

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.
and : 2009-23
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

09:32

[REDACTED]

09:34

[REDACTED]

09:33

[REDACTED]

09:35

[REDACTED]

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 issue 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

10:05 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 data double and triple counts certain samples. So a single
 20 sample in the Selva Viva Database may be listed such that
 21 you would count it both in the 1,000 to 5,000 bucket and
 22 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

10:04 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 file 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

10:07 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 that it's a fact that
13 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

10:11 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.

10:10 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

10:13 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.

10:14 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

10:16 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

10:17 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

10:23 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--in most cases, impossible to preserve

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

10:25 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.

10:30 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.

10:28 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

10:31 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

10:32 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

10:34 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.

10:36 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 the hearing--this hearing since
 15 last Tuesday?
 16 A. I've been--I've been to parts of it.
 17 Q. Did you hear our opening arguments?
 18 A. I heard parts of it.
 19 Q. And did you hear our cross-examination of
 20 Dr. Leonard?
 21 A. I heard parts of it. I wasn't--to be honest, I
 22 was not really paying attention. I had a document I had to
 23 write.
 24 Q. A document which we requested; correct?
 25 A. Yes.

10:38 1 Q. And Dr. Juola's testimony?
 2 A. I heard parts of it.
 3 Q. And Mr. Guerra's testimony?
 4 A. I didn't hear that, no.
 5 Q. Okay. And were you in the back--in the break-out
 6 room with the rest of Chevron's experts?
 7 A. I don't know who all was in the room. I was in a
 8 break-out room with--
 9 Q. Did they at least give you popcorn?
 10 A. I didn't get any popcorn.
 11 Q. Okay. Would you turn to Tab 7, please. This is
 12 the letter from the Tribunal attaching the agreed-upon
 13 protocol for imaging the Zambrano hard drives.
 14 Do you recognize this?
 15 A. Not the--the cover letter--I've not reviewed this
 16 document in full to see if I've seen this particular
 17 version, but it's at least similar to something I've seen
 18 before.
 19 Q. Okay. And I'll represent to you, I won't be
 20 asking you any questions about the cover letter. I just
 21 put it in there for completeness.
 22 A. Okay.
 23 Q. We're going to be focusing on Page 5 of the
 24 protocol. You will see the Chain of Custody section.
 25 A. Yes, I see that.

10:40 1 Q. And the Chain of Custody document records who is
 2 responsible for the evidence in question; correct?
 3 A. Well, it says that a--that people should certify
 4 the accuracy of the Chain of Custody.
 5 Q. Let me clarify that my understanding is that a
 6 Chain of Custody tell us who has which evidence and when.
 7 Would you agree with that?
 8 A. Yes, it does.
 9 Q. And it records the handing off of evidence from
 10 one person to the next person; correct?
 11 A. Yes.
 12 Q. And it is standard practice to include a Chain of
 13 Custody record for physical evidence such as a forensic
 14 image; right?
 15 A. It's standard practice for--for people in
 16 forensics to maintain one, and I don't--I'm not sure I
 17 heard the entire question. Can you repeat that? Sorry.
 18 Q. My question was: Is it a standard practice to
 19 include a Chain of Custody record with all physical
 20 evidence?
 21 A. I think it's standard practice to maintain one.
 22 I don't know that you include one with every
 23 single copy of a forensic image, but maintain a Chain of
 24 Custody on any original evidence, yes.
 25 Q. Okay. So you would agree with me that it's

10:41 1 correct practice to include or to maintain one for all
 2 pieces of evidence; correct?
 3 A. I'd agree that it's--it's standard practice for
 4 forensic examiners--or best practice for forensic examiners
 5 to maintain a Chain of Custody for original evidence.
 6 Q. Would you please turn to Appendix A of the same
 7 exhibit?
 8 This is the Zambrano hard drive Chain of Custody
 9 form itself; correct?
 10 A. Yes. Yes, it is.
 11 Q. And this Chain of Custody shows us that Zambrano's
 12 hard drives were picked up by someone--someone who's name I
 13 can't quite read, Mr. Jimenez, it looks like to me--and
 14 were delivered to Ms. Kathryn Owen on May 20th, 2014 at
 15 10:30 a.m.; right?
 16 A. Yes, that's what this appears to show.
 17 Q. Okay. And then Ms. Owen returned the hard drives
 18 to the Ecuadorian officer's custody at 18:55 that same day;
 19 correct?
 20 A. Yes.
 21 Q. So we know that if anything happened between--or
 22 before 10:30, the Ecuadorian officer would be the person
 23 who was responsible for those events; correct?
 24 A. Assuming the Chain of Custody is accurate, yes.
 25 Q. And let's do that. Let's assume that this is

10:43 1 accurate.
 2 And this Chain of Custody would also tell us that
 3 from 10:30 a.m. on May 20th until 6:55 p.m. on
 4 May 20th, Ms. Owen was responsible for the Zambrano hard
 5 drives; right?
 6 A. Yes.
 7 Q. And then after 6:55 p.m., the Ecuadorian officer
 8 took responsibility again; correct?
 9 A. I--I can't really read it. I think it's a
 10 different Ecuadorian officer, but an Ecuadorian officer
 11 took responsibility again.
 12 Q. I agree. This looks like "Santiago Crespo."
 13 A different--an Ecuadorian officer is all we're
 14 really looking for here.
 15 You would agree with me that he has now taken
 16 control of those hard drives at 6:55 p.m. from Ms. Owen;
 17 correct?
 18 A. Yes.
 19 Q. Okay. So if anything happened any time that day,
 20 we would know the specific person to whom we should go and
 21 ask questions of; correct?
 22 A. Yes. Assuming that it's correct, yes.
 23 Q. Assuming it's correct, we could ask Ms. Owen
 24 between 10:30 and 6:55 p.m. what happened with the hard
 25 drives during that time period?

10:44 1 A. Yes.
 2 Q. And if there were an issue--and there wasn't. I
 3 was there. There definitely was not--we could call
 4 Ms. Owen and ask her what happened and, if need be, get a
 5 sworn statement; right?
 6 A. We could, yes.
 7 Q. So you would agree that having a Chain of Custody
 8 like this is important; right?
 9 A. It--it can be. I would agree that it's standard
 10 practice, because it makes--makes the process of
 11 determining who had a computer slightly easier.
 12 Q. So it--so it isn't surprising to you that the
 13 Parties insisted on having a Chain of Custody in the
 14 protocol; right?
 15 A. No, it's not--not surprising, but I think I may
 16 have advised Chevron that they should ask for a Chain of
 17 Custody.
 18 Q. But you didn't produce any Chain of Custody for
 19 Mr. Guerra's hard drives, did you?
 20 A. I didn't attach a Chain of Custody to my Report.
 21 Q. Did you maintain one?
 22 A. From the moment Stroz Friedberg received the hard
 23 drives, yes.
 24 Q. Did you attach a Chain of Custody for his USB
 25 drives?

10:46 1 A. From the moment I received them, yes.
 2 Q. And the same is true for the CDs, from the moment
 3 you received them?
 4 A. Yes.
 5 Q. But you did not produce that in this arbitration
 6 as a part of your Expert Report?
 7 A. Not as part of the Report, no.
 8 Q. Did you produce it in any way in this arbitration?
 9 A. I don't believe that I've produced the Chain of
 10 Custody for the documents in--in the arbitration, no.
 11 Q. And you're not aware that Chevron has produced it
 12 either?
 13 A. I'm not aware of that, no.
 14 Q. You were told--and if we could turn to Tab 1,
 15 Paragraph 10.
 16 You were told that the data was collected from
 17 former Judge Alberto Guerra's hard drive and flash drives.
 18 Do you see that in Paragraph 10?
 19 A. I do, yes.
 20 Q. But you were not there when the data was
 21 collected, right?
 22 A. No, I was not.
 23 Q. And no one from Stroz Friedberg was there either;
 24 right?
 25 A. No.

10:47 1 Q. In fact, you have absolutely no firsthand
 2 knowledge as to what, if anything, was done with the media
 3 on July 13th?
 4 A. Well, I--I have the knowledge that I've--I've
 5 gained from my analysis of the computers as to--as to what
 6 happened.
 7 Q. But I'm asking you specifically: Do you have any
 8 firsthand personal knowledge of what happened to those
 9 computers on July 13th?
 10 A. I--I have the knowledge that I've gained from
 11 reviewing--from analyzing the computers. I can tell from
 12 my analysis when certain things happened with those
 13 computers.
 14 Q. You were not there on July 13th when these
 15 computers were retrieved from Mr. Guerra; correct?
 16 A. No, I was not.
 17 Q. And you were not there on July 14th with those
 18 computers, wherever they were?
 19 A. No, I was not.
 20 Q. And you were not with the computers on
 21 July 15th, when they were handed over to Audio Forensic
 22 Center; is that correct?
 23 A. That's correct. I was not there.
 24 Q. And you have no firsthand knowledge of what
 25 happened on these computers before July 13th; correct?

10:48 1 A. Well, again, I have the--the knowledge I've gained
 2 from analyzing the computers.
 3 Q. But you were not physically with these computers
 4 any time before July 13th; correct?
 5 A. I was not physically with the computers any time
 6 before July 13th.
 7 Q. And you referenced in your opening presentation
 8 this morning that approximately 22,000 files have a last
 9 access date of the afternoon and evening of July 13th,
 10 2012?
 11 A. Yes, I did reference that.
 12 Q. And you said in your--
 13 Actually, what does the last access date signify?
 14 A. It signifies that the files were accessed in some
 15 way.
 16 Q. Okay. And July 13th, when these files were
 17 accessed, is before you received them; correct?
 18 A. Yes. It's before the computers were imaged.
 19 Q. Do you know when--do you know who received those
 20 files from Mr. Guerra?
 21 A. I believe that it was Mr. Rivero, I think his name
 22 was, that got the files from--got the computers from
 23 Mr. Guerra.
 24 Q. And if you want, I do have the transcript of the
 25 conversation that Mr. Guerra had with Andres Rivero and

10:50 1 Investigator No. 5 at Tab R-1345, if you do need to refer
 2 to that. At this point, I don't think you will, but this
 3 is the context.
 4 And actually, could you look to the end of this
 5 file?
 6 On the last page, it says 91 page--at the
 7 bottom--or page--at the top, it says "Page 93 of 94," so
 8 the page right before the translator's certification.
 9 PRESIDENT VEEDER: I'm sorry. I've lost you.
 10 Which tab is this?
 11 MR. EWING: This is Tab R-1345.
 12 PRESIDENT VEEDER: I'm sorry. Okay.
 13 BY MR. EWING:
 14 Q. What time does this recording end, according to
 15 this document?
 16 A. Looking at the third-to-last line, it looks as
 17 though it ends at 1:54:05.
 18 Q. And that is probably in the afternoon; right?
 19 A. It doesn't state what time zone it is or if it's
 20 a.m. or p.m. I can assume it's p.m.
 21 Q. I'll represent to you that I also think it's p.m.
 22 If Mr. Guerra is a night owl, we can learn that
 23 later.
 24 So this recording finishes at 1:54 in the
 25 afternoon.

10:52 1 And at this point in the recording, Mr. Guerra
 2 has given--
 3 MR. WHITE: I'm sorry to interrupt, Mr. Ewing,
 4 with an objection. It's our understanding that time is the
 5 time in the recording, how long the recording has been
 6 going, not the time of day. I'm not sure if it matters to
 7 any point that Mr. Ewing is trying to make.
 8 MR. EWING: We can--we can move past that. It's
 9 not a--not an important time necessarily.
 10 MR. WHITE: Thank you.
 11 BY MR. EWING:
 12 Q. The last access date for all of the files--the
 13 22,000 files on Mr. Guerra's computer, what date is that?
 14 Do you remember?
 15 A. It was July 13th, 2012.
 16 Q. And that's the same date that we have here, where
 17 Mr. Guerra is handing the documents over to Mr. Rivero;
 18 correct?
 19 A. It's the same date that this recording was from
 20 and the same date that I understand Mr. Guerra provided his
 21 computer to representatives on behalf of Chevron.
 22 Q. And do you know why all of those files were last
 23 accessed at that time?
 24 A. I--I understand that Mr. Rivero explained that he
 25 and others sat in front of the computer with Mr. Guerra

10:53 1 and--and reviewed files, opened them, and were
 2 looking--looking through the contents of the computer.
 3 Q. Do you know exactly what they did?
 4 A. Well, I know from--from the evidence that
 5 they--they did, in fact, open files. There were what's
 6 called a link file, which tracks when a user opens a file
 7 created, showing that they were opening files, and the last
 8 access date shows that files were being accessed.
 9 Q. So we know then that Mr. Rivero and Investigator
 10 No. 5 were opening and reviewing files on Mr. Guerra's
 11 computer at that point; correct?
 12 A. Yeah, that's--I mean, the evidence taken with what
 13 I understand Mr. Rivero said shows that to be the case,
 14 yes.
 15 Q. Is there any indication of what was changed?
 16 A. Well, yeah. As I--as I set forth in my
 17 presentation, the--at least for the files that I analyzed
 18 and relied on, the last modified dates weren't updated, so
 19 those files weren't changed.
 20 Leaving a computer running will change files.
 21 While a computer is running, it--it--there will be
 22 operating system files and logs that are constantly being
 23 modified. So there were changes to those types of
 24 documents.
 25 But the files that I relied on were--the last

10:54 1 modified date for those files wasn't updated, so the
 2 files--I mean, that reflects the files weren't changed.
 3 Q. And to keep this easier, I'm only referring to the
 4 files that are relevant to this case. We can put aside
 5 operating system files, log files, et cetera.
 6 A. Okay.
 7 Q. Okay?
 8 So you say that the last modified date was not
 9 updated; correct?
 10 A. Yes, that's correct.
 11 Q. And by--it was not updated, you mean that it is
 12 not the same or later than the last access date; correct?
 13 A. Well, it wasn't--it doesn't reflect July 13th.
 14 It--it's--looking at the file system metadata and the
 15 embedded dates, those are the same. They all--they all
 16 predate July 13th.
 17 Q. And if you want to turn to your Report where you
 18 address this, this might make our lives easier.
 19 Do you have that?
 20 A. I'm not sure specifically what you're referring--I
 21 have the charts with the metadata for the files.
 22 Q. The chart with the metadata, correct.
 23 And what page are you looking at?
 24 A. I'm looking at Page 11 for the--the chart with the
 25 metadata for the 11 draft Guerra Orders.

10:56 1 Q. Correct. So if we could look at Table 2, you see
 2 for all of these 11 orders, Documents 1 through 11, they
 3 have an access date of 7/13/2012 at 5:00 in the
 4 afternoon--5:00 or 6:00 in the afternoon.
 5 A. Yes, I see that.
 6 Q. And your contention is that the last written date
 7 is earlier than that; correct?
 8 A. Well, the last written date is earlier than that.
 9 Q. And therefore, because the last written date is
 10 earlier, the last access didn't actual change anything?
 11 A. Yes. Had--had the activity that resulted in
 12 updating the last access date changed the contents, then
 13 the last modified date or the last written date would have
 14 been updated.
 15 Q. Where does the last modified date come from?
 16 A. The--comes from the file system the files are
 17 stored on.
 18 Q. So if, for instance I was looking at Document 1,
 19 and it has a last written date of October 20th, 2009, at
 20 6:24 a.m., that date came from the operating system;
 21 correct?
 22 A. That--that date comes from the file system that
 23 the--the file is stored in. It's--that's a date that--when
 24 you move a file from the computers to external devices, the
 25 last written date generally stays the same, so it follows

10:58 1 the document, but it's saved in the file system.
 2 Q. And it--when a file is saved, the operating system
 3 or the file system simply takes the date and time that the
 4 computer believes that it is; correct?
 5 A. Yes.
 6 Q. So there's no indication that that is actually the
 7 actual time when that was done, the file was modified; it's
 8 simply the date that the file system thought that it was;
 9 correct?
 10 A. Yeah. The computer--there are--there are ways
 11 that a computer can validate the date and time, the
 12 software that does that.
 13 But generally a computer only knows what its
 14 internal clock believes it to be, whether or not that date
 15 is accurate or not.
 16 But I would note that I did an extensive amount of
 17 analysis on the Guerra Computer to see whether or not there
 18 was any evidence that date was wrong, if that computer--if
 19 the computer clock was ever mis-set or tampered with.
 20 Q. So if I were to take your computer now and change
 21 your clock to October 20th, 2009, at 6:24 a.m., open your
 22 document that you used in your presentation this morning--
 23 A. Uh-huh.
 24 Q. --and save it, what would the last written date
 25 be?

10:59 1 A. The Last Written date would be updated to whatever
 2 date the computer believed to be, in your example,
 3 October 20th, 2009.
 4 Q. And if I then close that and reset your computer's
 5 date to the current date of April 27th at 10:59 a.m., any
 6 future edits I would do would reflect that date; correct?
 7 A. Yes. Any further edits would reflect--well, at
 8 any point in time when you save the document, the time the
 9 computer believes it will be--believes it to be will be
 10 assigned as the Last Written date.
 11 Q. And if I then imaged your computer and extracted
 12 all the document files and provided them to Counsel, they
 13 could tell me that this file was not updated during this
 14 presentation, according to the metadata?
 15 A. Looking at just the metadata for that document,
 16 yes. But there would be other evidence in the image that
 17 someone had manipulated the clock.
 18 Q. You referred to other evidence. What other
 19 evidence are you referring to?
 20 A. It depends on exactly the programs that are on the
 21 computer. But for example, if there was a virus-scanning
 22 program on the computer, virus scanners--and many other
 23 programs maintain a log of what their activity is.
 24 And if you look at that log, assuming a normally
 25 operating clock, that log appears sequentially. The first

11:01 1 entry is the first thing the virus scanner did. The second
 2 entry is the second thing, and the dates will follow
 3 because the clock is operating normally. It's always
 4 advancing. And if you go down into the tens of thousands
 5 of rows, the tenth thousand log entry will be the tenth
 6 thousand thing that was recorded; and, assuming the clock
 7 is operating normally from log entry 1 to 10,000, those
 8 dates will all be sequential.
 9 If you manipulate a computer clock, then those
 10 dates won't be sequential, so you'll still see the first
 11 entry's the first thing the virus scanner did. The tenth
 12 thousandth thing is the tenth thousandth thing the virus
 13 scanner did.
 14 But you'll see that the clock jumps around. So
 15 you may see that using July 13th, that on
 16 July 13th--that some of the last entries in the virus
 17 scanner log are July 13th; but then there would be a log
 18 entry recorded October 20th, 2009. And then there might
 19 be a log entry recorded another date because someone was
 20 changing the clock at those dates, and then there would be
 21 log entries going back to July 13th, 2012.
 22 You'd see--you'd see stuff like that in the other
 23 evidence in the computer. And I looked for that on the
 24 Guerra Computer and found no evidence of any--any log out
 25 of order, any sequential anomaly that would suggest someone

11:02 1 was tampering with the clock.
 2 Q. So Mr.--when Mr. Guerra gave his computer to the
 3 investigators, they probably removed his hard drive in
 4 order to image it; correct?
 5 A. I would imagine that Mr. Pelletier, who imaged the
 6 computer, removed the hard drive.
 7 Q. Do you know whether the investigators took the
 8 whole computer or just the hard drive?
 9 A. They took the whole computer.
 10 Q. And it was a laptop?
 11 A. It was a desktop.
 12 Q. It was a desktop.
 13 THE COURT REPORTER: Can we have a break soon?
 14 PRESIDENT VEEDER: Would it be convenient to have
 15 a break?
 16 MR. EWING: Yeah; one more minute.
 17 PRESIDENT VEEDER: One more minute.
 18 BY MR. EWING:
 19 Q. And if they had attached Mr. Guerra's hard drive
 20 to their own computer after taking it out of his desktop,
 21 none of your safeguards or log files that you just
 22 explained to us would actually be affected on Mr. Guerra's
 23 computer; correct?
 24 A. If you remove a hard drive and just connect it to
 25 a--to a computer, the timestamps will still be recorded as

11:04 1 THE WITNESS: Understood.
 2 (Brief recess.)
 3 PRESIDENT VEEDER: Let's resume.
 4 BY MR. EWING:
 5 Q. Mr. Lynch, would you turn to Tab 1, which is your
 6 October 7th, 2013, Report.
 7 A. Yes.
 8 Q. And could you look at Paragraph 11, please.
 9 A. Yes.
 10 Q. And do you see here where you say you used the
 11 acquisition hash values to verify that the EnCase evidence
 12 files provided to Stroz Friedberg by AFC were a true and
 13 correct representation of the original media?
 14 A. Yes, I see that.
 15 Q. What you're saying there is that you're comparing
 16 the image files that you received to the image files that
 17 Audio Forensic Center created; right?
 18 A. That's what the hash value comparison does. Yes.
 19 Q. So the hash value is a unique key for every file;
 20 correct? You generate this hash value, and it's a unique
 21 key for that file; correct?
 22 A. Yes. You generate a hash value, and that hash
 23 value kind of statistically will uniquely identify that
 24 file.
 25 Q. So if I take a file and I generate a hash key and

11:03 1 is.
 2 Q. So if I connected your hard drive to my computer
 3 and my computer thought it was 2009 and I modified your
 4 presentation from this morning and I gave you your hard
 5 drive back, none of the logs, none of the catches that you
 6 just told us about would actually show up on--on your
 7 computer, would they?
 8 A. It would depend on--on how your computer is
 9 configured.
 10 It's likely that if you--if you access the
 11 document to modify the file, that both the Last Access date
 12 and the Last Written date would be--would be updated.
 13 Q. But none of the logs would be modified?
 14 A. No. The computer wouldn't have been running, so
 15 the logs wouldn't have been updated.
 16 Q. So the only thing that would change are the dates
 17 on that file?
 18 A. Yes. The dates would be--both the Last Access
 19 date and the Last Written date would likely be--would be
 20 updated.
 21 MR. EWING: If we could take a break?
 22 PRESIDENT VEEDER: Let's take a break. We'll come
 23 back in 15 minutes. We'd ask you, like all other
 24 witnesses, not to discuss the case or your testimony until
 25 you come back before the Tribunal.

11:21 1 then I generate it a hundred more times, it should always
 2 be the same, correct, as long as the file does not change?
 3 A. Yes. If you generate a hash value over the same
 4 contents, you will always get the same hash value. If you
 5 change the hash value--or if you change the contents of the
 6 file, then the hash value will change.
 7 Q. So your comparison was intended to verify that the
 8 images that were made on July 15th, 2012, were identical
 9 to what you received on July 23rd, 2012; correct?
 10 A. That's what that particular hash value comparison
 11 establishes.
 12 Q. So when you say "a true and correct representation
 13 of the original media," that's not exactly what you mean
 14 there; right?
 15 A. Well, no. That's exactly what I mean. The image
 16 I was provided is a true and correct representation of the
 17 original media when it was imaged.
 18 Q. So it is a true and correct representation of the
 19 media as of July 15th, 2012; correct?
 20 A. Yes. That's what that--that's what that sentence
 21 means.
 22 Q. Okay. And you have no idea whether it's a true
 23 and correct copy of the original media as of July 14th?
 24 A. Well, as I described, I did an analysis of the
 25 drive, saw what evidence was on the drive, that files were

11:23 1 last accessed on July 13th.
 2 Generally, had any files been accessed or modified
 3 after that, then the Last Accessed or Last Modified dates
 4 respectfully would have been updated, and none were. They
 5 were all--all the Access dates were July 13th or earlier,
 6 and all the Modified dates were July 13th or earlier.
 7 There's no evidence of any changes on the drive after
 8 July 13th.
 9 Q. And again, the evidence you're referring to
 10 is--are the dates for those files; correct?
 11 A. Yes. The time stamps.
 12 Q. And those dates could all have been changed by
 13 Investigator No. 5 if he had attached that hard drive to
 14 his own computer; correct?
 15 A. If he had attached that computer to his hard
 16 drive, I would have--would expect that there would be files
 17 updated when he attached that file to his--there would be
 18 metadata showing a Last Access date after July 13th.
 19 Q. Let's talk for a minute about your past experience
 20 collecting forensic evidence.
 21 Have you ever been sent by Stroz Friedberg to
 22 collect images of someone's computer?
 23 A. Yes, I have.
 24 Q. Have you ever purchased that person's computer in
 25 order to make forensic images of that hard drive?

11:24 1 A. I personally have never purchased a computer to
 2 image it.
 3 Q. Have you ever brought a bag of cash to a meeting
 4 where you intended to image a person's computer?
 5 A. No. I've never traveled with a bag of cash.
 6 Q. So you've never paid a witness \$20,000 in cash in
 7 a backpack for computer access to the Witness' email
 8 accounts and two daily planners?
 9 A. I personally have never--never purchased something
 10 from a Witness.
 11 Q. In cash or otherwise?
 12 A. In cash or otherwise. If that was happening, I
 13 would expect it to be my clients. I just go and image.
 14 Q. Mr. Lynch, you have reviewed all of Guerra's media
 15 that he provided to Chevron's investigator; correct?
 16 A. Yes. One of the--one of the thumb drives didn't
 17 work, so I don't--couldn't review that. But generally,
 18 yes, I reviewed it all in some way.
 19 Q. And that included the hard drive, the USB drives
 20 or the thumb drives and CDs; right?
 21 A. Yes.
 22 Q. And were you asked to search for any document that
 23 contained text substantially similar to the 2011 Lago Agrio
 24 Judgment?
 25 A. That's one of the things that--that I searched for

11:26 1 in my analysis, yes.
 2 Q. But you did not find any; correct?
 3 A. No, I did not.
 4 Q. No early drafts?
 5 A. No.
 6 Q. Not on any of the USB drives?
 7 A. Not on any of the USB drives that were provided to
 8 me.
 9 Q. Okay. So Counsel for Chevron has never provided
 10 to you any external media: Thumb drives, hard drives, CDs
 11 that it represented to you came from Mr. Guerra and which
 12 contained the February 14th, 2011 Lago Agrio Judgment;
 13 correct?
 14 A. No. I have not been provided any media other than
 15 the--or anything that I understand came from Mr. Guerra
 16 that had a draft of that document.
 17 Q. Have you ever investigated any media where you
 18 found a draft of the Lago Agrio Judgment?
 19 A. Yes, I have.
 20 Q. What media was that?
 21 A. As I described in my presentation, the Zambrano
 22 Computers had draft--had a draft.
 23 Q. But other than the Zambrano hard drives, you have
 24 never analyzed any media that contained any portion of
 25 Final Lago Agria Judgment?

11:27 1 A. No. The Zambrano Computers are the only computers
 2 that I've analyzed that have a draft of that document on
 3 it--or text from that document, I should say.
 4 And actually, let me just add, I have reviewed,
 5 for instance, Mr. Donziger's computer, which have some of
 6 the unfiled work product, so there is text from those on
 7 other computers.
 8 Q. But you're not contending that those are the Final
 9 Lago Agrio Judgment, are you?
 10 A. No. I just want to make sure--when I say, "text
 11 from the Judgment" that I'm not excluding those when I
 12 shouldn't be.
 13 Q. Just to be clear, you have not reviewed any
 14 document, any computer, any media from any party that has a
 15 Draft that purports to be a Draft of the Lago Agrio
 16 Judgment; is that correct?
 17 A. Well, I've reviewed Mr. Zambrano's computers.
 18 Other than Mr. Zambrano's computers, I've not received a
 19 computer or media that has any document that purports to be
 20 a draft.
 21 Q. Could you turn in Tab 1--this is your
 22 October 2013, Report--to Table 2, Page 11.
 23 A. Yes.
 24 Q. At Gibson Dunn's request you were asked to
 25 identify and authenticate these 11 documents that were

11:28 1 found on Mr. Guerra's hard drive; correct?
 2 A. Yes.
 3 Q. And you concluded that they were nine Draft Orders
 4 issued by the Lago Agrio Court; right?
 5 A. These were Drafts of Orders issued by the Lago
 6 Agrio Court. Right.
 7 Q. And in your Report, you call them "Draft Guerra
 8 Orders"?
 9 A. Yes, I do.
 10 Q. So Table 2 that we're looking at now is file
 11 system metadata; right?
 12 A. That's correct.
 13 Q. And this is the information that the computer or
 14 the operating system attaches to these files; correct?
 15 A. Yes.
 16 Q. So looking at these columns, the date columns in
 17 particular, we've talked about the Last Written and the
 18 Last Accessed. Let's talk about the Created date.
 19 The Created date is when a file is created on a
 20 computer; correct?
 21 A. Yes. It's--it's when the file was first created
 22 on--on this particular file system. As I describe in my
 23 direct, that can either be through copying from another
 24 device or--or if a file is first created there.
 25 Q. So looking at the first line,

11:31 1 should say that there are--there are multiple pieces of
 2 evidence.
 3 One, if you look at Table 3, the Last Saved By
 4 name of Usuario, that--that's a name that's associated with
 5 other documents that--that appear to be, on their face,
 6 Mr. Guerra's documents. For example, his CV was last saved
 7 using that same user name, which suggests to me that
 8 Mr. Guerra's computer prior to the Windows reinstallation
 9 was, in fact, using the user name Usuario.
 10 And then all of these files--all of the files
 11 shown in Tables 1 and Table 2, all these 11 draft Guerra
 12 Orders, as I call them, were copied from the Western
 13 Digital hard drive en masse with some 4,000 other files,
 14 included his CV and including family photos of Mr. Guerra.
 15 To me, it seems most likely that prior to
 16 reinstalling Windows, he would have copied all of his
 17 documents to the external hard drive, reinstalled Windows,
 18 and then copied the documents back, particularly given
 19 that--that these--these documents were last saved by the
 20 same user name that was associated with some of his
 21 documents.
 22 Q. So, Mr. Lynch, you mentioned Mr. Guerra's CV.
 23 Can you point to me in this Report where you
 24 mentioned that before?
 25 A. I don't highlight that document in my Report.

11:30 1 "ProvidenciaTexaco.doc" it was created on July 23rd,
 2 2010, at 11:44 a.m.?
 3 A. It was--yes. From my analysis, it was copied to
 4 the--the computer. Then shortly after Windows was
 5 reinstalled.
 6 Q. But it was put onto this computer for the first
 7 time on July 23rd, 2010?
 8 A. I can't say that was the first time it was put
 9 there. It could have been there prior--or likely was there
 10 prior to the Windows reinstallation, but this is when it
 11 was copied to the computer after the Windows
 12 reinstallation.
 13 Q. Let's just take that one piece at a time.
 14 You agree that it's the first time that we can see
 15 this file on this computer; correct?
 16 A. Yes.
 17 Q. But you said it could have been there prior to
 18 that date?
 19 A. Yes, I did.
 20 Q. And you also said that it's likely that it was
 21 there prior to that date?
 22 A. Yes, I did.
 23 Q. What do you base "could have been" or "likely
 24 was"--what is your evidence that you're pointing to?
 25 A. If it you look at Table 3, the last--well, I

11:33 1 Q. So this is the first time today that you are
 2 mentioning that?
 3 A. Well, I think it's the first time today that I've
 4 mentioned it. I have mentioned it in the past. As an
 5 example, it's in my--it was--I mentioned it in my RICO
 6 testimony in the case.
 7 Q. So in your reports that you submitted in this
 8 arbitration, Mr. Racich responded to your October 2013,
 9 Report in December 2013 and raised this point, that all 11
 10 of these documents were not created on Mr. Guerra's
 11 computer until at least six months after they were issued.
 12 Would you agree with me?
 13 A. Yes, that--he--he described that. I don't know
 14 exactly what words he used, but he described that general
 15 situation in his Report.
 16 Q. And I am paraphrasing Mr. Racich.
 17 You have since filed three reports, none of which
 18 have mentioned Mr. Guerra's CV.
 19 A. Yes. As I--as I described earlier, I understood
 20 that--that the next three reports that I--I issued, two of
 21 which are in evidence in this case, were on different
 22 topics.
 23 Q. And you told me earlier that you didn't listen to
 24 all of Dr. Leonard's presentation because you were drafting
 25 a document. Do you remember that?

11:34 1 A. Yes, I do.
 2 Q. And that was your description of the scope of what
 3 you wanted to address from Mr. Racich's October 2013,
 4 Report that you had never taken the opportunity to respond
 5 to; correct?
 6 MR. WHITE: I'm going to object. That was an
 7 issue that was argued by Counsel that related to the scope
 8 of Mr. Lynch's direct testimony.
 9 These are responses that Mr. Ewing is eliciting
 10 from this witness on cross-examination, and that's quite
 11 different.
 12 PRESIDENT VEEDER: Please continue.
 13 BY MR. EWING:
 14 Q. But you did not--but you did not include this
 15 point about the CV in your short description that you wrote
 16 during Dr. Leonard's presentation; correct?
 17 A. The description I wrote was--was specific to a
 18 paragraph in Mr. Racich's most recent Report. I didn't--I
 19 didn't describe the CV, for example.
 20 Q. So your testimony today, though, is that you have
 21 testified before in other proceedings about these
 22 documents, but for the first time today you're mentioning
 23 them here?
 24 A. Well, I understand that my RICO testimony is in
 25 evidence. So, I mean, it--I don't think it's the first

11:35 1 time the CV has been before the Tribunal, but I've not
 2 explicitly mentioned it in my Report.
 3 Q. Just to make sure our record is clear, you also
 4 mentioned photos; correct?
 5 A. Yes.
 6 Q. Those also are not in any of your Reports in this
 7 operation?
 8 A. They're not in my Reports, no. I--I believe I
 9 described them in my RICO testimony.
 10 Q. And are you testifying that photos have an Author
 11 name of Usuario?
 12 A. No, the photos don't have an Author name. The
 13 photos are of Mr. Guerra.
 14 Q. So there are pictures of Mr. Guerra that he copied
 15 onto his computer?
 16 A. Alongside these documents and other documents with
 17 the name Usuario.
 18 Q. And that they came from a hard drive; correct?
 19 A. Yes.
 20 Q. You call it the Max Door hard drive?
 21 A. It's the Western Digital hard drive.
 22 Q. Oh, Western Digital, okay.
 23 You have no idea how these documents got
 24 onto--these documents--let me start over.
 25 You have no idea how Documents 1 through 11 got

11:37 1 onto the Western Digital hard drive?
 2 A. Well, I have an idea. As I said, it's--it's--when
 3 someone reinstalls Windows, it's common for them to back up
 4 their files to a hard drive so that when they reinstall
 5 Windows, they don't lose their files. And it's also
 6 common, once you reinstall Windows, for the files then to
 7 be copied back to the computer.
 8 So specifically whether or not, I have an idea,
 9 yeah, I have an idea how they got onto the Western--
 10 Q. But you have no forensic evidence?
 11 A. No. I--I don't have forensic evidence showing
 12 when they are copied to the Western Digital drive.
 13 Q. So you don't know whether they were copied from
 14 Mr. Zambrano's computer first and then onto Mr. Guerra's
 15 computer?
 16 A. Well, they're not--none of these files are on
 17 either of Mr. Zambrano's computers that were produced for
 18 imaging.
 19 Q. None of these files? Is the substance of these
 20 files on Mr. Zambrano's computer?
 21 A. Yes. The text is in some of the versions of
 22 Caso Texaco.
 23 Q. So Caso Texaco filed--on Mr. Zambrano's computer
 24 has the contents of all of these files; correct?
 25 A. Yes. Well, I guess specifically it has the--the

11:38 1 final or near-final versions of the Orders associated with
 2 these drafts. But the--just to be clear, the dates--so if
 3 we look at--at one of these files--choosing one, the--I
 4 can't choose right now--choosing one of them, the text was
 5 last saved on Mr. Guerra's computer before the file named
 6 Caso Texaco contained that text.
 7 Q. Mr. Lynch, you say it was last saved on
 8 Mr. Guerra's computer.
 9 Looking at Tables 2 and 3, which is all of the
 10 metadata you have provided for these two files, what
 11 evidence is there that these were saved on Mr. Guerra's
 12 computer and when?
 13 A. I should say that the--the files on Mr. Guerra's
 14 computer were last saved, but that they were saved using
 15 the user name Usuario and that, as I said earlier, is also
 16 the user name that's saved from Mr. Guerra's CV.
 17 Q. Do you know what Usuario means?
 18 A. I understand it means user.
 19 Q. That's a pretty generic user name?
 20 A. It is a generic name, yes.
 21 Q. Looking at Tables 2 and 3, just to be clear, the
 22 only information that we have as to when these files were
 23 created on Mr. Guerra's computer for sure is July 23rd,
 24 2010, for the create date for all 11 of them; everything
 25 else that you're suggesting is speculation?

11:40 1 A. I wouldn't--wouldn't say that it's speculation
 2 that the file was last saved on October 20th or that it's
 3 Last Saved By the name--user name Usuario or that other
 4 files have that same user name. I wouldn't characterize
 5 all that as speculation.
 6 Q. Let's try again.
 7 October 20th, 2009, we all agree that this file
 8 was last written?
 9 A. Yes.
 10 Q. And July 13th, 2012, we all agree this first
 11 file was last accessed?
 12 A. Yes.
 13 Q. And July 23rd, 2010, we all agree this first
 14 file was created on Mr. Zambrano's computer?
 15 A. It was copied to Mr. Guerra's computer.
 16 Q. Sorry. Mr. Guerra's computer.
 17 So on July 23rd, 2010, that is the only date
 18 that we know that ties this file--any of these 11 files to
 19 Mr. Guerra's computer?
 20 A. That's the--the first date that--that we can look
 21 at and say definitively the file would have been there when
 22 the computer believed it to be July 23rd.
 23 But as I said, we know when it was Last Written
 24 and that when it was Last Written it was done by the Author
 25 name Usuario, or Usuario, and that other files on

11:41 1 Mr. Guerra's computer also have that name.
 2 Q. So, Mr. Lynch, if I took your document from this
 3 morning--it's a great example you've made--given us--and it
 4 probably has a Created date of July--or April 27th, 2015,
 5 what, 9:35 p.m., approximately, when you started; right?
 6 A. Yeah, assuming that was the--yeah, the date and
 7 time when I created it. Yes.
 8 Q. So the Created date would be 9:35 a.m. today?
 9 A. Yes.
 10 Q. And the Last Written date would be today, when you
 11 finished your presentation, you saved that file again, you
 12 know, hit your final Control S and closed the file. So
 13 it's probably April 27th, 2015, at 10:30?
 14 A. Probably like 10:15, but--I don't know. But,
 15 yeah, somewhere around there.
 16 Q. 10:15.
 17 So if I took that file from your computer--I
 18 copied it from your computer and put it on my computer, the
 19 Create date would be right now, 4/27 at 11:40 a.m.; right?
 20 A. Yes. If we copied it from this computer to your
 21 computer, the Create date on your computer would be when we
 22 did the copy.
 23 Q. It would be when I copied it?
 24 A. Yes.
 25 Q. But it would also show a Last Written date of

11:43 1 April 27th at 10:15 a.m.; correct?
 2 A. Yes.
 3 Q. So that information wouldn't change when I copied
 4 it over?
 5 A. The Last Written date would not change, no.
 6 Q. So the date that it was created on my
 7 computer--the only date that we know that ties this to my
 8 computer would be the Created date?
 9 A. In that case, yes, that would be the date showing
 10 when it was first copied to--to your computer.
 11 Q. Could you turn, still in Tab 1, to Page 13.
 12 Do you see that?
 13 A. I do, yes.
 14 Q. You compared all of the soft--or the files from
 15 Mr. Guerra's computer and from the final Lago Agrio
 16 litigation?
 17 A. I compared the documents from Mr. Guerra computer
 18 (sic) to the--the issued versions of the orders in the Lago
 19 Agrio Court.
 20 Q. And you found that they were similar; correct?
 21 A. Yes.
 22 Q. Okay. So now, just to keep you on your toes, can
 23 you turn back to Table 4? Oh, sorry. We're already at
 24 Table 4. I already took you there.
 25 A. We are.

11:45 1 Q. Okay. You are on your toes.
 2 How many of these Orders were issued during Judge
 3 Zambrano's term as Presiding Judge from October 2010
 4 through March 2011?
 5 A. I believe it's nine of the Orders--well, all nine
 6 of the Orders, that--the 11 are--there are duplicates in
 7 there.
 8 Q. Just--listen carefully to the dates.
 9 How many of these Orders, the nine that you have
 10 listed, were issued by Judge Zambrano between October 2010
 11 and March 2011?
 12 A. Sorry. None of these Orders were issued in that
 13 time period.
 14 I understood that Mr. Zambrano was the Presiding
 15 Judge earlier as well.
 16 Q. So Mr. Zambrano was on the bench for two different
 17 terms. Do you understand that?
 18 A. That's my understanding.
 19 Q. And none of these orders that you have here at all
 20 relate to his second term?
 21 A. No, they don't.
 22 Q. I am correct that none of them relate to his
 23 second term?
 24 A. These all relate, as I understand it, to his first
 25 term.

11:46 1 Q. Okay. And these are all the same Orders which
2 have a Create date on Mr. Guerra's computer of July 23rd,
3 2010?
4 A. Yes. These Orders have the--have a Create date on
5 Mr. Guerra's computer of July 23rd, 2010.
6 Q. And how many of these orders were issued by Judge
7 Zambrano after July 23rd, 2010?
8 A. None of them.
9 Q. Okay. Let's move on to a different topic.
10 You've testified that you analyzed both
11 Mr. Guerra's and Mr. Donziger's computers; right?
12 A. Yes.
13 Q. And you have never uncovered any email between
14 Mr. Guerra and Mr. Donziger in which the two of them
15 reference a bribe; correct?
16 A. I have recovered emails between the two of them.
17 I don't--I can't recall the content of all of them. I
18 don't--I don't believe any of them do, but--
19 PRESIDENT VEEDER: Is that really a question for
20 this witness? It probably isn't, is it?
21 MR. EWING: He had been the one who had recovered
22 them. I was asking him whether he had reviewed them. He's
23 provided testimony on how documents overlap and don't
24 overlap.
25 But I can move on.

11:48 1 PRESIDENT VEEDER: Please do.
2 BY MR. EWING:
3 Q. One question about the emails, nonsubstantive:
4 The emails that you recovered were all on
5 Mr. Donziger's computer; correct?
6 A. Yes, that's correct.
7 Q. You recovered no emails on Mr. Guerra's computer
8 from Mr. Donziger?
9 A. That's--that's correct. I didn't recover any--the
10 content of any emails between Donziger and Guerra on the
11 Guerra Computer.
12 Q. So the only emails that you're aware of are from
13 Mr. Guerra to Mr. Donziger?
14 A. I--sitting here now, I--I can't recall whether or
15 not Mr. Donziger ever replied or sent any new emails.
16 Q. Okay. And were you asked to search for emails on
17 Mr. Guerra's computer from or to Mr. Fajardo?
18 A. Yeah, I believe that's one of the searches that I
19 would have run.
20 Q. Did you find any?
21 A. No. There are--there are effectively no emails on
22 the Guerra Computer to--to search.
23 Q. And let's talk about emails for a moment.
24 You mentioned in your opening slides, if I can
25 find them here, that Hotmail temporarily displays messages

11:49 1 on a user's computer; correct?
2 A. Yes. When you access it through a web browser.
3 Q. Through a web browser. And we all agree that
4 there's no indication that Mr. Guerra accessed his email in
5 any other way; right?
6 A. Yeah, I would agree with that.
7 Q. I'm looking for your slide where you discussed
8 Hotmail. Do you know which one it is offhand?
9 A. Not off the top of my head.
10 Q. It would be earlier in the deck.
11 MR. WHITE: That is 9.
12 MR. EWING: Thank you, Counsel.
13 BY MR. EWING:
14 Q. So Mr. Racich's concluded that on the Guerra
15 Computer there appear to be emails that have since been
16 deleted, and you said that you disagree with that
17 statement?
18 A. Yes. I--I disagree with the implication that they
19 were on the Guerra Computer and then deleted. They
20 weren't--there's no indication that they were stored
21 long-term on the Guerra Computer to be deleted.
22 Q. You had complete access to Mr. Guerra's Hotmail
23 accounts; correct?
24 A. I--I had the user name and passwords for
25 Mr. Guerra's Hotmail account.

11:51 1 Q. And did you or anyone else at Stroz Friedberg log
2 in to those accounts?
3 A. Yes. I did not, but someone at Stroz Friedberg
4 did, yes.
5 Q. So someone under your supervision logged in to
6 those Hotmail accounts and forensically stored them;
7 correct?
8 A. Yes.
9 Q. And you received this information from Chevron;
10 correct?
11 A. Received the user name and passwords from Chevron.
12 Q. Not from Mr. Guerra directly?
13 A. Not from Mr. Guerra directly.
14 Q. Did you look for deleted messages in his Hotmail?
15 A. Yes, we would have. There--there--there were
16 effectively no emails in the account when we preserved it.
17 The--the first email was a notice--I don't recall the exact
18 content, but implying that the account had gone inactive
19 and that Microsoft purges all the emails out of it. So
20 there were no emails relevant to preserve.
21 Q. So there were no sent messages?
22 A. No, there were not.
23 Q. And no drafts?
24 A. No, there were not.
25 Q. Because all of those messages had been deleted?

11:52 1 A. Yes, they'd all been--they'd all been purged.
 2 Q. When you say "purged," you're just arguing that it
 3 was Hotmail that deleted them, not Mr. Guerra; correct?
 4 A. Well, that--that is what the first email
 5 suggested, that Microsoft automatically deleted all of the
 6 emails because the account had not been used for a period
 7 of time.
 8 Q. But we can agree that there were likely emails
 9 there before and they are no longer there; correct?
 10 A. I would agree with that, yes.
 11 Q. Okay. When you reviewed Mr. Guerra's media, did
 12 you find any email text or any other communications with
 13 Mr. Zambrano?
 14 A. There was a--a reference to--in his--in his email
 15 account, the address book was still there. The address
 16 book contained an entry for an email address that had
 17 the--the name Nicolas Zambrano associated with it, but I
 18 didn't find any communications between the two of them in
 19 email.
 20 Q. So you found that one judge had a former judge's
 21 email address in his Hotmail contact list?
 22 A. Yes.
 23 Q. Did you find any other judge's names?
 24 A. I don't know all--I mean, I don't know all the
 25 different judges in Ecuador. So I won't--there could be

11:53 1 other judges; there may not be. I don't know.
 2 Q. You didn't look, though?
 3 A. Yes.
 4 Q. And you've not seen any emails or communications
 5 or texts from Mr. Guerra's computers, phones, USB drives in
 6 which Mr. Guerra purports to transmit any Proposed Order or
 7 Final Decision to Mr. Zambrano?
 8 A. I've not seen any--any electronic communication of
 9 an Order from Mr. Guerra to Mr. Zambrano through email or a
 10 text message or anything like that.
 11 But as I described earlier, there is evidence
 12 that--that Mr. Guerra saved orders to a thumb drive. There
 13 is evidence that Mr. Guerra sent packages to Mr. Zambrano
 14 or to Lago Agrio. There's evidence that those same thumb
 15 drives were connected to Mr. Zambrano's computers.
 16 The files--the drafts that Mr. Guerra had on his
 17 computer, that he created on his computer, appear on
 18 Mr. Zambrano's computer. I would consider all of that
 19 evidence of transmission, not through email or text, but, I
 20 guess, snail mail, as people sometimes call it.
 21 Q. And you mentioned TAME packages. You're referring
 22 to the TAME packages; correct?
 23 A. Yes.
 24 Q. That Mr. Guerra claims to have sent?
 25 A. And there are shipping records from TAME showing

11:55 1 that Mr. Guerra sent packages.
 2 Q. But we have no evidence of what is in those TAME
 3 packages, other than what Mr. Guerra says; correct?
 4 A. We also have Mr. Zambrano's testimony that
 5 Mr. Guerra shipped him Orders using TAME.
 6 Q. Did Mr. Zambrano testify that Mr. Guerra assisted
 7 with the Lago Agrio action?
 8 A. I don't believe so.
 9 Q. So we have no evidence--no TAME records that show
 10 that Mr. Guerra assisted with the Lago Agrio Final
 11 Judgment?
 12 A. No, there aren't any TAME records showing
 13 that--that Mr. Guerra did that.
 14 Q. Okay. And you analyzed Mr. Guerra's two cell
 15 phones; correct?
 16 A. Yes.
 17 Q. And you used the forensic software that we
 18 discussed earlier in an RF-blocking bag that would have
 19 enabled you to view and recover text messages; correct?
 20 A. Yes.
 21 Q. But you found no evidence of text messages between
 22 Mr. Guerra and Mr. Zambrano about a bribe?
 23 A. I can't recall all--whether--the content of any
 24 text messages, but I don't--I don't recall any about a
 25 bribe.

11:56 1 Q. And you didn't find any evidence of text messages
 2 between Mr. Guerra and any representatives of the
 3 Plaintiffs about a bribe?
 4 A. Not that I can recall, no.
 5 Q. Or about the merits of the Lago Agrio Case?
 6 A. No.
 7 Q. Or, in fact, no text messages at all between
 8 Mr. Guerra and any representative of the Plaintiffs?
 9 A. No. Not that I'm aware of, no.
 10 Q. And to be clear, you found absolutely no text
 11 messages at all between Mr. Guerra and Mr. Zambrano?
 12 A. Yeah. I--I don't believe there were any text
 13 messages.
 14 Q. Okay. Let's move on to a different topic again,
 15 away from communications.
 16 A. Actually, I just--on--there may have been texts--I
 17 can't recall any text messages right now. There may have
 18 been text messages. If there were, they would be listed in
 19 Exhibits 37, 38, and 39.
 20 Q. Okay. We can double-check those, but I don't
 21 think there were any between Mr. Guerra and Mr. Zambrano.
 22 But we can double-check.
 23 So let's move on to a different topic, away from
 24 communications and text messages.
 25 Could you return to Page 29 of your October 2013,

<p>Sheet 27</p> <p style="text-align: right;">1016</p> <p>11:58 1 Report? 2 A. Yes. 3 Q. And at the bottom, do you see where it says "Pit 4 Counts"? 5 A. I do, yes. 6 Q. So at this section, you are referencing the 880 7 pits that the Final Judgment says require remediation; 8 correct? 9 A. Yes. 10 Q. And what you have done is calculated the 880 pits 11 using what you call the Stratus Compilation or Annex H1 12 from Mr. Cabrera's Report; is that right? 13 A. Yes, that's what I--what I did. 14 Q. And Mr. Younger did a similar analysis of this 15 before and reached the same conclusion; right? 16 A. Yes, he did. 17 Q. And your conclusion is that the 880 Pit Count 18 comes from the Selva Viva data compilation, or Annex H1; 19 right? 20 A. Yes, that's generally the conclusion 21 specifically--I mean, I can walk you through that analysis. 22 Q. Let me do the walking through, and we'll get 23 there. 24 A. Okay. 25 Q. Stop me at any point.</p>	<p style="text-align: right;">1018</p> <p>12:01 1 you noticed that many of the pits included information 2 in a column called Comentario del RAP; right? 3 A. Yes. 4 Q. And that column provides some information about 5 how a pit was or was not addressed in the Remedial Action 6 Plan, or the RAP; right? 7 A. That's my understanding. 8 Q. And you understand that the RAP was an agreement 9 between TexPet and the Ecuadorian Ministry of Mines to 10 clean up part of the Oriente as a part of a separate 11 Release Agreement? 12 A. That's my understanding. 13 Q. And if we look at Figure 18, you have listed here, 14 on the left side of your figure, the Comentario de RAP--del 15 RAP; right? 16 A. Yes. 17 Q. And these are the categories that you found in the 18 Stratus compilation and the Annex H1. 19 A. Yes. 20 Q. Are you aware of the fact that Chevron also 21 created its own pit compilations? 22 A. No, I'm not. 23 Q. Or that HBT AGRA, one of the two auditors hired 24 before the RAP, also had its own pit compilations? 25 A. No, I am not.</p>
<p style="text-align: right;">1017</p> <p>11:59 1 So you both looked at the Stratus Compilation and 2 Annex H1? 3 A. Yes. 4 Q. And you found that they are, for all intents and 5 purposes, identical in terms of the data that is in there? 6 A. Yes. One had one more pit listed. But for all 7 the other pits, they were identical. 8 Q. If you want to turn to the next page, we'll be 9 focusing more there. 10 Just to make sure our background is right, the 11 Stratus compilation is Stratus Consulting's attempt to 12 identify all of the pits in the Concession Area; correct? 13 A. I don't know what they were attempting to do. I 14 just know that that's--I mean, I know what the data in the 15 compilation is. 16 Q. It's a compilation of pits in the Concession Area. 17 You would agree with me on that? 18 A. Yes, that's what it is. 19 Q. And Annex H1 is the same thing. It's a 20 compilation of pits in the Concession Area? 21 A. Yes. 22 Q. Annex--and for the Tribunal's reference, Stratus 23 compilation is in the arbitral record at R-1217, and Annex 24 H1 is in the record at R-1216. 25 So when you looked at the Stratus compilation,</p>	<p style="text-align: right;">1019</p> <p>12:02 1 Q. Or Fugro McClelland, the other auditor hired 2 before the RAP, had its own pit compilations? 3 A. No, I'm not. 4 Q. So you didn't perform these same style 5 calculations on Chevrons' compilations or either auditor's 6 compilations; correct? 7 A. No, I didn't have them, so I could not have done 8 that. 9 Q. Okay. And you don't know whether the Lago Agrico 10 Court-appointed experts also had these same pit 11 compilations, do you? 12 A. Well, do you mean Mr. Cabrera? I mean, he had the 13 same thing that Stratus did. 14 Q. So, Mr. Cabrera had it. We all agree to that? 15 A. Yes. 16 Q. And Mr. Barros--do you know whether Mr. Barros had 17 it? 18 A. No, I don't know if Mr. Barros--I actually want to 19 revise my previous statement. 20 I don't know that Mr. Cabrera had it. It was 21 submitted under his name. I should say that differently. 22 Q. Okay. But that's just an understanding you have 23 from counsel; that's not something you have determined by 24 your own expertise? 25 A. Well, I received his Report, and this information</p>

12:03 1 is in it.
 2 Q. So both you and Mr. Younger concluded that the
 3 Stratus compilation was the most likely source of the
 4 Judgment's 880 Pit Count; right?
 5 A. Yes.
 6 Q. And you performed your analysis using the--using
 7 the Stratus compilation because it was in Microsoft Excel
 8 and therefore much easier to use; right?
 9 A. Yes, that's correct.
 10 Q. You could have done the same thing by hand using
 11 Cabrera's Annex H1?
 12 A. Yes, and--yes, I could have.
 13 Q. So you and Mr. Younger both found that Cabrera's
 14 Annex H1 listed 916 pits and the Stratus compilation listed
 15 917 pits; right?
 16 A. Yes.
 17 Q. So there's a difference of one between the two?
 18 A. Yes. And--and Footnote 23 identifies the pit that
 19 was--
 20 Q. Was different?
 21 A. --different.
 22 Q. Okay. So this footnote that Charapa 4 was not
 23 part of the Concession Area was intended to explain why you
 24 excluded Charapa 4; correct?
 25 A. Well, it's--it's what I understand, and it's why I

12:04 1 understand it wasn't listed in the Cabrera report--or might
 2 not have been listed in the Cabrera Report.
 3 Q. Charapa 4 was one of the blank lines, wasn't it,
 4 in the Comentario del RAP?
 5 A. It was, yes.
 6 Q. So it was one of the 676?
 7 A. It was one of the 676 in the Stratus compilation.
 8 Q. So then--
 9 A. I'm sorry. It was one of the 676 in the Stratus
 10 compilation. It did not appear in the Cabrera Anexo H1.
 11 Q. And you then excluded Charapa 4 to get to your
 12 revised count of 675; correct?
 13 A. I--yes, I excluded it from the Stratus
 14 compilation. If you do the calculations using the Cabrera
 15 annex, you don't need to exclude it, because it's not
 16 there.
 17 Q. Okay. But that's the only pit you excluded from
 18 the blank category; correct?
 19 A. Yes, that's the--the only pit I excluded from the
 20 blank category.
 21 Q. But you left the three pits that are at Charapa 1
 22 on the list, right, that are also in the blank category?
 23 A. Yes, because those appear in the--in the Cabrera
 24 Report, and I--I don't have any understanding that they're
 25 outside the Concession Area.

12:06 1 Q. So you didn't know that Charapa 1 is also not part
 2 of the Concession Area?
 3 A. No. I--I--until you said that, I--I did not know
 4 that.
 5 Q. Similarly, you left the four pits from Bermejo 1,
 6 3, and 4 on the list; right?
 7 A. Yes. Those appear in the Cabrera Report, and I
 8 have no understanding that they are outside the Concession
 9 Area.
 10 Q. But you did this using the Stratus compilation;
 11 right?
 12 A. Well, yes, because it was in Excel, but I--I also
 13 confirmed that the Stratus compilation and the Stratus
 14 Report are--sorry--the Stratus compilation and the Cabrera
 15 annex, other than Charapa 4, have the same data. So the
 16 effects are the same, that--excluding Charapa 4 from the
 17 Stratus compilation makes the Stratus compilation the
 18 Cabrera annex.
 19 So I guess I did it with the Stratus compilation
 20 but excluded it so that it was effectively doing it
 21 with--with either one.
 22 Q. But you also then left the pits at Coca 1 on the
 23 list, which is also not part of the Concession Area?
 24 A. Yeah, because those are in the--the Cabrera annex.
 25 Q. Did you know that Coca 1 was a Texaco-drilled well

12:07 1 that's actually now part of the Burlington concession?
 2 A. No, I did not.
 3 Q. So you included all of these other pits at all of
 4 these other sites that are not part of the concession, even
 5 though you removed Charapa 1 because it was not part of the
 6 Concession Area?
 7 A. I removed Charapa 4 because it is the single
 8 difference between the Stratus compilation and the Cabrera
 9 Report, and I--I understood that the--the reason it may
 10 have been different was because it wasn't in the Concession
 11 Area.
 12 Q. Okay. So the Younger Report found that the Lago
 13 Agrio Judgment did not include no-impact figures or
 14 similar--similar entries or those related to Petroecuador
 15 and Petroproducción; correct?
 16 A. I don't--I mean, I don't know if I describe it as
 17 a--as a finding or something that's found.
 18 The Judgment, reading the English translation,
 19 describes what it's including in the count, and it
 20 describes that it doesn't include those--those pits.
 21 Q. At the top of page 30, you say the same thing:
 22 Stroz Friedberg observed that the Judgment did not include
 23 no-impact figures or similar entry--entries or those
 24 related to Petroecuador and Petroproducción.
 25 Do you see that?

12:09 1 A. I do, yes.
 2 Q. Okay. What does "no impact" mean?
 3 A. To me--I mean, I--like I said, at an environmental
 4 level. I'm not offering an opinion what "no impact" means,
 5 just that's what it said.
 6 Q. But you went through these descriptions of sites
 7 and decided which ones were no impact or similar; correct?
 8 A. It--I mean, from the descriptions, it appeared to
 9 me which ones were saying there was no impact and which
 10 ones didn't say that.
 11 So, for example, I looked at the line "no detecto
 12 impactos"--and I apologize for my Spanish. I--I don't
 13 speak Spanish.
 14 But I looked at that and said that that, to me,
 15 seems to be saying no impact.
 16 Q. And your Spanish is correct there.
 17 But what are the other "or similar" categories
 18 that you removed because they are no impact?
 19 A. "No terminada coma piscina."
 20 I believe those were the only two.
 21 Q. So you made some determination of what you thought
 22 "no impact" meant, because you then also included no
 23 determination as a piscina, no finding of a pool or a pit?
 24 A. Yeah. I guess--yes. But to me that seemed to be
 25 saying there--there--if there wasn't a pit, there was no

12:12 1 correctly, that it's the same result.
 2 Q. So if we could put Figure 22 from the Younger
 3 Report--that's the equivalent of Figure 18--for the
 4 Tribunal's reference, the Younger Report is Tab 9, and
 5 Figure 22 is on Page 19, almost the last page.
 6 And both in your Report and Mr. Younger's
 7 Report, you start out with a full count of 917 pits and
 8 end up with 880; right?
 9 A. Yes.
 10 Q. But you and Mr. Younger included and excluded
 11 different pits, didn't you?
 12 A. Yes. In this chart, Mr. Younger doesn't include a
 13 pit in impactful action level and didn't exclude the
 14 Charapa 4. So there is a different pit that's counted.
 15 I--I can't speak for Mr. Younger, but my
 16 understanding of what he was trying--it was that we were
 17 applying the same analysis.
 18 Q. Your understanding is that you were applying the
 19 same analysis, the same methodology, to the same data set,
 20 yet you used different pits in that analysis and included
 21 and excluded different pits in that analysis?
 22 A. Yeah. I can't speak to what Mr. Younger did.
 23 I--I would view this--this table as having a--an
 24 error in that it should--it should exclude Charapa 4 from
 25 the blank, and there should be a--a line that says 1.

12:11 1 impact.
 2 Q. Wouldn't you agree with me, though, that
 3 remediation complete, remediación completa, also would be
 4 no impact?
 5 A. To me, that sounds like there was an impact and it
 6 was remediated, not specifically that there was no impact.
 7 Q. So you understand that means that the impact has
 8 been cleaned up?
 9 A. But that's what it--you know, on its face, that's
 10 what it seems to say to me--or that's what it seems to be
 11 saying.
 12 Q. But this exercise that you were doing here is to
 13 determine which pits needed to be cleaned still, yet you're
 14 including pits that have already been cleaned?
 15 A. No. I'm--I'm--I'm not making a determination as
 16 to whether or not pits need to be cleaned. I'm--I am
 17 applying the description in the Judgment to the Cabrera
 18 annex, as I read it.
 19 Q. So when Mr. Younger did this calculation, he
 20 came--or calculated that there are 880 pits; correct?
 21 A. Yes, he did.
 22 Q. And you used the same methodology and came up with
 23 the same number?
 24 A. Yes. If you apply the same methodology to the
 25 same data set, it's a good test that someone did it

12:14 1 I don't know if that's just--if that was a
 2 typographical error or if he--he used a different counting
 3 of the pits.
 4 Q. So you don't know whether he used the same
 5 methodology?
 6 A. Well, he used the same methodology in that he--he
 7 read the Judgment, tried to apply that description to the
 8 Cabrera Annex or the Stratus compilation and--and came to
 9 880.
 10 Q. Let's move away from Pit Counts, and let's look at
 11 your analysis of the Zambrano Computers, beginning with
 12 your Second Report from August 15th, 2014, and that is
 13 Tab 2.
 14 A. Yes.
 15 Q. Did you analyze the Zambrano hard drives to make
 16 sure they were not tampered with?
 17 A. Yeah. I looked for--for evidence of that.
 18 Q. And did you see any evidence that they were
 19 tampered with?
 20 A. I noted that--that on one of the computers
 21 there--the last apparent activity on the computer was
 22 the--the bulk copying of the group of files and then the
 23 deletion and said that that could have been consistent or
 24 that it was consistent with--I guess with tampering, but I
 25 don't know what the motivation was.

12:16 1 Q. And that was the only indication that you found of
 2 tampering, in your definition of "tampering"?
 3 A. That was the--the only evidence that I--I found
 4 and highlighted, yeah.
 5 Q. Okay. And we will definitely come back to your
 6 contentions about bulk copying, but let's do some
 7 preliminary issues first.
 8 Actually, you know what? Let's--let's just talk
 9 about the bulk copying while we're here.
 10 A. Sure.
 11 Q. In your Second Report, you discuss the issue of
 12 bulk copying on the old and new Zambrano Computers; right?
 13 A. I do describe that, yes.
 14 Q. And you conclude that, "In my experience, the bulk
 15 copying of files will destroy data, and bulk copying and
 16 subsequent deletion of the copied files is consistent with
 17 an attempt to overwrite previously deleted data."
 18 Is that right?
 19 A. That's what I describe in my Report, yes.
 20 Q. Okay. But as a qualifier, you do state at the
 21 beginning of that sentence that you, "Do not know the
 22 motivation for these actions"; right?
 23 A. Yes.
 24 Q. And that's still true today?
 25 A. Yes.

12:18 1 Q. You understand that, when one deletes documents on
 2 a computer, they still remain on the computer, generally
 3 speaking?
 4 A. Yes.
 5 Q. So if I deleted your document from the
 6 presentation this morning, that file would physically still
 7 be on your computer, but a normal user would not be able to
 8 access it?
 9 A. I understand that.
 10 Q. And that you would be able to, as a forensic
 11 examiner, use your forensic tools likely to recover that
 12 file; right?
 13 A. Yep.
 14 Q. Okay. And that file remains in unallocated space
 15 on the hard drive?
 16 A. That's correct.
 17 Q. And you point to the fact that one may get rid of
 18 deleted documents or files in the unallocated space by
 19 overwriting the deleted documents; right?
 20 A. That is correct.
 21 Q. And this can be done, you say, by copying data
 22 onto a computer to fill up the unallocated space and
 23 thereby overwrite previously deleted files?
 24 A. Well, that's--that's something one can do,
 25 and--and that the copying of files--or creation of any new

12:19 1 file can overwrite data in unallocated space.
 2 Q. But the person copying files to a computer has no
 3 control over where that new file is placed, do they?
 4 A. No. They can't--generally they can't control it.
 5 Q. So if I deleted your document from this morning,
 6 it is now still an unallocated space; the file is still
 7 sitting there; correct?
 8 A. The file is still sitting there, yes.
 9 Q. And you could copy a new file onto it and--in an
 10 attempt to try and overwrite that file; right?
 11 A. I could, yes.
 12 Q. Do you think you would be successful?
 13 A. It would depend on--on what other activity is
 14 occurring on the computer. The computer does generally
 15 tend to reuse certain portions, but I couldn't, as a
 16 layperson, target any one area for overwriting.
 17 Q. So if you copied one or two files on there, you
 18 would have no certainty that you actually overwrote your
 19 deleted file?
 20 A. No, I wouldn't--I wouldn't have certainty.
 21 Q. Okay. So the only way to be sure that you
 22 permanently removed a particular deleted file would be by
 23 copying new files onto the computer to completely fill the
 24 unallocated space; correct?
 25 A. Yes. The only way to be--to be sure that you have

12:20 1 eliminated anything unallocated space is to fill
 2 unallocated space with--with other data.
 3 Q. And if you don't fill the entirety of unallocated
 4 space, you have no idea whether a particular deleted file
 5 has been permanently erased?
 6 A. No. I would--I would have no idea. As you copy
 7 more files, it--I think most people would assume it becomes
 8 more likely that they've--they've deleted something that
 9 was unallocated space. But like I said, a forensic--as a
 10 forensic point, unless you fill unallocated space entirely,
 11 you would have no assurance that you've overwritten a file.
 12 Q. So if someone, for instance, filled up 1 percent
 13 of the unallocated space, they maybe would have 1 percent
 14 chance of actually overwriting the deleted file; right?
 15 A. As I said, the computer tends to reuse some space
 16 more than others. I can't, sitting here right now,
 17 quantify the percentages, but...
 18 Q. You stated the most recent bulk copying on the old
 19 Zambrano computer took place on September 26th, 2012, and
 20 that's in Paragraph 68 of your August Report.
 21 A. Yes, on--on Page 11, so everyone can find that.
 22 Q. Sorry. Yes. Page 11. Sorry.
 23 You provide that 2,202 files were created on that
 24 computer on that day; right?
 25 A. Yes, that's what I describe.

12:22 1 Q. And those files were mostly Microsoft Word
 2 documents; right?
 3 A. That--that's my recollection. I can't--I can't
 4 speak to the specific percentages, but that is my
 5 recollection.
 6 Q. The total size of these 2,202 files was 734
 7 megabytes.
 8 Do you remember that from Mr. Racich's Second
 9 Report?
 10 That is in Paragraph 68. And for the record, that
 11 would be Tab 5, Racich's Second Report at November 7, 2014,
 12 Paragraph 68.
 13 A. Yes. I--I see him saying that it was only 734
 14 megabytes. And I--I believe I would have confirmed that.
 15 I believe that number to be true.
 16 Q. This is less than 1 percent of the total space on
 17 the Old Computer; right?
 18 A. Yes, it's less than 1 percent of the total space.
 19 Q. But you didn't mention that in your First Report
 20 where you brought up the bulk copying?
 21 A. No, I didn't describe that in the Report.
 22 Q. And it's also less than 4 percent of the
 23 unallocated space on the Old Computer; right?
 24 A. Yes.
 25 Q. And you didn't mention that in your earlier report

12:24 1 either, did you?
 2 A. No, I did not.
 3 Q. The fact that it's such a small percentage of
 4 files indicates that it's very unlikely that anything was
 5 actually deleted, wouldn't you agree?
 6 A. Well, no. Regardless of the--the percentage--I
 7 mean, there's a--there's a decent chance something was
 8 overwritten. I don't know what that--that would have been.
 9 But creating a new file, essentially regardless of its
 10 size, has a chance of overwriting something.
 11 Q. But the person who creates that file would have no
 12 idea which file was overwritten; right?
 13 A. No, they--they wouldn't. I--I--well, I wouldn't
 14 be able to tell. I don't know whoever--if anyone is doing
 15 this with an intent to destroy data, what they knew or
 16 didn't know. They may just think that if you create a
 17 file, it destroys the most recently deleted file. I--and
 18 I've heard people think that.
 19 So I can't speak to what whoever did the copying
 20 and deletion thought. I also I think say clearly I'm
 21 not--I'm not--I'm going to say I do not know the motivation
 22 for the actions.
 23 Q. And I agree that we don't know the motivation of
 24 the actions.
 25 As a forensic expert sitting here today, wouldn't

12:25 1 you agree with me that copying 734 megabytes--it is only
 2 4 percent of the unallocated space--would be an incredibly
 3 ineffective (sic) way to overwrite a previously deleted
 4 file?
 5 A. I would agree that if you were trying to--if--if
 6 you knew what you were doing and were trying to get rid of
 7 all deleted files, it would be ineffective.
 8 I--I can't speak to whether or not someone knew
 9 what they were doing; just that I have seen, in my
 10 experience, people try and destroy data by creating new
 11 copies of files.
 12 And it doesn't strike me as unreasonable to think
 13 that someone might think that they--that if they created
 14 2,000 files on a computer, that they might overwrite
 15 something that had been deleted.
 16 But again, I--I don't know why someone did that or
 17 what they were trying to do.
 18 Q. And again, putting aside what they are trying to
 19 do or their motivation, as a forensics expert, you would
 20 agree with me that it was not an effective way to overwrite
 21 those files?
 22 A. It would not have been effective to overwrite all
 23 of the deleted files on the computer. It likely would have
 24 overwritten information on the computer, and that's the
 25 point I try and make clear.

12:26 1 In addition to talking about the unallocated
 2 space, there are what's called the "MFT" on the computer.
 3 The MFT is like an index of all the files on the drive.
 4 When you delete a file, the file's contents remain in
 5 unallocated space to be overwritten, and the records for
 6 that file remain in the MFT to be overwritten. They are
 7 marked as deleted, but they're still there.
 8 So if you created 2,202 files, as were done on the
 9 Zambrano Old Computer, you'd both be putting files into
 10 unallocated space, which would potentially overwrite
 11 information; and you would have reused 2,202 MFT entries.
 12 So whatever was in those MFT entries would be overwritten.
 13 As to whether or not that would be effective--if
 14 you were trying to destroy a single file, it would entirely
 15 depend on where the computer--which MFT entries the
 16 computer choose--chose to overwrite and what areas of
 17 unallocated space.
 18 And again, I don't--I don't know what someone was
 19 trying to do. I am trying to highlight that that action
 20 would have overwritten data, and we don't now know what
 21 that data was; not--not to say that it was effective or
 22 ineffective. We don't know what it was, so we can't
 23 determine whether or not it was effective.
 24 Similar, we don't know the motivations, we don't
 25 know that someone was trying to do that, but we know that

12:28 1 it happened.
 2 Q. Just one technical question. We'll just skip past
 3 most of that.
 4 Is there a limit on the number of MFT entries that
 5 can be on a computer?
 6 A. No. The MFT--if it hits the maximum size--the MFT
 7 is set up so that it has a certain number of records in it.
 8 When it hits that number of records, it will grow the MFT;
 9 new space will be assigned to the MFT.
 10 Q. Do you know how many MFT entries were on this
 11 computer?
 12 A. No, I don't know sitting here right now.
 13 Q. But it's probably a lot more than 2,000?
 14 A. Oh, yeah. There were--I mean, on any computer,
 15 even without any user activity, there will be thousands of
 16 MFT entries just from installing Windows.
 17 Q. Right. The 2,202 files that were copied into a
 18 folder on the Old Computer were copied into a folder called
 19 "Respaldo PC Pentium 4."
 20 Do you know what "Respaldo" means in Spanish?
 21 A. I don't speak Spanish. I understand it, I think
 22 from Mr. Racich's Report, to mean backup.
 23 Q. So these 2,202 files were copied into a backup
 24 folder. You would agree with that?
 25 A. Yes.

12:29 1 Q. Would you agree with me that that's a pretty good
 2 indication that these files were created as a backup?
 3 A. That file name alone would suggest that. It seems
 4 odd to me that you would make a backup and then delete it.
 5 That's not normally how people make--it's not a backup if
 6 you then delete it.
 7 So again, I don't know what the motivation was.
 8 I'm just stating that it happened.
 9 Q. And looking at the New Computer, you discuss a
 10 bulk copying of data on July 9th, 2012, which resulted in
 11 the creation of 4,701 new files; right?
 12 A. Yes. That's correct.
 13 Q. You didn't mention in your Report, though, that on
 14 July 9th, 2012, a new user profile was created for Juan
 15 Encarnación on the New Computer, did you?
 16 A. No, I did not.
 17 Q. Would you agree with me that it's more likely that
 18 copying files on the same day that a user has his profile
 19 created on a computer is more likely just giving that user
 20 his files and instead is not an attempt to overwrite data?
 21 A. Yes. I--again, I'm not saying that that copy was
 22 an attempt to overwrite data, just that it very likely did
 23 overwrite data.
 24 Q. Nor did you mention in your Report that the new
 25 files created on the New Computer accounted for less than

12:31 1 one and a half of the total space on that hard drive and
 2 approximately 7 percent of the unallocated space?
 3 A. No, I did not describe that.
 4 Q. And again, the same would have hold (sic) true in
 5 terms of to effectively remove any particular file, one
 6 would have to overwrite the entirety of unallocated space;
 7 correct?
 8 A. Yes. To effectively remove a deleted file, you
 9 would have to--without using sophisticated data destruction
 10 techniques, you'd have to just overwrite all of unallocated
 11 space.
 12 Q. Would you agree with me that we either have an
 13 inept data destroyer or someone who is just creating user
 14 profiles for it to be used at the Court?
 15 A. On the New Computer, yes, it seems that the copy
 16 on July 9th was a creation of a user profile which--why I
 17 highlight that that would have--I mean, it's after the
 18 relevant time period, which is why we're able, perhaps
 19 not--we're maybe not to recover all of the evidence that
 20 would have been there prior, but that bulk copy would have
 21 overwritten evidence. That's what I'm trying to highlight
 22 there.
 23 Q. Okay. Could we move on to Page 27 of your
 24 August 15th, 2014, Report.
 25 A. Yes.

12:33 1 MR. EWING: And actually, before I start this
 2 line, Members of the Tribunal, when would be a good time
 3 for us to take a break?
 4 PRESIDENT VEEDER: Whenever you think it's
 5 appropriate.
 6 MR. EWING: Well, I could go all afternoon, but we
 7 are at an easy stopping point.
 8 PRESIDENT VEEDER: Well, let's stop now.
 9 MR. EWING: So I would be happy to take a break.
 10 PRESIDENT VEEDER: I don't think anybody is
 11 complaining.
 12 MR. EWING: Let's take a break.
 13 PRESIDENT VEEDER: Let's come back at 25 to 2:00,
 14 and we'll resume.
 15 And you've heard me say this before--
 16 THE WITNESS: Understood.
 17 PRESIDENT VEEDER: --please don't discuss the case
 18 or your testimony away from the Tribunal.
 19 THE WITNESS: Understood.
 20 (Whereupon, at 12:33 p.m., the proceedings were
 21 adjourned until 1:36 p.m., the same day.)
 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

01:39 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

01:37 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

01:40 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

01:45 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.

01:43 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

01:46 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

01:47 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

01:49 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;

01:51 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

02:00 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

02:01 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?

02:04 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.

02:10 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

02:12 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

02:13 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.

02:16 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

02:18 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

02:20 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, 2010, 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?

02:30 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

02:31 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.

02:32 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 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 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

02:43 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.

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 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.

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

03:03 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 compared 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.

03:05 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

03:08 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

03:10 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--

03:11 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

03:15 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,

03:17 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

03:18 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.

03:21 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.

03:24 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

03:26 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

03:29 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?

03:32 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.

03:33 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

03:36 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.

03:41 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

03:40 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.

03:43 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?

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

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

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?

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.

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

04:08 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 Pelletier.
 14 Q. And how long was the period of time between
 15 Chevron's folks getting hold of this and Mr. Pelletier
 16 taking 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

04:09 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?

04:12 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

04:14 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.

04:16 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

04:18 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.

04:20 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

04:21 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?

04:22 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 cover 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 say. 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

04:37 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 actual sitting at the keyboard, you don't have that
 14 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

04:39 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 texts 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

04:40 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 Document. 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

04:43 1 March 4th. This is consistent with the adding of document
 2 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.doc 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

04:45 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 data.
 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

04:48 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.

04:50 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

04:51 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

04:54 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

<p>Sheet 60</p> <p style="text-align: right;">1148</p> <p>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.</p>	<p style="text-align: right;">1150</p> <p>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.</p>
<p style="text-align: right;">1149</p> <p>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.</p>	<p style="text-align: right;">1151</p> <p>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 work, 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 a station? 25 A. I believe that's correct.</p>

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

05:08 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?

05:07 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?

05:09 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

05:12 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

05:11 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?

05:13 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 you 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

05:17 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

05:16 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

05:18 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

05:20 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 CPJS;
 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?

05:21 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

05:23 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

05:29 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?

05:27 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

05:31 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

05:32 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

05:34 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).

05:37 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

05:52 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

05:50 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,

05:53 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
 22 Usuario. for a speech that Ecuador says was prepared by
 23 Mr. Guerra in late 2009, early 2010, wouldn't you agree
 24 with me that there is forensic evidence indicating that
 25 Mr. Guerra used a computer with the Microsoft user name

05:55 1 registered to 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.

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.

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?

06:07 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.

06:09 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

06:10 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.

06:13 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 read 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.

06:15 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

06:16 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

06:19 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.

06:20 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

06:23 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