully pursued its appeals.  20 The Ecuadorian appellate courts had ample  21 procedural vehicles under the Constitution to determine the  22 claims of fraud and corruption that Chevron brought, but  23 they ignored them.  24 They also had ample evidence of the fraud already  25 in the record before them--the Cabrera fraud, for</p>	<p style="text-align: right;">2513</p> <p>09:10 1 opportunity to see and hear from the Environmental Experts,  2 and I think you've seen the gross exaggerations and  3 distortions of Ecuador's case in this regard. And there  4 are three simple points I'd like to make about it very  5 quickly:  6 First, at all relevant times, Petroecuador was  7 always the majority and controlling partner of the  8 Consortium, and the Government was both the regulator and  9 the policy-maker who set the policies that was followed by  10 the Consortium.  11 Second, the Government agreed to a remediation  12 program with TexPet at specific sites and with agreed  13 criteria that was both effective and protective, and then  14 it approved that remediation at every single site and fully  15 released TexPet from all diffuse environmental liability.  16 What was left was Petroecuador's responsibility.  17 And, third, Petroecuador's own budget for the full  18 remediation of the same sites is \$70 million, not  19 \$8.5 billion.  20 Now, finally in terms of remedies, the Claimants  21 request a combination of declaratory, injunctive, and  22 monetary relief in order to wipe out the consequences of  23 the illegal acts of Ecuador. The most important of those  24 remedies is declaratory relief, declaring that the Republic  25 of Ecuador committed a denial of justice under customary</p>
<p style="text-align: right;">2512</p> <p>09:08 1 example--and the evidence that the Judgment copies from the  2 Plaintiffs' internal documents that are nowhere filed in  3 the Court Record. That evidence was before them. And they  4 could have ruled on that basis, but instead they ignored  5 that evidence as well. And the reason I think is clear:  6 Donziger wanted the Government to make the Lago case into a  7 national issue, so no judge could rule against them and get  8 away with it in terms of his career, and he said that in so  9 many words. And President Correa, once he was elected,  10 accommodated exactly that and made the case into a national  11 cause.  12 Now, as to the Collusion Prosecution Act itself,  13 it's not a direct remedy; and, very importantly, it cannot  14 be used to enjoin or arrest the enforcement of the  15 gargantuan \$9.5 billion judgment which would remain  16 enforceable throughout the pendency of the case.  17 In these unique circumstances in which Chevron is  18 condemned by the President of Ecuador as an enemy of the  19 country and its lawyers and experts are condemned as  20 traitors to the country, justice for Chevron in Ecuador is  21 futile, and the CPA provides no possible remedy.  22 Now, Ecuador's other major theme in this case is  23 environmental. Over the past three years, you've heard  24 them describe what happened in Ecuador as an environmental  25 disaster. But over the past two weeks you finally had an</p>	<p style="text-align: right;">2514</p> <p>09:11 1 international law and also breached the Bilateral  2 Investment Treaty and several of its provisions, including  3 the effective means provision.  4 Now, in order to provide full relief as  5 international law requires, Chevron needs a declaration of  6 both denial of justice and a breach of the Treaty, and  7 Mr. Kehoe will discuss this in much more detail this  8 afternoon.  9 Similarly, Chevron also requests the Declaration  10 that the Judgment is nullity and therefore devoid of legal  11 effect under international law.  12 Now, I'd like to answer your first question.  13 Throughout this presentation, various of the speakers will  14 be answering your questions. We're going to try to answer  15 each and every one of them.  16 But as to your first question, the Claimants  17 certainly have no objection to the Tribunal having the full  18 legal materials that you need, including the full books of  19 Professors Paulsson and Freeman and the full legal opinions  20 in the Loewen Case, among others. We have no objection to  21 that whatsoever.  22 Now, we've divided our presentation today into  23 seven segments. And, as I said, we've tried to weave the  24 Tribunal's questions into these, and so we're going to  25 answer those questions throughout, so the structure of our</p>

<p>Sheet 6</p> <p style="text-align: right;">2515</p> <p>09:12 1 argument is going to be as follows:  2 First, I'm going to hand the floor to Tracie  3 Renfroe, who will address TexPet's remediation and the RAP.  4 Then Wade Coriell will address the remaining  5 Track 1 issues, including the settlement issues and  6 certainly the Tribunal's questions on veil piercing,  7 causation, and timing that relate to the Judgment itself.  8 Now, at that point, that might be a good  9 opportunity to take the mid-morning break. I think that  10 will take about an another hour and 15 minutes to get to  11 that point.  12 After that, we will then turn to the international  13 law issues for approximately an hour and a half.  14 David Weiss will address the jurisdictional and  15 admissibility issues and the relevance or irrelevance of  16 the environmental issues.  17 Professor Paulsson will then address the remaining  18 international law issues such as the treaty breaches, the  19 denial of justice, and the exhaustion of legal remedies.  20 That might be a good opportunity for a lunch  21 break.  22 Following that, we'll return to Tracie Renfroe,  23 who will answer the environmental case that Ecuador has put  24 forward.  25 Then we will turn to the facts of the fraud and</p>	<p style="text-align: right;">2517</p> <p>09:15 1 that under that Remedial Action Plan or RAP, the Parties  2 divided not only the sites within the Concession Area, but  3 within a given site they divided remediation  4 responsibilities with TexPet having responsibility only for  5 certain features at certain sites. And we've discussed  6 that issue in detail, and you will have heard no dispute  7 from any fact witness or any expert witness to that point.  8 Which then brings me to: What was done in this  9 Remedial Action Program? With the benefit of the jointly  10 commissioned HBT Agra audit, the Parties--meaning Ecuador,  11 Petroecuador, and TexPet--agreed on the details of exactly  12 what sort of remediation would be done and where.  13 And in this slide I've just excerpted a few of the  14 highlights of the nature of the types of things that were  15 to be addressed.  16 Contrary to what you may have heard earlier this  17 week from Ecuador's Expert LBG, it is not the case that the  18 remedial action work was limited to pits. If one simply  19 looks at the Remedial Action Plan, you will find that it  20 calls for remediation of soils and spills as well as  21 sediments in certain areas, including, in addition to the  22 pit remediation, plugging and abandonment of wells, et  23 cetera; and so it's simply factually incorrect to suggest  24 that this remediation program was limited to pits.  25 Now, the remediation program was conducted by</p>
<p style="text-align: right;">2516</p> <p>09:14 1 the corruption, and I will address that along with Caline  2 Mouawad and Elizabeth Silbert.  3 Following that in our sixth segment we'll turn to  4 the issue of remedies. Mr. Kehoe will primarily discuss  5 the remedies, followed by Jan Paulsson discussing the  6 offset theory.  7 And we will conclude with some final remarks from  8 Mr. Hew Pate, who I think will also attempt to answer some  9 of the Tribunal's questions with respect to the RICO  10 issues.  11 And with that, I'll turn the floor over to Tracie  12 Renfroe.  13 PRESIDENT VEEDER: Thank you.  14 Ms. Renfroe.  15 MS. RENFROE: Thank you very much, Mr. President,  16 and good morning, Members of the Tribunal.  17 I would like to add some color and additional  18 detail to Mr. Bishop's comments about the fact that the  19 TexPet Remedial Action Program, or the RAP as we have  20 called it, was both effective and highly protective.  21 You may remember this slide that I showed you in  22 my opening remarks in which I set forth the division or  23 allocation of remediation responsibilities that the Parties  24 agreed to in 1995 in their Settlement Agreement and the  25 Remedial Action Plan. And the noteworthy point here is</p>	<p style="text-align: right;">2518</p> <p>09:17 1 Ecuadorian remediation Contractors under the oversight and  2 management of the Woodward-Clyde International  3 environmental engineering firm. You may recall having  4 heard in detail from Claimants' Expert engineer John Connor  5 how the remediation work was done; and, on this slide from  6 his presentation, you'll see the eight-step process that  7 was followed by the remediation for remediation of pits.  8 And you will find when you look at the volume, the  9 two-volume final report published by Woodward-Clyde  10 International in 2000, you will find a photographic log in  11 Volume 2 of this Report that shows you the photographs that  12 documented the remediation of all of these pits and  13 surrounding areas, including some streams.  14 And just as a reminder, the Woodward-Clyde Report  15 is in the record as Connor Exhibit 30.  16 Now, Mr. Connor also, in addition to explaining  17 how the remediation work would be done, he showed us the  18 results of it; and, if we look at this slide taken from his  19 presentation, you can see just one illustration of what a  20 pit looked like before it was remediated and then what it  21 looked like following application of the eight-step  22 remediation process. And as you can see for yourself, the  23 result of it is that the pit was--the contents of it were  24 treated and solidified, it was revegetated and essentially  25 retaken by the surrounding land area.</p>

09:18 1 We also heard from Mr. Connor's testimony about  
 2 the effective nature of this type of remediation program.  
 3 And it might be of interest to you to know that today, the  
 4 Republic of Ecuador and Petroecuador actually use the same  
 5 eight-step process for remediating pits in the Concession  
 6 Area.  
 7 Now, during the testimony of LBG earlier this  
 8 week, I believe you may have heard the suggestion that  
 9 streams and sediments were a problem in the Concession Area  
 10 that LBG is now focused on, and the suggestion that TexPet  
 11 addressed no sediment contamination. As I said a moment  
 12 ago, that is simply not true. And in this photograph taken  
 13 from the Woodward-Clyde Report and that can be found in the  
 14 clickable database, I show you an example of a stream that  
 15 TexPet actually remediated, and the stream is near the  
 16 Sacha 89 well platform. You will find when you look in the  
 17 Actas in this record that Hinchee 175 contains a copy of  
 18 the October 1997 Acta confirming from the Republic of  
 19 Ecuador's Ministry that the remediation work had been done  
 20 and completed.  
 21 And not only do we have the Acta confirming  
 22 Ecuador's satisfaction with the remediation of this stream,  
 23 but we also have this letter from members of the local  
 24 community, this letter of appreciation to TexPet, thanking  
 25 them for the grate--well, providing an observation of and

09:22 1 which we have provided citation, but we're happy to provide  
 2 them in a handy, convenient collection if that would be of  
 3 convenience to the Tribunal.  
 4 So, let me then move on to this issue, and that  
 5 is, not only did we have the contemporaneous documented  
 6 confirmation by Ecuador's representatives, but after the  
 7 fact we've had further sworn testimony, as I mentioned in  
 8 my Opening Statement, from high-level executives from the  
 9 Republic of Ecuador's Ministries again confirming that  
 10 TexPet, indeed, performed all of the remediation items that  
 11 were assigned to it, but observing that Petroecuador had  
 12 yet to do its part.  
 13 And I wish to remind you again of the testimony of  
 14 the Republic's Undersecretary of the Environmental  
 15 Protection Division with the Ministry of Energy and Mines,  
 16 Mr. Giovanni Rosania Schiavone, whom you met in a hearing in  
 17 November of 2012, and he told you under cross-examination  
 18 he was brought by the Republic of Ecuador, and he told you  
 19 under cross-examination that he insisted that the technical  
 20 work, the environmental remediation work, had been done  
 21 well.  
 22 Now, one other important observation that we  
 23 learned this week and to which there is no dispute from  
 24 Ecuador's own environmental experts is the fact that the  
 25 Parties' agreement, their agreed remediation criteria that

09:20 1 expressing their testimony of, "real gratefulness to TexPet  
 2 Petroleum Company for the environmental remediation work  
 3 performed on the creek which has its origin near well  
 4 Sacha 89." You'll find that letter in C-1174.  
 5 So, not only was TexPet's remediation of pits  
 6 effective and protective, but we have the testimony of  
 7 local members of the community who appreciated TexPet's  
 8 remediation work of streams.  
 9 And then again to remind you of the detailed  
 10 documentation from the Government of Ecuador's own  
 11 representatives who monitored this remediation program, and  
 12 their work notes and their monitoring of the program were  
 13 documented in these 52 what we called RAT Actas, and those  
 14 are all in this record. And then ultimately, all of the  
 15 remediated areas that required action by TexPet were  
 16 approved in the 19 Approval Actas, which are also all in  
 17 this record, and then all of that culminated in the Final  
 18 Acta, the final remediation Acta issued September 1998 in  
 19 which the senior Executives for both Petroecuador and the  
 20 Ministries of Ecuador confirmed their satisfaction that  
 21 TexPet had, indeed, completed all of the remediation  
 22 obligations assigned to it.  
 23 And as I said, the documentation of the oversight  
 24 by Ecuador and Petroecuador's representatives is contained  
 25 in these various Actas, all of which are in the record, and

09:23 1 they set forth in the Remedial Action Plan called for the  
 2 treatment and then encapsulation of materials that had been  
 3 stored in pits. After treatment through that eight-step  
 4 process, then the pits were closed and encapsulated, but  
 5 the result is that there will be residues or there could  
 6 be--there is not necessarily, but by agreement of the  
 7 Parties there could be--residues of TPH left in these  
 8 remediated closed pits. Dr. Garvey, or Mr. Garvey, and  
 9 Mr. Goldstein from LBG acknowledged that and acknowledged  
 10 that was the Agreement of the Parties. And so, to the  
 11 extent that something untoward is suggested by Ecuador,  
 12 something untoward about that, that we need only to look at  
 13 the Parties' agreement and recognize that that was the  
 14 anticipation and recognition.  
 15 And then we move forward in time to two other  
 16 points in which different representatives of Ecuadorian  
 17 agencies investigated more than a decade later the  
 18 efficacy--in some cases a decade later--the efficacy of  
 19 TexPet's remediation work. And here on this slide, I  
 20 simply summarize the key findings of one of these  
 21 environmental investigators associated with one of  
 22 Ecuador's agencies.  
 23 And here, this environmental engineer, Dr. Narvez  
 24 Troncoso and Dr. Bolivar Garca Pinos have concluded after  
 25 investigating various remediation areas that TexPet had



09:25 1 addressed, they concluded that the hydrocarbon impact is  
 2 confined to the area of the pits and does not affect  
 3 underground water quality.  
 4 Likewise, they concluded that the remediated pits  
 5 had no impact on the quality of life or the wildlife. Nor  
 6 were there any leaks or infiltrations into the subsoil or  
 7 the bottom of the pits detected.  
 8 And so, this is proof positive from  
 9 representatives from the Republic of Ecuador themselves  
 10 that the TexPet remediation work was both effective and  
 11 protective of the environment.  
 12 Similar findings were made by another  
 13 investigator, another environmental engineer associated  
 14 with Ecuador's Office of the Prosecutor; and in this Report  
 15 in 2006, she reports, after having inspected the surface  
 16 area of a number of the RAP-remediated pits, that, "of all  
 17 the pits evaluated, 100 percent of them showed no surface  
 18 environmental impacts that endanger human life, flora, or  
 19 fauna." 100 percent of those that she inspected.  
 20 Now, all this occurred before the Judgment was  
 21 issued.  
 22 Now, I come to my final point, and that is, not  
 23 only do we have the official actions of the representatives  
 24 of Ecuador in the various Actas that we have included in  
 25 this record, confirming in the period of the remediation

09:26 1 work between 1995 and 1998, that the remediation was done  
 2 pursuant to the Parties' Agreement, and then we see the  
 3 subsequent testimony to that effect by the two senior  
 4 environmental Ministers from Ecuador. And then we have the  
 5 subsequent investigations by various branches of Ecuador's  
 6 Ministries.  
 7 But now we move forward in time to the Lago  
 8 Litigation, where I have--where we find the observation of  
 9 the Stratus Expert Doug Beltman on behalf of the Lago  
 10 Plaintiffs. And on this slide at the top, I have excerpted  
 11 again one of his private e-mail observations, where he's  
 12 telling Steven Donziger: "I did not find any clear  
 13 instances where TexPet did not meet the conditions required  
 14 in the cleanup." From the observations of the Lago  
 15 Plaintiffs' Environmental Expert himself.  
 16 That same conclusion was also observed by  
 17 Mr. Barros, one of the Court-appointed experts who said,  
 18 "TexPet completed the part of the remediation assigned to  
 19 it under the RAP." And again, you heard Mr. Connor last  
 20 week tell you the very same thing in his testimony, that  
 21 when he went to those sites during the judicial inspection  
 22 process, he too confirmed the RAP remediated areas had been  
 23 perfectly and faithfully remediated pursuant to the  
 24 remediation plan.  
 25 And then finally this week, Mr. Goldstein from

09:28 1 LBG, from actually quoting from his prior deposition, he  
 2 said he believed they complied with the RAP, that TexPet  
 3 complied with the RAP.  
 4 So, Members of the Tribunal, it is simply  
 5 uncontroverted from any fact or expert witness that TexPet  
 6 fully complied with the RAP and performed its obligations  
 7 to remediate, and it did it well, its work was effective,  
 8 it was protective, and it fully deserved the release that  
 9 it got from the Republic of Ecuador.  
 10 And so, with that, I will now turn it over to  
 11 Mr. Coriell.  
 12 (Tribunal conferring.)  
 13 PRESIDENT VEEDER: Mr. Coriell.  
 14 MR. CORIELL: Thank you, Mr. President, Members of  
 15 the Tribunal.  
 16 You've heard about the effective remediation that  
 17 TexPet performed, and I'll now be discussing Ecuador's  
 18 liability for its legally absurd refusal to give effect to  
 19 the Settlement and Release Agreements that TexPet signed on  
 20 behalf of itself and its affiliates in exchange for doing  
 21 that RAP work that Ms. Renfro discussed.  
 22 And you will recall that this falls into three  
 23 different and independent legal categories, Ecuador's  
 24 remaining Track 1 liability. The first, of course, is  
 25 breach of the Settlement and Release Agreements which you

09:30 1 have jurisdiction to hear under Ecuadorian law under  
 2 Article VI(1)(a) of the BIT.  
 3 The second is, of course, denial of justice for  
 4 the legal absurdity inherent in the Judgment's failure to  
 5 account for the Settlement and Release Agreements and its  
 6 reasoning with respect to those.  
 7 And the third is, of course, the treaty breaches,  
 8 in particular the effective means provision and the  
 9 fair-and-equitable-treatment provision because of the  
 10 legitimate expectation of finality that TexPet and Chevron  
 11 derived from these Release Agreements.  
 12 And then I'm going to answer a couple of your  
 13 questions about causation and piercing of the corporate  
 14 veil.  
 15 Now, when we submit our final brief on the Track 1  
 16 issues, we're going to walk you through Ecuador's changing  
 17 and inconsistent position on the nature of the rights that  
 18 were purportedly vindicated in the Lago Agrio Judgment.  
 19 You may remember how in 2010, Ecuador spoke to you during  
 20 our very first Interim Measures Hearing as if Chevron made  
 21 up the entire concept of a diffuse right; how in 2012,  
 22 Ecuador and its experts treated diffuse and collective  
 23 rights as synonyms in the context of this case. Or how  
 24 after your Track 1 Award they suddenly pivoted and said  
 25 somehow "collective" actually means "individual." That was

09:32 1 the theme at last April's Track 1b Hearing.  
 2 Just two weeks ago we heard for the first time  
 3 that the Lago Agrio Case isn't about actual harm at all.  
 4 It's wholly about contingent harm. But what I want to  
 5 focus on today is the narrow issue of what you have left to  
 6 decide on Track 1 and how Ecuador is liable for a breach of  
 7 the Settlement and Release Agreements. And so, I'd like to  
 8 start with your two key holdings from the final Track 1  
 9 Award.  
 10 First, at Paragraph 106, at the time when the 1995  
 11 Agreement was executed, only Ecuador could bring a diffuse  
 12 claim under Article 19.2 of the Ecuadorian Constitution to  
 13 safeguard the right of its citizens to live in an  
 14 environment free from contamination. Only the State could  
 15 represent that diffuse right.  
 16 Second, Paragraph 112 of your First Partial Award:  
 17 The '95 and '98 agreements have legal effect under  
 18 Ecuadorian law precluding any diffuse claim under 19.2 by  
 19 any individual not claiming personal harm, actual or  
 20 threatened. The State settled that diffuse right that you  
 21 held that it could represent.  
 22 So, all that's left are individual allegations of,  
 23 in your words--and I discussed this with you during my  
 24 opening--personal harm. And you explained in your Track 1B  
 25 Decision the basis for that key distinction that you made

09:33 1 between diffuse and individual rights. You did it at  
 2 Paragraphs 155 and 156 of that decision. You said that  
 3 under Ecuadorian law, an individual claim belongs to that  
 4 individual with the remedy personal to that individual.  
 5 It's not a diffuse claim. A diffuse claim may belong to a  
 6 community of indeterminate people with the remedy  
 7 indivisible, and it is not an individual claim. So,  
 8 indeterminate people, indivisible interests. These are the  
 9 characteristics make that distinction.  
 10 Now, you may recall in its opening when Ecuador  
 11 showed you these two paragraphs from your decision, warned  
 12 you that you got it wrong in your Track 1B Decision, and  
 13 told you that there was no source for this distinction that  
 14 you made in Ecuadorian law. But you didn't get it wrong.  
 15 Ecuador's own expert Dr. Eguiguren has agreed with you.  
 16 Back in his Report in 2012, and he cited you to the source  
 17 in Ecuadorian law, which is the definition of a diffuse  
 18 interest in the 1999 Environmental Management Act. Let's  
 19 take a look. This is Footnote 14 from his declaration:  
 20 "Diffuse interest shall mean the homogeneous and  
 21 indivisible interests, whose holders are undetermined  
 22 groups of individuals linked by common circumstances." So,  
 23 just as you said, undetermined people, indivisible  
 24 interests. Ecuador can try to pretend otherwise now, but  
 25 this is its law.

09:35 1 And before your Track 1 Award forced them to  
 2 change tune, their comparative law expert agreed with you  
 3 as well. We see Mr. Chatelier's joint report with  
 4 Professor Oquendo back in August of 2012, defining diffuse  
 5 rights as indivisible entitlements that pertain to the  
 6 community as a whole, such as the community's collective  
 7 right to live in a healthy and uncontaminated environment,  
 8 in other words, such as Article 19.2 of the Ecuadorian  
 9 Constitution. Again, indivisible interests, community as a  
 10 whole. So, you didn't get confused by civil law concepts,  
 11 as Ecuador implied during its opening presentation two  
 12 weeks ago. You got this right, this key distinction.  
 13 So, where does that leave us? With a single  
 14 remaining Track 1 liability issue: Was the Lago Agrio  
 15 Judgment diffuse or did it vindicate individual claims for  
 16 personal harm, whether actual or threatened?  
 17 And in our Opening Argument, I showed you how the  
 18 Plaintiffs, how Ecuador up until your Track 1 Award, and  
 19 how every Ecuadorian Court in the Lago Agrio Case has  
 20 answered this question diffuse: No claims for personal  
 21 harm. And you have that handout of admissions that walks  
 22 you through all of that, and so I'm not going to go to  
 23 those provisions again.  
 24 And in Ecuador's opening, it agreed with us. You  
 25 see it from the Day 1 Transcript: The Lago Agrio Case does

09:36 1 not seek to address personal injury claims or health harms  
 2 specific to any one person. It didn't award damages based  
 3 on past or existing injury to any specific person or  
 4 persons.  
 5 And not that it would change the result either  
 6 way, but the health Expert that Ecuador hired and brought  
 7 before you to defend this Judgment after the fact didn't  
 8 even consider--wasn't asked to consider--the question of,  
 9 in your words, "personal harm." She was asked if the risk  
 10 assessments prove actual particular harm to a particular  
 11 person, and Dr. Strauss said no, they do not. "Does that  
 12 mean that you found that specific persons have been harmed  
 13 by TexPet?  
 14 No, I did not mean to imply any specific person  
 15 was harmed. I looked at no specific person. I did not  
 16 evaluate individual harms in the least."  
 17 And then we have Ecuador again in its Opening  
 18 Statement: The Aguinda Plaintiffs dropped their personal  
 19 injury claims. Indeed, they did. Those personal injury  
 20 claims refer to their cow claims, their claims for  
 21 reparation or compensation for their individualized harm.  
 22 Discrete, past harm. Personal harm. The key to the  
 23 distinction that you made, that would be a 2214 type  
 24 action, referring to Article 2214 in Ecuador's Civil Code.  
 25 So, what Ecuador is telling you now is that this

<p>Sheet 10</p> <p style="text-align: right;">2531</p> <p>09:38 1 is not a case of actual existing personal harm, which  2 leaves them with one remaining possibility other than a  3 diffuse case, and that's contingent individual harm under  4 Article 2236, and this is the argument that Ecuador made in  5 its opening presentation, its last remaining Track 1  6 argument.  7 But the Lago Agrio Judgment, in fact, used  8 Article 2236 in a wholly diffuse way, and Ecuador had  9 already released the diffuse use of that cause of action  10 back in 1995 and 1998, and that's what I'd like to turn to  11 now.  12 Now, in Article 5.1 of the 1995 Settlement  13 Agreement, Ecuador released claims for a defined term under  14 the Contract: Environmental impact. And those claims fall  15 into two buckets which I've tried to illustrate  16 conceptually on Slide 32, both of which are diffuse by  17 definition, and that's a key point. The first bucket is  18 harm to the environment, and that's the diffuse interest at  19 Article 19.2 of the Constitution that you identified in  20 your Track 1 Award; and the second is health impacts on  21 indeterminate persons.  22 And the source for these two buckets of released  23 diffuse claims is the Settlement Agreement itself, as it  24 would have to be, and in particular Article 1.3 which  25 defines the environmental impacts that were released under</p>	<p style="text-align: right;">2533</p> <p>09:41 1 the future, directly or indirectly arising out of  2 operations of the Consortium, including but not limited to  3 consequences of all types of injury. And then it says in  4 all other types of injuries and it lists some, including  5 nuisance. You will recall your Track 1B Decisions,  6 nuisance analogy, strict liability, any other theory or  7 potential theory of recovery. So substantively, what's  8 being released here is in any way related to contamination.  9 That's as broad as this could be. And when you read it  10 with the definition of environmental impact and those two  11 diffuse categories of claims that are being released, you  12 see that the State is acting in a representative capacity.  13 So, it's any statutory cause of action "related to  14 contamination" as long as it's diffuse and, thus, able to  15 be represented by the State. That's the key: As long as  16 it's diffuse and thus, able to be represented by the State.  17 And that's what you'll recall I started with this, that's  18 what you held at Paragraph 106 of your final Track 1 Award  19 was the case with Article 19.2 of the Constitution.  20 So, let's look now at another such cause of  21 action, and it's the one that Ecuador is now hanging its  22 hat on, Article 2236. And we see the terms of it. As a  23 general rule, a popular-action lawsuit, and that's what  24 2236 is, it's a popular action--is permissible in all cases  25 of future damage that, due to a party's imprudence or</p>
<p style="text-align: right;">2532</p> <p>09:39 1 that Agreement. An environmental impact is any substance  2 present or released into the environment in such  3 concentration or condition, the presence or release of  4 which causes, or has the potential to cause harm to two  5 things: Number 1, human health; Number 2, the environment.  6 So, let's think about this for a minute. The  7 State is releasing claims for harm to human health or harm  8 to the environment. The State can't have an individual  9 right in human health. The State can't have an individual  10 right in the environment. So, the only way for it to be  11 releasing claims based on these two substantive categories  12 is if it is doing so in a representative capacity, if it is  13 releasing diffuse claims. That's why with this definition  14 of what is being released in the Settlement Agreement is so  15 important to the Track 1 issues.  16 Any claim alleging harm to those two diffuse  17 interests identified in Article 1.3 is released by this  18 Agreement. The particular cause of action under which that  19 substantive claim is bought is irrelevant, and we can see  20 that in Article 5.2, where the Government and Petroecuador  21 said they intend claims to mean any and all claims, common,  22 civil law, equitable, Contract, tort, constitutional, like  23 19.2, statutory, like 2236--and here is the key part, and  24 it's highlighted in the middle of the screen. In any way  25 related to contamination, that have or ever may arise in</p>	<p style="text-align: right;">2534</p> <p>09:43 1 negligence, threaten undetermined persons. And we can stop  2 there. Because Ecuador and the Claimants and the  3 Ecuadorian courts all agree that the Lago Agrio Plaintiffs  4 purported to represent a group of some 30,000 undetermined  5 persons. It's not in dispute that it is the undetermined  6 persons prong of this Civil Code article that's being used  7 in the Lago Agrio Judgment.  8 And remember the definition of "diffuse interests"  9 that Dr. Eguiguren referred to, that you referred to,  10 that's in the 1999 Law, remember that that definition  11 refers to those interests that are held by undetermined  12 persons. That's the key link, the definition of diffuse  13 interests in the EMA to this prong of Article 2236 that is  14 undisputedly the one purportedly vindicated in the Lago  15 Agrio Judgment.  16 So, Article 2236 can be used in a diffuse way.  17 That's what we know from this terminology read with that  18 definition. And it could also be used by the State as  19 representatives of those undetermined persons, and we know  20 that from the testimony of Dr. Eguiguren back in November  21 of 2012. He was asked: Under Ecuadorian law in 1995, you  22 would agree that the Government had standing under  23 Article 19.2 to seek reparation for environmental damage  24 from any party? And he said, I think that, as a public  25 action, it could have done it. The protected legal right</p>

09:44 1 is the right to the healthy environment, to live in a  
 2 healthy environment.  
 3 Public action means Article 2236 as the cause of  
 4 action, the mechanism. And the substantive right is  
 5 Article 19.2, the right to the healthy environment.  
 6 And for the avoidance of any doubt, he went on to  
 7 specify that he was talking about Article 2236. This is  
 8 his follow-up answer. He's still talking about the State.  
 9 And he says: It could have initiated a legal action  
 10 seeking the reparation of an environmental damage. The  
 11 State in 1995: It could have followed Article 2236. And  
 12 that's determinative of Ecuador's one remaining argument,  
 13 and the one remaining Track 1 liability issue that you have  
 14 to decide.  
 15 It comes down really to four steps: The first is  
 16 that the State released all diffuse claims that it could  
 17 assert for environmental impact defined in the Agreement in  
 18 1995.  
 19 Number 2, the State could assert diffuse claims  
 20 under Article 2236 in 1995. It makes sense conceptually,  
 21 and Dr. Eguiguren confirmed it.  
 22 Number 3, the Lago Agrio Judgment was purportedly  
 23 a diffuse Article 2236 claim--Ecuador agrees with  
 24 that--therefore, Number 4, the Lago Agrio Judgment was  
 25 barred by the Releases.

09:46 1 And there is nothing unusual about that: Despite  
 2 Ecuador's claims to the contrary, representatives may  
 3 settle diffuse Article 2236 claims. They can bind the  
 4 community if they're acting properly in their  
 5 representative capacity. We can see this from a quotation  
 6 and citation in the Cassation Decision itself.  
 7 This is from Professor Guidi. He is being cited  
 8 in the Cassation Decision, Exhibit C-1975 at 185, and he  
 9 says: A popular-action lawsuit--that's like 2236--a  
 10 popular-action lawsuit is a lawsuit filed by one  
 11 representative in defense of a collectively considered  
 12 right, whose immutability and the authority of the Judgment  
 13 will impact a group of people, res judicata. In a  
 14 popular-action lawsuit, the rights of the group are  
 15 represented in Court by a representative, and the Judgment  
 16 will be with respect to the entire collective dispute,  
 17 reaching the members of the right of the group.  
 18 And consistent with this principle, you've already  
 19 held at Paragraph 107 of your Track 1 Award that  
 20 representatives may settle diffuse claims, and you've  
 21 talked about how the Ecuadorian State did so in one  
 22 instance. You said: It is not juridically possible for a  
 23 person to exercise a right which no longer exists. And I  
 24 want you to remember that term "juridically possible"  
 25 because as you'll recall it's a denial-of-justice standard,

09:48 1 as Professor Paulsson explained during in his opening  
 2 presentation.  
 3 You went on: "As agreed by the Parties' Experts,  
 4 that diffuse right under Article 19.2 was indivisible,  
 5 either settled in full or not at all. The Tribunal rejects  
 6 entirely the possibility that the same diffuse right in  
 7 Article 19.2 can exist in separate parts to be exercised by  
 8 multiple Claimants at different times with successive  
 9 diffuse claims, thereby making any effective final  
 10 settlement or adjudication of such claims illusory." You  
 11 rejected that possibility because we had a contractual  
 12 right and a legitimate expectation not to have that happen.  
 13 The Lago Agrio Judgment embraced that possibility.  
 14 And contrary to Mr. Leonard's concern during his  
 15 opening, the Romans wouldn't be surprised about this  
 16 either, and you can look at the source for that in  
 17 Professor Oquendo's Second Report in 2012, where he said  
 18 the actions under analysis derive--and Ecuador said  
 19 this--from Roman law, which explicitly recognized the erga  
 20 omnes preclusion effect of these suits. And then he cites  
 21 to where it does that, Title 23 of Book 47 of the Justinian  
 22 Code, which deals with popular actions, that's like 2236,  
 23 unequivocally proclaims: "If an action is repeatedly  
 24 brought on the same cause and on the same fact, the  
 25 ordinary exception of res judicata may be raised." In

09:49 1 other words, preclusion applies upon repetition of the  
 2 suit, independently of who acts as Plaintiff" independently  
 3 of the representative.  
 4 So, this is basic stuff, and it's been true for at  
 5 least 1500 years in the civil law.  
 6 So, Ecuador can't escape the Releases just by  
 7 pointing you to Article 2236 and saying there was a  
 8 carve-out for this from the Settlement Agreement. Nor does  
 9 the so-called "five Texaco Experts" or Bustamante Affidavit  
 10 that they like to point to, support Ecuador's position.  
 11 This is the Affidavit from the proceedings before  
 12 Judge Sand in New York in 2005 that you heard referenced  
 13 again a couple weeks ago.  
 14 And my colleague earlier handed out a packet with  
 15 four documents for you. I will be mentioning each of them.  
 16 This is behind Tab 4 and it's the entire text of the  
 17 Affidavit. I'm not going to walk you through it right now,  
 18 but I have pulled out the sort of two key pullouts on  
 19 Slide 41. The second one is the language Ecuador always  
 20 likes to point you to, the reference to Article 2236, and  
 21 these Experts' opinion that the possibility of bringing  
 22 those claims is not affected. But what I would like you to  
 23 look at, you see that that's labeled (b), I would like you  
 24 to look up at the question that they're being asked,  
 25 Question 4(b): Does a settlement between the State and

09:51 1 TexPet affect the ability of individuals to bring claims  
 2 against Petroecuador for preventive purposes under  
 3 Article 2236? That's what they're responding to. They're  
 4 saying it doesn't affect the ability to make these  
 5 Petroecuador claims. So, this language can't carry the  
 6 weight that Ecuador wants it to carry with you, especially  
 7 in light of what I have just walked through, showing the  
 8 clear release of diffuse Article 2236 claims in the  
 9 Settlement Agreement.  
 10 So, please do take a look at the entire Affidavit,  
 11 and I will point you in particular to around the middle of  
 12 Page 2 of the Affidavit where these Experts talk about the  
 13 use of Article 2236 to vindicate what they call collective  
 14 or, indeed, diffuse rights. You've heard a lot. You heard  
 15 it again two weeks ago about how the term "diffuse rights"  
 16 only came up for the first time in this dispute during this  
 17 arbitration in 2009 or 2010. These Experts that they like  
 18 to point you to were talking about them, and talking about  
 19 them in terms of Article 2236's use back in 2005.  
 20 Although--and we've discussed this  
 21 before--although the Cassation Decision disagreed with  
 22 Dr. Eguiguren and although it disagreed with your final  
 23 Track 1 Award on the question whether the State could  
 24 represent diffuse rights in 1995, I do want to give you  
 25 comfort on the remaining Track 1 liability issue that you

09:52 1 still have left to decide because, on that one, the  
 2 Cassation Decision is clear. It treats the Lago Agrio  
 3 Judgment as wholly diffuse.  
 4 Now, on Tuesday morning you may recall I walked  
 5 Dr. Andrade through the section of the Cassation Decision  
 6 or portions of the Cassation Decision that rejected  
 7 Chevron's improper joinder argument, and the reason that  
 8 the Cassation Decision did so--and I'm going to show you  
 9 the key passages in a moment, but the reason that the  
 10 Cassation Decision rejected the argument that the Civil  
 11 Code and the environmental claims were improperly joined,  
 12 is based on the fact that the Claims decided in the  
 13 Judgment were wholly diffuse, no matter the vehicle, they  
 14 were wholly diffuse environmental claims. The reason it  
 15 rejected our improper joinder defense is because these are  
 16 wholly diffuse claims.  
 17 So, let's start at Pages 200 and 201 of the  
 18 Decision, where the Court says "diffuse interests have to  
 19 be considered as general interests, interests held by all  
 20 members of a collective, the object of which consists of  
 21 goods of general or collective importance." Again, that  
 22 sounds a lot like the distinction that you made between  
 23 diffuse and individual claims.  
 24 And I asked Dr. Andrade if he understood the Court  
 25 to be saying that the interest being vindicated

09:54 1 substantively in the Lago Agrio Case is a general interest,  
 2 a diffuse interest in a clean environment, that's  
 3 Article 19.2, and he said yes, in part. So, Ecuador is  
 4 admitting that the Judgment at least in part vindicates  
 5 diffuse rights that we know it can't legitimately and  
 6 legally vindicate because of the Settlement and Release  
 7 Agreements.  
 8 These are otherwise known, by the way, to go back  
 9 to the EMA glossary of definitions, as "environmental  
 10 collective rights" in Ecuadorian law, and you see this  
 11 again, Dr. Eguiguren citing to that term and its definition  
 12 as those rights shared by the community to enjoy a healthy  
 13 and pollution-free environment; in other words,  
 14 Article 19.2, it's an environmental collective right.  
 15 So, this is saying diffuse is the same as  
 16 collective when we're talking about these group rights to  
 17 public health and to a pollution-free environment. You see  
 18 again those two substantive buckets of rights I was talking  
 19 about: Healthy and pollution-free.  
 20 And Dr. Andrade agrees with the Cassation Decision  
 21 that the Lago Agrio Case is a collective action for  
 22 environmental harm, which is distinct--again, to go back to  
 23 that distinction that you made in your Track 1B Decision  
 24 that's troubling Ecuador--it's distinct from an individual  
 25 action. So, your understanding, he was asked, of what it's

09:55 1 saying is that the Civil Code does not just contemplate  
 2 individual actions, it also contemplates collective actions  
 3 for environmental harm, like the Lago Agrio Case. And he  
 4 said yes, that is correct.  
 5 So, collective or diffuse, even if it's a Civil  
 6 Code cause of action, it's vindicating the same collective  
 7 or diffuse substantive right, and these are not, as a  
 8 result, individual Civil Code claims.  
 9 The Cassation Decision goes on. The complaint was  
 10 filed by a collective. When a case involves damage to the  
 11 environment, it is always a collective that will be harmed,  
 12 so the EMA itself contemplates group actions in order to  
 13 enforce the Claims of a given group and achieve the  
 14 corresponding remedies and exercise the fundamental  
 15 right--and here is that reference to Article 19.2  
 16 again--that diffuse right to live in a healthy environment.  
 17 And then Dr. Andrade confirms three things for us:  
 18 One, when there is environmental harm it's always a  
 19 collective that's harmed; two, the EMA contemplates group  
 20 actions; and, three, the purpose of them is to enforce the  
 21 Claims of a given group. So, what the Court is saying  
 22 through this analysis is that it's okay to join the Lago  
 23 Agrio Plaintiffs' Civil Code claims with their  
 24 environmental claims because the substance of all of those  
 25 claims is a collective right, a group right, a diffuse

<p>Sheet 13</p> <p style="text-align: right;">2543</p> <p>09:57 1 right. That's the reason it's not an improper joinder,  2 according to the Cassation Court.  3 And then the Cassation Decision explicitly says  4 these Civil Code claims are not being used here as  5 individual claims. They're being used to make diffuse  6 claims. And you have that at Page 203. It is mistaken to  7 state that Article 2214 only contemplates individual  8 actions, considering that this title provides for a  9 popular-action lawsuit in all cases of contingent damage in  10 which indeterminate persons are threatened, indeterminate  11 persons. Again, the characteristic of diffuse right. So,  12 the appellant cannot try to confuse the Court by arguing  13 that the current Article 2214 only applies to individual  14 claims. Again, that's why the National Court of Justice  15 says that there was no improper joinder because the entire  16 Judgment vindicated only diffuse or collective claims under  17 the right to human health, the right to live in an  18 environment, and that's why it was appropriate, according  19 to the Court to be heard under Article 43 of the EMA in a  20 summary verbal proceeding.  21 And finally--and this is the last one--the  22 Cassation Decision cites to comparative law from Colombia  23 in Footnote 221 to show how the popular action--again,  24 Article 2236 in Ecuador--is being used here solely in a  25 diffuse way. You see the reference: Popular-action</p>	<p style="text-align: right;">2545</p> <p>10:00 1 Article 2236 of the Ecuadorian Civil Code.  2 Go down to the Cassation Decision. That is how  3 both the EMA and Article 2236, which were allegedly not  4 improperly joined in the case. According to the Cassation  5 Decision, that's how both of them were interpreted as being  6 used in the Lago Agrio Judgment, in a wholly diffuse way,  7 to protect--and we are back to those two key substantive  8 buckets: The people's public health and the people's right  9 to live in a clean environment.  10 So then we go to the Settlement Agreement, and  11 that's exactly what we started with. That's exactly what  12 the Settlement Agreement released with respect to that key  13 defined term "environmental impact." Cases of actual or  14 contingent harm to public health or to the environment.  15 What else could have been being released by that term  16 "environmental impact" when you're talking about potential  17 or actual harm to public health or to the environment,  18 other than the community's diffuse claims based on alleged  19 harm in each of those categories?  20 So, the Releases bar the Lago Agrio Judgment, but  21 I would like to take a step back. And I want to go back to  22 the conversation with which I ended my discussion with  23 Dr. Andrade on Tuesday. You'll recall it was about the  24 State's duty under Article 397 of the Ecuadorian  25 Constitution. Under that provision as he says here from</p>
<p style="text-align: right;">2544</p> <p>09:58 1 lawsuits are mechanisms instituted by the legal system to  2 defend collective interests. And then it lists some types  3 of collective interests involving public property, space,  4 safety, health, moral administration, the environment,  5 competitive markets and other similar rights and interests.  6 All of these--all of these--are group rights that have to  7 be vindicated by representatives, not individual rights,  8 not relating to personal harm, in your terminology.  9 And then at the bottom, it goes on, popular-action  10 lawsuits as a collective remedy in response to public  11 injuries and damage as a right afforded to the community to  12 defend itself. In a public-action suit, any person  13 belonging to a group in the community has standing to  14 defend the group harmed. Collective remedy, public injury,  15 community right, individual standing to defend that  16 community right, no personal harm, so we're talking about  17 something that's wholly diffuse, and this is the Cassation  18 Decision analyzing the use of Article 2236 in the Judgment  19 and comparing it to a Colombian provision that's similar.  20 Now, this final slide on this issue, Slide 51, I  21 hope puts all of the pieces together as far as why the Lago  22 Agrio Judgment is wholly barred by the Settlement and  23 Release Agreements. You see at the top, the EMA. It  24 protects diffuse interests which are held by indeterminate  25 groups. And then you go clockwise, and you see, so does</p>	<p style="text-align: right;">2546</p> <p>10:01 1 the Transcript: The State has to act immediately--it's a  2 constitutional duty to act immediately and to repair in any  3 case where it sees environmental harm.  4 And he was asked: In addition to whatever  5 sanction there is for environmental harm, the State then  6 shall seek restitution from the Operator that it thinks  7 caused that harm. And he said: That's correct, yes.  8 So, what that does is it creates a right, the  9 right to receive compensation for whatever the State had to  10 invest in fulfilling that duty, and again he said yes.  11 And we walked through a hypothetical about this,  12 but the obvious implication is, if the State saw harm in  13 the former Concession Area, it was required to fix that  14 harm, and then it could sue the Operator that it thought  15 caused that harm.  16 But we know that it couldn't sue TexPet, and we  17 know that it couldn't sue Chevron--both sides at least  18 agree on that because of the Releases.  19 So think about what this illustrates. They  20 released us in 1995 and 1998 for claims for environmental  21 impact, and I've walked through what that means. In  22 exchange, we cleaned up our percentage interest in the  23 Consortium, and Ms. Renfroe walked you through that  24 process. They're supposed to clean up the rest. Why?  25 Because, as Dr. Andrade said, as the Constitution says,</p>

10:03 1 it's a constitutional requirement, immediately.  
 2 Then--then--they have the right to sue the  
 3 allegedly responsible party, exactly like they've sued  
 4 Burlington, exactly like they've sued Perenco.  
 5 And please don't forget, as the State sits here  
 6 before you today saying that it could not settle diffuse  
 7 claims, it is seeking billions of dollars from those two  
 8 companies for the same diffuse environmental torts that are  
 9 the subject of the Lago Agrio Judgment, just in a different  
 10 area, a different geographical area.  
 11 But because of the Releases, Ecuador can't sue  
 12 Chevron, so the Lago Agrio Plaintiffs sued Chevron for the  
 13 same alleged environmental impacts to vindicate the  
 14 community's right to public health and to live in a clean  
 15 environment.  
 16 And what this illustrates is that this whole  
 17 entire process has become a shell game and it's not  
 18 permitted by the 1995 and 1998 Releases.  
 19 So, with respect, we believe that revolves the  
 20 remaining Track 1 liability issue. The Judgment is barred  
 21 by the Releases.  
 22 Second, Ecuador breached the Settlement and  
 23 Release Agreements. This relates to the first of the three  
 24 different legal buckets. You've got a denial of justice  
 25 for ignoring the Releases, you've got a treaty breach for

10:05 1 ignoring our legitimate expectation of finality, but you've  
 2 also got a breach of the Settlement and Release Agreements.  
 3 Now, you recall that we've briefed the various breaches,  
 4 and we'll outline them again in our Post-Hearing Brief.  
 5 Last April, Ms. Mouawad walked you through each one, and I  
 6 have put her slide packet from that presentation from the  
 7 Track 1B opening last year in with all the key evidentiary  
 8 references in it at Tab 1 of the handout that you received  
 9 this morning, and I do encourage you as you deliberate to  
 10 review that slide packet because there is overwhelming  
 11 evidence of breach.  
 12 For now, I want to touch on a couple of the more  
 13 egregious breaches of the agreements, but before I do that,  
 14 Professor Lowe had asked during the opening about the  
 15 relationship between the Track 1B Decision, the complaint  
 16 and the Judgment. And while we certainly maintain our  
 17 view, and we believe that it's supported if you look  
 18 through the handout that I gave you on opening of the  
 19 various statements and characterizations about the  
 20 complaint, while we maintain our view that the complaint  
 21 brought exclusively diffuse claims, it ultimately doesn't  
 22 matter because, as I think we have shown, the Judgment  
 23 vindicated exclusively diffuse claims, so the Judgment is  
 24 barred as res judicata, whether the complaint in whole or  
 25 in part was barred as res judicata or not.

10:06 1 Now, what the decision about the complaint might  
 2 do is it might have an effect on the date at which you find  
 3 that a breach of the Settlement and Release Agreements  
 4 occur. Now, we argue that there were various breaches of  
 5 the agreements, regardless of what the complaint said,  
 6 beginning with the filing of the case, extending through  
 7 the criminal investigations and the criminal proceedings  
 8 that took place before the Judgment was issued; the  
 9 Government's collusion with the Plaintiffs up to and beyond  
 10 the Judgment itself. But at the very least--at the very  
 11 least--we know that there was a breach as of the  
 12 enforceability date of the Judgment itself.  
 13 So, that said, I would like to walk you through  
 14 some of the key breaches that, in fact, occurred much  
 15 earlier than that, even consistent with your Track 1B  
 16 Decision.  
 17 But, first, Ecuador's obligation, just to sort of  
 18 go back to the context, Ecuador's obligation, which is to  
 19 perform the Releases in good faith. You see the references  
 20 on the screen: This is a substantive duty under the civil  
 21 law, to do whatever is necessary to implement the  
 22 objectives of the Contract. They didn't just have some  
 23 sort of negative obligation. They had a positive  
 24 good-faith obligation to do whatever was necessary to  
 25 implement the objectives.

10:07 1 So with these releases, what does that mean as a  
 2 practical matter? Well, it means a few things--to uphold  
 3 them and implement their objectives and not to undermine  
 4 them. So, for example, Ecuador can't release Chevron and  
 5 then impose liability through its Judgment for claims that  
 6 Ecuador extinguished. It can't help the community sue,  
 7 pressure Chevron, enforce the Judgment against Chevron for  
 8 the Released claims. It can't frustrate the Releases by  
 9 seeking creative ways to undermine them or nullify them.  
 10 That is inconsistent with them on their own terms and it's  
 11 inconsistent with that good-faith obligation.  
 12 And what it is is what it comes down to is it's an  
 13 obligation of result. Ecuador can't try but fail to  
 14 release, acquit and forever discharge--those are the terms  
 15 from the Agreement--Claimants from claims for diffuse  
 16 environmental impact. That's the ultimate obligation.  
 17 And when the Lago Agrio Plaintiffs filed their  
 18 case, Chevron requested way back in October 2003 that  
 19 Ecuador honor its obligations under these releases. You  
 20 see it on Slide 57 in the letter from Chevron to Ecuador's  
 21 Minister of Energy and Mines. It asked Chevron to notify  
 22 the Court that, pursuant to the Releases, Chevron, Texaco,  
 23 TexPet are not liable for environmental damage or for the  
 24 remediation work arising from the Consortium activities; in  
 25 other words, are not liable for Environmental Impact,

10:09 1 capital E, capital I, was released. Please protect and  
 2 defend the rights of Chevron, Texaco, and TexPet.  
 3 Now, Ecuador likes to say to you what could we do,  
 4 as if it were some sort of a passive observer of the  
 5 undermining of these releases. But let's take a look back  
 6 at some of what it did do. It knew that the Settlement  
 7 Agreements barred the Lago Agrio claims, so it sought to  
 8 undermine them, by instituting criminal proceedings against  
 9 the signatories to those agreements, and Ms. Mouawad walked  
 10 you through that sordid story before, the timeline of the  
 11 events for the investigation and the proceedings  
 12 themselves--the reopening, all of it, are at Slides 39 and  
 13 40 behind Tab 1 of your handout. But let's look at some of  
 14 the low lights of that process.  
 15 And we can start in August 2005 with Martha  
 16 Escobar, the Deputy Attorney General, who wrote in an  
 17 e-mail to the Plaintiffs' attorneys, if you look at the  
 18 "to" line, to the Plaintiffs' attorneys, about how the  
 19 A.G.'s Office and all of us working on the State's defense  
 20 are searching for a way to nullify or undermine the value  
 21 of the Remediation Contract, searching for a way to breach  
 22 the Settlement Agreements. The Attorney General remains  
 23 resolved, he wants to criminally try those who executed the  
 24 Contract, the evidence of criminal liability having been  
 25 already rejected by a prosecutor. They are going to try

10:12 1 Donziger instead of agreeing, says don't worry, nothing  
 2 Chevron says sticks these days.  
 3 So, collaborating with the Fiscalía, to undermine  
 4 and nullify releases executed by the State. If this is not  
 5 a breach, then I don't know what would be a breach of these  
 6 Release Agreements.  
 7 Now, Ecuador's response to all of this, amazingly,  
 8 is to shrug it off essentially before you. The charges  
 9 were dismissed, they say. No harm, no foul. They want you  
 10 to ignore what Mr. Veiga went through, being accused of  
 11 criminal acts and fearing the consequences as he traveled  
 12 around South America and continued to work on these Ecuador  
 13 matters. They want you to ignore what Mr. Pérez went  
 14 through living in exile in Florida away from his family and  
 15 away from his Ecuadorian home for most of the last few  
 16 years before he passed away. Really, what appalling  
 17 conduct by a sovereign State shamelessly ignoring its own  
 18 contractual obligations much less any basic sense of  
 19 justice, using the full weight of its authority to support  
 20 Donziger and his fellow conspirators. I should hope that  
 21 we can at least agree that this kind of conduct rises to  
 22 the level of a breach of contract.  
 23 But it doesn't stop there, as Ms. Mouawad  
 24 referenced for you last year. Ecuador has reopened the  
 25 investigation, no formal proceedings have been filed, but

10:10 1 again. So, the Releases are in the way, so let's undermine  
 2 them.  
 3 A month later, Steven Donziger talks about the  
 4 collusive plan with the Government, how the idea is to use  
 5 it to convince the Government to take action against  
 6 Chevron to nullify the remediation Contract, compel the  
 7 Government to act against the company legally, to nullify  
 8 the remediation Contract.  
 9 These Plaintiffs' lawyers knew the hurdle that the  
 10 Remediation Contract had for their claims down in Lago  
 11 Agrio, so they needed it nullified and they colluded with  
 12 the Government to try to get it nullified.  
 13 October 6th of 2005, Donziger again, the key issue  
 14 is the criminal case, can we get that going, Ricardo Veiga  
 15 likely will be knocked out of the box by the criminal  
 16 investigation and being called as a witness. This will be  
 17 useful for us in Lago and in the ongoing criminal  
 18 investigation.  
 19 And then in 2009, the honest confession from a  
 20 Plaintiffs' lawyer to Mr. Donziger, he says on  
 21 February 4th: Dude, if the guys at Jones Day--that's  
 22 Chevron's counsel--get a hold of this, it's gonna hurt us.  
 23 It's pretty much irrefutable evidence of us collaborating  
 24 with the Fiscalía to get Reis Veiga and Pérez convicted."  
 25 Irrefutable evidence. We agree. And then of course,

10:14 1 they've reopened the investigation that continues to hang  
 2 over the people who signed this Release Agreement. You see  
 3 no less than President Correa's favorite advisor, Alexis  
 4 Mera, October 7th of 2013, he said, "I have asked the  
 5 Prosecutor General--recall this is the same Prosecutor  
 6 General who seems unwilling to investigate any of the  
 7 judicial fraud, the evidence of which you have seen in this  
 8 case--but Mr. Mera focusing on the Releases said: "I have  
 9 asked the Prosecutor General publicly, and privately, I  
 10 have gone to see him, to ask him to bring criminal actions  
 11 for embezzlement of public funds against all of these  
 12 officials. They committed treason. There is that word  
 13 again. President Correa has demanded that the Prosecutor  
 14 reopen proceedings and there have actually been a series of  
 15 so-called site inspections preliminary to just that, and we  
 16 will walk you through the evidence of that in our  
 17 Post-Hearing Brief as well.  
 18 You see the words from the Minister of the  
 19 Environment just last summer. Ecuador is going to pursue  
 20 this to the very end. All efforts by our Attorney  
 21 General's Office, to ensure that this oil company  
 22 acknowledges the harm that it caused and responds with the  
 23 appropriate compensation. As if there hadn't been a  
 24 Release Agreement and a Remediation Action Plan properly  
 25 implied that already did just that.



10:15 1 And, of course, flouting your Interim Measures  
 2 Awards, Ecuador continues to undermine the Releases  
 3 globally. To you, they complain every few months about  
 4 limited resources while spending the public funds liberally  
 5 across the world, promoting through payments to various  
 6 publicity groups and the like, promoting their declared  
 7 number one foreign policy priority, as Mr. Bishop noted in  
 8 his opening presentation: The Lago Agrio Judgment.  
 9 Do you remember in 2010 when they used to come  
 10 before you and say we have nothing to do with this case?  
 11 Number 1, foreign policy priority.  
 12 I could go on, Mr. President, about the various  
 13 breaches but please do review the materials behind Tab 1 in  
 14 the handout. Before our break, though, I would like to  
 15 answer a couple of your questions about causation and  
 16 veil-piercing, which as you know and as I argued in my  
 17 opening presentation, were additional legal absurdities in  
 18 the Lago Agrio Judgment.  
 19 On causation, I think that the issue for its  
 20 effect on a denial-of-justice case, what it ultimately  
 21 boils down to is fairly straightforward: The Parties agree  
 22 that causation is a required element for an environmental  
 23 tort in Ecuador. We disagree on who has the burden of  
 24 proof with respect to that element. And you can look at  
 25 the references from Doctor Coronel, Dr. Barros and then

10:18 1 articles for the rather unremarkable proposition that there  
 2 was a form of merger between Texaco and a Chevron  
 3 subsidiary.  
 4 And then it says this, what you see on Slide 66:  
 5 Per the principle of good faith, any citizen, Ecuadorian or  
 6 North American, who heard the public statements made by the  
 7 companies Chevron and Texaco would have inevitably come to  
 8 the conviction of a merger between them.  
 9 So, again, I encourage you to read Pages 11 to 13  
 10 of the Judgment to see the true absurdity in this Court's  
 11 veil-piercing holding.  
 12 I also encourage you to read Tabs 2 and 3 of your  
 13 handout. Behind Tab 2 is the Witness Statement of  
 14 Chevron's corporate governance liaison, Frank Soler. He  
 15 details the merger transaction, and he explains how Texaco,  
 16 Inc. survived with even more equity value than it had  
 17 pre-merger. He explains how its assets and its liabilities  
 18 were fully intact because of the particular form, the  
 19 reverse triangular merger that took place. And to that end  
 20 I would say that Paragraph 20 of his Statement is  
 21 particularly informative.  
 22 Behind Tab 3 is the Expert Report of Delaware law  
 23 professor William Allen, who is a former Chief Judge of the  
 24 Chancery Court there, and he explains the legality of the  
 25 merger under the applicable law, which was

10:17 1 Dr. Andrade on the other side for that discussion.  
 2 But recall from my opening that the Cassation  
 3 Decision refused to consider evidence from Chevron of  
 4 Petroecuador's causation, saying that it would violate due  
 5 process because Petroecuador isn't a party to the case.  
 6 That was the Cassation Decision's legal conclusion, and  
 7 that's the legal absurdity that's at the heart of our  
 8 denial-of-justice case on causation. Regardless of burden  
 9 of proof, that issue transcends burden of proof to say that  
 10 that can't be considered, the factual causation by  
 11 Petroecuador is a legally absurd result under Ecuadorian  
 12 law as it would be under the law of any system.  
 13 And I'll note before I move to veil-piercing, that  
 14 as I said, Dr. Barros and Dr. Coronel spent a lot of time  
 15 with these issues in their Reports. You heard from  
 16 Dr. Andrade because we confronted him. You have not had  
 17 the opportunity to hear from Dr. Barros and from  
 18 Mr. Coronel because Ecuador did not want to confront them,  
 19 did not want you to hear from them.  
 20 Now, on veil-piercing, you asked if the Judgment  
 21 has findings of abuse of the corporate form as to the  
 22 Chevron/Texaco merger. It does not. What it does, and I  
 23 encourage you to look at pages roughly 11 through 13 of the  
 24 Judgment, which is at Claimants' Exhibit 931--what it does  
 25 is it cites a series of PowerPoint presentations and news

10:20 1 ignored--absolutely ignored with no explanation by the Lago  
 2 Agrio Judgment in those pages that I've asked you to  
 3 review. And again, the reason I'm putting those in your  
 4 handout and asking you to take a careful look at them is  
 5 because Ecuador again chose not to confront these  
 6 particular witnesses and chose not to let you hear from  
 7 them in person.  
 8 Finally, you asked for the reference for the  
 9 Plaintiffs suing the wrong party in their initial  
 10 complaint, and so here it is on Slide 67, it's Exhibit 716  
 11 from Steven Donziger's diary January 24, 2006, and what he  
 12 says is this goes back to Alberto's, and by Alberto he  
 13 means Plaintiffs' lawyer Alberto Wray, this goes back to  
 14 Alberto's errors, suing the wrong party in the complaint.  
 15 This is one of the many reasons why the Plaintiffs had to  
 16 ghostwrite this Judgment. They had to fix this mistake and  
 17 they had to navigate numerous other issues and  
 18 difficulties, like the exposure of the Cabrera fraud, the  
 19 use of the cleansing Experts, lots of complications that  
 20 they had to navigate, and they couldn't rely on Judge  
 21 Zambrano, of course, to get it right, and so they bought  
 22 the opportunity to write this Judgment. This is part of  
 23 the reason for that.  
 24 So, with that, I will close my presentation and,  
 25 as Mr. Bishop mentioned, this might be a good time for our

10:21 1 morning break.  
 2 PRESIDENT VEEDER: Thank you very much.  
 3 Let's have a 15-minute break, and we will come  
 4 back at 25 to 11:00.  
 5 (Brief recess.)  
 6 PRESIDENT VEEDER: Let's resume.  
 7 MR. BISHOP: Yes, Mr. President. We will now move  
 8 into the international law issues and start with David  
 9 Weiss, who will discuss the jurisdictional and the  
 10 admissibility issues.  
 11 PRESIDENT VEEDER: Mr. Weiss.  
 12 MR. WEISS: Thank you.  
 13 Professor Lowe asked during the opening arguments  
 14 for Claimants' case regarding when the breaches are said to  
 15 have occurred especially in light of the fact that  
 16 Claimants filed their Notice of Arbitration in 2009; and on  
 17 Friday the Tribunal asked the related question of whether  
 18 this timing has any effect on your jurisdiction or the  
 19 admissibility of those claims under the lex arbitri, the  
 20 UNCITRAL Rules, or public international law.  
 21 First, these sorts of temporal issues have no  
 22 effect on your jurisdiction. They are an attack on the  
 23 effectiveness or the defects in certain claims. They are  
 24 not an attack on your power to rule on those claims. To  
 25 the contrary, they assume that you have the power to rule

10:39 1 accordance with due process and in particular allow the  
 2 counter-party a right to respond and prevent unreasonable  
 3 delays in the course of the arbitration. And this is set  
 4 forth in Article 20 of the UNCITRAL Rules.  
 5 We think this is dispositive as to the question;  
 6 nevertheless, we have cited on the next few slides a few  
 7 additional authorities. For instance, this is consistent  
 8 with the practice of the PCIJ and the ICJ. We've also  
 9 cited several investor-State cases under the UNCITRAL  
 10 Rules, but I would take one moment to bring to your  
 11 attention a statement from the EnCana versus Ecuador  
 12 Tribunal deciding an investor-State dispute under the  
 13 UNCITRAL Rules where Professor Crawford, in discussing this  
 14 discretion, stated that a balance must be struck between  
 15 unreasonably requiring that new proceedings be commenced  
 16 where the substance of a claim of breach of a BIT may  
 17 arguably have been made out or very nearly made out, and  
 18 subsequent questioned events put the question beyond doubt.  
 19 That is very apropos to this case. To the extent you have  
 20 any concerns as to the ripeness of Claimants' claims when  
 21 asserted, there can be no doubt as of today, given the  
 22 conduct of Ecuador since 2012, that all of Claimants'  
 23 claims are ripe, provided that they fall within the  
 24 Agreement to arbitrate.  
 25 Which brings me to Ecuador's outstanding

10:37 1 on those claims, and this reasoning is consistent with your  
 2 Award on Jurisdiction at Paragraph 4.91.  
 3 Very well. As a question of admissibility, when  
 4 did the breaches occur? Mr. Coriell touched on this a  
 5 little bit. Certain conduct of the Ecuadorian State  
 6 violated Claimants' rights under the Release and related  
 7 rights under the Treaty before 2009. Subsequent conduct  
 8 has continued to violate those obligations. But Claimants  
 9 did not assert denial-of-justice claims in 2009. Now,  
 10 certainly conduct that's inconsistent with the  
 11 international minimal standard of due process required by  
 12 international law had occurred prior to 2012, but on  
 13 Claimants' case, at the latest, because of questions of  
 14 exhaustion, Claimants' denial-of-justice claims ripened in  
 15 2012 when they asserted them.  
 16 Does this timing affect the admissibility of  
 17 Claimants' claims under the lex arbitri, the UNCITRAL  
 18 Rules, or public international law? The answer is no. We  
 19 consulted with our Dutch counsel. There are no applicable  
 20 mandatory rules which would take us to the UNCITRAL Rules.  
 21 Nevertheless, it's somewhat of a moot point because Dutch  
 22 arbitral practice is consistent with the practice under the  
 23 UNCITRAL Rules, which is basically this Tribunal has the  
 24 discretion to allow Claimants and Respondents to amend and  
 25 supplement claims and defenses, provided that they do so in

10:40 1 objections to jurisdiction, and I will discuss those  
 2 objections in four categories: First, objections to this  
 3 Tribunal's jurisdiction under VI(1)(a), claims arising out  
 4 of or relating to an investment agreement with respect to  
 5 TexPet; claims under VI(1)(c) BIT breaches with respect to  
 6 TexPet, and the same two categories with respect to  
 7 Chevron.  
 8 I would also note at the outset that Ecuador has  
 9 challenged your Track 1A Award in the Dutch courts and in  
 10 so doing also your Award on jurisdiction. Therefore, as a  
 11 matter of Dutch law and international law, the  
 12 Jurisdictional Award is final and binding.  
 13 VI(1)(a), this Tribunal has already held that  
 14 TexPet may assert claims related to its Investment  
 15 Agreement. This Tribunal has held that the 1973 Concession  
 16 and the 1995 Release comprise one Investment Agreement.  
 17 VI(1)(a) jurisdiction includes disputes related  
 18 to. It is broadly defined. It is not limited to claims  
 19 arising under an Investment Agreement. And here I depart  
 20 from your prior Award and note that the Commercial Cases  
 21 Tribunal expressly held that VI(1)(a) provides jurisdiction  
 22 to bring claims directly under customary international law  
 23 provided that they relate to an investment agreement. And  
 24 as Mr. Bishop foreshadowed, this is a very important point  
 25 for purposes of remedies, which Mr. Kehoe will address

10:42 1 later today.  
 2 Ecuador has not contested in this proceeding your  
 3 jurisdiction to decide denial-of-justice claims directly  
 4 under customary international law, provided that they  
 5 relate to an investment agreement.  
 6 Your jurisdiction with respect to TexPet under  
 7 VI(1)(c), your Award on Jurisdiction: TexPet has an  
 8 investment. That investment began in the 1960s; it  
 9 continues to exist today. And if I could bring your  
 10 attention to the red underline, it includes the Lago Agrio  
 11 Litigation, and that makes sense because, as you also state  
 12 in your Decision on Jurisdiction, remediation is a normal  
 13 part of an oil concession.  
 14 Now, Ecuador's principal argument with respect to  
 15 TexPet historically has been that TexPet was not a party to  
 16 the Lago Agrio Litigation and, therefore, it hasn't  
 17 suffered any harm, and, therefore, it has no standing in  
 18 this forum to complain about what transpired in the Lago  
 19 Agrio Litigation. This Tribunal in its decision on  
 20 jurisdiction already rejected that argument at least as to  
 21 TexPet's release claims for non-compensatory relief. But  
 22 even to the extent that Ecuador's argument had water as to  
 23 compensatory relief at one point in time, it does not  
 24 today. As you will recall when we were examining Professor  
 25 Andrade, the Ecuadorian judiciary has imposed all of the

10:46 1 that Dr. Andrade agreed when discussing the Cassation  
 2 Court's Judgment and the Lago Agrio Litigation that at  
 3 least in part the right to live in a clean environment was  
 4 being vindicated, and I submit, at least for purposes of  
 5 jurisdiction under VI(1)(a), this is sufficient to provide  
 6 Chevron with the jurisdictional bases to assert  
 7 denial-of-justice claims under customary international law.  
 8 Your jurisdiction over Chevron's claims under  
 9 VI(1)(c). This Tribunal has already held that Chevron may  
 10 bring claims with respect to its indirect investment in  
 11 TexPet. You reserved for the merits the question of the  
 12 extent to which whether Chevron, on that basis alone, can  
 13 seek all of the relief that it seeks in this arbitration.  
 14 We submit that it is more than sufficient. What precisely  
 15 is Chevron's indirect investment? It's the same investment  
 16 as TexPet's. The only difference is that TexPet had a  
 17 direct investment from the 1960s that continues to exist  
 18 today. As of 2001, Chevron acquired an indirect investment  
 19 in that same investment, and that continues to exist to  
 20 this day.  
 21 Thus, since 2001, Chevron has had an investment in  
 22 Ecuador, and all of Chevron's claims in this arbitration  
 23 concern that investment.  
 24 Now, to put a finer point on it, but for that  
 25 link, but for that indirect ownership, there is no more

10:44 1 liability arising out of the Lago Agrio Judgment directly  
 2 on TexPet. It has seized TexPet's bank accounts, and it  
 3 has purported to seize TexPet's interest in the Commercial  
 4 Cases Award.  
 5 Your jurisdiction over Chevron's claims under  
 6 VI(1)(a), again, I began with your Award on Jurisdiction.  
 7 There is an investment agreement that includes both the  
 8 1973 Concession and the 1995 Release. Chevron is a  
 9 Releasee. Chevron may enforce its rights under the 1995  
 10 Agreement. Jurisdiction under VI(1)(a) is broad and  
 11 includes claims related to the Investment Agreement and  
 12 does not require original contractual privity. And as I've  
 13 already noted, it provides a basis for asserting  
 14 denial-of-justice claims directly under customary  
 15 international law.  
 16 Now, Ecuador's argument focuses on your limited  
 17 holding that the 1995 Release Agreement by itself is not an  
 18 investment agreement, that Chevron was not a party to the  
 19 Concession Agreement and, therefore, Chevron cannot bring a  
 20 claim under VI(1)(a). We believe your reasoning has  
 21 already rejected that argument at least as to the 1995  
 22 agreement; and, therefore, Ecuador's entire argument under  
 23 this prong is predicated on it prevailing entirely on the  
 24 Track 1 issues. I'm not going to reargue the Track 1  
 25 issues that Mr. Coriell has covered, but I would note again

10:47 1 connection between Chevron Corporation and the impacts in  
 2 the Oriente than Federal Express or Google. That alone is  
 3 sufficient.  
 4 Let me address Ecuador's counter-arguments.  
 5 Ecuador argues that TexPet has not suffered any harm in the  
 6 Lago Agrio litigation; and, therefore, there has been no  
 7 harm to Chevron's indirect investment. And that kind of  
 8 makes sense with perverse logic. Again, these treaties  
 9 were all designed in the wake of Barcelona Traction to  
 10 provide standing for indirect investment. What does that  
 11 typically entail? The most that an indirect investor in  
 12 almost every investor-State case can lose is the money they  
 13 contribute and the value of the company that they own. And  
 14 yet here, based exclusively on indirect ownership of  
 15 TexPet, billions of dollars have been imposed directly upon  
 16 Chevron.  
 17 Ecuador argues that the right to limited liability  
 18 is not a part of its investment. It's not an "investment  
 19 treaty right." It's a legal right under municipal law.  
 20 This argument confuses the components of an "investment"  
 21 which is determined by the definition of investment and the  
 22 relevant Treaty with the substantive treaty rights. The  
 23 legal right to limited liability under municipal law is a  
 24 claim to performance having economic value and associated  
 25 with an investment. As such, it falls squarely within the

10:49 1 definition of "investment" in Article I of this Treaty.  
 2 And, therefore, Ecuador has an obligation to accord  
 3 Chevron's right to limited liability with fair and  
 4 equitable treatment, and Ecuador has an obligation to  
 5 provide Chevron with an effective means of enforcing its  
 6 right to limited liability.  
 7 Next, Ecuador argues that Chevron did not  
 8 contribute to the Ecuadorian economy and, therefore, it  
 9 cannot complain it does not have an investment. This comes  
 10 from the Salini line of cases. It is a controversial  
 11 element of the Salini line of cases, but more importantly,  
 12 Salini has to do with the concept of "investment" in the  
 13 ICSID Convention, which famously does not have a definition  
 14 of "investment," and even there it is very controversial.  
 15 ICSID Awards have been annulled for applying it. In its  
 16 opening argument, Ecuador cited GEA v. Ukraine, and yet  
 17 that case at Paragraphs 137-143 discusses and acknowledges  
 18 the controversial nature of the Salini line of cases.  
 19 It is entirely inappropriate to take a  
 20 controversial element of a controversial test having to do  
 21 with a different Treaty and seek to import it into an  
 22 entirely different Treaty that has a definition of  
 23 "investment." Nevertheless, it's an entirely moot point.  
 24 Even if one accepts the contribution element entirely, the  
 25 question is not whether each individual legal right that

10:51 1 comprises a component of the investment contributes to the  
 2 Ecuadorian economy in some esoteric or vague way. The  
 3 question is whether the investment contributes to the  
 4 Ecuadorian economy. And TexPet and Chevron's investment  
 5 contributed \$23 billion to the Ecuadorian Treasury and  
 6 billions and billions more to the Ecuadorian economy.  
 7 Finally, there is the open question of Chevron's  
 8 status as a direct investor. We don't think this Tribunal  
 9 needs to reach that question. As we've already submitted,  
 10 your jurisdiction over Chevron's indirect investment is  
 11 more than sufficient. Nevertheless, let me make three  
 12 quick points:  
 13 The Ecuadorian judiciary has pierced the corporate  
 14 veil between TexPet and Chevron. As a result, whether you  
 15 think that veil-piercing was legitimate or not, as a direct  
 16 result under Ecuadorian law, the rights and obligations of  
 17 TexPet flow to Chevron. Dr. Coronel addressed this in his  
 18 August 28th, 2012 report at Paragraph 11, and he also  
 19 addressed it in his June 13, 2013 Report at Paragraphs 25  
 20 to 28. That is a separate question from our preclusion  
 21 argument under international law.  
 22 In its Opening Argument, Ecuador argued that we  
 23 had no authority for our preclusion argument. We cited  
 24 several authorities in our Counter-Memorial on Jurisdiction  
 25 at Paragraphs 82 through 96. We were not particularly

10:52 1 focused on the facts of those cases; we were citing it for  
 2 the principle. It's a general principle of law. It's  
 3 fairly straightforward. The question is how it should  
 4 apply to this case, and we submit it is fundamentally  
 5 unfair for the Ecuadorian State to impose billions of  
 6 dollars on Chevron as if it were TexPet as if they were one  
 7 and the same, and then turn around for purposes of  
 8 investor-State arbitration and insist that Chevron be  
 9 treated as a separate legal personality.  
 10 Again, that functions whether or not you think the  
 11 veil-piercing was illegitimate. But if you were to  
 12 conclude that the veil-piercing was arbitrary and  
 13 illegitimate, Ecuador's objection is even worse because it  
 14 seeks to benefit from its own improper veil-piercing to  
 15 deprive Chevron of this forum. Ecuador cited BG Group in  
 16 its Opening Argument, where that Tribunal declined to allow  
 17 the parent corporation BG to bring contractual claims that  
 18 belonged to a contract of Metrogas.  
 19 Let me pause on that for one second. That  
 20 argument succeeded. But why did it succeed? It succeeded  
 21 because that Tribunal and Argentina respected the corporate  
 22 separateness between Metrogas and BG. What Argentina did  
 23 not do in that case is impose billions of dollars in fake  
 24 liability on BG Group for the alleged conduct of Metrogas  
 25 and a State-owned joint venture partner and then turn

10:54 1 around and argue that BG cannot complain about that conduct  
 2 in an investor-State forum.  
 3 For these reasons, this Tribunal has ample  
 4 jurisdiction with respect to both TexPet's and Chevron's  
 5 claims under both Article VI(1)(a) and VI(1)(c) of the  
 6 Treaty and, as a result, has the power and the duty to  
 7 decide the Claims before you and to discuss the content of  
 8 those claims.  
 9 I yield the floor to Professor Paulsson.  
 10 PRESIDENT VEEDER: Thank you.  
 11 Professor Paulsson.  
 12 MR. PAULSSON: Good morning, gentlemen. I'll  
 13 address international law issues relevant to Track 2;  
 14 namely, denial of justice under customary international law  
 15 and the treaty breaches, but you will find me most of the  
 16 time addressing a subtopic, "exhaustion."  
 17 Members of the Tribunal, the sheer weight of  
 18 evidence that Chevron has been able to put forth in this  
 19 case is massive, notwithstanding the considerable efforts  
 20 of those involved to conceal their misconduct. Now, in  
 21 Loewen, the Tribunal found that an outrage--that's the  
 22 Tribunal's word, an outrage--had been committed in the  
 23 conduct of a trial by a single judge. What should one say  
 24 if, instead, several appellate jurisdictions up to the U.S.  
 25 Supreme Court had applauded and endorsed the Mississippi

10:56 1 Judgment, that U.S. prosecutors had blankly refused to  
 2 consider evidence of a gross fraud--that the U.S.  
 3 Government had indicated in formal submissions and in  
 4 treaty arbitration that the remedy which Loewen was  
 5 required to exhaust was available in a particular Appellate  
 6 Court, which then denied having any authority to consider  
 7 the matter, that a U.S. Federal Court nevertheless endorsed  
 8 the Judgment for enforcement abroad; and that the U.S.  
 9 President on a weekly telecast proclaimed that the  
 10 un-investigated fraudulent judgment was the most important  
 11 in the history of the country, and it was a matter of  
 12 national policy of highest priority to influence other  
 13 countries to enforce the Award?

14 And the Attorney General of the United States  
 15 stands before the international tribunal and says with a  
 16 straight face that although his country has flouted every  
 17 order pronounced by the Tribunal, and although he has  
 18 publicly condemned the arbitrators for their failure to  
 19 obey the decisions of his country's courts, he invokes the  
 20 very international law which he rejects to require Loewen  
 21 to seek some remedy in some other Court of First Instance.  
 22 What do you call this? What comes after outrage?

23 I would like to start off by addressing your  
 24 specific question about the relevance of the environmental  
 25 evidence. The only role it serves in Track 2 is to

10:59 1 from issuing a Track 2 Award since this offset request  
 2 could only apply to the Claimants' tertiary request for  
 3 damages, the quantum of which has been reserved for  
 4 Track 3. Indeed, Ecuador has declined to quantify its  
 5 allegations of environmental damage and instructed its  
 6 experts to do the same, not talk about this. This confirms  
 7 that the only relevance that Ecuador's environmental case  
 8 has to the issues before you in Track 2 is whether the Lago  
 9 Agrio Judgment satisfied minimum criteria of judicial  
 10 rationality.

11 Turning to the question when precisely the claimed  
 12 denial of justice occurred is a mere curiosity rather than  
 13 a jurisdictional impediment, as Mr. Weiss explained. When  
 14 I say, "curiosity," I use the word in its fundamental  
 15 old-fashioned sense: Something strange. When a State is  
 16 in the position of defending itself against a claim of  
 17 international law, it tends to take great care, as of the  
 18 commencement of the case, to stop violating its  
 19 international obligations. In this case, the conduct of  
 20 Ecuador is really hard to believe.

21 I do not even know if it is correct to say that  
 22 Ecuador is defending itself in the sense of arguing that it  
 23 has respected its international obligations. Rather, it  
 24 recognizes no obligations to international law. Speaking  
 25 repeatedly through its Head of State, it says that this

10:57 1 corroborate the existence of a denial of justice, full  
 2 stop. Of course, you do not sit as a court of appeal, but  
 3 you can review the substance of the Lago Agrio Judgment  
 4 when evaluating the denial-of-justice claims. If your  
 5 Tribunal concludes that the Judgment's factual, legal, and  
 6 damages holdings are objectively absurd--divorced from  
 7 reality is how Dr. Hinchee put it--that proves a breakdown  
 8 in the legal process. The testimony you heard this week  
 9 and the various Expert Reports you have read reveal the  
 10 preposterousness of the Judgment's treatment of causation  
 11 and the absurdity of the \$9.5 billion. Ms. Renfroe will  
 12 return to discuss later the unrefuted evidence that the  
 13 Judgment's remediation Award is almost 90 times more than  
 14 Petroecuador's estimated total remediation costs for all  
 15 environmental liabilities in the former Concession Area,  
 16 where it has been the one and only polluter for the last  
 17 quarter of a century.

18 To be sure, Ecuador argues that the environmental  
 19 evidence before you support its, they call it, "offset  
 20 theory," but that theory has no possible traction in this  
 21 case, given that the Lago Agrio Record is completely and  
 22 irretrievably tainted, which, in fact, Ecuador has  
 23 implicitly conceded by instructing LBG to gather new  
 24 evidence.

25 At any rate, this need not detain your Tribunal

11:00 1 Tribunal is comprised of crooks (corrupt arbitrators) and  
 2 that it is for the State and its courts to decide what it  
 3 needs to do, not this institution created by the Treaty  
 4 which it has denounced.

5 So, what is Chevron to do when faced with the fact  
 6 that Ecuador breaches international law by thumbing its  
 7 nose at the Orders of this Tribunal? Must Chevron file a  
 8 new BIT arbitration and ask a new set of arbitrators for  
 9 relief? And an arbitration after that, when the President  
 10 of Ecuador laughs off whatever decisions the second  
 11 Tribunal makes?

12 When you think about it, States who are as  
 13 violently opposed to international tribunals as this one  
 14 usually simply default. This at least has the merit of  
 15 avoiding hypocrisy. In this case, Mr. Correa calls you  
 16 corrupt while his lawyers appear politely before you  
 17 clamoring for due process. What is going on here? Isn't  
 18 it clear? Ecuador participates because Mr. Correa would  
 19 like to give the appearance that Ecuador cares about  
 20 international law. But it does not, and he must find some  
 21 explanation for all the adverse BIT Awards, so he blames  
 22 the system. He blames you. You're convenient. You, of  
 23 course, cannot answer in kind--you can only answer in the  
 24 voice of international law.

25 So, let's talk about exhaustion.

11:02 1 Chevron raised all of its complaints about the  
 2 process and about the Judgment with the Appellate Court,  
 3 which ignored most and rejected others on entirely specious  
 4 grounds, as you have heard. Most significantly, the  
 5 Appellate Court deferred to the supposed *sana critica* of  
 6 Mr. Zambrano and affirmed the Judgment in toto without  
 7 bothering to determine whether it had been secretly written  
 8 by the Plaintiffs. Additional recourse then remained  
 9 available to Chevron, but the Appellate Court at that point  
 10 ignored the Tribunal's interim measures Awards and  
 11 certified the Judgment as enforceable abroad.

12 Now, we do not argue and we do not ask the  
 13 Tribunal to hold that the enforceability of a judgment  
 14 results in the consummation of a denial of justice in all  
 15 circumstance in every case when this might happen. But it  
 16 clearly did in this case where Ecuador took the affirmative  
 17 step of declaring the Judgment enforceable knowing full  
 18 well that the Plaintiffs would immediately take it abroad,  
 19 which, in fact, they did.

20 The irreducible premise of exhaustion is that the  
 21 State has the power to remedy the harms arising from the  
 22 denial of justice and to do so effectively. Mr. Ugarte  
 23 stated in opening that, "the test is whether or not the  
 24 local remedy is effective to address the harm complained  
 25 of." Transcript Page 234. Professor Mayer likewise

11:03 1 acknowledged at Page 215 that a remedy must be effective,  
 2 and I quote: "In some situations there is no possibility  
 3 of redress when a first instance or appeal Judgment has  
 4 been enforced." Although neither of them would admit it,  
 5 these precepts, which they acknowledged, are dispositive  
 6 here; they're decisive, where enforcement is actively being  
 7 pursued abroad. Ecuadorian courts don't have the power to  
 8 control the actions of foreign sovereign courts. Where  
 9 there is no effective remedy remaining, there is  
 10 consummation of the denial of justice.

11 This left Professor Mayer to argue that the mere  
 12 possibility of obtaining relief through a CPA action before  
 13 the Judgment is enforced abroad requires that it be  
 14 pursued. This is not, and cannot be, the test for  
 15 exhaustion.

16 Members of the Tribunal, let us, just for a  
 17 moment, suspend what is surely the disbelief of every  
 18 person in this room and assume that a sole Ecuadorian judge  
 19 Hearing a CPA complaint unpatriotically nullifies the Lago  
 20 Agrio Judgment in its entirety, and the result is then  
 21 summarily and unpatriotically affirmed by the Appellate  
 22 Court, the National Court of Justice, the Constitutional  
 23 Court--notwithstanding their prior refusal to do so.

24 One would hope that this would cause the pending  
 25 actions in Argentina, Brazil, and Canada to be dismissed,

11:05 1 but two points: First, even with the enforcement abroad  
 2 forestalled, Chevron would have no effective recourse in  
 3 Ecuador for the harms it has already suffered, including  
 4 the significant fees it has incurred over the past three  
 5 years defending the vexatious foreign enforcement actions.  
 6 Complete success in Ecuador would not wipe out the injury.  
 7 It would simply reduce the amount of damages flowing from  
 8 the consummated delict.

9 Second, and more important, this partial redress  
 10 would be entirely serendipitous and contingent upon events  
 11 and activities beyond Ecuador's control. Let me explain.

12 It is just happenstance that the Plaintiffs have  
 13 brought only three foreign enforcement proceedings and that  
 14 they have not yet reached conclusion. The Tribunal will  
 15 recall that an Argentine trial court froze all the assets  
 16 of a Chevron subsidiary operating there. If that freezing  
 17 order had not been overturned by the Argentine Supreme  
 18 Court, it is indisputable that Chevron would have suffered  
 19 substantial harm for which there is no adequate remedy in  
 20 Ecuador. This is the critical point: The question of  
 21 exhaustion must be answered objectively at the relevant  
 22 time; it cannot turn on future possibilities and  
 23 contingencies beyond the control of the Claimant and beyond  
 24 the control of the State.

25 It's not enough that a remaining remedy might be

11:06 1 effective. Where the victim of a denial of justice is  
 2 facing imminent harms for which the breaching State is no  
 3 longer capable of providing effective redress, the delict  
 4 is consummated. The victim of a denial of justice cannot  
 5 have the doors of international law slammed in its face  
 6 based upon the speculative possibility that things might  
 7 somehow work out to some extent in the end, depending on  
 8 the breaks. The uncertainty of the remedy, moreover, must  
 9 be balanced against the severity of the harm. It cannot be  
 10 forgotten that we're dealing with a \$9.5 billion Judgment  
 11 and a government actively promoting its enforcement abroad.

12 Indeed, when Professor Mayer in his opening  
 13 finally got around to acknowledging the possibility of a  
 14 foreign Court enforcing the Judgment before the completion  
 15 of a CPA action, he blithely answered his question, and I  
 16 quote, "the trust--that's the trust with the Amazon Defense  
 17 Front as its beneficiary--would be forced to give that back  
 18 the money, which it would not have had time to spend."  
 19 That's what he said. Transcript, Page 218.

20 Really? Professor Mayer apparently is unaware of  
 21 the fact that the Amazon Defense Front has signed an  
 22 inter-creditor agreement in which it has promised to put  
 23 any enforcement proceeds immediately into a separate escrow  
 24 account with immediate and priority payment going to the  
 25 Plaintiffs' counsel and offshore funders. It's a

11:08 1 complicated agreement, but the Tribunal will surely recall  
 2 the distribution waterfall in Article 3.2. It sets out  
 3 nine categories of beneficiaries, and the Order in which  
 4 they will receive payments from the escrow account. The  
 5 first eight categories are restricted to lawyers, funders,  
 6 and advisers.  
 7 The Plaintiffs are ninth of nine. At last, the  
 8 balance, if any, shall be paid to the Claimants or as  
 9 otherwise required by applicable law. As for whatever  
 10 might be left, who knows how much of it will make its way  
 11 to the Government in return for its support of the  
 12 plaintiffs which, after all, has been substantial. Not  
 13 much hope for the indigenous, I fear. And Chevron would be  
 14 left to seek restitution of a mere portion of its loss from  
 15 a government which will be slow to accede to a claim of the  
 16 demon Chevron and quick to claim sovereign immunity in its  
 17 own courts.  
 18 But let's ignore for the purposes of argument the  
 19 evidence on record. Let's follow Professor Mayer's logic,  
 20 and assume that all enforcement money will be transferred  
 21 to an Ecuadorian trust where it will sit untouched pending  
 22 the outcome of a CPA action, including its three layers of  
 23 appellate review. Given the amount at issue here, that  
 24 money will most likely have come from the forced sale of  
 25 assets belonging to an independent Chevron subsidiary.

11:11 1 \$625 million bond. It was undisputed that the U.S. Supreme  
 2 Court had the power to reduce the Bond, so the only  
 3 question was whether there was a reasonable prospect that a  
 4 writ of certiorari would be granted. The Loewen Tribunal  
 5 ultimately determined in Paragraphs 215-217 that Loewen had  
 6 failed to present sufficient evidence to explain its  
 7 decision to settle the case rather than to pursue recourse  
 8 in the Supreme Court, and concluded that the exhaustion  
 9 requirement had not been satisfied.  
 10 As Mr. Ugarte said in his opening, Loewen's mortal  
 11 sin was failing to petition the U.S. Federal Supreme Court  
 12 to strike down a bond requirement imposed by the  
 13 Mississippi State courts, Page 234.  
 14 Now, as I will elaborate in a moment, all of this  
 15 was obiter dicta, and the Loewen arbitrators were  
 16 embarrassingly and plainly wrong, but that's what they  
 17 said.  
 18 The Loewen situation has nothing to do with the  
 19 issue here, which is, in any event, whether the Claimants  
 20 were right to come to this Tribunal in March 2012 after the  
 21 Appellate Court certified the Judgment as immediately  
 22 enforceable. At that point, there were no adequate  
 23 remedies available in Ecuador, not simply because the  
 24 Judgment was enforceable, but because it was actively being  
 25 enforced abroad, as I just said.

11:10 1 Gentlemen, what is the remedy in Ecuador for the total loss  
 2 of a going concern in another country? I could go on,  
 3 Members of the Tribunal, but surely at some point theory  
 4 must make some allowance for reality.  
 5 You'll note that I have been talking thus far only  
 6 about the effectiveness of the remedies available in  
 7 Ecuador after the Judgment was certified for enforcement  
 8 abroad. If the remaining remedies are inadequate to  
 9 redress the harms complained of, that brings the exhaustion  
 10 analysis to its conclusion. There is no need to ask  
 11 whether there is a reasonable possibility of those remedies  
 12 succeeding because even if there was, they would not  
 13 provide adequate redress. That's the situation here given  
 14 the inherent inability of an Ecuadorian court to indemnify  
 15 Chevron for the actions of other sovereigns with respect to  
 16 a \$9.5 billion judgment.  
 17 You'll note that I have been talking thus far only  
 18 about the effectiveness of the remedies available in  
 19 Ecuador after the Judgment was certified for enforcement  
 20 abroad. If the remaining remedies are inadequate, the  
 21 exhaustion analysis reaches its conclusion. That's  
 22 different from the situation that obtained in Loewen. The  
 23 issue in Loewen was whether Loewen was right to abandon  
 24 further recourse and settle the case after the Mississippi  
 25 Supreme Court denied its request to reduce the size of the

11:13 1 Contrast this with a statement in Paragraph 167 in  
 2 Loewen that I quote: "Here the issue concerns the  
 3 availability of the remedy rather than its adequacy or even  
 4 its effectiveness." Loewen did not involve and did not  
 5 address the adequacy of intra-State remedies in the face of  
 6 foreign enforcement.  
 7 Nor can Chevron be faulted for allowing the  
 8 Judgment to become enforceable: The appellate and  
 9 cassation courts refused Chevron's request that they comply  
 10 with your Tribunal's interim measures Awards, which would  
 11 have obviated the need to post a bond. At any rate, both  
 12 sides agree that a bond would have been in the amount of at  
 13 least--at least--\$1.9 billion, given the Appellate Court's  
 14 affirmation of the punitive damages award, which, while not  
 15 per se a denial of public international law, to answer a  
 16 question from the Tribunal, is further confirmation of the  
 17 denial of justice since punitive damages are a remedy which  
 18 is not available under Ecuadorian law.  
 19 I invite you to conclude on the punitive damage  
 20 aspect that this was a gambit invented by the Plaintiffs'  
 21 U.S. counsel very familiar with punitive damages to jack up  
 22 the size of the Award to do two things: Either Chevron  
 23 will be so scared of the number \$18 billion that it will  
 24 say sorry, and pay the 9.5 billion immediately without  
 25 fighting further; or if Chevron doesn't bite, have a higher

11:14 1 court reduce the Award to show how fair the courts are in  
 2 Ecuador. Worth a try. Posting a bond of this amount in  
 3 Ecuador would have been tantamount to a down payment on  
 4 ransom given the fraud and collusion that had brought  
 5 Chevron to this point. And here, not only were the  
 6 remaining Ecuadorian judges limited in the scope of the  
 7 relief that they could grant, but could hardly rule in  
 8 favor of Chevron without placing their careers and  
 9 livelihood at risk.

10 The situation is thus vastly different from that  
 11 in Loewen. Still, the result here is dictated by the  
 12 straightforward application of the test for exhaustion  
 13 articulated in Loewen under Paragraph 168. Here it is.  
 14 It's an obligation to exhaust remedies which are effective  
 15 and adequate and are reasonably available to the  
 16 complainant in the circumstances in which it is situated.  
 17 Because the remedies in Ecuador cannot effectively and  
 18 adequately redress the injuries Chevron has already  
 19 suffered and may suffer from enforcement of the fraudulent  
 20 judgment abroad, the exhaustion inquiry is at an end. This  
 21 tracks the opinion filed in Loewen by then Professor  
 22 Greenwood writing a couple of years before the Award was  
 23 rendered, who wrote in Paragraph 41 of his First Opinion  
 24 that, "It is well established that local remedies do not  
 25 have to be exhausted when there are no effective remedies

11:17 1 it had been the victim of an outrage, Loewen then came up  
 2 against a few disastrous sentences at the end to the effect  
 3 that, by the way, so sorry, your claim must be rejected  
 4 because you failed to exhaust remedies. The arbitrators  
 5 could have been more merciful and just contented themselves  
 6 with saying that the denial of justice story was  
 7 irrelevant. But wait. Wait. Even the exhaustion of  
 8 remedies finding was not the ratio decidendi. Because in  
 9 the end, and few people seemed to notice this, the Tribunal  
 10 ruled that under NAFTA, a national of one of the three  
 11 countries cannot bring an action against its own State.  
 12 You see, in the course of the bankruptcy, the denial of  
 13 justice has caused a reorganization which involved the  
 14 reincorporation of a Loewen entity in the United States.  
 15 And so the Loewen corporate Claimant became American.

16 Now, every comment I have read about the Loewen  
 17 Case says that the arbitrators got the rule of continuous  
 18 nationality wrong. And what is one to say about the fact  
 19 that the arbitrators simply forgot that there were two  
 20 Loewen Claimants, right on the caption of the case, the  
 21 second being Mr. Raymond Loewen, a natural person who had  
 22 always been Canadian and so remained. His share of the  
 23 claim was significant. He was just forgotten.

24 As we now know, one arbitrator revealed in a  
 25 recorded public address some years after the event that

11:16 1 to exhaust."

2 Before leaving Loewen, let me say a few more words  
 3 about that unfortunate case. When it was first decided, I,  
 4 as someone in the midst of writing a book on the subject,  
 5 was very happy, indeed, to see that in a major  
 6 international case--against the United States no  
 7 less--three eminent retired judges from the appellate  
 8 jurisdictions of three respectable legal systems (two of  
 9 them, in fact, former members of the Supreme Courts of  
 10 their respective countries) had reviewed a trial record in  
 11 depth and not hesitated to conclude that the discrimination  
 12 against the foreigner, whose \$3 billion transaction had  
 13 resulted in punitive damages of half a billion dollars was,  
 14 I quote again, "an outrage," and thus a denial of justice.

15 But as time has passed and further details of this  
 16 case have revealed themselves, I have resiled from that  
 17 view and now conclude that the doubts hanging over the  
 18 Loewen Award are so substantial that the case is best  
 19 entirely forgotten.

20 The entire discussion of the outrageous denial of  
 21 justice was perhaps the longest obiter dictum in history  
 22 because it did not make any difference. Loewen's rejoicing  
 23 must have been short-lived. Having been told by these  
 24 distinguished persons at great length and with much  
 25 indignant emphasis and fulsome citations of authority that

11:19 1 when he was appointed by the U.S. Government he had been  
 2 told ex parte that this was a case which would destroy  
 3 NAFTA if the United States were not successful in its  
 4 defense, and he had answered: "You really know how to put  
 5 pressure on me." Worse, he had asserted that he, of  
 6 course, had had to dissent from the inconceivable finding  
 7 that the United States was responsible for denial of  
 8 justice, but was relieved in the end that the case was  
 9 thrown out nevertheless. This comment was all the more  
 10 remarkable since there was no recorded dissent at all. The  
 11 entire award, including the obiter about the outrageous  
 12 denial of justice was unanimous. One can only infer one  
 13 thing: The U.S. arbitrator disagreed with the denial of  
 14 justice finding but was willing to go along if a way could  
 15 be found on another point so that the United States could  
 16 win the case anyway. It's a deal. Perhaps you see why I  
 17 say the case is best forgotten.

18 Of course, the only thing of present interest is  
 19 what was said, in what one might describe as the  
 20 intermediate obiter dictum about the failure to exhaust.  
 21 That's the only thing of relevance here. As you might  
 22 expect, this aspect of the decision has been extensively  
 23 criticized as well, including at length in my book. One  
 24 cannot fail to observe that none of the three arbitrators  
 25 had credentials in international law. This is not the



11:20 1 place to find significant jurisprudence, whatever respect  
 2 one might have for the achievements in other circumstances  
 3 of the three individuals who struggled with case. But for  
 4 us here it really doesn't matter. Even if the arbitrators  
 5 had been right about exhaustion there, our case is  
 6 different, as I have explained.

7           Indeed, although your Tribunal need not address  
 8 the issue, it is manifest that the second required element  
 9 for exhaustion--that the remedy, to quote Loewen, "be  
 10 reasonably available, given the circumstances," is not met  
 11 here, either. Every indication is that Chevron cannot  
 12 receive fair treatment in Ecuador: The quid pro quo  
 13 agreement between the Plaintiffs and Ecuador; the  
 14 discriminatory, indefensible, and aberrant rulings against  
 15 Chevron in the Lago Agrio Litigation; the active  
 16 prosecution of Guerra while complaints against Zambrano,  
 17 Fajardo, and Cabrera languish in oblivion; to say nothing  
 18 of the frequent anti-Chevron rants of Mr. Correa.

19           In considering the effect of all of this on a weak  
 20 and dependent judiciary, I ask you to bear in mind two  
 21 fundamental propositions: First, international law must be  
 22 practical or it will be a dead letter.

23           Second, a denial of justice can perfectly well be  
 24 consummated by the Head of State, even if he is not a  
 25 judge.

11:22 1           The first point is crystalized in  
 2 Sir Hersch Lauterpacht's observation in the Norwegian Loans  
 3 Case to the effect that "the requirement of exhaustion of  
 4 local remedies is not a purely technical or rigid rule. It  
 5 is a rule which international tribunals have applied with a  
 6 considerable degree of elasticity." I consider this to be  
 7 among the most insightful of all doctrinal statements I  
 8 have ever read on this subject. If international law were  
 9 overly formalistic the remedy would be pure illusion.  
 10 Imagine that a country whose highest Appellate Court has  
 11 failed to overturn a denial of justice in an important  
 12 case, enacts a decree which, on its face gives some Court a  
 13 new authority to reconsider the matter. "We must be judged  
 14 by our system as a whole," the Government will say. "We  
 15 have just improved it, and you must go there." And, lo and  
 16 behold, the Government says the same thing two years again  
 17 later when the foreigner gets yet another unfavorable  
 18 ruling. Gentlemen, general principles of international law  
 19 do not have specific rules about the need to try new as  
 20 opposed to previously established means of recourse. But  
 21 if international law cannot put an end to such a charade,  
 22 the rule against denial of justice will be sheer hypocrisy.  
 23           Ecuador's invocation of the CPA is a similar  
 24 charade, as brought into relief during the  
 25 cross-examination of Dr. Andrade earlier this week.

11:23 1 Dr. Andrade, in his original Report, and Ecuador in its  
 2 Track 2 Counter-Memorial, stipulated that Chevron would  
 3 satisfy the exhaustion requirement with petitions to the  
 4 National Court of Justice and the Constitutional Court. As  
 5 Chevron pursued this path and as Chevron--as Ecuador came  
 6 close to losing its main procedural defense, Ecuador and  
 7 its Expert reversed themselves without explanation, moved  
 8 the goal posts. This is just a contrivance. If it were  
 9 not the CPA, it would have been something else. Ecuador  
 10 rejects international law and does not want to answer it.

11           At this point, I wish to make a submission to the  
 12 Tribunal in the most formal terms possible. The State of  
 13 Ecuador, represented by its Attorney General, who is a  
 14 co-signatory of its written Memorials, represented to  
 15 Chevron in front of your Tribunal that Chevron was entitled  
 16 to have its claim of corruption in the Lago Agrio Judgment  
 17 heard by an Appellate Jurisdiction which then refused to  
 18 consider Chevron's evidence at all. In light of this,  
 19 Chevron submits that Ecuador simply cannot contend that  
 20 Chevron needs to proceed to some other form of exhaustion  
 21 because it sought the remedy which Ecuador formally  
 22 represented as the appropriate one. Your Tribunal should  
 23 not allow itself to become a partner in the age-old hustle  
 24 known as bait-and-switch. It is offensive to good faith  
 25 and to international law.

11:25 1           If we were to look at the CPA anyway and its  
 2 terms, there are five inherent problems with its invocation  
 3 by Ecuador:  
 4           First, as noted, it does not provide an adequate  
 5 remedy for the damages that Chevron has suffered and may  
 6 suffer abroad. I've dealt with that.  
 7           Second, Dr. Andrade confirmed that the doctrine of  
 8 ultima ratio applies here, meaning that the CPA may not be  
 9 invoked if there is an alternative forum. Chevron has not  
 10 pursued a CPA action because it has been advised by local  
 11 counsel that the Courts reviewing the Judgment have the  
 12 power and duty to consider the evidence of fraud in order  
 13 to vindicate the rights of due process enshrined in the  
 14 Ecuadorian Constitution. Ecuador disagrees and would have  
 15 you accept that Appellate Courts considering whether to  
 16 affirm a judgment are disempowered from considering whether  
 17 it was procured by fraud.  
 18           But Article 838 of the Code of Civil Procedure  
 19 does not mandate such a perverse result. What it provides  
 20 in its relevant part is that the Court shall rule on the  
 21 merits of the case, and this, as it would apply here, means  
 22 that the Appellate Court's consideration of the underlying  
 23 merits in the Ecuadorian system would be limited to the  
 24 evidence presented and designated during the evidentiary  
 25 phase set by the Court of First Instance and established in

11:27 1 October 2003. By the way, the Appellate Court actually  
 2 violated this provision by considering the cleansing  
 3 Expert's Reports, but I digress, there are too many  
 4 details.  
 5 Article 838 does not purport anywhere to bar  
 6 consideration of non-merits evidence going to conduct that  
 7 affects the integrity of the proceedings and the bona fides  
 8 of the Judgment under review, and Ecuador can cite no  
 9 authority that it has ever been so read.  
 10 Article 838 cannot be read as a prohibition or it  
 11 would violate fundamental principles such as the supremacy  
 12 of the Constitution; the direct and immediate application  
 13 of constitutional guarantees; and the requirement that all  
 14 proceedings shall provide due process. As you review the  
 15 plain textual commands of these provisions, which you now  
 16 see, recall the answer Dr. Andrade gave to Professor Lowe  
 17 on Tuesday morning: Due process, he said, is not a duty,  
 18 it "depends on the discretionality of the Judge."  
 19 Transcript Page 2426.  
 20 I think all of this speaks for itself, but to  
 21 answer the Tribunal's question, there is a denial of  
 22 justice regardless of the proper construction of  
 23 Article 838. If we are correct that the Appellate Court  
 24 had, but failed to exercise, the power to correct--to  
 25 consider the evidence of fraud, that is a denial of

11:28 1 justice. Let me repeat. If we are correct that the  
 2 Appellate Court had the power but failed to exercise it to  
 3 consider the evidence of fraud, that's denial of justice.  
 4 If Ecuador is correct that its judicial system is  
 5 powerless to address fraud on direct appeal or even to stay  
 6 enforcement during the pendency of a CPA action, then its  
 7 system falls below international standards and has in this  
 8 circumstance led to a denial of justice on that hypothesis  
 9 as well. That's the Kingsley Case and other authorities I  
 10 mentioned on the first day, European Court of Human Rights.  
 11 Third, even if Points 1 and 2 are wrong, the CPA  
 12 is still ineffective because it does not permit a stay of  
 13 enforcement of the Judgment under review. Now, one might  
 14 imagine a system where allegations of fraud committed in  
 15 the course of the first instance proceedings are not  
 16 addressed by an ivory-tower Appellate Court but rather  
 17 deferred to a special Magistrate for a prompt Hearing. But  
 18 for this imaginary system to make any sense, the Appellate  
 19 Court would have to stay its hand until the fraud Hearing  
 20 is resolved. But the CPA scenario constructed by Ecuador  
 21 for the purposes of this case does not even have these  
 22 basic attributes. Given that even Ecuador admits that a  
 23 typical CPA action would take several years, this is not a  
 24 remedy, it's an invitation to anarchy. And there is every  
 25 reason to think that a CPA action brought by Chevron would

11:30 1 languish. Gentlemen, recall the Commercial Cases  
 2 arbitration, where eight cases filed by Chevron had sat  
 3 dormant for over ten years without decision, a delay  
 4 condemned by the Böckstiegel Tribunal as violating  
 5 Article II(7) of the Treaty. And those were less  
 6 politicized cases in a less politicized time. It is hard  
 7 to believe that a CPA Court would act with greater alacrity  
 8 than the office the Prosecutor General, which has either  
 9 contemptuously returned or ignored the crates of evidence  
 10 sent to it by Chevron over the past four years about the  
 11 fraud. And this is to say nothing of the fact that any CPA  
 12 Judge who dared to rule for Chevron would be deemed a vende  
 13 patrias, and that ruling would then be appealed to the very  
 14 same courts that have already affirmed the ghostwritten  
 15 Judgment.  
 16 Fourth, as articulated in the work of David  
 17 Mummery placed in record by Ecuador, as a matter of fact,  
 18 local remedies should be deemed exhausted if the cost  
 19 involved in proceeding considerably outweighs the  
 20 possibility of any satisfaction resulting. As noted in my  
 21 opening remarks, given the scope of the fraud here, Chevron  
 22 would need to file not one, but several different CPA  
 23 actions. This would only add to the costs and delays of an  
 24 already ineffective remedy.  
 25 Fifth, under Chevron's theory of the case,

11:31 1 furthermore, the remedy offered by the CPA is completely  
 2 irrelevant. If you please, read together these two flatly  
 3 inconsistent statements from Ecuador's Memorials. Track 2  
 4 Rejoinder, Paragraph 220:  
 5 After bringing a complaint under the Collusion  
 6 Prosecution Act alleging a collusive action by means of  
 7 fraud and ghostwriting, Chevron would be afforded full and  
 8 proper recourse to address any claims of fraud or collusion  
 9 in respect of Judge Zambrano's Judgment.  
 10 Now, Paragraph 67 of Respondent's Track 2  
 11 Supplemental Counter-Memorial: Claimants' efforts to  
 12 impugn the Ecuadorian courts is focused on the Judgment  
 13 rendered by Judge Zambrano. But as Dr. Andrade explains,  
 14 this decision is not the operative Judgment because the  
 15 intermediate Appeals Court reviewed and affirmed it de  
 16 novo.  
 17 Why is Ecuador recommending that Chevron attempt  
 18 to nullify a judgment that Ecuador views as inoperative?  
 19 Ecuador is asking Chevron to spend years pursuing relief  
 20 that it would later argue, no doubt to this Tribunal when,  
 21 in 2018 and 2019, it would argue that it's completely  
 22 beside the point. Inoperative. Rather, if Ecuador is  
 23 seriously arguing that Chevron hasn't been harmed by the  
 24 Judgment because of the supposedly curative effects of the  
 25 Appellate Court's 16-page review, a point Chevron

11:33 1 vehemently rejects, then that issue is ripe for this  
 2 Tribunal's decision now, because nothing a CPA Court could  
 3 say or do will address it.  
 4 I said two fundamental propositions. The second  
 5 one is shorter. It's this. While denial of justice always  
 6 involves the functioning of the judicial process, extended  
 7 possibly in some instances to some types of administrative  
 8 determinations, international law does not limit  
 9 responsibility, State responsibility, to acts of officials  
 10 who are formally part of the judiciary. The reason why I  
 11 thought it was worthwhile to write my book on the topic was  
 12 that international law had evolved in three fundamental  
 13 ways since the last comprehensive work on the subject,  
 14 which was Freeman's book in 1938, and this was one of the  
 15 three developments. I describe it in Chapter 3 under the  
 16 subtitle "denial of justice by non-judicial authority."  
 17 This is how I describe the evolution of the law. Forgive  
 18 my self-quotation, written way before I had heard of this  
 19 case obviously. "Once it is established that the relevant  
 20 Act or Mission is attributable to the State, it does not  
 21 matter whether the doors to justice were blocked by  
 22 Executive fiat, legislative over-reaching, or judicial  
 23 obstreperousness." What makes this case unprecedented is  
 24 the innumerable confirmations of the denial of justice from  
 25 various quarters.

11:35 1 Let me concentrate on the Head of State. I spoke  
 2 a few moments ago of a weak and dependent judiciary.  
 3 Perhaps I should have said despondent judiciary. Is that  
 4 an outlandish claim? Of the myriad of documents you have  
 5 seen in this case, if one had to pick three or four that  
 6 were absolutely crucial, you might be pleased to hear there  
 7 is one which is only one page long, and that's is C-127,  
 8 when Mr. Correa describes who he is in his capacity as head  
 9 of the entire Ecuadorian State. This is what he said in  
 10 one of his Saturday radio broadcasts.  
 11 "The President of Ecuador is not only the head of  
 12 the Executive Branch, he is also head of the entire  
 13 Ecuadorian State." Correa added that, "The Ecuadorian  
 14 State is the executive, the legislative, the judiciary, the  
 15 electoral, and the transparency and citizens oversight  
 16 bodies, the superintendencies, the Prosecutor's Office and  
 17 the Controller General's Office. The Ecuadorian State  
 18 comprises all that. Why should it be strange for the Head  
 19 of State to meet with the legislators, with the members of  
 20 the electoral counsel or with the Members of the Court of  
 21 Justice to get to know each other, to support each other?  
 22 There is nothing wrong with that. Quite the opposite, it's  
 23 a very positive thing."  
 24 When the Head of State says that he not only  
 25 endorses the corrupt Judgment but has instructed Ecuador's

11:36 1 diplomatic representatives to militate around the world to  
 2 secure its enforcement as a matter of national priority on  
 3 policy, as of now without waiting for any possible  
 4 correction, how flaccid would international law have to be  
 5 to find that the denial of justice is not ripe for  
 6 assessment under international law, and that Ecuador must  
 7 still be given a chance, which visibly it doesn't want to  
 8 take, and when any hope of effective restoration is long,  
 9 long gone.  
 10 The realities of our situation, Members of the  
 11 Court, render Ecuador's argument for the obviously futile  
 12 test irrelevant, we would pass with flying colors even  
 13 under that. But our Memorials lay out the clear consensus  
 14 that has emerged in favor of the test as being one of  
 15 reasonable possibility. I will say only two things. You  
 16 heard again in opening that the Sole Arbitrator's Decision  
 17 in the Finnish Ships Case was seminal in the development of  
 18 the obvious futility test, but no one who's actually read  
 19 the case would say that Mr. Justice Bagge applied that test  
 20 at all. He simply said that an appeal would have been  
 21 obviously futile when it turned upon a factual finding that  
 22 the Appellate Court could not review. Obviously correct.  
 23 But very different from saying that appeals must be brought  
 24 if they are not obviously futile. That's it.  
 25 My second observation is that the Apotex Case

11:38 1 recently decided under the chairmanship of Toby Landau, is  
 2 not an outlier which contradicts what I have just said.  
 3 The obviously futile test was applied there, but only  
 4 because of a joint stipulation of the Parties, for some  
 5 reason, as Mr. Landau was careful to note pointedly and  
 6 repeatedly, but apparently not enough times for everyone to  
 7 notice it. See, for example, his Paragraphs 257 and 268.  
 8 In short, while I believe that the obvious  
 9 futility test is wrong and irreconcilable with  
 10 Lauterpacht's call for common sense and realistic weighing  
 11 of the circumstances, if there is a case in which the  
 12 standard cannot matter at all, this must be it. There is  
 13 not, to borrow from Professor Mayer, even a tiny prospect  
 14 of effective redress for Chevron in Ecuador.  
 15 Let me finally, before I move to the Treaty,  
 16 address among the most audacious statements Ecuador has  
 17 made in this arbitration, which is that Ecuador is the  
 18 victim of Chevron's deliberate failure to act. If I follow  
 19 this argument, it is that Chevron allegedly knew of  
 20 Plaintiffs' bribe to Zambrano before the Judgment issued,  
 21 which is false, and decided to allow him to issue an  
 22 \$18 billion Judgment against the company, which is insane.  
 23 To put an end to this nonsense, the sole piece of  
 24 contemporaneous evidence Chevron had of Zambrano's  
 25 agreement with the Plaintiffs was double hearsay. This is

11:40 1 the Affidavit of a local Chevron attorney named Enrique  
 2 Carvajal Salas, and the relevant portion is found in  
 3 Paragraph 5. "In that meeting, my friend told me based on  
 4 his discussion with Dr. Guerra, that Judge Zambrano would  
 5 no longer try to reach some agreement with Chevron because  
 6 he was aware that the company would not make financial  
 7 arrangements with anybody, but, instead, that  
 8 Judge Zambrano was sure to do so with the Plaintiffs." So,  
 9 Guerra told a friend who told a Chevron lawyer. There is  
 10 no link, no direct link, at the time with Zambrano itself,  
 11 given the backlash that Chevron faced when it submitted  
 12 authenticated videos of judicial malfeasance by Judge Núñez  
 13 coming forward based on this double hearsay Affidavit,  
 14 would surely have exposed Chevron to further charges of  
 15 reckless and malicious defamation, as Mr. Bishop explained  
 16 on the first day. This argument sits particularly poorly  
 17 in Ecuador's mouth considering that when Chevron finally  
 18 obtained sufficient confirmatory evidence of the  
 19 ghostwriting scheme, it did present the evidence to  
 20 Ecuador's Appellate Court, and we all know how that turned  
 21 out.

22 Now, you could forget everything I have said about  
 23 exhaustion and take a more direct route to the same  
 24 conclusion. The fact is that Ecuador has, by its own  
 25 actions, disqualified itself from relying on the exhaustion

11:42 1 Ecuador doesn't get it. You're not supposed to ignore the  
 2 Orders of an international tribunal. Ecuador is saying  
 3 three things unrepentantly: One, we are trying with all  
 4 our might to enforce the Judgment, and we don't care what  
 5 the Tribunal says or thinks about it. Two, Chevron is  
 6 asking for the urgent nullification of the Judgment because  
 7 it was a denial of justice, but, three, we insist that  
 8 Chevron cannot do this, and will be powerless to stop the  
 9 enforcement actions because Chevron has to run around on a  
 10 wild goose chase and we will tell them that they must seek  
 11 relief from one Court and then another, as we please. This  
 12 really cannot be tolerated without belittling the  
 13 international legal process.

14 The treaty claims. The breaches in our Memorials,  
 15 Gentlemen, have been specific. They concern governmental  
 16 actions unrelated to the Lago Agrio Litigation. To the  
 17 extent that the treaty claims do concern judicial conduct  
 18 in some way, Ecuador is mistaken in treating them as denial  
 19 of justice redux with the same exhaustion requirements.  
 20 Although these issues have been well rehearsed in the  
 21 Memorials, I will happily address the Tribunal's questions  
 22 about Chevron's treaty claims and their relationship to the  
 23 denial-of-justice claims.

24 Ecuador has breached its obligation to provide  
 25 fair and equitable treatment through non-judicial conduct

11:41 1 argument. It's violated your Orders. In doing so, it not  
 2 only declined to take all measures to avoid enforcement of  
 3 the Judgment, it has done the exact opposite. That is a  
 4 violation of international law. And Ecuador is shameless  
 5 about this.

6 In the waning moments of the hearing of the  
 7 Witnesses Tuesday afternoon, I heard from the back of the  
 8 room that Mr. Bloom was making an application to you for  
 9 some type of Protective Order regarding Expert evidence in  
 10 these proceedings. Since it was the last day of very  
 11 lengthy witness examinations, I thought he might have been  
 12 seeking to introduce a humorous note into the case. He  
 13 said--and I'm quoting from the Transcript Page 2462: "All  
 14 we're asking for is for this sensitive information that was  
 15 produced under certain circumstances to be treated with a  
 16 certainly level of sensitivity, especially with the  
 17 overlay, the evidentiary overlay in terms of potential uses  
 18 abroad or somewhere in the United States." Ironic, isn't  
 19 it, for Ecuador's lawyer to ask you to be its accomplice as  
 20 it seeks the violation of your own Order. You ordered the  
 21 enforcement of the Judgment to be suspended. Ecuador  
 22 disregards that Order, and now asks you to help facilitate  
 23 enforcement.

24 In time, I understood that Mr. Bloom is apparently  
 25 not a man of irony and that he was perfectly earnest.

11:44 1 in a variety of ways. Let me highlight just three:  
 2 First, the Ecuadorian Government breached the  
 3 fair-and-equitable-treatment standard failing to honor but  
 4 instead working in bad faith to destroy the value of the  
 5 Settlement and Release Agreement, as Mr. Coriell has  
 6 already explained.

7 Second, the Head of State, the Attorney General,  
 8 and other high-ranking officials have improperly  
 9 interjected themselves into the Lago Agrio Litigation--with  
 10 Mr. Correa, as I noted in my opening, even offering to call  
 11 the Presiding Judge. Such conduct breaches the FET  
 12 requirement, not only because it is inconsistent with  
 13 Claimant's legitimate expectations, but because it's  
 14 non-transparent, arbitrary, and done in bad faith. As  
 15 confirmed, for example, by the Petrobart Decision, CLA-219,  
 16 where the Tribunal based its finding of a breach of the  
 17 Energy Charter Treaty FET provisions in part on the fact  
 18 that the Vice-Prime Minister sent a single letter to the  
 19 Court trying to influence the outcome of the case.

20 Similarly, in the recent decision of TECO versus  
 21 Guatemala, CLA-615, a CAFTA Tribunal found a breach of the  
 22 FET obligation through a regulator's attempt to influence  
 23 review of the tariffs to be charged by the investor.

24 And third, the Ecuadorian Government has commenced  
 25 a coordinated campaign to promote enforcement of the

11:45 1 Judgment. And investors can reasonably expect to be  
2 involved in foreign litigation, but not that the Government  
3 will use that litigation as a form of extortion,  
4 punishment, defamation.

5 Altogether, the level of abuse directed against  
6 the Claimants here from the highest levels of Government is  
7 astounding. It's the antithesis of a State's obligation of  
8 fair and equitable treatment. This delict is separate and  
9 distinct from denial of justice. So is the anti-foreigner  
10 discrimination. There is no exhaustion requirement with  
11 respect to these non-judicial conduct, and they are ripe  
12 for resolution.

13 Now, specifically with regard to Ecuador's breach  
14 of the effective means provision, to answer the Tribunal's  
15 question as to whether Article II(7) imposes obligations  
16 beyond those of customary international law, the answer is  
17 plainly affirmative.

18 Article II(7) requires that Ecuador, let me quote,  
19 "provide effective means of asserting claims and enforcing  
20 rights." This is a specific and self-contained obligation,  
21 it makes no mention of customary international law.  
22 Ecuador argues that the United States intended to limit  
23 Article II(7) to the obligations of customary international  
24 law, but they do not establish a common intent of the  
25 Parties to the Treaty.

11:48 1 summary verbal proceeding breached Article II(7) because,  
2 among other things, it prevented Chevron from impleading  
3 Petroecuador.

4 Your Tribunal asked specifically about  
5 Article II(7)'s application with respect, not to the Trial  
6 Court but rather to the higher courts. It's manifest that  
7 the Appellate Court breached this affirmative obligation by  
8 failing to consider the evidence of fraud before affirming  
9 and certifying the Judgment as enforceable abroad. The  
10 breach was immediate.

11 As Professor Böckstiegel wrote for the Commercial  
12 Cases Tribunal claims of breach of Article II(7), and I  
13 will quote, "they're not subject to the same strict  
14 requirement of exhaustion as claims for breach of customary  
15 international law," and he added that "the decision of a  
16 lower court may in certain circumstances directly violate  
17 BIT provisions." And where, if not here. The time to  
18 provide an effective remedy was before the Judgment was  
19 allowed to set sail to the four corners of the earth. The  
20 window of opportunity was gone, the genie out of the  
21 bottle, and further recourse in Ecuador could not bring it  
22 back. Contrary to Ecuador's argument, there was no need  
23 for Article II(7) to expressly waive the exhaustion  
24 requirement established under customary international law.  
25 To the extent that there is exhaustion element, it comes

11:47 1 To the contrary, Professor Caron, in his Report,  
2 confirms that the preparatory work of the Treaty indicates  
3 that the effective means provision was intended to go  
4 beyond customary international law. That's in his Report  
5 of 3 September 2010. It would moreover have been senseless  
6 for the State Parties to have repeated in Article II(7) the  
7 obligation to provide the customary international law  
8 standard of treatment that is already required by  
9 Article II(3). An interpretation which denies the  
10 independent significance of Article II(7) obviously cannot  
11 be correct. This much was confirmed by the only two  
12 tribunals to have directly addressed the relationship  
13 between effective means provisions and customary  
14 international law. Those, Gentlemen, are the Tribunal's  
15 and the Commercial Cases, CLA-47, and White Industries,  
16 RLA-347 from Paragraph 92 on in that case. The conclusion  
17 of the Commercial Cases Tribunal applied to the  
18 Ecuador-U.S. BIT, which is, of course, the very Treaty  
19 before you.

20 So, Article II(7) is properly read to place an  
21 affirmative duty upon Ecuador to provide measures that are  
22 adequate in practice to secure the rights at issue, rather  
23 than simply a negative promise not to deny justice. It  
24 calls for practical, timely, useful recourse. For example,  
25 trying a case of this magnitude and complexity through a

11:50 1 form the nature of Article II(7)'s command itself, as  
2 applied to the specific circumstances which, of course, are  
3 a matter for the Tribunal to judge.

4 Ecuador's judicial conduct also breached other  
5 obligations in the BIT. Claimants have explained in their  
6 written submissions that Ecuador breached the obligations  
7 of fair and equitable treatment, full protection and  
8 security, and non-discrimination, such as, for example, the  
9 100 PPM/TPH remediation standard. You can see our full  
10 arguments on this score in our Track 2 amended Reply,  
11 Paragraphs 333 to 357, Track 2 supplemental Reply,  
12 Paragraphs 393 to 407.

13 In short, the conduct of the judicial system here  
14 plainly violates customary international law, and the  
15 breaches of Article II(7), fair and equitable treatment,  
16 and the other treaty provisions follow a fortiori.

17 I thank you very much for your attention, and this  
18 is our moment for a break, I believe.

19 MR. BISHOP: Mr. President, we're in the  
20 Tribunal's hands. We could do--we could move forward in  
21 one of two ways. We could either take our lunch break now,  
22 which we are happy to do if the Tribunal would like that,  
23 or we could perhaps go to one other topic, which is  
24 Ms. Renfroe's discussion of the environmental case put  
25 forward by the Respondent, so we could either do that and

11:51 1 then break for lunch or we could break for lunch now,  
 2 however the Tribunal wishes to proceed.  
 3 PRESIDENT VEEDER: It's a little bit early for  
 4 lunch. The clock says ten to 12:00. How long would  
 5 Ms. Renfroe take?  
 6 MR. BISHOP: I think she plans on probably a  
 7 little more than 30 minutes, but perhaps we could take a  
 8 five-minute break before that, if you don't mind, to set  
 9 up.  
 10 PRESIDENT VEEDER: Let's take a five-minute break,  
 11 and then we will go to the next section. Thank you.  
 12 (Brief recess.)  
 13 PRESIDENT VEEDER: Ms. Renfroe.  
 14 MS. RENFROE: Thank you very much, Members of the  
 15 Tribunal.  
 16 I turn now to the discussion of the environmental  
 17 evidence and use it to illustrate several important aspects  
 18 about the absurdity of this Judgment.  
 19 Certainly, the damage awards of the Judgment are  
 20 not the only example of how this Judgment is absurd. One  
 21 could point to the causation element or the lack of  
 22 causation analysis in the Judgment as an equally absurd  
 23 feature of it, but for now this morning I'd like to focus  
 24 my discussion on the damage components because I think,  
 25 standing alone, they illustrate perhaps one of the most

12:01 1 damage awards contained in it.  
 2 I want to review for you, however, five of the  
 3 gentlemen or experts who you did not have an opportunity to  
 4 hear from in the last few weeks but whose testimony you  
 5 certainly have, and the contribution they make to this  
 6 conclusion that there is no scientific basis that supports  
 7 these damage awards.  
 8 We start with that of Dr. Bill Bellamy, who  
 9 observes and who's testified that there is no drinking  
 10 water contamination from TexPet's petroleum operations and,  
 11 therefore, no support for the Judgment's Award of  
 12 \$150 million to replace community water systems.  
 13 In fact, not only was this opinion not  
 14 controverted by the Lago Plaintiffs in the Lago Litigation,  
 15 but it's not controverted even in this arbitration case  
 16 now.  
 17 Then there is the opinion of Dr. Suresh  
 18 Moolgavkar, a renowned epidemiologist, who is the only  
 19 Expert in this arbitration case to have published a  
 20 peer-reviewed mortality study analyzing mortality data from  
 21 the Concession Area; and, based on that study, he concludes  
 22 that there is no statistical significant relationship, much  
 23 less any causal relationship between exposure to TexPet's  
 24 operations and any sort of human health risk.  
 25 And then we have the testimony of Dr. Pedro

11:59 1 shocking examples of why this Judgment is, indeed, so  
 2 absurd on its face.  
 3 And so, I take you back to a slide that was  
 4 presented by John Connor, Claimants' environmental expert,  
 5 during his presentation in which he summarized those key  
 6 Awards in the Judgment and noted that \$3 billion or more of  
 7 the damages awarded in the Judgment had absolutely no basis  
 8 expressed in the Judgment. Those would include the  
 9 groundwater remediation Award, the Award for potable water  
 10 systems to be replaced, the community--the healthcare  
 11 monitoring system Award, and then the healthcare program  
 12 for cancer care--no basis in the Judgment whatsoever.  
 13 The other Awards in the Judgment that purported to  
 14 have some basis, when analyzed we know from the record that  
 15 there was no legitimate basis in the record for them.  
 16 And we know that because of the, among other  
 17 things, the testimony in this Hearing from Claimants' array  
 18 of highly qualified oil field petroleum experts whose  
 19 testimony I've summarized again for your convenience.  
 20 Many of them or several of them you had the  
 21 opportunity to meet in the last few weeks, and I think you  
 22 can judge for yourself their experience, their credibility,  
 23 and the quality of the scientific analysis they brought to  
 24 bear to support their conclusions that there is no  
 25 scientific basis for the Judgment as a whole or any of the

12:02 1 Alvarez, another gentleman you didn't have a chance to  
 2 meet, but who has explained in his Expert Report the impact  
 3 of Petroecuador's last 25 years of operations. And the  
 4 fact that its operations from both the perspective of its  
 5 expansion as well as its numerous spills and releases, how  
 6 those impacts have irrevocably changed the face of this oil  
 7 field in a way that makes it absolutely impossible to go  
 8 back and reconstruct what it was like in June of 1990, when  
 9 it was handed over.  
 10 That, of course, is very significant on one's  
 11 consideration of the causation factor and the fact that the  
 12 Lago Court made no effort to deal with a critical causation  
 13 question.  
 14 And then we have two more opinions bearing on the  
 15 ecosystem factors, and those are Dr. Robert Wasserstrom and  
 16 Dr. Douglas Southgate, both of whom were experts in the  
 17 Lago Case, and both of whom testified to factors that bore  
 18 on ecological impacts, that those factors were driven by  
 19 the Government of Ecuador's policies to promote  
 20 agricultural development and population growth in the area,  
 21 not by oil field operations.  
 22 So, perhaps the most important of these  
 23 illustrations of why the damages award is so absurd, it has  
 24 to do with the soil and groundwater remediation Awards that  
 25 amount to over \$6 billion. Perhaps you will remember, or

12:04 1 at least I hope you will, the testimony of Dr. Robert  
 2 Hinchee who was here last Friday, I believe, and who  
 3 explained to you based on his widespread experience in  
 4 actual real oil field contamination cases, that the damage  
 5 award of \$6 billion from the Lago Court to remediate soil  
 6 and groundwater has absolutely no bearing to reality.  
 7 And to illustrate that point, he shared with you  
 8 he shared with you his experience with the Kuwaiti oil  
 9 field, where Saddam Hussein had ordered the intentional  
 10 destruction of those oil fields, and there the most that  
 11 was ordered for the remediation of over 350 square  
 12 kilometers was \$2.5 billion.  
 13 You will remember also Dr. Hinchee's comparison of  
 14 the square kilometers to be remediated in the Kuwait oil  
 15 fields, and he compared it to the total amount to be  
 16 remediated according to the Judgment. And look at the  
 17 difference: 385 square kilometers in Kuwait versus 3.1  
 18 square kilometers in the Concession Area. Just think about  
 19 that difference in the amount of area allegedly to be  
 20 remediated, and look at the difference in the price tag.  
 21 You simply cannot support a \$6 billion cost when you take  
 22 into account the area to be addressed.  
 23 And then if you look at it, if you compare these  
 24 numbers on the cost per square meter or cubic meter for  
 25 remediation, in Kuwait, where it was actually done, \$45 per

12:06 1 cubic meter compared to the Judgment Award that would  
 2 amount to \$730 per cubic meter.  
 3 Now, if we think about this a little more closely,  
 4 and we look at the elements that went into this soil and  
 5 groundwater remediation Award, and we then assess it or  
 6 measure it against reality, and that reality is very clear  
 7 and undisputed, it's the reality of what Petroecuador does  
 8 in the Concession Area today. It actually remediates in  
 9 the Concession Area soil, though not groundwater because  
 10 groundwater is rarely, if ever, impacted by oil field  
 11 operations.  
 12 But if you remember the slide presented to you by  
 13 Dr. Hinchee, he sums up as concisely as anyone could the  
 14 departure from reality wrought by this Judgment.  
 15 And when you actually look at the \$70 million cost  
 16 estimate published by the PEPDA program for what it would  
 17 cost to remediate both former Concession liabilities of  
 18 Petroecuador as well as post-1990 liabilities of  
 19 Petroecuador, so from two different operating eras,  
 20 Petroecuador's estimate as published by PEPDA, I believe,  
 21 in 2009 in Hinchee Exhibit Number 1, that estimate was  
 22 \$70 million. And it included remediation not only of  
 23 soils, but sediments as well. And when you compare that to  
 24 the \$6 billion Award, you will find a 90 times  
 25 exaggeration. The Lago Award of \$6 billion is 90 times

12:08 1 what has been estimated by Petroecuador that is actually  
 2 needed to deal with Petroecuador's liabilities. That  
 3 alone, Members of the Tribunal, is a profound absurdity.  
 4 It illustrates that this Judgment, on its face, is nothing  
 5 less than absurd. And that's just one example.  
 6 Now, we go to the health Awards, and they are  
 7 equally lacking in any technical or scientific basis. When  
 8 you consider what evidence was in the Lago record that  
 9 could possibly have justified Awards of over \$2 billion for  
 10 health-related costs, it's shocking to see what we find.  
 11 On this slide, I've summarized the evidence that was in the  
 12 Lago record placed there by Chevron. Unfortunately, there  
 13 is no comparison placed there by the Lago Plaintiffs, and  
 14 to the extent that they put anything in the Lago Record, it  
 15 does not survive any kind of scientific rigor or scrutiny.  
 16 Let me just review for you the fact that it was  
 17 Chevron in the Lago Case; that was the Party who bothered  
 18 to sample the drinking water sources during all the  
 19 Judicial Inspections. That's not something that the Lago  
 20 Plaintiffs even bothered to do.  
 21 It was also Chevron who was the only party who  
 22 performed a quantitative human health-risk assessment. You  
 23 heard Dr. McHugh tell you about that. He was the Expert  
 24 who did it. There was no equivalent risk assessment  
 25 performed by the Lago Plaintiffs. And it was Chevron who

12:10 1 commissioned and put in the Lago Record the only study of  
 2 ecological risks as well as the only study of impacts on  
 3 biodiversity. Those studies and those reports in the Lago  
 4 Agrio Record stand alone to demonstrate that TexPet's  
 5 operations did not present a human health risk or a risk to  
 6 the environment. And there was no offsetting evidence of  
 7 any validity, of any legitimacy from the Lago Plaintiffs.  
 8 And so, when you look at this collectively, you can see  
 9 there simply was no basis for the staggering human health  
 10 Awards issued by the Lago Court.  
 11 So, now we turn to the question of whether LBG,  
 12 Ecuador's new after-the-fact experts who were not involved  
 13 in the Lago Case, we turn to the fact or the question of  
 14 whether they can endorse this Judgment or whether they can  
 15 somehow rescue it. The answer, respectfully, Members of  
 16 the Tribunal, is that while they endorse it in form, they  
 17 do not endorse it with any scientific substance whatsoever.  
 18 I've summarized on this slide for you as concisely  
 19 as I can the essence of their testimony and why I say,  
 20 notwithstanding the four volumes of reports they have  
 21 submitted, they simply do not offer any scientific support  
 22 for this Judgment. It begins with the fact that they don't  
 23 even endorse the monetary Awards. They told you here  
 24 earlier this week, they didn't make any attempt to evaluate  
 25 causation or attribute liability or apportion liability,

<p>Sheet 31</p> <p style="text-align: right;">2615</p> <p>12:11 1 even though they recognized that Petroecuador had operated  2 these oil fields for 25 years. And even though they  3 recognized numerous spills had occurred throughout the  4 Concession Area, knowing that, they nevertheless made no  5 attempt whatsoever to try to apportion liability.  6 And on the many questions I asked them about what  7 evidence they had on the extent of sediment impacts,  8 groundwater impacts, impacts to drinking water, or the  9 extent of impacts to soil at any given site, they had no  10 opinion. It's quite amazing when you consider the volume  11 of reports they have submitted, but here is their testimony  12 that you heard on Monday of this week: They had no  13 opinion.  14 They did venture an opinion that contamination as  15 they define it is anything over a detection limit, but they  16 had to admit that the matter of what constitutes an  17 actionable impact is a matter of law for which they offered  18 no opinion as we would expect. But what they also had to  19 concede was that they were not applying Ecuador's own oil  20 field regulation, Decree 1215, or the RAOH, as we sometimes  21 call it. They simply put that aside and didn't apply it in  22 forming their conclusions.  23 And so, I caution you that to the extent that you  24 consider their Reports and their use of the word  25 "contamination," please recognize that that is a conclusion</p>	<p style="text-align: right;">2617</p> <p>12:15 1 see any pictures or any drawings or diagrams about any  2 problems with those four. Instead, what we saw are  3 photographs like these that come from non-RAP areas.  4 So, moving then to a second reason that the LBG  5 work simply deserves no weight and does nothing to prop up  6 this Judgment is their departure or their failure to follow  7 Ecuador's own oil field regulations, Decree 1215. You  8 heard a lot about that on Monday. The facts are, as I  9 tried to draw out from them, that when you do apply Decree  10 1215, Ecuador's own oil field regulations, we find that  11 many, many of the places that LBG contends to be  12 "contaminated" would require no action, no remediation  13 under Ecuador's own system.  14 So, the fact that LBG and the Republic of Ecuador  15 refused to apply even their own oil field regulations  16 governing oil field operations and which are designed to  17 protect the environment in oil field areas, the fact that  18 they don't apply those is shocking. It's just impossible  19 to reconcile it with any intellectual honesty. And so  20 that's the second reason I urge you to conclude they do  21 nothing to support this Judgment, and their conclusions  22 deserve no weight.  23 To remind you of the effect of their failure to  24 apply Ecuador's own environmental regulations, I bring you  25 back to a graphic presented by Mr. Connor where, on the</p>
<p style="text-align: right;">2616</p> <p>12:13 1 they've made that completely departs from Ecuador's own  2 legal criteria for oil field operations.  3 And so, instead of supporting this Judgment with  4 evidence from the Lago Record and mainstream widely  5 accepted scientific protocols, what did they do? Well, a  6 bit reminiscent of what Steven Donziger did, as he told us,  7 "When the facts do not exist, facts are created." And what  8 we find with the LBG team is that they've completely  9 departed from accepted protocols in trying to fashion some  10 sort of a defense to this Judgment.  11 I point out for you the photographs that LBG  12 provided in their Reports, but under examination they had  13 to admit that these photographs do not represent areas  14 remediated by TexPet or RAP areas. Instead, what they told  15 us was that they purposefully targeted non-RAP areas and  16 were really oblivious to where the RAP and non-RAP areas  17 were. They didn't concern themselves with that distinction  18 very much. And to the extent that they did sample in RAP  19 areas, you didn't hear one example from them this week that  20 they found a location that TexPet had remediated; i.e., a  21 RAP feature, for which they found any problem. You didn't  22 hear anything about that.  23 And the facts are, Members of the Tribunal, that  24 of the 13 sites where they actually took samples, they  25 sampled only four RAP locations. Only four. But we didn't</p>	<p style="text-align: right;">2618</p> <p>12:17 1 left, he took a map that was provided by LBG, and he shows  2 the sample locations that LBG says are, "contaminated."  3 And then on the right, Mr. Connor demonstrated for us that  4 when you apply Decree 1215, in this case it's agricultural  5 criteria of 2500 parts per million, that all but one of  6 those sampling locations require no action. The Government  7 of Ecuador and Petroecuador would take no action because  8 under Ecuador's regime, 2500 parts per million of TPH is  9 permissible to remain in soils in agricultural areas.  10 Another illustration of this we see at the  11 Shushufindi 25 well platform where again, Mr. Connor was  12 making the point that there is great agreement between the  13 JI data that he analyzed on the left and the LBG data that  14 they collected recently, when you apply the same Decree  15 1215 criteria. So, when you compare apples to apples in  16 defining what constitutes an impact that needs remediation,  17 when you do that, you will see that these Parties found  18 essentially the same thing. They sampled in the same areas  19 and got essentially the same results.  20 And yet, LBG continues to urge you to find  21 widespread contamination throughout the Concession Area,  22 which they attribute to TexPet, even though they've made no  23 attempt to analyze causation.  24 And then I want to take you to this example, which  25 I found perhaps one of the most dramatic of all</p>



12:19 1 illustrations of how LBG cannot demonstrate any support for  
 2 the Judgment using its approach. They showed you this  
 3 photograph, as did the Republic of Ecuador in opening, this  
 4 hand-dug well used by a family; and, on their slide, they  
 5 told you the residents at Lago 16 used contaminated water  
 6 when drinking, bathing, and washing their clothes.  
 7 And this was not the only photograph like this  
 8 they showed you, but under cross-examination, Dr. Garvey  
 9 had to acknowledge that his own data showed that when you  
 10 applied Ecuador's TULAS regulations, this water well, this  
 11 hand-dug well, met not only Ecuador's groundwater  
 12 regulations, but it also meets Ecuador's drinking water  
 13 criteria under TULAS.  
 14 So, I urge the Tribunal to beware, when you were  
 15 shown photographs during Ecuador's closing as I suspect you  
 16 will be, remember this photograph and others like it where  
 17 the word "contamination" is used, but the data doesn't  
 18 prove it.  
 19 Now I go to a third example of LBG's extraordinary  
 20 measures to try and support this Judgment. You may remember  
 21 in opening and then again during LBG's presentation this  
 22 week, they showed you this drawing, and this map from the  
 23 Sacha 13 well site has been annotated to show a calculation  
 24 that Dr. Garvey created. His calculation was taking the  
 25 Judicial Inspection soil data, developing an average, and

12:23 1 And I asked him whether he had any data that would  
 2 validate his model, and you will see here his answer to my  
 3 question: "Do you have any data here that would confirm  
 4 your model, or you don't have it, do you?" And he said:  
 5 "No." And you may remember that I walked him around the  
 6 Shushufindi 34 well site where he had collected data, and  
 7 none of those samples conformed to his predictions in his  
 8 model.  
 9 So, this is another example of LBG's work really  
 10 being nothing less than just some smoke and mirrors to try  
 11 and add some weight to this Judgment, and it does not  
 12 survive any kind of scientific rigor or scrutiny.  
 13 I take you now to another problem with that  
 14 calculation, readily admitted by Dr. Garvey. It took no  
 15 account of the fact that much of the--many of the Judicial  
 16 Inspection sites were measuring contamination in the soils  
 17 from Petroecuador's operations. He acknowledged that he  
 18 had made no attempt to separate that out.  
 19 And here I showed him this photograph, and you may  
 20 remember I asked him: "In developing your calculation, did  
 21 you make any deductions for the oil that was spilled in  
 22 these various sites by Petroecuador?"  
 23 Answer: "No, we did not."  
 24 And then we talked about the fact that, according  
 25 to Petroecuador's own public records, the SIPAS database,

12:21 1 extrapolating that to assume that all 344 Concession Area  
 2 sites would be equally contaminated. But what he didn't  
 3 tell you was, but I did, or he acknowledged it under  
 4 cross-examination was that, Number 1, that he relied upon  
 5 soil samples from a Petroecuador spill at the Sacha 13 well  
 6 site to form the basis of developing his average.  
 7 Number 2, we learned that all of the contamination  
 8 that he declared to constitute six Exxon Valdezes, all of  
 9 that contamination, that so-called "contamination," if you  
 10 applied Ecuador's Decree 1215 criteria, it would all be  
 11 below the agricultural standard for TPH.  
 12 And then we took the step of examining--well,  
 13 before I move there, let me also remind you of the  
 14 testimony by Mr. Connor, who tried to explain the flaws in  
 15 this calculation, and he illustrated for you that the oil  
 16 that Dr. Garvey fictionalizes to exist in 200-meter  
 17 diameters from each of these Platforms simply does not  
 18 exist when you look at the data. It exists nowhere but in  
 19 Dr. Garvey's calculation, as Mr. Connor told you.  
 20 But then, if you remember I asked Dr. Garvey if he  
 21 could ground-truth his model, that is, test it against the  
 22 data, because, after all, as he acknowledged, data is what  
 23 we should make decisions by. It is the gold standard. And  
 24 as between data and a model or a calculation, there is no  
 25 question that the data governs.

12:24 1 through 2009, 125,000 barrels of oil had been reported to  
 2 be spilled throughout the Concession Area, and again, LBG  
 3 has taken no account of this.  
 4 But we do know, and Dr. Garvey and LBG had to  
 5 acknowledge, as did Dr. Strauss, that the Petroecuador  
 6 operations over the last 25 years have indeed been, very,  
 7 very extensive. I showed you this image in opening, the  
 8 screenshot from the mapping tool where the green icons  
 9 represent the TexPet wells, and if I can draw your  
 10 attention to the screen, the red icons representing the  
 11 Petroecuador wells drilled since 1990. And if you just  
 12 compare, if you go back and forth, what you can do when you  
 13 open the mapping tool, you will see the dramatic  
 14 comparison, the dramatic expansion of Petroecuador's  
 15 operations in the last 25 years.  
 16 Now, we know from observations by Pablo Fajardo in  
 17 statements he made before he joined the Lago Agrio  
 18 Plaintiffs' team, that Petroecuador had, indeed, caused  
 19 more damage and far more disasters than Texaco, and quoting  
 20 him: "There are frequent spills and broken pipes and  
 21 contamination of wetlands, of rivers, of streams in great  
 22 magnitude. But since it's a State-owned company, no one  
 23 says a thing," quoting Pablo Fajardo. And I've shown you  
 24 just two of the images that you saw in the last few weeks  
 25 that are examples, they are photographs of Petroecuador

12:26 1 impacts in the Concession Area.  
 2 Now, I want to make another point, taking you back  
 3 to the mapping tool, C-2444, and this has to do with the  
 4 dramatic expansion that we find in the Concession Area.  
 5 This is the Shushufindi 40 Well Platform, and I'm showing  
 6 you an image on the left from the Year 2000, 10 years after  
 7 Petroecuador had been operating. The red circle on the  
 8 left is the well platform as it existed in 2000.  
 9 Now, if you look closely on the right-hand side,  
 10 you will see the platform, and you can see in the brown  
 11 sort of scarred area, the expansion of that platform, and  
 12 what you're looking at, Members of the Tribunal, is a  
 13 150-pit pit farm that has been constructed by Petroecuador  
 14 since 2000. Again, when you go into the mapping tool and  
 15 you toggle through each year, you can see the evolution and  
 16 the progression of changes.  
 17 It's a little bit hard to see in this slide, but  
 18 when you look at it carefully, you will see in the upper  
 19 portion what looks like little cells. Those are pits that  
 20 Petroecuador has constructed recently. This is just but  
 21 one example of one site where there has been dramatic  
 22 expansion.  
 23 Now, I want to show you an image as I move forward  
 24 with my observations about LBG and why their work deserves  
 25 no weight and why it in no way validates the Judgment.

12:28 1 Like those photographs that we were shown declaring  
 2 contamination where the data didn't support it, LBG showed  
 3 you this image from their slide presentation. We hadn't  
 4 seen this before. This was new. It was not included in  
 5 their Expert Reports. And in this image, they purported to  
 6 suggest that there are stream impacts throughout the  
 7 Concession Area that caused them concern. We certainly  
 8 recognized that stream impacts can be concerning and can be  
 9 of concern and should be taken seriously, but the point I  
 10 want to make to you now is that Dr. Garvey admitted "we  
 11 don't have the details as to where it might be impacted."  
 12 And you can see his testimony there.  
 13 So, what he did was to present to you this image  
 14 suggesting that all of the red streams within the  
 15 Concession Area are contaminated, but even he acknowledged  
 16 he really didn't know.  
 17 But, Members of the Tribunal, in the Slide 137 A  
 18 that I have just handed out, I want to direct your  
 19 attention to something that Dr. Garvey did not share with  
 20 you, and that is that we actually do know quite a bit about  
 21 the condition and quality of the streams and the surface  
 22 water in the Concession Area. On this image, I have taken  
 23 Dr. Garvey's map and I've annotated it with information  
 24 from three Environmental Impact Assessments that were  
 25 commissioned by Petroecuador very recently. They're all in

12:29 1 this record. And what I've annotated here is the fact that  
 2 these three reports include surface-water sampling results,  
 3 in three--in these various oilfields.  
 4 So, for example, in the Shushufindi Aguarico  
 5 field, which is Number 2 on the map, there is an  
 6 Environmental Impact Assessment that reports that the vast  
 7 majority of surface water and sediment samples meet  
 8 Ecuadorian standards for TPH. Now, that is not to say that  
 9 there aren't impacts from Petroecuador's operations and, in  
 10 fact, I have shown you some those in the last few weeks.  
 11 We recognize that those are there, but what I do think is  
 12 very important to the Tribunal to recognize is that  
 13 Petroecuador and other organizations actually monitor the  
 14 quality of surface water within the Concession Area. And  
 15 so I urge the Tribunal to take great caution as you listen  
 16 to and consider what may be presented in the Republic's  
 17 closing about what Dr. Garvey has found because as we can  
 18 see from this map, he has actually found nothing about the  
 19 condition of the stream system.  
 20 Now I will move on quickly to the question about  
 21 Dr. Strauss and the health risks and whether she can do  
 22 anything to rescue the Judgment. You may remember the  
 23 testimony of Dr. Strauss last Friday. And again, with all  
 24 due respect to her, she brings absolutely no support, no  
 25 scientific support whatsoever to bolster the healthcare

12:31 1 awards in the Judgment. On their face, they, too, are  
 2 absurd, and she did nothing to demonstrate otherwise.  
 3 Again, on this slide, for your convenience, I have  
 4 summarized her key--the key admissions that she made. Even  
 5 as limited as her opinions are, we found that she backed  
 6 away from many of them or she simply couldn't address  
 7 critical points.  
 8 She performed her risk assessment, her  
 9 quantitative health risk assessment as if the Settlement  
 10 Agreement and Remedial Action Plan had never occurred. She  
 11 made no effort to differentiate between impacts from  
 12 Petroecuador as opposed to those from TexPet. They didn't  
 13 even try to do that.  
 14 And then you might have heard that she also  
 15 disregarded Petroecuador's operations throughout. She  
 16 wasn't satisfied to calculate health risk using widely  
 17 accepted EPA approaches. She did it that way in 2014 but  
 18 not in 2015. Instead, she resorted to having to make up  
 19 her own toxicity factor in trying to calculate a human  
 20 health risk. Why would anyone do that? Only because using  
 21 widely accepted published toxicity values, she could not  
 22 calculate a risk to human health.  
 23 And then we also saw how she used unprecedented  
 24 TEM data to assess health risk. Similarly, she, too,  
 25 disregarded Ecuador's own Decree 1215 Regulatory Cleanup

12:33 1 Criteria, she paid no attention to those. Even though  
 2 purportedly the question she was trying to answer was  
 3 whether remediation was needed.  
 4 You then will recall the testimony from  
 5 Dr. Greg Douglas about the problems with the data that she  
 6 relied upon, key data that she relied upon for her  
 7 calculations has reliability problems because it's got  
 8 blank contamination as well as many samples are simply  
 9 plant matter.  
 10 So, now I move to the question of cancer, and  
 11 while Dr. Strauss purported to do some cancer-risk  
 12 calculations for future risk, I'm going to address those in  
 13 a minute, but here I want to reflect a moment about the  
 14 epidemiologic evidence. I told you earlier that  
 15 Dr. Moolgavkar was the only Expert in this arbitration  
 16 case, the only epidemiologist, who's published any kind of  
 17 peer-reviewed study, and I've highlighted his key  
 18 conclusion at the top of the page.  
 19 But his finding about the lack of any association  
 20 between exposure to petroleum in the Concession Area and  
 21 any human health risks or health impacts, his finding is  
 22 actually consistent with other evidence that was in the  
 23 Lago Record during the Lago Case, some of which I have  
 24 summarized on this slide.  
 25 No excess cancer or cancer mortality in the

12:35 1 they're speaking only of taste and odor, which has nothing  
 2 to do with whether the drinking water is safe.  
 3 Now, I want to return to Dr. Strauss's  
 4 calculations just briefly. You may remember that we walked  
 5 through this diagram, this chart from her 2014 Report.  
 6 This was her non-cancer risk calculation in which most of  
 7 the cells are white and recall that she admitted the white  
 8 cells show absolutely no risk, no harm, nothing to worry  
 9 about, not even a cause for any concern.  
 10 She also eventually acknowledged that even the  
 11 pink cells and the orange cells were just areas where  
 12 further evaluation may be needed. The red cells were the  
 13 only ones that she indicated any concern for.  
 14 But now what I've done is I've distilled from her  
 15 three the quantitative risk assessments, I've distilled  
 16 them on this slide, and what did she really find?  
 17 Well, she calculated--now, bear in mind, this is a  
 18 calculation of theoretical health risk. Undisputed, she  
 19 did not find any actual health impacts. No one did. But  
 20 in terms of her calculation of a theoretical health risk,  
 21 she finds--she calculates such risk at nine sites, all of  
 22 which are non-RAP locations, all of which are non-RAP  
 23 locations.  
 24 But even those nine sites--let's look at them a  
 25 little more closely.

12:34 1 village of San Carlos according to Arana and Arellano and  
 2 according to Rourke, TexPet's operations did not cause  
 3 anyone to get cancer.  
 4 And then to the extent that Dr. San Sebastian's  
 5 work has been mischaracterized, he corrected it or he  
 6 corrected any misinterpretation and observed that his  
 7 Reports and his studies had been misinterpreted.  
 8 Turning to the question of drinking water, which  
 9 is obviously an important feature or component in  
 10 evaluating health risk, here we have no dispute of any  
 11 kind. We know from the JI data, 520 drinking water samples  
 12 were collected and 98 percent of those meet World Health  
 13 Organization and USEPA Standards for drinking water.  
 14 They also meet Ecuador's own standards for  
 15 drinking water criteria. And on this point, I want to be  
 16 very clear, I'm talking about primary standards for  
 17 drinking water that determine what water is safe to drink  
 18 and what is not. Across the board the JI data shows that  
 19 the water in the Concession Area is safe to drink. That  
 20 was also the finding by LBG as to the four drinking water  
 21 sources they sampled when they were in the field, and I've  
 22 got an excerpt of their data.  
 23 To the extent that you heard any opinion or have  
 24 read any opinion by Dr. Strauss or LBG in their Reports  
 25 that there is a violation of drinking water standards,

12:37 1 Of the nine, they break down with eight being  
 2 future exposure scenarios. That is, she's assumed that  
 3 someone would be exposed to something in a swamp in the  
 4 future, even though today no one uses the swamp, and there  
 5 is no water well in the swamp, but she made assumptions  
 6 that this oilfield would be used for more residential  
 7 purposes in the future.  
 8 And so that leaves us with one, only one scenario,  
 9 where she calculated a current human health risk, and that  
 10 was from the Shushufindi 13 Well Platform. And you may  
 11 remember this, but if you would indulge me, I would like to  
 12 remind you, that when I presented to her the fact that  
 13 Dr. Short had concluded that the one sample from the one  
 14 pit that she was relying upon to calculate human health  
 15 risk, that Dr. Short, Respondent's Expert, analytical  
 16 chemist, he had concluded that that sample was from oil  
 17 that had been released within the last year. So that could  
 18 only have been Petroecuador, and Dr. Short's Report is on  
 19 this Slide 2014 at Page 15.  
 20 So, that leaves us with the conclusion that  
 21 Dr. Strauss was not able to calculate any human health  
 22 risk, theoretical human health risk at any RAP location,  
 23 and even where she does find one, it's all in the future  
 24 with the one exception, and that exception falls at the  
 25 feet of Petroecuador.

12:39 1 So, then, to summarize collectively the work and  
 2 the flaws of LBG and Dr. Strauss together, this slide does  
 3 that. Some of these points I have covered for you. But  
 4 when I told you in Opening Statement that Ecuador's Experts  
 5 had to depart from widely accepted protocols to try and  
 6 fashion some support for this Judgment, these are examples  
 7 of what I was talking about. And only by doing this are  
 8 they able to even attempt to support this Judgment, but as  
 9 I said, under any real scientific scrutiny, their effort  
 10 fails.  
 11 So, that brings me to my conclusion that there is  
 12 a manifest absurdity in the damage awards in the Judgment  
 13 and in the Judgment itself to the extent that no causation  
 14 analysis is provided. And so, as I conclude, I bring you  
 15 back to the most compelling illustration of that, and that  
 16 is Dr. Hinchee's chart in which he shows you how badly the  
 17 soil and groundwater remediation awards in the Judgment  
 18 depart from reality, more than 90 times what is actually  
 19 done in Ecuador today by Petroecuador.  
 20 So, Members of the Tribunal, I conclude with the  
 21 observation that the damage awards in this Judgment cannot  
 22 be supported with the environmental evidence that was in  
 23 the Lago Record, nor can they be supported in any sense of  
 24 the word with the new information that has been provided by  
 25 LBG, Dr. Strauss, and Ecuador's other Environmental

1 AFTERNOON SESSION  
 2 PRESIDENT VEEDER: Let's resume.  
 3 Before we give the floor back to the Claimants, we  
 4 understand that the current draft of the Site Visit Order  
 5 is agreed, but we don't have the security protocol.  
 6 What is the position about that missing annex?  
 7 MS. RENFROE: Mr. President, we were speaking  
 8 about it with our client over the lunch hour. We have one  
 9 more phone call to make, and I think that we'll be in a  
 10 position by tomorrow, early tomorrow, to represent that we  
 11 have all the important details worked out. We certainly  
 12 are aware that you would very much like to have it  
 13 completed by tomorrow.  
 14 PRESIDENT VEEDER: Is the Attorney General here  
 15 tomorrow?  
 16 ATTORNEY GENERAL GARCIA CARRION: Yes.  
 17 PRESIDENT VEEDER: What we're going to do because  
 18 we struggled so much with this document is that we're going  
 19 to give you copies during the next break, and if it's  
 20 agreeable, could you please just initial to the extent it's  
 21 agreeable, so that we at least have that under our belt.  
 22 And then tomorrow we'll look at the security protocol, and  
 23 then we can add that in if that's agreed, and then we could  
 24 formally issue the order and have it countersigned. Can we  
 25 do that?

12:40 1 Experts. There is simply no support for these damage  
 2 awards, and they are patently absurd on their face.  
 3 Thank you.  
 4 PRESIDENT VEEDER: Thank you very much.  
 5 We will break now for the lunch break. We will  
 6 come back at quarter to 2:00.  
 7 Over this lunch break, if the Parties could look  
 8 at the draft Site Visit Order, and before the end of the  
 9 lunch break, approach the Tribunal's Secretary to see if  
 10 there is any changes we need to make to the wording, we  
 11 need to complete an annex, we would very much like by this  
 12 evening to issue this Order signed and countersigned.  
 13 The other matter is we have questions. They have  
 14 arisen as you have been speaking to us. We thought it  
 15 appropriate not to interrupt you, but you may assume that  
 16 at the end of your presentation today, you will have a  
 17 number of questions. You may have answered them, which is  
 18 one reason for keeping quiet at the moment, but if you  
 19 don't, we will raise them with you at that time. So, we  
 20 come back in an hour plus.  
 21 (Whereupon, at 12:41 p.m., the hearing was  
 22 adjourned until 1:45 p.m., the same day.)  
 23  
 24  
 25

01:47 1 MS. RENFROE: Yes, sir, we can. Thank you.  
 2 PRESIDENT VEEDER: Respondents, too?  
 3 MR. BLOOM: Yes, that's fine.  
 4 PRESIDENT VEEDER: Okay, well during the next  
 5 break, you'll be given copies by our Secretary. Please  
 6 just initial them. At least we've moved on.  
 7 Nothing else, so we will give the floor back to  
 8 the Claimants.  
 9 Mr. Bishop.  
 10 MR. BISHOP: Thank you, Mr. President.  
 11 This brings us to the factual discussion of the  
 12 evidence of fraud and corruption, but before going into  
 13 that, I want to answer one of the Tribunal's questions. I  
 14 think Mr. Coriell had answered one that was on Slide 148  
 15 already.  
 16 There was a second one that the Tribunal asked  
 17 with respect to my reference in the opening statement to  
 18 Donziger's words about having gone over to the dark side.  
 19 What you find in Slide 149 is a portion of Mr. Donziger's  
 20 diary where he makes that statement. And let me give you  
 21 the context of this very quickly.  
 22 At this point, Donziger made a deal with Gustavo  
 23 Pinto and Fernando Reyes, and this is all set forth in the  
 24 Witness Statement or the Declaration of Mr. Reyes, which  
 25 you have in this case, but what he did was he hired

01:48 1 Fernando Reyes and Gustavo Pinto to act as monitors of the  
 2 Court-appointed independent settling Experts during the  
 3 Judicial Inspections. He held them out as being  
 4 independent, but he made a deal with them to secretly pay  
 5 them, which was the forerunner of the pattern you saw later  
 6 with Cabrera where he secretly paid Cabrera and held him  
 7 out as independent. He was doing something similar here,  
 8 and this is his statement in his diary, "feel like I have  
 9 gone over to the dark side." So, that's what I was  
 10 referencing in my Opening Statement, and you have the  
 11 source here on Slide 149.

12 Now, the Plaintiffs' claims of fraud and  
 13 corruption fall broadly into three main factual categories:  
 14 The Cabrera fraud, which you've heard quite a lot about and  
 15 which is now admitted; the ghostwriting of the Court orders  
 16 in the Lago Agrio Case by Mr. Guerra, who was being paid by  
 17 the Plaintiffs to do so in order to advance their case;  
 18 and, of course, the Judgment fraud and corruption in which  
 19 Judge Zambrano was bribed by the Plaintiffs in order to be  
 20 able to ghostwrite his opinion, which they did.

21 In the past three weeks, you've heard the  
 22 testimony of Claimants' Witnesses and Experts, and I have  
 23 put up some of those gentlemen on the Board on Slide 151,  
 24 but in contrast in these three weeks, you have not heard a  
 25 coherent factual case from Ecuador, and so Claimants' case

01:51 1 and forget to give you the source. You'll find them right  
 2 there on this slide.

3 Instead, Ecuador, in fact, has tried to distance  
 4 itself from each of those actors, saying it doesn't defend  
 5 their conduct, effectively acknowledging the illegality of  
 6 that conduct in the Lago Agrio Case.

7 So, who did you hear from in the past three weeks?  
 8 You heard from Mr. Guerra because we brought him. You  
 9 didn't, however, hear from Judge Zambrano because Ecuador  
 10 didn't bring him to the case, so you didn't hear him rebut  
 11 any of the testimony you heard from Mr. Guerra.

12 You did hear, however, from Dr. Robert Leonard,  
 13 who testified before you that he found at least six of the  
 14 Plaintiffs' internal documents were plagiarized in the  
 15 Judgment, and Ecuador has no counter expert to offer in  
 16 response to Dr. Leonard.

17 We have brought you the expert reports of  
 18 Dr. Gerald McMenamin who testified that in his opinion, the  
 19 judgment probably had multiple authors, and Zambrano had  
 20 very little input to it. Ecuador did not call  
 21 Dr. McMenamin for cross-examination, and they have no  
 22 counter expert to him.

23 You also heard from Spencer Lynch. He testified  
 24 that the Guerra computer contained drafts of Ecuadorian  
 25 court orders that were later issued by Judge Zambrano, in

01:50 1 and its experts stands largely rebutted. Ecuador has no  
 2 alternative narrative to explain how or why the Plaintiffs'  
 3 internal documents were copied into the Judgment. The RICO  
 4 Defendants had no explanation for that. Mr. Zambrano at  
 5 the RICO trial had no explanation for that, and Ecuador has  
 6 no explanation. They had no explanation for where in the  
 7 Court Record you can find any of these Plaintiffs'  
 8 documents.

9 Now, instead, all you've heard are disjointed and  
 10 sometimes inconsistent excuses that do not in any way  
 11 explain the fraud and corruption that occurred. If Ecuador  
 12 had any reasonable alternative story to the evidence that  
 13 we put forward, it could have brought you direct evidence.  
 14 It could have put on the stand any of these people: Pablo  
 15 Fajardo, Judge Zambrano, Steven Donziger, Luis Yánza or  
 16 Richard Cabrera, but it's not provided you with testimony  
 17 from any of those people either in the past three weeks or  
 18 in any of their Memorials throughout this case.

19 And you didn't hear from Steven Donziger, although  
 20 you have plenty of evidence--plenty of material--in his own  
 21 words that demonstrate the corrupt tactics that the  
 22 Plaintiffs pursued in this case. In Slide 153 I tried to  
 23 provide you some of the more memorable statements by  
 24 Mr. Donziger that demonstrate those corrupt tactics, and I  
 25 put them up there just in case I make a reference to them

01:53 1 fact, over a hundred of them generally in other cases,  
 2 including nine in the Chevron Case specifically. He  
 3 testified that the forensics evidence is inconsistent with  
 4 Zambrano's testimony in the RICO case, and he's testified  
 5 that the content of the Ecuadorian Judgment was not  
 6 generated on the Zambrano computers.

7 Now, this is the one place where the Ecuador has a  
 8 partial counter expert in Mr. Racich, but you heard his  
 9 cross-examination, and he largely, to a great extent when  
 10 he was cross-examined, agreed with much of the testimony of  
 11 Mr. Lynch, and he doesn't testify at all about the copying  
 12 of the Selva Viva Database into the Judgment as Mr. Lynch  
 13 testifies, and he also doesn't testify about Mr. Zambrano's  
 14 testimony.

15 Now, you heard from Dr. Juola that he searched the  
 16 court record, did a very careful search, and he concluded  
 17 that the Plaintiffs' documents that are plagiarized in the  
 18 Judgment are nowhere found in the Court Record, and Ecuador  
 19 has no counter expert to Dr. Juola.

20 We also brought you the Expert Reports of  
 21 Mr. Samuel Hernandez of Morningside Translations, who did a  
 22 hand-review of all relevant portions of the Court Record,  
 23 and he also concluded that the Plaintiffs' documents that  
 24 are plagiarized in the judgment are nowhere found in the  
 25 Court Record, and Ecuador has no counter expert to

01:55 1 Mr. Hernandez.  
 2 We heard filed an expert report from Mr. Adam  
 3 Torres, who marshals all of the documentary evidence that's  
 4 relevant to Mr. Guerra's testimony, and he shows the clear  
 5 patterns that corroborate that testimony of Mr. Guerra.  
 6 And Ecuador chose not to call Mr. Torres for  
 7 cross-examination, and it has no counter expert for him.  
 8 Now, I'd like to come back to another two further  
 9 questions asked by the Tribunal. You asked whether the  
 10 RICO Judgment is in evidence in this case. Well, we gave  
 11 the RICO decision an exhibit number, so it is an exhibit in  
 12 this proceeding. So, it could be treated as evidence.  
 13 But, quite frankly, it's better than evidence. You had the  
 14 opinion here of a Federal judge who heard all of the same  
 15 testimony, he had all the same testimony before him--well,  
 16 excuse me. You actually have all the testimony before you  
 17 that he had before him and more. He wrote a 500-page  
 18 opinion, and he came to some strong conclusions.  
 19 Now, we don't say that that opinion is binding on  
 20 you, of course, but, quite frankly, it's highly persuasive,  
 21 and it's entitled due consideration, so I think that  
 22 probably answers the question as best we can on that  
 23 subject.  
 24 Now, you also asked a question that we've  
 25 struggled with somewhat, struggled with trying to

01:57 1 apply it to the facts, and thus that is also evidence of  
 2 denial of justice.  
 3 But if the question is simply whether if the Court  
 4 appropriately took notice of foreign law and got the  
 5 foreign law correct in writing the Judgment, I don't think  
 6 that would be a denial of justice in and of itself. So I  
 7 hope that answers the question.  
 8 Now, I'll turn next to the State's role in the  
 9 Lago Agrio Case, and after that I'll turn the floor over to  
 10 Caline Mouawad and Elizabeth Silbert to discuss the  
 11 standard of proof and adverse inferences as well as some of  
 12 the evidence.  
 13 There are three aspects of the political  
 14 interference in the Lago Agrio Case: The first is the  
 15 Government's interference in the case to tip the scales of  
 16 justice before the Judgment was issued, and this has to do  
 17 with President Correa and the Government making the Lago  
 18 Agrio Case into a national cause, as they were requested to  
 19 do by Fajardo and Donziger, and as Donziger was trying to  
 20 get them to do.  
 21 The second, which is where I'll spend most of my  
 22 time today--I have spent much of my time in the past on  
 23 that first issue, so I'm not going to try to retrace the  
 24 same ground again, but the second issue is the Government's  
 25 promotion of the enforcement of the Judgment, even after

01:56 1 understand it. The question is, what if the Fusión Memo  
 2 were an accurate reflection of Ecuadorian law, could that  
 3 be a denial of justice? Is it arbitrary to take the  
 4 correct account of applicable foreign law, is that a denial  
 5 of justice.  
 6 PRESIDENT VEEDER: Well, you left out a rather  
 7 important phrase, "subject to respecting the Parties'  
 8 procedural rights." So, assuming you don't have that as a  
 9 problem, which obviously is another part of your case--  
 10 MR. BISHOP: Okay.  
 11 PRESIDENT VEEDER: --is it inappropriate for an  
 12 Ecuadorian judge to take of his own motion judicial notice  
 13 of the foreign law.  
 14 MR. BISHOP: Okay. I have to tell you, we  
 15 understood the question differently.  
 16 PRESIDENT VEEDER: Don't worry. We will come back  
 17 to it.  
 18 MR. BISHOP: We understood the question as  
 19 being--as going to the Fusión Memo itself and its  
 20 appearance in the Judgment, and perhaps we did  
 21 misunderstand. And, of course, the ghostwriting of the  
 22 Judgment using the Fusión Memo is, we believe, a denial of  
 23 justice. And in this situation, we also believe that the  
 24 Court, as I think Mr. Coriell has discussed at some length,  
 25 did not consider the legal test appropriately, did not

01:59 1 the fraud and corruption were revealed.  
 2 And, third is President Correa's attempts to  
 3 control the judiciary more generally to undermine its  
 4 independence, which we think is particularly relevant to  
 5 the appellate process in this case.  
 6 Now, when President Correa took office in  
 7 January 2007, he found in the Plaintiffs' case a political  
 8 and nationalistic issue. And just as Donziger asked him to  
 9 do, Correa and the Government adopted the case as the  
 10 Government's case effectively and proceeded to make it into  
 11 a national cause in Ecuador. During the pendency of the  
 12 case, and especially during the appellate phase of the  
 13 case, the Government repeatedly proclaimed Chevron to be  
 14 guilty. And in a country like Ecuador with a weak and  
 15 fragile judiciary, as Donziger himself explained it, a  
 16 strong President who is willing to put his own popularity  
 17 and the full weight of the Government behind a case can  
 18 clearly tip the scales of justice, as happened exactly in  
 19 this case.  
 20 Now, the second aspect of the Government's  
 21 involvement has been its actions supporting the fraudulent  
 22 judgment and promoting its enforcement since it was issued.  
 23 When the Judgment was issued, President Correa praised the  
 24 Judgment as the most important Judgment in the history of  
 25 the country, clearly signaling to the appellate courts what

02:00 1 his position and his Government's position was with respect  
 2 to the appeals. And when the Appellate Decision was issued  
 3 a year later, he again praised it, saying that justice had  
 4 been done, even though during this period, the evidence of  
 5 fraud and corruption was coming out.  
 6 Now, this Tribunal, in February 2012, issued its  
 7 Second Interim Award, ordering that the Government maintain  
 8 the status quo by preventing enforcement of the Judgment.  
 9 But despite the evidence of fraud and corruption and in  
 10 violation of your Interim Awards, Ecuador responded by  
 11 initiating a worldwide campaign to promote the Judgment and  
 12 its enforcement.  
 13 In late 2012, after your Interim Award had been  
 14 issued and at a very critical moment in the enforcement  
 15 proceedings in Argentina, President Correa flew to Buenos  
 16 Aires, he met with the President of Argentina, and he told  
 17 the press on that trip that he was there to try to ensure  
 18 that the Court ruling in the Chevron Case is complied with,  
 19 and you see the reference is there. That's exactly what he  
 20 was talking about, and that's what he was doing.  
 21 In 2013, the Foreign Ministry even published and  
 22 distributed a pamphlet saying, among other things, the  
 23 Judgment is enforceable anywhere in the world. And the  
 24 Government, in fact, in the past three weeks has been  
 25 distributing similar pamphlets outside this very building,

02:02 1 and you may have seen some of them during that period.  
 2 They have the Ministry of Foreign Affairs written on the  
 3 outside of each of those pamphlets.  
 4 Now, this promotion of the Judgment's enforcement  
 5 is a direct violation of your interim awards; and in over  
 6 40 countries--I think Mr. Coriell showed you this slide as  
 7 well--in over 40 countries since that time, Ecuador's  
 8 embassies in the Foreign Ministry have held demonstrations  
 9 and various meetings denouncing Chevron and again promoting  
 10 the Judgment in saying Chevron is guilty, and it must  
 11 comply with the Judgment.  
 12 Now, you have seen this next clip before, but I  
 13 think it's very important because it shows that President  
 14 Correa has instructed the Foreign Ministry to make this  
 15 case and this Judgment a first priority of the foreign  
 16 policy, so I'd like to show it to you again.  
 17 (Video played.)  
 18 MR. BISHOP: So, in other words, President Correa  
 19 and the Government have made enforcement of the Judgment a  
 20 foreign-policy issue--in fact, not just a foreign-policy  
 21 issue, but the number one priority of the foreign policy  
 22 according to the statement of the Foreign Minister himself,  
 23 and the Vice Foreign Minister has made very similar  
 24 statements as well, which are also in our record.  
 25 And in doing so, what the Government has done is

02:04 1 made this case, made the Plaintiffs' case a matter of  
 2 Government policy.  
 3 The Republic cannot now claim that it's not  
 4 involved in the Lago Agrio Case. It has made itself a  
 5 participant, and it has made itself a partisan in the case.  
 6 And as he did before the Judgment was issued, President  
 7 Correa has continued to call Chevron an enemy of the  
 8 country. And as he and the Government have also sought to  
 9 shame and intimidate Chevron's lawyers and expert  
 10 witnesses.  
 11 Shortly after President Correa was elected--this  
 12 is in February 2007--he asked Donziger for a list of the  
 13 lawyers who are hurting the country, and that's a reference  
 14 to Chevron's lawyers at that point.  
 15 Shortly thereafter, he started making public  
 16 statements, calling Chevron's lawyers "vende patrias,"  
 17 basically traitors, homeland-selling lawyers who for a few  
 18 dollars are capable of selling souls, homeland, family, et  
 19 cetera. These are in speeches that he gave.  
 20 More recently, he has again referred to anyone who  
 21 worked with Chevron as traitors and as opponents of the  
 22 Government who have teamed up with Chevron.  
 23 And still again more recently, he's referred to  
 24 Chevron's attorneys as collaborators who act against the  
 25 interest of their own country and their own countrymen.

02:05 1 Now, I want you to please note those words.  
 2 Correa is identifying the Plaintiffs' case and the Judgment  
 3 as a national interest, and he is saying that Chevron's  
 4 lawyers, who are simply defending Chevron, are acting  
 5 against the interests of the country. The point of this  
 6 and the point of all of these has been to try to deprive  
 7 Chevron of legal counsel in Ecuador, and reflecting  
 8 President Correa's statements, an Ecuadorian Web site was  
 9 established entitled, "The Nation's Traitors," and it  
 10 refers specifically to Chevron's lawyers--well, Chevron's  
 11 lawyers and also its experts, the various people who have  
 12 been working with it. This was an attempt to deprive  
 13 Chevron of expert witnesses in this BIT proceeding.  
 14 And President Correa in his weekly national radio  
 15 addresses has called out Chevron's lawyers and experts and  
 16 Contractors by name, and the State-owned newspaper has  
 17 published identifying information, personal information,  
 18 about those lawyers and experts.  
 19 And it's notable that both the President in the  
 20 past few weeks leading up to this Hearing and the Vice  
 21 President of Ecuador have called Guerra a traitor to the  
 22 nation, a traitor for giving evidence in this case, clearly  
 23 trying to intimidate him and prevent him from testifying  
 24 here.  
 25 Now these words, "enemy" and "traitor" are not the

02:07 1 kind of words you normally hear in a lawsuit. These  
 2 necessarily, as I said, implicate a national interest.  
 3 Ecuador is identifying its national interest with the  
 4 Plaintiffs' case, and thus it's identifying Chevron as an  
 5 enemy of the country, and its lawyers and experts as  
 6 traitors to the nation. It's also the language, of course,  
 7 of intimidation, trying to prevent them from testifying in  
 8 this case.

9 Now, you asked in your Friday questions if anyone  
 10 involved in the fraudulent schemes has been charged. Well,  
 11 I would note that Chevron has sent at least 12 letters to  
 12 Ecuador's Prosecutor General in the past six years seeking  
 13 investigations, first of the Núñez bribery scandal;  
 14 secondly of the ghostwriting of the Cabrera Reports; and,  
 15 third, of the ghostwriting of the Judgment and the  
 16 corruption involved in it. So, all of these matters have  
 17 been put before the Prosecutor General, and substantial, in  
 18 fact, boxes and boxes of evidence, have been sent to the  
 19 Prosecutor General so that he would be fully informed and  
 20 have all the material. Chevron has given them all of that  
 21 information.

22 And yet, what has happened? No one has been  
 23 charged: Not Zambrano, not Fajardo, not Yánza, not  
 24 Donziger, and not any others over the past six years. And,  
 25 in fact, with regard to the Núñez bribery scandal in

02:10 1 corroborate Mr. Guerra's testimony. We would like to have  
 2 used that evidence, but because of concerns for their  
 3 safety at the hands of the Government, we did not bring  
 4 that evidence forward in this case.

5 It's this conduct of intimidation and retaliation  
 6 that makes the Republic's actions so insidious. The  
 7 President's counsel Alexis Mera at one point had a meeting  
 8 with Fajardo in which he said you need to bring a mob to  
 9 Quito to close down the streets and to demonstrate because  
 10 that's the way this country operates. That's the way this  
 11 country works. Now, it's that attitude that has pervaded  
 12 the Government's approach to both the Lago Agrio Case and  
 13 to this BIT proceeding: Pressure and intimidation.  
 14 Intimidate the Judges. Intimidate Guerra. Intimidate  
 15 Chevron's experts. Intimidate Chevron itself, and  
 16 intimidate others.

17 But that strategy is the very antithesis of the  
 18 rule of law. That strategy puts one man's will above the  
 19 law.

20 Former Minister Alvarez, in his expert opinions,  
 21 noted President Correa's statements, and Mr. Paulsson  
 22 alluded to this earlier today, but President Correa has  
 23 said that he has the right to pressure the judiciary. When  
 24 he was asked about that statement, he said he's the leader  
 25 of the entire State, including the Judicial Branch as well

02:09 1 particular, the Prosecutor General closed the investigation  
 2 not only taking no action, but he accused Chevron of  
 3 recklessly and maliciously filing the complaint and  
 4 threatened to investigate Chevron's lawyers instead.

5 Now, in contrast to the fact that Chevron's  
 6 requests for investigations have gone absolutely nowhere in  
 7 Ecuador, we can see what has happened in Fajardo's request  
 8 for a criminal investigation of Guerra. Over the past  
 9 week, the day after, in fact, Guerra testified in this  
 10 case, that investigation started to move forward very  
 11 quickly. The Prosecutor accepted jurisdiction. He added  
 12 documents to the file. He required that Chevron's lawyers  
 13 appear this week to testify in that investigation, along  
 14 with other witnesses, so we have seen substantial action in  
 15 that investigation, but nothing in the investigations  
 16 requested by Chevron.

17 Now, I would also note that Ecuador's attempts at  
 18 intimidation have had their effects.

19 In the RICO case there were four John Doe  
 20 witnesses for Chevron whose identity Judge Kaplan kept  
 21 confidential because of security concerns for their welfare  
 22 in Ecuador, and Judge Kaplan wrote a very long opinion  
 23 about maintaining confidentiality for those people.

24 Now, we could have produced their sworn  
 25 declarations in this case, and their sworn declarations

02:12 1 as the other branches. And at one point he called for a  
 2 referendum in early 2011 on the judicial system, saying,  
 3 among other things he was doing so, "so I could get my  
 4 hands on the justice system."

5 And he followed that view, and I have shown you  
 6 substantial evidence of this in the past. He's followed  
 7 that view by firing and prosecuting judges for the rulings  
 8 in specific cases, and here on slide 186 you see two Orders  
 9 sent out by the Office of the Presidential Council to the  
 10 judiciary in which he's essentially threatening judges  
 11 about their decisions in specific cases unless they rule in  
 12 favor of the Government. You can read them at your  
 13 leisure, but that's essentially what they mean.

14 Now, President Correa may think that he's James  
 15 the First, but in the 21st Century, the King's prerogative  
 16 does not extend to violating the law, including  
 17 international law. The rule of law is why we're here in  
 18 this proceeding. It's what restrains despotic rulers.  
 19 It's what makes foreign investment and economic development  
 20 possible. In fact, it's the very foundation of liberty.

21 What we're asking in this case is that the  
 22 Tribunal uphold the rule of law because that's what, in  
 23 essence, this case is all about. You don't have to make a  
 24 decision that Ecuador's entire judiciary is corrupt or has  
 25 substantial problems. The issue before you, the issue in



02:14 1 this case is simply whether Chevron in the full  
 2 circumstances of this case can get a fair trial and fair  
 3 appeals in a situation in which the President of the  
 4 country condemns Chevron as an enemy of the country, and it  
 5 condemns its lawyers as traitors to the nation.  
 6 And with that, Mr. President, I think that I will  
 7 hand the floor over to Caline Mouawad to discuss the  
 8 standard of proof and the Judgment fraud.  
 9 PRESIDENT VEEDER: Thank you.  
 10 Ms. Mouawad.  
 11 MS. MOUAWAD: Thank you, Mr. Bishop.  
 12 Mr. Chairman, Members of the Tribunal, I will  
 13 start by addressing the Tribunal's question from last  
 14 Friday about the applicable standards of proof when the  
 15 allegations concern what amounts to criminal conduct.  
 16 As the Chairman intimated in his question, there's  
 17 a distinction between the burden of proof and the standard  
 18 of proof. The Rompetrol Tribunal explained that  
 19 distinction most clearly. The burden of proof defines  
 20 which Party has to prove what in order for its case to  
 21 prevail; the standard of proof defines how much evidence is  
 22 needed to establish either an individual issue or the  
 23 Party's case as a whole.  
 24 The relevant rules applicable to our case do not  
 25 provide any specific standard of proof that the Tribunal

02:15 1 should apply. Under Dutch law, there are no relevant  
 2 mandatory rules that have a bearing on the issue.  
 3 Article 1039 Subsection 5 of the 1986 Dutch Arbitration Act  
 4 provide that the application of the evidentiary rules is at  
 5 the discretion of the Tribunal. The UNCITRAL Rules are  
 6 silent on the standard of proof; so, again, it is left to  
 7 the Tribunal's discretion. The BIT also has no relevant  
 8 rules.  
 9 Which brings us to investment arbitral case law,  
 10 which may be better suited to assist the Tribunal on the  
 11 issue of the proper standard of proof in cases of fraud and  
 12 serious wrongdoing.  
 13 Judge Higgins cautioned that, "the graver the  
 14 charge, the more confidence must be in the evidence relied  
 15 on." With that in mind, tribunals have applied different  
 16 standards of proof. Some tribunals have imposed a  
 17 heightened common law standard of clear and convincing  
 18 evidence for fraud and corruption allegations. You see  
 19 this in the Siag v. Egypt Case. You also see EDF versus  
 20 Romania and Rumeli versus Kazakhstan.  
 21 Other tribunals have employed the civil law  
 22 standard of reasonable certainty to determine whether  
 23 corruption has been established. Reasonable certainty is  
 24 the standard of proof that most civil law systems,  
 25 including The Netherlands, impose to disputed facts in all

02:17 1 civil proceedings, and generally civil law would not impose  
 2 any heightened burden on the standard of proof just because  
 3 fraud and corruption are at issue.  
 4 More recent jurisprudence has rejected a  
 5 heightened standard of proof for fraud allegations in favor  
 6 of the ordinary common law standard of balance of  
 7 probabilities. You have that in the Libananco case and as  
 8 well as in the Rompetrol case.  
 9 Whichever standard of proof the Tribunal decides  
 10 to apply in this case, the evidence of fraud and judicial  
 11 corruption that is before you, Members of the Tribunal, is  
 12 overwhelming. There has never been such clear,  
 13 uncontroverted, and unrebutted evidence of fraud and  
 14 corruption in any one case.  
 15 We have videotaped evidence, clip after clip after  
 16 clip of government officials doing everything in their  
 17 power to help the Plaintiffs against Chevron. We have  
 18 videotaped evidence of the President's top legal adviser,  
 19 Alexis Mera, advising the Plaintiffs on how to pursue  
 20 criminal prosecution of Chevron's lawyers.  
 21 We have videotaped evidence of a supposedly  
 22 independent damages Court-appointed Expert meeting with the  
 23 Plaintiffs prior to his appointments.  
 24 And we have videotaped evidence of a judge caught  
 25 in a bribery scandal.

02:18 1 We have e-mail evidence--and you saw this this  
 2 morning with Mr. Coriell--we have e-mail evidence of the  
 3 Attorney General's Office working with the Plaintiffs to,  
 4 "search for ways to nullify and undermine the Settlement  
 5 and Release Agreements." We have e-mail evidence of the  
 6 Plaintiffs' lawyers worried about, "going to jail," because  
 7 of their illegal conduct.  
 8 We have banking records of bribes paid and secret  
 9 accounts.  
 10 We have the use of the code names, the cook, the  
 11 waiter, the restaurant, the menu, the Wao, the puppet, the  
 12 puppeteer, all of these code names to hide the truth of  
 13 wrongdoing.  
 14 We have admissions by co-conspirators about  
 15 ghostwriting Expert Reports and judicial orders.  
 16 And we have conclusive forensic evidence that the  
 17 Plaintiffs ghostwrote this \$18 billion Judgment.  
 18 Under any standard of proof, the amount of  
 19 evidence that Chevron has put forward is staggering, and I  
 20 would refer you to Judge Kaplan's decision in the RICO  
 21 action in which he found that Chevron had proven among  
 22 other things the Judgment fraud with clear and convincing  
 23 evidence. That's Exhibit C-2135 at Pages 323 to 326.  
 24 Chevron has exposed an unprecedented record of  
 25 judicial fraud and public corruption, its complexities, its

02:20 1 secrecy, its insidiousness, and Ecuador's only answer is  
 2 show us more evidence.  
 3 But Ecuador is complicit in ensuring that more  
 4 evidence is not found, and that more evidence that is in  
 5 Ecuador does not come to light.  
 6 You heard Dr. Andrade tell us earlier this week  
 7 that the Prosecutor General is required to investigate  
 8 judicial fraud, but when Chevron asked the Prosecutor  
 9 General three years ago--three years ago--to collect  
 10 documents and order the forensic examination of the  
 11 computers of Fajardo, Sáenz, Prieto, Yánza, Cabrera, and  
 12 Zambrano, among others, in Ecuador, the Prosecutor General  
 13 just ignored Chevron's request.  
 14 When Chevron provided the Prosecutor General with  
 15 the latest evidence of fraud in the Lago Agrio Case, the  
 16 Prosecutor General answered that, as the head of public  
 17 criminal action, he could not investigate a civil  
 18 proceeding, and he returned the three boxes of evidence to  
 19 Chevron unopened.  
 20 The Prosecutor General repeatedly abdicates his  
 21 duty to investigate the judicial fraud that has transpired  
 22 in the Chevron case.  
 23 And instead of investigating Fajardo or Yánza or  
 24 Zambrano, Ecuador is actively pursuing an investigation  
 25 against Mr. Guerra for the alleged crime of incitement or

02:23 1 action.  
 2 And when Chevron sought Mr. Fajardo's depositions  
 3 and special arrangements were made for depositions to be  
 4 heard at the U.S. Embassy in Lima, Mr. Fajardo simply  
 5 refused to appear and have his deposition taken.  
 6 This is the same Fajardo who, just a couple of  
 7 years earlier, eagerly submitted a declaration in 17 U.S.  
 8 court proceedings, a highly misleading Declaration, in  
 9 which he did not disclose blackmailing Judge Yánez into  
 10 canceling the judicial inspections, or the Plaintiffs'  
 11 secret meeting with Cabrera, or Stratus ghostwriting the  
 12 Cabrera Report, or the Plaintiffs' secret payments to  
 13 Mr. Cabrera. Mr. Fajardo shamelessly went across the  
 14 United States filing this false Declaration in many U.S.  
 15 courts, but when it came time to be held accountable by one  
 16 of those courts, the New York Court, Mr. Fajardo was  
 17 nowhere to be found.  
 18 So, in answer to one of the Tribunal's questions,  
 19 yes, Mr. Fajardo was requested to give evidence in the RICO  
 20 case he refused to do it, and the Court drew an adverse  
 21 inference from the lack of his testimony, but it did  
 22 clarify that it would have made the same findings even in  
 23 the absence of those inferences.  
 24 Notwithstanding Ecuador's and the Plaintiffs'  
 25 efforts to keep the truth from coming to light, the

02:21 1 fostering separatism, an investigation that Ecuador opened  
 2 at the request of Mr. Fajardo, whose very computer is a  
 3 critical piece of evidence of the fraud. By investigating  
 4 Mr. Guerra rather than Mr. Fajardo, Ecuador is again making  
 5 sure that this piece of evidence never comes to light.  
 6 Ecuador has also made sure that no other witness  
 7 testimony will come to light in Ecuador. As you heard from  
 8 Mr. Bishop, Ecuador brazenly uses State power to intimidate  
 9 persons assisting Chevron. President Correa personally  
 10 denounces anyone who works with Chevron on this case as a  
 11 traitor to the nation. Just a few weeks ago, on the eve of  
 12 this Hearing, President Correa singled out Mr. Guerra in  
 13 his weekly presidential address. And you, Members of the  
 14 Tribunal, witnessed how Ecuador's counsel pushed to know  
 15 where Mr. Guerra's children and grandchildren live.  
 16 Chevron tried to obtain documentary and  
 17 testimonial evidence through the New York RICO action as  
 18 well, but its efforts to get evidence from the Ecuadorian  
 19 co-conspirators were, "largely stonewalled." Even when  
 20 ordered to do so, Donziger refused to produce the  
 21 Ecuadorian co-conspirators' documents. Mr. Fajardo then  
 22 commenced a collusive action in Ecuador, and obtained an  
 23 order from an Ecuadorian Court, again complicit with the  
 24 Plaintiffs to cover up the fraud, this order enjoining  
 25 Mr. Fajardo from producing any documents in the RICO

02:25 1 evidence that you have before you of the Judgment fraud  
 2 that took place in Ecuador's courts is as shocking as it is  
 3 voluminous. The starting point for examining the Judgment  
 4 fraud is the text of the Judgment itself, and that starting  
 5 point is an undisputed point between the Parties. The  
 6 Judgment copies verbatim from the Plaintiffs' work-product  
 7 documents.  
 8 Ecuador admitted this point in its Opening  
 9 Statement, stating that it "does not dispute the text from  
 10 some of the Plaintiffs' documents appears in the Judgment  
 11 as Claimants have identified." Ecuador's own forensic  
 12 expert Mr. Racich also agreed that the Judgment copied from  
 13 work product documents created by the Plaintiffs. This is  
 14 the Hearing Transcript at Page 1194.  
 15 We saw together the extent of that copying when  
 16 Dr. Leonard testified here on the second day of the  
 17 Hearing. Dr. Leonard identified five different indicia of  
 18 plagiarism across 38 examples in the Judgment spanning  
 19 dozens of pages. Among other things, the Judgment copied  
 20 word strings of 90 words, 100 words, 150 words. The  
 21 Judgment copied identical mistakes. Our starting point is  
 22 thus one of common ground. Page after page, the Judgment  
 23 copies multiple times and in multiple ways from the  
 24 Plaintiffs' work-product documents.  
 25 But none of these Plaintiffs' documents copied

02:26 1 into the Judgment appears in the Lago Agrio Court Record.  
 2 You heard Dr. Juola explain to you in detail how he  
 3 reviewed the entire Lago Agrio Court Record with the aid of  
 4 his computers. His analysis was robust and reliable. He  
 5 broke down the entire Lago Agrio Court Record into millions  
 6 of five word strings scouring the record for a source for  
 7 the overlaps. To no avail.  
 8 Ecuador tried to poke holes in Dr. Juola's  
 9 computational analysis by attacking the quality of the OCR  
 10 record that he reviewed. Ecuador showed him text files of  
 11 the Court Record with localized error, but as Dr. Juola  
 12 testified, his reading of the record five words at a time  
 13 was specifically intended to mitigate the risk of localized  
 14 errors. Even if every other line of text were missing, he  
 15 still would have caught a source for overlaps of 50 words,  
 16 100 words, 150 words.  
 17 Ecuador then pointed to a few documents that, when  
 18 subjected to the OCR process, produced blank pages, but as  
 19 Dr. Juola testified if the Plaintiffs' work-product  
 20 documents which you see on the screen, if those documents  
 21 had been filed in the Lago Agrio Court Record, they would  
 22 have OCR'd very well and would have produced readable text,  
 23 not blank pages because these documents were nicely  
 24 typeset. These are not handwritten documents, these are  
 25 typed and printed documents as you see on the screen.

02:29 1 date of May 28, 2010, which is the date when Chevron began  
 2 receiving document production from the discovery actions in  
 3 the United States, and so the idea was to ensure that,  
 4 prior to May 28, 2010, Chevron would have had no access to  
 5 any of that work product. And after that date it would  
 6 have, and we wanted to be sure that it hadn't been  
 7 inadvertently put in the record through Chevron's own  
 8 filings, so this is why you have the subset of  
 9 documents--generally all of the Plaintiffs' filings,  
 10 anything filed by third parties, and Chevron's filings  
 11 after May 28th, 2010.  
 12 There was a three-level hand review that was done.  
 13 First level was two reviewers who looked at every document.  
 14 Second level of review was also two reviewers who looked at  
 15 the entire set, so it wasn't just first pass, second pass.  
 16 The first level, both looked at the entire set; second  
 17 level, both looked at the entire set; and then there was a  
 18 third level of review that Mr. Hernandez personally  
 19 conducted.  
 20 I hope that elucidates the mystery of the  
 21 hand-review.  
 22 And in doing that very thorough hand-review of  
 23 every piece of document in those categories that I just  
 24 described, they looked for the passages that came from the  
 25 Fusión Memo, the January and June Index Summaries, the

02:28 1 And, in fact, looking at the Plaintiffs' filings  
 2 that Ecuador showed Dr. Juola, those filings which for one  
 3 of them you should have on the left, the TIFF image,  
 4 produced generally good quality text which you see on the  
 5 right-hand side after the OCR process. So, Dr. Juola did  
 6 not find the Plaintiffs' work-product documents in the Lago  
 7 Agrio Record, and Ecuador, despite having clearly spent  
 8 time reviewing that record, also did not find the  
 9 Plaintiffs' work-product documents in the Court Record.  
 10 None of the documents that Ecuador showed  
 11 Dr. Juola, none of them was the Plaintiffs' internal work  
 12 documents.  
 13 The manual review that Morningside did also came  
 14 up empty-handed.  
 15 PRESIDENT VEEDER: Could I just ask you to take  
 16 this piece of evidence quite slowly. There was one  
 17 question that we wanted to raise last Friday, and we  
 18 omitted to raise it. So, just explain a little bit more as  
 19 you go through what Mr. Hernandez's colleagues looked at.  
 20 MS. MOUAWAD: Sure, I'd be happy to do this.  
 21 Morningside Translations conducted a manual review  
 22 of all the documents filed, of a subset of the documents  
 23 filed in the Lago Agrio Litigation, and that subset  
 24 includes all of the filings by the Plaintiffs, all of the  
 25 filings by third parties, and Chevron's filings after the

02:31 1 Fajardo Trust e-mail, Draft Alegato, Moodie Memo, and Selva  
 2 Viva Database.  
 3 And the conclusion that Mr. Hernandez drew and to  
 4 which he testified in his Report is that none of these  
 5 overlaps is in the Lago Agrio Court record, and Ecuador has  
 6 offered no response to the Morningside manual review of the  
 7 record.  
 8 So no one, not Chevron, not the Plaintiffs, not  
 9 Ecuador--absolutely no one--has produced a copy of any  
 10 single one of the Plaintiffs' work-product documents as  
 11 filed with the Lago Agrio Court.  
 12 And this brings us to the Lago Agrio Court Record.  
 13 PRESIDENT VEEDER: Just one moment. Just coming  
 14 back to the records that were reviewed by Mr. Hernandez and  
 15 his colleagues, you say he reviewed documents filed, but  
 16 they were copies of documents or copies of the file. Were  
 17 they the product of OCR or were they photocopies?  
 18 MS. MOUAWAD: They reviewed the actual TIFF  
 19 images, so they could be the same TIFF image record that  
 20 Dr. Juola was provided for was also provided to  
 21 Morningside, so they reviewed the actual documents that  
 22 were filed, not a text version that had been OCR'd.  
 23 PRESIDENT VEEDER: Thank you.  
 24 MS. MOUAWAD: Sure.  
 25 So, that brings us to what the Lago Agrio Record

02:32 1 is or isn't.  
 2 As Chevron's Expert Dr. Velázquez testified in his  
 3 Expert Report, and as you heard Mr. Guerra confirm in  
 4 cross-examination, the official Court Record is the one  
 5 kept by the Court Clerk. A party will file the document  
 6 with the Court Clerk. That document is stamped to prove  
 7 that it was received by that Clerk and that it was  
 8 submitted to be included in the Court Record, and that's  
 9 what we talk about and referred to as the certificate of  
 10 submission.  
 11 The Clerk stamps a document, and this is a blowup  
 12 of that stamp that you will see--handwrites the date when  
 13 the document is received by the Clerk, writes in the time  
 14 at which it was received, and then signs it.  
 15 And typically the party filing a document will  
 16 bring an extra copy, have that document also stamped,  
 17 signed, and dated, so that it maintains proof of receipt by  
 18 the Court.  
 19 The copy of the document that is actually included  
 20 in the Court Record, that's physically put into the Court  
 21 Record is paginated, hand paginated by the Court Clerk and  
 22 then inserted into the record, into the Cuerpo of the  
 23 record.  
 24 So, this is how a Court Record becomes the Court  
 25 Record. It's a finite universe of documents that serves as

02:35 1 it here except to say one thing. That among each other,  
 2 the poor members of the fraud clearly discussed their plan  
 3 to draft the Judgment, as is clear from this June 2009  
 4 e-mail, and they wanted to do it without having a member or  
 5 Junior member of their team know what he is doing. So,  
 6 it's no surprise that they wanted to keep this a secret  
 7 from others. And, in fact, many individuals, funders,  
 8 lawyers, other people that were part of this whole  
 9 fraudulent scheme but who were not members, core members of  
 10 the fraud have testified about Donziger and Fajardo  
 11 misleading them about what was really going on in the Lago  
 12 Agrio Litigation.  
 13 Ecuador simply cannot explain away any of the  
 14 Plaintiffs' unfiled documents. It speculates, it suggests,  
 15 it ignores, but at the end of the day, it cannot produce a  
 16 filed copy of any one of these nine documents.  
 17 And if you step back for a moment and you look at  
 18 these documents on the screen, the Plaintiffs' legal  
 19 research memos, the Plaintiffs' database of sampling  
 20 results, the Plaintiffs' internal index of the Court  
 21 Record, the Plaintiffs' internal e-mails, these documents  
 22 are precisely the types of documents that the Plaintiffs  
 23 would have had at their fingertips in ghostwriting the  
 24 Judgment, which explains how they left their fingerprints  
 25 all over that judgment.

02:33 1 a basis for a judge's decision. And the importance of the  
 2 Court Record cannot be overstated. As Dr. Velázquez stated  
 3 in his Report, "what is not part of the record lacks  
 4 procedural value and obviously can't be used as basis or  
 5 element to render a decision."  
 6 And Dr. Andrade agreed and went even further:  
 7 Documents that are not properly submitted, to the Court,  
 8 "do not exist."  
 9 A judge cannot consider evidence that is not in  
 10 the Court Record. That is a breach of Ecuadorian law and  
 11 of due process, and for that I refer you to the Expert  
 12 Report of Dr. Velázquez. And yet that is precisely what  
 13 the Lago Agrio Judgment does. It relies over and over  
 14 again on evidence not in the Court Record. No one has ever  
 15 found an official filed copy of any single one of the  
 16 Plaintiffs' work product documents, but Ecuador expects you  
 17 to believe that Judge Zambrano supposedly found each of  
 18 these nine Plaintiffs' documents. Now, Ecuador makes a  
 19 last-ditch attempt to undermine this overwhelming evidence  
 20 of fraud by pointing to a handful of Fajardo e-mails in  
 21 December 2010 and January 2011 as supposed evidence that  
 22 the Plaintiffs did not know when the Judgment was coming,  
 23 and so they could not have ghostwritten that judgment.  
 24 Mr. Bishop already addressed Ecuador's argument in  
 25 detail in his opening presentation, so I will not revisit

02:37 1 And if we look specifically at this Selva Viva  
 2 Database, it's one of the dozen examples of the Plaintiffs'  
 3 fingerprints that simply cannot be explained any other way  
 4 than by the Plaintiffs' ghostwriting. The forensic  
 5 evidence in this regard is conclusive, and I would refer  
 6 the Tribunal to Mr. Lynch's testimony starting on Page 948  
 7 and Mr. Racich's testimony starting on Page 1195, so I will  
 8 just cover this very quickly because I want you to see the  
 9 points that cannot be refuted where the forensic evidence  
 10 is clear, and it cannot be refuted.  
 11 We know that the author of the Judgment used the  
 12 Selva Viva Database. There are data and naming  
 13 irregularities that are copy-pasted into the Judgment.  
 14 There are statistical percentages calculated across  
 15 thousands of lab results from within the database that  
 16 appear into the Judgment, and I think you will remember  
 17 this slide, I should give credit to Mr. Lynch from his  
 18 opening presentation. Mr. Racich agreed and testified that  
 19 whoever calculated the statistics that made it into the  
 20 Judgment must have had access to the Selva Viva Database.  
 21 We also know from Mr. Lynch that the Selva Viva  
 22 Database, if printed, would print out to more than 2000  
 23 pages and would be completely unusable. It is only usable  
 24 in electronic form.  
 25 So, we know that the Selva Viva Database

02:38 1 information is in the Judgment, that it must have been in  
2 electronic form. We know that the Selva Viva Database is  
3 not in the Lago Agrio Record, not in the paper record, and  
4 not in the 69 CDs. And for this I refer you to Dr. Juola's  
5 January 2013 and June 2013 Reports.

6 We also know that there are no electronic copies  
7 of the Plaintiffs' documents on Zambrano's computers. Both  
8 Mr. Lynch and Mr. Racich testified to that.

9 We know that Zambrano's computers were not used to  
10 calculate the statistics in the Judgment. Mr. Lynch  
11 testified that Excel was used for fewer than five minutes  
12 during the period of Zambrano's second tenure from  
13 October 2010 through March 2011, and that it was not used  
14 at all during the period from December 21 to December 28,  
15 2010, where content from the Selva Viva Database was  
16 entered into the Providencias document. And Mr. Racich  
17 agreed with Mr. Lynch's testimony regarding the amount of  
18 Excel usage on Zambrano's computers.

19 So, Ecuador can speculate all it wants about how  
20 Judge Zambrano may have received the Selva Viva Database,  
21 but the forensic evidence is irrefutable. Judge Zambrano  
22 did not have the Selva Viva Database on his computers. He  
23 did not download it. He did not use it. He did not make  
24 calculations with it. There is simply no explanation for  
25 how data and naming irregularities and statistical

02:40 1 percentages from the Selva Viva Database made their way  
2 into the Judgment other than the Plaintiffs put them there,  
3 the same way that they put in the rest of their internal  
4 unfiled documents into the Judgment as we just saw.  
5 Ecuador simply cannot explain away the evidence.

6 I will now turn the floor to Ms. Silbert who will  
7 show you how Ecuador has tried to minimize this mountain of  
8 Judgment fraud evidence by limiting the extent of the  
9 evidence that it wanted you to hear.

10 Thank you.

11 PRESIDENT VEEDER: Thank you.

12 Ms. Silbert.

13 MS. SILBERT: Members of the Tribunal, good  
14 afternoon.

15 In its questions to the Parties last week,  
16 Tribunal asked the extent to which it can draw adverse  
17 inferences from the failure of certain witnesses to appear.  
18 Over the next 15 minutes, I will address that question  
19 along with the larger theme of missing Witnesses that have  
20 been so prominent in this Hearing.

21 With respect to Claimants' witnesses, Ecuador made  
22 a tactical choice not to confront many of the key witnesses  
23 we brought regarding the Judgment fraud. Instead, they  
24 critiqued that evidence indirectly through the argument of  
25 counsel or by questioning witnesses without direct

02:41 1 knowledge.

2 With regard to the missing witnesses on Ecuador's  
3 side, I note that Ecuador brought forward, as Mr. Bishop  
4 previewed, not one witness to support its elaborate version  
5 of events of how this Judgment came to be.

6 I will go through some of Claimants' witnesses  
7 that you did not hear from over the last three weeks.  
8 First is Adam Torres, a 30-year veteran of the U.S.  
9 Marshals and the IRS fraud investigation. He has a unique  
10 background of investigating thousands of public corruption  
11 claims, including thousands of judicial corruption claims  
12 in his 30-year career.

13 What he did in this case was to conduct an  
14 independent, from-scratch review of more than a million  
15 records provided to him directly, and looking only at the  
16 corroborating evidence of what happened and what was  
17 attached to Mr. Guerra's report. He found that the  
18 documents, standing alone, were consistent with the pattern  
19 of public corruption that he identified in his career. He  
20 also opined that none of the alternative theories brought  
21 forward survived the challenge of investigation.

22 And I'm going to show you a timeline of the  
23 documents culled together by Mr. Torres. Now, in order to  
24 analyze and investigate the chain of events, he assembled a  
25 timeline, and even without Guerra's words narrating the

02:43 1 story as you've heard before, the plot is very clear.  
2 You've seen these documents before, so I won't go into them  
3 in great detail. I just will walk through one pattern. We  
4 see on November 18 a Draft Order saved to Guerra's  
5 computer, the next day a shipping receipt of a package to  
6 Narcisa Leon at the Lago Agrio Court, and four days later  
7 Judge Zambrano issues an order with closely matching text.  
8 A few days later, there is a \$1,000 withdrawal from the  
9 Selva Viva bank account as evidenced in the record itself,  
10 and the next day, an internal e-mail from the Plaintiffs'  
11 team we have seen before. "The budget is higher since we  
12 are paying the puppeteer." And that day a 1,000-dollar  
13 deposit, according to Guerra's own bank account statement.

14 And from there we see the pattern repeat itself  
15 again and again, and the timeline continues.

16 Another witness you did not hear from is  
17 Dr. Gerald McMenam, a Spanish linguist with significant  
18 testifying expertise on Authorship issues. Dr. McMenam  
19 concluded that it's highly probable the Judgment has  
20 multiple authors and that Nicholas Zambrano did not author  
21 a significant amount of that document.

22 He achieved this analysis by relying on what he  
23 calls style markers: He analyzed seven different ones, and  
24 I'll show you just one.

25 Mr. Zambrano, in his known writings, has a very

02:45 1 unique and very consistent manner of subdividing his  
 2 headings. You see a number, a period, a dash, a number, a  
 3 parentheses, a period, a dash. It's quite consistent among  
 4 documents.  
 5 When you look at the Judgment, however, you see  
 6 all sorts of styles used. It goes back and forth from one  
 7 to the other. No internal inconsistency whatsoever.  
 8 Now, Dr. McMenamin concluded that this means  
 9 multiple authors, but I note that this evidence also  
 10 dovetails with the forensic evidence proving that the  
 11 Judgment is a collection of cut and pasted text from  
 12 different sources.  
 13 Another witness, Dr. Vladimiro Alvarez, his  
 14 qualifications are here on the screen, and they are many,  
 15 but I also note to you that his Report attached hundreds  
 16 upon hundreds of public media and NGO reports on the state  
 17 of the judiciary of Ecuador and its decline in recent  
 18 years.  
 19 Dr. Alvarez concluded that the Executive Branch  
 20 has continually violated the rule of law by influencing  
 21 courts and tribunals. Ecuador never confronted him on this  
 22 conclusion. Instead, and to make a point personal that  
 23 we've heard from several times in our Closing Statements  
 24 today, Mr. Alvarez testified before the New York Court  
 25 about the effect that President Correa's statements calling

02:46 1 him and other Chevron witnesses "traitors," the effect that  
 2 that had on his personal reputation, his 35-year career as  
 3 a professor and his working life as an attorney.  
 4 The fourth and final witness I will go over with  
 5 you is Professor Mitchell Seligson, a professor at  
 6 Vanderbilt University. He's responsible for the Latin  
 7 American Public Opinion Project which administers the  
 8 Americas Barometer Survey throughout Latin America.  
 9 Mr. Seligson has personally conducted these surveys in  
 10 Ecuador since 2001. And what you did hear Ecuador do this  
 11 week is tout one of Professor Seligson's own surveys in its  
 12 opening. Again, without calling him for cross. You see  
 13 the cover of this survey sponsored by USAID. At the bottom  
 14 we see the LAPOP Project and Vanderbilt University. He is  
 15 the director of this study.  
 16 Now, if Mr. Seligson had been here, he would have  
 17 told you that the 2014 Report far from endorsing Ecuador's  
 18 judiciary, marked the lowest point in a decade of  
 19 confidence in the judiciary among the Americas, that  
 20 Ecuador continued to rank among the most corrupt countries  
 21 in the Americas, and that more than 68 percent of  
 22 Respondents in Ecuador said that corruption is somewhat or  
 23 very common among government officials in their country.  
 24 I've put Professor Seligson's ultimate conclusion  
 25 up here for you: "The high level of bribery and the low

02:48 1 level of confidence that the Courts in Ecuador guarantee  
 2 fair trials support the conclusion that the Courts of  
 3 Ecuador do not offer impartial tribunals." Again, he has  
 4 never been cross-examined on that ultimate conclusion.  
 5 And these are but a few of the Witnesses you did  
 6 not hear from this week--I'm sorry, this month, from the  
 7 Claimants' side.  
 8 You also have not heard Ecuador challenge the  
 9 testimony of many who have disavowed the Judgment. And I  
 10 put up here on the board several witnesses who have  
 11 publicly recanted their involvement in this case. This  
 12 involves them admitting wrongdoing in many instances. And  
 13 for the funders, they have forfeited their stake in the  
 14 Judgment, and many millions of sunk costs towards the Lago  
 15 Agrio Plaintiffs' legal case.  
 16 PRESIDENT VEEDER: Would you mind just going  
 17 through their names and telling us where they came from.  
 18 MS. SILBERT: Sure. You see at the top  
 19 Mr. Beltman and Ms. Maest, across, those are Stratus  
 20 consultants. Mr. Russell and Mr. Quarles were early  
 21 Experts who had provided assessments that they later  
 22 recanted, and the cleansing Experts who gave depositions  
 23 either recanting--well, recanting their findings or stating  
 24 that the findings relied on the Cabrera Report and did not  
 25 come from independent testing and data.

02:49 1 At the bottom, Joe Kohn, an American lawyer who  
 2 originally had worked with the Plaintiffs, Mr. McDermott  
 3 and Mr. Shinder, also attorneys. Chris Bogart, Mr. De Leon  
 4 and Woodsford were all litigation funders. Mr. Bogart, his  
 5 declaration is in the record. Mr. De Leon and the  
 6 Woodsford, those settlements have become public in very  
 7 recent months since we last submitted a Memorial on the  
 8 Merits, our last Memorial on the Merits.  
 9 PRESIDENT VEEDER: Forgive me for interrupting,  
 10 when you say "settled," were they Defendants in the RICO  
 11 litigation in New York?  
 12 MS. SILBERT: No, I apologize. And correct me if  
 13 I'm mistaken, but they were not, those are separate  
 14 settlements agreed between Chevron and those Parties.  
 15 PRESIDENT VEEDER: Okay.  
 16 MS. SILBERT: Changing gears from Claimant's case  
 17 to Ecuador's. We also note that Ecuador has brought  
 18 forward no witnesses to support its version of events. Of  
 19 course, the key missing witness is Mr. Zambrano and  
 20 Mr. Bishop will tell you more about him later, but we also  
 21 note that there are several Court employees who could have  
 22 come forward to discuss Ecuador's side of this case, and  
 23 that includes Ms. Calva, Ms. Leon, Mr. Albán. The  
 24 Plaintiffs' legal team are another category of witnesses we  
 25 do not see here, and given their eagerness to defend the

02:51 1 Judgment in the media and tout it as a historic victory,  
 2 one would presume they would be willing to defend it here  
 3 before you, but none have stepped forward to testify under  
 4 oath.  
 5 Now, the Tribunal asked last week about  
 6 Ms. Calva's testimony before the New York Court. This  
 7 timeline sets forward the events that took place there. I  
 8 will note that all of the documents referenced here are on  
 9 the record with two exceptions, the November 20 Court Order  
 10 and the December 4 through the 7th migration records. With  
 11 the Tribunal's permission, we would ask to add those to the  
 12 record in response to the Tribunal's questions. We have  
 13 the exhibit numbers ready, and we can distribute the  
 14 documents at the end of our presentation.  
 15 PRESIDENT VEEDER: If you can first show them to  
 16 the Respondent, and then we will see where we go.  
 17 MS. SILBERT: Yes, we will do that.  
 18 In brief, the timeline is as follows, two weeks  
 19 into the RICO Case, the Defendants moved to add  
 20 Evelyn Calva to their witness list and to submit her  
 21 notarized Declaration. Judge Zambrano was deposed the very  
 22 next day after that Declaration was signed and admitted  
 23 Ms. Calva's involvement in writing the Judgment.  
 24 Judge Kaplan accepted Ms. Calva's Declaration on  
 25 the condition that she submit to a deposition, a sworn

02:54 1 without showing sufficient cause, the Tribunal may make the  
 2 Award on the evidence before it; in other words, the rules  
 3 suggest sticking to the record at hand.  
 4 The IBA Rules, however, explicitly permit adverse  
 5 inferences both with respect to documentary evidence and  
 6 witness testimony. Here we see if a party fails to make  
 7 available any other relevant evidence, including testimony  
 8 sought by one party or fails to make available evidence  
 9 including testimony ordered by the Tribunal, the Tribunal  
 10 may infer that such evidence would be adverse to the  
 11 interests of that party.  
 12 And, finally, we have reviewed Dutch law on this  
 13 matter. As Ms. Mouawad told you, the application of Dutch  
 14 procedural law is discretionary under the Dutch Arbitration  
 15 Act, but we simply note that adverse inferences are  
 16 permitted.  
 17 Regarding the practical application of adverse  
 18 inferences by international tribunals, we point the  
 19 Tribunal to a thorough survey of the practices of the  
 20 Iran-U.S. Claims Tribunal on adverse inferences in  
 21 particular, published in Arbitration International and  
 22 which summarizes many published decisions of that Tribunal.  
 23 Here you see a five-point test. We would state that all  
 24 five of these factors are met. But we do note two  
 25 procedural requirements that emerge from the practice of

02:52 1 deposition, in New York. And over the next week, the  
 2 Defendant's lawyers represented that they would obtain a  
 3 visa for Ms. Calva and her sister to travel to the United  
 4 States. Those visas were obtained, but the very next day,  
 5 the lawyers advised the Court that they would no longer  
 6 call Ms. Calva to trial. The trial concluded on  
 7 November 26th, and on December 4th, Ms. Calva traveled to  
 8 New York, accompanied by her sister. How did Judge Kaplan  
 9 weigh Ms. Calva's evidence before him? You see how he  
 10 assessed it in his ultimate decision. He noted that at  
 11 first Zambrano stated in his original Declaration he was  
 12 the only Author of the Judgment. Then Ms. Calva's  
 13 existence was actually first disclosed by Mr. Guerra. And  
 14 after Guerra had testified, the Defendants moved to add  
 15 Ms. Calva as a witness, and at that point Zambrano changed  
 16 his story.  
 17 Judge Kaplan said, of course, Ms. Calva readily  
 18 could have confirmed or denied Zambrano's account; and  
 19 while the Court does not draw any inference as to the  
 20 substance of her testimony she would have given, her  
 21 absence is worthy of note. We ask the Tribunal to make a  
 22 similar inference with respect to Judge Zambrano's  
 23 testimony at least.  
 24 The UNCITRAL Rules states that if one party duly  
 25 invited to produce documentary evidence fails to do so

02:56 1 the Tribunal.  
 2 First, there is a consensus that an adverse  
 3 inference must relate to an Order by the Tribunal under the  
 4 IBA Rules. And there is also a consensus that a tribunal  
 5 must notify a party of its evidential obligations and give  
 6 it a sufficient opportunity to produce the evidence before  
 7 drawing the inference. For that reason, we suggest  
 8 treating the failure of certain witnesses to appear,  
 9 including Judge Zambrano, as additional circumstantial  
 10 evidence of concealment of wrongdoing without drawing  
 11 formal inferences as to the content of that testimony.  
 12 A similar approach was found by the Feldman versus  
 13 Mexico Tribunal. In this case, the Claimant alleged  
 14 discrimination. It said that it was denied export rebates  
 15 that were handed out to their local Mexican equivalents.  
 16 And here the Tribunal noted the utter failure of Mexico to  
 17 bring exonerating evidence before the Tribunal. Instead,  
 18 Mexico had focused its defense on the corporate structure  
 19 of the Claimant Parties.  
 20 As the Tribunal said: Why would any rational  
 21 party have taken this approach at the Hearing and in the  
 22 Briefs if it had information in its possession that would  
 23 have shown that the Mexican-owned cigarette exporters were  
 24 being treated in the same manner as the Claimant? This  
 25 allowed the Tribunal to make an inference based on that

02:57 1 failure to present evidence. It was treated as another  
 2 weight on the scale of evidence before the Tribunal.  
 3 At the very heart of this issue, and in conclusion  
 4 of my presentation, we note Ecuador's responsibility to  
 5 produce all evidence in its possession to establish the  
 6 truth, whatever it may be. In this case, the Parker versus  
 7 Mexico Commission took into account the Respondent's  
 8 failure to produce relevant evidence in reaching its  
 9 decision.  
 10 This concludes my presentation. I turn it back to  
 11 Mr. Bishop, who will explain to you the evidence that is  
 12 before you concerning the conduct of Guerra and Zambrano  
 13 which is more than sufficient to support a finding of  
 14 fraud.  
 15 PRESIDENT VEEDER: Just before that happens, you  
 16 referred to Jeremy Sharpe's Article in Slide 246, Exhibit  
 17 CLA-620. I don't believe we have that electronically.  
 18 MS. SILBERT: No, that's correct. I apologize.  
 19 There are several Legal Authorities that we are seeking to  
 20 introduce into the record in response to the Tribunal's  
 21 questions of last Friday. We also have them ready to  
 22 distribute at the end of our presentation, and can hand  
 23 them to Ecuador before turning them in.  
 24 PRESIDENT VEEDER: Do share them to the Respondent  
 25 first.

03:00 1 forthright answers in his testimony in the past two weeks;  
 2 Second, the extent to which his testimony is  
 3 corroborated by independent and documentary evidence;  
 4 And, third, from the extent to which our own  
 5 common sense tells us that his testimony is probably  
 6 correct given the full facts and circumstances that you  
 7 otherwise have before you.  
 8 So, in the next few minutes, I intend to go  
 9 through the corroborating evidence in particular for the  
 10 testimony you've heard from Mr. Guerra.  
 11 First of all, there is no dispute that Mr. Guerra  
 12 was generally ghostwriting Court Orders for Judge Zambrano  
 13 at least in other cases. Zambrano, in fact, admitted this  
 14 in his RICO testimony. He admitted that Guerra, in the  
 15 period from 2009 to 2012, was helping him draft Court  
 16 Orders generally. So, we had that admitted from Zambrano  
 17 himself.  
 18 Mr. Lynch, in his forensic examination of  
 19 Mr. Guerra's computers, found over 100 draft Court Orders  
 20 on Guerra's computer that were later issued by Zambrano in  
 21 his other cases. So, there is no dispute that Guerra was  
 22 generally ghostwriting Orders for Zambrano. There is no  
 23 dispute about that whatsoever.  
 24 Now, Zambrano, however, denies that Guerra  
 25 ghostwrote Court Orders in the Chevron Case specifically.

02:59 1 MS. SILBERT: Yes.  
 2 PRESIDENT VEEDER: So it would be 620, 623, 621.  
 3 MS. SILBERT: Correct.  
 4 PRESIDENT VEEDER: We will sort that out later.  
 5 MS. SILBERT: And we have an index as well for  
 6 everyone to view.  
 7 PRESIDENT VEEDER: Show it to the Respondent  
 8 first. Thank you very much.  
 9 MS. SILBERT: We will. Thank you.  
 10 MR. BISHOP: Thank you, Mr. President.  
 11 At this point we move to the end of our discussion  
 12 of the fraud and corruption facts, and what I plan to do is  
 13 to take you briefly through some of the testimony of  
 14 Mr. Guerra and the corroborating evidence for his  
 15 testimony, and then move to Mr. Zambrano and discuss the  
 16 RICO evidence or the RICO testimony that he gave. And I  
 17 should be approximately 30 to 40 minutes in that endeavor.  
 18 Now, you have been able to see and hear directly  
 19 from Mr. Guerra, and as I mentioned in the opening,  
 20 Mr. Guerra is no saint. He's admitted to some very serious  
 21 wrongdoing, but the question the Tribunal has to deal with  
 22 with respect to his testimony is simply whether the  
 23 testimony that he has given before you is true or not, and  
 24 there are three ways in which you can go about doing that:  
 25 First, from your own view of his demeanor and his

03:02 1 But first of all, in light of the clear pattern that Guerra  
 2 and Zambrano had established with Guerra ghostwriting over  
 3 100 Orders, Zambrano's testimony in this regard has to be  
 4 viewed with substantial scepticism.  
 5 And what I had planned to do next was to walk you  
 6 through but very quickly the evidence that corroborates  
 7 Mr. Guerra's testimony that he was paid \$1,000 a month by  
 8 the Plaintiffs to ghostwrite the Court Orders for Zambrano  
 9 in the Chevron Case specifically and to move the case along  
 10 quickly for them, and you see Mr. Guerra's testimony in the  
 11 next slide.  
 12 The first corroborating evidence I would refer you  
 13 to is the Plaintiffs' own e-mails. When Zambrano was  
 14 becoming the Judge in his first tenure in September 2009,  
 15 October 2009, Fajardo sent an e-mail to Donziger in which  
 16 he said "I understand that Zambrano himself asked Judge  
 17 Núñez...that Núñez help him with the Orders."  
 18 So, what you see is that, in their own e-mails,  
 19 the Plaintiffs are saying that they knew that Zambrano  
 20 needed help with the Orders, his Orders were ghostwritten  
 21 and they were thinking who do they want to have  
 22 ghostwriting these Orders, Núñez who is being recused from  
 23 the case or Zambrano?  
 24 And also, I showed you in the Opening Statement--I  
 25 haven't put it up again here--the use of code names by the



03:03 1 Plaintiffs for Guerra and Zambrano in this period, in  
 2 September, October and November 2009, they were referring  
 3 to Guerra and Zambrano as the puppeteer and the puppet.  
 4 And the only reason they would be using code names to hide  
 5 the identities of Guerra and Zambrano is that they knew  
 6 that what they were doing was illegal.  
 7 Now, secondly--and this is very important, and you  
 8 see it on the next slide, I put this up in the opening  
 9 statement--we can match up the bank records both of  
 10 Mr. Guerra and of the Plaintiffs themselves to show that  
 11 they were paying Guerra \$1,000 a month during this period  
 12 to ghostwrite the Orders. The Plaintiffs were using the  
 13 Selva Viva company, which was set up by Donziger to support  
 14 the Plaintiffs, and he's testified to that. There is no  
 15 dispute about it. But what you see in this slide is that,  
 16 throughout this period of Zambrano's first term on the  
 17 Court from October 2009 to February 2010, you see \$1,000  
 18 cash withdrawals from the Selva Viva bank account and  
 19 either the same day or the next day you see that same  
 20 amount of money being put into Mr. Guerra's bank account.  
 21 And for the first two deposits, we can match them  
 22 up to e-mails that Fajardo and Yánza were sending referring  
 23 to them paying the puppeteer.  
 24 For the last two, we have direct evidence that  
 25 they were the ones who were making these payments into

03:06 1 this. Mr. Lynch did a forensic examination of Mr. Guerra's  
 2 computer, and he found the drafts of nine Court Orders in  
 3 the Chevron Case that were ultimately issued by Zambrano,  
 4 he found those drafts on Mr. Guerra's computer. The drafts  
 5 on Guerra's computer pre-date the later issuance of those  
 6 same Court Orders by Zambrano. And Mr. Lynch compared the  
 7 contents of the drafts on Guerra's computer to the final  
 8 issued documents. He found substantial overlaps of the  
 9 language, but they were not identical, so they were clearly  
 10 drafts as they appeared on Guerra's computer.  
 11 Now, fourth, we can also confirm that these were  
 12 drafts by looking at their contents because what we find,  
 13 as you will see on Slide 259, is that Guerra left blank  
 14 spaces in these Orders. You heard him testify about this  
 15 last week when he was here. He left blank spaces, and he  
 16 put editorial notes in all capital letters for Zambrano in  
 17 places where he didn't have the information, and Zambrano  
 18 had to fill in, for example, the names of expert witnesses,  
 19 so you see those editorial notes in the drafts on Guerra's  
 20 computer that he was sending to Zambrano. And Mr. Guerra  
 21 testified about this in his testimony that, in fact, these  
 22 were editorial notes to Zambrano to fill in.  
 23 Now, fifth, Mr. Guerra testified, and Mr. Zambrano  
 24 confirmed in his RICO testimony, that Guerra would, in  
 25 fact, sometimes ship draft Court Orders to him using TAME

03:05 1 Mr. Guerra's account because the deposit slips were signed  
 2 by Ximena Centeno. And when she signed the deposit slips,  
 3 she had to put her cédula number--that is her personal  
 4 identification number in Ecuador--on the deposit slips.  
 5 You can see it on the next slide, and we have matched that  
 6 cédula up to the governmental records to show that, in  
 7 fact, that is her number.  
 8 And Mr. Donziger, in his RICO testimony, testified  
 9 that Ms. Centeno was an employee of Selva Viva at the time  
 10 these payments were being made to Mr. Guerra.  
 11 Mr. Guerra has also testified that he would learn  
 12 sometimes of these deposits into his account because  
 13 Mr. Fajardo would call him and tell him that deposits were  
 14 being made into his account on that day or the previous  
 15 day.  
 16 And this pattern, as I said, occurs throughout  
 17 Zambrano's first term on the Court and it corroborates  
 18 Mr. Guerra's testimony that he was being paid \$1,000 a  
 19 month by the Plaintiffs, and the only reason they would be  
 20 paying him that money was to ghostwrite Court Orders in the  
 21 Chevron Case, and neither Ecuador nor Donziger nor anyone  
 22 else has given any other explanation for why these payments  
 23 would be made to Mr. Guerra except his explanation that it  
 24 was because of the ghostwriting.  
 25 Now, third, we also have forensic evidence of

03:08 1 Shipping, and we have, sixth, the TAME shipping records.  
 2 You have those before you, and they were discussed in the  
 3 testimony of Mr. Guerra. Mr. Guerra confirmed in his  
 4 testimony that he, in fact, sent Draft Orders to  
 5 Narcisca Leon at the Lago Agrio Courthouse to submit to  
 6 Mr. Zambrano. The reason was Mr. Zambrano was being very  
 7 careful to avoid clear-cut paper trails, so that's why they  
 8 were being sent instead of to him directly, as they were in  
 9 other cases, they were being sent through the Court Clerk  
 10 Narcisca Leon.  
 11 And seventh and finally, and Ms. Silbert has  
 12 already addressed this particular slide, Slide 264, you see  
 13 the clear patterns of how this worked. The Draft Order  
 14 last saved on Guerra's computer on October 20th, for  
 15 example, and the next day Zambrano issues an Order with  
 16 text matching that found on Guerra's computer.  
 17 On November 18th, you have a draft Order last  
 18 saved on Guerra's computer, the next day Guerra sends a  
 19 shipment to Narcisca Leon through TAME shipping and in four  
 20 days later Zambrano issues an Order with matching text, and  
 21 that same pattern goes on.  
 22 Mr. Adam Torres, as Ms. Silbert has told you, has  
 23 taken all of this evidence and has matched it into  
 24 patterns, and he testifies about it in his Expert Report.  
 25 Now, Mr. Guerra, moving to the subject of the

03:10 1 ghostwriting of the Judgment, Mr. Guerra testified that, on  
 2 instructions from Mr. Zambrano--and I should go back for a  
 3 moment. Both Mr. Guerra and Mr. Zambrano in the RICO Case  
 4 testified that they had a close and long-standing  
 5 relationship, that was not denied by Zambrano, Zambrano  
 6 admitted that. So Mr. Guerra testified that Zambrano used  
 7 him as an intermediary to solicit a bribe for the  
 8 ghostwriting of the Judgment. On Zambrano's instructions,  
 9 he approached Chevron's lawyers about a bribe in exchange  
 10 for ghostwriting the Judgment through intermediaries. In  
 11 the last part of 2010, you have the Chevron lawyers'  
 12 testimony in the RICO Case before you, so we know that that  
 13 occurred.

14 After Chevron rejected that approach, Zambrano  
 15 then instructed Mr. Guerra to solicit a \$500,000 bribe from  
 16 the Plaintiffs in exchange for allowing them to ghostwrite  
 17 the Judgment.

18 Now, the only reason for the Plaintiffs to be  
 19 meeting with Mr. Guerra as he did at this point, was  
 20 because they knew that he was close to Zambrano, they knew  
 21 that he had been ghostwriting Court Orders for Zambrano  
 22 because they had been paying him to do it during Zambrano's  
 23 first term and they knew that he was Zambrano's  
 24 intermediary. So, Mr. Guerra on Zambrano's instruction,  
 25 reached out to Donziger, and they set a meeting at the

03:12 1 Honey & Honey Restaurant in Quito, which was attended by  
 2 Donziger, Fajardo and Yánza and by Mr. Guerra. And at this  
 3 meeting, Guerra testifies that he passed on this offer from  
 4 Zambrano to allow the Plaintiffs to ghostwrite the Judgment  
 5 in return for a \$500,000 bribe. And we know that that  
 6 meeting occurred, and we know that that bribe solicitation  
 7 occurred because Donziger, in his RICO testimony, confirmed  
 8 it. He admitted, in fact, that they did have this meeting  
 9 at the restaurant in Quito and, in fact, that Guerra did  
 10 solicit, on behalf of Zambrano, the \$500,000 bribe in order  
 11 to fix the case with the Plaintiffs.

12 So, the fact of those meetings is established.  
 13 It's confirmed and corroborated by independent testimony  
 14 from Donziger himself.

15 And what happened after that is very interesting  
 16 because Guerra has testified that Fajardo later approached  
 17 him about being an expert for the RICO Defendants in the  
 18 RICO Case in New York about the Ecuadorian judiciary, and  
 19 Donziger confirmed in his testimony that he was aware that  
 20 that approach, in fact, happened. So, we know that the  
 21 Plaintiffs certainly weren't outraged by this bribe  
 22 solicitation.

23 In summary, Guerra's testimony about the bribe  
 24 solicitation is corroborated both by the testimony of  
 25 Chevron's lawyers about the attempt to seek a bribe from

03:13 1 them which they rejected, and it's also corroborated by  
 2 Donziger in his RICO testimony, so we know that this was  
 3 happening.

4 Now, in this case, we have a rare example of  
 5 direct evidence from an insider to a fraudulent scheme.  
 6 Had Guerra not come forward and become a witness, Chevron  
 7 would never have learned about the various details of this  
 8 scheme, including, for example, the bribe solicitation to  
 9 the Plaintiffs at the Honey and Honey Restaurant. And  
 10 without Guerra, Chevron would not have known to ask  
 11 Mr. Donziger about that in the RICO testimony, and so it  
 12 never would have come to light.

13 Now, you've heard about Mr. Guerra's security  
 14 concerns since filing his Declaration on behalf of Chevron.  
 15 He testified about those concerns. You asked him about the  
 16 Fajardo complaint, and you have seen the cross-examination  
 17 of him with respect to his children and his grandchildren.  
 18 And in the past week, as I've noted, that investigation  
 19 sought by Guerra has now been moving forward. It's clearly  
 20 retaliatory, but unfortunately, it's very much in line with  
 21 attempts we have seen by the Respondent to intimidate  
 22 Guerra and others of Chevron's Expert Witnesses by calling  
 23 them "traitors."

24 Now, by contrast to the treatment that we see from  
 25 the Respondent of Guerra, I would like to next turn to

03:15 1 Mr. Zambrano and see the very disparate treatment we see  
 2 with respect to him from the Respondent.

3 ARBITRATOR GRIGERA NAÓN: To set the record  
 4 straight, the investigation is sought by Fajardo, not by  
 5 Guerra.

6 MR. BISHOP: Yes, I'm sorry. If I said that, I  
 7 apologize.

8 ARBITRATOR GRIGERA NAÓN: I think you said that.

9 MR. BISHOP: I apologize. Yes, it was sought by  
 10 Mr. Fajardo, that's correct.

11 Now, a year ago this Tribunal emphasized to the  
 12 parties in this case that you wanted to see in person two  
 13 witnesses, Mr. Guerra, whom you have seen, and  
 14 Mr. Zambrano, who you haven't. We asked the Government to  
 15 bring Zambrano to this Hearing. And as this Hearing  
 16 approached, you asked Mr. Zambrano yourselves to have him  
 17 come to this Hearing. Now, we asked the Government to  
 18 bring him because we know that he works for, he's  
 19 testified, he works for a company that is majority-owned  
 20 and controlled by Petroecuador, the national oil company of  
 21 Ecuador, so he is effectively controlled in that regard by  
 22 the Government.

23 We brought Mr. Guerra for you to see, but the  
 24 Government did not bring Zambrano. So now you have a major  
 25 contrast in that regard. You've seen and heard from

03:17 1 Guerra. You haven't had an opportunity, however, to see  
 2 Zambrano. And why is that? Why didn't the Government  
 3 bring--why didn't the Republic bring Zambrano to testify?  
 4 Well, the answer, I think, is actually a very simple  
 5 answer: He didn't write the Judgment. He's not a credible  
 6 witness, and they can't put him on the stand. And the  
 7 evidence of that is to look at the RICO Opinion of Judge  
 8 Kaplan where he finds specifically that Zambrano is not a  
 9 credible witness. Now, although you didn't get to see or  
 10 hear Zambrano, we do have his testimony in the RICO Case,  
 11 and I would like to very briefly take you through that.  
 12 Zambrano testified there that the Lago Agrio  
 13 Judgment was the largest and most significant Decision of  
 14 his career. And of course, we know that's true, it's the  
 15 largest Judgment in the history of Ecuador by many factors.  
 16 He received a lot of attention from the media with respect  
 17 to this case. And the day after the Decision was issued,  
 18 he appeared with the head of the judicial council at a  
 19 press conference to receive praise about this Decision.  
 20 So, this was a big deal to him. And he testified in the  
 21 RICO Case that he spent a lot of time on the Judgment and  
 22 that he wrote every single word of it himself, with no  
 23 assistance from anyone else. That was his testimony.  
 24 But when he was asked in the RICO Case about the  
 25 substance of the Judgment, he couldn't answer even basic

03:18 1 questions about it. He was asked, for example, what theory  
 2 of causation did the Judgment rely upon? Well, there is a  
 3 long discussion in the Judgment about the various theories  
 4 of causation, and then the Judgment comes to a conclusion,  
 5 but Zambrano didn't know. He couldn't answer.  
 6 He didn't know what the English word "workover"  
 7 means, which appears in the Judgment twice. But more than  
 8 that, when he was asked the question why does that English  
 9 word appear in the Judgment, he couldn't answer that,  
 10 either. He didn't know why it's in the Judgment. He had  
 11 no explanation for it.  
 12 And he didn't know what the term "TPH" means.  
 13 Now, the Judgment awarded \$5.4 billion to clean up TPH, so  
 14 that was a very significant term in the Judgment, and that  
 15 term appears in the Judgment 41 times. So, this was a term  
 16 that one ought to be familiar with, if one wrote the  
 17 Judgment.  
 18 Now, Ecuador's explanation for this in its  
 19 Memorial was that, well, he was perhaps confused because  
 20 you didn't ask him about the Spanish acronym HTP. You  
 21 instead asked him in cross-examination about the English  
 22 acronym TPH. But the problem with that is that the  
 23 original Spanish version of the Judgment itself uses the  
 24 English acronym TPH. It doesn't use the Spanish acronym  
 25 HTP. So, if he didn't know what it means, it because he

03:20 1 didn't draft the Judgment.  
 2 Well, maybe you might ask, maybe he has something  
 3 that he can use to refresh his recollection. Maybe he has  
 4 some notes, maybe he has some materials that he could look  
 5 at and refresh his recollection about that, so he was asked  
 6 about this in the RICO Case. Well, no, in fact, he had to  
 7 admit he has no documents that indicate he was the Author  
 8 of the Judgment.  
 9 Now, he says he made notes, but then he says he  
 10 threw those notes away about a year later, even though he  
 11 knew that Chevron was appealing the Judgment, and even  
 12 though he knew that Chevron was claiming that the Judgment  
 13 was ghostwritten. Nevertheless, he just tossed his notes.  
 14 But the bottom line is he now has nothing to indicate that  
 15 he was the Author of the Judgment, and my suggestion is he  
 16 never did.  
 17 Now, Mr. Guerra testified that Fajardo had a draft  
 18 of the Judgment on Fajardo's computer before the Judgment  
 19 was issued, and Mr. Guerra says he saw it. Now, we were  
 20 never able to obtain Fajardo's computer or any of his  
 21 documents, and Ms. Silbert has gone through that, so I  
 22 won't go through it again. But because of that, Zambrano  
 23 was asked at the RICO trial, what computer did you draft  
 24 the Judgment on? So, he answered "the new one" in his  
 25 office. He had an Old Computer from when he became a judge

03:21 1 in 2008 and he obtained a New Computer. So, when he was  
 2 asked on what computer did you draft the Judgment, his  
 3 answer was on the "new one." He even drew a map of his  
 4 office, he showed where the old one was, he showed where  
 5 the new one was, he said Ms. Calva sat only at the New  
 6 Computer, typed only into the New Computer, that the  
 7 Judgment was drafted exclusively and only on the New  
 8 Computer, and he testified about that repeatedly, and he  
 9 testified about it insistently. He was quite sure, and he  
 10 said that he was quite sure because it was the more modern  
 11 computer. But we know that testimony is untrue.  
 12 He says he started drafting the Judgment in  
 13 mid-November 2010, but he only got the New Computer on  
 14 December 7th, and Microsoft Word was only open on that New  
 15 Computer from the time he got that computer on December 7th  
 16 until the Judgment was issued on February 14th, 2011,  
 17 Microsoft Word was only open on that computer for a total  
 18 of 36 hours, not nearly enough time to draft a 188-page  
 19 single-spaced Judgment. It just wasn't possible.  
 20 And every draft of the Judgment text that predates  
 21 the issuance of the Judgment was saved only on the New  
 22 Computer, and Mr. Lynch testified to that, and Mr. Racich  
 23 also had to admit it, so the only draft of the Judgment was  
 24 saved only on the Old Computer, not the New Computer. So  
 25 Mr. Zambrano's testimony on what computer he used to draft

03:23 1 the Judgment was clearly false.  
 2 Now, Zambrano also quite frankly lied when he said  
 3 that his 18 year old assistant, Ms. Calva, typed almost the  
 4 entire Judgment from dictation. He said he never gave her  
 5 a document to type from, and he never wrote out in longhand  
 6 what he wanted her to type and just handed it her. He said  
 7 everything that she typed into the computer was done from  
 8 dictation.  
 9 But Dr. Leonard, in his Report and his testimony  
 10 pointed out the many mistakes in the Plaintiffs' internal  
 11 and unfiled documents that were copied verbatim, word for  
 12 word, into the Judgment. So, is it credible that Ms. Calva  
 13 typed from dictation the very same mistakes, word for word  
 14 and comma for comma and period for period and number for  
 15 number, exactly as they appear in the Plaintiffs'  
 16 documents? What's far more likely is that the Plaintiffs  
 17 themselves copied and pasted portions of their internal  
 18 documents to create the Judgment.  
 19 And Zambrano also lied when he testified about how  
 20 the Judgment came to discuss U.S., Australian and English  
 21 law. And this is, I think, an important point. He says he  
 22 asked Ms. Calva, the 18 year old recent graduate, to do  
 23 legal research on the Internet in foreign law and in a  
 24 foreign language, and that she is the one who found these  
 25 cases from the U.S., Australia and England that are

03:27 1 And the only translation Web site that was  
 2 accessed from Zambrano's computer in the relevant period  
 3 could not have been used because it was accessed on  
 4 January 4th, 2011 but that was after these foreign law  
 5 cases appeared in the Providencias, specifically after the  
 6 U.S. cases appeared in the Providencias on Zambrano's  
 7 computer on December 21, 2010.  
 8 And, as a matter of fact, let's talk about the  
 9 Providencias. These are partial drafts of the Judgment  
 10 found on Zambrano's Old Computer on December 21 and  
 11 December 28, 2010. And these are perhaps the most  
 12 important aspects of the forensic examination done by  
 13 Mr. Lynch. So what do they show?  
 14 Well, Ecuador refers you to the metadata, the  
 15 Author name and the Last Saved name, but the metadata  
 16 cannot show you who Authored the contents of this document,  
 17 these Providencias. In fact, you saw that illustrated very  
 18 vividly in the cross-examination of Mr. Racich and with  
 19 respect to his own Report when he was shown that the  
 20 metadata indicates he wasn't the Author of his own Report.  
 21 And Mr. Racich, therefore, agreed that, in fact, metadata  
 22 cannot tell you who created the content of a document.  
 23 Now, Ecuador also points you to the number of  
 24 times the Providencias was saved, the so-called "revision  
 25 number," but the revision count increases every time you

03:25 1 discussed in the Judgment. That was his testimony in the  
 2 RICO Case.  
 3 Well, he had to create some story about this  
 4 because he doesn't speak English, and the cases aren't  
 5 anywhere to be found in the Court Record, but this is a  
 6 remarkable proposition, he's saying he decided to go  
 7 outside the Court Record and to have his 18-year-old  
 8 assistant do legal research in a foreign language, in a  
 9 foreign legal system to support the Judgment without giving  
 10 the Parties an opportunity to comment on them, and so  
 11 Ms. Calva is the one who did this, he says.  
 12 Well, Ms. Calva, as we know, conveniently did not  
 13 attend the RICO trial, and consequently she was never  
 14 cross-examined about any of this, and so we don't have her  
 15 testimony.  
 16 Now, the forensic evidence also does not support  
 17 Zambrano's testimony. The only legal research Web site  
 18 that was accessed by Zambrano's computer in the relevant  
 19 period was an Ecuadorian Web site called fielweb, but that  
 20 Web site cannot access U.S. cases and authorities, and we  
 21 brought you an Expert Report that looked at that Web site  
 22 and testifies to that, and Ecuador never refuted that,  
 23 never brought a counter Expert, so that is unrefuted  
 24 testimony that that Web site cannot be used, could not be  
 25 used to find these cases.

03:28 1 hit Control Save on the computer, regardless of whether the  
 2 document is actually revised or not. And an experienced  
 3 typist, I'm told--and I'm not one, but I'm told--that an  
 4 experienced typist may hit Control "S" every few seconds to  
 5 make sure that they are saving their documents and are not  
 6 going to lose them.  
 7 In fact, you saw Mr. Lynch's demonstration about  
 8 this. He hit the Save button every few seconds to make  
 9 sure that his work product wouldn't be lost, and the  
 10 document at the end showed 11 revisions in the very few  
 11 minutes that he had it open, even though he didn't create  
 12 any of the content of that document, it also showed him as  
 13 being the Author. He simply cut and pasted from other  
 14 documents into the document.  
 15 There is no evidence, also, that the number of  
 16 Saves that Ecuador tells you about, I think it's 286 saves  
 17 in Providencias, there is no evidence that that's related  
 18 necessarily to the Judgment text. That relates to the  
 19 entire file of Providencias over the life of its existence,  
 20 and we know that there were other documents in Providencias  
 21 beyond just the Judgment text itself.  
 22 Now, the best evidence of what relates to the  
 23 Judgment text in this regard is probably what happened  
 24 between that period, December 21 and December 28th, when  
 25 38 to 45 pages of the Judgment text were added, but there

03:30 1 were only 29 Saves, so the number of Saves simply doesn't  
 2 tell us very much.  
 3         There is, however, other forensic evidence that's  
 4 more meaningful. First is the edit time. What the edit  
 5 time tells you for these Providencias is that, on  
 6 December 21st, the first 81 pages of the Judgment, which  
 7 were later reformatted to become the first 107 pages of the  
 8 Judgment, were input into Zambrano's Old Computer in only  
 9 35 hours, less than one week. And if, from the time that  
 10 file had been created back in October, that's less than 30  
 11 minutes a day. In fact, depending on whether we use the  
 12 81 pages or the 107 pages, it means that the Judgment text  
 13 was input into Zambrano's computer at a rate of somewhere  
 14 between 20 and 26 minutes per page. And 94 percent of that  
 15 December 21st Providencias, as it appears on his computer,  
 16 was never changed thereafter. That means it went in at  
 17 almost final form with very little editing after that.  
 18         And between December 21st and December 28th,  
 19 another 38 to 45 pages were input in only 17 hours at the  
 20 rate of approximately 27 minutes per page and 96 percent of  
 21 that text was never changed thereafter.  
 22         So, those consistent rates are incredibly fast for  
 23 drafting a complex legal document. And as I said, these  
 24 154 pages of text were put on the computer in almost  
 25 completely finished form. That's not how lawyers typically

03:32 1 draft documents, at least not in my experience. And in my  
 2 experience, lawyers don't draft documents quite that  
 3 linearly either, at least I know I go back and forth in  
 4 drafting and editing my documents.  
 5         So, the edit time, I believe, indicates that the  
 6 Judgment was not, in fact, drafted on Zambrano's computer  
 7 but was only input to it.  
 8         Now, second, both of the Experts agree that the  
 9 Providencias does show evidence of cutting and pasting or  
 10 copying and pasting from other documents. Both of the  
 11 Experts agree to that. And in Slide 290 you see evidence  
 12 of that on the computer. There were two different fonts  
 13 and two different formatting styles found in the  
 14 Providencias on Zambrano's computer. And as I said, both  
 15 Experts agreed that that indicates there was cutting and  
 16 pasting from other documents into the Providencias.  
 17         Now, this is from Page 34, but this evidence of  
 18 different fonts and different formatting actually goes for  
 19 about 50 pages on and off in the Providencias.  
 20         Both Experts also agree that there were at least  
 21 13 USB Devices or flash drives connected to Zambrano's  
 22 computer during the relevant period of the drafting of the  
 23 Judgment, and text could have been copied and pasted from  
 24 those flash drives into Zambrano's computer without leaving  
 25 any forensic trail about it. And the same thing can be

03:34 1 done by accessing Hotmail and then cutting and pasting from  
 2 it. And we know that in the relevant period, Zambrano's  
 3 computer accessed Hotmail hundreds of times.  
 4         Now, I want to go to another point about the  
 5 Providencias, and this is an extremely important point.  
 6 And that has to do with the substance of what we find on  
 7 these Providencias and December 21st and December 28th on  
 8 Zambrano's computer.  
 9         The Providencias--and let's just take the  
 10 December 21st Providencias--contains a discussion of  
 11 causation based on U.S. and Australian case law. Part of  
 12 that discussion is a discussion of the substantial factor  
 13 test, and you see it on the right-hand side of the screen  
 14 from the Providencias. And you see at the bottom of that  
 15 discussion in the Providencias, a citation to two U.S.  
 16 cases: Whitley versus Philip-Morris and Rutherford versus  
 17 Owens-Illinois. Those cases are nowhere found in the Court  
 18 record. Mr. Juola has testified about that. They are,  
 19 however, found in one place, and that is in the Moodie  
 20 Memo. You have on the left-hand side of your screen, a  
 21 discussion from the Moodie Memo of the substantial factor  
 22 test and citations to exactly those same two California  
 23 cases, Rutherford and Owens-Illinois.  
 24         So, what you see is U.S. case law, California case  
 25 law, being cited both in the Moodie Memo for propositions

03:35 1 about the substantial factor test and also being cited in  
 2 the Providencias on Zambrano's computer in support of  
 3 exactly the same legal proposition about the substantial  
 4 factor test.  
 5         And no one has suggested that the Moodie Memo was  
 6 ever filed in the Court Record. It's certainly not found  
 7 there.  
 8         So, is this just a coincidence? Did the 18-year  
 9 old Ms. Calva just happen to find exactly the same legal  
 10 proposition supported by exactly the same two U.S. cases  
 11 that are found in the Plaintiffs' Memo? Well, before we  
 12 answer that question, there's substantially more.  
 13         The Providencias, on December 21st also cites to  
 14 nine other U.S. Court cases and U.S. Legal Authorities in  
 15 support of certain legal propositions. Those nine U.S.  
 16 authorities are also found nowhere in the Court Record, and  
 17 that was also confirmed by Mr. Juola in a supplemental  
 18 review of the Record.  
 19         And I invite you to please compare the Plaintiffs'  
 20 unfiled Erion Memo, which has to do with the merger issue,  
 21 with the Providencias, and what you will find is exactly  
 22 the same legal propositions supported by exactly the same  
 23 U.S. Legal Authorities in both documents.  
 24         On Slide 295, you see, for example, references to  
 25 patent injustice in both documents supported by exactly the

03:37 1 same U.S. case, the Penn Central Case, in exactly the same  
 2 citation form. And then you see a reference to manifest  
 3 injustice in both documents supported by a reference to the  
 4 Acushnet River Case. And note that in both documents, the  
 5 Acushnet River citation is an incomplete citation, but it  
 6 appears in exactly the same form at exactly the same place  
 7 in both of those documents.

8 In the next slide, you see the same pattern  
 9 reoccurring with exactly the same legal proposition in the  
 10 Erion Memo and in the December 21st Providencias supported  
 11 by exactly the same U.S. case citations in exactly the same  
 12 form. And you see that again in the next slide, only here  
 13 it's not a reference to case law, it's a reference to the  
 14 same U.S. legal treatise, the Fletcher Treatise and the  
 15 Encyclopedia Private Corporations in support of the same  
 16 legal proposition, but note the citation form again.  
 17 Meade, the Encyclopedia Private Corporations, Section 7122,  
 18 and exactly the same reference, exactly the same publisher,  
 19 exactly the same year, exactly the same section number in  
 20 both documents.

21 And on Slide 298, you see again the same legal  
 22 proposition, here supported in the Erion Memo by a  
 23 reference to the California Civil Code Section 3521.

24 And what do we find in the Providencias on  
 25 Zambrano's computer? We find the same legal proposition

03:41 1 frankly, what's far more plausible is that the Plaintiffs  
 2 themselves ghostwrote the Judgment using their own  
 3 documents which they had before them.

4 You have seen reference to the opinion of  
 5 Dr. Gerald McMenamin who found from the stylistic analysis  
 6 of the Judgment, that it's highly probable that the  
 7 Judgment had multiple Authors and that Zambrano himself had  
 8 very little to do with the writing of the Judgment.

9 Now, the timing of Zambrano's testimony in RICO is  
 10 also highly suspect. I'm not going to spend much time on  
 11 this. My time, I think, is running very quickly, so I will  
 12 hurry this along. But Zambrano was dismissed as a judge in  
 13 February 2012 for "inexcusable judicial error" revealing  
 14 "notorious ineptitude or carelessness" in the  
 15 administration of justice. He was suspected of accepting a  
 16 bribe in a drug trafficking case and releasing the drug  
 17 trafficker, but he was dismissed as a judge for this basis.

18 He was also dismissed as a judge as a second  
 19 sanction three months later, again finding him guilty of  
 20 "inexcusable judicial error."

21 And we know that Zambrano had a history of people  
 22 accusing him of soliciting bribes. There are literally  
 23 dozens of people who had accused him of that, and we know  
 24 that the Napo Bar Association itself requested that the  
 25 Prosecutor General suspend him for soliciting bribes.

03:39 1 supported by a reference to the California Code  
 2 Section 3521. It's exactly the same. And that Legal  
 3 Authority, again, is not in the record, and no one has  
 4 suggested that the Erion Memo is anywhere in the Court  
 5 Record.

6 So, is it plausible--is it plausible--that the  
 7 18-year old recent graduate, Ms. Calva, did legal research  
 8 in a foreign language, in a foreign legal system and just  
 9 happened to find exactly the same U.S. cases and Australian  
 10 cases that you find cited in the Plaintiffs' internal  
 11 memos, or is it far more likely that the Plaintiffs used  
 12 their own documents, which they had before them, to  
 13 ghostwrite the Judgment?

14 Now, what is Zambrano's explanation for this. He  
 15 has given an explanation of sorts in his RICO Declaration  
 16 at Section 16. And his explanation is: Well, the stork  
 17 just left these documents at the foot of his office door  
 18 overnight. I mentioned that the documents related to the  
 19 case that were not incorporated into the process were left  
 20 at the door of my Office of the Court. This was relevant  
 21 information that I realized could be of use in my Decision.  
 22 That's his explanation.

23 If that happened, it's a violation of Ecuadorian  
 24 law. It means that he used non-transparent documents never  
 25 filed in the Court Record to write the Judgment, but quite

03:42 1 But what happened is that, after he was dismissed  
 2 as a judge, he was unemployed for a year until he signed  
 3 his RICO Declaration, and then the very next month he  
 4 testifies he was invited to a judge as a legal adviser at  
 5 the refinery, which is majority owned and controlled by  
 6 Petroecuador.

7 But when he was asked in the RICO Case about his  
 8 employment, he knew very little about his employer. He  
 9 was, however, well paid. In fact, he's paid more as a  
 10 legal advisor to the refinery than he was paid as a judge.  
 11 He was paid more than the General Counsel, and he was paid  
 12 more than the position advertised.

13 So, is Zambrano's testimony in RICO credible? I  
 14 won't go through the factors. I did this in the opening  
 15 statement. His testimony clearly is incredible, and that's  
 16 exactly the finding that was made by the only fact finder,  
 17 the only decision-maker who saw him actually testify, and  
 18 that was Judge Kaplan in the RICO Case. He found that  
 19 Zambrano was unpersuasive for a host of reasons, including  
 20 the many inconsistencies in his own testimony, and between  
 21 his testimony and other documents and between his testimony  
 22 in the Hearing and his testimony in his deposition. He  
 23 found Zambrano was a remarkably unpersuasive witness.

24 And with that, I will conclude my presentation so  
 25 that hopefully I can keep us on time.

03:44 1 Thank you, Mr. President.  
 2 PRESIDENT VEEDER: I think this is where you  
 3 suggested we take the mid-afternoon break.  
 4 MR. BISHOP: It is.  
 5 PRESIDENT VEEDER: We will do that. We will come  
 6 back at 4:00. Thank you.  
 7 (Brief recess.)  
 8 PRESIDENT VEEDER: Let's resume.  
 9 Before we start, we've received a draft, which  
 10 looks as though it's an agreed form of wording for our  
 11 order; is that correct?  
 12 We ask the Claimants first.  
 13 MR. BISHOP: Yes, it is.  
 14 PRESIDENT VEEDER: And the Respondent?  
 15 MR. BLOOM: I can confirm that, yes.  
 16 PRESIDENT VEEDER: Thank you for that.  
 17 In the meantime, as you will probably see, we're  
 18 circulating the Draft Procedural Order except for the  
 19 security protocol, just to be initialed tonight. We'll  
 20 have a signing ceremony before 9:30 tomorrow where it will  
 21 be put to bed, signed, countersigned, whatever, and we can  
 22 then move on from the site--from the site order, but that's  
 23 before 9:30 tomorrow, so don't forget to bring the Security  
 24 Protocol, which I hope is going to be not a problem.  
 25 MS. RENFROE: We've made progress on that, and we

04:04 1 declarations and the different types of declarations that  
 2 it seeks is because Ecuador will not remedy the wrongdoing  
 3 at its roots in Ecuador under Ecuadorian law. If Ecuador  
 4 would honor its international obligations and obey a  
 5 directive from this Tribunal to take all measures necessary  
 6 to wipe out the consequences of the Lago Agrio Judgment,  
 7 then some of these Declarations that Chevron seeks might  
 8 not be necessary, but that's not case, and I ask you to  
 9 please keep this critically important fact in mind as you  
 10 listen to my remedies argument today and as you deliberate  
 11 on this important issue after we've all gone home.  
 12 In Request Number 1, Chevron asks for a  
 13 declaration that, by issuing the Judgment, Ecuador has both  
 14 committed a denial of justice under customary international  
 15 law and also breached provisions of the Treaty. The  
 16 Tribunal may question whether it's necessary to declare a  
 17 denial of justice in addition to a treaty breach, and the  
 18 simple answer is, yes, gentlemen, it is necessary. If you  
 19 find that a denial of justice has occurred, we ask that you  
 20 declare it in order to award full reparation that  
 21 international law principle requires.  
 22 In the Commercial Cases between Chevron and  
 23 Ecuador, the distinction was meaningless from a remedies  
 24 perspective, so full reparation could be given without  
 25 deciding the question of denial of justice. But here the

04:02 1 expect to be able to present that to you tomorrow morning.  
 2 PRESIDENT VEEDER: Thank you very much.  
 3 Please.  
 4 MR. KEHOE: Thank you, Mr. President, Professor  
 5 Naón, Professor Lowe.  
 6 Chevron seeks combination of remedies with the  
 7 most important being declaratory relief which you see  
 8 listed first.  
 9 The specific Declarations that are needed to help  
 10 white out the consequences of Ecuador's wrongful acts are  
 11 enumerated in Claimants' submission of January 14, 2015, at  
 12 Paragraph 435, and I've copied them on to this slide for  
 13 you at 311.  
 14 The first four declarations focus on the  
 15 wrongfulness of Ecuador's acts under international law and  
 16 requests five through nine relate to the legal consequences  
 17 of that unlawful conduct under international law, and ten  
 18 relates to monetary damages.  
 19 I will provide an introductory overview right now  
 20 of Chevron's main points concerning remedies and then I'll  
 21 move to the main argument which addresses these issues in  
 22 more detail. I ask you to please stop me any time during  
 23 my presentation with any questions that you may have.  
 24 As this Tribunal knows at this late stage in the  
 25 proceedings, the reason that Chevron requires the various

04:05 1 distinction is meaningful, potentially dispositively  
 2 meaningful to recognition and enforcement courts around the  
 3 world where this Judgment is being taken and will be taken  
 4 for recognition, enforcement, and execution, and I'll  
 5 expand on that shortly with examples of why this  
 6 distinction is meaningful.  
 7 The Second Declaration relates to the breach by  
 8 Ecuador of Settlement and Release Agreements, which the  
 9 Tribunal has deferred until after hearing the Track 2  
 10 evidence of fraud. Having heard the evidence over the past  
 11 three weeks and having heard Mr. Coriell's closing remarks  
 12 today, this Declaration is now ripe and ready to be ruled  
 13 upon in Chevron's favor.  
 14 Declarations three and four are self-explanatory,  
 15 they also relate to declarations of the wrongfulness of the  
 16 conduct. Then we move down to the list, four through nine  
 17 on the list which are declarations that describe the  
 18 consequences of Ecuador's illegal conduct under  
 19 international law arising from the violations and the  
 20 breaches listed in one through four.  
 21 Now, this category of remedies five through nine  
 22 was the subject of a question from the Tribunal last  
 23 Friday. You asked whether or not the jurisdictional  
 24 authority to issue declarations of consequences of  
 25 Ecuador's conduct under international law was vested with

04:06 1 you, should you find that, indeed, they did commit the  
 2 wrongful acts found in one, two, three or four, and again,  
 3 the answer is yes, and I'm going to go through that in  
 4 great detail with you. And I would argue, sirs, that not  
 5 only are declarations four through nine well within your  
 6 jurisdictional authority to grant, but with due respect,  
 7 they are required under principles of international  
 8 reparations law to wipe out the consequences of Ecuador's  
 9 act. The reason that these declarations are especially  
 10 necessary in this case is not only because Ecuador has  
 11 unleashed this extraordinarily egregious \$9.5 million  
 12 Judgment out into the international system, but importantly  
 13 because Ecuador has stated unequivocally that it will not  
 14 take measures to wipe out the consequences of the Acts.  
 15 Ecuador will not take all measures necessary to nullify and  
 16 negate this Judgment at its roots, even if directed by this  
 17 Tribunal to do so.  
 18 In its Supplemental Rejoinder of March 17, 2015,  
 19 Ecuador states, "It is common ground that the Judgment is  
 20 enforceable under Ecuadorian law." And they go on to say,  
 21 "If the Tribunal were to order the Republic to nullify the  
 22 Lago Agrio Judgment, as the Claimants demand, Ecuador would  
 23 have to violate its human rights obligations, Constitution,  
 24 and procedural laws. And for this reason alone,  
 25 nullification by Ecuador is not an available remedy in the

04:09 1 successful breach in international law in a moment.  
 2 This Tribunal knows that if the Judgment is the  
 3 product of a denial of justice under the Treaty, the  
 4 Judgment has no legal effect under international law. Same  
 5 result if it's a breach of denial of justice or the Treaty.  
 6 There is no impediment whatsoever to declaring that in your  
 7 Award. And Ecuador, for its part, shouldn't be heard to  
 8 complain about these declarations because no one is allowed  
 9 to take advantage in the law of their own wrongful act. As  
 10 Ecuador seeks to do here, by opposing the declarations of  
 11 nullification under international law, that its conduct has  
 12 necessitated because it won't do it under its domestic law,  
 13 which would be a better result, frankly.  
 14 As to injunctive relief, Ecuador states in that  
 15 same Paragraph 417 of its Memorial, that because Ecuador  
 16 will disregard a directive from the Tribunal to nullify the  
 17 Judgment in Ecuador, an order directing it to do so is not  
 18 an available remedy to Ecuador in this case, and we  
 19 disagree. We believe that the injunctive requests that  
 20 Chevron has asked for is an available remedy, and Ecuador's  
 21 unilateral decision to preemptively breach such an order  
 22 does not make it any less available to Chevron. And we ask  
 23 that you do order Ecuador to take all measures necessary to  
 24 render the Judgment null and void within and without  
 25 Ecuador, even though we all know that Ecuador will ignore

04:08 1 case."  
 2 So, while Ecuador superficially goes through the  
 3 motions of participating in these international arbitration  
 4 proceedings, it simultaneously makes a mockery of them by  
 5 stating in advance that it will not honor its international  
 6 obligation to eradicate the Judgment if the Tribunal orders  
 7 Ecuador to do so. So, this means that the Final Decision  
 8 maker concerning the validity of this Judgment is actually  
 9 not this Tribunal, which has been vested with the authority  
 10 and the jurisdiction to decide this dispute with finality,  
 11 but rather it is the trial court judges and the appellate  
 12 judges sitting in different courts around the world. As a  
 13 result of this unfortunate reality in which we find  
 14 ourselves, if the Tribunal determines that a denial of  
 15 justice and treaty breaches have occurred, the Tribunal  
 16 should issue declarations that state the legal consequences  
 17 of those findings under international law just as we have  
 18 requested in declarations numbers four through nine. If  
 19 the Tribunal does not issue these declarations, it becomes  
 20 more likely that the Lago Agrio Judgment will be recognized  
 21 and will be enforced. And in that eventuality, full  
 22 reparation required by international law clearly will not  
 23 have been afforded to Chevron. Ecuador will have succeeded  
 24 in successfully breaching its international law  
 25 obligations. And I'm going to come back to this point of

04:11 1 your Award because in order for this Tribunal in  
 2 combination with the Declarations that we seek collectively  
 3 and in combination may enable Chevron to resist recognition  
 4 and enforcement of this Judgment.  
 5 The third form of relief is monetary claims which  
 6 will be addressed in Track 3. Professor Paulsson will  
 7 follow me to address Ecuador's novel monetary setoff theory  
 8 when I complete my presentation, so I won't spend any real  
 9 time on it now, except to emphasize one particularly  
 10 important point that does tie into my argument, which is  
 11 that Ecuador's monetary setoff theory has no relevance or  
 12 relation to Chevron's request for declaratory and  
 13 injunctive relief. Setoff applies only to Chevron's  
 14 monetary claim for indemnification against Ecuador should  
 15 the Lago Agrio Plaintiffs successfully execute upon the  
 16 Judgment. It's an important fact, and it's important not  
 17 to confuse and conflate the different forms of remedies  
 18 that Chevron seeks as Ecuador has done in its written  
 19 submissions and which it may do tomorrow in its Closing  
 20 Argument, so I highlight that for the Tribunal.  
 21 Okay. Now, down to the basics, the fundamental  
 22 principles of reparation, this Tribunal does not need to be  
 23 told that under international law, reparation must, as far  
 24 as possible, wipe out the consequences of the illegal act  
 25 and re-establish the situation which, in all probability,



<p>Sheet 56</p> <p style="text-align: right;">2715</p> <p>04:12 1 would have existed if the Act had not been committed. With  2 the goal and purpose from Chorzow Factory of reparations to  3 provide full reparation for the injury and to wipe out the  4 consequences of the illegal act to the extent possible, the  5 next step, of course, is to determine the forms of  6 reparation that are available to this Tribunal to  7 accomplish the result of full reparation.  8 We see in Article 4, forms of reparation. Full  9 reparation for the injury caused by the internationally  10 wrongful act shall take the form of restitution,  11 compensation, and satisfaction either singly or in  12 combination in accordance with the provisions of this  13 chapter.  14 The official Commentary notes there is--that  15 wiping out the consequences of the wrongful act may thus  16 require some or all forms of reparation to be provided,  17 depending on the type and the extent of the injury that has  18 been caused.  19 Now, this Tribunal has noted that Chevron's  20 allegations against Ecuador are among the gravest  21 accusations that one can advance against a modern State  22 subject to the rule of law. You reiterated this sentiment  23 at the end of the day last Friday. These are very serious  24 allegations that we make, but we stand by them.  25 The evidentiary phase of this proceeding is now at</p>	<p style="text-align: right;">2717</p> <p>04:15 1 repeating here because declarations are critically  2 important to the analysis in these proceedings for both  3 Track 1 and Track 2, so he notes that the most usual remedy  4 for an international law violation is undoubtedly  5 declaratory relief. The emphasis was in his original. He  6 notes that a declaration may be the only remedy of relative  7 effectiveness which no judge or arbitrator can reasonably  8 withhold.  9 And he astutely observed that a declaration would  10 not only vindicate the innocent party in the eyes of the  11 world, but might also serve as a defense or as res judicata  12 in a proceeding or have some value for the victim. It's  13 almost as though Dr. Mann predicted the circumstances of  14 this case.  15 And this brings us to Chevron's request for both a  16 declaration that Ecuador committed a denial of justice in  17 violation of customary international law as well as a  18 declaration that Ecuador breached the Bilateral Investment  19 Treaty. This is request number one, and breached the  20 Treaty in a number of ways breaching the Settlement and  21 Release Agreement, breaching the effective means provision,  22 breaching the fair and equal treatment provision, they're  23 all included within the Treaty breach category.  24 A declaration that Ecuador's conduct in the Lago  25 Agrio Judgment litigation and Judgment as a matter of</p>
<p style="text-align: right;">2716</p> <p>04:14 1 an end, and if Chevron has proven these grave and serious  2 allegations to you, then only an equally serious  3 combination of remedies will be capable of providing the  4 full reparation that is needed to wipe out the consequences  5 of Ecuador's conduct, not only because of its underlying  6 act of rendering the fraudulent judgment, but also because  7 it won't remedy the wrong itself, even if ordered to.  8 Now, while the character and the extent of  9 Ecuador's unlawful conduct both during and after the Lago  10 Agrio Litigation is uncommon, I daresay unprecedented, one  11 of the most common modalities to address wrongful conduct  12 is satisfaction, which is what we're asking for in the form  13 of a declaration of wrongfulness of the Act by the  14 competent court or tribunal. This would encompass both  15 denial of justice and treaty breaches.  16 And, of course, the Tribunal may render  17 declarations under its own authority, its own  18 jurisdictional authority, to determine the lawfulness of  19 the conduct in question and make legal findings as a  20 necessary part of the process of deciding the case, which  21 this Tribunal is well aware and, in fact, has done when  22 issuing your Interim Measures Award.  23 These excerpts from Dr. Francis Mann's seminal  24 publication are familiar to you. I referenced some of them  25 during the Track 1B argument on remedies, but they bear</p>	<p style="text-align: right;">2718</p> <p>04:16 1 customary international law and denial of justice is, of  2 course, different to some degree than a declaration that  3 Ecuador breached the effective means provision of the  4 Treaty. And the Tribunal may be tempted to decide this  5 case on the more narrow basis of only Treaty breach rather  6 than on both grounds if you perceive no meaningful  7 difference between the two; deciding on a narrower ground  8 is a wise thing sometimes, but only if it doesn't make a  9 difference. Here it makes a difference and, as I said,  10 potentially a dispositive one because recognition and  11 enforcement courts around a the world may perceive a  12 difference between the two.  13 In recognition and enforcement proceedings,  14 Chevron must convince a domestic court to give no legal  15 effect to a judgment that has been issued by the courts of  16 a sovereign nation, a judgment that has not only been  17 blessed by that State's entire relevant judiciary, but also  18 endorsed by the country's President and other government  19 officials who are lobbying consistently and earnestly for  20 its recognition and enforcement. Mr. Bishop described that  21 to you this morning.  22 Chevron, of course, will raise legal defenses in  23 these proceedings. The relative strength or weakness of  24 these defenses, the success of these defenses may very well  25 depend on the decisions that this Arbitration Tribunal</p>

04:18 1 makes with respect to the remedies that you are going to  
2 provide Chevron with respect to the declarations that  
3 you're willing to issue. And on this important point, we  
4 believe it's more likely that a foreign recognition and  
5 enforcement court will refuse to recognize the fraudulent  
6 Lago Agrio Judgment if this Tribunal declares a denial of  
7 justice, the embodiment of a denial of justice, more so  
8 than if this Tribunal finds a breach of a bilateral treaty  
9 to which the enforcement State is not a party.

10 I'm going to provide just two examples where the  
11 distinction of these two different types of declarations  
12 that we seek may be meaningful to a foreign Court, and the  
13 first arises under Article 16 of the ILC Draft Articles on  
14 assisting, aiding and assisting the Commission of an  
15 internationally wrongful act.

16 Now, this Tribunal need not decide this defense to  
17 recognition and enforcement, of course. You have more than  
18 enough to decide, but I am going through it to illustrate  
19 why a declaration of denial of justice will be more  
20 valuable to Chevron in enforcement proceedings than a  
21 declaration that Ecuador has breached the Treaty.

22 Under Article 16 of the ILC Articles, a State that  
23 aids or assists another State in the commission of an  
24 internationally wrongful act is internationally responsible  
25 for the consequences of such assistance if the State aids

04:19 1 and assists or assists with knowledge of the circumstances  
2 of the internationally wrongful act, and the underlying act  
3 would be wrongful if committed by the State. Under this  
4 analysis, the assisting State obviously does not itself  
5 engage in the underlying wrongful conduct in question. Its  
6 responsibility arises simply from the fact that it  
7 facilitates the wrongful act.

8 Now, these principles of Article 16 are rules of  
9 customary international law. The ICJ held this in the  
10 Bosnia Genocide Case, which is a new legal authority  
11 CLA-640. As an esteemed international law scholar and  
12 Professor at Oxford University stated in a speech to the  
13 Japanese Society of International Law in Kyoto on  
14 October 13, 2001, just a month after the terrorist attack  
15 on the World Trade Center, Article 16 represents a  
16 significant development in what one might call the moral  
17 sophistication of law. It is a decisive step in the  
18 direction of a more mature, more moral conception of State  
19 responsibility. And that is CLA-633. Hopefully we've  
20 handed it out and you have these in front of you.

21 PRESIDENT VEEDER: We have the English translation  
22 but not the Japanese.

23 (Laughter.)

24 MR. KEHOE: The first page was in Japanese, but I  
25 think that it was just a placeholder. Thank you.

04:21 1 If the Tribunal determines and declares in its  
2 Award that the Lago Agrio Judgment is the embodiment of a  
3 denial of justice under customary international law, then a  
4 recognition and enforcement court presented with your Award  
5 might conclude that both elements of Article 16 would be  
6 satisfied. If the State, through its courts, were to  
7 recognize and enforce the Lago Agrio Judgment so that the  
8 Lago Agrio Plaintiffs and their funders could execute upon  
9 it. Your first--your Award just walking through the  
10 tautology, would declare Ecuador's issuance of the Judgment  
11 to be a denial of justice. Let's just suppose and, thus,  
12 an internationally wrongful act by Ecuador.

13 Second, Chevron would present your Award to a  
14 recognition and enforcement court so that the foreign State  
15 would have knowledge of the circumstances of Ecuador's  
16 internationally wrongful act that you declare.

17 And, finally, international law bars all States  
18 from committing denials of justice under customary  
19 international law, so that State's issuance or recognition  
20 and--no, issuance of the fraudulent judgment would be  
21 wrongful if that State were to have done it itself.

22 So, under a mature and moral conception of its own  
23 international responsibility, a State is highly unlikely to  
24 recognize a foreign Judgment in this case--the Lago Agrio  
25 Judgment from Ecuador--that could cause a State to come

04:22 1 into breach of its own international law obligations under  
2 Article 16. This same State may not reach the same  
3 conclusion if the Tribunal declares only a breach of a  
4 provision of a bilateral investment treaty to which the  
5 State is not a party.

6 Now, we would argue that it should. We would  
7 argue, of course, to the enforcement court that they should  
8 find an Article 16 risk for enforcing your Award if you  
9 declare only a breach of the Treaty and not customary  
10 international law. But, frankly, that's a weaker argument  
11 than the customary international law argument, and Chevron  
12 should not be put in a position of having to advance a  
13 weaker argument if you find that we have proven a denial of  
14 justice. That's a principle of reparation, full  
15 reparation, under international law.

16 A second example, a declaration of a denial of  
17 justice might also provide Chevron with a stronger public  
18 policy argument to resist recognition and enforcement of  
19 the Lago Agrio Judgment than a Declaration of Treaty  
20 breach. As the Tribunal noted in the Worldwide Duty Free  
21 versus Kenya Case, the concept of public policy, ordre  
22 publique is rooted in most, if not all, legal systems.  
23 Violation of the enforcing State's own domestic public  
24 policy is grounds, of course, for refusing recognition or  
25 enforcement of foreign Judgments or Awards. That's what

04:24 1 this Tribunal held. The domestic public policy of every  
2 State that observes the rule of law prohibits conduct that  
3 constitutes a violation of customary international law.  
4 Now, again, Chevron would likely make this same  
5 public policy argument to an enforcement court if this  
6 Tribunal stops short of declaring a denial of justice, and  
7 hopefully it will carry the day if that is all you give  
8 Chevron as reparation in the form of a declaration from  
9 these proceedings. But with due respect, Members of the  
10 Tribunal, again, if Chevron has proven a denial of justice  
11 in these proceedings, you should declare it.  
12 Under settled principles of awarding full  
13 reparation for an international wrong and Ecuador's refusal  
14 to wipe out the consequences of its act entitles Chevron to  
15 declarations both of denial of justice and Treaty breach if  
16 Chevron has proven them both. And we maintain that we  
17 have.  
18 Let me stop there because I'm turning to another  
19 topic and just ask if anyone has any questions.  
20 Okay. I'm turning from Chevron's request.  
21 PRESIDENT VEEDER: Please continue.  
22 MR. KEHOE: From Chevron's request for a  
23 declaration of denial of justice and treaty breaches,  
24 requests numbers one through four on Slide 311, to the  
25 Declarations that state the consequences under

04:25 1 international law of those breaches.  
2 And we see, for example, five, six, and seven. In  
3 request number five, Chevron asks for declarations that the  
4 Judgment is a nullity as a matter of international law.  
5 Request number 6, the Judgment is unlawful and consequently  
6 devoid of any legal effect, and we should have written,  
7 "under international law." That's what we mean by that.  
8 And the Judgment is a violation of Chevron's right under  
9 the BIT, and is not entitled to enforcement within or  
10 without Ecuador.  
11 Now, these three declarations flow normally and  
12 naturally under international law from a finding by you  
13 that Ecuador has committed a denial of justice or treaty  
14 breaches or both. Under settled international law, Members  
15 of the Tribunal, a wrongful act cannot be allowed any  
16 effect in the law. It would be odd if wrongful acts in the  
17 law were to be treated as anything other than null and  
18 void, and these are not my words. Dr. Mann made these  
19 unremarkable observations more than 30 years ago, and Sir  
20 Hersch Lauterpacht made a similar observation 30 years  
21 before that when he noted that the absence of more direct  
22 means of enforcement tend to endow the principles of  
23 nullity of illegal acts with particular importance in the  
24 international sphere.  
25 So, the question the Tribunal seemed to be asking

04:27 1 last Friday is why should the Tribunal take the extra step  
2 of stating or declaring its Award that Ecuador's denial of  
3 justice and/or treaty breaches cause the Lago Agrio  
4 Judgment to be null and devoid of legal effect. And as I  
5 mentioned earlier, the answer here follows on the same  
6 theme that Chevron has been emphasizing forcefully in these  
7 proceedings after Ecuador released this fraudulent judgment  
8 into the international system. We request these additional  
9 causation declarations because they will assist Chevron in  
10 resisting recognition and enforcement of the fraudulent  
11 judgment and because these declarations center on  
12 international law issues, an area within this Tribunal's  
13 jurisdiction and area of expertise. Local judges across  
14 the globe undoubtedly will be assisted and guided by your  
15 Award in their analysis of the Judgment and its  
16 implications under international law.  
17 You have the jurisdictional authority to make  
18 these declarations stating the legal consequences including  
19 nullification. Logic dictates that international tribunals  
20 may make declarations of international law, and the weight  
21 of authority supports your right to do so. Ecuador has not  
22 pointed to a single case, a single authority, which  
23 suggests that you don't.  
24 Professor Paulsson, who wrote his authoritative  
25 work on denial of justice years before he became counsel in

04:28 1 this case, as he mentioned this morning, stated that an  
2 obligation placed on a foreigner by a civil Judgment  
3 vitiated by a denial of justice may simply be annulled by  
4 the relevant international jurisdiction, as in the Martini  
5 case.  
6 Professor Crawford, as he was then, made this  
7 important point during our Track 1 Hearing in London in  
8 November 2012, when he said international law supports this  
9 Tribunal's authority to nullify the Judgment as a matter of  
10 international law and as in breach of Ecuador's treaty  
11 obligations. You have the authority to wipe out the  
12 consequences of unlawful acts by issuing factual and legal  
13 findings that may prevent enforcement of the Judgment. As  
14 always, I have discovered, Professor Crawford was  
15 eloquently simple in reducing to just a few words a  
16 complicated issue that this Tribunal faces.  
17 International precedent for declaring Judgments to  
18 be null and void exists. Other tribunals have done it.  
19 They've issued declarations nullifying legal decisions  
20 under international law. The Tribunal in the Idler versus  
21 Venezuela case declared the proceedings that denied  
22 Mr. Idler due process a nullity. In Barcelona Traction,  
23 Judge Fitzmaurice had no trouble concluding the same in his  
24 Concurring Opinion. And in the In Re: Martini case that  
25 Professor Paulsson referenced in his book, the

04:30 1 international tribunal put a fine point on this issue when  
 2 it said that although the Martini company had not made  
 3 payment that was imposed upon it by the Venezuelan Court,  
 4 the obligation continued to exist in law. As a consequence  
 5 of the international tribunal's determination that the  
 6 payment obligations were imposed in violation of  
 7 international law, the Tribunal pronounced their annulment  
 8 emphasizing that an illegal act has been committed, and it  
 9 applied the principle that the consequences of an illegal  
 10 act must be effaced.

11 Now, more recently, in May 2010, we have an award  
 12 from an ICSID tribunal comprised of Professor Michael  
 13 Reisman, Professor Ahmed Al Kosheri and Yves Fortier as  
 14 President in the ATA Construction versus Jordan Case,  
 15 together with the clarifying decision on interpretation  
 16 dated March 7, 2011, which we have submitted as CLA-637 in  
 17 response to your question concerning your jurisdictional  
 18 authority to issue declarations nullifying the Lago Agrio  
 19 Judgment under international law. In that case brought  
 20 under the Jordan-Turkey BIT, the Tribunal found that the  
 21 retroactive application of a new Jordanian arbitration law  
 22 by the Jordanian Court of Appeals which had sought to  
 23 extinguish the arbitration clause in a contract between the  
 24 investor and the Jordanian State was unlawful. That was  
 25 their conclusion. The Tribunal went on to apply the

04:31 1 Chorzow Factory standard, just as we ask you to do here,  
 2 and that Tribunal wiped out the consequences of the  
 3 unlawful act by negating it as a matter of international  
 4 law.

5 The Tribunal went further and ordered the  
 6 Jordanian Court proceedings over the dispute to be  
 7 immediately and unconditionally terminated with no  
 8 possibility to engage further in judicial proceedings in  
 9 Jordan or anywhere else on the substance of the dispute.  
 10 Obviously, the facts of the cases differ, but the point  
 11 that I'm making here, Members of the Tribunal, is that the  
 12 strong weight of authority supports your authority to  
 13 declare the nullity, the negation of the Lago Agrio  
 14 Judgment.

15 And on the point about facts being different in  
 16 each case, while no legal act can be allowed any effect in  
 17 the law, the case for clear declarations of negation and  
 18 nullification is particularly compelling for a finding of  
 19 fraud in a court judgment because this type of fraud is the  
 20 antithesis of good faith, indeed of law itself.

21 Wiping out the consequences of a fraudulent  
 22 judgment is a universal principle, both internationally and  
 23 in countries that adhere to the rule of law. As we see  
 24 from the quoted language by the United States Supreme Court  
 25 in the Chambers versus NASCO Inc. case, the historic power

04:33 1 of equity to set aside fraudulently begotten judgments is  
 2 necessary to the integrity of the courts, for tampering  
 3 with the administration of justice in this matter involves  
 4 far more than an injury to a single litigant. It is a  
 5 wrong against the institutions set up to protect and  
 6 safeguard the public.

7 Once again, the remarkable and unprecedented facts  
 8 of this case make the case for declarations of  
 9 nullification even more compelling because here the  
 10 institution itself, the Ecuadorian Court, participated in  
 11 the fraud. This wasn't a fraud on the Court that we're  
 12 used to seeing. This is a massive fraud with the Court  
 13 with its blessing, its active support, and its intimate  
 14 involvement.

15 The second form of relief that Chevron seeks is  
 16 restitution, which would come in the form of an affirmative  
 17 injunction or directive to Ecuador to take all measures  
 18 necessary to wipe out the consequences of its wrongful  
 19 conduct. I've listed them on Slide 335. They also appear  
 20 in our Track 2 Reply Memorial at Page 223. I won't go  
 21 through them. Various tribunals have taken this approach  
 22 as an alternative to declaring the underlying illegal act a  
 23 nullity.

24 And I reviewed these cases with the Tribunal in  
 25 Track 1B, so I won't belabor them here again, but I would

04:34 1 like to take a moment on the recent jurisdictional  
 2 immunities case, Germany versus Italy, because the ICJ  
 3 there not only declared the underlying acts of the Italian  
 4 courts to have violated international law when they  
 5 disregarded Germany's sovereign immunity, but they went on  
 6 to state that, for purposes of awarding remedies, the Court  
 7 was required to declare the consequences of its ruling.  
 8 That's the word they used. Germany asked the Court to  
 9 order Italy to take all steps to ensure that all of the  
 10 decisions of the Italian courts infringing on German  
 11 sovereignty would become unenforceable, and the Court  
 12 states that it understood that to mean that the relevant  
 13 decisions should cease to have effect. And the Court  
 14 agreed, saying it must uphold Germany's request in that  
 15 regard. The domestic court judgments that were still in  
 16 force must cease to have effect, and the effect of those  
 17 decisions must be reversed in a way to re-establish the  
 18 situation that existed before the wrongful acts were  
 19 committed. Quintessential Chorzow Factory which we're  
 20 arguing. In this jurisdictional immunities case, the good  
 21 faith compliance by Italy to the award was assumed, and  
 22 that assumption was well-founded because Italy's courts  
 23 thereafter did, indeed, take measures to reverse the  
 24 consequences of what its courts had wrongfully done. But  
 25 in the case before this Tribunal, good-faith compliance by

04:36 1 Ecuador cannot be assumed. We start with Ecuador's past  
 2 conduct in these very proceedings.  
 3 In its second Interim Measures Award the Tribunal  
 4 ordered Ecuador to take all measures necessary to prevent  
 5 recognition and enforcement of the Judgment within and  
 6 without Ecuador, including a specific directive that  
 7 Ecuador refrain from issuing the certificate of  
 8 enforceability.  
 9 A few months later, in May and June of 2012, the  
 10 Lago Agrio Plaintiffs instituted the enforcement  
 11 proceedings, as you will recall, and you'll hear from  
 12 Mr. Pate in Canada and Brazil.  
 13 In August 2012, rejecting this Tribunal's general  
 14 and specific directives, Ecuador went ahead and issued the  
 15 certificate making the Judgment final. Emboldened, the  
 16 Plaintiffs followed suit with a new filing in Argentina in  
 17 October 2012. The Tribunal, this Tribunal, convened an  
 18 emergency Hearing in London in November 2012; and, at that  
 19 Hearing, you invited Ecuador to intervene in the foreign  
 20 proceedings to prevent execution on the Lago Agrio Judgment  
 21 while this arbitration was pending. Ecuador asked to  
 22 respond to your invitation in writing, which it did two  
 23 months later after giving the issue some thought. And what  
 24 they said is this: "Under the domestic legal regime, there  
 25 is no conceivable basis for the Republic to interfere in

04:37 1 private litigation either within Ecuador or in foreign  
 2 jurisdictions."  
 3 Now, Ecuador knew full well that it was obligated  
 4 under the Treaty, the UNCITRAL Rules, this Tribunal's  
 5 directives and orders themselves to honor the Tribunal's  
 6 order. Ecuador was simply refusing to do so, relying  
 7 instead on a faulty and baseless argument that somehow its  
 8 domestic laws could prevent it from fulfilling its  
 9 international obligations.  
 10 Two weeks later, the Tribunal issued its  
 11 Fourth Interim Measures Award, February 9, stating neither  
 12 disagreement with the Tribunal's Orders or Awards nor  
 13 constraints under Ecuadorian law excuses Ecuador's failure  
 14 through any branches of its Government, its organs, to  
 15 fulfill its obligations under international law imposed by  
 16 the Treaty, the UNCITRAL Rules, or the Tribunal's Orders or  
 17 Awards.  
 18 The Tribunal went on to declare and confirm that  
 19 Ecuador remains legally obligated under international law  
 20 to ensure that its commitments are not rendered nugatory by  
 21 finalization, enforcement or execution of the Judgment.  
 22 The Tribunal's admonition in its Fourth Interim Measures  
 23 Award obviously fell on deaf ears. Ecuador holds its  
 24 defiant ground to this very day. We're back to  
 25 Paragraph 417 of its Rejoinder.

04:39 1 Again, Ecuador has no standing at this juncture to  
 2 challenge Chevron's requests for the Declarations that it  
 3 requires from this Tribunal under international law for  
 4 full reparation because Ecuador's recalcitrance has made  
 5 these declarations necessary. Ecuador can't take advantage  
 6 of its own wrongdoing. No one can be allowed to take  
 7 advantage of its own wrongdoing in the law.  
 8 I conclude my remarks this afternoon, Gentlemen,  
 9 with an observation of the importance of your decision on  
 10 remedies in this case. The form of reparation that you  
 11 award is important to Chevron for obvious reasons. The  
 12 harm to Chevron from the Lago Agrio Litigation and Judgment  
 13 cannot be overstated as this Tribunal noted in one of its  
 14 interim measures awards, but your decision may also be  
 15 important to the evolution of international law itself due  
 16 to the notoriety of this case and the esteemed tribunal  
 17 that is presiding over it.  
 18 Professor Paulsson put it well this morning when  
 19 he said that you cannot answer President Correa's rhetoric  
 20 and his attack on the international legal system in kind.  
 21 You can only answer in the voice of international law.  
 22 And Mr. Bishop noted this afternoon that the rule  
 23 of law is why we are all here. The rule of law is what  
 24 this case is about.  
 25 Sir Hersch Lauterpacht noted in his seminal work,

04:40 1 recognition in international law that the results of an  
 2 illegal act are a legal nullity, they are legally  
 3 non-existent. And in society in which enforcement of law  
 4 is precarious, there is a natural tendency to regard  
 5 successful breaches of law as a source of legal right.  
 6 Sir Lauterpacht's remarks about a successful breach,  
 7 although in a somewhat different context, but the same  
 8 general point, should carry great weight with this Tribunal  
 9 when you consider the remedies to award Chevron in this  
 10 case. If the Tribunal determines that Ecuador has  
 11 committed a denial of justice under international law, you  
 12 should declare it. If you find that Ecuador has breached  
 13 the Treaty, including the Settlement and Release Agreement,  
 14 the effective means provision and the other provisions of  
 15 the Treaty, you should declare them all.  
 16 And finally, if you conclude that you have the  
 17 jurisdictional authority to declare the consequences and  
 18 the results of these determinations under international  
 19 law, as I have demonstrated you do possess, then you should  
 20 issue those declarations as well. If this Tribunal does  
 21 not issue declarations that you determine international law  
 22 allows you to render--and we would argue requires you to  
 23 render under the principles of full reparation--then  
 24 Ecuador will have successfully breached the law, and that  
 25 successful breach may transcend Chevron and have ripple

04:42 1 effects through the international legal system in itself.  
 2 And with that, Mr. President, if the Tribunal does  
 3 not have any questions for me, I'm going to pass the floor  
 4 to Professor Paulsson for the monetary set off theory.  
 5 PRESIDENT VEEDER: Thank you very much.  
 6 Professor Paulsson.  
 7 MR. PAULSSON: Thank you, Mr. President. Your  
 8 Tribunal is going to develop an admirable reputation for  
 9 sitzfleisch. I hope I'm not pushing your patience too far.  
 10 What consequence did the PCIJ have in mind? Wipe  
 11 out all the consequences of the illegal act. The obvious  
 12 consequence here is a judgment which shouldn't exist. It  
 13 must be wiped out entirely. The malfeasance here was  
 14 pervasive, and there is no possibility of a partial  
 15 nullity. What head of damage might conceivably have been  
 16 the product of a fair and impartial weighing of all  
 17 pertinent data unaffected by the malfeasance and  
 18 manufactured evidence? What portion of the Judgment didn't  
 19 the Plaintiffs have a hand in? Maybe the date line.  
 20 To address the Tribunal's question, there is no  
 21 principled basis on which to say that there was no denial  
 22 of justice with respect to some portion of the Judgment, be  
 23 it \$500 or 500 million or any other number pulled out of a  
 24 hat. Nullification does not require consideration of  
 25 Chorzów's but-for test. Under no circumstance would the

04:44 1 tainted Judgment ever be deemed valid, and in any event--in  
 2 any event--you are a BIT Tribunal, and you have no  
 3 jurisdiction over the claim of the 47 Plaintiffs.  
 4 As for the Claimants' request for an injunction to  
 5 prevent enforcement of the fraudulent judgment, it's  
 6 clearly nonsensical to think of a set off against an  
 7 injunction. Either it's merited or not.  
 8 So, Ecuador's offset theory can relate only to the  
 9 Claimants' tertiary request for monetary damages. But  
 10 compensable injury arising from enforcement of the illicit  
 11 Judgment would never arise--would never arise--if Ecuador  
 12 had complied with the Claimants' prior request for  
 13 declaratory and injunctive relief. Ecuador's offset  
 14 argument is thus necessarily premised on its intent to  
 15 ignore any further instruction from this Tribunal not to  
 16 allow enforcement, just as it has ignored your interim  
 17 measures awards. This is unbounded cynicism. An effort by  
 18 Ecuador to reduce damages that it is now in a position to  
 19 prevent and that it has no intention of paying in the  
 20 future. This should not delay the Tribunal's issuance of a  
 21 Track 2 Award. If the argument is pursued, it can be  
 22 addressed in Track 3.  
 23 So, for now, you really do not need to get to the  
 24 substance of this theory for which Ecuador can cite no  
 25 precedent, but so you understand our position: Three

04:45 1 conditions would have to be satisfied for there to be any  
 2 traction for this theory. The first condition is this:  
 3 The nature of the delict must allow the Tribunal  
 4 to engage in the but-for inquiry. That was not the  
 5 situation in Amco II, the case Ecuador claims that I have  
 6 disagreed with in my book when all I said is that I  
 7 regretted its lack of a fuller discussion of Chorzów. I  
 8 certainly have no quarrel with the outcome. The Amco II  
 9 Tribunal, presided by Rosalyn Higgins, the Tribunal was  
 10 told by Indonesia that Amco, a victim, held to have been a  
 11 victim of a denial of justice in a proceeding to revoke its  
 12 foreign investment license, would have lost its license, so  
 13 said Indonesia, even in a fair process.  
 14 You see, the license by its own terms was  
 15 conditional on Amco's having brought in a certain amount of  
 16 foreign capital during the first term of the license. So,  
 17 Indonesia submitted, to put the investor in the same  
 18 position it would have been in but for the breach is to  
 19 consider that although our revocation was improper, we can  
 20 still show, here and now, before you, the international  
 21 tribunal, that the license is after all properly revocable  
 22 for failure of that objective condition. No harm, no foul,  
 23 as they say in this country.  
 24 But the Tribunal was having none of this. It made  
 25 clear that its sole function was to determine if

04:47 1 Indonesia's acts were detrimental to the victim. In my  
 2 book, I regretted that the Award did not provide fuller  
 3 explanation why it rejected Indonesia's argument. In fact,  
 4 Judge Higgins, somewhat to my relief, wrote me a gracious  
 5 note from The Hague about my book and my comments about  
 6 which I will say nothing except that it caused me to read  
 7 the Award and the underlying pleadings again as a matter of  
 8 sheer academic interest. That was a decade ago, and memory  
 9 fades.  
 10 Now, the point comes up in this case. And so we  
 11 look at Amco II again. We find two things. First of all,  
 12 the circumstances are sharply distinguishable. In Amco II,  
 13 just like the Commercial Cases presided by Professor  
 14 Böckstiegel, the State responsible for the denial of  
 15 justice was the very same party that was the victim's  
 16 opponent in the underlying dispute. Otherwise, the whole  
 17 setoff idea doesn't even get into the starting blocks, let  
 18 alone out of them.  
 19 Secondly, even in the Indonesian situation where,  
 20 of course, the very State which was responsible for the  
 21 denial of justice was the one which was responsible for  
 22 assessing compliance with the terms of the license, the  
 23 Tribunal gave useful indications of why it wasn't going to  
 24 get into a retrial of the merits of the revocation. The  
 25 arbitrators found, and now I quote, that the "whole

04:48 1 approach to the issue of revocation of the license was  
 2 tainted by bad faith" on the part of the Government  
 3 officials. The arbitrators therefore refused to ask  
 4 whether, if Indonesia had acted fairly, harm might have  
 5 been attributed to Amco's own fault, failure of the  
 6 objective condition of investing.  
 7 Judge Higgins wrote, Professor as she then was,  
 8 "this is both speculative and not the issue before us."  
 9 Amco II concerned monetary compensation and  
 10 illustrates that where State conduct entails a measure of  
 11 bad faith, the Chorzów counterfactual analysis is simply  
 12 inappropriate. That conclusion follows a fortiori here,  
 13 whether it is not simply bad faith but substantive fraud.  
 14 This situation doesn't come up often, but as it  
 15 happens, the U.S. Supreme Court once faced this very same  
 16 problem in a case called Hazel Atlas, and it did exactly  
 17 what Judge Higgins and her colleagues did. You may find  
 18 its short Judgment very instructive, as a matter of  
 19 interest, at CLA-431. It has nothing to do with the  
 20 specifics of U.S. law and everything to do with the eternal  
 21 verities of the need to protect the fundamental interests  
 22 of justice.  
 23 The second point is that, even where it might be  
 24 appropriate and conceptually possible to excise the denial  
 25 of justice, which as I noted is not the case here, the

04:51 1 arbitrators were in no position to rule on the forfeiture  
 2 of the license without trying the case anew and  
 3 substituting themselves for the very national legal system  
 4 which had committed the positive denial of justice.  
 5 It is evident that these two first points  
 6 foreclose Ecuador's attempt at an offset in this case.  
 7 Fraud vitiates all, and the malfeasance here goes to the  
 8 core of the Plaintiffs' case. The Cabrera Report, for  
 9 example, was, according to the Expert Douglas Beltman,  
 10 "probably the single most important technical document for  
 11 the case." This was at the inception of the plot to create  
 12 facts, as Donziger put it. Beltman was one of the Experts  
 13 who later recanted. Probably the single most important  
 14 technical document for the case.  
 15 If the Cabrera Report wasn't critical to their  
 16 case, Plaintiffs' representatives would not have spent the  
 17 money and borne the risk of this considerable and risky  
 18 machination. Recall the phrase "all of us might go to  
 19 jail". It is surely folly in these circumstances to speak  
 20 of salvaging a judgment unscathed by fraud. It cannot be  
 21 cleansed.  
 22 Ecuador understands that the Lago Agrio Record is  
 23 past saving. Why else has it resorted to gathering new  
 24 samples secretly outside of any proper process? Your  
 25 Tribunal has no basis at all on which it could speculate,

04:50 1 existing record before the international tribunal must be  
 2 clean and contain everything needed to assess the proper  
 3 outcome. That was the case for Professor Böckstiegel and  
 4 his co-Arbitrators in the Commercial Cases arbitration. As  
 5 you're aware, the Ecuadorian courts there had failed to  
 6 decide cases in which the Claimants were the Plaintiffs in  
 7 a remotely timely fashion. There was nothing to be  
 8 declared null. It therefore fell to the Tribunal, which  
 9 was applying the treaty standard of effective means, to  
 10 determine the value of the Claimants' unadjudicated claims  
 11 in the first instance.  
 12 As I observed on Page 227 of my book, the damages  
 13 to be awarded a Claimant who was prevented by a denial of  
 14 justice from having his grievance heard properly, should,  
 15 of course, not uncritically be deemed equal to be whatever  
 16 he had seen fit to ask initially. The task of Professor  
 17 Böckstiegel and his colleagues was relatively  
 18 straightforward, given the existence of a complete and  
 19 uncorrupted record in each of the underlying cases, which  
 20 allowed them to make their own assessment of the value of  
 21 the rights of which the Claimant had been deprived. The  
 22 only way to do it.  
 23 In Amco II, in contrast, where, as Judge Higgins  
 24 wrote, the circumstances surrounding the Administrative  
 25 Decision tainted the proceedings irrevocably. The

04:53 1 even if you were minded to do so, on how an Ecuadorian  
 2 Court might have decided if it were not politicized, if it  
 3 were not corrupt, and if the evidence were untainted.  
 4 Point 3, finally, is one to which I have already  
 5 alluded. It follows the observation that in Amco II and in  
 6 the Commercial Cases arbitration, the Parties were  
 7 identical in both the underlying domestic proceeding and  
 8 the international arbitration. Here, to reduce Ecuador's  
 9 liability, you would have to speculate about the intention  
 10 of third parties with respect to whom you have no  
 11 jurisdiction, namely the Lago Agrio Plaintiffs, faced with  
 12 the collapse of their fraudulent evidence. Would they  
 13 really try again and go to the effort of mounting a serious  
 14 claim from scratch with honest Experts who are not  
 15 instructed to ignore critical factors such as the  
 16 proportion of harm caused by Petroecuador's ongoing  
 17 operations alone during a quarter of a century?  
 18 Fatally compounding these difficulties is the fact  
 19 that Ecuador is precluded by the settlement and releases  
 20 from litigating against the Claimants over environmental  
 21 conditions in the Oriente. If, as Mr. Coriell has shown,  
 22 the Lago Agrio action is diffuse, the Releases are an  
 23 obvious bar to any offset. But even assuming counter to  
 24 fact that there are individual claims not covered by the  
 25 1995 Agreement, Ecuador has already conceded in its Track 2

04:54 1 Counter-Memorial Paragraph 516 that it cannot act as the  
2 Plaintiffs' surrogate.  
3 In sum, Amco II teaches that there is no second  
4 chance in these circumstances, given Ecuador's complicity  
5 in the fraud permeating this case, it is in no position to  
6 request a do-over, which would have the unpalatable effect  
7 of rendering denials of justice virtually costless. Have a  
8 go. For their part, the Lago Agrio Plaintiffs have  
9 knowingly ratified the illicit actions of their counsel, as  
10 the RICO Court found, Exhibit C-2135 at Pages 338-339, and  
11 they are actively seeking to profit from the enforcement of  
12 the fraudulent judgment abroad. Both had the opportunity  
13 to try this case in accordance with the rule of law. Their  
14 choices cannot be undone.  
15 And so, Members of the Tribunal, I come to my  
16 final topic before Mr. Pate makes his concluding  
17 observations.  
18 I wish to reflect on Ecuador's attempt to put  
19 forward before you two kinds of equitable considerations to  
20 excuse its conduct. One, you heard it in the openings.  
21 One had to do with what scoundrels oil companies are, ready  
22 to despoil a pristine native human habitat and then to deny  
23 that crude oil could possibly be toxic. The other had to  
24 do with the "real victims," the indigenous populations  
25 mentioned several times in Ecuador's oral opening arguments

04:56 1 with no little measure of sententiousness.  
2 If Ecuador seriously wants to talk the talk of  
3 equity in this denial-of-justice case, then by all means,  
4 for a few moments let's talk of equity, but let us please  
5 make it hard talk. We hear of a native population whose  
6 life of traditional subsistence in harmonious symbiosis  
7 with nature is sacrificed to the goal of economic  
8 development, without so much as a by your leave,  
9 irreversibly transforming their habitat and their way of  
10 life, and giving back almost nothing in return. This  
11 dislocation is undoubtedly real, and so is the deprivation.  
12 It's a sad story. So who made the decisions that led to  
13 these results? Who caused this outcome? Who is  
14 accountable?  
15 Ecuador, half a century ago, was an impoverished  
16 country with a growing population. It found great natural  
17 resources in the Oriente. The Government recognized what  
18 it had and made deliberate choices. You can take with a  
19 very large grain of salt any talk about oil companies  
20 taking advantage of ignorant officials. The Ecuadorian  
21 Governments knew how to negotiate, and they have known how  
22 to negotiate since the beginning. I will get back to that.  
23 Consider the infinite range of alternative  
24 policies that Ecuador could have pursued. I'll just give  
25 you two extremes and something in the middle. We don't

04:58 1 want any oil, we want to leave our indigenous population in  
2 their sylvan idyll.  
3 B, we need money for development, and we need it  
4 fast. We want maximal production at the lowest cost,  
5 whatever the consequences.  
6 C, we do need money, but not at the cost of  
7 disturbing the indigenous population. In their interest,  
8 we require that operators spend whatever is necessary to  
9 restore their sites to lush glades and crystalline streams,  
10 even if that reduces our dividends, royalties and taxes.  
11 It was the Government's choice; its actions, its  
12 responsibility.  
13 Yet, Mr. Correa would now deny this. He portrays  
14 Ecuador as a helpless victim of oil companies who have  
15 stolen vast riches from his country. Texaco has not been  
16 his only scapegoat, as you will have seen, if you read the  
17 findings of fact of ICSID tribunals which have dealt with  
18 the cases of Perenco, Occidental, Burlington. Mr. Correa's  
19 message is quoted in Paragraph 38 of the Decision on  
20 Liability in the Burlington Case, where he condemned, his  
21 words, "the opprobrious past" and decried oil companies  
22 that give us a little piece and the rest they take away.  
23 Now, Mr. Correa may describe himself as a  
24 revolutionary, as he explicitly did in that very speech,  
25 but he got a Ph.D. in economics from the University of

04:59 1 Illinois in 2001. He knew very well that what he was  
2 saying was untrue. But, of course, he was speaking to the  
3 masses, and the masses, not only in Ecuador, are often  
4 ill-informed and can easily rush to poor judgment if they  
5 are told by the highest official of the land that  
6 foreigners have been running away with national treasures.  
7 But we can all do the math, so let us check this assertion  
8 of foreigners "giving us a little piece."  
9 In the Oxy Case, for example, it was estimated  
10 that after taxes and costs Occidental received 30 percent  
11 of total net profits, that was in Paragraph 117 of that  
12 Decision and apparently not contradicted by Ecuador,  
13 RLA-587. From its share, Ecuador, of course, did not have  
14 any taxes to deduct. Nor did it have any costs.  
15 So, what about TexPet? Luis Alberto Aráuz, a very  
16 senior Ecuadorian professor of Mining and Petroleum Law who  
17 has represented Ecuador in negotiations with oil companies,  
18 wrote a book famous in Ecuador which bears the title  
19 "Ecuadorian Petroleum Law," derecho petrolero ecuatoriano,  
20 616 pages long. Professor Aráuz went to New York in the  
21 1970s to participate as a member of the Ecuadorian  
22 delegation in the drafting of the U.N. Resolution of the  
23 new world economic order. I think I need say nothing more  
24 about his credentials as someone who does not lavish praise  
25 on multi-national private corporations. In his book,



05:01 1 Professor Aráuz calculated that what the Ecuadorian  
 2 Government received from the activities of TexPet in the  
 3 20-year period from 1972 to 1992 in the Oriente. His  
 4 bottom number, \$23.5 billion.  
 5 In contrast, the corporate records available to  
 6 Chevron show that the cumulative income TexPet received  
 7 over those years was less than half a billion, less than  
 8 \$500 million, in fact, \$480 million as set forth in the  
 9 Report of Brent Kaczmarek, Page 34.  
 10 Mr. Correa's depiction of the opprobrious past was  
 11 demagoguery pure and simple. The fact is that during the  
 12 five-year period in the 1970s, the Ecuadorian Government  
 13 pushed Texaco's tax rate from 44 percent to 87 percent. In  
 14 an interview, Professor Aráuz is quoted as saying, and I  
 15 quote him: "We dictated terms to Texaco, and the company  
 16 accepted." R-1202.  
 17 We couldn't be further away from the cartoonish  
 18 depiction of foreign investors as thieves who steal the  
 19 country's riches and leave just a little piece, as Correa  
 20 says.  
 21 In addition to negotiating lucrative concessions  
 22 for itself, Ecuador, beginning in 1963, also pursued a  
 23 policy of colonizing the region, which was referred to as  
 24 "empty territory." Eventually, tens of thousands of poor  
 25 people from the highlands were offered free property if

05:02 1 they would plant crops and raise cattle. No one seems to  
 2 dispute the simple fact that Government-sponsored  
 3 agricultural settlement resulted in vastly more  
 4 deforestation than did oil development.  
 5 The indigenous population of Ecuador, less than  
 6 10 percent of the whole, looks different, speaks a  
 7 different idiom, struggles to maintain vestiges of their  
 8 original cultural. In the Oriente, their land has been  
 9 allocated to waves of settlers from the western part of the  
 10 country. And their subsoil, which they were told was not  
 11 theirs, but rather the property of the State, yielded and  
 12 continues to yield an abundance of hydrocarbons which fill  
 13 the coffers of the Government in Quito, across the Andes.  
 14 In a regulated private oil industry, the Government  
 15 assesses compliance with the standards set for those who  
 16 produce and sell. But when the Government takes over in  
 17 the form of entities with names like Petroecuador, it  
 18 becomes its own judge, and the appetite for cash and for  
 19 its apportionment in accordance with political decisions in  
 20 which the indigenous populations often have very little to  
 21 say, seem to make them far worse polluters by far than any  
 22 foreign enterprise subject to proper regulation.  
 23 Today, in our new world, seven of the world's ten  
 24 largest oil companies are self-regulated and self-audited.  
 25 No private shareholders. They're not exposed to any

05:04 1 serious scrutiny.  
 2 In 1990, Texaco did not leave Ecuador because it  
 3 wanted to, but because Petroecuador wanted to take over so  
 4 the State would have everything for itself. At that time,  
 5 there were significant environmental impacts from the  
 6 Consortium. That's the inevitable reality at the end of  
 7 any major oil operations, as your Tribunal recognized in  
 8 your jurisdictional award.  
 9 After an open and transparent processes, as you  
 10 were reminded again today by Ms. Renfro, the Ecuadorian  
 11 regulators established specified remedial standards for the  
 12 portion of sites assigned to TexPet. This resulted in the  
 13 Settlement and Release Agreement. You will remember that  
 14 the Director of Ecuador's Environmental Ministry told  
 15 Ecuador's Congress three years after the Lago Agrio  
 16 Litigation was filed, that, and I quote, "Texaco completed  
 17 the remediation of the pits that were their responsibility"  
 18 while Petroecuador had done, I quote, "absolutely nothing."  
 19 So, what did the Government do for the indigenous  
 20 population? Well, in 1996, while TexPet was in the process  
 21 of performing the agreed upon remediation, the Government  
 22 secretly concluded the "Waiver of Rights" with the  
 23 Plaintiffs' counsel, who agreed to surrender forever any  
 24 claims against Ecuador or Petroecuador. The Plaintiff's  
 25 lead lawyer at the time, Cristobal Bonifaz, later testified

05:05 1 under oath, that's C-1220, that he signed the Agreement  
 2 because they knew that a suit against the Government would  
 3 be futile and the Government would never pay environmental  
 4 claims but Texaco would. He explained that the Plaintiffs'  
 5 counsel viewed the Agreement--the Plaintiff's counsel  
 6 viewed the Agreement with the Government as a quid pro quo.  
 7 I think we all know what the quid was: Use your State  
 8 powers to put the squeeze on Chevron.  
 9 The waiver of rights was not only a bad faith  
 10 breach of Ecuador's obligations under the Settlement and  
 11 Release Agreement, it was an abdication of Ecuador's duties  
 12 to the indigenous population of the Oriente. It cannot be  
 13 disputed that every bit of contamination that has occurred  
 14 over the past 25 years in the zone you have been hearing  
 15 about is that of Petroecuador and Petroecuador alone. The  
 16 hard fact is that Texaco remediated its share as promised  
 17 on time in a proper manner and certified as such by the  
 18 appropriate public official. Ecuador did not.  
 19 Petroecuador's belated remediation has been certified, and  
 20 the cost of that is 1 percent of that assessed against the  
 21 long-departed Texaco and now against Chevron by Zambrano.  
 22 So, Ecuador's position before you is that the  
 23 foreigners, who had earned less than 10 percent of the  
 24 revenues during the long ago time when the Consortium was  
 25 operating and who have, of course, earned nothing at all

<p>Sheet 65</p> <p style="text-align: right;">2751</p> <p>05:07 1 since then should pay a multiple of more than 90 times the 2 remediation expenses of Petroecuador which had 90 percent 3 of the revenues while TexPet was around, and 100 percent of 4 the revenues ever since, and during which time Petroecuador 5 has been exclusively responsible for all pollution. 6 Petroecuador alone was responsible for spilling no 7 less than 125,000 barrels of oil through 2009, according to 8 the Ecuadorian Ministry of the Environment. Since 2009, 9 the flow of information about Petroecuador's spills has 10 dried up. What a surprise. 11 The native population of the Oriente may well have 12 legitimate grievances against their Government in Quito, 13 and attorneys purporting to act on their behalf, but these 14 are complex issues that are not matters for Chevron or the 15 Tribunal. What is at issue here is the Lago Agrio 16 Judgment, in which there are 47 named Plaintiffs. 17 Mr. Bloom in the opening lamented that they have 18 been seeking to have their day in Court for 22 years. But 19 what are their claims and what are their rights? 20 If, on the one hand, they are acting as 21 representatives of the environment generally, their claim 22 is properly directed to Petroecuador. As you held in your 23 Track 1A Award, all diffuse environmental claims against 24 TexPet and Chevron arising from the Consortium have been 25 released. This is true irrespective of what specific code</p>	<p style="text-align: right;">2753</p> <p>05:10 1 currently seeking to enforce the fraudulent judgment, as 2 you know, in Argentina, Brazil and Canada. 3 Gentlemen, we can all unhesitatingly accept that 4 Chevron is not the only victim here, a supposedly 5 revolutionary Government has been in power in Ecuador for 6 the better part of a decade, yet instead of acting to 7 improve the lives and conditions of the entire indigenous 8 community, it has aided the fraud done in the name of only 9 47. I'm afraid it's business as usual. But let us not 10 have any more logic that insults the intelligence, 11 syllogisms like this: One, here is an ugly photograph of 12 unknown origin and unknown date said to be from somewhere 13 in the Oriente; two, TexPet was in the Oriente a quarter of 14 a century ago; three, Chevron is in the oil business and is 15 a big company; so, four, Chevron must pay. Let us not hear 16 any more fatuous talk of equity from this Respondent. 17 Gentlemen, I thank you for your patience, and I 18 now invite you to listen to Mr. Pate for his concluding 19 remarks. 20 PRESIDENT VEEDER: One moment. 21 We are sorry to hold you up, but we will have a 22 ten-minute break and then we will hear Mr. Pate. 23 (Brief recess.) 24 PRESIDENT VEEDER: Mr. Pate. 25 MR. PATE: Thank you, Mr. President, Members of</p>
<p style="text-align: right;">2752</p> <p>05:09 1 provision they invoke in support of their diffuse claim, as 2 Mr. Coriell showed again today. 3 As a side note, if these 47 are barred from suing 4 Petroecuador in light of the waiver of rights given by 5 their counsel, there are any number of residents in the 6 Oriente who remain free to take up the mantle. 7 If, on the other hand, the 47 are suing for 8 individual harms, they are necessarily acting only on 9 behalf of themselves. Note well that Ecuador in its 10 opening conceded that the 47 are not suing for individual 11 harms, which confirms the consistent findings in all three 12 Lago Agrio Decisions and the repeated admissions of 13 Plaintiffs' counsel. 14 There, of course, might be others in the Oriente 15 besides the 47 who have individual claims, but, if so, one 16 would have expected them to have already brought them, 17 given that a quarter of a century has passed since TexPet 18 left Ecuador. 19 At any rate, any individual rights held by such 20 non-parties would be unaffected by nullification of this 21 Judgment. The key point is that the 47 Plaintiffs can have 22 no legitimate claim to enforce a judgment issued in 23 violation of customary international law. Yet, as recently 24 as January 2013, they have ratified the authority of 25 Fajardo and Donziger to act on their behalf and they are</p>	<p style="text-align: right;">2754</p> <p>05:22 1 the Tribunal. 2 The Tribunal has now seen and heard the evidence. 3 You've heard argument about the legal significance of that 4 evidence. I'd like to now give you Chevron's perspective 5 as a company. I'd like to respond as best I can to the 6 Tribunal's questions about our RICO statute in the United 7 States, give you an update about the enforcement and some 8 of the other litigations that are part of this situation, 9 and then finally address the unique and important role of 10 this Tribunal. 11 Let me begin with the root of this matter: The 12 environmental facts on the ground in Ecuador. As it turned 13 out, the Tribunal's decision to spend time on the 14 environmental merits of this matter has proved both wise 15 and important. The Tribunal now understands the nature of 16 the RAP. It understands how responsibility was divided as 17 between TexPet and Petroecuador, how the TexPet remediation 18 work was done, the confirmation of the effectiveness of 19 that work by officials of Ecuador at that time and then 20 repeatedly thereafter. And I think understands the vast 21 gulf between the fraudulent and discriminatory Lago Agrio 22 Judgment and actual regulatory standards and remediation 23 costs. All of this is part of why Chevron feels so 24 strongly about the injustice of what Ecuador and its 25 private co-conspirators are doing.</p>

05:24 1 Now, the RAP was the substantive basis of the  
 2 Contract, that issue in Track 1 of this case. As you have  
 3 already ruled in Track 1A, that Contract released all  
 4 collective or diffuse environmental claims. The Tribunal  
 5 rendered an interim decision on Track 1B, that it could not  
 6 decide whether a breach had occurred until hearing the  
 7 evidence with regard to the actual conduct of the Lago  
 8 Agrio Litigation. And it's now just done that during this  
 9 Track 2, and so the Tribunal knows that every statement of  
 10 the Plaintiffs themselves and every statement of every  
 11 level of the Ecuadorian Court system confirms that  
 12 collective or diffuse claims were the sole basis of the  
 13 sweeping liability that was imposed on Chevron. But,  
 14 having heard the environmental evidence, the Tribunal can  
 15 also now apply its common sense to the Contract issue.  
 16 What is it that Ecuador asks the Tribunal to  
 17 believe Ecuador and TexPet agreed to? TexPet, you are  
 18 asked to believe, carefully negotiated the apportionment of  
 19 remedial assignments between TexPet and Ecuador in 52  
 20 interim Actas. It then performed the tasks that it was  
 21 assigned through international Contractors. TexPet then  
 22 participated in the extensive verification process required  
 23 to complete and obtain the elaborate signature blocks on 19  
 24 Approval Actas, and then on a Final Acta.  
 25 But then, according to Ecuador, TexPet was

05:27 1 ghostwriting of the Judgment using their own unfiled  
 2 materials; fourth, the absurd and discriminatory fraudulent  
 3 judgment itself imposing enormous liability by ignoring the  
 4 environmental standards applicable to Petroecuador and  
 5 other companies, and then manufacturing environmental costs  
 6 for remediation exponentially greater than those used  
 7 anywhere else in the world.  
 8 Now, the fifth denial of justice is Ecuador's  
 9 response to the exposure of the first four. This goes  
 10 directly to the question of when international liability  
 11 will attach for misconduct that began in a country's  
 12 courts. In some cases that question is interesting. In  
 13 some cases it is even a difficult question. Not so here  
 14 where it has been resoundingly answered in three places:  
 15 First, within Ecuador's own system; second, before this  
 16 Tribunal; and, third, outside the Tribunal.  
 17 As to Ecuador's own system, ask yourself this:  
 18 Have you seen any evidence that any organ of Ecuador's  
 19 Government has shown any good faith interest in  
 20 investigating, much less remedying, the allegations of  
 21 misconduct here? No. Instead, we have attacks on Chevron  
 22 for exposing the corruption, and we have ever-shifting  
 23 fabrications about how the fraud might be corrected if  
 24 Chevron could just find the right procedural path. Of  
 25 course, no sooner does Ecuador recommend a path then it

05:25 1 supposed to wake up the next morning and begin remediating  
 2 everything else, including every site that was assigned to  
 3 Ecuador, even those that were designated for no action  
 4 because Petroecuador was at that time operating them.  
 5 Really? This cannot be right.  
 6 Now, you've also seen, heard, and read about the  
 7 fraud evidence, with the exception of Judge Zambrano, whom  
 8 Ecuador elected not to bring to the Tribunal after his  
 9 appearance in New York made the truth so vivid to everyone  
 10 who saw him there. I will not revisit the evidence, not  
 11 even the Honey & Honey restaurant. I will observe that  
 12 this must be the most thorough documentary, video, and  
 13 testimonial proof of fraud ever put before an arbitral  
 14 tribunal. For Ecuador to suggest that Chevron should have  
 15 had more evidence when Ecuador's courts were part of a sham  
 16 litigation conducted by Pablo Fajardo in order to prevent  
 17 discovery of the further evidence that was located in  
 18 Ecuador is disingenuous at best.  
 19 Although you will review the scheme as a whole,  
 20 the evidence before the Tribunal demonstrates at least five  
 21 separate and independent denials of justice: First, the  
 22 Cabrera fraud, which the private and Government  
 23 conspirators never quite managed to cleanse.  
 24 Second, the paid Guerra order ghostwriting on  
 25 behalf of the Plaintiffs; third, the Plaintiffs'

05:29 1 declares that path invalid. No reasonable person believes  
 2 that Chevron can get a fair hearing on this case in  
 3 President Correa's Ecuador.  
 4 Now, before this Tribunal, Ecuador's  
 5 responsibility is established by the very positions it has  
 6 taken before you. It has not sought to separate itself  
 7 from the corruption in its courts, but instead has  
 8 repeatedly denied the undeniable. It claims to you that  
 9 the \$9 billion Judgment was not ghostwritten. It denies to  
 10 you that Guerra wrote the Orders in the Lago Agrio Case  
 11 which appear on his computer. It denies to you the  
 12 discussions of a \$500,000 bribe scheme which even Donziger  
 13 admits. It denies that it has anything to do with the  
 14 private litigation. The cynicism of these factual  
 15 presentations to this Tribunal is breathtaking.  
 16 Now, outside the Tribunal, and in this case, I  
 17 mean literally right outside the Tribunal, right outside  
 18 the World Bank building, where we have seen a daily circus  
 19 of Ecuador-sponsored, and, in fact, Ecuador-logo'd  
 20 slanderous communications all in daily violation of this  
 21 Tribunal's orders, we have Ecuador's promotion of the  
 22 fraudulent judgment.  
 23 I would ask you to compare some of the statements  
 24 in the pamphlets being passed out by Ecuador to what you  
 25 have heard on the record in this Tribunal. The only

05:30 1 conclusion you'll be able to draw is that the presentations  
 2 are knowing falsehoods, and I would ask you to reflect on  
 3 how Ecuador repays a company that produced \$23 billion for  
 4 Ecuador, leaving aside the over \$50 billion produced in the  
 5 Concession since, during a time that Texaco made  
 6 \$500 million in profit, profit that has long since been  
 7 swamped by the damage Ecuador has inflicted in this case.  
 8 Now, beyond this, Ecuador has publicly declared  
 9 Chevron witnesses in this Tribunal and its lawyers to be  
 10 traitors and sought to prosecute them. They justly fear  
 11 for their safety and for that of their families. The Head  
 12 of State himself continuously reviles Chevron and makes  
 13 international diplomatic visits specifically to promote the  
 14 fraudulent judgment, all in willful gratuitous violation of  
 15 the Tribunal's Awards, through devices such as its  
 16 insulting pamphlets and its malicious recusal motion,  
 17 Ecuador hopes that the Tribunal will be frightened from its  
 18 duty or at least that the Tribunal will delay carrying out  
 19 its duty. To be sure, investor-State arbitration is under  
 20 attack in some political quarters, and Ecuador is one of  
 21 the leading attackers, but policy issues about the proper  
 22 scope of investor-State arbitration have nothing to do with  
 23 defending and promoting a fraud like this one, unless the  
 24 point is that a sovereign should not be subject to any  
 25 international standard at all.

05:33 1 Several courts issued opinions, and the most significant  
 2 one came under the rubric of the crime-fraud exception to  
 3 attorney-client privilege in the United States. One of the  
 4 grounds on which attorney-client privilege can be breached  
 5 in discovery orders is if it is found that that privilege  
 6 is being asserted in furtherance of a fraud, and a few  
 7 examples I will leave with you here. The District Court  
 8 for the Western District of North Carolina, reviewing the  
 9 evidence said, "While this Court is unfamiliar with the  
 10 practices of the Ecuadorian judicial system, the Court must  
 11 believe that the concept of fraud is universal, and that  
 12 what has blatantly occurred in this matter would, in fact,  
 13 be considered fraud by any court. If such conduct does not  
 14 amount to fraud in a particular country, then that country  
 15 has larger problems than an oil spill."  
 16 In New Mexico, the Court observed that the crude  
 17 outtakes had sent shock waves through the nation's legal  
 18 communities.  
 19 The District Court for the Southern District of  
 20 California found, it said, ample evidence of the Cabrera  
 21 scheme. That quote I suppose is irrelevant at this point  
 22 since that's largely conceded by everyone.  
 23 More relevant to some of the evidence we spent a  
 24 lot of time on, the District Court for the District of  
 25 Maryland said, "Chevron has shown to anyone with common

05:32 1 Now, the Tribunal has asked about the RICO case  
 2 and about the RICO statute. Perhaps the Tribunal is  
 3 interested in how the Tribunal's work fits into the many  
 4 other cases involved in this litigation. I'd like to try  
 5 to pause and give you a brief update before I conclude to  
 6 answer the questions you have on those matters.  
 7 I have two slides which I believe are going to be  
 8 handed up to you to try to set some context about the  
 9 different categories of litigation that have taken place.  
 10 We have the so-called 1782 actions in the United States,  
 11 and I'll tell you how some of the same evidence that you've  
 12 seen here came to be involved in those and what the issue  
 13 was and the conclusions were.  
 14 We'll talk about the RICO case currently on appeal  
 15 to the Second Circuit. I'll give an update on the Canada,  
 16 Argentina, and Brazil enforcement matters, and then  
 17 conclude with brief mention of a currently pending  
 18 litigation in the courts of Gibraltar.  
 19 Now, on the slide that I put up and that I believe  
 20 you have, these constitute findings by the so-called "1782  
 21 courts" in the United States, 28 USC Section 1782 is a  
 22 statute in the United States which allows discovery to be  
 23 taken in aid of a foreign proceeding. During some stages,  
 24 that proceeding was litigation in Ecuador, during some  
 25 stages, litigation for discovery in aid of this proceeding.

05:35 1 sense that the insertion of the Fusión Memo text in the  
 2 Ecuadorian Judgment is a blatant cut-and-paste exercise."  
 3 And as to the cleansing effort with respect to the  
 4 Cabrera fraud, the District Court for the District of  
 5 Columbia found that the Weinberg Group's work--that was the  
 6 group that had been hired to perform the cleansing--was  
 7 part of a fraud upon the Ecuadorian Court.  
 8 So, those 1782 cases led up to the RICO action.  
 9 You will recall that initially RICO was not the primary  
 10 focus of that Southern District of New York Action. In  
 11 count nine of that case, using the Declaratory Judgments  
 12 Act, Chevron sought protection by preemptive application of  
 13 the New York Judgment Enforcement Statute to Prevent  
 14 Enforcement. One of the reasons for that was that the  
 15 reservation of rights by Chevron under the New York  
 16 Convention to defend against any Ecuadorian Judgment was  
 17 common ground among everyone in earlier stages of this  
 18 litigation.  
 19 The Southern District of New York granted an  
 20 injunction. Under that count nine you will recall the  
 21 Second Circuit vacated it, finding that the Declaratory  
 22 Judgment Act was not available for that use of the New York  
 23 Judgment enforcement statute, and also observed that it had  
 24 difficulty with the comity effects of an injunction that  
 25 prevented enforcement in numerous foreign countries. The

05:36 1 focus of that case then shifted to the American RICO  
 2 statute.  
 3 You observed in your questions that that is an  
 4 unusual statute. It is a statute that creates the ability  
 5 of private litigants to pursue civil litigation but  
 6 requires as a showing of what are called predicate acts,  
 7 violation of a number of listed criminal statutes: If that  
 8 predicate finding and certain other findings are made, it  
 9 allows a private party to seek damages relief or, as  
 10 Chevron sought to pursue, injunctive relief. In this case,  
 11 the Judge, Judge Kaplan, acted as the finder of fact  
 12 because the only relief Chevron sought was injunctive. He  
 13 issued, as you know, and I won't belabor this, lengthy  
 14 findings. The Parties to that case were Donziger and his  
 15 associates, were two of the 47 LAPs. Only two of the 47  
 16 decided to appear. The others defaulted. Pablo Fajardo,  
 17 Luis Yánza, the Amazon Defense Front, Selva Viva were also  
 18 defaulting Defendants. Originally Stratus Consulting,  
 19 Mr. Beltman, Ms. Maest, were defendants, they ultimately  
 20 settled the case, and then disavowed some of what they had  
 21 done. The Court as you know made findings, and the  
 22 applicable standard under that statute called for findings  
 23 under a standard of clear and convincing evidence. It  
 24 found by clear and convincing evidence that the evidence  
 25 had demonstrated extortion, wire fraud, money-laundering,

05:40 1 So, let me pause there and see if there are other  
 2 questions about RICO.  
 3 PRESIDENT VEEDER: No, thank you.  
 4 Please continue.  
 5 MR. PATE: Enforcement actions, the same three  
 6 that I've told you about before, continue in Canada, which  
 7 was the first filed enforcement action. You will recall  
 8 the history was that initially the trial court, finding  
 9 that there was no basis to disregard the corporate  
 10 separateness between Chevron Canada, which is present in  
 11 Canada but has no connection whatsoever to the Ecuadorian  
 12 litigation, and Chevron Corporation, which is the Judgment  
 13 debtor in the Ecuadorian litigation but has no operations  
 14 or presence in Canada. The Court found that lacking any  
 15 evidence that the standards under Canadian law for  
 16 disregarding that corporate separateness could be found,  
 17 the action should be stayed. The trial court had rejected  
 18 Chevron's further contention that a jurisdictional showing  
 19 of presence on behalf of the Judgment debtor was required  
 20 at the outset.  
 21 And on appeal, the intermediate Court in Canada  
 22 reversed the stay finding that the trial court had made.  
 23 Argument has now been had in the Supreme Court of Canada.  
 24 The Court heard argument on December 11th on the  
 25 jurisdictional issue, the issue whether on the pleadings,

05:38 1 obstruction of justice, witness tampering, violations of  
 2 the Travel Act and the Foreign Corrupt Practices Act.  
 3 As an additional part of that case, Judge Kaplan  
 4 examined an independent cause of action, a common-law cause  
 5 of action for corruption of a judgment. That came up both  
 6 as an independent action and because evaluation of the  
 7 judgment was necessary to evaluate the res judicata or  
 8 collateral estoppel defense that the Defendants in the RICO  
 9 case, the Lago Agrio Plaintiffs, and Mr. Donziger had  
 10 asserted. And as you know, he found that the Lago Agrio  
 11 Judgment was obtained by corrupt means, and that for that  
 12 and other reasons it was not entitled to collateral  
 13 estoppel or other effect. And, indeed, was not a judgment  
 14 that was worthy of enforcement.  
 15 That opinion, that judgment by Judge Kaplan is on  
 16 appeal to the Second Circuit. As you know, the day before  
 17 this proceeding commenced argument was heard. The  
 18 principal issue in that case is whether a private party may  
 19 obtain injunctive relief under the RICO statute or whether  
 20 that is only available to the U.S. Government. That is an  
 21 issue that's been open in American law for some time.  
 22 One thing I would note, though, is that in the  
 23 briefing of that entire case before the Second Circuit, no  
 24 alternative narrative or any significant challenge to the  
 25 factual findings of Judge Kaplan was made.

05:41 1 if you will, some basis of jurisdiction over Chevron Corp  
 2 would be required. We expect a decision in that case could  
 3 come at any time. It's difficult to say, if the Supreme  
 4 Court finds that a jurisdictional finding was necessary, it  
 5 should end the case. If the Court does not, the next stage  
 6 may include a factual Hearing on the corporate separateness  
 7 issues as the next step. So, that's Canada.  
 8 In Brazil and Argentina, I don't have anything  
 9 quite as specific as that to report. The case in Argentina  
 10 has been--excuse me, in Brazil has been moving forward to  
 11 the extent that the Reporting Judge has ordered that the  
 12 case file be made available to the Public Prosecutor for an  
 13 opinion to be rendered as is the practice in that system.  
 14 That case has been assigned to NPF prosecutor Nicolo  
 15 Aldino. That was done in February, the time for the NPF  
 16 opinion to have issued has run, but those time periods are  
 17 frequently extended. I can't give you any more prediction  
 18 about when the case will move to the next stage, but I  
 19 guess I would say that it is poised, perhaps, to move to  
 20 further developments in the near future, but there is no  
 21 ability to predict when it might do so.  
 22 PRESIDENT VEEDER: Can I interrupt you? You  
 23 referred to the Public Prosecutor.  
 24 MR. PATE: Yes.  
 25 PRESIDENT VEEDER: This would be a civil

05:43 1 enforcement?  
 2 MR. PATE: It is and I'm not an expert in  
 3 Brazilian law, but the public prosecutor, the Ministerial  
 4 Publica is under that system, often or in certain types of  
 5 proceedings called upon to give opinions about what its  
 6 view is of the legal issues in the case.  
 7 PRESIDENT VEEDER: I think I'm told it's not--it  
 8 would not usually be a criminal proceeding.  
 9 MR. PATE: No, it's not a criminal proceeding, but  
 10 actually there may be any number of people who can correct  
 11 me about the fine points of Brazilian procedure, but it is  
 12 a Government attorney's office that would conduct the  
 13 review. The case is not criminal. It is a civil exequatur  
 14 Judgment recognition case.  
 15 Argentina, a number of defenses have been filed, a  
 16 number of briefs, some subsidiary motions have been argued,  
 17 but I think without detailing that, the shortest way to put  
 18 it is that that case remains pending but I don't have any  
 19 prediction of what the next major steps would be.  
 20 So, any questions on the three pending enforcement  
 21 cases? Of course, the constant threats of more enforcement  
 22 filings continue, but I have no information about that.  
 23 PRESIDENT VEEDER: No, thank you very much. We  
 24 have no questions.  
 25 MR. PATE: All right, finally then, I will mention

05:46 1 as the American system is often criticized by the  
 2 Plaintiffs as being somehow biased or untrustworthy as this  
 3 Tribunal is. This is a ruling from Gibraltar on that  
 4 topic, and a few of the comments made in denying that  
 5 Motion to Strike out include that "if the Appeal Court in  
 6 Ecuador had before it anything like the evidence which has  
 7 been put before me, it is, indeed, surprising on the face  
 8 of it that at least a rehearing was not ordered."  
 9 He went on actually to call into question and was  
 10 right to do so, whether the Ecuadorian appellate system had  
 11 actually done anything to address or to issue de novo  
 12 findings about or otherwise to treat with the fraud. He  
 13 said he was not convinced that it did. In fact, quoting  
 14 Justice Butler, it said specifically that it stayed out of  
 15 the accusations of fraud. But at the end of the day and in  
 16 this final bullet that I give you on this slide, Justice  
 17 Butler said, "it would be difficult to have confidence in  
 18 an Appeal Court which made the findings which it did and  
 19 upheld the First Instance Decision if the Claimants'  
 20 allegations are correct." I think Justice Butler has a  
 21 gift for understatement.  
 22 Are there any further questions about the context  
 23 of the other litigations? If not, I will conclude.  
 24 PRESIDENT VEEDER: Just one question. The  
 25 reference to Annex P on your PowerPoint slide.

05:44 1 Gibraltar and put up the second slide I have. In  
 2 Gibraltar, Chevron has had a litigation against certain of  
 3 the funders of the litigation scheme. Mr. De Leon, an  
 4 early funder, a later funder Woodsford Group, which  
 5 recently withdrew claims against some of the entities that  
 6 were set up to administer the funding waterfall that you  
 7 heard about earlier, Amazonia, Torvia are the names of some  
 8 of the companies that have been set up to distribute any  
 9 proceeds that this scheme might generate.  
 10 There was a hearing on a Motion to Strike out as  
 11 it's called in Gibraltar, and it's probably important for  
 12 the Tribunal to know that while here it has been depicted  
 13 that Chevron will, of course, have plenty of opportunities  
 14 to defend against any enforcement, so this Tribunal need  
 15 not be much concerned about doing anything. In the  
 16 enforcement actions and other actions, it has typically  
 17 been the position of the Lago Agrio Plaintiffs, Defendants  
 18 in Gibraltar, that the appellate process in Ecuador has  
 19 fully considered and ruled upon all of Chevron's fraud  
 20 allegations so that those rulings ought to be considered  
 21 issue preclusive of any further discussion of fraud, and  
 22 Chevron should not be able to present that defense.  
 23 I do think it's interesting to note that Justice  
 24 Butler in Gibraltar, in part it's interesting because this  
 25 is not for the pamphleteers in the room, an American Court,

05:47 1 MR. PATE: Those are citations in the Gibraltar  
 2 system. If you want to look in our record, it's C-2388.  
 3 PRESIDENT VEEDER: That's what I thought, yes.  
 4 Can you just remind us what Torvia Limited is  
 5 doing as a second Defendant?  
 6 MR. PATE: Torvia Limited I guess I would say is  
 7 the Gibraltar-based structure that is involved in the  
 8 administration and distribution of proceeds from the  
 9 Judgment, if ever there are any. It's not the only company  
 10 that was set up to do that, but it's one of them.  
 11 And I guess I should note, Torvia has now settled  
 12 out. It was a company with specific connections to  
 13 De Leon, and when Mr. De Leon withdrew from the scheme,  
 14 that took Torvia with it.  
 15 PRESIDENT VEEDER: Well, on the Judgment I'm  
 16 looking at, there are only two Defendants. If those two  
 17 go, who's left?  
 18 MR. PATE: There have been Parties added since the  
 19 document that you're looking at. Pablo Fajardo and Luis  
 20 Yánza in addition to another of the corporate structures.  
 21 My recollection is they're meant to answer, and we will  
 22 learn whether they will actually appear or default, when,  
 23 in early June? Is that right? Early June.  
 24 So Amazonia Funding is the name of the other  
 25 structure, and then it's Fajardo and Yánza who are the

05:49 1 remaining Gibraltar Defendants.  
 2 PRESIDENT VEEDER: Are you going to deal with the  
 3 situation in Ecuador as regards the Constitutional Court?  
 4 MR. PATE: Well, Chevron's Constitutional Court  
 5 submissions remain pending. I certainly couldn't give you  
 6 any information about when the Constitutional Court is  
 7 likely to do anything.  
 8 PRESIDENT VEEDER: And, lastly, just for the  
 9 record, we also have seen people outside, but you referred  
 10 to pamphlets. Those are not in the record, and we don't  
 11 propose to admit them into the record, and I think we can  
 12 leave it there.  
 13 Would you like to conclude?  
 14 MR. PATE: I will conclude, thank you.  
 15 One thing I hope you have been left with by my  
 16 summary is that Chevron was obliged by the rules of  
 17 sovereign immunity and jurisdiction to use multiple  
 18 proceedings to defend against this fraud. This Tribunal  
 19 uniquely is able to issue an opinion under international  
 20 law in a proceeding with Ecuador as a party. In fact, only  
 21 this Tribunal can provide vindication for Chevron's  
 22 contract rights. It can't be done anywhere else. Ecuador  
 23 cannot be made a party to U.S. litigation. It's also the  
 24 case that Donziger can't be made a party here.  
 25 So, therefore, only this Tribunal can hold Ecuador

05:52 1 overwhelming evidence, of the type you've heard here, that  
 2 an official Government policy of promoting a corrupt  
 3 judgment in defiance of lawful international injunctions is  
 4 simply beyond the power of international law to redress.  
 5 I respectfully suggest to you that when history  
 6 assesses the work of this Tribunal, only one of those  
 7 messages can possibly be seen as consistent with upholding  
 8 the rule of law.  
 9 So, with that, subject to more questions, either  
 10 for me or other members of our team, with confidence in the  
 11 wisdom, integrity and courage of this Tribunal, I confide  
 12 Chevron's claims into your hands.  
 13 Thank you.  
 14 PRESIDENT VEEDER: Thank you very much.  
 15 We had questions earlier, but they seem for the  
 16 moment to have been largely answered for which we thank you  
 17 very much. We don't exclude that there will be further  
 18 questions, but they will not be for tonight. It's been a  
 19 long day, and we would like to think about what we've  
 20 heard, and also we would like to hear the Respondents  
 21 tomorrow.  
 22 I think unless there is some urgent housekeeping  
 23 matters now, it's been a very long day for our shorthand  
 24 writers, we will start with the Respondent at 9:00  
 25 tomorrow.

05:51 1 accountable for its actions and it's uniquely important  
 2 that it do so.  
 3 Chevron seeks an injunction against further  
 4 misconduct by Ecuador in support of this fraud. This  
 5 relief will have value, even though Ecuador will not obey  
 6 as it will further expose internationally that Ecuador's  
 7 conduct is in violation of international law.  
 8 Chevron, as you know, also believes that a strong  
 9 and clear declaratory award from this Tribunal will be  
 10 persuasive to enforcement courts. A refusal by those  
 11 courts to enforce the fraudulent judgment will obviously  
 12 protect Chevron but it will at the same time protect  
 13 Ecuador against responsibility and damages for the  
 14 potential greater liability that might arise from its  
 15 enforcement campaign.  
 16 And Chevron emphasizes again that if the Tribunal  
 17 hopes to achieve this ends, then it must act as soon as  
 18 possible on Track 1, on Track 2, or both.  
 19 So, let me end where I began three weeks ago, and  
 20 that's with what is at stake in the Tribunal's work, and in  
 21 the Judgment it will issue, and that is the message that's  
 22 going to be sent to investors and to host Governments. The  
 23 message will be either that there is a right to justice  
 24 guaranteed by international treaty and made effective by  
 25 neutral tribunals or, instead, that notwithstanding

05:53 1 MR. BLOOM: Just one request, and I have spoken to  
 2 counsel to Chevron about this, for personal reasons,  
 3 they've agreed, and I'm asking the Tribunal if it's  
 4 possible to begin 15 minutes earlier tomorrow at 8:45.  
 5 PRESIDENT VEEDER: 8:45. Does that mean you want  
 6 to finish 15 minutes earlier at 5:15?  
 7 MR. BLOOM: We will keep to our schedule, but it  
 8 gives a little bit more of a buffer in the event there are  
 9 questions from the Tribunal.  
 10 PRESIDENT VEEDER: Fair enough. So, 8:45  
 11 tomorrow, but before that, at 8:44, we would like to put  
 12 the Site Visit Order to be duly signed/countersigned,  
 13 because we're way beyond its anniversary.  
 14 (Whereupon, at 5:55 p.m., the hearing was  
 15 adjourned until 8:45 a.m. the following day.)  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

## CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

  
DAVID A. KASDAN



IN THE MATTER OF AN ARBITRATION BEFORE A TRIBUNAL  
 CONSTITUTED  
 IN ACCORDANCE WITH THE TREATY BETWEEN THE U.S.A. AND THE  
 REPUBLIC OF ECUADOR CONCERNING THE ENCOURAGEMENT AND  
 RECIPROCAL PROTECTION OF INVESTMENT, SIGNED AUGUST 27, 1993  
 (THE "TREATY")

and

THE UNCITRAL ARBITRATION RULES 1976

- - - - -x  
 In the Matter of Arbitration :  
 Between: :  
 :  
 CHEVRON CORPORATION (U.S.A.), :  
 TEXACO PETROLEUM COMPANY (U.S.A.), :  
 :  
 Claimants, : PCA Case No.  
 : 2009-23  
 and :  
 :  
 THE REPUBLIC OF ECUADOR, :  
 :  
 Respondent. :  
 - - - - -x Volume 13

TRACK 2 HEARING

Friday, May 8, 2015

The World Bank  
 700 18th Street, N.W.  
 J Building  
 Conference Room JB1-080  
 Washington, D.C. 20003

The Hearing in the above-entitled matter convened  
 at 8:45 a.m. before:

- MR. V.V. VEEDER, Q.C., President
- DR. HORACIO GRIGERA NAÓN, Arbitrator
- PROFESSOR VAUGHAN LOWE, Q.C., Arbitrator

Registry, Permanent Court of Arbitration:

MR. MARTIN DOE, Secretary to the Tribunal

Additional Secretary:

MS. JESSICA WELLS

Court Reporters:

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08:51 1 millions of dollars, and this impaired jobs as well.  
 2 Also, Chevron has said that Ecuador is a country  
 3 that does not fulfill its international obligations. The  
 4 State of Ecuador has characterized itself for fulfilling  
 5 its operations under international law. Ecuador has met  
 6 the payment of the awards in the very few international  
 7 arbitrations where it was deemed liable. In the ICSID  
 8 arbitration by Duke Energy, the State paid in an opportune  
 9 manner the compensation ordered in that case. In the  
 10 Occidental I case under the VAT tax under UNCITRAL, the  
 11 State also paid the compensations ordered by the Tribunal.  
 12 The State also has won a number of cases that were  
 13 staged against it, for example, in the ICSID arbitrations  
 14 of M.C.I. and Murphy, both American companies, and one of  
 15 the members of this panel was an arbitrator in that case.  
 16 Fourth, Chevron tries to paint a picture that is  
 17 completely distorted of the position that I have had to  
 18 assume in connection with the strategies that I had to  
 19 adopt in this arbitration.  
 20 It is true that we have not always agreed with the  
 21 decisions made by this Tribunal and that I have had to make  
 22 decisions that were sensitive in nature. The request for  
 23 the Members of the Tribunal to step down is an  
 24 unprecedented decision that I have had to make in the  
 25 scores of arbitrations that I had to lead in this field,

08:55 1 any logical or time-related analysis. To seek that all the  
 2 governments of Ecuador in the past 20 years have colluded  
 3 against Chevron is something that is not believable, and it  
 4 cannot be proven by simple conjectures.  
 5 The video, for example, that was shown yesterday  
 6 that shows a number of statements by Ricardo Patiño, the  
 7 Ministry of Foreign Residence of Ecuador, shows that this  
 8 official is specifically making reference to the Chevron  
 9 Case and not to the Lago Agrio Litigation. The Chevron  
 10 Case for the authorities of the National Government is this  
 11 arbitration and the other actions through which Chevron is  
 12 persecuting the Republic. Claimants must be assured that  
 13 the defense of the interests of Ecuador in this arbitration  
 14 is a national priority matter, and it answers a State  
 15 policy. We're going to continue to face their claims in  
 16 every fora where we're being attacked.  
 17 We are not looking to involve ourselves in this  
 18 controversy. Unlike what we've heard yesterday, this has  
 19 not and has never been our dispute. The acts of the State  
 20 are a response to the attacks by the company. Of course,  
 21 the Government and the President of the Republic have  
 22 stated their sympathies and their understanding of the  
 23 victims of contamination. That is what the citizens  
 24 expect. But Chevron has not acted as a great corporate  
 25 citizen that it says it is. When a contractor is changing

08:53 1 and Ecuador has very few times recused an arbitrator. And  
 2 it hasn't been pleasant to use this kind of mechanism.  
 3 Such a mechanism must be used responsibly so that it is not  
 4 taken lightly or unfoundedly.  
 5 Notwithstanding the results obtained in this case  
 6 and the reservation of rights that are going to be  
 7 discussed in the annulment processes that have taken place  
 8 and that you know of, Ecuador has acted and continues to  
 9 act under the rules that govern these proceedings.  
 10 The qualifications that have been used by  
 11 Professor Paulsson and other Chevron's lawyers in their  
 12 allegations yesterday that were submitted in a defiant  
 13 manner and in an disrespectful manner go beyond the margins  
 14 of tolerance and the courtesy that one expects of these  
 15 individuals, so these are to be rejected by the Arbitration  
 16 Tribunal and also by the lawyers that I'm heading. I'm not  
 17 going to deal with those qualifications because this has  
 18 been an arbitration in which, apart from disagreements, we  
 19 have been able to treat each other with respect in spite of  
 20 the seriousness of the objections and the allegations put  
 21 forth by both Parties.  
 22 In the distortion of context line of the  
 23 Claimants, there were videos and statements attributed to  
 24 the highest authorities of the Executive branch in Ecuador.  
 25 This shows a false conspiracy theory that does not resist

08:57 1 contaminated samples for clean samples and it hides the  
 2 evidence of contamination or when it uses its enormous  
 3 resources to intimidate or keep witnesses. Throughout this  
 4 arbitration, I have appeared in my capacity as legal  
 5 representative of the State and as a lawyer. I don't have  
 6 a political function. I'm here representing my country,  
 7 and I am defending my country against the unfounded attacks  
 8 by Claimants. That is the extent of my appearance here,  
 9 and that must be respected by the opposing party.  
 10 To end, Members of the Tribunal, we expect with a  
 11 lot of expectation your visit to see the enormous  
 12 environmental damage caused by Chevron in the Amazon area,  
 13 and we would like your decisions not based on rhetorics or  
 14 discourse, but only on the evidence stemming out of these  
 15 proceedings.  
 16 Now, with your permission, Mr. President and  
 17 Members of the Tribunal, Mr. Bloom is going to continue  
 18 presenting the Closing Statements by the Republic of  
 19 Ecuador.  
 20 Thank you very much.  
 21 PRESIDENT VEEDER: Thank you very much.  
 22 Mr. Bloom.  
 23 MR. BLOOM: Thank you very much, Mr. President.  
 24 In about 15 minutes we will begin our response to  
 25 the Claimants' fraud allegations, and it will be detailed,

08:58 1 it will be exhaustive, but before we get to that, a word  
 2 about yesterday, about the closing offered by the  
 3 Claimants. For those of us on this side of this room, it  
 4 was reminiscent of the drive-by shootings that one sees  
 5 occasionally in the news occasionally, but in this instance  
 6 there were many drive-bys, quick, rapid-fire accusations,  
 7 some even personal.  
 8 You were told that the only conclusion that could  
 9 be drawn was that the Republic's presentation in this  
 10 proceeding must constitute, "knowing falsehoods." That's  
 11 at Transcript 1742. Really? And you were told at  
 12 Transcript 2639, that I, "pushed to know where Mr. Guerra's  
 13 children and grandchildren lived." Apparently I'm part of  
 14 the conspiracy to punish Mr. Guerra by exacting some kind  
 15 of punishment on his extended family.  
 16 Never mind that I was making the obvious point  
 17 that Mr. Guerra's bargain with Chevron fulfilled his every  
 18 hope of reuniting himself and his wife with his family in  
 19 the United States, and never mind that his son's decision  
 20 to move back to Ecuador, if that's what he did, belies  
 21 Mr. Guerra's contention that his son cannot return.  
 22 At Transcript 2557, Claimants proclaim that  
 23 Ecuador's Attorney General and we participate in these  
 24 proceedings, "to give the appearance that Ecuador cares  
 25 about international law," as cover of sorts while the State

09:01 1 period was lobbying successive governments of the Republic,  
 2 and the Republic, in fact, in that same year in 1996, in  
 3 fact, supported Texaco's position in Aguinda. Chevron, in  
 4 fact, prepared a draft--shall we say ghostwrote--a letter  
 5 for the then-Ambassador to the United States from Ecuador  
 6 that was forwarded to the U.S. State Department, and he  
 7 executed an affidavit supporting Texaco's position,  
 8 "requesting that this Court"--that's the Aguinda  
 9 Court--"decline to exercise jurisdiction," of the Aguinda  
 10 Case. Please look at C-289, R-27, and C-20.  
 11 Isn't it amazing that the 1996 so-called, "quid  
 12 pro quo agreement," is described as borderline criminal,  
 13 but it's perfectly okay when Texaco successfully lobbies  
 14 the Republic?  
 15 Facts matter. Context matter.  
 16 What else? As I predicted in opening, Claimants  
 17 again deliberately conflate the Plaintiffs with the  
 18 Republic, making repeated references to the Lago Agrio  
 19 Plaintiffs' relationship with Mr. Cabrera as if they--as if  
 20 we were they and referencing e-mails referring to the cook  
 21 and the messenger, et cetera, as if the Plaintiffs' conduct  
 22 is the Republic's conduct. It is not. I do not represent  
 23 the Plaintiffs. I represent the Republic of Ecuador.  
 24 They refer to the, "conclusive forensic evidence,"  
 25 Transcript 2637, when, in fact, the forensic evidence

09:00 1 actually seeks to go about to undermine international law.  
 2 That's why the Attorney General's Office has expended the  
 3 resources that it did on this case?  
 4 The drive-bys continued. Claimants again refer to  
 5 Judge Núñez, who they say was caught in a bribery scandal  
 6 all the while; and yet again, they deliberately failed to  
 7 respond to the Republic's multiple submissions on this  
 8 issue, most notably the finding of a U.S. judge who said  
 9 that he reviewed the tapes, and there was no bribery.  
 10 Or Mr. Borja's admission of the same.  
 11 Drive-bys don't stop. Mr. Paulsson made reference  
 12 to this nefarious, shady, underhanded quid pro quo between  
 13 Plaintiffs and the Republic in these documents. Please  
 14 look at these documents. They can be found at C-911 and  
 15 R-203. When were they dated? Would you be surprised to  
 16 learn it was 1996, more than a decade before President  
 17 Correa became President? This was sure some amazing  
 18 conspiracy; it lasted through several governments.  
 19 What was the quid for the pro? What was the quid  
 20 for the quo? The Government agreed to intervene in the  
 21 Aguinda action. That's all. That's it. Allow me to put  
 22 the exclamation point on it.  
 23 The next year, a successor Government reversed  
 24 course and chose not to intervene.  
 25 Note by the way that Texaco during the same time

09:03 1 overwhelmingly comports with Judge Zambrano's testimony  
 2 regarding the time he worked, the time he began working on  
 3 the document, how he worked on the document, the 400 Saves  
 4 of the document, and the eventual upload of the document.  
 5 Rather than providing conclusive evidence on their behalf,  
 6 it seems that the best that Claimants do is argue that  
 7 Judge Zambrano had the Microsoft Word application open, in  
 8 their view, not long enough for the Sentencia to be typed.  
 9 And in so doing, they are ignoring Judge Zambrano's  
 10 extensive testimony regarding all the advance work that he  
 11 did in preparing his notes in such great detail  
 12 specifically so he could prepare the Sentencia in short  
 13 order. We will get to that in our presentation.  
 14 And in all candor, I seriously doubt I'm the only  
 15 person who has ever used one of these, the Dictaphone  
 16 machine that my Secretary despises, as I used last night  
 17 and about three hours off and on and over the weekend,  
 18 Saturday, last Saturday. She transcribed some 27 pages.  
 19 Who are the Claimants to say how Judge Zambrano  
 20 should or should not draft the Judgment or how he writes?  
 21 If it is the position of the Claimants that the  
 22 forensic evidence so conclusively establishes that the  
 23 Plaintiffs ghostwrote the Decision, then may I ask the  
 24 obvious question? Why are they fighting so hard to keep  
 25 this Tribunal from expanding the mandate of Ms. Catherine

09:05 1 Owen?  
 2 Before Mr. Bishop even had an opportunity to  
 3 present the Claimants' case on fraud in the afternoon, the  
 4 counsel who preceded him and later those who followed chose  
 5 to attack the President of Ecuador, State officials, and  
 6 relied on every sound bite they have accumulated in the  
 7 last several years. But again, can we just offer a little  
 8 bit of context? And you may remember this from our  
 9 April 2014 Hearing. I walked you through a series of the  
 10 Republic's applications to this Tribunal for Interim  
 11 Measures, asking you to impose Interim Measures to stop the  
 12 public relations campaign against the Republic. All that  
 13 time period, the State was sitting on its hands in terms of  
 14 public relations.  
 15 And you may recall that for a long period of time  
 16 it was reported--and I don't know what the situation is  
 17 now--that the Claimants, in fact, had retained seven public  
 18 relations firms as part of their public relations campaign  
 19 against the State.  
 20 You may also remember that we have long ago  
 21 submitted to this Tribunal an Interim Measures Request to  
 22 stop Chevron's lobbying campaign to terminate the United  
 23 States trade benefits costing many millions of dollars that  
 24 were intended to benefit Ecuadorian citizens. Yes, this  
 25 case has been politicized, but it became politicized

09:08 1 That's at R-537, or consider R-621, where he referred to  
 2 the BP oil spill flatly stating that he was talking to  
 3 experts for the purpose of knowing, "whose ass to kick."  
 4 That's the President of the United States. Are we to hold  
 5 the State of Ecuador to a different standard than we're  
 6 holding the United States accountable for?  
 7 We also hear so much about the President and the  
 8 Foreign Minister "promoting" the Judgment abroad. There  
 9 was a great big slide on this, 40-some States in which  
 10 Ecuador is purportedly seeking to promote enforcement.  
 11 Of course, there are only three countries in which  
 12 enforcement actions have actually been brought, but that's  
 13 a little detail--let put that aside. Is it really  
 14 Claimants' position that President Correa not only controls  
 15 the Ecuadorian courts, but the courts across the globe  
 16 including the domestic courts of Denmark, of Belgium, of  
 17 the United States, of Canada?  
 18 There's a difference between offering political  
 19 support, I submit, political support for its indigenous  
 20 citizens and interfering with the legal proceedings,  
 21 speaking of which, they had 6.5 hours yesterday--6.5 hours.  
 22 And while they freely called the Government  
 23 "co-conspirators," at every moment made the Government  
 24 complicit in the alleged fraudulent scheme, they were stone  
 25 silent in respect to their star Witness's admission that

09:07 1 because Claimants determined it was in their best interests  
 2 to politicize it.  
 3 You do not make friends by publicly attacking  
 4 them. You do not make friends by bringing a lawsuit  
 5 against the Republic in the United States in 2004, a  
 6 frivolous lawsuit thrown out by the U.S. District Court and  
 7 unanimously affirmed on appeal. You do not make friends  
 8 when you seek to cut off financial benefits for ordinary  
 9 people who need the help. That some of the State's  
 10 officials should choose to react should not be surprising,  
 11 but you do not penalize the State for exercising its right  
 12 to respond, unless you at least first penalize the  
 13 instigator.  
 14 But maybe Claimants got what they wanted. They  
 15 got the sound bites after all, didn't they?  
 16 What is the alleged misconduct here beyond the  
 17 alleged ghostwriting which we will address? Is it that  
 18 Claimants are upset that the President and others have  
 19 reacted publicly to their many attacks? Are they seeking  
 20 to punish words rather than acts? Is it really a  
 21 cognizable international claim for a president to comment  
 22 on ongoing litigation against an oil company?  
 23 Let me remind you as I did last April 2014, as  
 24 some of President Obama's where he declared, "BP is  
 25 responsible for this leak. BP will be paying the bill."

09:10 1 the Government, in fact, never injected itself in the  
 2 decision-making process of the Lago Agrio Litigation.  
 3 Never. He said, "They never butted in. Never." The only  
 4 alleged effort of any official at any time to inject  
 5 himself in the process was three Attorneys General ago who  
 6 called on Chevron's behalf, not Plaintiffs', to shut down  
 7 the litigation. They never butted in. This is more than a  
 8 little admission by Mr. Guerra.  
 9 What it says is that the Claimants' allegations of  
 10 the last six years of this vast, incredible, pervasive  
 11 governmental conspiracy has been a fiction from the start.  
 12 Yes, both Parties can and should present evidence regarding  
 13 the circumstances surrounding the issuance of the Lago  
 14 Agrio Judgment, but I must say it really is time to discard  
 15 Claimants' conspiracy theories.  
 16 We hear about recantations of a dozen or so  
 17 people, recantations of the environmental science or of  
 18 their participation in the case, and I submit to you that  
 19 this speaks far more about Claimants' intimidation tactics  
 20 than it does about the merits of the case.  
 21 As I advised you, when we were together, I think  
 22 in this building on January 20, 2014, at Transcript 136 and  
 23 137, we had spoken to several of the Lago Agrio  
 24 Environmental Experts who were only too happy to sign  
 25 Witness Statements on our behalf reaffirming their Expert

09:12 1 conclusions in the Lago Agrio Case, and agreeing to  
 2 cross-examination by Chevron if requested. There was one  
 3 caveat. They wanted us to indemnify them in the event of a  
 4 retaliatory lawsuit by Chevron or in the event of a 1782  
 5 action by Chevron. They did not want to be paying lawyers'  
 6 fees. They did not even want to be paying copying costs.  
 7 We have to put our kids through college, we were told.  
 8 It is far, far cheaper, I must say, and easier to  
 9 roll over than to spend the kind of money that is necessary  
 10 to defend one's self against this juggernaut.  
 11 And I was surprised to see mention of the  
 12 Gibraltar case and reference to the settlement with Russell  
 13 De Leon, one of the funders of the Lago Agrio Litigation,  
 14 at least without mention that Chevron chose to settle only  
 15 after the Court there decided that it wanted to go to the  
 16 Oriente and see the environment for itself. And, of  
 17 course, Chevron got not one dollar in return.  
 18 And what of the U.S. cases finding fraud, these  
 19 discovery cases where that isn't even a finding to reach?  
 20 Well, what about all those that did not find it? And here  
 21 I'm referencing RLA-381 to 386. My understanding,  
 22 unfortunately, is that the others are not in the record.  
 23 And Claimants refer again to a 2005 e-mail from a  
 24 lawyer in the Attorney General's Office, 2005, again before  
 25 Mr. Correa assumed office. The Email notes that she was

09:13 1 looking for ways, "to nullify the Settlement Agreement."  
 2 Again, let's please provide just a wee bit of context. The  
 3 lawyer, Marta Escobar, was one of the lawyers assigned to  
 4 assist outside counsel in Chevron's litigation brought  
 5 against Ecuador in New York. If outside counsel were to  
 6 have had an e-mail or a memo discussing among other things  
 7 our fraud in the inducement defense, which we did raise for  
 8 a time in that litigation, does that mean that outside  
 9 counsel was acting to breach the settlement?  
 10 Ms. Escobar is a lawyer considering legal  
 11 positions on behalf of the Republic and, frankly, doing  
 12 what lawyers are supposed to do. Please let's have a  
 13 discussion of the facts, and let's present the facts in  
 14 context, and let the issues please be joined on that level.  
 15 We do not need more drive-bys.  
 16 We were going to go directly to our fraud  
 17 discussion, but I believed it was necessary in light of  
 18 yesterday to make those opening remarks, so please, let's  
 19 turn to the presentation at this time. We include in our  
 20 slide deck at the front, and you have seen it, a table of  
 21 contents of sorts for you that I hope will guide you during  
 22 the course of today. For this morning we will discuss and  
 23 first confront Claimants' corruption claims for the better  
 24 part of the next couple of hours, to be followed by  
 25 discussion of the environmental and health case. And then

09:15 1 we will close this morning's presentation with the  
 2 discussion of the Track 1B issues.  
 3 One quick preview on the environmental case. This  
 4 arbitration really is about a case--it really is a case  
 5 within a case, and the underlying case, of course, is the  
 6 Lago Agrio Case. That case is between the Plaintiffs and  
 7 Chevron. This Tribunal has already held in its March 12  
 8 Track 1B Decision that the Plaintiffs brought individual  
 9 claims and that those claims were not released under the  
 10 1995 Settlement Agreement. As such, the indigenous  
 11 Plaintiffs had every right to seek to recover from any  
 12 tortfeasor so long as, Number 1, they could show  
 13 contamination; Number 2, that at least some of that  
 14 contamination is attributable to the Defendant; and, three,  
 15 if there was risk, risk of harm to the Plaintiffs. If  
 16 proven, the tortfeasor is liable for the whole, subject to  
 17 his right to seek contribution.  
 18 With all due respect to Claimants, the issue of  
 19 apportionment, if at all, is not an issue for Track 2.  
 20 And note finally that we intend to ask for a  
 21 morning break at about 10:45.  
 22 At this time, Mr. President, I wish to turn the  
 23 floor over to my colleague, Mr. Goldstein, to start the  
 24 discussion in response to the Claimants' fraud allegations.  
 25 PRESIDENT VEEDER: Thank you.

09:17 1 Mr. Goldstein.  
 2 MR. GOLDSTEIN: Thank you, Mr. President.  
 3 Three weeks ago, we suggested to you and indeed  
 4 for years we have maintained that the Claimants' case is  
 5 simply not what it purports to be. They make allegation  
 6 after allegation, running from one to the next before  
 7 either you or we have a chance to evaluate the supposed  
 8 supporting evidence. And once we are able to demonstrate  
 9 that the supposed supporting evidence, in fact, does not  
 10 support a particular allegation, such as the alleged  
 11 bribery of Judge Núñez, Claimants drop the allegation,  
 12 leaving it behind but for drive-bys as if they had never  
 13 made it in the first place.  
 14 Over the next couple of hours we will recall the  
 15 testimony given during this Hearing and contrast it with  
 16 Claimants' ghostwriting allegations. When we are done, we  
 17 respectfully submit you will agree that what we predicted is  
 18 true.  
 19 Claimants' evidence simply cannot bear the weight  
 20 of their rhetoric, nor can this Tribunal rely on Guerra's  
 21 testimony to fill the evidential gaps. Throughout the  
 22 Republic's presentation, and, indeed, throughout your  
 23 deliberations, keep in mind Claimants' Expert Dr. Juola.  
 24 As Claimants tell it, they provided Dr. Juola with a  
 25 certified copy of the entire official Lago Agrio Court



09:18 1 Record, which Dr. Juola scientifically reviewed, and  
 2 concluded that none of the Plaintiffs' allegedly unfiled  
 3 work product documents from which the Judgment contains  
 4 text is in that record. Dr. Juola's work and his  
 5 conclusion form the basis of the assumption made by  
 6 Dr. Leonard and Mr. Lynch that these same documents are not  
 7 in the record. Without that assumption, the mere fact that  
 8 the Judgment and the Plaintiffs' work product contain  
 9 overlapping text simply does not advance the Claimants'  
 10 case. It was entirely proper for the Judgment to rely on  
 11 and even to copy from documents lawfully submitted to it by  
 12 the Parties.

13 So, take a close look at Dr. Juola's work because  
 14 a significant portion of Claimants' ghostwriting case  
 15 depends on it. I will leave it to Mr. Bloom to walk us  
 16 through a discussion on Dr. Juola's methodology and his  
 17 conclusion in a little while. Anticipating some of that  
 18 discussion, however, I expect the Tribunal might have been  
 19 surprised to learn, as we were, that optical character  
 20 recognition or OCR software had been run on those pages  
 21 before Dr. Juola even received them. He didn't do that  
 22 himself, nor could he vouch for the quality control of that  
 23 effort.

24 Moreover, despite what his Reports led one to  
 25 understand, Dr. Juola's electronic scientific review of the

09:20 1 representation against at least the following questions:  
 2 To what extent was his testimony here inconsistent with  
 3 previous recorded statements made before Guerra began  
 4 training with Chevron's counsel; to what extent was his  
 5 testimony here inconsistent with previous sworn statements,  
 6 including his testimony in the RICO action; and, of course,  
 7 perhaps most importantly, to what extent was his testimony  
 8 here and elsewhere inconsistent with the physical evidence?

9 Without Dr. Juola's analysis and conclusions  
 10 regarding the Lago Agrio Record and without Guerra's  
 11 narrative connecting the disparate dots of the Claimants'  
 12 story, Claimants are left with precious little to support  
 13 their ghostwriting charge. Yet Claimants bear a  
 14 substantial burden here. I will defer to Professor Mayer  
 15 to explore this in more detail later, but to prove their  
 16 ghostwriting allegations and establish a violation of  
 17 customary international law, Claimants must first overcome  
 18 the presumption of judicial regularity and adduce clear and  
 19 convincing proof of highly egregious conduct that can be  
 20 imputed to the national judicial system as a whole.  
 21 Moreover, because Claimants' case is based on  
 22 circumstantial evidence, the Tribunal must, in the words of  
 23 the Bayindir Tribunal, "assess whether or not the evidence  
 24 produced by the Claimant is sufficient to exclude any  
 25 reasonable doubt." That is CLA-81 at Paragraph 142.

09:19 1 record actually was quite limited. In the end, he claims  
 2 to have needed to review by hand essentially two-thirds of  
 3 the 216,000 pages Claimants provided to him. Yet he did so  
 4 not for all of the allegedly unfiled work product, nor even  
 5 for one entire document. He tried to match four isolated  
 6 word strings by looking for proper nouns like "TexPet y  
 7 Texaco." Nor did Dr. Juola's Reports disclose the extent  
 8 to which the OCR process resulted in blank or nearly blank  
 9 pages. What's more, we learned that Dr. Juola did not  
 10 include those blank pages as errors when concluding that  
 11 the overall quality of the OCR was excellent.

12 I would ask the Tribunal also to consider the fact  
 13 that 10,000 pages were missing from the hard drive of  
 14 documents that Claimants and Dr. Juola provided to the  
 15 Republic shortly before this Hearing. We did not receive  
 16 those missing pages until well after Dr. Juola had been  
 17 cross-examined. This is just the latest example of, in  
 18 Dr. Juola's own words, the "human error" that pervades the  
 19 record and any attempt to review it.

20 Briefly, on Guerra. I will not weigh down this  
 21 introduction with the myriad ways Guerra contradicted  
 22 himself and the evidence during his testimony. We will get  
 23 to that later as well. As another guiding principle,  
 24 however, I would ask the Tribunal each time it considers  
 25 one of Guerra's representations to judge that

09:22 1 Some additional representative citations to  
 2 authority as well as to the Republic's pleadings are before  
 3 you on Slide 4.

4 Having begun to sketch the outlines of our  
 5 presentation, let's start coloring in the picture. To that  
 6 end, I would invite the Tribunal to ask Mr. Ewing to  
 7 continue our presentation beginning with a discussion of  
 8 the forensic evidence.

9 PRESIDENT VEEDER: Thank you very much.

10 Mr. Ewing.

11 MR. EWING: Good morning, Members of the Tribunal.

12 I will start this morning with the contemporaneous  
 13 evidence including the forensic evidence as we believe it  
 14 is by far the most important piece of evidence relating to  
 15 ghostwriting. This is why we think it is imperative that  
 16 this Tribunal understand the forensics, that it understand  
 17 what the forensics show and what is merely attorney  
 18 argument or non-expert analysis and, therefore, why  
 19 Ms. Owen's assistance would be immensely helpful to this  
 20 Tribunal.

21 As Mr. Goldstein just said, clear and convincing  
 22 evidence must be found to find the Republic liable.

23 As Mr. Lynch and Mr. White repeatedly asked and  
 24 answered questions about possibilities, but that is not  
 25 clear and convincing. So let's look first at what is clear

09:23 1 and convincing.  
 2 Throughout his cross-examination, Mr. Lynch agreed  
 3 with me. The fundamental points of the forensics are  
 4 clear. A file was created on October 11th, 2010, on  
 5 Mr. Zambrano's computer, and that file became the Final  
 6 Judgment. It was created by a person using Mr. Zambrano's  
 7 computer. Between October 11th, 2010, and  
 8 December 21 2010, the Providencias document was Saved at  
 9 least 286 times. On December 21st, the first snapshot we  
 10 have of that document, 42 percent of the text was included  
 11 and available.  
 12 Between December 21st and December 28th, the  
 13 document was Saved an additional 29 more times, increasing  
 14 incrementally, so that on December 28th, the document now  
 15 contained 66 percent of the Judgment.  
 16 We don't know how many times it was Saved between  
 17 December 28th and December 21st, but we do know that from  
 18 the 21st of January until March 4th, it was Saved an  
 19 additional 124 times. And ultimately, we know that the  
 20 only significant difference--the only difference--between  
 21 the file in Mr. Zambrano's computer and the file that was  
 22 submitted and issued as that judgment is the header and the  
 23 signature. It is 100 percent substantively the same.  
 24 Mr. Zambrano's habit of working in a single file on  
 25 multiple Orders over time effectively removed historical

09:27 1 the Judgment up until the last minute. The forensics do  
 2 not support this story, where the Judgment appears only at  
 3 the last minute on Mr. Zambrano's computer in a complete  
 4 form like Mr. Guerra claims happened.  
 5 What else do we know? As we discussed in our  
 6 opening, while the forensics show that Mr. Zambrano was  
 7 working on the Judgment on his computer in his locked  
 8 office in Lago Agrio, the Lago Agrio Plaintiffs were in the  
 9 dark as to when that judgment would come, and I provided  
 10 here copies of references for that various contemporaneous  
 11 e-mails evidencing the lack of knowledge on behalf of the  
 12 Plaintiffs.  
 13 And I take you to this last e-mail. Claimants  
 14 allege that all of the other e-mails were just Lago Agrio  
 15 Plaintiffs, keeping everyone else in the dark by reference  
 16 to an e-mail by their intern Bryan. But this e-mail, one  
 17 that Claimants have always ignored, is between only the  
 18 inner circle. No U.S. counsel or junior members were  
 19 included, only individuals who would have been a part of  
 20 the conspiracy if it existed. The contemporaneous e-mails  
 21 also support our story of judicial regularity.  
 22 So, how do Claimants attempt to avoid the import  
 23 of the forensic evidence? First, they point to the  
 24 metadata that confirms that the Judgment was written on  
 25 Zambrano's computer and say that Author name does not

09:25 1 information about the file; and, as a result, when  
 2 Mr. Zambrano Saved the Amplification Order on March 4th, he  
 3 removed the file's earlier metadata that would have shown  
 4 the earlier activity.  
 5 But as Mr. Lynch admitted, he has examined no  
 6 other computer that contained a draft of the Lago Agrio  
 7 Judgment. Only Mr. Zambrano's computers contained such a  
 8 draft.  
 9 We also know what we do not see. Claimants allege  
 10 that the Lago Agrio Plaintiffs wrote the Lago Agrio  
 11 Judgment, but there is no evidence that this happened. If  
 12 it had happened, as I will discuss in a moment, we would  
 13 expect to see evidence of that. We do not.  
 14 Yesterday, Claimants said that we do not have a  
 15 coherent story, but I would posit that we, in fact, do, and  
 16 it is driven by the objective forensic evidence. The file  
 17 that became the Final Judgment was created on  
 18 Mr. Zambrano's computer in October. 42 percent was  
 19 complete on December 21st. 66 percent was complete on  
 20 December 28th, and 100 percent of it was complete on  
 21 February 14th, when it was uploaded to the SATJE system and  
 22 distributed to the Parties.  
 23 Our story fits perfectly with the forensics. It  
 24 is Claimants' story that does not. As Mr. Guerra said, the  
 25 Lago Agrio Plaintiffs, according to Claimants, worked in

09:29 1 actually indicate who created the document. The Tribunal  
 2 will remember that Claimants pointed to an Excel document  
 3 with my Author name in the Last Modified and the Author  
 4 fields. It is not surprising that Mr. Racich's exhibits  
 5 have my name in them, as I was the attorney responsible for  
 6 taking Mr. Racich's exhibits and preparing them for  
 7 submission to this Tribunal. But to Claimants, this  
 8 indicates that Author name alone does not indicate who  
 9 created the document.  
 10 First, we have never said that Author name alone  
 11 is the only metadata confirming Authorship. The Author  
 12 name in this case does indicate that the content was  
 13 created on Mr. Zambrano's computer, and then it was edited  
 14 on Mr. Zambrano's computer, and it was uploaded from  
 15 Mr. Zambrano's computer. Claimants allege, though, that  
 16 the Lago Agrio Plaintiffs must have provided the content to  
 17 Judge Zambrano intermittently.  
 18 And this leads to the second and maybe more  
 19 important point. The metadata on Mr. Racich's exhibit  
 20 demonstrates our point. If someone else had been involved  
 21 in the contents' creation, even if only to intermittently  
 22 provide or copy files for Mr. Zambrano, their metadata,  
 23 like mine in Mr. Racich's exhibit, would be evident on  
 24 Mr. Zambrano's computer, but there is no metadata on  
 25 Mr. Zambrano's computer, even hinting at any of the Lago

<p>Sheet 11</p> <p style="text-align: right;">2813</p> <p>09:30 1 Agrio Plaintiffs' lawyers.  2 Second, Claimants allege that Microsoft Word was  3 not used enough. And as Mr. Bloom pointed out, the issue  4 is not whether it wasn't used long enough to have typed the  5 Judgment--Claimants admit that it was--but it is whether it  6 was used as much as Claimants would have liked it to have  7 been used. Mr. Lynch admitted that his analysis of  8 Microsoft Word usage did not include any time Mr. Zambrano  9 spent working from paper notes or drafting on paper.  10 Mr. Lynch also admitted that Mr. Zambrano may have  11 cut and pasted documents, numerous sections of text from  12 his own computer, thus increasing the volume of text almost  13 instantaneously. But let's take a look at how Microsoft  14 Word was actually used. I have taken the OSessions logs  15 that Mr. Lynch relies on, and I've graphed them here, so  16 you can see how many hours per day Mr. Zambrano's computers  17 were used over the relevant time period. According to the  18 Claimants, Lago Agrio Plaintiffs may have provided Mr.  19 Zambrano the entire piece of the Judgment at various times,  20 and he then typed those into his computer. If this  21 happened, we would expect to see either one large spike at  22 the end or maybe intermittent spikes followed by very  23 little activity. But instead, what we can see is that  24 Mr. Zambrano's computers were used consistently from  25 March--or October 2010 until March 2011.</p>	<p style="text-align: right;">2815</p> <p>09:34 1 none of the attorney argument or objections were translated  2 so that Mr. Zambrano had no idea what was going on.  3 The proceeding was highly contentious and  4 aggressive, to the point where Chevron's counsel had to be  5 told to calm down repeatedly.  6 Let's not forget that Mr. Zambrano--Claimants make  7 much of Mr. Zambrano's faulty memory about TPH, but let's  8 not forget that he recalled that it related to  9 hydrocarbons, but it is true he did not remember that the  10 individual letters in English what they stood for when he  11 was asked about them in a foreign language. I would bet  12 many attorneys in this room would have a hard time  13 remembering what C-I-A-D-I stands for under these  14 circumstances.  15 Moving away from Zambrano, Claimants--one  16 moment--Claimants much make of Mr. Zambrano's testimony,  17 but even the Special Master who was present recognized the  18 little value that Chevron's memory test provided.  19 Moving away from Zambrano, though, Claimants also  20 allege that Mr. Zambrano did not use Microsoft Excel  21 enough, but here are the facts: The calculations that  22 Claimants point to in the record were based on data that  23 was in the record since November 2006; and, as Mr. Lynch  24 admitted, he doesn't know who calculated the percentages.  25 It could very well have been a previous judge.</p>
<p style="text-align: right;">2814</p> <p>09:32 1 Claimants also point to the fact that Mr. Zambrano  2 is not here. I would like to walk through some of his  3 testimony that supports and continues to support our story,  4 for he consistently described his authoring process. What  5 we see from Mr. Zambrano is that he primarily worked from  6 paper notes and only once his ideas were complete on paper  7 would he dictate the Judgment.  8 As he said, "I had my notes, and once I had  9 everything started working on what's already advanced as  10 far as the Judgment. I already had studied the process."  11 His work-gathering notes started in his first term. And by  12 the time he started dictating, he had already advanced very  13 far with the Judgment.  14 Ms. Calva's testimony also supports Mr. Zambrano's  15 testimony. I won't go through it all, but I've collected  16 here references for you in these slides.  17 I want to briefly discuss the environment in which  18 Mr. Zambrano provided his testimony during RICO. Claimants  19 have made much of seeming inconsistencies or incorrect  20 statements, and I think some background may be helpful.  21 First, he only met with the Plaintiffs' lawyers once before  22 he was deposed and he only met his personal attorney the  23 night before his deposition started. And as far as we  24 know, Mr. Zambrano does not speak English, but Mr. Zambrano  25 was kept in the dark without a translator. Specifically,</p>	<p style="text-align: right;">2816</p> <p>09:35 1 The Selva Viva Database had been produced by  2 Stratus Consulting, the Lago Agrio Plaintiffs'  3 Environmental Experts, at least as early as  4 October 5th 2010. As with the remainder of the allegedly  5 unfiled work product, it defies imagination to believe that  6 the Lago Agrio Plaintiffs simultaneously handed Chevron  7 documents, such as the Selva Viva Database, and then used  8 those same documents to draft the Judgment.  9 But interestingly, Mr. Lynch was not provided a  10 copy of Chevron's own database of Lago Agrio Records. As  11 you heard yesterday, Claimants have repeatedly said that  12 the percentages in the Judgment were necessarily calculated  13 using the Lago Agrio Plaintiff's Selva Viva Database.  14 According to Claimants, they cannot be explained any other  15 way and that it took Mr. Lynch hours to calculate the  16 percentages even after he knew how to do it. Not only is  17 this not a forensic expert exercise, but in only a few  18 minutes this week I was able to calculate the same or  19 similar percentages using Chevron's database. For  20 instance, using Chevron's database, I calculated the same  21 10 percent of TPH results greater than 5,000 PPM TPH. Or,  22 as another example, I calculated the number of Plaintiff  23 samples below 1,000 TPH as 160. Unsurprisingly, the rest  24 of the percentages can likely be calculated as they're  25 simply based on the data submitted to the Lago Agrio Court</p>

09:37 1 during the Judicial Inspections.  
 2 Does this mean that Chevron ghostwrote the  
 3 Judgment? I don't think so, but it shows what should be an  
 4 obvious fact: The percentages can be calculated from the  
 5 data that both Parties believe was a part of the record.  
 6 Claimants allege that the Final Judgment relied on  
 7 the Cabrera Report's compilation of Concession Area pits.  
 8 Annex H-1 or the Stratus compilation, as Mr. Lynch calls  
 9 it. But as I demonstrated during the cross-examination of  
 10 Mr. Lynch, Mr. Lynch and Mr. Younger attempted to calculate  
 11 880 pits using the same database, but arbitrarily selected  
 12 to include and exclude pits in a different manner so that  
 13 they could both reach the same number.  
 14 Claimants have also placed significant emphasis on  
 15 the fact that Mr. Zambrano said he used the New Computer to  
 16 draft the Judgment, not the Old Computer. And in contrast  
 17 with his testimony, the Judgment was found on the Old  
 18 Computer.  
 19 But as this slide seeks to demonstrate, this is  
 20 not dispositive. We know the two computers were networked,  
 21 and we know that the Judgment was shared between them. We  
 22 know that the Judgment was Saved and not just revised like  
 23 Mr. Bishop mentioned yesterday. And what happens when one  
 24 shares a file like this between network computers is that  
 25 whichever computer Saves it last completely overwrites the

09:38 1 other computer's fingerprints. We have four snapshots out  
 2 of hundreds of the Lago Agrio Judgment's drafts. We just  
 3 happened to get the Old Computer snapshots.  
 4 Claimants also point to the fact that text was  
 5 copied and pasted from documents. Mr. Lynch can't confirm  
 6 where the text was copied from because that block of text  
 7 doesn't appear in any other document. But Mr. Lynch  
 8 admitted that his evidence points to as well that someone  
 9 just selected a different font. He also recognized that  
 10 any number of documents on Mr. Zambrano's computer could  
 11 have been the source for the cut and pasted documents.  
 12 I have one point before I close. Claimants have  
 13 pointed to the Lago Agrio Orders that were on Mr. Guerra's  
 14 computer as proof that Mr. Guerra drafted Orders in the  
 15 Lago Agrio action, but those Orders do not appear on  
 16 Mr. Guerra's computer until July 23rd, 2010. We have no  
 17 forensic evidence where there were, other than the fact  
 18 that they were on Mr. Zambrano's computer before that date.  
 19 And here is why this is important. Mr. Guerra was  
 20 left alone in Mr. Zambrano's office repeatedly, and in 2010  
 21 specifically. We don't know what he did. We don't know  
 22 what he did. And as Mr. Lynch recognized during his  
 23 cross-examination, we don't know who plugged the USB drives  
 24 in to whose computers. We don't know whether Mr. Guerra  
 25 plugged it in. At the end of the day, all that we know

09:40 1 from the forensics is that Mr. Guerra had these drafts on  
 2 July 23rd, 2010, months after they were issued by  
 3 Mr. Zambrano.  
 4 And with that, I would hand the floor to  
 5 Ms. Hooshmandnia to continue with our presentation.  
 6 PRESIDENT VEEDER: Thank you.  
 7 Please.  
 8 MS. HOOSHMANDNIA: Thank you.  
 9 Mr. President, Members of the Tribunal, as  
 10 Claimants stated in their Opening Argument with regard to  
 11 Mr. Guerra, the specific question for you to decide is  
 12 simply whether he's telling the truth about specific  
 13 matters related to this case. In our view, the cash  
 14 incentives by themselves render him inherently unreliable.  
 15 Simply, Mr. Guerra's paid for claims cannot and should not  
 16 serve as a predicate for any factual findings from this  
 17 Tribunal.  
 18 Today I will spend 15 minutes evaluating  
 19 Mr. Guerra's testimony and illustrating why none of his  
 20 narrative can be credited by this Tribunal. And when  
 21 reflecting on this, I ask this Tribunal to remember what  
 22 Mr. Guerra shared regarding his views on human instinct and  
 23 truth telling: "Perhaps it's a genetic thing in human  
 24 beings or perhaps amongst Ecuadorians to try to present a  
 25 better image than what we really are vis-à-vis individuals

09:42 1 that we're just meeting for the first time, and all the  
 2 more so if they have the possibility of helping us at some  
 3 point in time or benefit us in some way."  
 4 By now you're familiar with the profits Mr. Guerra  
 5 has obtained from Chevron, and I have listed them on  
 6 Slide 49 for the Tribunal's convenience. Certainly, aiding  
 7 Chevron with a multi-billion dollar liability has its  
 8 perks.  
 9 We know that Mr. Guerra was admittedly struggling  
 10 financially. He had a \$20,000 construction debt. He  
 11 needed another 20 to \$30,000 to complete a half renovated  
 12 home, and he could not afford to visit two of his children  
 13 in the United States.  
 14 For a man who didn't have more than a couple  
 15 hundred dollars to his name, this was the lifeboat he was  
 16 looking for and the boat was big enough for his entire  
 17 family.  
 18 Somehow Chevron managed to buy Mr. Guerra what  
 19 money typically cannot buy, the opportunity to reunite with  
 20 the children he had not seen for years, the chance to be  
 21 present in the lives of his grandchildren, and the peace of  
 22 mind that capable attorneys would ensure that his son will  
 23 not face deportation in light of his illegal status in the  
 24 U.S.  
 25 These benefits, which Chevron calls a corporate

09:43 1 witness protection program did not come as a surprise to  
 2 Mr. Guerra. No, he knew that Chevron doles out these  
 3 packages. When Mr. Bloom asked him whether he read about  
 4 Mr. Diego Borja's financial benefits from Chevron,  
 5 Mr. Guerra stated, "it was said that the individual who  
 6 filmed these videos was taken out of Ecuador and got asylum  
 7 in the U.S., and, just like me, he lives in the U.S. and  
 8 his expenses are somehow covered by Chevron." To  
 9 Mr. Guerra's credit, these benefits were not easy to come  
 10 by. He had to hold his own with Chevron's investigators  
 11 and attorneys who sat at one side of the negotiating table  
 12 and Mr. Guerra on the other side. This was not someone  
 13 coming clean. This was a high stakes game of chess, and  
 14 Mr. Guerra had to make something out of nothing.

15 In the summer of 2012, the negotiations began.  
 16 For its part, Chevron knew how to leverage its position:  
 17 the brute motivation of money. Before Chevron's  
 18 representatives even fully understood Mr. Guerra's story,  
 19 they had wads of cash in their briefcases. Indeed, as  
 20 Mr. Guerra confirmed, the Chevron representatives made it  
 21 clear to him that they hoped that they could get his  
 22 cooperation for money.

23 Mr. Guerra, with not much else to offer, got  
 24 Chevron's attention by promising that he could serve  
 25 Judge Zambrano on a silver platter. And in between the

09:45 1 chit-chat, jokes and laughter, Chevron made its Agenda  
 2 clear. Mr. Guerra testified that "the representatives of  
 3 Chevron expressly told me that once I was able to arrange a  
 4 meeting between them and Zambrano, then there was going to  
 5 be a little bit of money, additional money for me, some  
 6 additional financial benefit."

7 After a couple months and no signs of  
 8 Judge Zambrano, Chevron began fearing the worst. Was  
 9 Mr. Guerra playing them? Mr. Rivero, Chevron's Miami-based  
 10 American lawyer, warns Mr. Guerra that Chevron is losing  
 11 patience and confidence. He said "so then Chevron starts  
 12 thinking, wrongly, that it's a ruse. Do you understand?  
 13 And so then Chevron asked, listen, could Alberto Guerra be  
 14 in on some ruse? They ask because they're sensible, too.  
 15 Andres, you have talked to Guerra face to face? What do  
 16 you think? What is he like? What are your thoughts? Is  
 17 it a ruse? No, not me, but I don't know."

18 And then they took a hard line. Chevron told  
 19 Mr. Guerra that he will be "left with nothing" if he could  
 20 not deliver Judge Zambrano to Chevron.

21 What was Mr. Guerra to do? Vying to stay relevant  
 22 and get some benefit, Mr. Guerra began mentioning the  
 23 various pieces of evidence that he had, most of which we  
 24 found out never existed, and Chevron was willing to take  
 25 what it could get, so the bidding began.

09:46 1 Mr. Rivero told Mr. Guerra, "I'm an attorney. I  
 2 don't mind setting a starting figure; right? Starting.  
 3 Understand?" And with that, Chevron put its first offer on  
 4 the table.

5 Mr. Rivero led Mr. Guerra by the arm to an open  
 6 safe filled with cash. "Look, look, look what's down  
 7 there. We have \$20,000 there".

8 Mr. Guerra asked for 50,000 and a few more zeros.  
 9 Starting figure, offer, counteroffer. Both sides  
 10 knew how it worked. Mr. Rivero said "The Americans have a  
 11 saying that I believe is good. They says money talks."  
 12 Mr. Guerra retorted, quote, "there is a saying here, and I  
 13 think it's worldwide. It says money talk, gold screams."

14 And of course, the more evidence Mr. Guerra could  
 15 provide, the more cash he would get. When Chevron didn't  
 16 find the Judgment on Mr. Guerra's computer or flash drives,  
 17 Mr. Rivero told Mr. Guerra, "had we been able to find it,  
 18 we would have been able to offer you a larger amount." But  
 19 "we have 18,000 for you, and we are going to take the  
 20 computer with us."

21 Does that sound like a witness protection program  
 22 as Chevron claims in its opening or does it sound more like  
 23 an illicit smoky backroom deal? In all of this, Mr. Guerra  
 24 claims he's not a greedy man. He testified that he "wasn't  
 25 hoping to become a millionaire or anything like that." He

09:48 1 was just, "hoping to receive something, like a good set of  
 2 fees."

3 But he did admit that after his 2010 and 2011  
 4 Chevron bribe solicitations, that he believed that Chevron  
 5 had more money that it could pay, and that he could get  
 6 paid more quickly than the Plaintiffs. Indeed, he wanted  
 7 to get as much money as he could. He never cared who  
 8 actually won the case in Lago Agrio; "the final outcome was  
 9 not something that concerned me."

10 And as to his 2012 dealings with Chevron,  
 11 Mr. Guerra sought to maximize his negotiating position. He  
 12 admits "the only thing I thought was to improve my position  
 13 vis-à-vis further benefits that I could receive down the  
 14 line." He did this by exaggerating or put more accurately,  
 15 by lying.

16 Mr. Guerra has no problem lying. He told us that.  
 17 During his testimony before you, he stated it was perfectly  
 18 appropriate to lie. He said it was like saying in a job  
 19 interview that you have ten years of experience when, in  
 20 fact, you have none. He saw nothing wrong with that. And  
 21 Mr. Bloom will go into the details of Mr. Guerra's  
 22 purported evidence, but let me remind you about the lies  
 23 that we know Mr. Guerra has told. He told Chevron's  
 24 attorney in Quito that he was receiving \$1,500 to \$2,000 a  
 25 month from Plaintiffs to move the case along during

09:50 1 Judge Zambrano's first term. We know that wasn't true. He  
 2 said the Plaintiffs had offered him \$300,000 for his role  
 3 in the alleged ghostwriting of the Judgment. They did not.  
 4 He said that he had an e-mail from Mr. Fajardo in  
 5 the weeks before the Judgment's issuance attaching the  
 6 Memory Aid. He lied. Mr. Guerra promised a copy of the  
 7 Judgment in draft form on his computer and flash drives.  
 8 He lied again.  
 9 As Claimants stated, the question for you, Members  
 10 of the Tribunal, is whether he's telling the truth about  
 11 specific matters related to this case. Let's keep that in  
 12 mind as we take a closer look at new contradictions and  
 13 lies in Mr. Guerra's testimony in this Hearing.  
 14 We revisited with Mr. Guerra his many  
 15 inconsistencies, exaggerations and lies. Mr. Guerra's  
 16 first line of defense was to draw a sharp distinction  
 17 between the recorded conversations and his written and oral  
 18 testimony produced under oath: "Certainly, the recorded  
 19 conversations that I had initially with Chevron  
 20 representatives include some inconsistencies, but in the  
 21 sworn statements that I signed myself or ratified myself  
 22 with my signature, those statements do not include in it  
 23 any inconsistencies."  
 24 And to justify making a false assertion, he said:  
 25 "You also need to remember that, or take into account that

09:51 1 those assertions were not said under oath. I did not swear  
 2 over the life of my mother that that was going to be the  
 3 case."  
 4 But two weeks ago, Mr. Guerra told you that he  
 5 lied under oath in the RICO proceeding. Mr. Bloom began by  
 6 asking Mr. Guerra about his testimony that Judge Zambrano  
 7 "assured" Mr. Guerra that he would receive 20 percent of  
 8 the \$500,000 that the Plaintiffs allegedly promised Judge  
 9 Zambrano. Mr. Guerra responded in this room: "I mentioned  
 10 20 percent when it wasn't true, and I think that, as a  
 11 gentlemen, I should say the truth, and we did not discuss  
 12 20 percent with Mr. Zambrano. He just said that he would  
 13 give me a share of what he would receive." Mr. Guerra  
 14 admitted that the very last time he was put under oath he  
 15 perjured himself.  
 16 Mr. Guerra has historically used two excuses for  
 17 his inconsistencies. The first is that he misremembered,  
 18 and second that he was merely exaggerating to get more  
 19 money. But when Mr. Guerra sat in this hearing room, he  
 20 misremembered his exaggerations and exaggerated his  
 21 mis-remembrances. These produced more lies.  
 22 Mr. Guerra's testimony has provided more examples  
 23 than we have time to go over today, so I will just mention  
 24 three.  
 25 First, we know Mr. Guerra lied when he initially

09:53 1 stated he was offered \$300,000 by Plaintiffs. He admitted  
 2 this in the RICO proceeding and he admitted it again in  
 3 this proceeding. When asked how he lied, specifically how  
 4 it improved his negotiating position, suddenly, it seemed  
 5 he hadn't lied at all. He had just spoken "carelessly,"  
 6 "lightly" and "without thinking". This was a lie.  
 7 Here is a second example: We also explored with  
 8 Mr. Guerra his representation that he had a draft of the  
 9 Judgment on flash drives. Before you, he ratified his  
 10 testimony in his May 2013 deposition that he had lied when  
 11 he told Chevron he possessed a draft Judgment. Yet,  
 12 minutes later, what he had twice admitted was a lie became  
 13 instead a mis-remembrance. Again, another lie.  
 14 And here is the third example. Mr. Guerra had  
 15 previously said that he had "exaggerated" when he told the  
 16 Chevron representatives that he had day planners. In other  
 17 words, he knew he did not have such day planners, but he  
 18 said it--but he said he did. Yet, at this Hearing,  
 19 Mr. Guerra testified that he thought he had them at the  
 20 time, that he had misremembered.  
 21 In the wake of this testimony, it is impossible to  
 22 know which representations are mere mis-remembrances, which  
 23 are calculated exaggerations and which are outright lies.  
 24 With the lines between these so blurred, I submit  
 25 respectfully that this Tribunal cannot credit his testimony

09:54 1 when it's aligned with the interests of his benefactor,  
 2 which is also in every instance in his own financial best  
 3 interest.  
 4 And here is how Mr. Guerra further blurred those  
 5 lines. At this Hearing, Mr. Guerra equivocated on parts of  
 6 the story that he managed to keep consistent before. When  
 7 asked about exaggerations more generally, Mr. Guerra gave  
 8 an example of an exaggeration that he has never given  
 9 before. He said: "Exaggeration was like when I said I  
 10 received a thousand dollars from the Plaintiffs and  
 11 Mr. Zambrano." In so doing, Mr. Guerra provided yet  
 12 another example of a previous sworn statement that was not  
 13 true.  
 14 Further, Mr. Bloom also asked Mr. Guerra about two  
 15 TAME airline tickets from August 2010 referenced in  
 16 Mr. Guerra's RICO Witness Statement, C-2358. The Tribunal  
 17 will recall that up until two weeks ago it was Mr. Guerra's  
 18 story that those trips were "specifically for the Chevron  
 19 Case." When Mr. Bloom asked again, he confirmed his  
 20 contention. Yet, seemingly in the stream of consciousness  
 21 of testifying before you, Mr. Guerra realized that  
 22 Mr. Zambrano was not even presiding over the Lago Agrio  
 23 Case in August 2010. And, of course, if Mr. Guerra is  
 24 unable to admit that his son-in-law is named Nicolas, what  
 25 else is he willing to hide?

09:56 1 Before I conclude my presentation, I'm going to  
 2 show you one final lie from Mr. Guerra's testimony. With  
 3 that, I give the floor to Mr. Bloom, who will discuss  
 4 Mr. Guerra's physical evidence.  
 5 PRESIDENT VEEDER: Thank you.  
 6 Mr. Bloom.  
 7 MR. BLOOM: Thank you, Mr. President.  
 8 The Claimants recognize the difficulties  
 9 underlying Mr. Guerra's testimony, and they, therefore,  
 10 rely on what they characterize as an "ever-growing  
 11 mountain" of corroborative evidence. In their view, this  
 12 Tribunal can reach its findings without ever relying on  
 13 Mr. Guerra. But the evidence on which Claimants rely do  
 14 not make out Claimants' case. To the contrary.  
 15 And for the next 35 minutes or so I would like to  
 16 take you through the physical evidence on which Claimants  
 17 rely, discuss the relevance of each in light of the  
 18 testimony you heard, determine with you which evidence can  
 19 be disregarded and which evidence may be properly  
 20 considered, and then ask you to consider what the relevant  
 21 evidence actually proves.  
 22 Now, on this single slide, we have sought to  
 23 identify the so-called "mountain" of physical evidence  
 24 offered by Claimants in support of their allegations. This  
 25 slide also includes evidence that had been promised by

09:59 1 Mr. Fajardo. That evidence does not exist.  
 2 Mr. Guerra promised Chevron's representatives in  
 3 June of 2012 that he had calendars showing notes of  
 4 meetings with Steven Donziger, but he never produced those  
 5 either. Simply he offered no notes referencing meetings  
 6 with Donziger at all. So, this evidence, too, does not  
 7 exist and goes away.  
 8 Mr. Guerra promised that he had day planners  
 9 evidencing meetings with Mr. Fajardo and with Mr. Donziger.  
 10 He testified in this proceeding, however, that "when I was  
 11 trying to look for them, I had lost them. I wasn't able to  
 12 find them." Of course, during the New York RICO trial he  
 13 said something else. He didn't claim to have lost the day  
 14 planners. What was his answer under oath that day? "I  
 15 said many things to the gentlemen, to the representatives  
 16 from Chevron. On many of those, I was exaggerating. I  
 17 wanted to improve my position." But in this Hearing he  
 18 says he lost them. In either event, the day planners don't  
 19 exist, and they go away.  
 20 We also know, because Mr. Guerra told us, that he  
 21 has no correspondence whether by e-mail or written  
 22 correspondence with Mr. Zambrano. To be sure, Mr. Guerra  
 23 provided Chevron's representatives access to his e-mail  
 24 account, including providing them with his e-mail password.  
 25 While Mr. Guerra purportedly had frequent e-mail contact

09:57 1 Mr. Guerra, but which was never produced.  
 2 Among the evidence actually offered by Claimants  
 3 are e-mails, TAME shipping records, evidence of travel for  
 4 Mr. Guerra to and from Quito and Lago Agrio, deposit slips,  
 5 the nine alleged Draft Orders found on Mr. Guerra's hard  
 6 drives and more. Taken together, the Claimants tell us the  
 7 physical evidence is mutually reinforcing and categorically  
 8 proves that Judge Zambrano accepted a bribe.  
 9 But before we rush to judgment, let's actually  
 10 analyze and consider the evidence before us and the  
 11 evidence not before us, and gain an understanding of their  
 12 import, taken both separately and together.  
 13 According to Mr. Guerra, he does not have  
 14 cellphone records to confirm his alleged communications  
 15 with Mr. Fajardo: "My phone did not maintain those  
 16 records." That evidence does not exist.  
 17 After Mr. Guerra promised Chevron that he had and  
 18 he would produce to them calendars showing notes of  
 19 meetings with Mr. Fajardo, Chevron's Miami attorney Andres  
 20 Rivero and Chevron's investigator affirmed to him that  
 21 Chevron would consider the calendars "very valuable for  
 22 us," very valuable. And you may remember my colloquy with  
 23 Mr. Guerra. Notwithstanding Mr. Guerra's promises and the  
 24 reward that was being offered, Mr. Guerra did not produce  
 25 any such calendar showing notes of any such meetings with

10:01 1 with Mr. Fajardo, no e-mail from Mr. Fajardo was ever found  
 2 in Mr. Guerra's e-mail account. According to Mr. Guerra,  
 3 any such e-mails have been lost. That evidence goes away.  
 4 Claimants, as you will recall from the  
 5 cross-examination I had with Mr. Guerra, have also relied  
 6 on the TAME shipping records which they claim corroborate  
 7 Mr. Guerra's testimony that he shipped Draft Orders to  
 8 Mr. Zambrano, and in this respect Claimants have pointed to  
 9 23 shipments from Mr. Guerra to the Oriente.  
 10 Let's evaluate the relevancy of these 23  
 11 shipments. Mr. Guerra provided evidence of exactly 11  
 12 shipments directly to Mr. Zambrano. While he never before  
 13 acknowledged this in all of his statements, notwithstanding  
 14 I think we had 19 tabs of his statements, Mr. Guerra in  
 15 cross-examination conceded that not one of these 11  
 16 shipments had anything to do with the Lago Agrio Case:  
 17 "QUESTION: You have confirmed that nine of  
 18 them were made after the Sentencia was issued and  
 19 had nothing to do with the Lago Agrio Case; isn't  
 20 that correct?  
 21 "ANSWER: Yes, sir.  
 22 "QUESTION: And you testified that the  
 23 July 22, 2010, shipment had nothing to do with the  
 24 Lago Agrio Case and that Judge Zambrano was not  
 25 even Presiding Judge at that time?

10:02 1 "ANSWER: Yes, that's correct.  
 2 "QUESTION: And that the February 11 shipment  
 3 of 2011 also had nothing to do with the Lago Agrio  
 4 Case?  
 5 "ANSWER: Yes, sir."  
 6 Evidence of these 11 shipments all go away.  
 7 Claimants have identified 12 additional packages  
 8 from Mr. Guerra to people other than Judge Zambrano through  
 9 TAME. Mr. Guerra, however, confirmed that the three  
 10 packages sent to Coca, about a two hour car ride from Lago  
 11 Agrio, had nothing to do with the Lago Agrio Case, and he  
 12 specifically affirmed that the packages sent to Pedro  
 13 Moreira Colorado, Juan Jurado, and to Orlando Daza, had  
 14 nothing to do with the Lago Agrio Case either. Evidence of  
 15 these shipments, therefore, also go away.  
 16 So, that leaves us with seven packages to Fernando  
 17 Albán and two to Narcisa Leon. The record makes clear, and  
 18 Mr. Guerra concedes, that the shipments to Fernando Albán  
 19 had nothing to do with the nine Orders found on his hard  
 20 drive. Nor could they, because the nine Orders had been  
 21 issued or were issued by Judge Zambrano at least nine  
 22 months before the first TAME shipment to Mr. Albán.  
 23 Now, I will note parenthetically that Mr. Guerra  
 24 contends that the shipments to Mr. Albán must have related  
 25 to other Orders other than these nine. Well, we know that

10:04 1 the two gentlemen have had a friendship at least extending  
 2 years. We have some testimony that they were, indeed,  
 3 relatives, although he denied it.  
 4 And we also know that they have published  
 5 together, and these shipments also could just as well have  
 6 been Court filings Mr. Guerra made in Lago Agrio on behalf  
 7 of his own clients since he was still representing clients  
 8 at that time.  
 9 And, of course, Mr. Albán is not here. He elected  
 10 not to stand behind his good friend Mr. Guerra. In fact,  
 11 no one has stepped forward to offer a witness statement to  
 12 corroborate Mr. Guerra's testimony. And there is quite  
 13 literally no physical evidence to support Mr. Guerra's  
 14 contention.  
 15 So, that brings me to the two final shipments to  
 16 Narcisa Leon. And in this respect I want to take you back  
 17 to one of Claimants' opening slides, it was Slide 45 in  
 18 their opening, they reintroduced it yesterday, and in the  
 19 far two right columns you will see here two examples where  
 20 Chevron identifies alleged Draft Orders saved on Guerra's  
 21 computer both followed by TAME shipments. One of these is  
 22 November 18, 2009, the other Draft Order was November 29,  
 23 2009, again, each followed by a TAME shipment, each  
 24 followed by Judge Zambrano's issuance of a Final Order.  
 25 At Page 59 of our Day 1 Transcripts, Claimants

10:05 1 walk through this slide and the sequences, and then  
 2 represented, and I quote, "this pattern plays out nine  
 3 times."  
 4 To be clear, however, it does not play out nine  
 5 times. There is evidence of 23 TAME shipments in all.  
 6 These are but two--there are but two instances in which  
 7 this pattern shows itself, and these are the two. Even a  
 8 broken clock is right twice a day.  
 9 So, in our analysis of the so-called  
 10 "corroborative" evidence, let's leave these two shipments  
 11 to Narcisa Leon in, as they at least fit into Chevron's  
 12 allegations. To be sure, however, we don't know the  
 13 contents of these packages, whether Mr. Guerra was  
 14 returning Court documents or books to Ms. Leon or whether  
 15 they were Court papers relating to cases he said that he  
 16 was handling as counsel. Nor has Ms. Leon ever offered a  
 17 witness statement corroborating Mr. Guerra's claim. But  
 18 for purposes of the physical evidence, let's leave them in.  
 19 The 21 other shipments go away.  
 20 In his Declaration of November 2012, Mr. Guerra  
 21 identified travel to and from Lago Agrio as evidence that  
 22 he traveled back--between Lago Agrio and Quito. When  
 23 pointed out that his first cited travel occurred on August  
 24 4 through August 6, 2010, while Judge Ordoñez was the  
 25 Presiding Judge, he agreed and conceded for the first time

10:07 1 since he executed his Declaration some two-and-a-half years  
 2 ago that this travel had nothing to do with the Chevron  
 3 Case. He admitted, "if I traveled during these dates, it  
 4 wasn't for me to provide assistance to the Chevron Case."  
 5 And similarly, when pointed out that his second  
 6 cited travel about a week later also occurred during Judge  
 7 Ordoñez's tenure, he again agreed, and again for the first  
 8 time, that the travel had nothing to do with the Lago Agrio  
 9 Case. Evidence of this travel is therefore not relevant to  
 10 the question here, and this evidence also goes away.  
 11 What other evidence is there?  
 12 Claimants cite to six alleged payments by Judge  
 13 Zambrano to Mr. Guerra: Three journal entries, two bank  
 14 statements and a deposit slip. Let's put aside the  
 15 question of whether the name Nicolas, referred a couple of  
 16 Mr. Guerra's notations, referred to Nicolas Zambrano, or  
 17 instead to his son-in-law, Nicolas, who Mr. Guerra now says  
 18 he calls Nick. Let's put aside that we don't know whether  
 19 Mr. Guerra actually wrote these notations or when he wrote  
 20 these notations. Let's put aside that there was no  
 21 evidence identifying what these payments were for.  
 22 Let's also put aside the fact that Mr. Guerra  
 23 produced no example of any payment at all of \$1,000 or even  
 24 anything close to \$1,000, and that he now admits that he  
 25 lied about the amount he said he was being paid.



10:09 1 Put all that aside, and let's instead focus on a  
 2 single sentence from Mr. Guerra's testimony, and I'll  
 3 quote: "The payments that I received from Mr. Zambrano  
 4 starting in April 2011 to February 2012," which all six of  
 5 those payments were, "had no connection with the Chevron  
 6 Case." In this one sentence, Mr. Guerra admits something  
 7 he had never admitted before: That each of the six  
 8 payments from Mr. Zambrano had nothing to do with this  
 9 case. And he, in fact, has no evidence of any payments  
 10 from Mr. Zambrano during the relevant time.  
 11 Claimants' reliance on Mr. Guerra's notations and  
 12 in other instances deposit slips for proof of payment from  
 13 Mr. Zambrano therefore go away.  
 14 What other evidence do Claimants rely on? Well,  
 15 there are two deposit slips purportedly signed by a woman  
 16 named Ximena Centeno, who was allegedly affiliated with the  
 17 Plaintiffs, and while I included two here, Mr. Bishop  
 18 identified other deposit slips not signed by Ms. Ximena, so  
 19 we want to be accurate--there are deposit slips we could  
 20 put in there.  
 21 We, of course, in her case, don't know who put her  
 22 name on the deposit slips, nor do we know what the payments  
 23 were for, whether it could be for a presentation on the  
 24 environmental case, lobbying in the public domain, but we  
 25 should and do include this evidence on the list of

10:10 1 surviving evidence, at least potentially relevant to the  
 2 issue before this Tribunal.  
 3 Let's also leave in as potentially relevant  
 4 evidence the nine purported Draft Orders on Mr. Guerra's  
 5 hard drive, notwithstanding that both Mr. Lynch and  
 6 Mr. Racich have both testified that they were created on  
 7 Mr. Guerra's hard drive after the respective Orders were  
 8 issued and notwithstanding the fact that Mr. Guerra had the  
 9 opportunity and access to copy drafts from Mr. Zambrano's  
 10 computer, but we'll leave them in there.  
 11 And let's also include in this list the three  
 12 e-mails relied upon by Claimants in support of their case,  
 13 e-mails dated October 27, 2009, November 27, 2009,  
 14 September 5, 2010. I will address these shortly.  
 15 And, finally, let's also include the so-called  
 16 "Memory Aid," even though Mr. Guerra said that it contained  
 17 absolutely no useful information in respect of the  
 18 Sentencia.  
 19 So, what evidence remains before this Tribunal?  
 20 Well, the Parties disagree about the import of  
 21 these individual pieces of evidence before you, and I will  
 22 not belabor our respective points here. In fact, for  
 23 purposes of this next exercise, I actually want to do  
 24 something that I don't do very often. I want to actually  
 25 assume arguing the worst case from the defense point of

10:12 1 view. Let's actually assume that each of these pieces of  
 2 evidence actually stands for the proposition for which they  
 3 are offered by Claimants, and let's see how far that gets  
 4 the Claimants.  
 5 There are effectively three sets of tasks that  
 6 were before Judge Zambrano in his two terms as Presiding  
 7 Judge of the Lago Agrio Court:  
 8 First, he served as the Presiding Judge from  
 9 October 2009 to February of 2010 and issued during this  
 10 time a number of Orders or Providencias.  
 11 Second, Judge Zambrano served a second term from  
 12 October 2010 to March 2011, during which time he again  
 13 issued a number of Orders and Providencias.  
 14 And, third, and most importantly, he drafted and  
 15 issued on February 14, 2011, the Sentencia or Judgment in  
 16 this case.  
 17 With this in mind and taking a look at what used  
 18 to be the mountain of evidence and seeing what remains,  
 19 let's actually identify which pieces of evidence relate to  
 20 which of these three categories of responsibilities that  
 21 Judge Zambrano had before him.  
 22 Most all of them drop in the first bucket.  
 23 Now, maybe this is where the rubber meets the  
 24 road, where both sides need to take a step back and need to  
 25 reassess. Might we, on this side, have overstated our case

10:14 1 by suggesting that there is no probative physical evidence  
 2 that would be consistent with at least one of Claimants'  
 3 allegations? Physical evidence regarding the first time  
 4 period of a possible agreement between Mr. Guerra and the  
 5 Plaintiffs in 2009?  
 6 But have the Claimants overstated their case when  
 7 they claim that the evidence conclusively proves that Judge  
 8 Zambrano was bribed and that he let the Plaintiffs  
 9 ghostwrite the Judgment?  
 10 When one looks at the evidence through the prism  
 11 of this exercise, it is clear that at least as a general  
 12 matter, the potentially relevant evidence is fairly well  
 13 congregated during that first term and focused more  
 14 particularly on Mr. Guerra rather than Judge Zambrano. So,  
 15 is it possible that Judge Zambrano may have, in fact,  
 16 relied on Mr. Guerra to help him draft certain Orders  
 17 during his first term? But if he did, not as part of a  
 18 criminal enterprise to do harm to Chevron or as part of a  
 19 bribery scheme, but instead to act in effect as a law clerk  
 20 to Mr. Zambrano? Orders that Mr. Zambrano would review,  
 21 edit and bless? If we were to accept that the nine Orders  
 22 found on Mr. Guerra's hard drive, even though created on  
 23 his computer well after they were issued, but if they were  
 24 drafts, we know for a certainty that they were at least  
 25 reviewed and blessed by Judge Zambrano because of what was

10:15 1 found--because what was found on Mr. Guerra's computers  
 2 were not final Orders.  
 3 Is it possible that Mr. Guerra, acting on his own  
 4 and without knowledge of Judge Zambrano was pitching his  
 5 wares to both Chevron and Plaintiffs? We know he was  
 6 desperate for cash, he was in financial trouble. He was  
 7 confronting another 20 to \$30,000 of construction debt. He  
 8 was terminated as a judge and he was making 10 to 30  
 9 percent of his previous salary. And according to Chevron,  
 10 he twice solicited bribes from Chevron after which Chevron  
 11 decided to sit on its hands and do nothing.  
 12 Look at the nine Orders. They are overwhelmingly  
 13 procedural in nature and, by our analysis, Chevron won the  
 14 majority of those issues that were decided. The exhibit  
 15 numbers are provided on Slide 144, and I encourage you to  
 16 look at these at your convenience.  
 17 Most importantly, Chevron has made no claim in  
 18 this arbitration that those nine Orders were incorrectly  
 19 decided. Even if we were to accept Mr. Guerra's  
 20 allegations with respect to this allegedly first agreement,  
 21 which we do not, his role would have been merely to "move  
 22 the case along." His words. Most of the time, the  
 23 Claimants have used the identical language in their written  
 24 submissions.  
 25 In other words, this hypothetical first agreement,

10:19 1 wanted. Instead, Mr. Guerra gave a very long answer  
 2 explaining the law. I think it was Mr. Kehoe's fourth try  
 3 that Mr. Guerra finally gave in and offered the  
 4 demanded-for response that yes, it was in part because of  
 5 his agreement with the Plaintiffs to move the case along.  
 6 To be clear, if the Plaintiffs in fact paid  
 7 Mr. Guerra any money during Mr. Zambrano's first term,  
 8 that's all it was for. It had nothing to do with the  
 9 merits, and it was without any intent to prejudice either  
 10 Party's rights on the merits. Not even Mr. Guerra says  
 11 otherwise. Nor could it have been.  
 12 On Claimants' case, Mr. Guerra solicited Chevron  
 13 one year later, in October of 2011, and offered to fix the  
 14 Judgment in their favor. Not only is there no hint in any  
 15 of these nine Procedural Orders that they were incorrectly  
 16 decided or otherwise tainted the Sentencia, there is no  
 17 physical evidence--in fact, no evidence at all other than  
 18 Mr. Guerra's word--suggesting that Judge Zambrano would  
 19 have been aware or was aware of any such agreement between  
 20 Plaintiffs and Mr. Guerra. None. Indeed, when I asked  
 21 Mr. Guerra who was receiving the \$1,000 a month, he replied  
 22 that he was, and that Judge Zambrano was not receiving  
 23 anything to the best of his knowledge. Of course he  
 24 wasn't. It wasn't his deal, if there ever was a deal.  
 25 Let's address the October 27 and November 27, 2009

10:17 1 according to both Mr. Guerra and Claimants, had nothing to  
 2 do with the merits of the case. Nothing. And for his  
 3 part, Mr. Guerra never claims to have drafted a Providencia  
 4 inconsistent with Ecuadorian law, which is, if his  
 5 testimony were to be credited, why Mr. Zambrano would have  
 6 blessed them.  
 7 On his redirect of Mr. Guerra, my friend Mr. Kehoe  
 8 asked Mr. Guerra why, in Paragraph 10 of the December 7,  
 9 2009 Order, which is Attachment R- to his November 17  
 10 Declaration, he allegedly wrote, "it is provided that  
 11 ordinary time frames may not exceed those given under  
 12 Article 288 of the Code of Civil Procedure. This is done  
 13 in accordance with the provisions of Articles 303 to 319  
 14 ibidem."  
 15 And how did Mr. Guerra respond? Well, three times  
 16 he was asked and three times he explained the legal  
 17 reasoning, and at no time did he suggest or hint that the  
 18 Decision, the Order of the Providencias, was incorrectly  
 19 decided.  
 20 Mr. Kehoe kept pressing the issue, fishing for the  
 21 needed answer, with the same leading question, asking time  
 22 and again whether he made this ruling, "at least in part  
 23 because of your agreement with the Lago Agrio Plaintiffs to  
 24 move the case along quickly".  
 25 Mr. Kehoe again did not get the answer that he

10:20 1 e-mails. And, again, we are focused here on the alleged  
 2 communications with Mr. Guerra during Mr. Zambrano's first  
 3 term. The first e-mail from Mr. Fajardo references the  
 4 puppeteer and the puppet. The second makes a reference to  
 5 the puppeteer.  
 6 Now, let's again assume for argument's sake the  
 7 Claimants' allegation is correct and that Mr. Guerra is the  
 8 puppeteer. How far does that get the Claimants? In that  
 9 event, what are these e-mails saying? Only that Mr. Guerra  
 10 is representing that he will move the case along until he  
 11 gets paid. And then as to Mr. Guerra's implication as to  
 12 who the puppet is, well, that again is all coming from  
 13 whom? From Mr. Guerra.  
 14 It was always in his interest for years to portray  
 15 himself as influential, to show himself as close to  
 16 Mr. Zambrano, just as he would say that he had ten years'  
 17 experience as a job applicant even if he had none.  
 18 The bottom line is there is no physical evidence  
 19 to support the proposition that Judge Zambrano ever acted  
 20 complicitly with Mr. Guerra. And isn't it strange that  
 21 there is nothing tying in Judge Zambrano to this alleged  
 22 agreement? No evidence by the way that he even received a  
 23 dollar, ever.  
 24 But now let's turn to the physical evidence  
 25 relevant to Mr. Zambrano's second term. Where is the

10:22 1 evidence that Mr. Guerra prepared even a single Providencia  
 2 during this time period, much less that he got paid for it  
 3 by Mr. Zambrano? Where is the evidence that the Plaintiffs  
 4 paid him even a dollar during this second tenure? There  
 5 are no Draft Orders in his possession. None found on his  
 6 hard drive. There is, instead, a total vacuum.  
 7 And again, where is the evidence that, even if  
 8 there had been a hypothetical deal, that Judge Zambrano  
 9 knew about it? There are no exchanges between Mr. Zambrano  
 10 and Mr. Guerra.  
 11 What you saw in Claimants' Slide 45 that I  
 12 previewed with you a moment ago connecting certain  
 13 Providencias with the TAME shipments are totally absent  
 14 during Judge Zambrano's second term. How on this record  
 15 could it be concluded that this evidence supports a finding  
 16 that Mr. Guerra prepared even one Providencia for  
 17 Mr. Zambrano's review during his second term, much less  
 18 that he was acting on behalf of the Plaintiffs, much less  
 19 with Judge Zambrano's knowledge and complicity? Again,  
 20 there is nothing but Guerra's word.  
 21 And, finally, let's turn to the physical evidence  
 22 purporting to relate to the actual writing of the  
 23 Sentencia. Now, putting aside all that doesn't make  
 24 sense--and there is a lot: That Judge Zambrano should  
 25 literally throw Plaintiffs' representatives out of his

10:25 1 don't have a draft Judgment on Mr. Guerra's hard drive. We  
 2 don't have TAME shipments linked in any way to the  
 3 Sentencia. We don't have diary notes, calendars, daily  
 4 planners. We have no witness corroboration. And the  
 5 forensics don't support it.  
 6 Claimants point to a September 5, 2010, e-mail.  
 7 There, Mr. Guerra in a single sentence of a longer e-mail  
 8 says he would quote-unquote "support the matter" of Pablo  
 9 Fajardo. We don't know what that matter was. Might this  
 10 have been in relation to a presentation he might give, an  
 11 article he might write on the case? Or is this a reference  
 12 to Mr. Guerra again puffing himself, trying to connect  
 13 himself with Mr. Zambrano?  
 14 And importantly, this was at a time before  
 15 Mr. Zambrano resumed as Presiding Judge. Whatever it was  
 16 about, there is nothing in here that shows this is anything  
 17 more than Mr. Guerra again promoting himself.  
 18 And finally, there is the so-called--  
 19 PRESIDENT VEEDER: I'm sorry to interrupt.  
 20 MR. BLOOM: Please.  
 21 PRESIDENT VEEDER: Is that the right exhibit for  
 22 the heading, Slide 156?  
 23 MR. BLOOM: I think this is one of the articles  
 24 that was written, but I'll check on that at the break.  
 25 PRESIDENT VEEDER: Okay, thank you.

10:24 1 office, as Mr. Guerra testified, only to later negotiate a  
 2 bribe with them.  
 3 Two, that Judge Zambrano should be so paranoid  
 4 about being watched and yet engage in illegal acts in the  
 5 Quito airport and invite Mr. Fajardo and Mr. Guerra into  
 6 his apartment to help revise the Judgment, knowing that  
 7 Chevron's out there with cameras.  
 8 Three, that Judge Zambrano should allow Mr. Guerra  
 9 to be the only person to receive any payments from the  
 10 Plaintiffs while he would have to wait one day, some day in  
 11 the future, maybe after the appeals and after the  
 12 enforcement actions, to receive even one dollar--of course,  
 13 with no ability of enforcing on such a deal if the  
 14 Plaintiffs should back out of such an alleged deal.  
 15 Four, that Mr. Guerra would be paid a hundred  
 16 thousand dollars, even though he contributed nothing of  
 17 value to the Sentencia since all of his suggestions were  
 18 rejected.  
 19 Five, that after making statements for three  
 20 years, Mr. Guerra for the first time in this proceeding  
 21 said his electronic exchanges were lost. That was a new  
 22 one.  
 23 But let's put all of this to the side. There is  
 24 no exchange of money, none to Mr. Zambrano, none to Guerra.  
 25 We don't have any e-mails between Zambrano and Guerra. We

10:27 1 MR. BLOOM: And finally, there was a so-called  
 2 "Memory Aid." As you will recall, however, we took  
 3 Mr. Guerra through that Memory Aid. It contains a  
 4 chronology that cuts off nearly two years before issuance  
 5 of the Sentencia. It does not make reference to the  
 6 controversies that arose in 2009 or more importantly to the  
 7 controversies that surrounded Mr. Cabrera in 2010 or the  
 8 decision of the Court to consider supplemental experts in  
 9 the fall of 2010.  
 10 Nor was this so-called Memory Aid usable for the  
 11 purpose for which Mr. Guerra allegedly solicited it. Nor  
 12 does the Memory Aid address any of the allegations made by  
 13 Chevron in light of the evidence it accumulated in the 1782  
 14 actions in the United States during this time period,  
 15 evidence that was provided to the Court.  
 16 Mr. Guerra conceded, as he had to, that he had  
 17 written articles and made presentations related to the  
 18 environmental conditions in Ecuador, and that he had  
 19 written several essays on the subject.  
 20 The problem we submit is that this Memory Aid has  
 21 relevance only if we were to credit Mr. Guerra's testimony.  
 22 On its face, the Memory Aid is not relevant to anything.  
 23 Not one sentence of the Memory Aid appears in the  
 24 Sentencia, and the nature and content of the Memory Aid,  
 25 frankly, contradict Guerra's claim that it was created and

10:28 1 produced to him for the purpose of preparing or revising  
 2 the Sentencia.  
 3 Now, Members of the Tribunal, I have taken you  
 4 through this lengthy exercise and I have sought to organize  
 5 the physical evidence one by one in a manner that I thought  
 6 was fair and made the most sense in part based on temporal  
 7 considerations.  
 8 This Tribunal may look at the evidence and  
 9 organize it differently, as it should. But the point of  
 10 this exercise is actually to take some care to review the  
 11 so-called "mountain" of evidence, and in the context of the  
 12 very specific and various and different allegations. We do  
 13 that because it's possible to find the evidence probative  
 14 as to one allegation but not others.  
 15 We submit that Claimants have been prone,  
 16 generously stated, to overstatement, and we have said many  
 17 times Claimants' cited evidence simply does not stand for  
 18 the propositions for which they are offered. And just like  
 19 Claimants cobbled together a large volume of document  
 20 excerpts to try and portray the Government as a  
 21 co-conspirator in a scheme to defraud Chevron, something  
 22 Mr. Guerra himself has conceded is untrue, so too Claimants  
 23 throw into your lap a lot of evidence and say that the  
 24 sheer volume of evidence overwhelmingly and conclusively  
 25 proves their ghostwriting allegations.

10:30 1 Let me close my part of the discussion with this.  
 2 Notwithstanding his early promises of being able to produce  
 3 quote-unquote "everything necessary to prove a bribery  
 4 scheme," and notwithstanding his every incentive to provide  
 5 the Claimants the abundance of evidence they were so happy  
 6 to pay for, starting price of 20,000, grabbing him by the  
 7 arm, look, look, at that cash. Money talks. He got the  
 8 message. And yet even Mr. Guerra eventually had to concede  
 9 to Chevron at Slide 163 that what he had was "very weak."  
 10 This amounts to a very weak case.  
 11 Claimants cannot plausibly tell you now that the  
 12 case that Guerra himself conceded was very weak is, in  
 13 fact, now clear and convincing or conclusive or  
 14 overwhelming. It is not now, and it never was.  
 15 Members of the Tribunal, this would be a good time  
 16 for our morning break.  
 17 PRESIDENT VEEDER: Thank you very much.  
 18 We will take a break. We'll come back at quarter  
 19 to 11:00.  
 20 (Brief recess.)  
 21 PRESIDENT VEEDER: Let's resume.  
 22 We won't delay the proceedings further in regard  
 23 to the signing of the Procedural Order for the site visit,  
 24 but there are two matters. One, we just noticed that Annex  
 25 B, the security protocol, is called the Draft Security

10:51 1 Protocol, and I'd like your permission to cross out draft.  
 2 Claimants?  
 3 MR. BISHOP: Yes, you have our permission.  
 4 PRESIDENT VEEDER: Respondent?  
 5 MR. BLOOM: Please.  
 6 PRESIDENT VEEDER: In light of that, we're going  
 7 to ask you to initial the Draft Security Protocol, which is  
 8 now called the Security Protocol, just to make sure there's  
 9 no misunderstanding, but I think we can assume that we're  
 10 there, subject to making further original copies of this  
 11 site order. So, thank you all very much.  
 12 So, Procedural Order Number 36 will be now signed  
 13 by the Tribunal.  
 14 Sorry to hold you up, but let's continue.  
 15 MR. BLOOM: To finish our morning session, we will  
 16 begin with Mr. Goldstein and myself as we will conclude our  
 17 discussion relating and responding to the allegations of  
 18 fraud. We will then turn the floor over to Mr. Ewing and  
 19 to Ms. Silver to discuss the environmental and health  
 20 issues, and then we will close this morning's session with  
 21 Mr. Leonard's discussion regarding Track 1B.  
 22 MR. GOLDSTEIN: Thank you.  
 23 At this point, it may be helpful to ask what  
 24 remains of the Claimants' case in light of what you've  
 25 heard thus far from my colleagues. The forensic evidence

10:52 1 does not support that case. The contemporaneous e-mails  
 2 among the Lago Agrio Plaintiffs' counsel in December 2010,  
 3 in January 2011, contradict that case. Guerra's testimony  
 4 is inherently unreliable, and the limited so-called  
 5 "corroborative physical evidence," does not support a  
 6 finding of ghostwriting. It is certainly not clear and  
 7 convincing evidence of it.  
 8 So, we come again to Claimants' allegation that  
 9 the Judgment copies text from the Claimants' allegedly  
 10 unfiled work product. This allegation, in turn, hinges on  
 11 the documents in question never having been filed. If  
 12 those documents were lawfully before the Court, as I said  
 13 earlier, then their presence in the Judgment is entirely  
 14 proper, if not even expected.  
 15 Mr. Bloom and I have divided this discussion as  
 16 follows.  
 17 First, and primarily by reference to  
 18 contemporaneous evidence, I will show you that many of the  
 19 documents in question were almost definitely submitted  
 20 lawfully to the Court during judicial site inspections.  
 21 It's obvious that a small Court in the middle of the  
 22 rainforest simply was not prepared or capable of dealing  
 23 with a record of this size. That, however, cannot be a  
 24 denial of justice. Mr. Bloom will then address Claimants'  
 25 assertion that the official Lago Agrio Record is

10:53 1 searchable. We believe that Dr. Juola demonstrated during  
 2 his testimony that it is anything but.  
 3 Let's begin with the Fusión Memo.  
 4 The Tribunal will recall that the Plaintiffs  
 5 presented oral argument at the Aguarico 2 Judicial  
 6 Inspection in June 2008 that precisely tracked the  
 7 structure of the Fusión Memo and that the Memo's exhibits  
 8 appear in the Court Record for the same day.

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12 During our Opening Statement, and again during  
 13 Dr. Juola's cross-examination, we also reviewed a number of  
 14 errors in the Lago Agrio Record for that specific day,  
 15 including unnumbered pages and pages dramatically out of  
 16 order. Although errors such as this prevent determining  
 17 with certainty what other documents may have been filed  
 18 that day, it is logical to infer that the memo accompanied  
 19 its exhibits into the record.

20 But that is not the full extent of the evidence  
 21 here. In November of 2007, Mr. Sáenz e-mailed his  
 22 co-counsel explaining, "colleagues, here's the first  
 23 version of the famous merger memo." In response to Mr.  
 24 Donziger's question, "the idea is that this is the only  
 25 document we file?" Mr. Sáenz replies, "this document along

10:55 1 with all of the attached documents that it mentions."  
 2 In other words, the Fusión Memo and its exhibits.  
 3 As to the Plaintiffs' specific intent to file the  
 4 Fusión Memo and its exhibits at Aguarico 2, on June 9,  
 5 three days before the inspection, Mr. Sáenz sent  
 6 Mr. Donziger a list of the Fusión Memo exhibits for  
 7 "Thursday's inspection." Less than 15 minutes later, an  
 8 intern followed up by sending Mr. Donziger the Fusión Memo  
 9 itself, referred to here as Mr. Sáenz's "memo on the  
 10 fusion/merger."

11 That same intern then e-mailed Mr. Donziger after  
 12 the inspection confirming that, "Julio presented a  
 13 PowerPoint presentation about the merger to the Judge."  
 14 I.e., that the fusion discussion had occurred as planned.  
 15 At that point, having submitted the memo and its exhibits  
 16 to the Court, the Plaintiffs' legal team stopped discussing  
 17 it.

18 Next, let's consider the evidence with respect to  
 19 the Clapp Report. In 2006, the Plaintiffs asked Boston  
 20 University Professor Richard Clapp and his team of  
 21 researchers in the United States to draft a report  
 22 exploring the link between the release of oil contaminants  
 23 and adverse health effects. They did so for the express  
 24 purpose of submitting it to the Lago Agrio Court as a  
 25 health annex. On November 10, 2006, the Clapp Report was

10:56 1 substantively complete; and, as this e-mail demonstrates,  
 2 Mr. Donziger was intent on having Professor Clapp read and  
 3 sign it so the Plaintiffs could file it with the Court "on  
 4 Tuesday." The process of getting signatures caused a  
 5 delay, as evidenced by e-mails available at R-1010.

6 On November 28, 2006, one the authors e-mailed his  
 7 signature pages to Mr. Donziger, who then asked an intern  
 8 whether it might be possible to coordinate having all of  
 9 the authors signing on the same page. As the intern's  
 10 response on this slide indicates, at that point the  
 11 Plaintiffs, "were in no rush since the translation hasn't  
 12 been finished and inspections"--that is, judicial  
 13 inspections--"won't be back on until next year."

14 Accordingly, that next year in early January 2007,  
 15 Mr. Donziger wrote to Mr. Clapp that, "For logistical  
 16 reasons, we still have not turned in the health annex to  
 17 the Court. There were some last-minute changes that  
 18 changed our certified translated copy which caused a SNAFU  
 19 with the translator. We will turn it in at the next  
 20 inspection, which might be in a few weeks."

21 Accordingly, the Plaintiffs most likely submitted  
 22 the Clapp Report at one of the two next Judicial  
 23 Inspections. Indeed, why ask for and obtain the signatures  
 24 of the three authors if the Report were not to be used as a  
 25 court submission?

10:57 1 Also, no e-mails countermand the Plaintiffs'  
 2 express intent to file the Clapp Report, yet Claimants  
 3 contend that the Plaintiffs changed their mind, and decided  
 4 instead of filing the report to copy part of it into Annex  
 5 K to the Cabrera Report. But the evidence doesn't support  
 6 that supposition. For one thing, in October 2007,  
 7 Mr. Donziger sent the Clapp Report to Doug Beltman and Ann  
 8 Maest at Stratus with the subject, FYI, health annex in  
 9 case, reflecting his understanding that the Clapp Report  
 10 was in the case, that it had been filed with the Court.

11 And the next month, in November, the Plaintiffs  
 12 included the Clapp Report with a mediation statement they  
 13 submitted in their effort to settle the case. This is  
 14 significant because as the mediators' agenda indicates,  
 15 "Each side should assume that all others present and I are  
 16 familiar with the details of the Parties' litigation, as  
 17 well as with the mediation submissions that have been  
 18 submitted."

19 It makes no sense that the Plaintiffs would have  
 20 cited to the Clapp Report and materials with which Chevron  
 21 was presumed to be familiar if, in fact, they had decided  
 22 not to file it, but instead to hold on to it for purposes  
 23 of ghostwriting a Cabrera Report annex that itself would  
 24 not be filed for another several months.

25 PRESIDENT VEEDER: Sorry to interrupt you, if it's



11:05 1 court-appointed expert Barros to then-Judge Núñez  
2 requesting that an official letter seeking data be sent to  
3 the National Hydrocarbons Directorate and to  
4 Petroproducción. R-1528, the document on the right,  
5 reflects the Ministry of the Environment providing data to  
6 Judge Zambrano. Both of these documents were filed in Lago  
7 Agrio.

8 Additionally, Claimants submitted evidence  
9 suggesting that Mr. Connor submitted data to the Lago Agrio  
10 Court on CDs at Judicial Inspections, CDs that were later  
11 damaged or otherwise rendered unreadable. We cannot know  
12 whether the Plaintiffs also made similar submissions that  
13 were lost or damaged.

14 Finally, as you heard not long ago, Mr. Ewing, an  
15 internet cookie in his former life, successfully replicated  
16 calculations made in the Judgment using Chevron's own data.  
17 Mr. Lynch never attempted to do that. In light of these  
18 various possible sources, Claimants cannot be credited with  
19 having proven that the Lago Agrio Court relied on an  
20 unfiled data compilation from the Plaintiffs.

21 And I would also point out that we don't know how  
22 many of Chevron's pleadings may have been copied into the  
23 Judgment. Dr. Leonard did not perform any analysis to  
24 determine whether the Sentencia included submissions or  
25 excerpts of Chevron's filings, and thus does not know

11:07 1 would have ghostwritten the Judgment using documents they  
2 knew were unfiled but that Chevron then possessed.  
3 On the first day of this Hearing, at Page 156 of  
4 the Transcript, Professor Paulsson stated that, "The  
5 fraudulent judgment does not speak its name. The guilty  
6 party doesn't produce evidence of the fraud because it  
7 wants the fraud to be successful. The innocent party does  
8 not produce it because the fraud is secret, and it is  
9 ignorant of it."

10 Had the Plaintiffs indeed ghostwritten the  
11 Judgment using documents they had already turned over to  
12 Chevron, then, in fact, their fraudulent judgment would be  
13 yelling from the rooftops. Anything but secret. Doing so  
14 would have made no sense.

15 I raised this same disconnect in our Opening  
16 Statement. Why would the Plaintiffs risk billions by  
17 engaging in such self-defeating behavior? Claimants have  
18 provided no answer. You did hear yesterday about  
19 Claimants' expert Gerald McMenamin, who purported to  
20 conclude that the Judgment had multiple authors, of which  
21 Judge Zambrano was not a significant one, based on an  
22 analysis of so-called "style markers." As applied in this  
23 case, however, Professor McMenamin's analysis is more  
24 probative of multiple typists than of multiple content  
25 generators. The style markers he chose to analyze,

11:06 1 whether the Judgment also copies from them.

2 Similarly, unlike Chevron's success with  
3 Section 1782 discovery actions aimed at Mr. Donziger and  
4 others, the Republic does not have Chevron's internal  
5 documents so we cannot, for example, check those against  
6 Judge Zambrano's RICO testimony that he received documents  
7 labeled, "courtesy of Chevron," nor can we check them  
8 against the Judgment itself.

9 This is certainly not to suggest that Chevron  
10 ghostwrote the Judgment, but rather to point out that both  
11 Parties made voluminous submissions to the Court any of  
12 which may well be incorporated into the Judgment but cannot  
13 be located now in the record.

14 It's also worth returning to the fact that  
15 Mr. Donziger was forced to turn over all of his electronic  
16 media to Chevron well before the Judgment issued.

17 He provided two external hard drives, two laptop  
18 computers, and a desktop computer which were forensically  
19 imaged in September of 2010. He then provided additional  
20 media which were imaged in January 2011, all of which is to  
21 say that Chevron had Mr. Donziger's electronic media at  
22 least one month and in large measure five months before the  
23 Judgment issued. And, in fact, Claimants found the very  
24 documents they claim were unfiled yet appear in the  
25 Judgment on the Donziger media, which means the Plaintiffs

11:09 1 including spacing and punctuation placement, would rest  
2 with the discretion of a typist and would not have been  
3 conveyed in dictation.

4 Mr. Guerra himself provided an illustration of the  
5 problem of the Lago Agrio Court being subjected to such a  
6 huge record in his discussion of the stamps placed on  
7 official copies of filed documents.

8 He says: "In the Oriente Region, different from  
9 in the capital, we are talking about places that are not  
10 very sophisticated."

11 Eventually, with enough time, we may well find the  
12 filed copies of each document Claimants contend was not  
13 filed. At this point we can say with moral certainty that  
14 some of them were, but the fact that we have not yet found  
15 the rest is not evidence that they were not. With each  
16 document we source, Claimants' hypothesis becomes less  
17 plausible. And with your permission I will now return the  
18 floor to Mr. Bloom to explain why the Tribunal cannot rely  
19 on Dr. Juola.

20 ARBITRATOR GRIGERA NAÓN: Excuse me,  
21 Mr. Goldstein.

22 MR. GOLDSTEIN: Yes.

23 ARBITRATOR GRIGERA NAÓN: Could you go back,  
24 please, to your Slide 165. You are there? On the  
25 right-hand side there is this document, apparently it's a

11:10 1 notarized document concerning the submission of a certain  
 2 number of documents. I was looking at the document,  
 3 according to the reference R-530. I don't see anything  
 4 behind it. I only see the cover. And when I look at the  
 5 cover, English translation, it says, "Attachment 01  
 6 copies." So, could you explain us what does this document  
 7 mean?

8 MR. GOLDSTEIN: I'm told that this is the  
 9 notarized copy, but we have since updated the exhibit to  
 10 include--updated the R-530 exhibit to include the  
 11 underlying Fusión Memo exhibits that were also filed.

12 ARBITRATOR GRIGERA NAÓN: Apparently I have just  
 13 been told that if you slide it sideways, you'll find some  
 14 content, but I was doing it the other way, so this is a  
 15 notarized copy; there is a stamp and there is a numbering  
 16 on it. What does it mean? There is a stamp saying Corto  
 17 de la Superior de Justicia, and there is a numbering that  
 18 seems to be a pagination.

19 MR. GOLDSTEIN: Sure. The stamp is, as we  
 20 discussed with Dr. Juola, among others, essentially, the  
 21 certification that the document was filed in the Lago Agrio  
 22 Litigation and received officially by the Court, and I  
 23 presume you were referring to the handwritten numbers in  
 24 the upper right?

25 ARBITRATOR GRIGERA NAÓN: Yes.

11:13 1 after tomorrow, it would take us a week.

2 MR. GOLDSTEIN: I'm at your disposal, Mr.  
 3 President. That's not a problem, and obviously neither  
 4 Dr. Naón nor I were cookies in our former lives.

5 PRESIDENT VEEDER: Another non-cookie.

6 MR. BLOOM: While Mr. Goldstein focused on the  
 7 available contemporaneous evidence to show that the  
 8 Plaintiffs almost certainly filed openly and transparently  
 9 certain of their internal work product, including the  
 10 Fusión Memo, we believe, and the Clapp Memo, regardless of  
 11 whether they ever got logged into the official Court  
 12 Record, I want to spend the next few minutes addressing  
 13 Claimants' contention that the hard copy Lago Agrio Record  
 14 is searchable in the first instance. It is not.

15 Putting aside all of the data on CDs and DVDs, we  
 16 are still talking about 217,000 pages that would stretch  
 17 miles and miles and miles from here to almost Baltimore,  
 18 and if the pages were merely stacked one on top of one  
 19 other another, it would be close to seven stories high. In  
 20 clear recognition of what is truly the impossible human  
 21 task to search the record, Claimants elected to retain the  
 22 services of Dr. Juola and asked him to analyze and  
 23 electronically search the OCR version of the record.

24 Now, his Report suggests that his was a systematic  
 25 scientific approach not only capable of finding any passage

11:12 1 MR. GOLDSTEIN: Those are the Foja numbers, the  
 2 page numbers of the Lago Agrio Record.

3 ARBITRATOR GRIGERA NAÓN: Thank you.

4 PRESIDENT VEEDER: Sorry to belabor this point,  
 5 but just to confirm, that that's the updated Spanish  
 6 version of R-530, which was submitted in this arbitration,  
 7 it seems, on the 10th of April, 2015?

8 MR. GOLDSTEIN: That sounds right. We can  
 9 double-check, but that sounds correct, yes.

10 PRESIDENT VEEDER: But these are the Fusión Memo  
 11 exhibits?

12 MR. GOLDSTEIN: Yes, sir.

13 PRESIDENT VEEDER: They still don't include the  
 14 Fusión Memo itself that we have at C-2118?

15 MR. GOLDSTEIN: That is correct.

16 ARBITRATOR GRIGERA NAÓN: I understand from what  
 17 Mr. Doe is telling me that you found those exhibits, or  
 18 whatever exhibits there are in the Spanish original but not  
 19 in the English version; is that correct? Or vice versa?

20 So the cover are both in English and Spanish, but  
 21 the rest of the documents that would be attached to this  
 22 are only in the Spanish version. That's what I understand.

23 MR. GOLDSTEIN: That may well be correct. Yes.

24 PRESIDENT VEEDER: Sorry for interrupting you, but  
 25 we can sort this out in a few minutes, but if we left it

11:15 1 in the record, but that it could do so with scientific  
 2 certainty. His words. And if you have as little  
 3 technological background as I do, you would have presumed  
 4 the correctness of his opinions upon reading them, but the  
 5 reality has proven far different.

6 Mr. Juola's opinion and the opinions of Mr. Lynch  
 7 and of Mr. Leonard, because they both relied on Mr. Juola,  
 8 are dependent on the OCR process and more particularly on  
 9 the quality of the OCR images.

10 Claimants represented that the OCR quality of the  
 11 record was excellent. That's their word from Dr. Juola's  
 12 opening presentation. And in his direct examination,  
 13 Mr. Juola testified that, "the OCR was extremely high  
 14 quality overall." He added that, "about 98.5 percent of  
 15 those documents contained what we considered to be high  
 16 quality Spanish."

17 In fact, you will recall that I showed him many,  
 18 many documents where the OCR was gibberish or as he called  
 19 them gobbledygook. We also found just as many documents  
 20 that turned out blank, only a subset of which did we offer  
 21 during his testimony, though the Tribunal can review R-1545  
 22 to see more.

23 More importantly, Dr. Juola is not--not--in a  
 24 position to say that these were aberrations, and let me  
 25 explain why.



11:16 1 While Dr. Juola and Claimants fall back on  
 2 Dr. Juola's statistical analysis, and we heard this from  
 3 Ms. Mouawad referring to these localized errors, for the  
 4 conclusion that the OCR was of high quality, it is  
 5 precisely his statistical analysis that I want to focus on  
 6 because it proves that his analysis is, in fact, inherently  
 7 unreliable and that the record is not searchable. I  
 8 encourage you to read his Appendix A to his 2013 report.  
 9 It makes clear what he did and what he did not do.  
 10 Most importantly, he did not compare the OCR  
 11 version with the original Lago Agrio Record:  
 12 "QUESTION: You never determined the error  
 13 rate by directly comparing the OCR version to the  
 14 original version; correct?  
 15 "ANSWER: I did not.  
 16 "QUESTION: You, instead, compared the OCR  
 17 version to the Spanish corpus; correct?  
 18 "ANSWER: That is correct."  
 19 What did he do instead?  
 20 "QUESTION: You're looking to see whether the  
 21 letters follow one another in the same approximate  
 22 percentage as the Spanish corpus?  
 23 "ANSWER: That is correct.  
 24 "QUESTION: So, this exercise is premised on  
 25 the assumption that statistically significant

11:19 1 He tells us, though, that he also conducted a  
 2 hand-review. Yes, his scientific OCR review was so perfect  
 3 that he chose to hand-review some 150,000 pages of the  
 4 record.  
 5 Now, to be clear, he owned up to a hand-review of  
 6 100,000 pages in his testimony. His Appendix B shows that  
 7 he actually tried to hand-review about 150,000 pages.  
 8 Let's discuss this hand-review.  
 9 By the way, I found out, it was interesting that  
 10 there was only one paragraph in his Report making allusion  
 11 to the hand-review because the very purpose of his Report  
 12 was to say we can scientifically determine that these  
 13 documents are not in the record. They recognized that this  
 14 is not truly searchable by a person by hand.  
 15 Mr. Juola did not hand-review the originals of  
 16 most all of the blank documents. Why not? Because his  
 17 statistical analysis did not consider the missing text that  
 18 constitute errors for his purposes, as he conceded. The  
 19 primary candidates for hand-review were not based on the  
 20 extent of missing text, but instead it was based on a  
 21 statistical analysis comparing documents to the Spanish  
 22 corpus.  
 23 So, he reviewed those with the high volume of  
 24 character errors, but did not generally review the  
 25 originals of documents that did not come out at all in his

11:18 1 differences between character strings in the OCR  
 2 version of the Lago Agrio Record and the Spanish  
 3 corpus might indicate a problem?  
 4 "ANSWER: That is correct."  
 5 In light of this, and to achieve utter clarity on  
 6 this point I asked him:  
 7 "When you referred to error rate right now,  
 8 are you referring or including text that's missing  
 9 entirely?"  
 10 "No, I was not," was his answer.  
 11 Now, at Paragraph 88 of his 2013 Report, which is  
 12 part of his Appendix A, he readily concedes that 10 percent  
 13 of the documents contained in the Court Record were  
 14 unusually difficult to analyze and are not reliable. But  
 15 that is only the starting point. We begin with 10 percent,  
 16 and if we do this in pages, and if the law of averages  
 17 work, he's referring to more than 21,000 pages. And again,  
 18 that's the starting point because the error rate was  
 19 entirely dependent on how well the non-missing OCR text  
 20 matched up to the Spanish corpus in terms of what letters  
 21 followed what letters.  
 22 He ignores for purposes of determining error rate  
 23 all of the blank documents. In his own words, he conducted  
 24 a "frequency analysis," and that frequency analysis simply  
 25 did not take into consideration the missing pages.

11:21 1 OCR analysis.  
 2 Now, keep in mind that we received his hard drive  
 3 only one week before his cross-examination. We didn't come  
 4 close to reviewing with the care we would have liked to  
 5 most of the OCR versions that he allegedly relied on. In a  
 6 quick scan of the last 10,000 pages that were provided to  
 7 us after he testified seems to show more of the same. When  
 8 pressed at the conclusion of his cross-examination, he  
 9 conceded he would not be surprised to learn that there were  
 10 many additional blank documents resulting from the OCR  
 11 process. Indeed, there are.  
 12 As to his hand-review and putting aside how  
 13 accurate any hand-review could be, he did not conduct a  
 14 hand-review for all of the so-called "plaintiffs' internal  
 15 documents." In cross-examination he testified that he  
 16 reviewed only four, all from the Fusión Memo, a document we  
 17 believe was filed at a judicial site visit. But Dr. Juola  
 18 did not look for any other passage or for any other  
 19 document.  
 20 What makes matters even worse is the lack of  
 21 clarity or reliability of how the process was even  
 22 conducted. He concedes that he's not an expert in OCR. He  
 23 has no idea what controls, if any, were placed before he  
 24 retained the documents, and he could only guess as to the  
 25 reasons for some of the errors that we all observed. He

11:23 1 attributed the blank documents, the gibberish, to low  
 2 quality copies. It doesn't matter that the Fusión Memo,  
 3 for example, was machine-printed. The question was what  
 4 kind of copy? Or what he refers to as salt and pepper on  
 5 the page or where the text was too light or too dark or  
 6 where there were Court Seals or handwriting. Some of the  
 7 copies that turned out blank were, at least to my naked  
 8 eye, fairly to moderate to high quality, and I refer you  
 9 only to his binder and assess for yourselves. And I will,  
 10 in fact, try to get glasses after this Hearing. But at  
 11 times he also referred to human error, perhaps in the  
 12 scanning process.

13 He also hypothesized in another instance that it  
 14 could also simply have been printed on a bad or old model  
 15 printer that did not print very well.

16 Interestingly, he also acknowledged that storage  
 17 conditions can affect the OCR quality. Perhaps not  
 18 comprehending that the non-air-conditioned Lago Agrio  
 19 Courthouse where these documents were stored was in the  
 20 middle and sits in the middle of a rainforest, he offered,  
 21 if you're keeping it in an unair-conditioned room in a  
 22 humid climate," he says that will be better than  
 23 maintaining the documents in a shower. So, we are now one  
 24 step up from leaving documents in a shower.

25 Mr. Juola's bottom line is that "bad OCR will have

11:26 1 four motions, albeit grossly misplaced, at the start of  
 2 this Hearing. That it took them two and a half years with  
 3 their resources, notwithstanding the OCR capabilities,  
 4 notwithstanding hand-reviewers. I submit establishes that  
 5 the process of trying to locate documents is not possible  
 6 and is not reliable.

7 Now, before we close this discussion, I wanted to  
 8 address one of the Tribunal's questions, namely that of  
 9 adverse inferences resulting from the Republic's alleged  
 10 failure to produce at this Hearing certain witnesses,  
 11 including Judge Zambrano, Ms. Calva, Mr. Donziger and  
 12 Mr. Fajardo, presumably among others over whom the State  
 13 has no control.

14 Now, to be clear, Claimants cited to no BIT case,  
 15 and we have not discovered any, that has ever imposed  
 16 adverse inferences on a party for failing to produce a  
 17 witness at an evidentiary Hearing. But, second, with  
 18 respect to those common law jurisdictions that have applied  
 19 the doctrine of adverse inferences, in each case, the Court  
 20 or Tribunal or the Party through the Court or Tribunal, had  
 21 subpoena power to compel the Witness to attend. This  
 22 Tribunal does not have subpoena power. The Republic did  
 23 not have subpoena power. That is absent here. Ecuador had  
 24 no ability to subpoena or otherwise compel any witness to  
 25 participate against his or her wishes.

11:24 1 an error rate of about 5 to 10 percent," and yet in the  
 2 short time we had together he acknowledged that there were  
 3 many, many documents with a substantially higher error rate  
 4 than his 5 to 10 percent.

5 And because his statistical analysis did not  
 6 consider missing pages as errors, and because he never  
 7 calculated the number of missing pages resulting from the  
 8 OCR process, we are left with no scientific or factual  
 9 basis on which to draw reliable conclusions from his work.  
 10 And again, I simply refer you to his Appendix A to draw  
 11 your own conclusions.

12 The fact that we received just last week nine,  
 13 10,000 additional pages that he purportedly reviewed is  
 14 more troubling. Each of these pages is a one-page TIFF  
 15 image. While that comports with what he said in his  
 16 Report, the other 200,000 or so pages from his original  
 17 hard drive were not, and that's inconsistent with his  
 18 Report. Let me just give you one example, I think it's a  
 19 very important example, of exactly how unreliable the OCR  
 20 process and hand-review have been in this case.

21 You will recall that the Republic represented a  
 22 number of times that we did not believe that four of  
 23 Chevron's 39 motions filed on October 2010 were in the  
 24 record, clearly both Parties had been looking for them for  
 25 a very long time. You will recall that Chevron found these

11:28 1 Third, in those same jurisdictions, an Applicant  
 2 seeking adverse inferences, not only had to have the power  
 3 to compel the Witness to attend, but also had the burden of  
 4 showing substantial prejudice, something absent here  
 5 because the Claimants had the opportunity to depose  
 6 Judge Zambrano for a couple of days in New York and call  
 7 him for cross-examination for several days in New York, and  
 8 I think they deposed, lest I remember, Mr. Donziger at  
 9 least 17 days.

10 We have--it is the Republic, I would submit, that  
 11 has been ultimately denied the opportunity to obtain  
 12 evidence in response and will I also remind the Tribunal of  
 13 what I said earlier, that we had brought to this Tribunal's  
 14 attention last year that we were reaching out to the  
 15 Plaintiffs' Expert Witnesses who were willing to provide  
 16 Witness Statements, and they would not provide Witness  
 17 Statements only because we would not in return give them an  
 18 indemnification agreements. Would anyone in his right mind  
 19 want to risk making itself an enemy of Chevron's war  
 20 machine? They squeezed Stratus writing letters seeking  
 21 debarment so that they might lose Government contracts.  
 22 They wrote letters to its clients. They helped put Patton  
 23 Boggs out of business. Who wants to take that on. Trust  
 24 me when I say we made efforts to reach out to people during  
 25 the course of the last couple of years, and too many times

11:30 1 we were shut down, and too many times it was attributable  
 2 to the conduct of the Plaintiffs.  
 3 Inferences made adverse to the Republic in  
 4 circumstances where the lack of cooperation is due to the  
 5 conduct of the other Party, I would suggest, would do no  
 6 equity. It would not be appropriate.  
 7 A few comments about Mr. Zambrano in particular,  
 8 Claimants suggest that we were ordered to produce him. Of  
 9 course, that's false. We agreed to convey the Tribunal's  
 10 invitation only, and Mr. President, you repeatedly  
 11 confirmed my understanding every time I corrected the  
 12 Claimants. Further, Claimants cite to no law for their  
 13 assertion that the Government somehow controls Mr. Zambrano  
 14 or any person merely because he works for a company in  
 15 which Petroecuador has a majority ownership interest.  
 16 And finally, not only did we not have the power to  
 17 compel his presence, but frankly it would have been  
 18 inappropriate for the Government or any party to actually  
 19 bring pressure on any judge to appear or discuss his  
 20 decision-making process. He chose to do so in New York.  
 21 He chose not to do so here. But, frankly, it is not up to  
 22 the State to be twisting arms, most especially where, as  
 23 here, Claimants' principal allegation for years has been  
 24 that "Ecuador controls the judiciary."  
 25 Here is the reality that we find ourselves. We,

11:33 1 evidence in this record tends to show that the Judgment was  
 2 written by Judge Zambrano without the involvement of  
 3 Plaintiffs.  
 4 And just for a moment, I want to return to  
 5 Mr. Guerra's testimony, and I wonder if anyone else caught  
 6 this in what surely appears to be the classical Freudian  
 7 slip. He says at Transcript 775, "Judge Zambrano, at a  
 8 given point in time has stated that in the reasoning that  
 9 he provided." Mr. Guerra at Transcript 775.  
 10 I will now turn the microphone over to Mr. Ewing  
 11 and then Ms. Silver, they're going to discuss the propriety  
 12 of the Judgment on the merits, which belies Claimants'  
 13 claims that the Court's conclusions of fact could have only  
 14 been the result of fraud. To the contrary, the record  
 15 evidence makes clear that the Lago Agrio Court properly  
 16 found Chevron liable for the contamination and the risk to  
 17 human health from that contamination.  
 18 PRESIDENT VEEDER: Could you wait one minute.  
 19 (Tribunal conferring.)  
 20 PRESIDENT VEEDER: There is one question we've  
 21 raised now but you can come back to it later. You've dealt  
 22 very thoroughly with Dr. Juola's written and oral evidence.  
 23 It would be useful if we could hear the Respondent's  
 24 submissions on the statement, I suppose, of Mr. Hernandez  
 25 of Morningside Translations. That was not developed, I

11:31 1 like you, are playing detective. We have used the rights  
 2 under Section 1782 to try to discover evidence. We put  
 3 together timelines, we've conducted our own investigation.  
 4 But the idea of placing burdens on the State's  
 5 representatives, that are neither practical nor consistent  
 6 with the fundamental proposition of both judicial  
 7 independence and the independence of the State's citizens  
 8 to make their own choices, would itself constitute grave  
 9 error.  
 10 So, let me conclude this part of the presentation  
 11 with this: We all recognize the Claimants' high burden of  
 12 proof, however it is articulated. This is not a case that  
 13 can or ought to be decided on people's testimony years  
 14 after the operative events. It really needs to be decided  
 15 on the physical and contemporaneous records. The forensics  
 16 evidence, we submit, is powerful evidence that  
 17 Judge Zambrano, in fact, wrote the Judgment. The  
 18 December 2010 and January 2011 contemporaneous e-mails  
 19 constitute powerful evidence that the Plaintiffs had no  
 20 involvement in the writing of the Sentencia. The  
 21 Plaintiffs' contemporaneous e-mails during the site visits  
 22 constitute critical evidence demonstrating their absolute  
 23 intent to submit much of the so-called "Plaintiffs'  
 24 internal work product."  
 25 Members of the Tribunal, the most probative

11:36 1 think, earlier at this Hearing, but it was referred to  
 2 yesterday by the Claimants as to what the effect of that  
 3 evidence would be on the submissions you made in regard to  
 4 Dr. Juola's testimony.  
 5 MR. BLOOM: I could give you a very quick response  
 6 now. The very reason, we submit, why Claimants brought in  
 7 Mr. Juola is that they understood that you could not do a  
 8 thorough hand-review at all. So, that's Number 1.  
 9 And Number 2, even Morningside, even in their  
 10 review, if you read it, they did look at a number and found  
 11 a number of overlapping sentences, but I think that the  
 12 primary point is that, I think we all--we certainly  
 13 recognize and we believe the retention of Dr. Juola  
 14 recognizes that you absolutely cannot do a hand-review and  
 15 expect to do it with any level of confidence.  
 16 PRESIDENT VEEDER: So, why do you say it is so  
 17 difficult, from your side? Because human beings can miss  
 18 text or misunderstand text, or something more?  
 19 MR. BLOOM: Well, I think, if you're talking a  
 20 20-page document but not when you're talking a 217,000-page  
 21 document.  
 22 The other thing I think is interesting is the  
 23 reviewers were bilingual reviewers, and Mr. Juola, you may  
 24 recall, testified it's harder when you speak that language.  
 25 So, it even made it more difficult for those reviewers to

11:37 1 accomplish such a task, at least with any level of  
 2 confidence.  
 3 At the end of the day, we really have two  
 4 different issues. The first issue, Mr. President, is, we  
 5 believe that sloppiness by the Court is not a denial of  
 6 justice. We believe that there is substantial evidence,  
 7 especially at the site visit, that documents, CDs, taped  
 8 videos were provided to the Court openly and transparently  
 9 but never made part of the record. So, that's half of  
 10 this. I mean, you lose one CD, you don't know how many  
 11 documents you're losing on that one CD.  
 12 But the other part of it--and I am now referring  
 13 back to the four Chevron motions filed in October 2010:  
 14 Surely, they looked for it, we looked for them, they looked  
 15 for them. We looked for them by hand. We obviously didn't  
 16 find them in two-and-a-half years, and they certainly  
 17 didn't find them, whether by hand or by OCR.  
 18 Yeah, humans have a lot of difficulty, I think,  
 19 especially--by the way, when you look at the number of  
 20 passages. We tried this exercise internally, try to look  
 21 for X number of passages in the course of 217,000  
 22 documents, and I submit it's not very reliable at all.  
 23 So, there are two sides here, and we don't believe  
 24 that either of one of them is reliable.  
 25 PRESIDENT VEEDER: Thank you very much.

11:39 1 Mr. Ewing.  
 2 MR. EWING: I want to start from this Tribunal's  
 3 question which boils down to: Why is the environmental  
 4 case relevant at all? First, for easy reference, I would  
 5 refer you to our several explanations of this question in  
 6 our submissions.  
 7 PRESIDENT VEEDER: It wasn't quite as blunt as  
 8 that, please. You're simplifying.  
 9 MR. EWING: I recognize I'm definitely  
 10 simplifying.  
 11 But let me take a few minutes to provide some  
 12 broader context, especially insofar as this may assist the  
 13 Tribunal as we prepare for the site visit in June and to  
 14 help you better understand the presentations that both  
 15 Parties have put on these last three weeks.  
 16 Yesterday, Professor Paulsson said that the single  
 17 purpose for the environmental case is to vindicate  
 18 Claimants' denial-of-justice claims. But I believe that is  
 19 not correct, and there are at least four primary reasons  
 20 why the environmental case is relevant. And I would like  
 21 to direct you to the first sentence of Claimants' first  
 22 Merits Memorial to show you why Professor Paulsson is  
 23 wrong.  
 24 According to Claimants: "This singular investment  
 25 dispute arises from an unprecedented, fraudulent, and

11:40 1 corrupt campaign of legally and factually baseless civil  
 2 litigation and bad faith criminal prosecution." Claimants  
 3 have based both their Treaty and denial-of-justice claims  
 4 on the conclusion that the Lago Agrio Judgment is  
 5 "factually baseless" or, in their latest formulation, "a  
 6 factual absurdity." This is the first point of relevance.  
 7 We have undertaken to show you that the Lago Agrio Judgment  
 8 is not a factual absurdity.  
 9 To the contrary, it is well-founded and reasonable  
 10 and thus is not a basis for breach of the Treaty or of  
 11 customary international law.  
 12 Second, Claimants have accused the Republic of  
 13 launching a bad faith criminal investigation of nine  
 14 individuals, including two Chevron attorneys. However,  
 15 there is more than ample evidence suggesting that material  
 16 misrepresentations to the Government had been made in  
 17 respect to the 1995 to 1998 remediation. While the  
 18 criminal investigations were eventually dismissed, the  
 19 Republic had the right in this proceeding to prove that  
 20 those investigations were not initiated in bad faith or by  
 21 collusion, but instead were based on information that the  
 22 representations regarding remediation compliance may have  
 23 been falsified.  
 24 Third, the environmental case is relevant because  
 25 it allows the Tribunal insight into Chevron's litigation

11:42 1 practices and unclean hands. Chevron went to great lengths  
 2 to hide contamination from the Lago Agrio Court and the  
 3 world, and now they've extended that effort to this  
 4 Tribunal.  
 5 Fourth, even in the event that the Respondent were  
 6 responsible for an international wrong, no party can obtain  
 7 relief that would put it in a better position than it would  
 8 have been in the absence of that wrong. In this regard,  
 9 Chevron cannot obtain a declaration of non-liability if it  
 10 is actually liable.  
 11 My colleague, Mr. Bravin, will discuss this more  
 12 this afternoon, but the bottom line is that any remedy for  
 13 any international wrong must take into consideration the  
 14 extent of Chevron's actual liability.  
 15 Our case is very simple: Is there pollution in  
 16 the Oriente? Is some of that pollution attributable to  
 17 TexPet? And is the RAP a defense? And having found after  
 18 that discussion that there is undoubtedly pollution in the  
 19 Oriente and that at least some of it is attributable to  
 20 TexPet, I will touch on the fact that TexPet can be held  
 21 liable for the whole subject to a right of contribution  
 22 under the principles of joint and several liability.  
 23 Next, Ms. Silver will address the health risks  
 24 faced by the people of the Oriente.  
 25 And, finally, I will address the reasonableness of

11:44 1 the categories of damages awarded in the Judgment.  
 2 As you've heard over the course of these  
 3 proceedings, TexPet operated in the Oriente from 1972 to  
 4 1990, and continued as part of the Concession until 1992.  
 5 Yesterday, Claimants stated that it is "impossible to go  
 6 back and reconstruct what the conditions were in the  
 7 Oriente." I beg to differ. Immediately after TexPet's  
 8 departure, two audits were conducted. These audits, by HBT  
 9 Agra and Fugro-McClelland, mere months after TexPet's  
 10 departure from Ecuador, paint a stark picture of oil  
 11 seeping out of pits into streams, and oil overtopping pit  
 12 walls and migrating into the surrounding environment and  
 13 otherwise significantly impacting the environment.  
 14 You have heard from LBG this week of how they  
 15 still find TexPet-caused contamination, but we will address  
 16 that aspect of this case more during the site visits.  
 17 As a historical note, it was while these audits  
 18 were being conducted and completed that the Aguinda  
 19 Plaintiffs first filed their complaint in the U.S. Courts.  
 20 So, the question is: Does this contamination  
 21 still exist? Mr. Connor would like you to think no.  
 22 Mr. Connor visited Sacha 18 in 2004 and declared that  
 23 proper remediation by TexPet of Pit 2 was confirmed. But  
 24 Mr. Connor's superficial review then of the site was far  
 25 from accurate. When Chevron's secret sampling team came

11:48 1 shows, any recent spill by Petroecuador is just adding  
 2 insult to injury. Claimants' criticism are like many of  
 3 their criticisms. No scientist, except those who have  
 4 worked for Chevron for 30 plus years can ever get anything  
 5 right, but Dr. Garvey's estimate of the amount of oil in  
 6 and around TexPet pits is the same analysis that Dr. Garvey  
 7 has routinely performed for multiple U.S. agencies and  
 8 courts. As Dr. Garvey explained, he estimated the  
 9 inventory of toxic chemicals and sediment along 200 miles  
 10 of the Hudson River in New York, 16 years after his  
 11 estimate and more than a billion dollars later, remediation  
 12 is just about to finish. His estimate, using the same  
 13 techniques as brought to bear here, was off by only  
 14 10 percent.  
 15 So, if we give Claimants the benefit of the doubt  
 16 that they are right, we don't have the equivalent of six  
 17 Exxon Valdezes, we have 5.4.  
 18 So, the next question: Is the RAP a defense? The  
 19 simple answer is no. This Tribunal has already decided in  
 20 its Track 1B Decision that the RAP does not apply to  
 21 individual claims brought by the Plaintiffs as one  
 22 tortfeasor against the other. Despite the fact that this  
 23 question has already been answered, Claimants continue to  
 24 rely on the RAP. But the RAP did not address Plaintiffs'  
 25 injuries for at least three reasons:

11:46 1 back a year later to conduct more in-depth sampling, they  
 2 found liquid crude oil at depth in this RAP-remediated pit.  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 10 There are hundreds of other examples where we can  
 11 show you that TexPet-era contamination is still present in  
 12 the Oriente, and we will show you more of this during the  
 13 site visits in four weeks.  
 14 You heard Dr. Garvey explain that the data shows  
 15 the contamination in the Oriente is massive. In reply,  
 16 Claimants point to samples taken at Sacha 13 and claim  
 17 they're from a recent Petroecuador spill and, therefore,  
 18 that Dr. Garvey's analysis must be wrong. As Dr. Garvey  
 19 tried to explain, that isn't how statistics work. But if  
 20 we engage the argument, we see that it suffers from factual  
 21 errors.  
 22 First, the samples Chevron points to are from at  
 23 least a meter below the surface, not surface samples  
 24 evidencing a recent spill.  
 25 Moreover, as this list of spills from TexPet-era

11:50 1 First, the analytical results used during the RAP  
 2 to test remediation were fatally flawed. As Mr. Connor  
 3 testified, the weathered Crude tested during the RAP was  
 4 incapable of violating the TCLP standard. We know that the  
 5 TCLP test was not measuring actual conditions because TPH  
 6 tests conducted simultaneously showed significant  
 7 exceedances of any possible standard, the Judgment  
 8 standard, current Ecuadorian standards, the later revised  
 9 RAP TPH standard, and even Chevron's "international  
 10 standard" they used during the Judicial Inspections.  
 11 Second, the RAP only included a small portion of  
 12 the impacts caused by TexPet's operations. As I've already  
 13 addressed, and Claimants have pointed out, numerous open  
 14 pits, including the open oilfield pit at Shushufindi 55,  
 15 were left unaddressed by the RAP.  
 16 Additionally, there are numerous undocumented  
 17 pits, like the ones shown here at Lago Agrio 6, which was a  
 18 RAP site. While the pits were evident in 1985 in the  
 19 picture on the left, as you can see in this 1990 photo, the  
 20 pits are gone and were left undocumented by TexPet. And  
 21 only one pit was found and remediated during the RAP.  
 22 Therefore, because no one even knew that they were there,  
 23 the rest of the pits were left unremediated. Examples like  
 24 this abound.  
 25 Third, the determination for when a closed pit

11:52 1 needed remediation was inadequate to address the pit's  
 2 condition. Dr. Hinchee testified that oil contamination is  
 3 not always visually observable at the surface, yet he  
 4 explained that RAP cleanup was required only if there is  
 5 visually observable contamination. This is the definition  
 6 of a superficial cleanup. And even in cases where more  
 7 than just visual observations were made, the analytical  
 8 data was often merely one sample in the pit with no  
 9 additional samples down-gradient to account for seepage out  
 10 of the pit. Therefore, it is clear that the RAP is not a  
 11 defense.

12 All of this evidence of contamination exists  
 13 despite Chevron's attempts to conceal it from the Lago  
 14 Agrio Court. Mr. Connor testified in this proceeding that  
 15 he and the other Chevron Judicial Inspection Experts were,  
 16 "not assistants to the Judge" and "did not feel within a  
 17 directive of the Court or ethically an obligation to report  
 18 non-risk conditions."

19 However, Mr. Connor testified the opposite in a  
 20 different matter. Under oath, he described himself as a  
 21 "special assistant to the judge," even though he got paid  
 22 by the Parties.

23 Similarly, in another proceeding, Mr. Connor  
 24 testified under oath that the JI objectives were to collect  
 25 samples to answer certain questions, and those questions

11:53 1 involved a complete characterization of the site from an  
 2 environmental perspective.

3 Mr. Connor described this complete  
 4 characterization as "investigating all components of the  
 5 site, which included whatever pits might be there."

6 But what we know now from the 1782 discovery  
 7 actions is that Chevron's Judicial Inspection Experts  
 8 intentionally omitted known TexPet features in their  
 9 Reports to the Court.

10 On the left in this slide, you can see Chevron's  
 11 Pre-Inspection map of the pits at Sacha 13. On the right,  
 12 you see the map they presented to the Lago Agrio Court.  
 13 They failed to disclose three of the pits that they knew  
 14 were there. This is not the complete characterization  
 15 Mr. Connor described. This also happened repeatedly, and  
 16 we will also discuss it more during the site visit.

17 The Lago Agrio Court had before it years of  
 18 visual, testimonial, and analytical evidence. Using that  
 19 evidence, the Lago Agrio Court sought to calculate the  
 20 costs of remediation. As it asked the Settling Experts at  
 21 Sacha 53, the Court sought to know "the net benefit that  
 22 the persons possibly affected can gain from carrying out  
 23 any mitigation matters."

24 The Court asked this question to determine  
 25 whether, as the Plaintiffs requested, there could be

11:55 1 individual benefit from the "performance of all such works  
 2 needed to restore the natural characteristics and features  
 3 of the soil and surrounding lands prior to the damage in  
 4 the crude oil pits opened by Texaco."

5 In these proceedings, you have heard Claimants'  
 6 Experts and counsel opine on the regulation they believe  
 7 should apply to this case, yet Mr. Connor at least admitted  
 8 that he was not aware of what the laws were that surrounded  
 9 the Concession activities at that time. Instead, he made  
 10 his own determination of standard the Judge should have  
 11 applied and did not evaluate the law existing at the time  
 12 of the Concession.

13 For its part, the Court very reasonably addressed  
 14 this issue, noting that the standards such as Decreto 1215  
 15 which Claimants point to now were not present at the time  
 16 of the Concession. However, the Court made clear that lack  
 17 of parameters would not exempt Texaco from its obligation  
 18 to comply with the law requiring Texaco to avoid harm to  
 19 the flora and fauna. The Court then applied the  
 20 Plaintiffs' request in their complaint for the "removal of  
 21 all the elements that can affect their health and their  
 22 lives," and specified a 100-milligram per kilogram Cleanup  
 23 Standard.

24 One point of clarification that should be made on  
 25 this question of background in light of the Tribunal's

11:56 1 questions to LBG regarding the reasonableness of the  
 2 100-milligram per kilogram standard. It is the Republic's  
 3 position that 100 milligrams per kilogram is reasonable  
 4 based on two primary grounds:

5 First, the standard is certainly within the realm  
 6 of the juridically possible. Several U.S. states had set a  
 7 similar 100-milligram per kilogram standard for cleanup in  
 8 the 1990s.

9 But this is not just an historical fact.  
 10 Chevron's headquarters in San Ramon currently enjoys the  
 11 protections of the same 100-milligram per kilogram  
 12 standard, and the Trecate cleanup achieved an even lower  
 13 50-milligram per kilogram standard.

14 Second, this standard is reasonable because it is  
 15 approximately five times background. As Dr. Garvey  
 16 explained, at 100 milligrams per kilogram, you can be sure  
 17 that values above this are clearly impacted and clearly  
 18 contaminated. Claimants pointed to Dr. Short's Report  
 19 stating that the natural background of soil is 160  
 20 milligrams per kilogram. But as Dr. Short makes clear and  
 21 Dr. Garvey explained to this Tribunal, this was just one of  
 22 three background measurements that Dr. Short reported, and  
 23 this one was done with the TEM method. Using Chevron's  
 24 preferred method, which LBG was referring to when assessing  
 25 the Judgment's reasonableness, Dr. Short agrees the

11:58 1 background is well below 100 milligrams per kilogram.  
 2 But LBG is not alone. Mr. Connor calculated using  
 3 Chevron's data that background TPH is approximately 12  
 4 milligrams per kilogram. What is important to remember is  
 5 that all of the Experts--LBG, Dr. Short, and Chevron's  
 6 Experts--agree that 100 milligrams per kilogram is at least  
 7 five to ten times above background, and where exceeded,  
 8 therefore, reflects petroleum contamination.  
 9 To combat the overwhelming evidence of  
 10 contamination, Claimants and their Experts parade out  
 11 images and tales of alleged Petroecuador contamination as  
 12 though the Republic has denied all Petroecuador impacts.  
 13 This is simply not the case.  
 14 Neither did the Judgment, though, ignore the  
 15 activities of Petroecuador. Instead, the Court  
 16 specifically excluded, where possible, alleged harm caused  
 17 exclusively by TexPet or by Petroecuador but found that,  
 18 "the obligation of reparation imposed on the perpetrator of  
 19 a harm is not extinguished by existence of new harm  
 20 attributable to third parties."  
 21 In other words, even if Petroecuador had a recent  
 22 spill at Sacha 13, that injury is on top of the 25 years of  
 23 TexPet's insult. This basic principle of joint and several  
 24 liability applies here.  
 25 This was aptly demonstrated by Claimants' counsel

12:00 1 with the presentation of evidence of the Sacha 86 well site  
 2 stream remediation. LBG showed the massive scale of a  
 3 stream remediation, and Claimants' response was to point to  
 4 a Petroecuador spill supposedly upstream. But what the  
 5 evidence shows and the Judgment understood is that  
 6 "contamination is undoubtedly a combination of impacts  
 7 because there is 25 or 30 years of legacy operations by  
 8 TexPet in this system. Successive tortfeasors polluting  
 9 the same stream, one after the other, are jointly and  
 10 severally liable."  
 11 If Chevron wishes to concede contribution from  
 12 Petroecuador, it may do so in a separate contribution  
 13 action allowed for under Ecuadorian law, as Dr. Andrade  
 14 explained.  
 15 Before I hand the floor to Ms. Silver, I want to  
 16 briefly address Chevron's litigation tactics during the  
 17 Lago Agrio trial. LBG showed you on Monday how Chevron  
 18 used its Pre-Inspections to skew the Judicial Inspections,  
 19 and we will also talk about that more during the site  
 20 visits. But today I would like to focus back on the  
 21 Sacha 6 Judicial Inspection.  
 22 Last week, you heard me ask Mr. Connor a series of  
 23 questions about the Pre-Inspections. According to  
 24 Mr. Connor, the Pre-Inspections were a part of the Judicial  
 25 Inspections, according to his definition of Judicial

12:02 1 Inspections.  
 2 But as Mr. Connor admitted, the Lago Agrio Court  
 3 did not share that definition.  
 4 We also walked through with Mr. Connor how at  
 5 Sacha 6 Judicial Inspection, Chevron's counsel complained  
 6 that the Plaintiffs were performing soil drilling, using  
 7 drills or other mechanical means, and Mr. Connor agreed  
 8 with me, as he had to, that Chevron had done the same.  
 9 But there may be two more significant points.  
 10 First, despite the fact that Chevron had drilled  
 11 for samples at the site at least twice before the Sacha 6  
 12 Judicial Inspection, during the Judicial Inspection,  
 13 Chevron's counsel told the Court, "I categorically state  
 14 that no technical team from Chevron Texaco Corporation has  
 15 performed any secret tests here or used drills."  
 16 Second, when asked how Chevron proceeded from that  
 17 point forward, Mr. Connor assured this Tribunal that  
 18 Chevron followed the Court's instruction "not to alter the  
 19 sites," which, according to Chevron's counsel, included  
 20 using drills or other mechanical means. But what really  
 21 happened is that Chevron continued drilling at sites before  
 22 the Judicial Inspections for over two years, taking 1,493  
 23 Pre-Inspection samples at 78 different sites after the  
 24 Sacha 6 Judicial Inspection where this instruction was  
 25 allegedly given.

12:03 1 With that, I would like to hand the floor to  
 2 Ms. Silver to address the health risks faced by the people  
 3 of the Oriente and the health-related categories in the  
 4 Judgment.  
 5 PRESIDENT VEEDER: Please.  
 6 MS. SILVER: You have just heard about the  
 7 widespread contamination that TexPet left in the Concession  
 8 Area, contamination that remains today and which places  
 9 those exposed to it at risk. Yet Claimants' counsel told  
 10 you yesterday that there was no basis for the  
 11 health-related damages awarded in the Judgment.  
 12 I will spend the next 15 minutes recalling and  
 13 putting into context the health-related evidence put before  
 14 the Lago Agrio Court as well as that adduced in this  
 15 arbitration. The latter reinforces the former and confirms  
 16 that the Judgment's health-related damages are, in fact,  
 17 well supported.  
 18 Let us begin with my first topic, the Lago Agrio  
 19 Court's Decision, which is Exhibit C-931, where the Court  
 20 at Page 170 expressly found that scientific studies and  
 21 testimonial evidence from affected citizens "satisfactorily  
 22 demonstrated that there are scientific bases for reasonably  
 23 linking the Claims concerning health made by the  
 24 inhabitants of the region with the oil contamination that  
 25 derives from TexPet's activities as the Consortium

12:05 1 Operator."

2 Before I address some of that record evidence, I

3 would note here that the Judgment states--and I am again

4 quoting from Pages 170 and 171 of the Judgment--that "even

5 though none of these factors can be attributed with either

6 direct causation or exclusive responsibility, the evidence

7 shows a sufficient causal link for this Court to order

8 reparation of the harm caused."

9 The Court then goes on to state that the

10 Plaintiffs have "reasonably and sufficiently proven both

11 that an impact of public health exists and the fact that

12 this impact has a reasonable medical probability of being

13 caused by the exposure of the people living in the

14 Concession Area to the substances discharged by TexPet into

15 the ecosystem."

16 As you can see on these next slides, the Judgment

17 cites numerous health studies that discuss the toxicity of

18 crude oil and the association between risks of disease and

19 exposure to oil. For example, the Judgment relies on the

20 Yana Curi Report, which evaluated the impact of oil on

21 human and animal health. It also relies on a study called

22 Cancer in the Ecuadorian Amazon. That study found that

23 there are significantly higher incidences of cancer in oil

24 provinces as compared to non-oil provinces.

25 The Judgment also relied on witness testimony

12:08 1 Dr. McHugh put into the Lago Agrio Record. As a

2 preliminary matter, this Tribunal, as the Parties seem to

3 agree, is not a supra-national Court of Appeals.

4 But in any event, just how accurate is Claimants'

5 so-called "scientific evidence"?

6 Over the past week, we've learned at least five

7 important lessons:

8 First, Dr. McHugh's sample set was predominantly

9 composed of clean data. In his risk assessments, Dr.

10 McHugh used delineation samples, meaning that instead of

11 using samples from source areas, as EPA and ASTM guidance

12 requires, he assessed risk based on known clean samples

13 from areas outside the contaminated source. Dr. McHugh's

14 failure to use samples impacted by the source of

15 contamination is compounded by the fact that he made no

16 attempt to verify the location of his samples. Indeed, Dr.

17 McHugh did not map out, use a Conceptual Site Model, or

18 even visit the Concession Area to evaluate the specific

19 sites he was investigating. Ultimately, he failed to take

20 into account whether the specific pathways he was

21 evaluating were even plausible.

22 In the case of Guanta 6, for example, the specific

23 pathway he was evaluating was separated by the

24 pit--separated from the pit by a stream.

25 Second, Dr. McHugh's lack of knowledge of the way

12:06 1 presented during the JIs. The Court accepted the testimony

2 of residents and considered significant their similar

3 medical diagnoses and symptoms. For example, at Yuca-2B,

4 the Court heard both from Mr. Albarracín, who lost his wife

5 from cancer allegedly caused by exposure to TexPet oil.

6 And from Mrs. Guarnan, who had recently been diagnosed with

7 leukemia allegedly due to pollution.

8 At Cononaco 6, the Court heard from Ms. Armijos,

9 who lost her husband from cancer, allegedly due to oil

10 exposure.

11 At the Sacha Sur Station, Mr. Ureña advised the

12 Court that his father, aunt and nephew all died from

13 various forms of cancer. His nephew died from leukemia at

14 age 17.

15 And at Lago Agrio Norte, the Court heard from

16 Mr. Celso, who testified that, after drinking the

17 contaminated water, his pigs grew sick, and that when they

18 gave birth, their uterus were ejected along with their

19 piglets.

20 These, of course, are just a few examples of the

21 tragic stories that were echoed time and again by the

22 affected residents.

23 Claimants have argued that the evidence I've just

24 described and more like it cannot defeat the contrary

25 expert testimony and scientific data that people like

12:09 1 people used the affected land caused him to make

2 unsupported assumptions about exposure pathways and future

3 land use. Contrary to regulatory guidance, he failed to

4 take into account future land use in assessing health

5 risks. For example, he assumed that people would not live

6 at sites where there were open pits. This might not be an

7 obvious error if made from the comfort of the United

8 States, but it does not reflect the ground-truth in the

9 Oriente. Many residents there do, in fact, live near open

10 pits.

11 And Dr. McHugh should have known this, [REDACTED].

12 Similarly, Dr. McHugh improperly ignored exposure

13 pathways that residents have abandoned due to

14 contamination. Actual current use is not a proper

15 measurement for cleanup determinations under HHRAs, so Dr.

16 McHugh cannot say that people face no risk from such

17 sources.

18 That people are not currently using a source like

19 the stream at Lago Agrio 2, a stream that runs right past

20 their home, does not mean that it is fine to exclude it for

21 purposes of assessing risk or that remediation or cleanup

22 is not required to alleviate that risk.

23 Third, Dr. McHugh ignored important exposure

24 pathways assessing risks only from ingestion. The Reports



12:11 1 he submitted to the Lago Agrio Court ignored dermal  
 2 exposure, even though the regulations require considering  
 3 it, and even though it is clearly an actual exposure route  
 4 given the lifestyle of the Oriente residents.  
 5 Fourth, Dr. McHugh did not measure or take into  
 6 account TPH as a possible contaminant in his risk  
 7 calculations, even though he had the data available to him  
 8 and could have done so. Instead, he measured only about 30  
 9 individual components that are found in crude oil. What he  
 10 evaluated and based his risk assessments on was, in fact,  
 11 less than 1 percent of the toxic components in crude oil.  
 12 Fifth and finally, to the extent that Dr. McHugh  
 13 evaluated drinking water samples that were not from  
 14 municipal water supply systems, he was not able to find any  
 15 health risks because he rejected key criteria in evaluating  
 16 the samples. Dr. McHugh determined that there could be no  
 17 risks associated with a drinking water sample if it did not  
 18 exceed the World Health Organization's numerical criteria  
 19 for the few chemicals and metals of concern he evaluated.  
 20 But this method does not protect health, nor does  
 21 it mean that the drinking water is not contaminated. As  
 22 the WHO explained, numerical criteria were never developed  
 23 for TPH because odor and taste were meant to deter people  
 24 from drinking water contaminated with oil. Odor and taste  
 25 were meant to be the canaries in the coal mine protecting

12:12 1 people from the health risks associated with drinking crude  
 2 oil. These criteria should not have been ignored by Dr.  
 3 McHugh.  
 4 So, let me pause here to recount just how  
 5 scientifically unsound Dr. McHugh's risk assessments  
 6 actually are. Given the five major omissions I just  
 7 discussed, Dr. McHugh's human health-risk assessments  
 8 submitted to the Lago Agrio Court failed to properly  
 9 evaluate or assess potential risks to humans. Indeed, in  
 10 the end, Claimants' supposed evidence of no human health  
 11 risks in the Lago Agrio Record is no evidence at all.  
 12 There are health risks from exposure to crude oil in the  
 13 Oriente, and had Claimants actually applied the regulatory  
 14 standards they purported to follow, they would have found  
 15 them.  
 16 Based on the five omissions I walked you through,  
 17 Claimants were never going to find health risks sufficient  
 18 to warrant remediation. The deck was stacked. Claimants  
 19 were always going to win. Claimants should not be rewarded  
 20 for deliberately failing to find risk.  
 21 Thus, the evidence in the Lago Agrio Record  
 22 demonstrates the damages awarded in respect of health were  
 23 reasonable and well-founded. Again, it is important to  
 24 remember that Claimants have not suggested that the damages  
 25 awarded in the Judgment were simply too high. They submit

12:14 1 any award for healthcare-related damages would have been  
 2 excessive. This is not the case.  
 3 This brings me to my second topic which is that  
 4 the Republic's health Experts in this arbitration have  
 5 confirmed the reasonableness of the healthcare-related  
 6 damages awarded in the Judgment, including excess cancer.  
 7 Nothing that you have heard yesterday or during this  
 8 Hearing has changed this fact.  
 9 First, Claimants have not challenged the  
 10 well-established data and numerous epidemiological studies  
 11 that show that exposure to oil is associated with increased  
 12 risks of serious health problems. Nor does anything you  
 13 have heard during these proceedings call into question the  
 14 conclusions of the Republic's health Experts,  
 15 Drs. Grandjean and Laffon. Claimants did not want this  
 16 Tribunal to hear from them.  
 17 But in their Reports, both Experts demonstrated  
 18 that the conclusions reached by Claimants' epidemiology  
 19 Expert Dr. Moolgavkar are wrong. Exposure to oil in fact  
 20 increases a person's risk of developing cancer and given  
 21 the intensity, duration and circumstances of the residents'  
 22 exposure, the studies performed to date likely  
 23 significantly underestimate the risks facing the Oriente  
 24 residents.  
 25 Second, Dr. Strauss found elevated risk of cancer

12:15 1 at seven of the nine sites at which she performed a human  
 2 health-risk assessment. Next month, you will visit two  
 3 sites, Lago Agrio 2 and Aguarico 6, where Dr. Strauss has  
 4 concluded that immediate action is required to alleviate  
 5 the cancer risk.  
 6 Third, Dr. Strauss's risk assessments quantified  
 7 the minimum health risks that the Oriente residents face.  
 8 She did not calculate the worst-case scenario or use  
 9 artificially inflated exposure factors, and she has not  
 10 asked this Tribunal to consider pathways that she did not  
 11 evaluate due to time constraints such as ingesting  
 12 contaminated crops or livestock.  
 13 The point is simple. Her conclusions almost  
 14 certainly underestimate risk.  
 15 Finally, nothing that Claimants or their Experts  
 16 have said over the course of this Hearing has changed much  
 17 less refuted Dr. Strauss's conclusions. Yesterday,  
 18 Claimants argued that the whole-mixtures approach, one of  
 19 the methods on which Dr. Strauss relies to evaluate  
 20 non-cancer health risks, is not an accepted method to  
 21 measure toxicity. But this is simply not the case. Where,  
 22 as here, there are adequate toxicity data for crude oil,  
 23 the whole-mixtures approach is the preferred method,  
 24 according to EPA and ASTM guidance.  
 25 If Dr. Strauss's methodology is not widely used,

12:17 1 it is because adequate toxicity data are generally lacking.  
 2 But even if this Tribunal were to discount the  
 3 whole-mixtures method, Dr. Strauss's HHRAs still show  
 4 sufficient non-cancer health risks to warrant further  
 5 investigation or cleanup at five of the nine sites. Rather  
 6 than rely on counsel's representations, we invite you to  
 7 review the data for yourselves.  
 8 Before I turn the floor back over to Mr. Ewing to  
 9 continue our discussion of the reasonableness of the  
 10 various categories of damages, a few words on the RAP. As  
 11 you have heard, the RAP is irrelevant here. Regardless of  
 12 whether the site or source was part of the RAP, individuals  
 13 were placed at risk and this Tribunal has found that they  
 14 had every right to bring claims to remedy the harms that  
 15 affect them.  
 16 My colleague, Mr. Leonard, will be addressing this  
 17 topic in detail, but it's important to note that even  
 18 though the Lago Agrio Judgment did not seek to address or  
 19 vindicate personal injury claims or harms specific to any  
 20 one person, the Claims at issue here do not fall under the  
 21 scope of the 1995 Settlement Agreement.  
 22 As the Republic has discussed in its prior Track 1  
 23 Memorials, nothing is more individual than the right to  
 24 health. That the Judgment frames its damages Award in  
 25 terms of public health does not morph the individual rights

12:20 1 Report provides extensive support for its cost figures.  
 2 Moreover, in the Court's analysis of groundwater, it  
 3 considered Judicial Inspection Reports by at least six  
 4 different experts, four of whom are Chevron's--at least  
 5 five different sites where groundwater was extensively  
 6 discussed.  
 7 And I've added a citation to the chart.  
 8 Also during his presentation, Mr. Connor told you  
 9 that the Judgment has stated that TexPet is to pay  
 10 \$150 million to replace all of the potable water systems.  
 11 These systems do not need to be replaced, according to  
 12 Mr. Connor. And in his presentation, he told you that  
 13 there is no basis provided for this damage in the Judgment.  
 14 But neither of these statements is true.  
 15 Having found that the local people, their water  
 16 supplies are contaminated, the Court recognized that the  
 17 people needed an alternative. Relying on the neutral  
 18 court-appointed Expert Barros's Report, which itself cited  
 19 to UNICEF, USAID and European agency estimations of the  
 20 cost of a water supply in the Oriente, the Court found that  
 21 Chevron should pay for a potable water system for  
 22 the percent of the population not covered by the already  
 23 existing or planned projects.  
 24 The Judgment, as Claimants recognized in their  
 25 opening presentation, also provided for \$10 million per

12:18 1 at issue here into the diffuse rights that Claimants allege  
 2 were settled under the 1995 Settlement Agreement. The  
 3 rights at issue stem from the subject harmed, not the Award  
 4 meant to cure it.  
 5 For the Tribunal's convenience, this last slide  
 6 contains citations to our previous Track 1 pleadings on  
 7 this subject.  
 8 Thank you.  
 9 PRESIDENT VEEDER: Thank you.  
 10 Mr. Ewing.  
 11 MR. EWING: I would like now to turn to the final  
 12 four categories of damages in the Judgment. And I've put  
 13 on here the slide that Claimants have used throughout this  
 14 proceeding to represent the categories of the Judgment.  
 15 Ms. Silver has addressed the bottom three.  
 16 I would like to start with groundwater  
 17 remediation.  
 18 Mr. Connor claims that there is no basis for  
 19 groundwater remediation in the Judgment. This is not true.  
 20 First, Judge Zambrano includes in groundwater damages both  
 21 underground water as well as sediments of the rivers,  
 22 estuaries and wetlands.  
 23 But more importantly, the Judgment cites to the  
 24 Lago Agrio Plaintiffs' Expert Report by Douglas Allen as  
 25 support for its determination of costs, and Mr. Allen's

12:21 1 year for 20 years for the recovery of native species flora  
 2 and fauna. Dr. Theriot, the Republic's ecology Expert,  
 3 whom Claimants did not call, conducted extensive analysis  
 4 of the data and Expert Reports in the Lago Agrio Record and  
 5 found that the Record showed extensive loss of diversity  
 6 due to TexPet's operations, and that in his opinion, the  
 7 Court's Judgment understates the magnitude of this direct  
 8 impact. And I've added a reference there.  
 9 Finally, the soil damages awarded by the Judgment  
 10 were reasonable and proper and based in fact. Dr. Hinchee  
 11 used a calculation in his testimony which I have put on the  
 12 screen now. Dr. Hinchee claimed that each piece of that  
 13 calculation fails the reasonableness test. The first  
 14 supposedly flawed element in the Judgment's soil damages  
 15 analysis is the cost per cubic meter. Dr. Hinchee states  
 16 that such an amount is unreasonable. And yet the amount he  
 17 compares it to in order to make that determination is the  
 18 unrealistically low PEPDA estimate. PEPDA is a non-profit  
 19 project, and Dr. Hinchee acknowledges that it is able to do  
 20 things far cheaper than other contractors in Ecuador.  
 21 Indeed, Mr. Connor, when estimating costs for  
 22 another oil company for a mediation in the Oriente  
 23 immediately next to the Concession Area came up with a  
 24 \$295-per-cubic-meter cost, four times that which Dr.  
 25 Hinchee says the Judgment should have relied on. And that

12:23 1 is for a different standard than was applied in the  
 2 Judgment.  
 3 In determining the costs, the Court had a range of  
 4 estimates from experts from Chevron's 0-dollar estimate to  
 5 the Plaintiffs' \$1,000-per-cubic-meter estimate. The  
 6 Court's determination is eminently reasonable when those  
 7 various options were placed in front of it.  
 8 The second element that fails according to Dr.  
 9 Hincee is the soil volume per pit, but Dr. Hincee admits  
 10 that the Court "relied on two TexPet documents for the soil  
 11 volumes." Based on Dr. Hincee's own admission, the  
 12 Judgment reasonably assessed soil volume by looking to  
 13 TexPet historical documents.  
 14 And the final aspect is the number of pits. But  
 15 Dr. Hincee admitted that he did not know the entire  
 16 universe of pits that TexPet created, nor was this  
 17 information in any of the documents he reviewed.  
 18 And Mr. Connor conceded that at least three pits  
 19 are necessary for the drilling of a well in the Oriente and  
 20 that TexPet drilled 322 wells. Putting aside the  
 21 Production Stations and all of the pits there, based on  
 22 Mr. Connor's estimate alone, there were, at a minimum, 966  
 23 TexPet pits in the Concession.  
 24 It is clear that the Judgment's assessment of soil  
 25 damages falls well within the juridically possible.

12:25 1 And with that, I'll leave you this slide with the  
 2 references for the bases in the Judgment for the various  
 3 categories of damages, and we will conclude our  
 4 presentation on the relevance and the import of the  
 5 environmental case.  
 6 Thank you.  
 7 PRESIDENT VEEDER: Thank you.  
 8 MR. BLOOM: Some people seem to be lobbying for  
 9 lunch. And if that's the consensus, we can break now.  
 10 PRESIDENT VEEDER: I think it's probably the  
 11 consensus. We will come back at half past 1:00, and in the  
 12 meantime, I hope all the other versions of the Site Visit  
 13 Order can be signed and initialed.  
 14 (Whereupon, at 12:26 p.m., the Hearing was  
 15 adjourned until 1:30 p.m., the same day.)  
 16  
 17  
 18  
 19  
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 21  
 22  
 23  
 24  
 25

1 AFTERNOON SESSION  
 2 PRESIDENT VEEDER: Let's resume.  
 3 MR. BLOOM: Thank you, Mr. President.  
 4 We will now turn to Mr. Leonard, who will have two  
 5 parts. He will first address the Track 1B issues and then  
 6 will provide a response to parts of Claimants' legal  
 7 absurdities argument.  
 8 We will then address the issues of jurisdiction,  
 9 followed by exhaustion, and at that point we will ask for  
 10 the afternoon break.  
 11 MR. LEONARD: Thank you, Mr. Bloom.  
 12 So, this, Mr. President, Members of the Tribunal,  
 13 this begins Part 4 of our presentation of today dealing  
 14 with the legal predicates of the Judgment, and as Mr. Bloom  
 15 indicated, my presentation is divided in three parts. The  
 16 first part will address the alleged legal absurdities as  
 17 they relate to the Track 1 issues. Parts 2 and 3 will  
 18 respond to the Tribunal's question concerning, number one,  
 19 the Court's decision to disregard the corporate  
 20 separateness between Chevron and Texaco, and Part 3 will  
 21 include just a few brief remarks addressing a question  
 22 regarding causation.  
 23 So, I'm going to begin the first segment of the  
 24 presentation with the following proposition: The Lago  
 25 Agrio Litigation is a continuation of Aguinda. This is a

01:34 1 matter of fact; the Lago Agrio Litigation is a continuation  
 2 of Aguinda, and this has been judicially determined between  
 3 the Parties by the Court with the regional jurisdiction  
 4 over this matter. I will be coming back to this notion at  
 5 different points during my submissions of today.  
 6 So, let me take you to the Aguinda Case first.  
 7 In 1993, about a year after Texaco had left  
 8 Ecuador, residents of Ecuador's Oriente Region sued Texaco  
 9 in the Southern District of New York, seeking extensive  
 10 relief for the vast devastation to that region caused by  
 11 decades of oil exploration and extraction activities. I'm  
 12 going to be quoting from Exhibit C-14--this is the Aguinda  
 13 Complaint. The Aguinda Plaintiffs, and I quote, alleged  
 14 that, "between 1964 and 1992, Texaco's oil operation  
 15 activities polluted the rainforests and rivers in Ecuador."  
 16 The complaint alleged, for example, that  
 17 approximately eight groups of indigenous people lived in  
 18 the Oriente. These people had lived for centuries in the  
 19 rainforest and depended on them on their livelihoods and  
 20 their very existence. A general concern to everyone,  
 21 Texaco's destruction of the rainforests already has caused  
 22 physical injury to Plaintiffs and the class and continues  
 23 to threaten their health, way of life, and very survival as  
 24 a people. This is at Paragraph 38 of the Aguinda  
 25 Complaint.

01:35 1 At Paragraph 44, the Complaint states: "The  
 2 defiling of the Oriente has had grave consequences for  
 3 Plaintiffs and the class. Again, the focus is on the  
 4 individuals, and this is Aguinda New York. The waste  
 5 products discharged in open pits typically contain such  
 6 toxins as arsenic, lead, mercury, benzene, naphthalene, and  
 7 other hydrocarbons. These substances are toxic to animals  
 8 and humans and are known or suspected carcinogens.  
 9 There is more. Defendant's breach of duty was  
 10 wanton, outrageous, reckless, and intentional. Defendant  
 11 made the decision for its own economic gain to dump  
 12 unprocessed oil into the environment, and thereby to expose  
 13 Plaintiffs and the class to toxic crude oil and other  
 14 elements I just mentioned, knowing that such substances  
 15 were toxic to humans.  
 16 This is at Paragraph 57 of the Complaint.  
 17 The next paragraph explains that: "As a direct  
 18 and proximate result of Defendant's breaches of duty,  
 19 Plaintiffs and the class have suffered injuries to their  
 20 persons and property."  
 21 Two paragraphs later, under Count Two, styled  
 22 "Public Nuisance," the complaint states that: Defendant's  
 23 conduct and the resulting contamination of the Oriente  
 24 environment has created a public nuisance which endangers  
 25 and will continue for many years to endanger the safety,

01:38 1 culture, their diet, and other ancient traditions and way  
 2 of life." This is from Exhibit R-21.  
 3 Texaco's own submissions before the New York Court  
 4 acknowledged the broad nature of the Plaintiffs' claims and  
 5 their Requests for Relief.  
 6 Texaco, for example, asked the New York Court to  
 7 dismiss Aguinda in part because an Ecuadorian could would  
 8 be better positioned to, and I quote, "evaluate Plaintiffs'  
 9 sociocultural claims of damage to their ancient traditions,  
 10 culture, and way of life in Ecuador." Texaco's counsel  
 11 observed that, and I quote, "We're talking about 25 years  
 12 of land contamination across hundreds, if not thousands, of  
 13 square miles impacting different people in different lands  
 14 in different ways and at different times.  
 15 In a 1998 brief to the Second Circuit, Texaco  
 16 affirmed that the Plaintiffs' demand--and I  
 17 quote--"Plaintiffs demand extraordinary equitable relief in  
 18 Ecuador. In support, Texaco cited Plaintiffs' documents  
 19 identifying the following types of equitable relief which  
 20 they seek, including these two, Number 1, an environmental  
 21 cleanup; Number 2, creation and maintenance of  
 22 environmental and medical monitoring funds. In other  
 23 District Court filings, Plaintiffs spelled out their  
 24 equitable relief demands as including remediation and  
 25 cleanup work at pools used for disposal of drilling mud,

01:37 1 health, and comfort of a large number of persons.  
 2 I could go on. Under Count 5, for example, styled  
 3 "Medical Monitoring," the Aguinda Plaintiffs assert that,  
 4 as a result of the Defendant's negligent and reckless  
 5 conduct, Plaintiffs and the class have been significantly  
 6 exposed to known hazardous substances.  
 7 The next paragraph: "As a result of such  
 8 exposure, Plaintiffs and the class are at an increased risk  
 9 of contracting latent diseases, including cancers."  
 10 Count 9 of the Complaint styled, "Equitable  
 11 Relief," includes the following language: "As a result of  
 12 Defendant's conduct, Plaintiffs' properties and environment  
 13 are highly contaminated with toxic substances. Plaintiffs'  
 14 drinking water supplies have been contaminated with  
 15 carcinogens, rendering them unsuitable for consumption."  
 16 The Aguinda Plaintiffs pled nine counts ranging  
 17 from negligence to public nuisance to international law  
 18 claims under the U.S. Alien Tort Claims Act for destruction  
 19 costs for the environment. Their relief includes the  
 20 following language.  
 21 "In addition to monetary damages, Plaintiffs  
 22 demand extraordinary equitable relief in Ecuador including  
 23 remediation of Ecuador's land and environment,  
 24 modifications of Petroecuador's facilities, medical  
 25 monitoring and relief for alleged harm to Plaintiffs'

01:40 1 providing drinking water through construction and  
 2 distribution networks or deep wells with filtering system,  
 3 and cleaning up oil spills.  
 4 That provides enough of an overview of the case in  
 5 Aguinda.  
 6 PRESIDENT VEEDER: Can I stop you. The document  
 7 that you have just read, the Second Circuit extract, is  
 8 that R-247? What is the exhibit number?  
 9 Come back to it later.  
 10 MR. LEONARD: I will have to come back to you  
 11 later.  
 12 I'm told that it's CLA-435.  
 13 PRESIDENT VEEDER: Thank you very much.  
 14 MR. LEONARD: So, that provides enough of an  
 15 overview of the case in Aguinda, and, Mr. President and  
 16 Members of the Tribunal, there is no dispute in these  
 17 proceedings that the Claims and rights asserted in Aguinda  
 18 were not covered by the 1995 Settlement Agreement.  
 19 The next document provides an account of what  
 20 later transpired in that case.  
 21 (Pause.)  
 22 MR. LEONARD: And this is CLA-435.  
 23 What is displayed on the screen is Page 7 of that  
 24 2011 decision by the United States Court of Appeals for the  
 25 Second Circuit in the matter Republic of Ecuador v. Chevron

01:42 1 Corporation, and again this is Exhibit CLA-435.  
 2 At the bottom of the first paragraph, Second  
 3 Circuit provides some of the background, and I quote,  
 4 "Texaco moved for dismissal on forum non conveniens and  
 5 international comity grounds. This District Court granted  
 6 Texaco's motion and dismissed Plaintiffs' action."  
 7 The Court goes on to explain, "On appeal, we held  
 8 that the District Court erred by dismissing Plaintiffs'  
 9 Complaint without first securing a commitment by Texaco to  
 10 submit to the jurisdiction of the Ecuadorian courts and  
 11 remanded for further proceedings."  
 12 The Court continues: On remand, Texaco provided  
 13 that commitment by "unambiguously agreeing in writing to be  
 14 sued in Ecuador, to accept service of process in Ecuador,  
 15 to waive any statute of limitations-based defenses that may  
 16 have matured since the filing of the Complaint. Texaco  
 17 also offered to satisfy any Judgments in Plaintiffs' favor,  
 18 reserving its right to contest their validity only in the  
 19 limited circumstances permitted by New York's recognition  
 20 of Foreign Country Money-Judgments Act."  
 21 Now, here is where I was getting. With those  
 22 concessions in mind, the District Court again dismissed  
 23 Plaintiffs' Complaint and the Second Circuit affirmed on  
 24 August 16, 2002.  
 25 And finally, the Court concludes its account of

01:43 1 the history of the case by noting that Plaintiffs responded  
 2 by refiling their claims in Lago Agrio, Ecuador, and the  
 3 resulting Ecuadorian litigation continues to this day. I  
 4 will come back to this last statement.  
 5 So, after nine years of litigation, the U.S. Court  
 6 of Appeals for the Second Circuit affirmed the District  
 7 Court's decision to dismiss Aguinda on the grounds that  
 8 Ecuador offered a more convenient forum for the  
 9 adjudication of the Claims asserted therein.  
 10 As the Second Circuit explains--and this is found  
 11 in the next page of the Decision--Texaco had been trying to  
 12 convince the District Court that Ecuador would serve as an  
 13 adequate alternative forum for resolution of its dispute  
 14 with Plaintiffs.  
 15 The Aguinda Plaintiffs refiled their claims in  
 16 Lago Agrio May 7, 2003, almost nine months after the Second  
 17 Circuit's affirmance of the District Circuit's dismissal of  
 18 Aguinda. Let's take a quick look at the Lago Agrio  
 19 Complaint. In the interest of time, I will walk you  
 20 through some of the highlights so you can see that this  
 21 Complaint contains allegations that are almost identical to  
 22 those found in the Aguinda Complaint concerning the  
 23 devastation of the environment and impacts of such  
 24 devastation on the inhabitants of the former Concession.  
 25 For example, at Page 7 of the Complaint, and for

01:45 1 the Tribunal's reference this is Exhibit C-071--the Lago  
 2 Agrio Plaintiffs alleged that, to date, there are still  
 3 pollutants released into the environment as a result of the  
 4 inappropriate and harmful practices employed by Texaco,  
 5 which continue causing ecological, environmental, economic  
 6 and personal damage.  
 7 At Page 10 of the Complaint, Plaintiffs state  
 8 that: As a consequence of this brutal environmental  
 9 deterioration, the health and life expectancy of the  
 10 population was severely affected.  
 11 And further down in the same page, the Complaint  
 12 explains that: "The procedures described above  
 13 contaminated the soil, the natural water streams, and the  
 14 air; destroyed aquatic life, natural vegetation, and  
 15 crops."  
 16 And it goes on at Page 11, the Complaint alleges:  
 17 "The consequences of the application of the methods and  
 18 proceedings described above were particularly devastating  
 19 for the five indigenous human groups of the area, who  
 20 additionally suffered the violent destruction of their  
 21 natural habitat and, consequently, of their subsistence  
 22 means, their way of life and customs, and have even faced a  
 23 serious threat to their future and identity entity as a  
 24 people."  
 25 Mr. President, there can be no dispute that the

01:46 1 Lago Agrio Complaint is premised on the exact same factual  
 2 allegations contained in the Aguinda Complaint. These  
 3 allegations do, in fact, mirror those in the Aguinda  
 4 Complaint.  
 5 Back to the Lago Agrio Complaint, Section VI,  
 6 contains a Prayer for Relief, and it is organized in two  
 7 general sections. The first one requesting the removal and  
 8 adequate treatment of the contaminating substances that  
 9 still threaten the environment and the health of the  
 10 inhabitants. The second one requesting remediation of the  
 11 environmental damage. The requested relief includes, for  
 12 example, the cleanup of the rivers, estuaries, lakes,  
 13 swamps, and the natural and artificial watercourses and the  
 14 adequate disposal of all waste materials.  
 15 Also, the cleanup of lands, fields, crops,  
 16 streets, roads, and buildings where there may still be  
 17 contaminated waste generated by the operations directed by  
 18 Texaco. Also, the retention at the Defendant's expense of  
 19 qualified personnel or firms to design and implement a plan  
 20 aimed at improving and monitoring the health of the  
 21 inhabitants of the towns affected by the pollution.  
 22 Again, an almost identical parallel with the  
 23 Aguinda Complaint and the relief requested therein.  
 24 And here I come back to the language in the Second  
 25 Circuit's decision of 2011. The Court noted in that

01:48 1 decision that Plaintiffs responded by refileing their claims  
 2 in Lago Agrio, Ecuador, and the resulting court litigation  
 3 continues to this day.  
 4 The Second Circuit went on to reject Chevron's  
 5 contention that the Lago Agrio Litigation is not the  
 6 refiled Aguinda action, and the Court rejected that  
 7 contention as meritless. As stated in the Decision, and I  
 8 quote, "The Lago Agrio Plaintiffs are substantially the  
 9 same as those who brought suit in the Southern District of  
 10 New York, and the Claims now being asserted in Lago Agrio  
 11 are the Ecuadorian equivalent of those dismissed on forum  
 12 non conveniens grounds."  
 13 I just quoted from Exhibit R-247. The Tribunal  
 14 noted this language in Paragraph 180 of its Track 1B  
 15 Decision, albeit with the apparent view that the Second  
 16 Circuit's determination may cover only certain of the  
 17 Claims pleaded in the Lago Agrio Complaint, but perhaps not  
 18 all of them. Assuming that I'm reading Paragraph 180 of  
 19 the Tribunal's decision correctly, I respectfully submit to  
 20 you that there is no such qualification in the language of  
 21 the Second Circuit decision, but I don't need to convince  
 22 you that the Lago Agrio Litigation is a continuation of  
 23 Aguinda. Instead I would simply call your attention to  
 24 those elements of the requested relief in Lago Agrio that  
 25 mirror those raised in Aguinda, and I will choose and refer

01:51 1 represented to the courts in New York that Ecuador was a  
 2 more favorable forum to adjudicate those claims.  
 3 At the Hearing that took place in this same room,  
 4 I believe if memory serves, almost exactly a year ago,  
 5 Professor Douglas expressed a sentiment of all of us on  
 6 this side of room when he congratulated Claimants' counsel  
 7 for having injected the concept of diffuse rights into this  
 8 arbitration. Professor Douglas called it ingenious, and,  
 9 indeed, it is. There is no mention of it in the four  
 10 corners of the 1995 Settlement Agreement or anywhere in the  
 11 contemporaneous doctrine or jurisprudence of Ecuador. The  
 12 notion of diffuse rights is simply not a concept that could  
 13 have been in the minds of the American lawyers who drafted  
 14 the Agreement. That, Mr. President, I submit to you, is a  
 15 fact.  
 16 But Claimants' theory of diffuse rights is not  
 17 just only ingenious. I also find it incredibly cynical.  
 18 Claimants obtained dismissal of the Aguinda claims in New  
 19 York on the basis of those multiple unqualified  
 20 representations that Ecuador provided a more adequate forum  
 21 to hear those claims, those exact claims--not just a subset  
 22 of those claims, those exact same claims. And as Claimants  
 23 represented to the United States courts, there was no bar  
 24 for the Aguinda Plaintiffs to refile those claims in  
 25 Ecuador.

01:49 1 specifically to the following three categories of damages:  
 2 First, the remediation of Ecuador's land and the  
 3 environment.  
 4 Second, the creation and maintenance of  
 5 environmental and medical monitoring funds;  
 6 And, third, relief for alleged harm to Plaintiffs'  
 7 culture, their diet, and other ancient traditions and way  
 8 of life. I could also include a system for potable water.  
 9 Each of these three forms of relief were initially  
 10 requested in Aguinda and later sought in Lago Agrio in  
 11 substantially identical terms. And you probably see the  
 12 predicament we find ourselves in by now. Chevron obtained  
 13 dismissal of Aguinda on the grounds that Ecuador offered a  
 14 more convenient forum for adjudication of those claims.  
 15 And Chevron did so on the basis of the following promises  
 16 and representations; first, a commitment to submit to the  
 17 jurisdiction of Ecuadorian courts in respect of those  
 18 claims; to accept service of process in Ecuador; and a  
 19 promise to satisfy any Judgment issued by the Ecuadorian  
 20 courts subject again to its rights under the New York's  
 21 recognition of Foreign Country Money-Judgments Act.  
 22 However, as it turns out, claims that were  
 23 otherwise viable in New York are barred in Ecuador because  
 24 they are diffuse claims and, therefore, covered by a  
 25 Release Agreement executed some seven years before Chevron

01:52 1 But once refiled in Ecuador, those claims suddenly  
 2 acquired all the elements of a diffuse claim and,  
 3 therefore, become barred by the 1995 Settlement Agreement.  
 4 The audacity of this argument is just remarkable.  
 5 Professor Douglas called it a hoax, a cruel hoax on the  
 6 Plaintiffs, who would see their claims remanded to a better  
 7 forum only to find in that forum they really don't have a  
 8 claim.  
 9 I prefer to use the term "fraud." This argument  
 10 attempts to perpetrate a fraud on the United States courts,  
 11 on the indigenous Plaintiffs, and a fraud on the system for  
 12 the adjudication of international investment claims.  
 13 Mr. President and Members of the Tribunal, if  
 14 Claimants, indeed, succeed with their diffuse claims  
 15 argument, they will have succeeded also in turning these  
 16 proceedings into their instrument to effect a historic and  
 17 unprecedented fraud on the United States courts and against  
 18 the most basic notions of fairness and justice. And they  
 19 effectively would have used this Tribunal to deprive the  
 20 indigenous Plaintiffs from their right to have their claims  
 21 heard by a court of law. That, Mr. President, is not the  
 22 purpose or the role of international system for  
 23 adjudication of investment claims.  
 24 So, I will submit to you that the inquiry should  
 25 stop here. Plaintiffs' request for remediation and other

01:54 1 equitable relief in the Lago Agrio action mirrors their  
 2 claims in Aguinda. As a matter of U.S. law, the Second  
 3 Circuit in New York would not and could not have granted  
 4 the requested dismissal on forum non conveniens if the same  
 5 claims could not be heard in adjudicated in Ecuador.  
 6 That's a fact. Semantics aside, no matter how one calls  
 7 them, those claims are not and could not be within the  
 8 scope of the Release.  
 9 Now, if you choose to continue the analysis beyond  
 10 this point, what you have before you is a simple question,  
 11 and the question is not whether the Claims at issue in Lago  
 12 Agrio are individual or diffuse, but rather whether these  
 13 claims fall within the scope of the Release. And I would  
 14 submit as my first point that it is beyond dispute in these  
 15 proceedings that not one of the claims raised in Aguinda is  
 16 covered by the 1995 Settlement Agreement. And again, I  
 17 would like to focus specifically on the three forms of  
 18 relief that I discussed just a few minutes ago:  
 19 Remediation of the lands and water, medical monitoring, and  
 20 relief for alleged harm to the Plaintiffs' culture and way  
 21 of life.  
 22 None of these claims are said or could be said to  
 23 have been settled in 1995, while the Aguinda Litigation had  
 24 been pending for two years.  
 25 You may recall that in 2005, the United States

01:57 1 State or State entities.  
 2 And this takes me to a third point: Both the  
 3 Judgment and the Cassation Decision confirm that the  
 4 substantive basis for the relief sought and obtained in  
 5 Lago Agrio are long-standing Civil Code provisions  
 6 governing tort law in Ecuador since 1861. There is no  
 7 serious dispute that these rights are rights of third  
 8 parties and are not of the State.  
 9 Critically, even if the Government or State entity  
 10 could conceivably assert tort claims under either  
 11 Articles 2214, 2229 or 2236, there is no authority anywhere  
 12 in this record for the proposition that the State could  
 13 have disposed of the citizens' rights under the Civil Code.  
 14 In fact, if we could jump to Slide 29. Articles 2349, 2354  
 15 and 2336 express an unequivocal provisions in the Civil  
 16 Code preclude any possibility that anyone, including the  
 17 Government, may dispose by settlement of rights pertaining  
 18 to third parties.  
 19 Article 2349 mandates that the only person who can  
 20 settle is the person who is able to dispose of the objects  
 21 covered by the settlement.  
 22 Article 2354, settlement over the rights of others  
 23 or non-existent rights is invalid.  
 24 And 2336, the settlement shall only be effective  
 25 as between the Parties, no ergo omnes effect.

01:55 1 District Court for the Southern District of New York was  
 2 hearing the same breach-of-contract claims now before you  
 3 in the Track 1 phase of these proceedings. In commenting  
 4 on those claims, the Court recognized that it would have  
 5 been, and I quote, "highly unlikely that a settlement  
 6 entered into while Aguinda was pending would have neglected  
 7 to mention the third-party claims contemporaneously made in  
 8 Aguinda, if it had been intended to release those claims."  
 9 This is coming from Exhibit R-52.  
 10 My second point is that a release of these claims  
 11 is nowhere to be found within the four corners of the  
 12 Release. The Release covers claims by the Government and  
 13 Petroecuador, and here I took the liberty to use Claimants'  
 14 own slide, and took the further liberty to highlight in  
 15 pink--that was not my liberty--someone else's--portions of  
 16 this language that should have been highlighted. These are  
 17 not general claims. These are claims that the Government  
 18 or Petroecuador have or claims that the Government or  
 19 Petroecuador may allege.  
 20 And while the Tribunal has determined that the  
 21 Government was entitled to assert and dispose by settlement  
 22 of the citizens' right to live in a clean environment, both  
 23 the language of the Release and the Tribunal's  
 24 determinations in these proceedings exclude claims by third  
 25 parties asserting rights other than rights vested with the

01:28 1 Claimants have been blowing hot and cold for far  
 2 too long. Their initial theory of the case was that the  
 3 State, and only the State, could assert the fundamental  
 4 right enshrined in Article 19.2 of the Constitution. This  
 5 notion was predicated on the contention that as of 1995, no  
 6 individual was entitled to assert a claim vindicating its  
 7 right to live in a clean environment. The circumstances of  
 8 the case changed following the National Court's Cassation  
 9 Decision. Claimants now assert that Article 2236 enforced  
 10 since, again, 1861 is in fact a mechanism designed for the  
 11 vindication of diffuse claims.  
 12 And I do not intend to delve into the merits of  
 13 this proposition. Instead, I will simply note that these  
 14 two premises cancel each other out. They cannot coexist.  
 15 Either the State had the monopoly of the citizens' right to  
 16 protect themselves, or it did not. If the second premise  
 17 on this slide, Article 2236 vindicates diffuse rights, if  
 18 that premise were valid, that would render the First  
 19 Partial Award a fallacy. If, however, we are to stand by  
 20 the First Partial Award and consider the first premise a  
 21 valid one, then Claimants' new contention that the  
 22 Plaintiffs brought claims under Article 2236 to assert  
 23 diffuse rights must be rejected.  
 24 But again, the question before you is not whether  
 25 these claims are individual or diffuse. The question is

02:01 1 whether these claims are covered by the scope of the  
 2 Release.  
 3 To conclude, a final point: All roads lead to  
 4 Rome. I will not engage in a debate with Professor Oquendo  
 5 about the corpus iuris, one of my favorite topics during my  
 6 days as a student of Roman law. I will simply suggest that  
 7 my colleague and Professor Oquendo have misconstrued the  
 8 context of that CODEX. If I can take you back to Slide 29,  
 9 the protections enshrined in those provisions of the Civil  
 10 Code--and again, Articles 2349, 2354, and 2336, admit no  
 11 exception and impose an absolute bar to the settlement of  
 12 rights of third parties. Any attempt to do so without a  
 13 valid Power of Attorney is null and void.  
 14 Mr. President, I would like to turn to the second  
 15 part of my presentation by addressing the following  
 16 question. This is one of the questions that the Tribunal  
 17 posed last week. Is it in evidence why Texaco and TexPet  
 18 were not pursued by the Lago Agrio Plaintiffs as Defendant  
 19 Parties as distinct from Chevron in the Lago Agrio  
 20 Litigation? And then the Tribunal clarified, and we say  
 21 that in particular because we know that Texaco was named as  
 22 a Defendant, Texaco, Inc., in the Lago Agrio Complaint.  
 23 So, I should start by making a rather important  
 24 clarification: Texaco, Inc. was not a named Defendant in  
 25 the Lago Agrio Complaint. The complaint was filed against

02:03 1 ChevronTexaco Corporation. I will take you to the Lago  
 2 Agrio Complaint in just a few minutes but wanted to make  
 3 this clarification at the outset.  
 4 In response to the question, it is in evidence and  
 5 I intend to refer to that evidence while I take the  
 6 opportunity to address Claimant's reproach of the  
 7 Judgment's Decision to disregard the corporate separateness  
 8 of Chevron and Texaco as a legal absurdity.  
 9 I would also take the opportunity to address the  
 10 Tribunal's next question, and I quote: "Do we find in the  
 11 Lago Agrio Judgment or, indeed, in any allegation made by  
 12 the Parties before that Court, a statement that Chevron was  
 13 guilty of fraud or abuse in merging with Texaco?"  
 14 And here, another clarification is in order.  
 15 Under Ecuadorian law, the intent of a party at the time of  
 16 a merger is irrelevant to a court's assessment of whether  
 17 piercing of the corporate veil, separating two legal  
 18 entities is warranted under the circumstances of a  
 19 particular case, and I refer to a decision that is  
 20 referenced by the Lago Agrio Judgment at Page 14 of the  
 21 Decision, so that's Exhibit C-931 at Page 14. The  
 22 reference to the case is the case that goes by the styled  
 23 Moran v. Onofre.  
 24 What was relevant for purposes of the Court's  
 25 analysis in the Lago Agrio Case was a conduct subsequent to

02:04 1 the merger, so what I would like to do is to go over the  
 2 timeline of the relevant events leading up to the  
 3 Claimants' filing of the Lago Agrio Complaint against,  
 4 again, ChevronTexaco Corporation.  
 5 As the Tribunal might recall, in the Year 2000,  
 6 Chevron and Texaco reached an agreement to combine the two  
 7 companies into an integrated global energy company, and  
 8 this is from Exhibit R-1299. The merger was completed on  
 9 October 9, 2001.  
 10 PRESIDENT VEEDER: I'm sorry to go back. You  
 11 cited a case from Page 14 as the Lago Agrio Judgment. We  
 12 can't find it. Can you just help us with the reference  
 13 again and the name.  
 14 MR. LEONARD: I will provide you the exhibit  
 15 number for that case.  
 16 PRESIDENT VEEDER: And is it the first such case  
 17 about eight lines down on Page 14 or is it the later cases?  
 18 Come back to it later, if you want to.  
 19 MR. LEONARD: Four lines from the top, I will come  
 20 back to you with an exhibit number for that particular case  
 21 which was referenced by Dr. Andrade in one of his Reports.  
 22 ARBITRATOR GRIGERA NAÓN: I'm sorry, since you are  
 23 there, you refer to Article 2336 of the Civil Code. That  
 24 would be related to settlements? I don't find--it seems to  
 25 refer to mortgages, so I don't know--I know that the

02:06 1 numbering has changed. I checked both numbers, and I do  
 2 not know where we are. You may check that later and come  
 3 back.  
 4 MR. LEONARD: Let me give you the exhibit number  
 5 for the Civil Code version that provides that numbering.  
 6 ARBITRATOR GRIGERA NAÓN: Thank you.  
 7 MR. LEONARD: It's RLA-163.  
 8 So, I was saying the merger was completed on  
 9 October 9, 2001, and on that date, the Shareholders of  
 10 Chevron and Texaco voted to approve the merger, and  
 11 ChevronTexaco Corporation began doing business that same  
 12 day. From that point on, Chevron and Texaco professed to  
 13 be one company.  
 14 In 2001, ChevronTexaco filed a brief before the  
 15 Second Circuit in New York, instructing the Court that, and  
 16 I quote, "as generally known, and thus this Court may take  
 17 judicial notice, Texaco merged with Chevron, Inc. on  
 18 October 9, 2001." Here is the language I am interested in,  
 19 "the resulting corporation ChevronTexaco, Inc. is  
 20 headquartered in San Francisco." In its brief,  
 21 ChevronTexaco further rejected Plaintiffs' argument that  
 22 the Aguinda lawsuit should proceed in New York because, and  
 23 I quote, "it is the home of Texaco, Inc." ChevronTexaco  
 24 rebuffed, "that is no longer true. ChevronTexaco is in the  
 25 process of closing down what remains of Texaco's former



02:07 1 offices in White Plains, New York." And this is all coming  
 2 from Exhibit R-1280.  
 3 Following dismissal of the Aguinda Complaint,  
 4 ChevronTexaco issued a first release asserting the  
 5 following: "ChevronTexaco is pleased with the ruling of  
 6 the U.S. Court of Appeals affirming the lower court's  
 7 dismissal. This ruling vindicates ChevronTexaco's  
 8 long-standing position and arguments we have made to the  
 9 Court at the appropriate forum for this litigation is  
 10 Ecuador." This is from Exhibit R-41. It is manifest that  
 11 Chevron and Texaco presented themselves to the world as a  
 12 single company.  
 13 And so, the Aguinda Plaintiffs refiled their  
 14 claims in Lago Agrio, less than nine months later. Their  
 15 complaint was logged against, as I said, ChevronTexaco  
 16 Corporation. At Page 7 of the complaint, Plaintiffs make  
 17 the following statement: "On October 9, 2001, Texaco, Inc.  
 18 and Chevron merged, giving rise to a new legal entity known  
 19 as ChevronTexaco Corporation, which substituted the  
 20 foregoing companies in all other rights and obligations."  
 21 At Page 15, the Plaintiffs again expressed their  
 22 justified belief that ChevronTexaco was a new legal entity,  
 23 and the surviving product of a merger between Chevron and  
 24 Texaco. And I quote: "Since the acts and omissions  
 25 described above are directly attributable to Texaco, Inc.'s

02:11 1 even changed its name back to Chevron Corporation. It  
 2 dropped Texaco from its corporate name.  
 3 That, Mr. President, is nothing but gamesmanship.  
 4 It's against a principle of good faith and it's a blatant  
 5 violation of the promises on the basis of which Chevron  
 6 successfully obtained the removal of the Aguinda Case to  
 7 Ecuador.  
 8 Now, let's pause for a moment and think about what  
 9 could have been going through the Plaintiffs' lawyers  
 10 minds. Gosh, we have been deceived, Alberto sued the wrong  
 11 party, reference to Alberto Wray, but the Court would not  
 12 hear it. The principle of good faith would not allow it.  
 13 The Judgment devotes eight pages to the analysis of  
 14 Chevron's about face, and I refer the Tribunal to  
 15 Exhibit 931, Pages 8 through 16.  
 16 But Judge Zambrano was not alone. The Second  
 17 Circuit, same court that relied on Chevron for  
 18 presentations in granting a forum non conveniens  
 19 dismissal--  
 20 PRESIDENT VEEDER: Can I interrupt you? Are you  
 21 moving away from the complaint? The Lago Agrio Complaint  
 22 document?  
 23 MR. LEONARD: I'm moving out of that document.  
 24 PRESIDENT VEEDER: Before you do that, just on the  
 25 basic question, when you look at that complaint, who is the

02:09 1 willful misconduct and negligence, Texaco, Inc. became  
 2 liable for the damage caused and, therefore, it was under  
 3 the obligation to remedy them. Such liability and  
 4 subsequent obligation passed to ChevronTexaco Corporation  
 5 by virtue of the merger mentioned in the background section  
 6 of this claim."  
 7 Now, ChevronTexaco had obtained dismissal of the  
 8 Aguinda Complaint on the basis of the promises and  
 9 representations it made to the New York courts. And we  
 10 talked about those. ChevronTexaco provided an  
 11 unconditional promise to submit to the jurisdiction of  
 12 Ecuador's courts to be sued on the basis of those same  
 13 claims, and also promised to satisfy any Judgment that  
 14 might issue from the Court in Ecuador.  
 15 Now, contrast those undertakings with Chevron's  
 16 answer to the complaint in Lago Agrio. And this is coming  
 17 from Exhibit C-072. This is a Conciliation Hearing at  
 18 Page 3. In addition, ChevronTexaco Corporation was never  
 19 an operator nor a party to the Concession Contract which  
 20 had existed since 1973, nor replaced nor is a successor to  
 21 Texaco, Inc. or Texaco Petroleum Company, TexPet.  
 22 Fast-forward a few sentences, therefore, I repeat  
 23 that ChevronTexaco Corporation is not under your  
 24 jurisdiction or competence, Mr. President, nor is a  
 25 legitimate Defendant Party in this lawsuit. ChevronTexaco

02:12 1 Defendant?  
 2 MR. LEONARD: It's ChevronTexaco Corporation, and  
 3 this is--this is from Page 17 what you have on the screen.  
 4 It's Slide 28.  
 5 PRESIDENT VEEDER: I would like you to look at  
 6 Page 1, the first page.  
 7 MR. LEONARD: The first page.  
 8 You mean the cover page?  
 9 PRESIDENT VEEDER: Yes.  
 10 MR. LEONARD: The cover page lists Texaco, Inc. as  
 11 the Defendant Party.  
 12 PRESIDENT VEEDER: It does.  
 13 MR. LEONARD: There is no reference to  
 14 Texaco, Inc. throughout the complaint. The complaint  
 15 references ChevronTexaco Corporation, and the reason why I  
 16 wanted to walk you through some of those statements, the  
 17 relevant statements, precisely or especially the ones that  
 18 referenced the merger and--as a result of the merger, the  
 19 fact that in Plaintiffs' view, all liabilities and  
 20 obligations of Texaco, Inc. had transferred to  
 21 ChevronTexaco Corporation.  
 22 PRESIDENT VEEDER: But at the time of the  
 23 complaint, obviously there was an argument that  
 24 Texaco, Inc. had merged with Chevron, Inc. and the new  
 25 legal entity ChevronTexaco, Inc. was the Party that assumed

02:13 1 the liability for Texaco, Inc., but if we're looking at the  
 2 title page, it says Texaco, Inc. rather than  
 3 ChevronTexaco, Inc. is that the mistake attributable to  
 4 Dr. Alberto Wray?  
 5 MR. LEONARD: No, and let me bifurcate the answer.  
 6 First of all, I have no explanation for the fact  
 7 that the cover page of the record lists Texaco, Inc. as a  
 8 Defendant party. It is not. All the Claims are asserted  
 9 against, and if we can go back to that language on Page 17  
 10 against ChevronTexaco.  
 11 The statement about Mr. Alberto Wray suing the  
 12 wrong party is because, after the fact, after filing the  
 13 complaint against ChevronTexaco, on the belief that  
 14 ChevronTexaco was a resulting surviving company of a merger  
 15 of two previous companies, and let me remind you, one of  
 16 the quotes that I referenced here, is ChevronTexaco's  
 17 representation to the Court of The Second Circuit, you can  
 18 take judicial notice of the merger, the resulting  
 19 corporation is ChevronTexaco. It's not Chevron, it's not  
 20 Texaco. There is no reference, no mention to the fact that  
 21 Chevron survived and Texaco survived, and that there was  
 22 something called a triangular, reverse triangular merger  
 23 behind that transaction.  
 24 It is a merger, but it's not one that results in  
 25 the extinguished--in the extinction of the two initial

02:15 1 companies and the creation of one new surviving company.  
 2 That's not the case. But nobody knew that. Not at that  
 3 time. At least not at the time Alberto Wray drafted the  
 4 complaint and filed it in Lago Agrio.  
 5 Now, the first time that ChevronTexaco comes  
 6 forward and says I am not the right Defendant Party here,  
 7 and neither is Chevron nor Texaco, those companies  
 8 survived, and I'm not a successor for Texaco, Inc.'s  
 9 liabilities. The first time that happens is in--at the  
 10 Conciliation Hearing, the Conciliation Hearing just as a  
 11 point of clarification is the way the Defendant answers the  
 12 complaint in oral summary proceedings. There is no written  
 13 submission. There is a Conciliation Hearing. There is  
 14 oral argument, that oral argument is transcribed and that  
 15 becomes parts of the record, and that contains the answer  
 16 to the complaint.  
 17 That is the first time that this issue arises.  
 18 And the next question of the Tribunal is if  
 19 whether there is any evidence in the Lago Agrio Record as  
 20 to any allegations of fraud that the Plaintiffs make  
 21 against Chevron, and there is, and I intend to get there in  
 22 a few minutes.  
 23 Does that answer your question?  
 24 PRESIDENT VEEDER: Yes.  
 25 MR. LEONARD: May I proceed?

02:16 1 PRESIDENT VEEDER: Yes.  
 2 MR. LEONARD: Thank you.  
 3 So, I was saying, Judge Zambrano was not alone in  
 4 rejecting--dismissing Chevron's contentions. The Second  
 5 Circuit is the same Court that relied on those  
 6 representations in granting the forum non conveniens  
 7 dismissal rejecting Chevron's new position in the follows  
 8 terms: "Lawyers from ChevronTexaco appeared before it and  
 9 reaffirmed the concessions that Texaco had made in order to  
 10 secure dismissal of the Aguinda Plaintiffs' complaint. In  
 11 so doing, ChevronTexaco bound itself to those Concessions.  
 12 Chevron Corporation, therefore, remains accountable for the  
 13 promises upon which the Court of Appeals and the District  
 14 Court relied in dismissing Plaintiffs' action." I will  
 15 come back to you with a reference to the exhibit number  
 16 where this is coming from.  
 17 So, the Court went on to address Chevron's change  
 18 of its corporate name, an important fact. The Court says  
 19 "in 2005, ChevronTexaco dropped the name Texaco" and  
 20 reverted to its original name, Chevron Corporation. There  
 21 is no indication in the record before us that shortening  
 22 its name had any effect on ChevronTexaco's legal  
 23 obligations.  
 24 So, as I anticipated as to the question of whether  
 25 Plaintiffs' alleged fraud or abuse of the corporate form by

02:18 1 Chevron, the answer is yes. That occurred in several  
 2 opportunities, different instances, the Lago Agrio  
 3 Plaintiffs alleged that ChevronTexaco was abusing of the  
 4 corporate form with the intention to avoid liability. The  
 5 reference to those sources is, first of all, the Alegato.  
 6 That's Exhibit R-195. The Alegatos are the final oral  
 7 submissions in the case.  
 8 R-926, Judicial Inspection Acta for Sacha Norte 2  
 9 at 33. Exhibit C-2007, Judicial Inspection Acta for  
 10 Guanta 06 at 2425; and finally Exhibit C-2008, Judicial  
 11 Inspection Acta for Yuca-02-B at 22.  
 12 Now, Mr. President, I addressed this Tribunal  
 13 three weeks ago on the merits of the Lago Agrio Court's  
 14 determination to pierce the corporate veil or in other  
 15 words disregard the corporate separateness between  
 16 ChevronTexaco and between Texaco and TexPet. I am  
 17 approaching dangerously the limits of my allotted time so,  
 18 I will not delve into those details again. I will  
 19 respectfully refer you to my submissions of last week.  
 20 But I would like to conclude this segment of my  
 21 presentation with reiterating respectfully the plea that I  
 22 made to you in opening, urging you to resist any temptation  
 23 to revisit these issues de novo. That is not the province  
 24 of investment tribunals. Investment tribunals are not  
 25 empowered to substitute their judgment for that of a

02:20 1 municipal court, absent clear and convincing evidence of  
 2 egregious procedural misconduct. And as I suggested to you  
 3 three weeks ago, this Tribunal can take comfort from the  
 4 fact that a Mississippi Court reached the same conclusion  
 5 on the basis of the same facts concerning the same  
 6 companies.

7 Just to conclude, some very brief remarks in  
 8 response to the Tribunal's question concerning Dr. Barros'  
 9 testimony on the issue of causation. Dr. Andrade dispelled  
 10 any doubts during Day 1 of his examination, and I refer you  
 11 to the Hearing Transcript of Day ten, Pages 2282 through  
 12 2283.

13 In a nutshell, as Dr. Andrade explained,  
 14 Dr. Barros based his testimony on two theories of  
 15 causation, necessary cost and proximate cost, that do not  
 16 apply in Ecuador. And it's the Delfina Torres Decision,  
 17 the Supreme Court rejected these theories and adopted,  
 18 instead, the theory of adequate cost as a more appropriate  
 19 one. And you will recall that the Judgment quotes  
 20 extensively from the Delfina Torres Decision on causation.

21 So, before I hand the floor to my colleague, I  
 22 would like to respectfully refer the Tribunal to the  
 23 Republic's most comprehensive submission on the issue of  
 24 causation, and this is the Respondent's Track 2  
 25 Supplemental Rejoinder, Paragraphs 107 through 114.

02:23 1 I will first explain once more why Chevron has no  
 2 investment agreement that could possibly generate  
 3 jurisdiction in the circumstances. Second, I will make it  
 4 clear, again, why Chevron has no investment relevant to the  
 5 Lago Agrio Litigation and to its related denial-of-justice  
 6 claim.

7 Beforehand, however, I shall make four preliminary  
 8 observations: First observation: Even though jurisdiction  
 9 is not commonly declined at this stage of an arbitral  
 10 proceeding, you expressly reserved, Members of the  
 11 Tribunal, the possibility of doing so. The time that has  
 12 lapsed due to Claimants' evolving case should be of no  
 13 concern to you.

14 Indeed, you had, and we still believe you have  
 15 serious doubts as to whether there is jurisdiction over  
 16 Chevron's denial-of-justice claim. You decided to save,  
 17 and I quote, those issues relating to the jurisdictional  
 18 objections raised against Chevron for the merits stage of  
 19 these proceedings when you suggested in your decisions you  
 20 could make an assessment, in light, you said, of the  
 21 relevant facts.

22 And we submit, Members of the Tribunal, that the  
 23 relevant facts should lead you to now definitively  
 24 recognize that the Lago Agrio Litigation was not related to  
 25 any investment or Investment Agreement that Chevron had, so

02:22 1 Thank you, Mr. President.  
 2 PRESIDENT VEEDER: Thank you.  
 3 Please.

4 MR. SILVA ROMERO: Thank you, Mr. President,  
 5 Members of the Tribunal.

6 I will address the issue of jurisdiction once  
 7 more. In the end, this case, Members of the Tribunal, will  
 8 stand for or against the proposition that investment  
 9 tribunals have universal jurisdiction over claims by any  
 10 foreigner that he or she was somehow mistreated in  
 11 litigation. The Tribunal, we say, has the burden of not  
 12 permitting an extraordinary expansion of the scope of  
 13 arbitral jurisdiction in contravention of the limits of a  
 14 State's consent. This is, to use Chevron's mantra, the  
 15 first rule of law you have to look at and apply in this  
 16 case.

17 As held in the Plama Decision, and you know this  
 18 by heart, consent is the basic requirement for arbitration,  
 19 and such a prerequisite is plainly missing in this case.  
 20 In the interest of time, and to deal with the questions put  
 21 by the Tribunal on the very issue of jurisdiction, I will  
 22 address the Tribunal's lack of jurisdiction over Chevron's  
 23 claims only, and once more I refer the Tribunal to  
 24 Ecuador's written submissions for all other jurisdictional  
 25 arguments.

02:25 1 there can be no jurisdiction over its denial-of-justice  
 2 claims.

3 Second preliminary observation: Claimants have no  
 4 response to the basic facts presented by Ecuador in  
 5 relation to its jurisdictional pleading. My friend,  
 6 Professor Paulsson's Opening Statement was very telling in  
 7 this regard. He didn't address the issue that you deem  
 8 relevant or relevant enough to be settled at this merits  
 9 stage of the proceedings. He said absolutely nothing of  
 10 substance in support of the extraordinary assertion that  
 11 Chevron, which has never contributed any resources to  
 12 Ecuador, may bring claims as a direct investor in the Lago  
 13 Agrio oil concession. And as you know, contribution is the  
 14 very first element of the definition of "investment."

15 He merely repeated arguments that the Tribunal  
 16 already found insufficient to establish jurisdiction. He  
 17 simply rephrased one expression by another. As summarized  
 18 by the Tribunal, Chevron has said that Ecuador cannot have  
 19 it both ways. Professor Paulsson simply said that Ecuador  
 20 was blowing hot and cold. And as I am convinced Professor  
 21 Paulsson would put it himself, these shortcuts cannot  
 22 replace analysis and demonstration.

23 Third preliminary observation: Even more telling,  
 24 Members of the Tribunal, it's Professor Paulsson's reliance  
 25 on these purported considerations of fairness. We also

02:27 1 heard yesterday from my friend Mr. Weiss, a strong reliance  
 2 on the fact that it would be "fundamentally unfair for your  
 3 Tribunal not to exercise its jurisdiction in this case."  
 4 Even though it could be a ground for declining  
 5 jurisdiction, fairness cannot establish jurisdiction. Only  
 6 a State consent, as you know, do so.  
 7 As put by the Tribunal in the case Bureau Veritas,  
 8 it is not the function of arbitrators who are charged with  
 9 interpreting and applying a treaty to go beyond the limits  
 10 of what that Treaty allows them to do whether to do justice  
 11 or for any other reasons.  
 12 Even admitting arguendo that Claimants' case had  
 13 some merits, to paraphrase Professor Stern, there will be  
 14 no unfairness here if jurisdiction is declined as this is  
 15 purely a result of the limited jurisdiction of investment  
 16 tribunals. International investment tribunals are not here  
 17 to redress any torts worldwide. And as I will explain in a  
 18 moment, fairness actually militates against a Tribunal  
 19 accepting jurisdiction in this case.  
 20 My fourth and last preliminary observation  
 21 pertains to my friend Mr. Weiss's extraordinary argument,  
 22 which we heard yesterday, that the wording "related to" in  
 23 Article VI--"related to" in Article VI--of the Treaty would  
 24 somehow generate jurisdiction in this case. It obviously  
 25 does not. The boilerplate "related to" phrase doesn't

02:31 1 during my opening submissions.  
 2 Turning to my first proposition, Chevron, we say,  
 3 has no investment agreement. Yesterday, Chevron asserted  
 4 once again its argument that the 1995 Settlement Agreement  
 5 was somehow an investment agreement despite the Tribunal's  
 6 explicit decision that on its own, it is not. At this  
 7 point, Chevron stops talking about only itself and it  
 8 starts talking about Chevron and TexPet to somehow leverage  
 9 the fact that TexPet and TexPet alone had prior Concession  
 10 Agreements in Ecuador.  
 11 As we say in Spanish, however, Claimants cannot  
 12 hide the sun with their hands. Chevron was not a party to  
 13 the prior Concession Agreements, and jurisdiction is  
 14 limited to investment agreements between the investor and  
 15 the State. There was no privity anywhere between Ecuador  
 16 and Chevron; and, as a result, there was no investment  
 17 agreement, point final.  
 18 In fact, Members of the Tribunal, Chevron shows  
 19 again and again just how confused it is by these issues.  
 20 It supposes that a decision as to an investment  
 21 agreement has some connection to Track 1 issues as we heard  
 22 yesterday. It does not. There is no jurisdiction because  
 23 Chevron is not a party to an investment agreement, whether  
 24 or not Chevron has municipal law rights under the  
 25 Settlement Agreement. In fact, Claimants here completely

02:29 1 magically generate an investment or an investment  
 2 agreement.  
 3 First, the investor must be privy to an investment  
 4 agreement or have an investment.  
 5 Second, disputes relating to an investment  
 6 agreement or an investment may be submitted to arbitration.  
 7 It is not the other way around.  
 8 And as you know, the first prong of this  
 9 two-tiered test was left expressly unanswered in the Third  
 10 Interim Award on Jurisdiction.  
 11 To review, the Third Interim Award on Jurisdiction  
 12 explicitly excluded the Lago Agrio Litigation and related  
 13 denial-of-justice claims from the scope of its conclusion  
 14 about jurisdiction. However, this Award reserved for the  
 15 future any decision in regard to the Respondent's  
 16 jurisdictional objection to Chevron's own claims as a  
 17 direct investor. This is Paragraph 4.27 of the Award.  
 18 Similarly, even though the Tribunal subsequently  
 19 found that Chevron was a Releasee under Ecuadorian law, it  
 20 didn't decide whether Chevron had a covered investment  
 21 agreement that could support jurisdiction for its Lago  
 22 Agrio claims and related claims under the Treaty.  
 23 I will now clear away the remaining jurisdictional  
 24 doubts of the Tribunal through the same two propositions,  
 25 investment agreement and investment, that I described

02:33 1 ignore both the Tribunal's earlier finding and Ecuador's  
 2 opening.  
 3 As I said at the beginning of this Hearing, the  
 4 Tribunal expressly noted in its recent decision on Track 1B  
 5 that, and I quote, "the Respondent strongly denies all  
 6 claims for denial of justice on the merits, and also  
 7 disputes the Tribunal's jurisdiction to decide any such  
 8 claims in this arbitration." And the Tribunal added:  
 9 "Those parts of the Parties' dispute cannot be decided even  
 10 indirectly by the Tribunal in this Track 1B."  
 11 Aside from having no investment agreement--and I  
 12 come here to my second proposition--Chevron has no relevant  
 13 investment. Members of the Tribunal, you have already  
 14 decided and, as my friend Mr. Weiss said it, this is res  
 15 judicata, that, and I quote, "Chevron made no investment  
 16 under any of TexPet's Concession Agreements; it was never a  
 17 member of the Consortium; it was not a signatory or named  
 18 party to the 1995 Settlement Agreement; and it first  
 19 appears in this case chronology in 2001 following its  
 20 'merger' with Texaco."  
 21 Even though you also decided that Chevron had an  
 22 indirect investment, which is TexPet, you also decided to  
 23 postpone until now the most important question regarding  
 24 jurisdiction, namely whether or not Chevron has a direct  
 25 investment.

02:35 1 Now, the only reason we say you didn't immediately  
 2 decline jurisdiction of a Chevron direct investment was  
 3 because of your preoccupation with the legal reasons why  
 4 Chevron is to be treated in the Lago Agrio Litigation as a  
 5 party succeeding to Texaco's liabilities. However, as I  
 6 will explain later, if the issue of Chevron's lack of a  
 7 direct investment in the Lago Agrio oil concession had been  
 8 moot, as Claimants desperately argued during the first  
 9 jurisdictional phase of this arbitration, the Tribunal  
 10 wouldn't have explicitly left it opened.  
 11 Simply put, Chevron's indirect investment, TexPet,  
 12 and TexPet's investment are not and cannot be the same  
 13 thing. The distinction between direct investment and  
 14 indirect investment made by the Tribunal in the Third  
 15 Interim Award on Jurisdiction is res judicata. It was not  
 16 reserved for this stage of the proceedings as Claimants  
 17 tried to reargue yesterday.  
 18 And please allow me to make three points at this  
 19 point. My first point is that bare legal rights are not  
 20 investments and cannot confer jurisdiction. My second  
 21 point is that any amalgamation that may have occurred in  
 22 the Lago Agrio Litigation is entirely irrelevant to  
 23 jurisdiction in this proceeding. And my third point is  
 24 that, regarding an indirect investment, the Tribunal has  
 25 jurisdiction only over those breaches of rights relating to

02:36 1 the claiming Parties' existing investment and no more.  
 2 Let me explain these three propositions.  
 3 I will begin with my first point that bare legal  
 4 rights are not investments.  
 5 Despite Chevron's propositions, there is no legal  
 6 authority for the view that a bare legal right can confer  
 7 jurisdiction of an investment tribunal. Quite the opposite  
 8 is true. Liability releases, rights to limited liability  
 9 and procedural rights are not investments, and investment  
 10 treaty jurisdiction stands only to investments.  
 11 An investment treaty, Members of the Tribunal, is  
 12 not an insurance policy, but instead protects an investor  
 13 with an investment. Nor is it a property protection treaty  
 14 for foreigners, but an investment protection treaty. A  
 15 State consent to arbitration, again, extends only to  
 16 investments.  
 17 Now, what is an investment? The GEA Group Award  
 18 provides an important review of the decisions on point, and  
 19 adopts the dominant definition which requires, among other  
 20 things, an economic contribution of resources. In fact,  
 21 contrary to what my friend Mr. Weiss implied yesterday,  
 22 this decision indicates that investment treaties themselves  
 23 require an economic contribution to the host State for  
 24 there to be an investment, although it secondarily applies  
 25 the ICSID Convention to the same effect.

02:38 1 Likewise, my friend Mr. Weiss's reliance on  
 2 Article I of the Treaty and the list of manifestations of  
 3 investments therein is unavailing. Such list in Article I  
 4 of the Treaty is not enough to define the notion of  
 5 "investment". Investment, Members of the Tribunal, is  
 6 above all the activity of investing.  
 7 Since Claimants pretend that this issue is  
 8 controversial, let me add that other cases like Romak and  
 9 authors like my friend Mr. Bishop provide more detail. An  
 10 investment requires an economic contribution of resources  
 11 to the host State in its territory held for a certain  
 12 period of time that involves risk in anticipation of  
 13 economic benefit and that contributes to the development of  
 14 the host State. The fact that an investment requires as  
 15 its first foundational element a contribution is not  
 16 controversial. You perfectly know that, Members of the  
 17 Tribunal, and my friend Mr. Weiss's observations about  
 18 Salini are simply off point.  
 19 It is also telling that yesterday, when Claimants  
 20 got to the point of explaining how Chevron had made a  
 21 contribution to Ecuador, it has slipped once again from  
 22 talking solidly about Chevron to talking about Chevron and  
 23 TexPet. I quote, they said, "and TexPet and Chevron's  
 24 investment contributed," they said, "23 billion to the  
 25 Ecuadorian Treasury and billions and billions more to the

02:40 1 Ecuadorian economy."  
 2 This statement about whether or not TexPet  
 3 contributed to Ecuador is simply beside the point.  
 4 Chevron--Chevron--did not contribute to Ecuador. As a  
 5 matter of fact, you have already decided this point,  
 6 Members of the Tribunal, implicitly when you rejected the  
 7 proposition that the Settlement Agreement alone could be  
 8 characterized as an investment agreement.  
 9 This brings me to my second point, which is that  
 10 amalgamation in the Lago Agrio Litigation is irrelevant to  
 11 jurisdiction in this arbitration.  
 12 PRESIDENT VEEDER: Can I stop you--  
 13 MR. SILVA ROMERO: Yes, sir.  
 14 PRESIDENT VEEDER: Just to bring you back to the  
 15 GEA Group Case, in Slide 10. This is in our CLA-300, but  
 16 for some reason we don't have this particular passage. If  
 17 we could have a fuller copy of that, and indeed the other  
 18 legal materials you have requested, we can go through that  
 19 later.  
 20 MR. SILVA ROMERO: Absolutely.  
 21 PRESIDENT VEEDER: And secondly, if you look at  
 22 the citation you have given us on Slide 10, it's slightly  
 23 unusual, to my mind, because I had always been taught that  
 24 the ICSID arbitration test was twofold: You had to satisfy  
 25 the BIT and Article 25, and this citation, which I couldn't

<p>Sheet 46</p> <p style="text-align: right;">2953</p> <p>02:41 1 check, says "or," not "and."  2 Now, in the light of the submissions yesterday, we  3 heard that this and other cases may be rather special in  4 that Article 25 of the Convention may be interpreted  5 differently from an Article in a Bilateral Investment  6 Treaty. But does that really "all"? Is that the right  7 citation?  8 MR. SILVA ROMERO: I take this is the correct  9 transcription.  10 If I may make a comment on the submission that was  11 made yesterday, the idea is that the notion of "investment"  12 will be different in ICSID cases. And it is Ecuador's  13 submission in this case that there is no difference in the  14 objective notion of "investment" depending on the  15 procedural rules that the investor ends up choosing.  16 There is always an objective notion based on the  17 activity of investing, and this objective notion I believe  18 unanimously showed today is considered to be made at least  19 of three elements: The first element, which is the one at  20 stake here, contribution; the second, duration; and the  21 third, risk. There is, indeed, some discussion about the  22 fourth criterion in Salini, this development of the economy  23 of the State, but regarding the three first criteria, there  24 seems to be consensus.  25 I am corrected here. Paragraph 153 in the</p>	<p style="text-align: right;">2955</p> <p>02:45 1 principle somehow establishes the Tribunal's jurisdiction  2 over Chevron's denial-of-justice claim.  3 This assertion begs for the application of a  4 fundamental principle of justice which I mentioned at the  5 beginning of the Hearings, nemo auditur propriam  6 turpitudinem allegans: No one may benefit from his or her  7 own wrongdoing.  8 This principle, as you know, is widely accepted in  9 international law, such as by the Plama Tribunal, which  10 applied it to reject a claim related to a fraudulently  11 acquired investment. Similarly, Chevron acted wrongly when  12 it abused corporate form in the Lago Agrio Litigation.  13 Chevron's wrongdoing, the precise basis for piercing the  14 corporate veil, cannot give rise to jurisdiction over its  15 denial-of-justice claim. To paraphrase Professor  16 Paulsson's Opening Argument, Chevron cannot be permitted to  17 blow hot and cold.  18 But the analysis does not stop here. Even if nemo  19 auditor didn't block jurisdiction, there is no jurisdiction  20 to block on the basis of amalgamation. Jurisdiction exists  21 to be blocked only on the basis of a State consent, which  22 must be strictly construed on the basis of clear and  23 unambiguous language.  24 Ecuador consented to arbitrate only those claims  25 related to investments. The Tribunal must look only to the</p>
<p style="text-align: right;">2954</p> <p>02:43 1 original Award says "and" and not "or." Apologies.  2 PRESIDENT VEEDER: Thank you.  3 MR. SILVA ROMERO: The amalgamation point I  4 mentioned is actually Claimants' sole argument to defend  5 their untenable position that Chevron has a direct  6 investment for the purposes of its denial-of-justice  7 claims. Here, as my friend Mr. Leonard did a moment ago,  8 it is worth reviewing the facts.  9 Following their so-called "merger" in 2001,  10 Chevron and Texaco portrayed themselves as a combined legal  11 entity. That supposedly combined entity promised the U.S.  12 courts that it would submit to Ecuadorian jurisdiction and  13 abide by any Judgment against it with only a reservation of  14 rights under the New York enforcement statute.  15 It is undisputed that Texaco and TexPet left  16 Ecuador in 1992 and that TexPet had been effectively  17 Texaco's instrumentality in Ecuador. There is no evidence  18 that TexPet operates anywhere and that it has any assets in  19 Ecuador, nor is there any indication of separation between  20 Texaco and Chevron. For such reasons, the Lago Agrio Court  21 determined that it was a violation of the principle of good  22 faith for Chevron to present itself as having merged with  23 Texaco and to induce lawsuits against it and not directly  24 against Texaco or TexPet.  25 Now, Chevron has the audacity to assert that the</p>	<p style="text-align: right;">2956</p> <p>02:47 1 facts about the investment Chevron has held, and the  2 amalgamation didn't change or illuminate those facts.  3 The Lago Agrio Court's amalgamation for assigning  4 liability under municipal law demonstrates absolutely  5 nothing about whether Chevron ever had an investment of its  6 own within the scope of Ecuador's consent to arbitrate.  7 The veil-piercing of necessity regarded the corporate  8 relationship of Chevron, Texaco and TexPet following the  9 so-called "merger" in 2001. The Court concluded that it  10 was fair in the present to collect compensation from  11 Chevron for the conduct of TexPet, given that Chevron  12 abused the corporate form to make TexPet judgment-proof in  13 Ecuador.  14 This is not the relationship, Members of the  15 Tribunal, pertinent to the jurisdiction analysis. For  16 jurisdiction, what matters is whether Chevron and TexPet  17 were in effect the same corporation during the existence of  18 the Lago Agrio oil concession. Only then would Chevron  19 have a collateral argument that it had a direct investment  20 in the oil concession. But the fact is that the oil  21 concession ended in 1992, and Chevron entered the picture  22 only in 2001. There was no relationship at all between  23 Chevron and TexPet at the relevant times.  24 In short, the municipal law on amalgamation is, as  25 I said, entirely irrelevant to jurisdiction.</p>

02:49 1 My third and last point is that an indirect  
 2 investment confers jurisdiction only over breaches of  
 3 rights protecting that indirect investment. This  
 4 proposition is not novel. You have already accepted it,  
 5 Members of the Tribunal. In the Third Interim Award, you  
 6 concluded that you have jurisdiction over claims for an  
 7 alleged breach of any right conferred or created by the BIT  
 8 with respect to its indirect investment. This conclusion  
 9 is consistent with the approaches of tribunals which have  
 10 allowed indirect investors to assert claims only in its own  
 11 behalf; that is, for damages the investments suffered.  
 12 However, because TexPet was neither sued nor found  
 13 liable in the Lago Agrio Litigation, Chevron's  
 14 denial-of-justice claim has no relation to any treaty right  
 15 regarding TexPet, the indirect investment. The Tribunal  
 16 decided as much when it recognized its jurisdiction over  
 17 indirect claims concerning TexPet's treaty rights but  
 18 nevertheless held that no conclusion followed about its  
 19 jurisdiction over Chevron's denial-of-justice claim.  
 20 Now, my friend Mr. Weiss argued yesterday that  
 21 TexPet suffered harm as a result of the Lago Agrio  
 22 Litigation because its bank accounts were seized. However,  
 23 at best, this would confer jurisdiction to the Tribunal  
 24 over TexPet's claims of denial of justice and solely to the  
 25 extent of its harm. It is, however, of no assistance to

02:52 1 with an indirect investment--that is, TexPet--under the  
 2 BIT?  
 3 Now, as an indirect investor, if--and I emphasize,  
 4 "if"--TexPet had been sued and held liable in the Lago  
 5 Agrio Litigation, Chevron could bring a claim but only for  
 6 the harm its indirect investment suffered. As my friend  
 7 Mr. Weiss conceded yesterday, the most that an indirect  
 8 investor can claim is the loss of value of the company it  
 9 controls. In other words, under the scenario of the  
 10 Tribunal's questions, both TexPet and Chevron could bring  
 11 as a matter of jurisdiction claims for treaty breaches  
 12 against TexPet.  
 13 However, even assuming arguendo that the treaty  
 14 breaches occurred, both TexPet and Chevron would be  
 15 entitled to be compensated only to the extent of their own  
 16 loss. No award would be payable to Chevron in the  
 17 circumstances.  
 18 This doesn't mean, as the Duke Tribunal noted, and  
 19 you can see it on the screen, that Chevron would  
 20 be--wouldn't be compensated. Chevron would be made whole  
 21 through its shareholding in TexPet, its indirect  
 22 investment.  
 23 To conclude, Members of the Tribunal, I want to  
 24 emphasize once again that this Tribunal's Award will stand  
 25 for or against universal jurisdiction over claims by

02:51 1 Chevron's denial-of-justice claim.  
 2 These principles and conclusions, Members of the  
 3 Tribunal, helped me provide answers to the Tribunal's  
 4 questions on jurisdiction.  
 5 The first question was: If TexPet had been sued  
 6 as a named Defendant in the Lago Agrio Litigation and had  
 7 been held liable as was Chevron under the Lago Agrio  
 8 Judgment, does the Respondent dispute that TexPet could  
 9 bring, as a matter of jurisdiction, a claim for denial of  
 10 justice or breach of the effective-means obligation under  
 11 the BIT?  
 12 This question assumes facts contrary to what  
 13 actually happened, since TexPet was not sued. However, it  
 14 seems to follow from the Tribunal's Third Interim Award  
 15 that if TexPet had been sued and held liable in the Lago  
 16 Agrio Litigation as a direct investor in the Lago Agrio oil  
 17 concession, always within the framework of the Award on  
 18 Jurisdiction by the Tribunal, TexPet could bring a claim  
 19 for denial of justice on its own behalf.  
 20 The Tribunal then added a second question: A  
 21 related question, you said, is the effect of the Tribunal's  
 22 Third Interim Award on Jurisdiction. We heard submissions  
 23 in opening on the status of Chevron as an investor with or  
 24 without a direct investment, but what is the effect of our  
 25 Jurisdiction Award on Chevron for its status as an investor

02:54 1 foreigners for denial of justice. On the one hand, the  
 2 Tribunal can find that it has jurisdiction based on  
 3 subjective fairness considerations, and despite the basic  
 4 fact that Chevron has never contributed anything of value  
 5 to Ecuador and has no direct investment. This conclusion,  
 6 as you know, is contrary to fundamental principles of  
 7 international law and international arbitration.  
 8 First, this conclusion would eliminate the  
 9 essential limitation of investment arbitration to  
 10 investments and expanded to include any alleged injury to a  
 11 foreigner, even when the foreigner was never even in the  
 12 country.  
 13 Second, this conclusion would reject the  
 14 fundamental principle that the scope of jurisdiction is  
 15 defined by State consent, not by Claimant's scheming.  
 16 Third, this conclusion would constitute a radical  
 17 departure from the uniform decisions that base jurisdiction  
 18 on an investment of the investor made in the territory of  
 19 the host State.  
 20 And fourth, this conclusion would disregard the  
 21 basic principle of fairness called nemo auditor.  
 22 On the other hand, Members of the Tribunal, this  
 23 Tribunal can defend these principles, the rule of law, and  
 24 find that it lacks jurisdiction over Chevron's  
 25 denial-of-justice claims.

<p>Sheet 48</p> <p style="text-align: right;">2961</p> <p>02:56 1 With that, Members of the Tribunal, I conclude my  2 submissions and, with your permission, I hand over the  3 floor to my former senior partner and however friend  4 Professor Mayer.  5 MR. BLOOM: Before we do that, would the  6 Tribunal--the next presentation, which will be done by  7 three speakers, would be about 50 minutes in length. Would  8 you rather take the afternoon break before or after this  9 next presentation?  10 PRESIDENT VEEDER: We shall ask our lords and  11 masters.  12 COURT REPORTER: Yes.  13 PRESIDENT VEEDER: I think the answer is always  14 yes. We'll have a break now and come back at 3:15.  15 (Brief recess.)  16 PRESIDENT VEEDER: Let's resume.  17 We're sorry to keep you waiting a little bit  18 longer, Professor Mayer, because I think we have two  19 matters. First, we announce that we have now completed the  20 signing of the Site Visit Order as regards the Parties. We  21 have signed. Obviously there will have to be a signature  22 at the PCA by the Secretary-General of the PCA, but that is  23 a formality, so we can take it that that order is now in  24 full force and effect, and thank you all very much for the  25 enormous efforts that have been taken in producing that</p>	<p style="text-align: right;">2963</p> <p>03:17 1 brought its claim, that would be a clerical error that we  2 sure know that could not--never happened at the PCA. Thank  3 you.  4 PRESIDENT VEEDER: Go ahead.  5 ARBITRATOR GRIGERA NAÓN: I have a question for  6 Mr. Silva Romero regarding his submission. You referred to  7 enforcement proceedings of the Lago Agrio Award in respect  8 of bank accounts of TexPet. My understanding is that there  9 are other assets in Ecuador that are also being the subject  10 to enforcement proceedings. I remember a reference to  11 trademarks. I do not know if they are trademarks of  12 Chevron or of TexPet. Could you clarify that, please.  13 MR. SILVA ROMERO: I believe my friend Mr. Tomás  14 Leonard can explain better the question of this issue of  15 the trademarks. I believe he already explained it before,  16 so if I may defer that question, Professor Grigera Naón, to  17 my friend Tomás Leonard.  18 MR. LEONARD: Thank you, my friend. You caught me  19 off guard.  20 There is indeed an order of enforcement issued by  21 the first-instance court in Lago Agrio, and that's a normal  22 procedure when a judgment becomes enforceable; it goes back  23 to the Court of First Instance for enforcement. There is  24 an order of enforcement instructing the seizure of certain  25 assets, including trademarks, a large number of trademarks.</p>
<p style="text-align: right;">2962</p> <p>03:15 1 document.  2 Secondly, you have the floor.  3 MR. LEONARD: Thank you, Mr. President.  4 Just two very quick corrections. As Professor  5 Grigera Naón correctly noted, my reference in Slide 29 to  6 Article 2336, is actually 2363. It's a problem of  7 dyslexia.  8 The second correction is a problem of poor  9 judgment. I was trying to operate out of memory right  10 after lunch, and I gave you the wrong name for a case, the  11 case cited at Page 14 of the Lago Agrio Judgment. The case  12 that I actually should have referred to is Angel Puma, and  13 that's Exhibit R-650.  14 Now, my colleague, Álvaro Galindo, would also like  15 to make a brief clarification regarding the cover page of  16 the Complaint.  17 MR. GALINDO: Mr. President, here in the back.  18 PRESIDENT VEEDER: Yes.  19 MR. GALINDO: Just by instruction of the Attorney  20 General, the cover page of the Lago Agrio Complaint is made  21 by the Law Clerk of the office of that Court. That's  22 nothing in which the Plaintiffs have any say, and you will  23 find the right party to as a Defendant on Page 17 of the  24 Complaint. It is basically as if the PCA will submit in  25 the cover page of this claim that Chevron is the Party who</p>	<p style="text-align: right;">2964</p> <p>03:19 1 We've addressed this issue in the show-cause proceedings,  2 explaining that those trademarks are subject to two  3 agreements with the company. If I recall correctly, it's  4 Swiss Oil, a company who acquired the ability to produce  5 lubricants under Chevron's trademarks in Ecuador. Those  6 trademarks are subject to two agreements, one of which is  7 royalty-free. This company doesn't pay royalties for the  8 use of those trademarks. The second agreement, and I  9 apologize, but I don't recall the technical names of the  10 Agreements--it's been a while since we briefed these  11 issues.  12 The second agreement is a licensing agreement, if  13 I recall correctly, and that is subject to certain payments  14 depending on the volume of sales of those products, and  15 those payments are capped, if I recall correctly, at  16 \$1.1 million a year. So, other than that cash flow, there  17 is no other economic impact or effect of that seizure.  18 These trademarks have essentially no economic value being  19 subject to a licensing agreement that is royalty-free.  20 One additional note is that, at least as we  21 understand it today, the property of those trademarks has  22 not been transferred to the Plaintiffs yet, and we don't  23 know whether the Plaintiffs are seeking to have those  24 trademarks transferred to them. We just know that no steps  25 have been taken so far to effect the transfer of ownership</p>



03:21 1 over those trademarks to the Plaintiffs.  
 2 PRESIDENT VEEDER: Professor Mayer.  
 3 PROFESSOR MAYER: Thank you, Mr. President. As I  
 4 did in my part of the opening statement, I will answer  
 5 essentially to Professor Paulsson on the issue of lack of  
 6 exhaustion of local remedies by Chevron under international  
 7 law.  
 8 My starting point will be a complete agreement  
 9 with what Jan Paulsson wrote on this topic in his excellent  
 10 book on denial of justice, which I had the pleasure of  
 11 reviewing for the "Revue de l'arbitrage". Two brief  
 12 quotations from that book:  
 13 First, "The obligation of the State is to  
 14 establish and maintain a system which does not deny  
 15 justice." That's at Page 108. And the consequence of that  
 16 follows at Page 111. "The very definition of the delict of  
 17 denial of justice encompasses the notion of exhaustion of  
 18 local remedies. There can be no denial before exhaustion."  
 19 The Ecuadorian judicial system has not yet arrived  
 20 at its decision on the Lago Agrio Litigation. It has not  
 21 been given a chance to do so.  
 22 Chevron still had remedies available to it--has  
 23 remedies available to it in Ecuador, and it had them when  
 24 it filed its Request for Arbitration.  
 25 Now--and this is the core of the debate--are these

03:24 1 In fact, I leave aside the first one. The first  
 2 one was based on the non-vertical nature of a CPA action.  
 3 I had answered in the opening, and Jan Paulsson did not  
 4 insist in closing; therefore, I immediately come to the  
 5 second argument.  
 6 The second argument is that once the Judgment is  
 7 enforceable, no recourse is capable of redressing the harm.  
 8 This is, in fact, a petitio principii without any basis in  
 9 international law. There would be irreparable harm if the  
 10 Judgment, supposing, of course, it had been obtained by  
 11 fraud, had already been rn forced, and there would be no  
 12 possibility of getting the money back; or, if it was  
 13 certain or at least likely that it would be enforced before  
 14 any remedy could prevent it, and there would be no  
 15 possibility of getting the money back.  
 16 In our case, more than four years after the  
 17 first-instance Judgment was rendered, it has not been  
 18 enforced anywhere. An attempt in Argentina failed, and an  
 19 attempt in Ecuador has just been mentioned. If Chevron had  
 20 initiated a CPA action in the hope of obtaining a favorable  
 21 decision, such decision would already have been rendered.  
 22 And if it was in favor of Chevron, no possibility of  
 23 enforcement abroad would exist in the future. The Judgment  
 24 would have been nullified, and courts do not enforce  
 25 foreign Judgments that have been nullified in their Country

03:23 1 available remedies futile as Chevron contends?  
 2 As in my opening remarks, I feel no need to enter  
 3 into the tedious debate between "obvious futility" or "no  
 4 reasonable possibility of effective redress" as the  
 5 appropriate standard for determining if an otherwise  
 6 available recourse needs to be exercised prior to accusing  
 7 a State of being guilty of denial of justice. I will  
 8 consider the standard the Claimants themselves invoke: The  
 9 "no reasonable possibility of effective redress" standard.  
 10 It is a very high standard. And it implies that, if you  
 11 have been ordered by a judgment to pay \$19 billion or  
 12 \$9.5 billion, it would be unreasonable not to try even a  
 13 small chance of success.  
 14 And in addition, you owe it to the State before  
 15 accusing its whole judicial system of denial of justice.  
 16 As Professor Amerasinghe wrote, and I cannot  
 17 resist the temptation of quoting him a second time because  
 18 the sentence is both concise and profound, "The sovereignty  
 19 of the Respondent State requires that it be given a fair  
 20 opportunity of doing justice through its own system."  
 21 In the present case, are there good reasons to  
 22 think that the still open recourses would still be futile?  
 23 Professor Paulsson has made and considering both his  
 24 Opening Statement and his Closing Argument--four arguments.  
 25 Let me visit them.

03:26 1 of Origin.  
 2 Chevron cannot complain that there is now a risk  
 3 of actual enforcement precisely because it did not try a  
 4 recourse that was available to it.  
 5 Professor Paulsson said yesterday morning, and I  
 6 quote: "The question of exhaustion must be answered  
 7 objectively at the relevant time. It cannot rest on future  
 8 possibilities and contingencies." But the relevant time is  
 9 precisely now. There would be now no risk of enforcement  
 10 if the recourse had been made and if it had proved  
 11 successful. We know that it has not been made--one has not  
 12 been made, one is still pending. We don't know if it would  
 13 have proved successful, but it's simply because the  
 14 recourse has not been made.  
 15 Ecuador is not, contrary to what Professor  
 16 Paulsson argued, "asking Chevron to spend years pursuing  
 17 relief and to come back in 2018 or 2019." Ecuador's  
 18 position is to say you, Chevron, should have exhausted  
 19 local remedies as soon as they were available, and we can  
 20 see now that you have not done it and that the delict of  
 21 denial of justice does not exist now, since the local  
 22 remedies have not been exhausted.  
 23 To that, Jan Paulsson objected that there are two  
 24 successive appeals possible against a CPA judgment of first  
 25 instance, appeals which, first, would have taken years and,

03:28 1 second, would have ended before the National Court of  
 2 Justice which allegedly has shown hostility towards  
 3 Chevron.  
 4 This is wrong on three counts:  
 5 First, once a court of appeal would have rendered  
 6 its decision supposedly in favor of Chevron, the impugned  
 7 judgment would have ceased to be enforceable.  
 8 Second, even before that, if the CPA Court of  
 9 First Instance had found in favor of Chevron--and that  
 10 would have taken on average one year and a half--any  
 11 possibility of enforcement abroad would, in practice, have  
 12 immediately ceased, and the enforcement actions in the  
 13 various countries would have been frozen everywhere.  
 14 Third, it is unfair to say that the National Court  
 15 of Justice is systematically hostile to Chevron in the Lago  
 16 Agrio Case. Let us remember that the National Court of  
 17 Justice dismissed the criminal charges brought against two  
 18 of Claimants' attorneys. There was, therefore, a fair  
 19 chance, not a tiny chance. If a fraud, of course, was  
 20 established, then the CPA would have succeeded, and it  
 21 would have succeeded in time; that is, before any  
 22 enforcement occurred. Which, by the way, dispenses me,  
 23 also for the sake of time, to discuss the alternative  
 24 argument that I had made in opening based on the obligation  
 25 for the Trust to give back the money to Chevron if Chevron

03:32 1 word "consummated" has been used several times, and it's a  
 2 very practical word because it's extremely ambiguous. For  
 3 Jan Paulsson, the denial of justice was consummated when  
 4 the Court of Appeal affirmed the Zambrano Judgment and  
 5 certified that Judgment as enforceable. And then it would  
 6 "be preposterous" and "grotesque" for Ecuador to invoke the  
 7 existence of a remedy which should have been exhausted by  
 8 Chevron. And why? Because, I quote: "The refusal of the  
 9 higher court to consider evidence of fraud is in itself a  
 10 frustrating denial of justice."  
 11 There is clearly an error in the reasoning here.  
 12 It is one thing to say that not only the Zambrano Judgment,  
 13 but also the decisions of the Court of Appeal constitutes a  
 14 denial of justice because the latter did not consider the  
 15 alleged ghostwriting character of the former.  
 16 It is another thing to say that the State itself,  
 17 not Judge Zambrano or the Court of Appeal, is guilty of an  
 18 international delict of denial of justice which is the  
 19 issue at stake here.  
 20 When Judgment has to be passed on the judicial  
 21 system of the State, all possibilities of recourse offered  
 22 by that system must be taken into consideration.  
 23 International law requires that the self-styled victim of a  
 24 denial of justice establishes two things: One, that a  
 25 certain judge or possibly several judges have denied him

03:30 1 had been forced to pay it.  
 2 In addition, Chevron had the possibility of  
 3 obtaining a Stay of Enforcement by merely posting a bond  
 4 with the Court of Appeal. Chevron did not even ask the  
 5 Court to fix the amount of the Bond. But it has been  
 6 established in these proceedings that, in the practice of  
 7 Ecuadorian courts, bonds are fixed in the range of  
 8 1 percent to 5 percent of the amount of the Judgment under  
 9 appeal, contrary to 1.9 billion U.S. dollars, which  
 10 Professor Paulsson mentioned yesterday. I refer the  
 11 Tribunal to Dr. Andrade's Second Report, RE-20,  
 12 Paragraph 57, Note 84, which is extremely precise and  
 13 documented. In the Loewen Case, bond was fixed at  
 14 125 percent of the judgment, and Loewen was not able to  
 15 pay, and still the Tribunal found that Loewen had not  
 16 exhausted the local remedies before accepting a settlement.  
 17 That was, of course, an extreme case, and some commentators  
 18 have criticized the Award, no one more strongly than Jan  
 19 Paulsson yesterday. But in Chevron's case, the bond would  
 20 have been of a relatively, of course relatively, modest  
 21 amount, and Chevron would not have had any difficulty to  
 22 pay.  
 23 I come to Professor Paulsson's third argument. It  
 24 is that the denial of justice in this case is so egregious  
 25 that it must be considered already consummated, and this

03:34 1 justice; two, that all available and effective remedies  
 2 have been exhausted.  
 3 Even assuming, which we deny, that an extremely  
 4 serious denial of justice had occurred, materialized in the  
 5 Lago Agrio Judgment and in the decision of the courts of  
 6 appeal and in the issuance of a certification of  
 7 enforceability, to conclude from that, as Professor  
 8 Paulsson does, that the requirement of exhaustion does not  
 9 apply, constitutes an intermingling of two distinct  
 10 conditions and, in fact, suppresses the requirement of  
 11 exhaustion.  
 12 Professor Paulsson's fourth and last argument is  
 13 that there is not even a tiny chance that an Ecuadorian  
 14 Court redresses the harm. Why? Because the whole  
 15 judiciary of Ecuador is, "weak, dependent, subjugated."  
 16 But it does not suffice to say that, and to repeat it  
 17 several times, one has to prove it, and the facts disprove  
 18 it. There have been numerous instances in which in  
 19 disputes between the Government and Texaco, Texaco won. I  
 20 mentioned earlier the dismissal by the National Court of  
 21 Justice of criminal charges against two of Chevron's  
 22 lawyers. I mentioned other decisions in my opening  
 23 remarks, Transcript Page 213.  
 24 So, why be so pessimistic? Of course, it's  
 25 convenient for Claimants.

03:36 1 Professor Paulsson insisted at length on President  
 2 Correa's alleged pressures on the judiciary, insisting that  
 3 he himself--President Correa--claims that he is the  
 4 judiciary. But the reality is different. Mr. Guerra,  
 5 Chevron's star fact witness, disavowed Claimants'  
 6 accusations. There was never any interference by the  
 7 Executive or anyone else, for that matter, in the Lago  
 8 Agrio Case.

9 There is also the accusation that President Correa  
 10 demanded that all those involved in the execution of the  
 11 1995 Settlement Agreement and the Final Acta be prosecuted.  
 12 There was, indeed, a preliminary investigation by the  
 13 Prosecutor, but he concluded that the evidence did not  
 14 warrant prosecution or even further investigation.  
 15 Therefore, either President Correa did not make that demand  
 16 and the accusation is slanderous, or he did, and that  
 17 proves the independence of the judiciary. And that is what  
 18 counts: the independence of the judiciary, not what the  
 19 President of the State did or did not do.

20 Now, it is true that Professor Paulsson goes so  
 21 far as to say that President Correa's actions constitute in  
 22 themselves a denial of justice. Quotation from the  
 23 opening: "Why is it not decisive that the Head of State  
 24 disaffirms any intention to countenance reconsideration?",  
 25 asked Professor Paulsson. It was, of course, a rhetorical

03:40 1 two questions asked by the Tribunal concerning the burden  
 2 of proof. One can suppose that the interest of the  
 3 Tribunal in these questions is related to the alleged  
 4 ghostwriting of the Lago Agrio Judgment, but these  
 5 questions are also relevant to the Claimants' accusation  
 6 against the State that its whole judiciary is weak and  
 7 dependent, and to the burden of proving that, which rests  
 8 upon them, the Claimants. We can keep both aspects in  
 9 mind.

10 The Arbitral Tribunal's first question is whether  
 11 under the lex arbitri, which is Dutch law, the UNCITRAL  
 12 Rules or public international law the evidential burden can  
 13 shift backwards and forwards.

14 The second question is whether the  
 15 balance-of-probabilities standard used in common law is  
 16 also applied under Dutch law--lex arbitri--the UNCITRAL  
 17 Rules, international law, and if in these systems the  
 18 standard changes when the allegations are, if not criminal,  
 19 extremely serious. I take both questions together.

20 First, Dutch law. Dutch law on arbitration has no  
 21 answer to any of these questions.

22 Second, the UNCITRAL Rules. Article 24 of the  
 23 UNCITRAL Rules is the only provision in those Rules that  
 24 addresses the issue of burden of proof, and all that it  
 25 says is--you see it on the slide--"Each party shall have

03:38 1 question, but, in fact, it is a good question. Why is it  
 2 not decisive? It's not decisive because the head of the  
 3 State is not the judiciary.

4 In his closing remarks yesterday, Professor  
 5 Paulsson said even more explicitly that the Executive can  
 6 be guilty of a denial of justice, and the only authority  
 7 that Professor Paulsson cited was Professor Paulsson's  
 8 book, excellent book, on denial of justice. But even  
 9 assuming that his position corresponds to the state of  
 10 international law today, that does not tell us which action  
 11 by President Correa would constitute, in our case, a denial  
 12 of justice. Professor Paulsson mentioned several actions  
 13 which he criticized on the part of President Correa, but he  
 14 did not pinpoint which of these actions would constitute a  
 15 denial of justice.

16 And we were not told either why if a denial of  
 17 justice had been made by the Executive, the requirement of  
 18 exhaustion of local remedies would not also apply.

19 In conclusion, none of Claimants' attempts to  
 20 establish futility presented yesterday by Professor  
 21 Paulsson and more generally in the various presentations,  
 22 written or oral, by Chevron or by the Claimants is  
 23 convincing.

24 Convincing to the required level of conviction,  
 25 and I seize this opportunity before closing to answer the

03:42 1 the burden of proving the facts relied on to support his  
 2 claim or defense." This provision does not distinguish the  
 3 evidential burden from the legal burden, a distinction  
 4 which is not made everywhere. Even if it maybe should be.  
 5 And it does not address the issue of shifting of the  
 6 burden. It does not make distinctions between extremely  
 7 serious or less serious allegations. The burden of proof  
 8 rests on the Party that makes the allegation, and that is  
 9 all. And we know that on the issue of the alleged futility  
 10 of a remedy, the burden of proving that futility rests on  
 11 the alleged victim.

12 I come to international law. On these issues, it  
 13 is not easy to describe. There are essentially  
 14 issues--these are essentially issues of judicial practice  
 15 from which a unanimous answer cannot easily emerge because  
 16 a common law judge will have a different attitude from that  
 17 of a civil law judge. For instance, the  
 18 balance-of-probabilities standard does not exist in civil  
 19 law countries. In those countries, the Party which has the  
 20 burden of proof must establish reasonable certainty, which  
 21 is a much higher standard.

22 In the Bayindir Award, the standard was taken from  
 23 a famous decision of the International Court of Justice,  
 24 the Corfu Channel decision. You can see it on the slide.  
 25 The proof, says the Tribunal in Bayindir, but also the

03:44 1 Corfu Channel Case, "proof may be drawn from inferences of  
 2 fact, provided that they leave no room for reasonable  
 3 doubt." No room for reasonable doubt. The standard is  
 4 very high. Of course, the issue was about inferences of  
 5 fact, but why should evidence based on inferences of fact  
 6 be subject to a higher standard than any other kind of  
 7 evidence? That one must be particularly cautious because  
 8 it is based on reasoning, yes, but that the standard be  
 9 higher, no reason for that.

10 And also the standard applies independently of the  
 11 more or less serious character of the allegation. But when  
 12 we come to particularly serious allegations such as  
 13 corruption, the standard is undoubtedly very high. Let us  
 14 look at the EDF versus Romania Award at the top, and a  
 15 Procedural Order in the same case. The Award reads:  
 16 "There is a general consensus among international tribunals  
 17 and commentators regarding the need for a high standard of  
 18 proof of corruption. The evidence before the Tribunal in  
 19 the instant case concerning the alleged solicitation of a  
 20 bribe is far from being clear and convincing."

21 And in the Procedural Order, the Tribunal had  
 22 said: "Proving corruption is a challenging task in the  
 23 absence of admission of liability by the accused person.  
 24 It is, therefore, required that every effort be made by the  
 25 party raising a charge of corruption to substantiate its

03:47 1 Constitution, an extraordinary action of protection is  
 2 available against Judgments of Final Orders by which  
 3 constitutional rights were violated by action or omission.  
 4 This action shall be brought before the Constitutional  
 5 Court.

6 If the Constitutional Court grants any of  
 7 Chevron's allegations of due-process violation, it has the  
 8 power to overturn, to invalidate the underlying decision on  
 9 the grounds that it infringes Chevron's constitutional  
 10 rights, and it may remand the case to the corresponding  
 11 Court to continue from the point where the violation  
 12 occurred.

13 As demonstrated in this slide, Chevron's  
 14 accusations related to the violation of the constitutional  
 15 rights are precisely the kind of allegations that the  
 16 Constitutional Court is called to address and redress.  
 17 However, I am urged to clarify that the Constitutional  
 18 Court may not consider extrinsic evidence to prove the  
 19 alleged violation of a constitutional right as established  
 20 by judicial precedent where the Court ruled against the  
 21 Plaintiff because the existing record did not contain any  
 22 evidence of the alleged constitutional infirmity. As the  
 23 Tribunal is well aware, the extraordinary action for  
 24 protection filed by Chevron is still pending.  
 25 This takes me to the second point. Instead, the

03:46 1 claim." And in this sentence, we can guess that there is  
 2 no shifting of the evidential burden since it's the person  
 3 accusing that must make every effort to substantiate its  
 4 claim.

5 With this, Mr. President and Members of the  
 6 Tribunal, I close my part of our presentation, and I give  
 7 the floor, with the Tribunal's permission, to Dra. Blanca  
 8 Gómez de la Torre.

9 PRESIDENT VEEDER: Thank you.

10 MS. GÓMEZ de la TORRE: Thank you, Mr. President,  
 11 Members of the Tribunal.

12 I will now address the arguments regarding the  
 13 exhaustion of local remedies with a special emphasis on the  
 14 Collusion Prosecution Act. Therefore, I will divide my  
 15 presentation in two parts: The Constitutional Court  
 16 provides effective means to redress Chevron's allegations  
 17 of due-process violations and other constitutional  
 18 guarantees. Two, Chevron has chosen not to exhaust local  
 19 remedies for the alleged judicial crime.

20 Regarding my first point, as mentioned in my  
 21 Opening Argument and ratified by the Republic's Expert  
 22 Dr. Andrade, it is undisputed that the extraordinary action  
 23 for protection provides Chevron the effective remedies  
 24 regarding violations of due process and other  
 25 constitutional guarantees. According to Ecuador's

03:49 1 CPA is the one that provides the exclusive mechanism to  
 2 address and effectively redress Chevron's allegations of  
 3 ghostwriting and fraud in the Lago Agrio Litigation. The  
 4 CPA action could afford Chevron and the Parties accused by  
 5 Chevron of fraud a full and actual opportunity to present  
 6 its claims to properly put forth its alleged evidence of  
 7 ghostwriting and fraud and to participate in a hearing on  
 8 its claims. And, if finally proven, the full nullification  
 9 of Judge Zambrano's Judgment as well as damages,  
 10 imprisonment, and disciplinary proceedings. It is  
 11 perfectly clear that the ultima ratio requirement is  
 12 satisfied since the CPA is the only available means to  
 13 address precisely the kind of infirmities that Chevron  
 14 alleged have tainted the Lago Agrio Judgment.

15 This is also confirmed by the Judgment of the  
 16 Constitutional Court cited by Chevron's Expert in his  
 17 Expert Report, reference RLA-VI(6)(3). In this ruling it  
 18 was established that the allegations arising out of  
 19 Constitution wide violations, legal certainty right were  
 20 filed by the affected party with the Constitutional Court  
 21 while the allegations related to the procedural fraud were  
 22 filed following a different proceeding under the CPA.

23 Dr. Andrade was correct when asserting that the  
 24 action under the CPA is a parallel action, it is not of a  
 25 vertical nature.

03:51 1 As to Mr. Paulsson's contention that an effective  
 2 CPA action would require several layers of appeal, the  
 3 following observations are in order. First, the Tribunal  
 4 will recall that a judgment in a CPA action issues on  
 5 average 17 months after the filing of the complaint. You  
 6 may refer to R-1488, official letter of the Judicial  
 7 Council cited in the Respondent's Track 2 Supplemental  
 8 Rejoinder.  
 9 Claimants have wasted precious time, and continue  
 10 to do so.  
 11 Second consideration, a CPA Judgment will become  
 12 final and enforceable upon affirmance by the first instance  
 13 Appellate Court. Mr. Paulsson's suggestion that several  
 14 layers of appeal will be required is just wrong.  
 15 Moreover, we also note that Appellate Decisions on  
 16 CPA actions have historically issued within approximately a  
 17 year-and-a-half from the date of the appeal. In fact, a  
 18 CPA first-instance Judgment declaring the underlying  
 19 Judgment null and void because it was procured by fraud  
 20 could effectively shut down and terminate any hope for  
 21 recognition of the Judgment in a foreign jurisdiction. Any  
 22 contention otherwise is simply fanciful.  
 23 As you know, Chevron ignored this last remedy and  
 24 decided to bring an arbitration. Chevron's attorney for  
 25 their National Court Cassation Appeal knew this remedy very

03:53 1 well. Santiago Andrade, one of its main counsels in  
 2 Ecuador and a former judge of the Supreme Court of Ecuador,  
 3 in one of his rulings recognized the effectiveness of the  
 4 CPA in nullifying decisions based on fraud. Chevron cannot  
 5 hide that.  
 6 Chevron's counsel should have known better. I  
 7 assume they were well aware that, under the applicable law,  
 8 the effective means to redress their claim was the CPA, but  
 9 yet, they simply decided not to choose this remedy. In the  
 10 same way they decided not to post a bond when they filed  
 11 the cassation appeal of the National Court to a stay  
 12 enforcement of the Judgment pursuant to Ecuadorian law.  
 13 In conclusion, it is actually quite simple. For  
 14 constitutional violations, the extraordinary action of  
 15 protection is the right course of action, and for the  
 16 alleged collusion, the CPA is the adequate venue. In both  
 17 cases, both means are effective and provide for an adequate  
 18 remedy, and they had not been exhausted yet. This Tribunal  
 19 is, therefore, under the duty to wait for these remedies to  
 20 be exhausted, which is to say that the Tribunal must  
 21 provide the Ecuadorian judiciary with an opportunity to  
 22 correct any mistake that could have been committed in the  
 23 administration of justice in the Lago Agrio Case.  
 24 Thank you.  
 25 PRESIDENT VEEDER: Thank you.

03:55 1 Please.  
 2 MR. UGARTE: Members of the Tribunal, I will  
 3 address why the treaty and denial-of-justice claims founded  
 4 on the purported ghostwriting scheme fail at outset due to  
 5 international legal principles of exhaustion, in particular  
 6 I will briefly respond to the excuses offered by Claimants  
 7 during their Opening Statements for why they failed to  
 8 invoke local remedies at the trial level concerning such  
 9 allegations.  
 10 Claimants have been gaming the system with respect  
 11 to the Aguinda claim since Day 1, to prevent adjudication  
 12 of their responsibility to the Plaintiffs. They burn  
 13 through nearly ten years of litigation proceedings in the  
 14 United States just to decide the proper forum to adjudicate  
 15 the Claims brought by Aguinda and now invoke a release that  
 16 supposedly bars these same claims. And now Chevron is  
 17 gaming the system once again, with respect to the so-called  
 18 "ghostwriting allegations." And you can see that from the  
 19 emphasis they placed on what they knew and when. And that  
 20 emphasis is remarkably different, depending on the forum in  
 21 which Claimants are in.  
 22 I want to run through a few slides that concern  
 23 Chevron's pre-Judgment allegations of ghostwriting and show  
 24 you the contrast of what Chevron told you during their  
 25 opening submissions and what they told Judge Kaplan.

03:57 1 In the first slide, you see Chevron downplaying  
 2 what Guerra allegedly told Chevron in 2009. They tell you  
 3 that, in 2009, Guerra apparently told Chevron he was just  
 4 out to fix a motion. But to Judge Kaplan, they said, it  
 5 was a massive fraud about fixing the entire case.  
 6 Then, as you can see in the next slide, Chevron  
 7 told you during opening that Chevron was not even aware  
 8 that Zambrano had purportedly struck a deal with the  
 9 Plaintiffs themselves but they told Judge Kaplan that they  
 10 had received reports which allegedly led Chevron's  
 11 attorneys to understand that Judge Zambrano was sure to  
 12 strike a deal with Plaintiffs.  
 13 Finally, Chevron tells you, well, it's not that we  
 14 didn't have a basis to invoke local remedies at the trial  
 15 level. We just didn't have a videotape. We didn't have  
 16 objective evidence. Well, as you can see from the slide,  
 17 Claimants didn't have a videotape when they first told  
 18 Judge Kaplan just one day after the Judgment was issued  
 19 that Judge Zambrano had allegedly received secret  
 20 assistance in drafting the Judgment.  
 21 Now, please recall that there is no reliable  
 22 evidence that any of the statements I'm referencing in the  
 23 slides during my presentation were made by Judge Zambrano.  
 24 He did not make any of these statements. All these  
 25 statements are supposedly coming to Chevron before the

03:58 1 issuance of the Judgment, either directly or indirectly  
 2 from Mr. Guerra or others, but not a judge of the Court.  
 3 As my colleagues have demonstrated, the contents of  
 4 Mr. Guerra's statements are, indeed, bogus, but let me ask  
 5 you, why are Claimants downplaying those allegations about  
 6 the supposed statements made directly or indirectly to them  
 7 by Judge Guerra before the Judgment was issued? Well, the  
 8 answer is clear: Claimants know they cannot successfully  
 9 bring a treaty or denial-of-justice claim based on the  
 10 purported wrong-doings of a trial judge when they had a  
 11 basis to object and recuse or remove that judge. I cited  
 12 to all the relevant authority for this proposition during  
 13 my opening.

14 Now, during closing, Professor Paulsson said well,  
 15 you should not credit Chevron's own RICO affidavits about  
 16 the pre-Judgment events, and he focused on an affidavit  
 17 submitted by Mr. Carvajal. Chevron, according to  
 18 Professor Paulsson could never have used this affidavit to  
 19 recuse Zambrano. He called Mr. Carvajal's Affidavit double  
 20 hearsay. Well, I couldn't agree more, it is double  
 21 hearsay. The statements originating from Guerra and  
 22 Mr. Carvajal's Affidavit about a purported ghostwriting  
 23 scheme involving Judge Zambrano are, indeed, bogus and  
 24 unreliable hearsay, much like the other lies that Guerra  
 25 has made before this Tribunal. But that issue goes to the

04:01 1 forget about these affidavits, they can be ignored as  
 2 double hearsay. That is gaming the system, pure and  
 3 simple.

4 Yesterday it was--claimed that Chevron never would  
 5 have sat on the information if it knew it would result in a  
 6 multi-billion dollar Judgment. This proposition was  
 7 insane. It's not insane from the perspective of RICO. A  
 8 RICO Plaintiff very well may have no burden to exhaust  
 9 local remedies to prevent a supposed pre-Judgment fraud  
 10 before it can bring a RICO claim, but that is not the  
 11 standard under international law, and Chevron has always  
 12 said it has no intention of paying for any Judgment that  
 13 comes out of the Ecuadorian courts.

14 So, it didn't matter what the Judgment said or  
 15 didn't say. Indeed, if you look at the timeline, look at  
 16 when they filed the RICO complaint. They filed it before  
 17 the Lago Agrio Judgment was even issued, and yet in their  
 18 RICO complaint, Chevron was already claiming that the  
 19 Judgment was going to be fraudulent before the Judgment was  
 20 even issued. Well, if they could claim that the Judgment  
 21 was going to be fraudulent before the Judgment was issued,  
 22 they clearly had grounds to invoke local remedies at the  
 23 trial level to prevent the supposed fraud.

24 But let's put Chevron's motives aside. Chevron's  
 25 motives and their deliberate strategic business and

04:00 1 lack of the factual merits, but I'm speaking here about the  
 2 timing of these allegations, and the implications that this  
 3 has under international law.

4 And the legal point is simple: Whether this  
 5 Affidavit was based on double hearsay or not, if it was  
 6 good enough in Chevron's view to provide it to Judge Kaplan  
 7 and if it was good enough for Chevron to have a basis to  
 8 run into Judge Kaplan's arms to make the ghostwriting  
 9 allegations, a mere one day after the Judgment was issued,  
 10 then these pre-Judgment allegations surely were good enough  
 11 for Chevron to invoke local remedies at the trial level in  
 12 Ecuador.

13 But, of course, the double hearsay point is  
 14 irrelevant in any event for purposes of making out my  
 15 argument on the doctrine of exhaustion. And why is that?  
 16 Because Chevron claims that it had several direct  
 17 pre-Judgment contacts in 2009 with Mr. Guerra, where Guerra  
 18 boasts that he could influence the outcome of the Judgment.  
 19 And you see that from the timeline on the next slide.  
 20 Again, the red lines represent the fiction underlying the  
 21 ghostwriting claims, and the blue lines represent actual  
 22 events.

23 Now, Chevron cannot be so duplicitous as to say to  
 24 Judge Kaplan that the RICO affidavits are persuasive  
 25 evidence of ghostwriting and before this Tribunal say

04:02 1 litigation decisions are not Ecuador's responsibility under  
 2 international law. All you have to do is review the timing  
 3 of when the supposed ghostwriting allegations actually  
 4 begin.

5 And, lastly, I simply want to leave you with the  
 6 slides that detail the numerous remedies available to  
 7 Chevron to remove a trial judge for bias. And these are on  
 8 the next four slides, and I won't take you through all of  
 9 the slides. I do want to draw your attention to one remedy  
 10 in particular.

11 Beyond the simple recusal motion for bias, Chevron  
 12 also could have invoked Article 109 of the Organic Code of  
 13 the Judiciary which had a lower standard. All Chevron had  
 14 to do was offer evidence of a solicitation that would cast  
 15 doubt on the Court's impartiality to obtain effective  
 16 disciplinary relief.

17 In sum, Ecuador has disproven the bogus claims of  
 18 ghostwriting, but if you give credence to these  
 19 allegations, you must buy into the whole story. If the  
 20 evidence was good enough for three Chevron attorneys to  
 21 swear under oath, under penalty of perjury before a United  
 22 States Court, then the evidence was good enough to trigger  
 23 Chevron's duty to report such allegations to Ecuador's  
 24 judicial authorities, which have, indeed, acted swiftly to  
 25 recuse judges as was the case with Judge Ordoñez.

04:04 1 Now, Chevron's strategy paid off handsomely for  
 2 its RICO purposes, but the result under international law  
 3 has to be different. International law places the burden  
 4 of bringing such claims forward at the trial level. Under  
 5 the doctrine of exhaustion, Chevron had to help itself by  
 6 using the effective means it had at the domestic trial  
 7 court level to address the supposed ghostwriting  
 8 allegations. Their failure to do so is fatal as a matter  
 9 of law to all the denial of justice and treaty claims that  
 10 rely on these ghostwriting allegations.

11 Members of the Tribunal, with that, I will switch  
 12 to a discussion of the Treaty, but I will pause for your  
 13 questions, if you have any.

14 ARBITRATOR LOWE: Could I ask if you have anything  
 15 to say about Article 113 on your last side, which says that  
 16 the disciplinary action shall be exercised sua sponte or  
 17 based on a complaint or claim. And does that indicate that  
 18 even if they had not raised the claim themselves, it could  
 19 have been raised by someone else?

20 MR. UGARTE: That would appear to be the case but  
 21 I would have to reserve the right to come back to you to  
 22 give you a definitive answer, if I could.

23 Thank you.

24 Members of the Tribunal, at this juncture of the  
 25 proceedings, I wish to take a step back by providing a

04:07 1 obligation exists under the Treaty. The terms "investor"  
 2 and "investment" simply cannot be used synonymously for  
 3 purposes of determining liability. Ecuador's treatment of  
 4 an investor may or may not be relevant but the treatment  
 5 afforded by Ecuador towards the investment at issue is  
 6 inevitably the key issue in determining liability here.

7 With that as a preliminary comment, Ecuador  
 8 submits that, to establish liability, Chevron must prove  
 9 the following three elements.

10 First, Chevron must prove as a factual matter that  
 11 Ecuador engaged in the conduct of which Ecuador is accused.  
 12 Second, Chevron must prove that Ecuador's conduct fell  
 13 below the Treaty's substantive standards of treatment and,  
 14 third, Chevron must prove that Ecuador's conduct harmed an  
 15 investment that is owned or controlled by Chevron. And  
 16 these elements are derived from a plain reading of each of  
 17 the substantive provisions of Article II of the Treaty that  
 18 are at issue in this arbitration.

19 TexPet, for its part must also individually  
 20 satisfy each of these three elements to establish Ecuador's  
 21 liability vis-à-vis TexPet. Now, Claimants come nowhere  
 22 close to establishing all three elements for any of their  
 23 Treaty claims or denial-of-justice claims for that matter.

24 In that regard, I want to comment on one of the  
 25 reasons why Claimants cannot establish the last element.

04:05 1 roadmap of the basic elements that Claimants must satisfy  
 2 to establish liability under the Treaty.

3 As a prefatory matter, this Treaty requires  
 4 Ecuador to afford certain treatment towards investments,  
 5 not investors. For example, as you see in the slide before  
 6 you under Article II of the Treaty, Ecuador must afford  
 7 fair and equitable treatment to investments. There is no  
 8 reference to investors in the substantive provisions of the  
 9 Treaty. Thus, for Chevron to allege that Chevron itself  
 10 has suffered a purported violation of due process in the  
 11 abstract or some other injury at the hands of Ecuador, is  
 12 insufficient to establish liability under the Treaty.  
 13 Chevron nevertheless intermingles the concept of an  
 14 investment and an investor in its pleadings as if these  
 15 terms were synonymous, for example, in the slide before  
 16 you. Chevron alleges that the Treaty requires Ecuador to  
 17 treat foreign investors fairly and equitably and that  
 18 Ecuador must supposedly give investors full protection and  
 19 security.

20 Similarly, in the next slide, Claimants also  
 21 repeat this mistaken assumption elsewhere in their  
 22 pleadings by stating that Article II of the U.S.-Ecuador  
 23 Treaty contains substantive protections that Ecuador must  
 24 provide to a foreign investor.

25 Now, I think we can all agree that no such

04:08 1 This is the element that requires Chevron to show some  
 2 nexus between the purported misconduct and a harm to its  
 3 investment, and this is a key issue because if the  
 4 investment upon which Claimants' treaty claims are grounded  
 5 does not exist or was not harmed in the Lago Agrio  
 6 Litigation, then the Claimants' investment treaty claims  
 7 necessarily fail.

8 So, what is that investment? There is only one  
 9 investment that Claimants say was actually harmed by  
 10 Ecuador. That investment is the bundle of contract rights  
 11 contained in various Settlement Agreements, particularly  
 12 the 1995 Settlement Agreement. Each and every treaty  
 13 breach pled by Claimants is grounded upon their claim that  
 14 Ecuador injured--somehow injured the Claimants' contractual  
 15 rights under the Settlement Agreements. Take, for example,  
 16 Paragraph 539 of their Merits Memorial, where Claimants  
 17 refer to the very purpose of this arbitration as protecting  
 18 the investment represented by the rights they say exist  
 19 under the Settlement Agreements.

20 What you will not see anywhere in Claimants'  
 21 Treaty breach discussion is a reference to the 1973  
 22 Agreement. Claimants discussed the 1973 Agreement in  
 23 relation to this Tribunal's purported jurisdiction, but  
 24 Claimants never discuss, much less establish, how their  
 25 supposed rights under the 1973 Agreement were breached or

04:10 1 harmed by Ecuador in relation to the Lago Agrio Litigation.  
 2 Indeed, not a single reference is made to the 1973  
 3 Agreement in Claimants' Request for Relief.  
 4 In sum, all of Claimants' treaty breaches are  
 5 grounded solely upon the investment represented by the  
 6 bundle of supposed contract rights that Claimants purport  
 7 to have under the Settlement Agreements. So, let's  
 8 identify the rights that actually exist under the 1995  
 9 Settlement Agreement based on the Tribunal's findings to  
 10 date.  
 11 When this arbitration began, Claimants had  
 12 asserted that the Settlement Agreements contained at least  
 13 four contractual rights. They claimed that under the  
 14 Settlement Agreements, Claimants had a contractual right to  
 15 be defended, to be held harmless, to be indemnified and to  
 16 be released by the Government of Ecuador in relation to the  
 17 Lago Agrio Claims. The Tribunal has since stated that the  
 18 first three of these contract rights simply do not exist.  
 19 The Tribunal found that there is no express contractual  
 20 provision in the '95 Settlement Agreement that obligated  
 21 Ecuador to defend, indemnify or hold Claimants harmless  
 22 from any liability or obligation, period. As you can see  
 23 from Paragraph 79 of the First Partial Award.  
 24 Now, this finding is extremely significant. If  
 25 the underlying contract rights that constitute the

04:13 1 that they obtained. The doctrine of good faith does not  
 2 expand the actual rights contained in the Settlement  
 3 Agreement.  
 4 Clearly, the Government of Ecuador has not  
 5 breached the Release. The Government never sued Chevron  
 6 nor TexPet, nor can it be seriously maintained that simply  
 7 because an Ecuadorian court interprets the scope of the  
 8 Release at the request of Chevron and makes findings in  
 9 that regard, that this somehow constitutes a breach of  
 10 contract giving rise to an umbrella clause claim. A local  
 11 court's interpretation of a contract governed by domestic  
 12 law cannot be said to be a breach of that contract, much  
 13 less a violation of an umbrella clause.  
 14 Finally, and most importantly, what standard of  
 15 review is this Tribunal to use to evaluate the scope of the  
 16 Release with respect to the remaining treaty claims?  
 17 In reviewing the scope of the Release, of course,  
 18 this Tribunal does not sit here as a court of appeal, as  
 19 everyone in this room has conceded. The Tribunal cannot  
 20 substitute its Judgment for that of the Ecuadorian courts  
 21 on this local law issue. The issue before this Tribunal is  
 22 not whether the Ecuadorian courts interpreted the scope of  
 23 the Release correctly. Rather, this Tribunal must only  
 24 determine whether the Court's interpretation of the scope  
 25 and their finding that the Lago Agrio Claims and the Lago

04:11 1 foundation of Claimants investment treaty claims do not  
 2 exist in the first place, the Treaty claims fall away on  
 3 their own terms.  
 4 Furthermore, this finding means that the last  
 5 remaining contract right whose purported breach or injury  
 6 gives rise to all of Claimants' treaty claims is the  
 7 Release contained in the Settlement Agreements. In other  
 8 words, Claimants' treaty claims are entirely dependent on  
 9 Claimants' showing that Ecuador somehow injured the  
 10 investment represented by the Release rights contained in  
 11 the Settlement Agreement. Whether the Release rights were  
 12 undermined, of course, depends on the scope of the Release,  
 13 and whether it is truly an ergo omnes supernatural release  
 14 broad enough to cover every man, woman, and child who  
 15 stands in harm's way as Claimants allege.  
 16 With that in mind, let me briefly comment on how  
 17 the Tribunal should assess the issue of the scope of the  
 18 Release. Before doing so, let me say that this Tribunal  
 19 should readily discard any claim that there has been an  
 20 actual breach of the '95 Settlement Agreement under  
 21 domestic law, much less a breach of the umbrella clause,  
 22 and this finding could be made irrespective of the scope of  
 23 the Release. This is because no matter the scope of the  
 24 Release, Claimants cannot establish that there has been any  
 25 conduct of the State of Ecuador which breached the Release

04:14 1 Agrio Judgment were not barred thereby was an  
 2 interpretation that can be considered within the  
 3 juridically possible. Or, to use the words of the Mondev  
 4 Tribunal, this Tribunal should only review the decision of  
 5 the courts of Ecuador concerning the scope of the Release  
 6 to determine if their decision was clearly improper and  
 7 discreditable.  
 8 And, of course, the opinions of the higher courts  
 9 of Ecuador, particularly that of the National Court, on the  
 10 scope of the Release was well within the bounds of the  
 11 juridically possible. It was far more than that. It was  
 12 the only correct finding. Far from being outside the  
 13 juridically possible, many of the findings of the National  
 14 Court in this respect are in sync with the Tribunal's own  
 15 decision in Track 1B of March 2015 insofar as the Tribunal  
 16 decided that the Lago Agrio Complaint included individual  
 17 claims resting upon individual rights, that simply did not  
 18 fall within the scope of the '95 Settlement Agreement as  
 19 invoked by Claimants.  
 20 Under these circumstances, the Ecuadorian court's  
 21 decision on the scope of the Release was clearly a decision  
 22 within the bounds of the juridically possible under  
 23 principles of international law, and that finding alone  
 24 should end this Tribunal's task.  
 25 A finding binding by this Tribunal that the ruling



<p>Sheet 57</p> <p style="text-align: right;">2997</p> <p>04:15 1 of the appellate or National Court on the scope of the  2 Release was proper under international law necessarily  3 means that the actual Release rights under the '95  4 Settlement Agreement were simply not implicated much less  5 harmed by the Lago Agrio Litigation. This finding would  6 remove the last pillar or the last investment propping up  7 all of Claimants' treaty claims. Without an injury to an  8 investment, there can be no breach of an investment treaty,  9 and the Tribunal need not convert itself into a forensic  10 task force to get to this conclusion.  11 Now, Ecuador has demonstrated that Claimants'  12 factual allegations have failed. There was no  13 ghostwriting. There was no due-process violations giving  14 rise to an international breach. And for this reason  15 Claimants' treaty claims also fail. But the Tribunal need  16 not start there. It may get to the same conclusion by  17 issuing a proper finding with respect to the scope of the  18 Release.  19 And I leave you with a few passages from the  20 National Court's decision that you can review at your  21 leisure where the National Court finds that the Release  22 could not have barred the Claims asserted by the Lago Agrio  23 Plaintiffs. And many of these findings concerning the  24 Release, of course, are also useful in debunking the  25 analysis presented by Claimants on the Track 1 issues.</p>	<p style="text-align: right;">2999</p> <p>04:18 1 provisions, and in relation to the specific treaty at issue  2 there is simply no evidence that the U.S. and Ecuador  3 intended to jettison well-established international  4 principles that have long been held to apply when  5 evaluating the conduct of a State's judicial system such as  6 the doctrine of exhaustion.  7 Numerous investment tribunals have found that the  8 denial of justice principles apply when evaluating  9 investment treaty claims that hinge on the conduct of a  10 State's judicial system, including Mondev, Loewen, Jan de  11 Nul, Pantechniki and others. And, of course, the Duke  12 Energy Award where the Tribunal interpreted the very Treaty  13 at issue here.  14 I will not repeat the holdings in those cases, but  15 will simply leave you with the pertinent passages from the  16 Jan de Nul and Mondev Decisions, which address the  17 Tribunal's questions here.  18 I will emphasize that the answer to the Tribunal's  19 question should not be influenced by the fact that the  20 terms "denial of justice" and "customary international law"  21 are not expressly referenced in the present Treaty because  22 investment treaties are not interpreted in a vacuum.  23 Indeed, both sides agree that the Vienna  24 Convention applies to the interpretation of the present  25 Treaty, and Article 31.3(c) of the Vienna Convention</p>
<p style="text-align: right;">2998</p> <p>04:17 1 You will see in these slides examples of the  2 passages where the National Court drew a distinction  3 between diffuse rights and collective rights, and where the  4 National Court found that the object of and the Parties to  5 the 1995 Settlement Agreement were different than those  6 involved in the Lago Agrio Litigation.  7 Members of the Tribunal, I will now address the  8 two questions raised by you at the end of last week that  9 concerned the scope of Ecuador's obligations under the  10 Treaty.  11 The first of the these questions is whether the  12 Treaty's other standards of protection such as the  13 fair-and-equitable-treatment provision bring any relevant  14 additional protection to the Claimants' case on denial of  15 justice or should you be primarily focused on effective  16 means and denial-of-justice principles.  17 The first comment to make in addressing this  18 question of the Tribunal is that Claimants' entire case is,  19 in fact, inextricably predicated on the acts of the  20 judiciary of Ecuador as we have established during our  21 Opening Statement and in our written submissions. So, the  22 context in which the Tribunal's question arises is clearly  23 paramount.  24 Now, naturally, the Tribunal is bound to evaluate  25 Claimants' case by application of the governing treaty</p>	<p style="text-align: right;">3000</p> <p>04:20 1 requires a tribunal to consider "any relevant rules of  2 international law applicable in the relations between the  3 parties," which includes relevant rules of customary  4 international law as was found by the ICJ in the Oil  5 Platforms Case.  6 That rules of customary international law are to  7 be used to interpret the scope of Ecuador's treaty  8 obligations should reinforce the conclusion that the  9 Treaty's other standards do not afford broader protections  10 than a claim for denial of justice in light of the specific  11 claims pled here.  12 Indeed, the same essential view as expressed by  13 Professor Paulsson in his treatise on denial of justice  14 where he states: "The elements of the delict of denial of  15 justice tend to reappear as treaty provisions, for example  16 when they proscribe 'discrimination' or when they require  17 'fair and equitable treatment.' Thus, a complainant before  18 an international tribunal may allege that a treaty has been  19 breached by reference to its terms without invoking the  20 doctrine of denial of justice by name. When the alleged  21 breach has been committed by a judicial body, however, an  22 assessment of discrimination or unfairness or protection  23 immediately invites reference to the way such general  24 notions have been understood in the context of denial of  25 justice."</p>

04:21 1 Turning to the second question posed by the  
 2 Tribunal last week, this question concerned whether the  
 3 effective means provision provides broader protection for  
 4 an investor than denial of justice. And you specifically  
 5 asked Respondent whether it was common ground between the  
 6 Parties that the requirement to exhaust local remedies is  
 7 the same--excuse me, and you specifically asked Respondent  
 8 whether it was common ground between the Parties that the  
 9 requirement to exhaust local remedies is the same in light  
 10 of the reference to the Commercial Cases Partial Award.  
 11 The short answer is that the protections afforded  
 12 under the effective means obligation under the Treaty and  
 13 denial of justice are the same. And this was the sum and  
 14 substance of the findings made, for example, by the  
 15 Tribunal in Duke Energy versus Ecuador with respect to the  
 16 very same treaty at issue here.  
 17 Now, it is true that the Tribunal in the  
 18 Commercial Cases Award interpreted the effective means  
 19 provision in this Treaty, and it professed that the  
 20 effective means provision may potentially offer slightly  
 21 broader protection than the protection afforded under  
 22 principles of denial of justice.  
 23 However, I would submit that the Commercial Cases  
 24 Decision has to be assessed on two levels. The first level  
 25 concerns the formulation of the effective means test as

04:24 1 the Tribunal between Article II(7) and denial-of-justice  
 2 principles appears to have been immaterial. Whatever space  
 3 it intended to create between the two standards cannot be  
 4 said to have been material. The investor still had to  
 5 exhaust all remedies. And Ecuador certainly agrees with  
 6 the Commercial Cases Award to the extent it held that the  
 7 investor was required to exhaust all available remedies  
 8 before a breach of Article II(7) could potentially arise.  
 9 Finally, I offer some observations on the comments  
 10 made by Claimants yesterday in relation to the treaty  
 11 claims.  
 12 Yesterday, we saw Professor Paulsson backpedaling  
 13 to dissuade the Tribunal from relying on the highly  
 14 pertinent Loewen Case. Professor Paulsson now says the  
 15 Loewen Case is wrong and should be forgotten. But, Members  
 16 of the Tribunal, this case was introduced into this  
 17 arbitration by Claimants as legal authority CLA-44, and  
 18 indeed Professor Paulsson himself referenced the Loewen  
 19 opinion in his opening slides just two weeks ago at  
 20 Slide 173.  
 21 Despite Professor Paulsson's disavowal yesterday,  
 22 the Loewen Decision is still very pertinent and highly  
 23 instructive in this case. Of course, in his book on denial  
 24 of justice at Page 107, Professor Paulsson professed that  
 25 the Loewen Tribunal was surely right insofar as exhaustion

04:23 1 articulated by the Commercial Cases Tribunal. The  
 2 Commercial Cases Tribunal found that Article II(7)  
 3 constituted lex specialis. Ecuador disagrees that Article  
 4 II(7) is lex specialis.  
 5 Furthermore, to the extent that the Commercial  
 6 Cases Award intended to somehow suggest that the  
 7 requirement of exhaustion under denial of justice and the  
 8 effective means provision are different, Ecuador submits  
 9 that that finding must be wrong. That decision cuts  
 10 against many other decisions and authorities that hold that  
 11 investment treaty provisions apply denial-of-justice  
 12 principles when evaluating judicial conduct, and I refer  
 13 you to the authorities I cited during my opening  
 14 submissions and our discussion of Article II(7) in our  
 15 pleadings.  
 16 The second level of analysis of the Commercial  
 17 Cases Partial Award is what the Commercial Cases Tribunal,  
 18 in fact, actually required by way of exhaustion, and that  
 19 is all that matters here. Despite its unfounded  
 20 articulation of a qualified exhaustion requirement, in  
 21 practice, the Commercial Cases Tribunal nevertheless went  
 22 on to hold that the investor still had a duty under the  
 23 effective means provision to exhaust all available  
 24 remedies.  
 25 So, in the end, the apparent distinction drawn by

04:26 1 is required as an element to establish a breach of treaty  
 2 claims that hinge on judicial conduct, and I showed you  
 3 this quote in the slides displayed during our Opening  
 4 Statement.  
 5 So, let's examine why Claimants suddenly say that  
 6 Loewen belongs in the past and should be forgotten.  
 7 Professor Paulsson asks you to imagine what the Loewen  
 8 Tribunal would have done in the circumstances of this case.  
 9 Would it have required Chevron to exhaust further remedies?  
 10 And the answer is, of course, yes. Professor Paulsson  
 11 draws distinctions between the Loewen Case and the  
 12 case--or, should I say, the allegations of Chevron in this  
 13 case--but those distinctions don't withstand scrutiny.  
 14 For example, first, Professor Paulsson claimed  
 15 that the outrage at issue in Loewen was confined to the  
 16 lower court, but that's not true. Paragraph 6 of the  
 17 Loewen Decision indicates that after the trial court  
 18 affirmed the jury's verdict and denied Loewen's petition to  
 19 reduce the bond that would have stayed enforcement of that  
 20 verdict, the highest court of Mississippi, the Mississippi  
 21 Supreme Court, thereafter also refused to reduce the appeal  
 22 bond. Indeed, the Supreme Court of Mississippi even  
 23 dismissed Loewen's motion for stay of execution of the  
 24 Judgment without offering even a single reason for doing  
 25 so, as you can see from Paragraph 196 of the Loewen Award.

04:27 1 In contrast here, you have Ecuador's highest court  
2 reducing the Judgment and offering over 200 pages of  
3 reasoned analysis. The Loewen--that Loewen based its  
4 treaty claims on the conduct of both the trial court and  
5 the Mississippi Supreme Court is also apparent from  
6 Paragraph 52 of that award.

7 Indeed, the investor's situation in Loewen was far  
8 more precarious than what Chevron alleges here, because, in  
9 Loewen, the investor had significant in-State assets.  
10 Loewen had assets in Mississippi and enforcement was  
11 imminent in Mississippi unless it could find a way to  
12 prevent immediate execution of the Judgment, such as by  
13 filing for reorganization under the U.S. bankruptcy laws.

14 Now, Professor Paulsson likes to refer to the  
15 notion that Ecuador's courts are powerless to prevent  
16 international enforcement, but that is a red herring under  
17 the present circumstances of this case. Chevron is crying  
18 wolf because of foreign enforcement proceedings that are  
19 now forestalled. But imagine what Chevron would be saying  
20 if it had significant assets in Ecuador where the Judgment  
21 could be enforced immediately by the very courts that  
22 Chevron so readily denigrates and claims as corrupt.

23 Chevron is essentially Judgment-proof in Ecuador.  
24 It is hard to see how the vague risk that Chevron faces of  
25 an international enforcement helps Chevron here, when the

04:30 1 were perhaps not qualified to comment on principles of  
2 international law. Well, perhaps the arbitrators could be  
3 excused for not realizing their own limitations because,  
4 after all, they relied upon the opinions of Professor  
5 Greenwood, whom they cited frequently in their Award. Nor  
6 is the issue of purported obiter dicta relevant here.  
7 Loewen is no more binding on this Tribunal than any other  
8 investment Award, but the Loewen Decision as well as  
9 Professor Greenwood's opinions are persuasive. Indeed, you  
10 will find Professor Greenwood's opinions support each of  
11 the points on exhaustion and denial of justice made by  
12 Claimants during our opening submissions.

13 And, finally, needless to say, I confirm that  
14 Ecuador has no objection to the Tribunal's request to  
15 review Professor Greenwood's opinion and the other  
16 authorities' reference last Friday by the Tribunal that are  
17 not presently in the record. And with that I close my  
18 submissions.

19 PRESIDENT VEEDER: We would like to chase you up  
20 on the last comment. There was Professor Greenwood who  
21 was--Sir Robert Jennings. What other Experts gave Expert  
22 evidence in Loewen?

23 MR. UGARTE: I believe there was another Expert  
24 but those were the two you referenced, I believe, in your  
25 Friday--and there was--

04:29 1 Loewen Tribunal found that even imminent in-State  
2 enforcement by the Mississippi courts did not excuse  
3 Loewen's duty to pursue other remedies. And I refer you to  
4 Paragraph 208 of that decision, where the Tribunal makes  
5 clear that Loewen had major concerns over the enforcement  
6 of its in-State assets. Indeed, Loewen's situation was far  
7 worse. So dire were the circumstances that Loewen was  
8 considering filing for reorganization to forestall  
9 immediate enforcement.

10 Chevron does not appear to be seeking bankruptcy  
11 protection due to the risk of foreign enforcement.

12 Nor by relying on Loewen does Ecuador accept  
13 Claimants' characterization of the Ecuadorian Judgment nor  
14 Claimants' characterization of the behavior of the higher  
15 courts of Ecuador nor Claimants' speculation that the  
16 courts of Ecuador engaged in some massive conspiracy,  
17 abiding by President Correa's every whims.

18 Despite the hyperbole offered by Claimants, in the  
19 end you will see that there is a large gap which exists  
20 between the speculation offered by Claimants and the lack  
21 of any evidence that Ecuador's judiciary actually received,  
22 much less heeded, the statements, the supposed statements,  
23 of President Correa.

24 Claimants yesterday also commented that a major  
25 reason you should ignore Loewen is that the arbitrators

04:32 1 PRESIDENT VEEDER: Yeah, but it was dot-dot-dot  
2 question. Was there another one?

3 MR. UGARTE: A dot-dot-dot question. There are  
4 others, and I don't know them offhand, but I will--surely,  
5 I think, we are referring to all the expert opinions in  
6 Loewen. From Ecuador's perspective, those are certainly--

7 PRESIDENT VEEDER: This applies, really, to both  
8 sides. We are really asking you to check what other expert  
9 opinions were relevant to this issue generally. And we are  
10 also asking for copies, because we don't have a  
11 photocopying machine in our little room to my right.

12 MR. UGARTE: Yes.

13 PRESIDENT VEEDER: But it doesn't have to be done  
14 tonight.

15 MR. UGARTE: I'm sure we could coordinate with our  
16 colleagues.

17 PRESIDENT VEEDER: Also, do you remember you also,  
18 I think on the Respondent's side, introduced Professor  
19 Greenwood's article contribution, but we didn't have the  
20 whole article. We asked you for the full copy.

21 MR. UGARTE: Duly noted. We'll also follow up on  
22 that point as well.

23 PRESIDENT VEEDER: Again, it doesn't have to be  
24 tonight, but we do need it.

25 MR. UGARTE: Thank you.

04:33 1 PRESIDENT VEEDER: Thank you very much.  
 2 MR. UGARTE: Thank you.  
 3 ARBITRATOR LOWE: I've got another question which  
 4 came out of your presentation, but is probably better  
 5 addressed to Professor Mayer.  
 6 There is a constitutional right to due process,  
 7 and we have been pointed to the CPA and Article 109 of the  
 8 Organic Code of the judiciary which Respondent says offer  
 9 the Claimants the opportunity of seeking a remedy.  
 10 My question is are there any circumstances in  
 11 which there is a duty on the State to take positive steps  
 12 to investigate allegations of fraud in the judiciary? And  
 13 is there any circumstance in which there is that positive  
 14 duty in addition to the availability or whatever legal  
 15 consequences flow from the availability of the remedy which  
 16 the Claimants could pursue?  
 17 PROFESSOR MAYER: Your question is not under  
 18 Ecuadorian law but under international law?  
 19 ARBITRATOR LOWE: Yes.  
 20 I think it's a question of what is entailed by the  
 21 denial of justice, whether it's always sufficient to  
 22 provide the possibility of remedies that could be pursued  
 23 by an individual company which considers itself to have  
 24 been injured, or whether there are circumstances in which  
 25 the State is under a positive duty to take steps on its own

04:34 1 initiative in order to maintain a fair system of justice.  
 2 PROFESSOR MAYER: Well, I'm not in a position to  
 3 make an answer that I would be certain that corresponds to  
 4 the truth in international law now. So, I suggest that we  
 5 answer your question in the framework of the Post-Hearing  
 6 Brief, if there are Post-Hearing Briefs.  
 7 PRESIDENT VEEDER: Who is next?  
 8 MR. BLOOM: We're done down to our last 45  
 9 minutes. Shall we go until conclusion?  
 10 PRESIDENT VEEDER: I think we need a 10-minute  
 11 break.  
 12 MR. BLOOM: Okay.  
 13 (Brief recess.)  
 14 PRESIDENT VEEDER: Let's resume.  
 15 Mr. Bloom.  
 16 MR. BLOOM: I'm going to turn the floor over to  
 17 Mr. Silva Romero first, who's got a response or a  
 18 clarification for the Tribunal, and then I would ask him to  
 19 turn the floor over to my partner Mark Bravin for a  
 20 20-minute presentation on remedies, and then we'll turn to  
 21 the final tranche, which is answering the remaining  
 22 questions that the Tribunal had.  
 23 MR. SILVA ROMERO: Thank you, Mr. President. The  
 24 promotion was temporary, as you can see.  
 25 (Laughter.)

04:50 1 MR. SILVA ROMERO: Just to tell you that the full  
 2 version of the GEA Award is on record, and the reference  
 3 number is RLA-648.  
 4 Thank you. Thank you, Mr. Bloom.  
 5 MR. BRAVIN: Mr. President, Members of the  
 6 Tribunal, we turn now to the Claimants' requested remedies.  
 7 We have shown in our written and oral submissions that  
 8 Claimants have failed to prove their allegations of the  
 9 denial of justice in a treaty breach, and we have shown  
 10 that the applicable international law, if correctly  
 11 applied, will not sustain a decision that Ecuador is liable  
 12 to the Claimants in any respect. But for this discussion  
 13 let's assume arguendo that the Tribunal finds some basis  
 14 for a finding of liability.  
 15 What then? Well, Claimants ask the Tribunal to  
 16 grant three types of remedies. These include declaratory,  
 17 injunctive and monetary relief. Specifically ten separate  
 18 Declarations, a half dozen injunctive orders, and monetary  
 19 compensation in an amount yet to be determined. Yesterday,  
 20 Mr. Kehoe indicated that Chevron's claim for monetary  
 21 compensation is an issue for Track 3, and we agree.  
 22 Accordingly, I will limit my remarks to Claimants' requests  
 23 for declaratory and injunctive relief.  
 24 As indicated in the next slide, Claimants have  
 25 asked for ten different declarations, and there's

04:52 1 considerable overlap among the ten. I will just briefly  
 2 summarize a few of them.  
 3 First, Chevron declares or asks for a declaration  
 4 that Ecuador has committed a denial of justice under  
 5 international law and has breached the provisions of the  
 6 Treaty. If the Tribunal were to conclude that Claimants  
 7 have proved these alleged breaches of international law, a  
 8 declaration to that effect would be a logical and customary  
 9 part of the Tribunal's Award.  
 10 The second proposed Declaration merely repeats the  
 11 first, but only as to Treaty breach.  
 12 The third proposed Declaration is something  
 13 altogether different. Claimants ask the Tribunal to  
 14 declare that the Lago Agrio Court lacked jurisdiction to  
 15 adjudicate the Claims of the Lago Agrio Plaintiffs. As we  
 16 explained this morning, that proposal is evidence of  
 17 Claimants' bad faith and, worse, of fraud on the courts of  
 18 the United States. They procured the transfer of the case  
 19 from New York to Ecuador based on their promise not to  
 20 challenge jurisdiction, and yet here they are with a  
 21 scandalous proposal that should be rejected out of hand.  
 22 The fourth declaration merely restates the first  
 23 one, but this time as to denial of justice. And Items 5,  
 24 6, 7, and 9 on their list are different formulations of the  
 25 same proposed Declaration, but this time that the Lago

<p>Sheet 61</p> <p style="text-align: right;">3013</p> <p>04:54 1 Agrio Judgment is a nullity and may not be enforced in the 2 courts of Ecuador or any nation. I'll come back to this 3 nullification remedy in a few moments. 4 Item 8 on their list proposes that the Judgment be 5 declared contrary to international public policy. It is 6 subsumed in the first requested Declaration. 7 And then finally, Item 10 asks for a declaration 8 that Ecuador must indemnify Claimants for any amount 9 collected from them by the Lago Agrio Plaintiffs. And 10 again, I will come back to that in a bit. 11 For three separate reasons, the Tribunal should 12 reject Claimants' requests for the nullification remedy. 13 First, awarding such remedies would constitute an 14 unnecessary interference with Ecuador's sovereignty. It 15 would have far-reaching consequences for the Republic, for 16 its system of law, and for its national and international 17 legal obligations to its citizens. It's a little bit like 18 the Star Trek imperative not to interfere with a foreign 19 civilization at the risk of making one small change and 20 throwing the entire culture and system into havoc. 21 The Tribunal may declare that there has been a 22 breach of international law, leaving others to work out the 23 consequences of such a breach, and as the question from the 24 Tribunal posed on Friday, that is within the scope of the 25 Tribunal's mandate. It is within the scope of the Treaty,</p>	<p style="text-align: right;">3015</p> <p>04:58 1 without a sentiment of undue interference with its 2 sovereignty." 3 The principle in play in the LG&amp;E Case applies 4 equally here, where we're talking about a judicial system, 5 and the Claimants request that this Tribunal go beyond its 6 remit and impose obligations that have effects far beyond 7 what Claimants assert to be their rights in connection with 8 their alleged claims of a denial of justice and a breach of 9 the Treaty. 10 Second, the requested remedies would 11 overcompensate Claimants. Claimants cite the correct 12 principle of international law as expressed in Chorzów 13 Factory Case; and as we have in the next slide, the quote 14 is, "Reparation must, as far as possible, wipe out all the 15 consequences of the illegal act and re-establish the 16 situation which would, in all probability, have existed if 17 that act had not been committed." There really is no 18 genuine dispute about what the Court was talking about. 19 They were not talking about taking the Parties back to some 20 time in history before the events occurred. They were 21 talking about compensation, reparation, taking the 22 situation as it was found, and making adjustments so that 23 the effects of the illegal act are wiped out, but not the 24 effects of the entire legal process. 25 The proposed nullification remedy simply goes too</p>
<p style="text-align: right;">3014</p> <p>04:56 1 but the same cannot be said for declarations of nullity and 2 the injunctive relief that Claimants seek. 3 Indeed, in response to the Tribunal's invitation 4 on Friday, Claimants provided no precedent whatsoever for 5 the remedies in an investor-State arbitration that they 6 seek here. We have found none. 7 State Parties to bilateral investment treaties 8 consent to arbitrate claims of investors of the other State 9 Party when they assert breaches of treaty obligations, but 10 the consent is circumscribed. The jurisdiction conferred 11 by those treaties on a duly constituted arbitral tribunal 12 are similarly limited. The Tribunal should be wary of 13 Claimants' request that it holdly go where no arbitral 14 tribunal has gone before by granting remedies that 15 improperly interfere with Ecuador's sovereignty. 16 There is on the next slide a quote from the 17 decision in LG&amp;E. Go back one, please. The Tribunal in 18 LG&amp;E versus Argentina, RLA-Slide 103, Paragraph 87, states, 19 and I quote: "Likewise, if approached as restitution, the 20 Tribunal cannot go beyond its fiat in the Decision on 21 Liability. The judicial restitution required in this case 22 would imply modification of the current legal situation by 23 annulling or enacting legislative and administrative 24 measures that make over the effect of the legislation in 25 breach. The Tribunal cannot compel Argentina to do so</p>	<p style="text-align: right;">3016</p> <p>05:00 1 far. It would overcompensate the Claimants. In his book 2 on denial of justice, Professor Paulsson explained why that 3 is so. 4 On the next slide, please. 5 And I'm quoting: "The Tribunal must recognize 6 that if the Complainant's case had been given a completely 7 fair hearing, its case may have been a one poor one in any 8 event. Its defenses may have had little or no chance of 9 complete success even in the absence of a denial of 10 justice. That is a fair and accurate statement of the 11 principle in play in this case." 12 But we heard from Professor Paulsson yesterday 13 that his clients should get a better result than what his 14 treatise explains is the appropriate remedy for a denial of 15 justice. He asks this Tribunal to put aside the dictate of 16 the Chorzów Factory Case and to revise the applicable 17 principle of international law so that his client escapes 18 the legal consequences of their wrongful conduct for which 19 they are strictly liable under Ecuadorian law. 20 Mr. President, with due respect to Professor 21 Paulsson, both as a scholar and as an advocate, that 22 position is plainly wrong. If the Tribunal concludes that 23 the Lago Agrio Court Judgment is tainted by illegal acts, 24 it must not grant reparation that puts Chevron in a better 25 position than it would have been if there had been no</p>

05:01 1 illegal acts. It must reject Chevron's invitation to throw  
 2 out the baby with the bath water.  
 3 Third, Claimants' unclean hands in this  
 4 arbitration preclude or at least militates strongly against  
 5 the equitable relief they seek. The maxim of Roman law  
 6 cited by my colleague Eduardo Silva Romero is a ground for  
 7 dismissing Chevron's claims for lack of jurisdiction, but  
 8 that maxim also applies when the Tribunal is considering  
 9 what remedies to award. The fact that the Claimants come  
 10 before this Tribunal with unclean hands has been  
 11 demonstrated without doubt.  
 12 My colleague Mr. Leonard described how Chevron  
 13 perpetrated a fraud by procuring the transfer of the  
 14 Aguinda Case to Ecuador after ten years of hard-fought and  
 15 expensive litigation, based on a false promise to submit to  
 16 the jurisdiction of the Ecuadorian courts. And as I noted  
 17 a few moments ago, from Item 3 of the requested declaratory  
 18 relief, Chevron even now is continuing to perpetrate that  
 19 fraud by asking for a declaration by this Tribunal that the  
 20 Lago Agrio Court had no jurisdiction to decide the case. I  
 21 just wonder what Chevron would have to say to the Second  
 22 Circuit if it were to take this argument back to the Court  
 23 today, and I wonder what the Court would say in response.  
 24 Mr. Ewing outlined Chevron's frauds in the Lago  
 25 Agrio Court by hiding evidence of environmental

05:03 1 contamination by misrepresenting evidence, by manipulating  
 2 the assignment of judges, and by taking every opportunity  
 3 to undermine the administration of justice by that Court.  
 4 In fact, the record indicates that that was Chevron's  
 5 strategy even before the case came to Ecuador. Literally  
 6 from Day 1 and from before Day 1, Chevron was hard at work  
 7 setting the stage for the arguments that are only now being  
 8 played out in this arbitration.  
 9 I'd like to refer to slides from Claimants'  
 10 Closing Argument which are directly on point in evaluating  
 11 their requests for equitable relief.  
 12 Turning to Claimants' Slide 332, which is a  
 13 citation from the treatise, General Principles of Law as  
 14 Applied by International Courts and Tribunals, and I quote:  
 15 "Fraud is the antithesis of good faith and, indeed, of law,  
 16 and it would be self-contradictory to admit that the  
 17 effects of fraud could be recognized by law." And yet that  
 18 is what Chevron asks this Tribunal to do, to disregard its  
 19 fraud, to disregard the effects of that fraud, and to make  
 20 awards that are unjustified and unreasonable.  
 21 Turn next to Slide 345 from the Claimants' Closing  
 22 Argument, which is a citation to the Umpire in the Montijo  
 23 Case, where he says, no one can be allowed to take  
 24 advantage of his own wrong, and yet that is precisely what  
 25 Chevron is proposing to do here.

05:05 1 And on our next slide we quote from RLA-549, which  
 2 is Professor Crawford's contribution, and Article 39 from  
 3 the International Law Commission's Articles on State  
 4 responsibility, and I quote: "In the determination of  
 5 reparation, account shall be taken of the contribution to  
 6 the injury by willful or negligent action or omission of  
 7 the injured State or any person or entity in relation to  
 8 whom reparation is sought."  
 9 So the principles on which the Claimants would  
 10 have this Tribunal impose sanctions and serious Awards on  
 11 Ecuador actually apply to their own case. These are  
 12 sources of applicable international law on which the  
 13 Parties agree are applicable here.  
 14 As indicated in the next slide, taken from the  
 15 Yukos Case: "In the view of the Tribunal, Claimants should  
 16 pay a price for their abuse, which contributed in a  
 17 material way to the prejudice which they subsequently  
 18 suffered at the hands of the Russian Federation." The  
 19 Yukos Claimants in that case sought compensation for the  
 20 loss of their entire investment, and the Russian Government  
 21 came back and said, well, you are a contributing factor to  
 22 the loss of your investment. You manipulated the tax  
 23 system, you committed abuses, and for that we are going to  
 24 make a substantial reduction in the Award that you  
 25 otherwise have shown you would be entitled. And that

05:07 1 result plays out time and time again as courts, modern  
 2 Arbitration Tribunals and other bodies confront the  
 3 question of what to do when the Claimant has committed a  
 4 fraud or has contributed in an intentional or negligent way  
 5 to the very harm that it complains about. It's what we ask  
 6 of this Tribunal.  
 7 Now, the injunctive relief I won't go into in  
 8 great detail, but I will simply ask that we turn to the  
 9 slide which shows the extent to which Claimants have  
 10 overreached in asking this Tribunal to do something that it  
 11 cannot and should not as a matter of international law and  
 12 practice do, which is to order a sovereign State to take  
 13 acts within its own borders and around the world, not just  
 14 today but for an indefinite period of time, in order to  
 15 give effect to what Claimants believe or assert should be  
 16 the result in the Final Award. It is simply too much. If  
 17 arbitral tribunals were able to as a regular course or  
 18 regular practice build into their Award a recipe for how  
 19 the Award will be implemented in the future, we'd see very  
 20 different Awards coming out of Treaty tribunals. It simply  
 21 isn't done. The Tribunal's remit ends upon the issuance of  
 22 its Award. The requests for injunctive relief are simply  
 23 out of bounds and over-reaching and should be rejected.  
 24 At various times earlier in the proceedings,  
 25 Chevron asked the Tribunal to order Court Clerks to take

05:09 1 action, to order the Lago Agrio Court not to allow its  
 2 Judgment to be enforced against Chevron pending the outcome  
 3 of this case, to prevent the Lago Agrio Plaintiffs from  
 4 taking steps in the courts of other countries. They wanted  
 5 this Tribunal to order that Chevron is exempt from bond  
 6 requirements, similar to the bond requirements that were in  
 7 play in the Loewen Case.  
 8 They wanted the Tribunal to order Ecuador to post  
 9 a bond on Chevron's behalf.  
 10 These are the kinds of over-reaching requests  
 11 that, even if there was some basis for finding liability,  
 12 and, as we have very clearly outlined, we don't believe  
 13 there are any reasons, these are the kinds of remedies that  
 14 this Tribunal should reject out of hand. Whatever the  
 15 result will be, it will be the administration of justice  
 16 based on principles of fairness. And the Final Award after  
 17 Track 3 will have to take into account not only whatever  
 18 delict the Tribunal finds, if it finds, was committed in  
 19 the course of the Lago Agrio Litigation, but it will have  
 20 to take into account the wrongs of Ecuador.--I'm sorry, the  
 21 wrongs of Chevron.  
 22 And so, in conclusion, I would like to say that,  
 23 on the issue of remedies, there is nothing for this  
 24 Tribunal to Award to the Claimants at the conclusion of  
 25 this chapter in the arbitration. At the end of Track 3, we

05:13 1 The first clarification or comment in respect of  
 2 this question is the interpretation of what the Tribunal  
 3 means by denial of justice per se, and one possible  
 4 interpretation could be kind of a strict liability standard  
 5 for denial of justice. And we are not aware of any  
 6 authority in public international law for that kind of  
 7 standard.  
 8 Now, removing the reference to per se or  
 9 interpreting the question as to whether the availability of  
 10 punitive damages in a given system of law could conceivably  
 11 serve as a basis for a finding of denial of justice, again  
 12 we found no authority for that proposition, and we believe  
 13 that would render, for example, the United States legal  
 14 system, one very much prone for findings of denial of  
 15 justice, given that it allows for punitive damages and even  
 16 treble damages. So the answer to that aspect of the  
 17 question is no.  
 18 In respect of punitive damages in this case, we  
 19 would like to clarify that our position is that the  
 20 punitive damages that were initially awarded by the  
 21 Zambrano Judgment are no longer on the table and no longer  
 22 relevant to this case because they were struck by the  
 23 National Court on Cassation. And that decision is a  
 24 product, a final product, of Ecuador system of justice, and  
 25 that process remedied itself to the extent that the finding

05:11 1 will know much more than we do now about what Claimants  
 2 assert to have been their damages, at this point we have no  
 3 idea. And this idea of offset that the Tribunal asked  
 4 about last Friday is really a mechanism for contrasting on  
 5 the one hand the liability that Chevron should be held  
 6 accountable for, assuming a fair process, something that  
 7 this Tribunal can do, just as the Commercial Cases Tribunal  
 8 did, and contrasting that against the wrongs committed by  
 9 the Claimants in Ecuador.  
 10 So, with that, I will conclude my remarks and turn  
 11 the table back to my colleagues.  
 12 PRESIDENT VEEDER: Thank you very much.  
 13 Mr. Bloom.  
 14 MR. BLOOM: And now we're going to have a few  
 15 additional answers to the Tribunal's questions of last  
 16 Friday. I'll first turn the floor over to Mr. Leonard.  
 17 MR. LEONARD: Thank you.  
 18 If I could just have one minute.  
 19 (Pause.)  
 20 MR. LEONARD: I apologize.  
 21 So, with your indulgence, I would like to address  
 22 the Tribunal's question which reads as follows: What is  
 23 the position as a matter of public international law as  
 24 regards punitive or multiple damages amounting to a denial  
 25 of justice per se?

05:14 1 of punitive damages could be considered an anomaly in  
 2 Ecuadorian law.  
 3 Now, as to the interpretation of multiple damages,  
 4 I read that as a reference to excessive damages, and I  
 5 would like the--I would ask the Tribunal to correct me if  
 6 I'm wrong, but the answer or the research that we conducted  
 7 we conducted on the basis of interpreting the concept of  
 8 multiple damages as excessive damages. Now, again, there  
 9 is no authority for a strict liability standard. Excessive  
 10 damages cannot amount to a denial of justice per se.  
 11 Excessive damages understood as irrational damages, lacking  
 12 any basis in law or in fact, could hypothetically  
 13 conceivably under the circumstances of a given case, serve  
 14 as a basis for a finding of denial of justice. We submit  
 15 that that's not the case here.  
 16 Mr. Ewing, this morning, addressed the various  
 17 bases for the Court's findings and determinations in terms  
 18 of quantum of damages, in respect of each of the categories  
 19 of damages requested and awarded in the Lago Agrio  
 20 Judgment.  
 21 So, I'm afraid that I come empty-handed. Our  
 22 research doesn't yield any results that, in my view, could  
 23 assist the Tribunal in addressing this issue, and for that  
 24 I apologize.  
 25 PRESIDENT VEEDER: Thank you nonetheless.

05:16 1 MR. BLOOM: And I'm now going to turn the floor  
 2 over to one of my colleague from the Attorney General's  
 3 Office, Ms. Daniela Palacios.  
 4 PRESIDENT VEEDER: Please.  
 5 MS. PALACIOS: Thank you, Mr. President. Members  
 6 of the Tribunal, good afternoon.  
 7 I will be responding now to two of the Tribunal's  
 8 questions raised last Friday.  
 9 First, regarding the timing of the outstanding  
 10 action pending before the Constitutional Court and second,  
 11 about the current statutes of the enforcement actions filed  
 12 in Argentina, Brazil, and Canada.  
 13 Regarding the first question, in light of your  
 14 request, we've made inquiries with the Constitutional Court  
 15 to obtain official statistics regarding the average time  
 16 for extraordinary actions of protection to be heard and  
 17 decided. We are at this time still waiting for an answer.  
 18 Nevertheless, to respond to the Tribunal's concerns, we  
 19 have considered information available at the Constitutional  
 20 Court's official Web site.  
 21 But before we get to the numbers, allow me to  
 22 update the Tribunal on the current status of the action.  
 23 Chevron filed its extraordinary action of protection based  
 24 on alleged constitutional rights violations on  
 25 December 23rd, 2013. The action was filed against the

05:19 1 Moving on to the Tribunal's second question  
 2 related to the current status of the actions filed in  
 3 Argentina, Brazil, and Canada. Simply the actions have not  
 4 moved forward.  
 5 Now, Members of the Tribunal, one must keep in  
 6 mind that the first step before enforcement is exequatur,  
 7 in all three enforcement actions we are only at this  
 8 preliminary stage.  
 9 Once a decision from the Ecuadorian court has been  
 10 nationalized, only then the execution proceedings can  
 11 commence.  
 12 But let's take each jurisdiction in turn.  
 13 First, Argentina. Our Expert haven't been able to  
 14 access the record. Nevertheless, all we know is that the  
 15 exequatur request has been filed.  
 16 Second, Brazil, according to the information  
 17 available, the last development took place more than two  
 18 years ago on April 4th, 2013. This is consistent with the  
 19 information we provided to the Tribunal through our  
 20 Brazilian Experts who found that the process of exequatur  
 21 and enforcement can take more than a decade. For the  
 22 record, this is Exhibit R-444, Paragraph 22.  
 23 As it was pointed out yesterday by Mr. Pate,  
 24 according to the Superior Tribunal of Justice official Web  
 25 site, the type of action is listed as Civil Liability and

05:17 1 National Court's Judgment and Clarification Order dated  
 2 November 12th and 22nd, 2013 respectively.  
 3 According to the corresponding law, on  
 4 January 2nd, 2014, the Court that issued the Judgment--this  
 5 is the National Court--sent the file to the Constitutional  
 6 Court on January 14, 2014. The Constitutional Court  
 7 Secretariat confirmed that no other action based on the  
 8 same legal or factual argument is pending resolution by the  
 9 Constitutional Court.  
 10 Finally, on March 20th, 2014, the Constitutional  
 11 Court admitted the claim, and it's currently being  
 12 analyzed.  
 13 Now, back to the numbers.  
 14 We have looked at all the decisions issued by the  
 15 Constitutional Court since March 2014--that is over the  
 16 last 12 months--and calculated how long it took the Court  
 17 to decide extraordinary actions of protection. Some  
 18 actions have been decided in as few as five months.  
 19 Several have taken as long as 59 months. In our review of  
 20 the decided cases over the last year, we noted that many  
 21 were for actions commenced in 2010, 2011, and 2012. Very  
 22 few of the decisions were issued for cases commenced in  
 23 2013 and 2014. Of course, like many courts around the  
 24 world, we would not know when the decisions are issued  
 25 until it is actually issued.

05:21 1 Civil Law. What Mr. Pate didn't tell this Tribunal is that  
 2 the request made by the Court to the Brazilian Public  
 3 Ministry has been pending since 2013.  
 4 Last but not least, Canada. Our Expert, George  
 5 Pollock, has observed, and I quote: "The entire  
 6 recognition and enforcement process could take as many as  
 7 six years or even longer before it is completed." For the  
 8 record, this is Exhibit R-443 at Paragraph 23.  
 9 As Mr. Pate noted yesterday as well, the Canadian  
 10 courts are grappling right now with the threshold question  
 11 as to whether the Plaintiffs may even proceed in Canada.  
 12 If they are permitted to do so, the proceedings will begin  
 13 all over again at the first-instance court level.  
 14 Thank you.  
 15 PRESIDENT VEEDER: Thank you very much.  
 16 MR. BLOOM: And I'm now going to turn to another  
 17 colleague from the Attorney General's office, Ms. Maria  
 18 Teresa Borja.  
 19 PRESIDENT VEEDER: Please.  
 20 MS. BORJA: Thank you, Mr. President, Members of  
 21 the Tribunal.  
 22 I would like to spend just a couple of minutes to  
 23 clarify the applicable Ecuadorian law relating to the  
 24 issues of whether Chevron could bring a third-party claim  
 25 against Petroecuador within the Lago Agrio proceedings or,



05:22 1 in the alternative, whether Chevron could bring  
 2 Petroecuador as an additional Defendant in the Lago Agrio  
 3 proceedings.  
 4 Under Ecuadorian law, the Parties, as well as the  
 5 Judges, can act only in accordance with what is expressly  
 6 permitted and regulated by procedural provisions. As a  
 7 general rule, in all Ecuadorian procedures, the Claimant,  
 8 the Respondents, and the Judge are not allowed to assert or  
 9 assign claims against a third party to an active process.  
 10 There are exceptions, but such exceptions must be expressly  
 11 provided by rule. Dr. Andrade has confirmed this in his  
 12 Expert Reports--for the record, RE-20, Paragraph 25 and  
 13 RE-27, Paragraphs 49 and 50.  
 14 Ecuadorian law does not regulate and therefore  
 15 does not permit the joining of a third party in summary  
 16 oral proceedings. Therefore, it is not possible to bring a  
 17 third party into these type of proceedings. The Experts of  
 18 both Parties have confirmed this. Even if one would assume  
 19 that the Lago Agrio Case would have been treated as an  
 20 ordinary proceeding rather than an oral summary proceeding,  
 21 something that would have not been possible under that EMA,  
 22 there is no legal provision under an ordinary proceeding  
 23 that allows a Party to bring a third party into this type  
 24 of process. Neither the Parties nor the Judge can make  
 25 such a request.

05:24 1 At Paragraph 414 of Dr. Coronel's First Expert  
 2 Report, he wrongly concluded that it's possible to bring a  
 3 third party into an active ordinary proceeding based on  
 4 Articles 108, 109, 492 and 494 of the Ecuadorian Court of  
 5 Civil Procedure.  
 6 Dr. Coronel's affirmation is erroneous for three  
 7 reasons. First, Article 108 and 109 of the Civil Procedure  
 8 Code are applicable exclusively for cases in which two  
 9 processes ought to be joined. This provision cannot be  
 10 relied upon within a single case--that is, to bring a new  
 11 Party into an existing action. Instead, these Articles  
 12 could be invoked only if there were two parallel  
 13 proceedings at the same time, in which case the two  
 14 separate cases could be joined.  
 15 Here, Chevron never brought a separate action  
 16 against Petroecuador. Absent a parallel action, the rule  
 17 is inapplicable.  
 18 Second, Article 492 allows a third party to be  
 19 heard as long as one of its interests has been affected.  
 20 Nevertheless, this Article is applicable when the third  
 21 party wishes and requests to be heard.  
 22 Petroecuador has not been injured in the Lago  
 23 Agrio Case. Petroecuador may be held liable as a co-debtor  
 24 if Claimants decide to pursue a separate action as provided  
 25 by the Ecuadorian law. If that were to occur, the

05:25 1 proceedings commenced by Claimants against Petroecuador  
 2 would not deal with Chevron and Petroecuador's liability  
 3 for environmental damage. The corresponding court would  
 4 instead assess the percentage of Petroecuador's liability  
 5 as a co-debtor.  
 6 Finally, Article 494 was incorporated into the  
 7 Ecuadorian legal system in order to allow third parties to  
 8 join an action if they voluntarily wished to do so due to a  
 9 direct injury to its interests.  
 10 Thank you.  
 11 PRESIDENT VEEDER: Thank you very much.  
 12 MR. BLOOM: Now, let me turn the floor over to yet  
 13 another colleague from the Attorney General's Office,  
 14 Mr. Luis Felipe Aguilar.  
 15 PRESIDENT VEEDER: Please.  
 16 MR. AGUILAR: Thank you, Mr. President.  
 17 In response to your question about the status of  
 18 pending prosecutions, investigations and/or disciplinary  
 19 actions against specific individuals involved in the Lago  
 20 Agrio Litigation, the Office of the Attorney General has  
 21 made inquiries in the hopes of obtaining information  
 22 responsive to your request.  
 23 However, the Criminal Code imposes rules of  
 24 confidentiality that prohibit the Prosecutor Office from  
 25 disclosing the requested information, even to the Office of

05:27 1 the Attorney General. For this reason I cannot report on  
 2 any details except to say that it has been confirmed to us  
 3 that there are more than one investigations concerning the  
 4 Lago Agrio Case that are currently pending.  
 5 The details and scope of these investigations are  
 6 not known to the Attorney General's Office.  
 7 We're aware of the pending investigation involving  
 8 Mr. Guerra, but we learned of it only through this  
 9 proceeding. That is because Mr. Guerra, by law, had to be  
 10 notified of the investigation, and he presumably disclosed  
 11 it to the Claimants, who have, from time to time, updated  
 12 it to the Tribunal and us.  
 13 Of course, as noted on Thursday, the Office of the  
 14 Attorney General has not received a letter seeking  
 15 information from this arbitration related to that  
 16 investigation. But even with respect to this  
 17 investigation, and even though we have reason to believe  
 18 that multiple persons are being investigated, we do not  
 19 know precisely whose conduct other than Mr. Guerra's is  
 20 under investigation, what charges are being considered or  
 21 when the investigation will come to an end.  
 22 Thank you, Mr. President.  
 23 PRESIDENT VEEDER: Thank you.  
 24 MR. BLOOM: And finally, that brings this oral  
 25 submission back to me for the final two minutes.



05:46

[Redacted text block]

05:48

[Redacted text block]

05:47

[Redacted text block]

22 PRESIDENT VEEDER: So, let's move on to the next  
23 item, which is simply that we close the evidential file to  
24 the Parties as regards Track 2, but not obviously to the  
25 Tribunal.

05:49

1 perspective up here, can we thank the parties for making  
2 this an extremely efficient Hearing. We know just how much  
3 hard work goes on behind the scenes. We simply see the tip  
4 of the iceberg, but we're thankful for the whole iceberg,  
5 so thank you both sides very much indeed, and we look  
6 forward to seeing some of you soon.  
7 MR. BISHOP: Mr. President, could I simply say on  
8 behalf of the Claimants that we very much thank the  
9 Tribunal for the attention that you have paid over the past  
10 three weeks. We appreciate the hard work that has gone  
11 into this.  
12 We also thank the translators and the court  
13 reporters for their around when work and also our  
14 colleagues on the other side of the table. And with that,  
15 we close for the Claimants.  
16 MR. BLOOM: And before anything else, we would  
17 reciprocate that, and that includes, of course, the Members  
18 of the Tribunal, the Secretary, everyone in this room. It  
19 was a very smoothly run Hearing. I was in awe of how well  
20 the translation went the two days that I was  
21 cross-examining Mr. Guerra. I don't think that's an easy  
22 job. I will state that I have done this in a courtroom,  
23 too, as in these hearings. This had to have been the  
24 smoothest that I've ever experienced. And again, I thank  
25 the courtesies of my colleagues across the room.

05:50 1 PRESIDENT VEEDER: Well, thank you for all that,  
 2 and with that we close this Hearing. Have safe journeys  
 3 home.  
 4 (Whereupon, at 5:51 p.m., the Hearing was  
 5 concluded.)  
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CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

  
 DAVID A. KASDAN