STROZ FRIEDBERG

CHEVRON CORP. AND TEXACO PETROLEUM COMPANY

V.

THE REPUBLIC OF ECUADOR,
Bilateral Investment Treaty Arbitration

Prepared by
Spencer Lynch

January 14, 2014

Table of Contents

I.   INTRODUCTION

Stroz Friedberg, LLC ("Stroz Friedberg") was retained by King & Spalding, counsel for Chevron Corporation and Texaco Petroleum Company (collectively, "Chevron"), to preserve, authenticate, and/or review data described below and provide an expert report for an international arbitration against the Republic of Ecuador. Stroz Friedberg also was retained in other related matters by Gibson Dunn & Crutcher, LLP (together with King & Spalding, "Counsel"). In addition, I have performed work with Ramiro Garcia Falconi, Alberto Guerra's criminal defense counsel in Ecuador. Counsel asked Stroz Friedberg to, among other things, perform an analysis of two computers used by Nicolas Zambrano (the "Zambrano Computers"), the judge who issued the February 14, 2011 judgment against Chevron (the "Ecuadorian Judgment") in the Lago Agrio Litigation.

Prior to this report, I authored and submitted multiple other reports for use in this case and other related cases. My first report in this case was dated October 7, 2013 (the "October BIT Report"). My background and qualifications are set forth therein. My most recent report was dated August 14, 2014 (the "Lynch Zambrano Report"). Where possible, I have adopted the defined terms used in those prior reports and the reports of other experts in this case.[1]

Since submitting my most recent report, I have been provided with a report authored by J. Christopher Racich, dated November 7, 2014 (the "Racich Zambrano Report"), that sets forth his conclusions related to his analysis of the Zambrano Computers and his assessment of some of the conclusions set forth in my prior reports.

II.   EXECUTIVE SUMMARY

There are important areas of agreement between the Lynch Zambrano Report and the Racich Zambrano Report. For instance, we agree that the evidence is consistent with text being copied and pasted into Providencias, the document that contains text from the Ecuadorian Judgment. Additionally, we agree that USB devices were used with both Zambrano Computers. However, there are also substantial issues where Mr. Racich is silent or we disagree. While my prior reports have set forth substantial analysis of the content of the Ecuadorian Judgment and the Lynch Zambrano Report compared that evidence to the Zambrano Computers, the Racich Zambrano Report is largely silent on those issues. Where Mr. Racich does offer analysis and conclusions that disagree with the Lynch Zambrano Report, his analysis and conclusions are flawed.

---

[1] In the event of any conflict in the defined terms between any experts, the terms used herein refer to the terms as defined in my prior reports.

A. CONTENT OF THE ECUADORIAN JUDGMENT

The analysis of the content of the Ecuadorian Judgment and the Zambrano Computers shows that, at least for portions of the document, the content was not generated or first drafted on either of the Zambrano Computers. Mr. Racich's analysis and conclusions do not address the content of the Ecuadorian Judgment described in the October BIT Report or the Lynch Zambrano Report. Instead, he is silent, offering no opinions or analysis, on two substantive issues related to the content of the Ecuadorian Judgment, and on a third issue the analysis he presents does not account for the evidence. Specifically:

1. Mr. Racich's analysis is silent on the evidence that the Plagiarized Documents served as the source of text that appears in both Providencias and in the Ecuadorian Judgment. He is also silent on the evidence that the Plagiarized Documents were not found on either of the Zambrano Computers.

2. Mr. Racich's analysis is silent on the evidence that Excel, the program that would have been used to copy text and derive statistics from the Unfiled Selva Viva Database, was essentially unused on the Zambrano Computers.

3. Mr. Racich's discussion of the Zambrano Computers' Internet usage is inconsistent with Mr. Zambrano's testimony about content found in the Ecuadorian Judgment, and the Internet usage evidence that Mr. Racich cites does not account for the presence of citations to cases from the USA.

B. OTHER DISAGREEMENTS WITH MR. RACICH

Where we disagree, Mr. Racich's conclusions are either unsupported by the evidence or contradicted by the evidence and/or by Mr. Racich's own assumptions. Additionally, to support his conclusions, Mr. Racich offers speculation inconsistent with the evidence. Based on the flawed analysis and speculation, Mr. Racich concludes that the evidence is consistent with the Zambrano Computers "being used to write the Lago Agrio Judgment."[2] Mr. Racich's conclusion is unsupported. Instead, as set forth herein, the evidence he addresses is consistent with multiple authorship possibilities, including that the text of the Ecuadorian Judgment was generated elsewhere and transferred to the Zambrano Computers through USB devices, by having someone re-type a pre-written document, or through another method.

Specifically, the Racich Zambrano Report's conclusions are flawed for the following reasons:

1. Mr. Racich's analysis of how text was added to Providencias is flawed and leaves open multiple possibilities for third party sources of the text in the Ecuadorian Judgment. Importantly, Mr. Racich's analysis of the rate at which text was added to Providencias

---

[2] Racich Zambrano Report at 6.

assumes that Providencias was edited every calendar day from October 11, 2010 to December 28, 2010 and he concludes that, at least for a portion of the document, text was added at a rate of one page per day. However, the forensic evidence, specifically the 53 hours of edit time, shows that Ecuadorian Judgment text was added to Providencias at a rate of at least 17.5 pages per 8 hour day.

2. Mr. Racich speculates that text added to Providencias between December 21, 2010 and December 28, 2010 was copied from another document found on the Zambrano Computers, Caso Texaco. However, none of that text was found in Caso Texaco or in any other document found on the Zambrano Computers.

3. Mr. Racich offers speculation inconsistent with the evidence to support Mr. Zambrano's testimony that solely the New Computer was used to draft the Ecuadorian Judgment. The evidence shows that whoever saved Providencias on multiple occasions was using the Old Computer to do so.

4. Mr. Racich's statement that "there is no evidence in the metadata that the versions of Providencias found on Mr. Zambrano's computers were provided in any way by Mr. Guerra, Pablo Fajardo, or anyone else"[3] is not responsive to who authored the content of the document. His statement refers only to the recorded Author and Last Saved By names, and only shows which of the Zambrano Computers was used to save Providencias. For example, his analysis, for one example, does not rule out that text could have been copied from a file on a USB device that was created by Mr. Fajardo, Mr. Guerra, or any other third party.

5. Mr. Racich speculates about the content of files on USB devices used with the Zambrano Computers. The content of those "USB files" is unknown to both Mr. Racich and me. It is thus not knowable to us whether any of those USB files contained Ecuadorian Judgment text.

6. Mr. Racich's claim that Stroz Friedberg did not provide the serial numbers of USB devices used on both the Zambrano Computers and the Guerra Computer is baseless.

7. Mr. Racich's claim that the copying of documents on September 26, 2012, the penultimate action on the Old Computer, was most likely "a normal backup"[4] of files is implausible because it ignores that the ultimate action was to delete that "back up."

In addition to the flaws in the Racich Zambrano Report, there are two flaws in Ecuador's Supplemental Counter-Memorial that are not discussed in the Racich Zambrano Report. First, although Ecuador states that "the entire final Judgment appears on Judge Zambrano's computer within the Providencias.docx document,"[5] there is no complete and stand-alone version of the Ecuadorian Judgment on either of the

---

[3] Racich Zambrano Report at 20.

[4] Racich Zambrano Report at 68.

[5] Supplemental Counter-Memorial at 75.

Zambrano Computers, there is no evidence that the final Ecuadorian Judgment was saved on either Zambrano Computer on February 14, 2011, the day it was issued, and evidence shows that it was not uploaded to SATJE using either of the Zambrano Computers on February 14, 2011. Second, although Ecuador suggests that CDs or DVDs may account for the source of Plagiarized Text in the Ecuadorian Judgment, there is no forensic evidence on the Zambrano Computers to support that suggestion.

C. ALLEGATIONS MADE BY MR. RACICH

Finally, Mr. Racich alleges that certain of my conclusions in the Lynch Zambrano Report are based on "speculation and without scientific merit."[6] As set forth herein, my conclusions are fully supported by the evidence.

III. BACKGROUND

The conclusions in the Lynch Zambrano Report related to the Zambrano Computers are:

1. 82 of the 105 Additional Guerra Documents, documents found on Mr. Guerra's computer containing drafts of rulings issued in cases other than the Lago Agrio Litigation, also were found on the two Zambrano Computers and, in every case, the versions of the draft rulings found on the Zambrano Computers post-date the corresponding instances of the rulings on the Guerra Computer.

2. The Guerra Computer and the Zambrano Computers shared 9 USB devices between them.

3. Evidence from the Guerra Computer, the USB devices, TAME shipping records, and the Zambrano Computers is consistent with Mr. Guerra's testimony that he sometimes "shipped draft rulings to Mr. Zambrano…on flash drives"[7] where those draft rulings were subsequently issued by the court in cases that were demonstrably connected to Mr. Zambrano.

4. None of the Plagiarized Documents that served as sources of text for the Ecuadorian Judgment were on the Zambrano Computers.

5. The Zambrano Computers contain a version of one of the Plagiarized Documents, the "Index Summary," that is significantly different than the January and June Index Summaries analyzed by Professor Leonard, and the version on the Zambrano Computers lacks almost all of the plagiarized text contained within the Ecuadorian Judgment.

6. Neither of the Zambrano Computers contains the Unfiled Selva Viva Data Compilation.

---

[6] Racich Zambrano Report at 72.

[7] Guerra Witness Statement at 15.

7. The forensic evidence found on the Zambrano Computers is inconsistent with, and in some aspects cannot be reconciled with, Mr. Zambrano's testimony about how the Ecuadorian Judgment was purportedly drafted on the newer of his two court assigned computers.

8. Additionally, data was copied, in bulk, onto both of the Zambrano Computers while they were in use. One of those bulk copies was made onto, and then deleted from, the Old Computer after the last apparent use of that computer. Those bulk copies would have overwritten data on the computers.

In the Racich Zambrano Report, Mr. Racich reaches two conclusions related to the text of the Ecuadorian Judgment. His first conclusion, that "the analysis of the New Computer and Old Computer is consistent with those computers being used to write the Lago Agrio Judgment,"[8] is cast as a comparison of the forensic evidence to that which Mr. Racich would expect to see if the computers were used to draft the Judgment, regardless of the identity of the drafter. The second conclusion, that the forensic evidence is "consistent with Mr. Zambrano and his assistant using the two computers in his office over multiple months to write and edit the document that became the Lago Agrio Judgment,"[9] is cast as a comparison of the forensic evidence to Mr. Zambrano's testimony but does not reconcile the evidence with that testimony. Mr. Racich's analysis does not note Mr. Zambrano's testimony as to when drafting of the Ecuadorian Judgment began, how long he worked on the Ecuadorian Judgment, or that the "document that became the Lago Agrio Judgment"[10] also contains text that pre-dates and text that post-dates the Ecuadorian Judgment.

IV.   MATERIAL RELIED UPON

In performing the analysis described herein, I considered the following materials in addition to those set forth in my October BIT Report and the Lynch Zambrano Report:

1. The Supplement Expert Report of J. Christopher Racich, dated November 7, 2014 (the "Racich Zambrano Report");

2. The Track 2 Supplemental Counter-Memorial from the Republic of Ecuador, dated November 7, 2014 (the "Supplemental Counter-Memorial");

3. Two PDF files, AUDITORIA CNJ001.pdf and AUDITORIA CNJ002.pdf, that contain records extracted from the SATJE system (the "SATJE Logs") and a cover letter that accompanied the records (the "SATJE Log Cover Letter", attached together with the SATJE Logs as Exhibit 1);

---

[8] Racich Zambrano Report at 6.

[9] Racich Zambrano Report at 9.

[10] Racich Zambrano Report at 9.

4. The "Stylometric Report of Computational Analysis of Extended Court Record in the Lago Agrio Case" of Dr. Patrick Juola, dated June 3, 2013 (the "June 2013 Juola Report"); and

5. The Expert Report of Juan Carlos Riofrío Martínez-Villalba, dated January 13, 2015 (the "Riofrio Report").

V.   ANALYSIS

As set forth in the Lynch Zambrano Report, text from the Ecuadorian Judgment was found on the Old Computer in five files with metadata reflecting that they had been created or last saved in the months leading up to and shortly after the issuance of the Ecuadorian Judgment on February 14, 2011.[11] Four of the five files were different versions of the same document, named Providencias. Those files were as follows:

1. A temporary copy of Providencias that was last saved on December 21, 2010 and contained 42% of the text from the Ecuadorian Judgment ("December 21 Providencias");

2. A temporary copy of Providencias that was last saved on December 28, 2010 and contained 66% of the text from the Ecuadorian Judgment (the "December 28 Providencias");

3. A temporary copy of Providencias that was last saved on March 4, 2011 and contained 99% of the text from the Ecuadorian Judgment ("March 4 Providencias"); and

4. The final version of Providencias that was last saved on March 18, 2011 and contained 99% of the text from the Ecuadorian Judgment ("March 18 Providencias").

In addition to the Providencias files, text from the Ecuadorian Judgment was found in a fifth file. That file was a temporary copy of another document, Caso Texaco, that was last saved on January 19, 2011 and contained 11% of the text from the Ecuadorian Judgment ("January 19 Caso Texaco"). No other recovered version of Caso Texaco, including the prior recovered version of Caso Texaco last saved on January 5, 2011 and the subsequent recovered version last saved on March 18, 2011, contained any Ecuadorian Judgment text.

A. MR. RACICH ANALYZES ONLY THE METADATA OF PROVIDENCIAS AND DOES NOT EXPLAIN HOW THE CONTENT IN PROVIDENCIAS WAS GENERATED

The Racich Zambrano Report does not discuss the text in the Ecuadorian Judgment that came from the Plagiarized Documents, when that text was introduced into the Ecuadorian Judgment, or how that text was inserted into the Ecuadorian Judgment. In addition, Mr. Racich's analysis of Internet history does not

---

[11] In addition to these files, there was a file found on the New Computer, DAÑOS AMBIENTALES CHEVRON TEXACO, that contained text from the Ecuadorian Judgment. That file was created and last saved in 2012 more than a year after the Ecuadorian Judgment was issued.

explain how text in the Ecuadorian Judgment related to cases from the United States was found or how it was introduced into the Ecuadorian Judgment.

1. THE RACICH ZAMBRANO REPORT DOES NOT ACCOUNT FOR THE PLAGIARIZED DOCUMENTS IN ANY WAY

The Ecuadorian Judgment contains text that is identical or nearly identical to text from documents produced in other related litigation that were not found in the documents filed with the Ecuadorian Court. None of the Plagiarized Documents that served as sources of text for the Ecuadorian Judgment were on the Zambrano Computers. Mr. Racich offers no analysis to account for the source of that plagiarized text in the Ecuadorian Judgment. The recoverable instances of Providencias show that multiple instances of text from the Plagiarized Documents were added to Providencias before December 21, 2010, and between December 21 and December 28, 2010.

While Mr. Racich's conclusion does not account for the text from the Plagiarized Documents, Ecuador, in its Supplemental Counter-Memorial, states that "many additional documents were submitted [to the Court] on CDs and DVDs,"[12] suggesting that this accounts for the presence of plagiarized text in the Judgment. I have reviewed the June 2013 Juola Report and understand that he has reviewed the content of 69 CDs provided to Ecuador's National Court of Justice in this case. According to that report, those 69 CDs represented "a copy of all digital information stored on compact discs (CDs) or DVDs in the Lago Agrio matter."[13] In his analysis of the content of the CDs, he found none of the plagiarized text.

In addition, the only evidence of a user of either of the Zambrano Computers accessing a CD or DVD between October 2010 and March 2011, the time period during which Providencias was edited, was on November 25, 2010. On that date, a user of the New Computer opened "My Disc."[14] Mr. Racich identifies in his report that the "My Disc" device appears "related to the IT Department's setup of Microsoft Office on Mr. Zambrano's New Computer."[15] There is no other forensic evidence of access to a CD or DVD between October 2010 and March 2011 on either of the Zambrano Computers. Thus, there is no forensic evidence to support Ecuador's suggestion that the plagiarized text found in the Ecuadorian Judgment originated from a CD or DVD accessed using the Zambrano Computer.

---

[12] Supplemental Counter-Memorial at 89.

[13] The June 2013 Juola Report at 7.

[14] The Lynch Zambrano Report and Racich Zambrano Report identify "My Disc" as a USB device. It is, in fact, a CD or DVD, as shown by the "D" drive letter in Table 24 of the Lynch Zambrano Report and the underlying forensic evidence.

[15] Racich Zambrano Report at 61.

2. THE EVIDENCE SHOWS THAT EXCEL, THE PROGRAM WITH WHICH STATISTICS APPEARING IN THE JUDGMENT WERE LIKELY CALCULATED, WAS NOT USED

Additionally, the evidence shows that between December 21, 2010 and December 28, 2010, text and statistics from the Unfiled Selva Viva Data Compilation, a series of Excel spreadsheets, were added to Providencias. As described in the Lynch Zambrano Report, the Office Session logs for Microsoft Excel show that Excel was not opened during that time period on either of the Zambrano Computers, and I am not aware of any explanation beyond that as to how the text and statistics from these spreadsheets were calculated and inserted into the Ecuadorian Judgment.

As described in my October BIT Report and the Lynch Zambrano Report, I have calculated the sample statistics appearing in the Ecuadorian Judgment using the Unfiled Selva Viva Data Compilation. Calculating those statistics is a complex process and, based on my experience, it is not reasonably possible for someone to accurately calculate the statistics from the Unfiled Selva Viva Data Compilation without having access to the data in Microsoft Excel or a similar spreadsheet or database program. While Microsoft Excel is installed on the Zambrano Computers, there is no evidence on the Zambrano Computers of any of the other similar programs that I am aware of that could be used to calculate those statistics. Thus, in my opinion, in order for the Ecuadorian Judgment to have been drafted using the Zambrano Computers, the Unfiled Selva Viva Data Compilation spreadsheet document from which the text was plagiarized must have been available to the drafter in electronic form and accessed using Microsoft Excel. Yet there is no evidence that the Unfiled Selva Viva Data Compilation was available on the Zambrano Computers or that Microsoft Excel was used during the time period this text was inserted into Providencias. When cross-examined at the RICO trial, Mr. Zambrano admitted under oath that he did not know what an Excel spreadsheet was.[16]

I. MR RACICH ATTEMPTS TO DISMISS THE OFFICE SESSION EVIDENCE WITH NO EXPLANATION

Rather than provide an analysis of the Office Session log evidence, the Racich Zambrano Report attempts to dismiss such evidence with a general observation unsupported by analysis or any evidence. In his report, Mr. Racich states that "there is no accepted explanation of how [the Microsoft Office Session] log feature works, or whether it is a reliable indicator of anything," and that "Mr. Lynch gives no explanation or documentation"[17] regarding it. He states, without providing any examples or analysis, "[i]n my experience the log entries have been inconsistent (if they are created at all) on various computers I have analyzed"[18] and provides no discussion about the logs found on the Zambrano Computers or the

---

[16] Zambrano Testimony, Deposition at 278:9 – 278:11.

[17] Racich Zambrano Report at 72.

[18] Racich Zambrano Report at 73.

analysis found in the Lynch Zambrano Report beyond saying that "the conclusions that Mr. Lynch has provided are speculation and without scientific merit."[19]

Contrary to Mr. Racich's assertions, the Lynch Zambrano Report does describe how and when Microsoft Office Session logs are created, the data they track, and limitations to an analysis of those logs. Indeed, Ecuador cites the discussion of the Office Session logs in the Lynch Zambrano.[20] In conducting the analysis described in the Lynch Zambrano Report, I, with others working at my direction, performed extensive testing of the log files. An additional discussion of the testing performed by Stroz Friedberg is attached as Appendix 1. Consequently, there is no basis for Mr. Racich's statements on this point.

Mr. Racich also states that he is "aware of no documentation on the Microsoft Office Session log from Microsoft,"[21] implying that without any formal documentation from a software manufacturer, a digital forensic examiner should not be able to rely on evidence. In my experience, it is common for digital forensic examiners to perform testing and offer opinions about evidence notwithstanding the absence of formal documentation from a software manufacturer. Many of the most commonly used software programs are proprietary and the artifacts left on a computer by their operation are not publicly documented by the manufacturer.

II. IT IS GENERALLY ACCEPTED PRACTICE TO RESEARCH AND TEST SOFTWARE TO ANALYZE DIGITAL FORENSIC EVIDENCE

It is widely accepted for forensic examiners to perform testing to establish the way that artifacts are created in the absence of documentation from the manufacturer. As an example, exFAT is a proprietary file system created by Microsoft that is not publicly documented. Nonetheless, because of its growing prevalence, SANS, a widely respected digital forensics training organization, published a white paper on exFAT based on their testing "to be an aid in the performance of a digital investigation."[22]

In addition to publicly released white papers that document testing, I am aware, based on my experience, that it is common for digital forensic experts to perform research and testing as part of their work in preparing expert reports, declarations, witness statements, and other documents submitted to a court. I have done this before, and I am aware of multiple other experts who have done it, including Mr. Racich. For example, in another case, Mr. Racich described in a publicly available declaration[23] that he conducted

---

[19] Racich Zambrano Report at 72.

[20] Footnote 137 of Supplemental Counter-Memorial.

[21] Racich Zambrano Report at 73.

[22] Reverse Engineering the Microsoft exFAT File System, http://www.sans.org/reading-room/whitepapers/forensics/reverse-engineering-microsoft-exfat-file-system-33274, accessed January 14, 2014

[23] Declaration of J. Christopher Racich, dated 28 January, 2010, in *James River Management Co., Inc. et al. v Michael Kehoe et al.* (3:09CV387-REP).

research into a program that was not formally documented to determine how it operated and he offered opinions on its operations:

> *… I conducted research to determine whether there were any characteristics of the data destruction programs that Mr. Kenney admitted to using that would tend to make deleted and wiped files appear to be system files and not user-created files such as, for example, Word document or Excel spreadsheets. My research revealed that newer versions of Eraser, beginning with the 5.8 series of Eraser, can wipe files and give the wiped files names that make them appear to be system files…"*

In that declaration from another case, Mr. Racich cites an Internet website to describe the developers' intentions in having the software operate in the way in which it does. This website is not formal documentation from the manufacturer of the software. It does not describe in detail how the software operates or what conclusions a forensic examiner can draw from any artifacts left by the software. Instead, the website Mr. Racich cites is a "forum" where users ask for assistance in using the software. The person who describes why the software operates in the way it does has a disclaimer on his response that states:[24]

> *"I am not paid nor do I work for Heidi Computers Ltd. My views do not represent those of Heidi Computers Ltd"*

Finally, the Office Sessions logs are stored as "Event Logs," a type of forensic artifact that is well known and documented. There is information published by Microsoft about event logs and many forensic courses and resources that can inform a forensic investigation of event logs. Additionally, the Office Session logs are not "unknown" to the digital forensic industry, as implied by Mr. Racich. They are referenced in digital forensics-focused websites[25] and in published books.[26]

3. THE IDENTIFIED INTERNET ACTIVITY IS NOT CONSISTENT WITH MR. ZAMBRANO'S TESTIMONY

Mr. Zambrano testified that during the drafting process Ms. Calva used the New Computer to perform Internet research and found cases from United States that she had translated into Spanish through the

---

[24] Heidi Computers is the publisher of the software that is the subject of Mr. Racich's Declaration. Exhibit B of the Declaration.

[25] E.g., "The Microsoft Office Sessions Event Log …. events include how long the session was up, and how long it was active…." http://windowsir.blogspot.co.uk/2010/02/fun-analysis-stuff.html.

[26] E.g., The Art of Memory Forensics: Detecting Malware and Threats in Windows, Linux, and Mac Memory; copyright 2014 by John Wiley & Sons (page 269).

use of translation services.[27] The Lynch Zambrano Report sets forth that there is no evidence of either computer being used to find and then translate the cases. In the Racich Zambrano Report, Mr. Racich concludes that "a broader review of Internet activity on Mr. Zambrano's computer is consistent with his testimony regarding Internet usage."[28] Mr. Racich's analysis does not offer any evidence that is consistent with Mr. Zambrano's testimony, and his conclusion is unsupported by the evidence.

I.   THERE IS NO EVIDENCE THAT "FIELWEB" COULD BE USED OR WAS USED TO FIND CASES FROM THE UNITED STATES

From October 2010 to February 2011, the time period during which Providencias was typed, Mr. Racich identified a single website that enables legal research, "fielweb.com," accessed using the Zambrano Computers. Mr. Racich does not identify when the website was accessed, how many times it was accessed, or which computer was used to access it. The only recoverable Internet history on the Zambrano Computers between October 2010 and March 2011 shows that fielweb.com was accessed on two dates, December 2, 2010 and January 3, 2011. Both times it was accessed using the Old Computer. Mr. Racich provides no analysis of whether fielweb.com would allow access to cases from the United States. In fact, the Internet history referenced by Mr. Racich includes the Spanish language search term used by the user of the Old Computer on fielweb.com on December 2, 2010 – "Codigo de ejecution de penas."[29]

Moreover, I understand from the Riofrio Report that fielweb.com does not contain any information about the cases from the United States that are referenced in Providencias. Thus, the access to fielweb.com is neither consistent with Mr. Zambrano's testimony nor does it explain content in the Ecuadorian Judgment.

II.   THE AVAILABLE EVIDENCE SHOWS A SINGLE ACCESS TO THE TRANSLATION WEBSITE USING A DIFFERENT COMPUTER THAN THE ACCESS TO FIELWEB

Mr. Racich identified that on January 4, 2011 a user of the New Computer visited the site "www.windowslivetranslator.com." While Mr. Racich does describe that Internet history can provide evidence of how many times a website was visited, he does not provide the visit count associated with this webpage. The evidence from the New Computer reflects that the webpage was visited only once. Mr. Racich also does not explain how a user of the Old Computer could find international cases on the Old Computer using fielweb if the New Computer was used to access the translation service. Finally, Mr. Zambrano testified that Ms. Calva "would open the pages... and because it was very extensive, she would

---

[27] Zambrano Testimony, Deposition at 244:9 – 244:18, Testimony at 1619:4 – 1619:6

[28] Racich Zambrano Report at Heading V.B.ii

[29] I understand from Spanish speakers that, while this phrase may be incomplete, it would approximately translate to "Sentencing Guidelines Code," presumably for criminal matters.

print them" for Mr. Zambrano.[30] As set forth by Mr. Racich,[31] the computer used to access this translation website, the New Computer, did not have a printer at the time.

III. MR. RACICH'S DESCRIPTION OF WEBSITES THAT WERE ACCESSED DURING OTHER TIME PERIODS IS MISLEADING

Although Mr. Racich identifies other websites accessed using the Zambrano Computers related to legal research and Internet translation, he does not provide any evidence that any of these websites were accessed in the time period during which Mr. Zambrano claims the Ecuadorian Judgment was being drafted. Mr. Racich also notes that there are multiple types of Internet history:

> *When a person visits certain Internet sites the website places a small file called a "cookie" on the person's computer. When a person subsequently returns to that website the website accesses that cookie to retrieve the information stored there. That access is recorded in the Internet History just like access to the website's actual pages. This distinction is relevant because when as part of its normal operations the web browser deletes old Internet History, it often does not delete old cookies even while it deletes entries related to accessing the website's files.*

Mr. Racich is correct that "this distinction [between cookies and Internet history] is relevant."[32] The cookies identified by Mr. Racich provide evidence that the legal research and translation websites he highlights were accessed either long before or long after the Ecuadorian Judgment was issued. In describing some of those cookies, he speculates that "these cookies may have overwritten a previous cookie or may have been new."[33] He does not explain how a cookie might have overwritten a previous cookie or reconcile that with his statement that "as part of its normal operations…[the web browser] often does not delete old cookies."[34]

Mr. Racich's discussion of cookies is misleading in another way. The cookies Mr. Racich describes are dated in 2012. Yet, he states: "On the New Computer, during the October 2010 to March 2011 time period, the record of pages visited is minimal but many cookies are still available."[35] This misleadingly implies that the cookies he discusses are from the time period in which Mr. Zambrano claims the

---

[30] Zambrano Testimony, Deposition at 244:9 – 244:18.

[31] Racich Zambrano Report at 39.

[32] Racich Zambrano Report at 47.

[33] Racich Zambrano Report at 49.

[34] Racich Zambrano Report at 47.

[35] Racich Zambrano Report at 49.

Ecuadorian Judgment was drafted. The evidence reflects that they are not. Rather, they are from periods before and after the October 2010 to March 2011 timeframe.

Finally, while Mr. Racich identifies certain periods of time where he was able to identify gaps in the Internet history, he does not describe the volume of Internet history recovered from the Zambrano Computers between October 2010 and March 2011. I used the same tool that Mr. Racich used, Internet Evidence Finder, and "extracted all active and recoverable Internet History from both the Old and New Computers."[36] That process recovered approximately 50,000 Internet history records dated between October 2010 and March 2011, of which fewer than 10 relate to the fielweb.com or windowslivetranslator.com sites discussed herein. While both Mr. Racich and I agree that Internet history can be limited, there is substantial recoverable Internet history on the Zambrano Computers from the relevant time period.

In summary, Mr. Racich's conclusion is unsupported by his analysis of the evidence on the Zambrano Computers. He presents no evidence that the foreign cases Mr. Zambrano testified were identified through the Internet can be found on the single legal research website he identified as accessed between October 2010 and March 2011. He also fails to note that the only evidence of how that website was used shows that the search term was in Spanish, does not appear to be related to a search for foreign language cases, and does not appear to reference cases from the United States. Additionally, the translation website he identified was accessed on the New Computer while the legal research website was accessed from the Old Computer: Mr. Racich does not describe how Ms. Calva could perform legal research in a foreign language on one computer, and then use a translation website on another computer on a different day to translate the results of that legal research.

B. MR. RACICH'S ANALYSIS OF HOW TEXT WAS ADDED TO THE JUDGMENT IS FLAWED AND CANNOT RULE OUT THE POSSIBILITY THAT TEXT WAS COPIED FROM USB DEVICES

Mr. Racich offers the opinion that "the analysis of the New Computer and Old Computer is consistent with those computers being used to write the Lago Agrio Judgment."[37] In addition, Mr. Racich states that "increasing amounts of Lago Agrio Judgment Text was added to documents"[38] and that the "documents were edited and saved hundreds of times."[39] In offering these opinions, Mr. Racich compares his

---

[36] Racich Zambrano Report at 45.

[37] Racich Zambrano Report at 6.

[38] Racich Zambrano Report at 6.

[39] Racich Zambrano Report at 6.

assumptions as to how, hypothetically, someone would draft the Judgment to the evidence. However, his hypothetical assumptions are narrow and his analysis is flawed and misleading. Specifically:

1. Mr. Racich's analysis of the rate at which text was typed is flawed;
2. Contrary to his suggestion that there are "successive versions,"[40] the text that is found in the instances of Providencias is largely unedited in the Ecuadorian Judgment as issued;
3. Mr. Racich ignores the Office Session log evidence that corroborates the edit time of Providencias;
4. Contrary to Mr. Racich's suggestion that text was copied from Caso Texaco, the evidence suggests that text from unknown documents was copied into Providencias;
5. Mr. Racich offers speculation without scientific merit about the content of files on USB devices; and
6. Mr. Racich's conclusions that relate to whether text in the Ecuadorian Judgment originated with Mr. Guerra, Mr. Fajardo, or any other third party are unsupported by the evidence.

Together, the analysis set forth by Mr. Racich does not support his conclusions and in fact suggests that some of the text in Providencias came from unknown sources. While both Mr. Racich and I agree that text found in the Ecuadorian Judgment was copied from other sources, neither of us have identified any evidence to rule out that those sources were contained on USB devices or originated from Mr.Guerra, Mr. Fajardo, or others.

1. MR. RACICH'S ANALYSIS OF THE RATE AT WHICH TEXT WAS TYPED IS FLAWED

In analyzing the Providencias document (which he treats as the "Judgment"), Mr. Racich contends that the first "78 pages of the 188-page Judgment" were created at a rate of "approximately 1 page per day if the work were evenly spaced."[41] Mr. Racich's assertion is misleading and contradicted by the evidence. Mr. Racich assumes that the December 21 Providencias document was actively edited every day from the day it was created, October 11, 2010, to the day it was last saved, December 21, 2010, while ignoring, among other things, the edit time of the document which reflects how long the document was open between saves.[42] Moreover, Mr. Racich made this assumption in response to the Lynch Zambrano Report, which compared the edit time to the content and concluded that "66% of the Ecuadorian

---

[40] Racich Zambrano Report at Heading V.A.i

[41] Racich Zambrano Report at 13.

[42] "The edit time of a document created and drafted in Microsoft Word is a cumulative count reflecting the total amount of time elapsed while the document was open. Edit time only accumulates when a document is changed and then saved. If a document is opened and not changed before it is closed, the edit time will not advance. In addition, if a document is open and changed, left on the screen for a period of time with no additional changes, and then saved, the edit time will reflect the entire time the document was open until it was saved, not just the amount of time the changes were being made to the document." (Lynch Zambrano Report at 29.)

Judgment was present on the Old Computer as of December 28, 2010 in a file that could not have been edited for any more than 53 hours."[43] It is only by Mr. Racich having made this demonstrably false assumption that the document was edited every day since October 11, 2010 that he is able to conclude that the first 78 pages of the document were typed at approximately one page per day. Additionally, as set forth later, Mr. Racich's assumption is at odds with his conclusion as to which computer was used to edit Providencias.

First, for the December 21 Providencias, instead of assuming that the document was edited every calendar day, Mr. Racich could have compared the amount of Ecuadorian Judgment text in the document to the edit time recorded in the document. When his analysis is re-performed to account for the edit time, the evidence shows that the December 21 Providencias was typed at a rate of approximately 26 minutes per page (as set forth in Table 1). Assuming a typist typed for 8 hours per work day typing at an average of 26 minutes per page, they would be typing at approximately 18 pages per day, far faster than Mr. Racich's suggestion of "approximately 1 page per day."[44]

This comparison is more accurate than Mr. Racich's, but may in fact understate the pace at which the text was typed because the December 21 Providencias contains the text of another document (i.e., non-Ecuadorian Judgment text) that was likely copied from a pre-cursor document.[45] The edit time of the December 21 Providencias will include whatever time was spent working with that text in addition to the Ecuadorian Judgment text found in the December 21 Providencias.

Additionally, for the December 28 Providencias, Mr. Racich contends that, over a period of seven days, "approximately 45 pages of the 188-page Judgment were added – approximately 7 pages per day."[46] This analysis again ignores the edit time. Mr. Racich suggests that "it is likely that part of this additional text originated in another document on Mr. Zambrano's Computer, and that the user copied that text into the Providencias"[47] document. While he does not identify the text that was copied and pasted, his statement appears to acknowledge his belief that this rate of drafting is faster than he can reconcile with his conclusion. When Mr. Racich's analysis is corrected to account for the edit time, the evidence shows that the additional text added to Providencias between December 21, 2010 and December 28, 2010 was typed at a rate of approximately 27.5 minutes per page (as set forth in Table 1). Assuming an 8 hour work day, that represents approximately 17.5 pages per day.

---

[43] Lynch Zambrano Report at 26.

[44] Racich Zambrano Report at 13.

[45] Lynch Zambrano Report at 29.

[46] Racich Zambrano Report at 45.

[47] Racich Zambrano Report at 15.

I compared the edit time to the amount of text in the first two recovered instances of Providencias. For the comparison, I used the number of pages based on the pagination found in the recovered instances of Providencias. Table 1 below sets forth those comparisons.

Table 1 – Comparison between edit time and the amount of text in the first two recovered instances of Providencias

Document	Total Editing Time (Mins)	Total Editing Time (Hours)	No. of Pages Containing Judgment Text	Mins Per Page Calculation
December 21 Providencias	2107	35.12	81	26.01234568
December 28 Providencias (Additional Text Only)	1046	17.43	38	27.52631579

2. THE TEXT FROM THE RECOVERED INSTANCES OF PROVIDENCIAS WAS LARGELY UNEDITED IN THE ISSUED ECUADORIAN JUDGMENT

In addition to performing an analysis of the rate at which text was added to Providencias, Mr. Racich describes the recovered instances of Providencias as "several successive versions."[48] However, he does not provide any analysis to show whether or how the successive versions changed from their initial drafting to when the Ecuadorian Judgment was issued. As set forth in the Lynch Zambrano Report, I performed multiple text comparisons to set forth how the documents changed over time. In addition to that analysis, as set forth herein, I performed an analysis of how much of the text found in the December 21 Providencias, the December 28 Providencias, and the January 19 Caso Texaco was edited after those instances were last saved but before the Judgment was issued. In sum, this analysis shows that the text found in the December 21 Providencias, the December 28 Providencias, and the January 19 Caso Texaco was largely unedited in the issued Ecuadorian Judgment.

To perform this analysis for the December 21 Providencias, I compared the first line of Ecuadorian Judgment text ("María Aguinda, Ángel Piaguaje, y otros, amparados en el contenido de los artículos 2241 y 2256 de la anterior") and the last line of Ecuadorian Judgment text ("este juicio la peligrosidad de los elementos reportados en las inspecciones judiciales") from the December 21 Providencias and identified those lines of text in the Issued Ecuadorian Judgment. I then isolated the text between those two lines of text as the "Corresponding Issued Text."

I performed a similar analysis for the December 28 Providencias, identifying the first new line of Ecuadorian Judgment text ("Dicho esto y en atención a la peligrosidad de ciertos elementos contaminantes"), the last line of Ecuadorian Judgment text, and the Corresponding Issued Text for that

---

[48] Racich Zambrano Report at Heading V.A.i

block of text. For the purposes of this analysis, the first new line of text was identified as the line in the December 28 Providencias that immediately follows the last line in the December 21 Providencias. Finally, I performed the same analysis to identify the Corresponding Issued Text for the section of Ecuadorian Judgment text found in the January 19 Caso Texaco, the sole recovered instance of Caso Texaco that contains Ecuadorian Judgment text.

After identifying the Corresponding Issued Text for each of the three instances of draft Ecuadorian Judgment text found on the Zambrano Computers, I used WCopyFind[49] to quantify the differences between the text found in the instances of Providencias and Caso Texaco to its Corresponding Issued Text. Table 2 below sets forth the results of that analysis.

Table 2 – Differences between text found in Providencias and Caso Texaco and their Corresponding Issued Text

	December 21 Providencias	December 27 Providencias	January 19 Caso Texaco
Corresponding Issued Text in Ecuadorian Judgment (Page Range)	pp. 1 - 107	pp. 107 - 154	pp. 154 - 178
Corresponding Issued Text in Ecuadorian Judgment (No. Pages)	107	47	24
Percentage Match Between Providencias Instance and Corresponding Issued Text	94%	96%	97%

As set forth in the chart above, most of the text found in the two recovered instances of Providencias is found verbatim in the issued Judgment. While, as demonstrated in Exhibits 44 through 47 of the Lynch Zambrano Report, there were additional blocks of text added to the Corresponding Issued Text before the Ecuadorian Judgment was issued, this analysis shows that the text that did exist was typed at a rate of approximately 26 minutes per page and was largely unedited between the time it was typed and when the Ecuadorian Judgment was issued.

---

[49] WCopyFind, which generates a percentage score of how much text from one document was found in another, was used in the analysis set forth in my October BIT Report and the Lynch Zambrano Report. It is described more fully in both reports.

3. MR. RACICH IGNORES OFFICE SESSION EVIDENCE THAT CORROBORATES THE EDIT TIME

As set forth in relation to the usage of Excel, the Racich Zambrano Report does not offer any analysis of the Office Session logs found on the Zambrano Computers. The Lynch Zambrano Report explains that the Office Session logs show that:

1. Between October 11, 2010 (the date Providencias was created) and February 14, 2011 (the date the Ecuadorian Judgment was issued), Microsoft Word, regardless of what particular document was open, was open for 198 hours on the Old Computer and 36 hours on the New Computer;

2. Between November 1, 2010 (Mr. Zambrano testified that he began working on the Ecuadorian Judgment in November 2010) and February 14, 2011, Word was open for 167 hours on the Old Computer and 36 hours on the New Computer;

3. Between December 28, 2010 (the date of the latest recoverable version of Providencias prior to February 14, 2010) and January 21, 2011 (the date that the edit time of Providencias was reset using "Save As"), Word was open for 40 hours on the Old Computer and 4 hours on the New Computer; and

4. Between February 14, 2011 and March 4, 2011 (the date the Expansion and Clarification Order was issued), Word was open for 14 hours on the Old Computer and 3 hours on the New Computer.

I. THE OFFICE SESSION LOGS AND EDIT TIME OF PROVIDENCIAS CORROBORATE EACH OTHER

In addition to those time periods, an analysis of another time period demonstrates that the Office Session logs are consistent with the edit time. The Office Session logs for Microsoft Word, listed in full in Exhibit 85 to the Lynch Zambrano Report, reflect that Microsoft Word was active for 1,098 minutes (18.3 hours) between when the December 21 Providencias was last saved and when the December 28 Providencias was last saved. As set forth in the Lynch Zambrano Report, the edit time for Providencias shows that the file was open for 1,046 minutes (17.4 hours) in that same period. Over these 1,046 minutes, 38 pages of text were added to the Providencias document.

The difference of 52 minutes between 1,098 and 1,046 reflects the fact that the Office Session logs track a different statistic than edit time, and the Office Session logs include time that Word was active with either no document or a different document open. As set forth in table 21 of the Lynch Zambrano Report, there is evidence that at least one other document was open between December 21 and December 28, 2010, a document named "CURRICULUME.doc" stored on a USB device named "Evelyn."

This Office Session evidence further supports the analysis of the rate at which text was added to Providencias. That the time recorded in the Office Session logs is similar to the edit time of Providencias serves to corroborate the edit time. Had text been typed into documents other than Providencias during this period, the Office Session logs would have recorded that time as active time. The evidence shows that, while there was some time spent in documents other than Providencias, the vast majority of the time that Word was active between December 21 and December 28, 2010 was spent in the Providencias file.

II. RESPONDENT COUNSEL'S CLAIM THAT OFFICE SESSION LOGS UNDER-REPORTED HOW LONG WORD WAS OPEN IS OVERSTATED

In the Supplemental Counter-Memorial, Counsel for Respondent claim that "there is forensic evidence on both of Mr. Zambrano's computers that Microsoft Word regularly did not close properly, suggesting that Word was open for longer than recorded by the Microsoft Office Session logs."[50] Mr. Racich does not offer any evidence to support this claim. Ecuador offers a document from the Microsoft Support website[51] that explains, among other things, that temporary files can be used to recover a document lost if Word crashes or ends unexpectedly (for instance, in the event of a power outage).

I reviewed the temporary files found on both of the Zambrano Computers to determine how many times Microsoft Word left temporary files and therefore could have crashed without recording information in the Office Session logs. That review found that there were no temporary files left on the New Computer between October 2010 and March 2011. All of the temporary files on the New Computer with metadata from that time period were created elsewhere and then copied to the New Computer. On the Old Computer, there are only six temporary files with metadata showing that they were created on the Old Computer between October 2010 and March 2011, suggesting that Microsoft Word crashed six times in the time period and that therefore six Office Sessions may not have been recorded in the log files. Neither Mr. Racich nor Ecuador present evidence that Microsoft Word crashed any more than six times. The average time recorded in the Office Session logs for Microsoft Word was approximately 19 minutes. If these six sessions were of the average length, then the Office Session logs would be missing at most 114 minutes.

4. THE EVIDENCE SUGGESTS THAT TEXT FROM UNKNOWN SOURCES WAS COPIED INTO PROVIDENCIAS

Mr. Racich acknowledges that the evidence suggests that text originating in other documents was electronically copied and pasted into Providencias.[52] In two separate discussions about copying and

---

[50] Supplemental Counter-Memorial at 80.

[51] R-1272

[52] Racich Zambrano Report at 74

pasting, however, Mr. Racich offers speculation about the source of the copied text that is not supported by any evidence. First, in his discussion about the rate at which text was added, he appears to assume that text was copied into Providencias from Caso Texaco when there is no evidence to suggest it was. Second, in discussing formatting changes, he agrees that these formatting changes suggest copying and pasting of text, but his analysis as to the source of the copied text is flawed and again unsupported by the evidence.

In sum, I agree with Mr. Racich that text was likely copied from one or more documents and pasted into Providencias on multiple occasions, but there is no evidence that the source of that text was on either of the Zambrano Computers. Additionally, it is my opinion that, while the formatting differences do indicate copying and pasting of text into a document, it is possible to copy and paste text in such a way that does not create formatting differences. Because of that, while Mr. Racich and I have been able to identify some text that likely was copy from other documents and pasted into Providencias, it is entirely possible that additional text was also copied and pasted into Providencias. It is not possible to quantify the full extent to which text was copied and pasted into Providencias.

I. MR RACICH SPECULATES THAT TEXT WAS COPIED INTO THE DECEMBER 28 PROVIDENCIAS FROM CASO TEXACO

As described earlier, in his discussion of the rate at which text was edited, Mr. Racich offered that "it is likely that part of this additional text [added between December 21 and December 28, 2010] originated in another document on Mr. Zambrano's computer, and that the user copied that text into the Providencias document."[53] In offering this potential explanation, Mr. Racich does not identify which document was the source of this text or which text was copied versus typed into Providencias. Instead, he references a discussion about the instance of Caso Texaco that includes other Ecuadorian Judgment text. However, none of the text found in Caso Texaco was added to Providencias between December 21, 2010 and December, 28, 2010. I searched all of the instances of Caso Texaco for any of the text that was added to Providencias between December 21, 2010 and December 28, 2010 and did not find any of that text. I also searched all of the documents found on either of the Zambrano Computers and did not find the added text. As a result, while I agree with Mr. Racich that this text was likely copied into Providencias from another document, there is no evidence the text originated from Caso Texaco or from any other document on the Zambrano Computers.

---

[53] Racich Zambrano Report at 15.

II. MR. RACICH SPECULATES THAT THE FORMATTING CHANGES FOUND IN INSTANCES OF PROVIDENCIAS ARE EVIDENCE THAT TEXT WAS COPIED FROM CASO TEXACO

Mr. Racich accepts that the formatting changes highlighted in the Lynch Zambrano Report are "consistent with a person copying text from other documents."[54] To reconcile the copying and pasting of text into Providencias with his conclusion that the Ecuadorian Judgment was drafted on the Zambrano Computers, he suggests that the use of the "Bookman Old Style" font shows that the text was copied from Caso Texaco, "a known source of some of the Judgment's text" that "was written using Bookman Old Style."[55] His interpretation and analysis of the evidence is incorrect. The evidence actually demonstrates the opposite conclusion – that the text was not copied from Caso Texaco.

The Lynch Zambrano Report lists instances in Providencias where formatting changes suggest that text was copied from another document. As set forth in Table 12 and Exhibits 37-43 of that report, the Ecuadorian Judgment text found in the December 21 Providencias begins in the Bookman Old Style font. The text continues in that font until page 34, where a block of text in the middle of the page appears in Times New Roman. After that block, the text reverts to Bookman Old Style and continues in that font until the middle of page 37, when it again switches again to Times New Roman. The entirety of page 38 through the end of December 21 Providencias continues in Times New Roman. There is another formatting change at page 42 of the December 21 Providencias when the font stays the same, but the margins of the document change. Similar formatting changes were observed in the December 28 Providencias. It is those formatting changes that are "consistent with a person copying text from other documents."[56]

Mr. Racich sets forth that he "looked for other documents on Mr. Zambrano's computers that use Bookman Old Style."[57] As a result of his search, he identifies a single document that contains Bookman Old Style: the January 19 Caso Texaco. He does not, however, mention that hundreds of other documents on the Zambrano Computers also contain Bookman Old Style. In any event, his search proves nothing. His search is based on the premise that "when a user copies text from one document to another, the copied text may retain the original font."[58] As such, he is implying that the text in Providencias starts in Times New Roman, and then someone pasted text from a document in Bookman Old Style into Providencias, and that copied text retained the Bookman Old Style font. As set forth above, his interpretation of the evidence is incorrect. The evidence shows the opposite occurred – the

---

[54] Racich Zambrano Report at 74.

[55] Racich Zambrano Report at 75.

[56] Racich Zambrano Report at 74.

[57] Racich Zambrano Report at 74.

[58] Racich Zambrano Report at 74.

Ecuadorian Judgment text in Providencias starts in Bookman Old Style and then switches to Times New Roman such that the text that appears to have been copied and pasted appears in Times New Roman. Following Mr. Racich's reasoning that the source document must have used the font that is used for the blocks of text appearing to have been copied, his analysis shows that Caso Texaco cannot be the source of blocks of text that appear in Providencias in Times New Roman because Caso Texaco does not use that font, it uses Bookman Old Style.

5. MR. RACICH SPECULATES ABOUT THE CONTENTS OF FILES ON USB DEVICES

As set forth in Table 23 and Table 24 of the Lynch Zambrano Report, the evidence on the Zambrano Computers shows that multiple USB devices were used with the Zambrano Computers and multiple files were opened from those devices. Additionally, the Lynch Zambrano Report states that "many more files could have existed on the USB devices or been accessed from the USB devices than shown in the table."[59]

Mr. Racich suggests that he has affirmatively ruled out that text was drafted on another computer and copied to the Zambrano Computers using a USB device. He states that "none of the files that were accessed on the EVELYN USB device appears to be related to the Lago Agrio Litigation."[60] He also states that "Vestigant also performed an independent analysis of all evidence of files opened from USB devices on either the Old or New Computers between October 2010 and March 2011."[61]

Mr. Racich claims to have performed a thorough analysis of the files on all USB devices connected to the Zambrano Computers during the relevant time frame and determined that none, save one that may refer to a "historical document"[62] in the case, relate to the Lago Agrio Litigation. Mr. Racich does not offer any evidence of that review or claim that he has obtained access to any of the thumb drives that were connected to the Zambrano Computers. Without those thumb drives, it is impossible for him to know the contents of the files stored on them, and the only evidence he had to review was the names of files and metadata shown in Table 24 of the Lynch Zambrano Report. That table includes files with generic names such as "KKKK.doc" and "Documento 1.doc." Mr. Racich's conclusions that these documents, or any other document on a USB device, did not relate to the Lago Agrio Litigation and did not contain Ecuadorian Judgment text are mere speculation unsupported by the evidence.

---

[59] Lynch Zambrano Report at 36.

[60] Racich Zambrano Report at 56.

[61] Racich Zambrano Report at 59.

[62] Racich Zambrano Report at 60.

6. MR. RACICH'S SUGGESTION THAT NO TEXT IN THE JUDGMENT ORIGINATED WITH MR. GUERRA, MR. FAJARDO, OR ANY OTHER THIRD PARTY IS UNSUPPORTED BY EVIDENCE

In addition to his attempt to rule out that text was copied from USB devices into Providencias, Mr. Racich attempts to rule out that any text originating with "Mr. Guerra, Mr. Fajardo, or anyone else"[63] was found in the Judgment. Specifically:

1. He performed an analysis to review the metadata in Providencias for Author names or Last Saved By names that were different than those on the Zambrano Computers;[64]

2. He searched for any document with metadata with an Author or Last Saved By name of "PABLO," (the author name found in five documents containing "either text of a court submission over Mr. Fajardo's signature or a letter intended for his signature);"[65] and

3. He searched for email addresses for "Steven Donziger, Juan Pablo Saenz, Pablo Fajardo, Luis Yanza, Julio Prieto, and Alberto Guerra."[66]

For each analysis, he states that he found no evidence.

All three analyses are insufficient to support the conclusion he reaches that the Zambrano Computers were "used to write the Lago Agrio Judgment"[67] without any involvement from other parties.

I. MR. RACICH'S ANALYSIS OF METADATA OF PROVIDENCIAS DOES NOT PROVE WHO TYPED TEXT OR RULE OUT THAT TEXT ON THE ZAMBRANO COMPUTER ORIGINATED WITH MR. FAJARDO

In the Racich Zambrano Report, Mr. Racich implies that if text found in Providencias originated with Mr. Guerra, Mr. Fajardo, or any other third party, then the metadata would reflect their names as either the Author or the Last Saved By metadata in Providencias. His analysis only confirms that each version of Providencias was created and last saved on the Old Computer – a fact set forth in detail in the Lynch Zambrano Report. It does not show that text originating with a third party was not pasted into Providencias from a USB device. It also does not show who was sitting at the keyboard on Mr. Zambrano's Old Computer. Finally, it does not show that whoever was typing at the keyboard was not reading from a document previously written by Mr. Fajardo, Mr. Guerra, or any other third party.

---

[63] Racich Zambrano Report at 21.

[64] Racich Zambrano Report at 21.

[65] Racich Zambrano Report at 23.

[66] Racich Zambrano Report at 77.

[67] Racich Zambrano Report at 6.

In addition to the analysis of the Providencias metadata, Mr. Racich attempts to rule out that text originated with Mr. Fajardo by searching for any document listing "PABLO" in the Author or Last Saved By metadata. He bases his search on five documents "that appear to have been created and edited by Mr. Pablo Fajardo"[68] and assumes "that the Author name in Microsoft Word on Mr. Fajardo's computer was set to PABLO during the relevant time."[69] I have not been provided access to Mr. Fajardo's computer(s), and Mr. Racich does not indicate that he has been provided access to Mr. Fajardo's computer(s). I also understand that Chevron, in a related matter, has requested access to computers owned or used by Mr. Fajardo, but has not received them.

His assumption is not necessarily correct and does not account for the possibility that Mr. Fajardo used more than one computer. If Mr. Racich and I were given access to Mr. Fajardo's computers, it may be possible to determine the author name recorded by his computers and whether there was more than one username used on his computers. However, like his analysis of the Providencias metadata, this analysis only proves that no entire document was copied onto Mr. Zambrano's computer directly from the computer used by Mr. Fajardo to draft the five documents Mr. Racich was provided with. It does not show that any of the text did not otherwise originate with Mr. Fajardo.

II.   THERE WAS NO EMAIL ON THE ZAMBRANO COMPUTERS FOR MR. RACICH TO SEARCH, SO HIS ANALYSIS PROVES NOTHING

Mr. Racich states that he "was asked to search both the Old Computer and the New Computer for the existence of any of [the email addresses for Steven Donziger, Juan Pablo Saenz, Pablo Fajardo, Luis Yanza, Julio Prieto, and Alberto Geurra] or communications dealing with those email addresses."[70] Mr. Racich states that "no instances of those email addresses were located on the Old Computer or the New Computer."[71] In describing his analysis, Mr. Racich does not identify whether either of the Zambrano Computers had any of Mr. Zambrano's email stored on them. They did not. There is no long-term storage of Mr. Zambrano's email on either the New Computer or the Old Computer. Thus, Mr. Racich's search does not prove that Mr. Zambrano did not communicate with the email addresses he searched for; it only demonstrates that there is no email for Mr. Zambrano on the computers. While there is evidence that "webmail accounts" were accessed on the Zambrano Computers, including during the period in which Providencias was being edited, there is no record of what emails were sent or received from those accounts.

---

[68] Racich Zambrano Report at 23.

[69] Racich Zambrano Report at 23.

[70] Racich Zambrano Report at 77.

[71] Racich Zambrano Report at 78.

Mr. Racich also does not set forth whether he asked for or attempted to preserve any email accounts used by Mr. Zambrano. As such, that although Mr. Racich was asked to search the email accounts of Mr. Zambrano, it appears that either he did not attempt to obtain the email or he did not identify that he attempted to obtain it, but his client did not provide him with the data he requested.

7. MR. RACICH'S ANALYSIS LEAVES OPEN MULTIPLE POSSIBILITIES FOR THE SOURCE OF TEXT IN THE ECUADORIAN JUDGMENT

Mr. Racich's analysis of the source of text in the Ecuadorian Judgment leaves open multiple possibilities. While he attempts to explain that the text was largely drafted on the Zambrano Computers and that no text originated from a USB device or a third party, the Racich Zambrano Report leaves all of those possibilities open. Moreover, if errors in his analysis are corrected, his assumptions and analysis appear to suggest that, in fact, text found in Providencias originated in a document not found on the Zambrano Computers.

Mr. Racich offers a theory that the New Computer could have been used to edit Providencias even though there is no evidence that it was used to do so because that evidence has been overwritten by subsequent activity on the Old Computer.[72] By the same logic, it is also possible that a computer not in Mr. Zambrano's possession was used to edit Providencas and the evidence of that has also since been overwritten. It is possible that on or after October 11, 2010, when Providencias was created, someone copied Providencias to one of the USB devices used with the Zambrano Computers, drafted text using another computer, and then transferred Providencias back to the Old Computer, opening and then saving Providencias during the transfer such that the Last Saved metadata reflects that it was saved using the Old Computer.

Additionally, the evidence present on the Zambrano Computers does not rule out that text was copied and pasted from documents contained on USB devices. Mr. Racich agrees that the evidence on the Zambrano Computers shows that text from an unknown source was copied and pasted into Providencias. During the time period that Providencias was being modified, USB devices were used with the Zambrano Computers and files stored on those USB devices were opened. Without access to the USB devices it is impossible to know what text was in the files stored on them, but even accepting the filenames as evidence of the content (as Mr. Racich has), there are files with generic names that could have had any text in them, including Ecuadorian Judgment text. Thus, it is possible that text was copied from those USB devices into Providencias.

---

[72] Racich Zambrano Report at 40.

Finally, even accepting Mr. Racich's unsupported conclusion that the evidence "is consistent with that document being edited over time on Mr. Zambrano's computers,"[73] his conclusion and analysis only assess the typing of a document. His analysis does not reflect the generation of the content in the Ecuadorian Judgment. The conclusion leaves open the possibility that text was typed or transcribed using the Old Computer from pre-written documents. Content in the Ecuadorian Judgment originated with documents not found on the Zambrano Computers and, thus, the typing that Mr. Racich concludes occurred using the Zambrano Computers may have been transcription from a document that had been drafted elsewhere.

Any of these scenarios would account for the presence in the Ecuadorian Judgment of the content of the Plagiarized Documents that, as discussed herein, Mr. Racich fails to address. None of the evidence identified by Mr. Racich from the Zambrano Computers rules out these possibilities.

C. MR. RACICH OFFERS SPECULATION INCONSISTENT WITH THE EVIDENCE TO SUPPORT MR. ZAMBRANO'S TESTIMONY AS TO WHICH COMPUTER WAS USED

There are multiple inconsistencies between the evidence set forth in the Lynch Zambrano Report and Mr. Zambrano's testimony regarding which computer was used to type the Ecuadorian Judgment. For example, the Lynch Zambrano Report explains that although Mr. Zambrano testified that the New Computer was used exclusively to type the Ecuadorian Judgment, the only recoverable documents containing text of the Ecuadorian Judgment were saved on the Old Computer. No identified evidence demonstrates that any of the text was typed on the New Computer, and Microsoft Word was only used on the New Computer for 36 hours between October 2010 and March 2011. Mr. Racich ignores these inconsistencies and speculates that the New Computer could have been used to type Providencias despite the evidence.

I. THE NEW COMPUTER COULD NOT HAVE BEEN USED TO DRAFT THE WHOLE OF PROVIDENCIAS AS IT WAS NOT IN ECUADOR WHEN THE FILE WAS CREATED

As described herein, in his analysis of the rate at which Providencias was typed, Mr. Racich assumes that Mr. Zambrano began drafting the Judgment on October 11, 2010, the created date of the Providencias file. Mr. Zambrano testified "the whole writing of the judgment was done on the new computer."[74] It is not possible to reconcile Mr. Racich's conclusion and Mr. Zambrano's testimony with the creation date of

---

[73] Racich Zambrano Report, heading V.A.i.

[74] Zambrano Testimony, Dep. at 196:16 – 19.

Providencias, which Mr. Racich utilizes throughout his analysis as the date on which the drafting of the Judgment began.

As set forth in the Lynch Zambrano Report,[75] as of October 11, 2010 the New Computer had been recently manufactured and had not yet been shipped to Miami, Florida on its way to Ecuador before it was purchased by the Ecuadorian Judicial Council on November 26, 2010. The first user activity appears on December 7, 2010. It is impossible that Mr. Zambrano began typing Providencias on the New Computer on October 11, 2010 – the New Computer was still with the manufacturer and was not yet in Ecuador, let alone in Mr. Zambrano's Office and mapped to his Old Computer. Of the two computers assigned to Mr. Zambrano, whoever created Providencias on October 11, 2010 must have done so using the Old Computer. In assuming otherwise, Mr. Racich's analysis is inherently flawed.

Mr. Racich's assumption also contradicts his analysis of the rate at which text was drafted. If, for the purposes of analyzing Mr. Racich's conclusion, one accepts his assumption that the New Computer, and not the Old Computer, was used to type the Ecuadorian Judgment, then his analysis as to the rate at which text was added to Providencias is flawed in more ways than already set forth herein. The evidence shows that Mr. Zambrano could not have used the New Computer before December 7, 2010, 14 days before the December 21 Providencias was saved with approximately 81 pages of text in it. Mr. Racich assumes, in conducting his analysis as to the rate at which text was drafted, that the Ecuadorian Judgment text was drafted beginning October 11, 2010. Mr. Racich's assumptions are at odds with each other and at least one, if not both, must be incorrect.

II. NONE OF THE METADATA FROM THE "SEVERAL SUCCESSIVE VERSIONS" OF PROVIDENCIAS CONTAIN ANY EVIDENCE THEY WERE EDITED ON THE NEW COMPUTER AFTER IT ARRIVED IN ECUADOR

The Racich Zambrano Report describes (as was highlighted in the Lynch Zambrano Report) that the Old Computer was "mapped" to the New Computer such that a user of the New Computer could access and modify documents stored on the Old Computer. As a result, Mr. Racich suggests the evidence is consistent with Mr. Zambrano's testimony, and suggests that Mr. Zambrano and/or Ms. Calva could have typed the Judgment on the New Computer. Mr. Racich indicates that, because of their lack of technical knowledge, they "would likely simply presume that the files he is accessing are being saved on the New Computer (where he is physically sitting and performing the work), even though the files in actuality are saved to the Old Computer."[76]

---

[75] Exhibit 11 of the Lynch Zambrano Report.

[76] Racich Zambrano Report at 40.

I agree with Mr. Racich that theoretically, a user of the New Computer could access and modify documents on the Old Computer. In fact, the Lynch Zambrano Report sets forth evidence that this happened for one instance of Caso Texaco. There is, however, no evidence that the New Computer was used to modify either Providencias or the January 19 Caso Texaco file that contained Ecuadorian Judgment text.

In arguing for the possibility that someone accessed Providencias from the New Computer to draft and edit it, Mr. Racich ignores that there is no evidence showing that Providencias was ever edited using the New Computer. Mr. Racich states that "the existence of several successive versions of the Providencias document…is consistent with that document being edited over time…."[77] He acknowledges[78] that the metadata for those "several successive versions" reflects that they were last saved using the Old Computer. Finally, he states that in "one instance [of Providencias] the Last Saved By field is HP, which is the registered Author name for the Microsoft Office user of the New Computer."[79] But he fails to mention that this metadata is only found on a single instance of Providencias that was saved on May 4, 2012, more than a year after the Judgment was issued.

Mr. Racich also highlights evidence presented in the Lynch Zambrano Report that versions of Caso Texaco were last saved on the New Computer. It is true that some versions of Caso Texaco were saved using the New Computer. However, as described in the Lynch Zambrano Report, the only instance of Caso Texaco that contained text from the Ecuadorian Judgment was saved using the Old Computer.

In summary, all of the "several successive versions" of Ecuadorian Judgment text contained in Providencias and the January 19 Caso Texaco document were saved by the Old Computer and not through any "mapping" by the New Computer. Had any of those versions been saved using the New Computer the metadata for those versions would reflect that they had been saved using the New Computer.

III.   MR. RACICH SPECULATES THAT DOCUMENT PRINTING ACCOUNTS FOR THE INCONSISTENCY ABOUT WHICH COMPUTER WAS USED FOR DRAFTING

As part of the analysis in which Mr. Racich suggests that the New Computer could have been used to type the Ecuadorian Judgment, he describes that the Old Computer was the only computer with a printer and that, "therefore, it is unsurprising that the Providencias.docx file was last saved on the Old Computer

---

[77] Racich Zambrano Report at Heading V.A.i.

[78] Racich Zambrano Report at 38.

[79] Racich Zambrano Report at 19.

a majority of times."[80] Mr. Racich offers no evidence that Providencias was actually printed, and his explanation therefore does not account for the actual evidence.

Mr. Racich does not explicitly state why he believes that evidence is "unsurprising" even though it is inconsistent with his opinion that the New Computer may have been used exclusively to type the Ecuadorian Judgment. Presumably he is implying that Mr. Zambrano used the Old Computer to print the document and then saved the document without editing it. With that explanation, Mr. Racich attempts to leave open the possibility that Mr. Zambrano still could have done all the drafting on the New Computer, as he testified. This speculation is unfounded.

When a document is printed and then saved, the Last Printed metadata is updated to reflect the date and time that the document was printed. The Last Printed metadata will then remain until it is printed and saved again, when the Last Printed metadata will again be updated. Had Providencias been printed on the Old Computer and then saved using the Old Computer to account for the metadata found in Providencias, the Last Printed date would have been updated to reflect the date that it was printed.

The Last Printed metadata for Providencias is blank, showing that it has not been printed and then saved. Thus, Mr. Racich's explanation is unsupported by the evidence.

D. THERE IS NO COMPLETE AND STAND-ALONE VERSION OF THE ECUADORIAN JUDGMENT OR EVIDENCE THAT IT WAS UPLOADED USING THE ZAMBRANO COMPUTERS

In the Supplemental Counter-Memorial, Ecuador claims that "the entire final Judgment appears on Judge Zambrano's computer within the Providencias.docx document" and that "[t]he only text missing from Providencias.docx that appears in the issued Judgment is the heading automatically added by SATJE itself, not the judge, once the file is uploaded."[81] The evidence does not support those assertions. There is no complete and stand-alone version of the Ecuadorian Judgment on the Zambrano Computers, the version that does exist has a different header than the issued Judgment, and there is no evidence that the Judgment was uploaded from the Zambrano Computers.

I. THERE IS NO COMPLETE AND STAND-ALONE VERSION OF THE ECUADORIAN JUDGMENT

In assessing the exercise performed by Mr. Racich in which he assumed how someone (regardless of who) might have typed the Ecuadorian Judgment using the Zambrano Computers, I reviewed his

---

[80] Racich Zambrano Report at 41.

[81] Supplemental Counter-Memorial at 75.

assumptions. One assumption that appears to be missing from his analysis, based on my experience, is how someone would treat the final draft of the Ecuadorian Judgment. After spending months drafting a document, it is common, based on my experience, for someone to create a backup copy or to save the final copy as a new "final" version of the document, particularly before using the same file to create other documents (as is the case with Providencias). No such copy exists and there is no evidence that a contemporaneous backup copy of any version of Providencias or the Ecuadorian Judgment text ever existed on either of the Zambrano Computers. Instead, the only instances of the final text of the Judgment appearing on the Zambrano Computers are in versions of the Providencias file that were saved after the Judgment was issued and that include text from the later Expansion and Clarification Order and the February 21 Order.

II. THE VERSION FOUND ON THE ZAMBRANO COMPUTERS HAS A DIFFERENT HEADER THAN THE ISSUED VERSION

The Providencias.docx is not simply missing the heading that Ecuador states is automatically added by SATJE. The Ecuadorian Judgment text in the March 18 Providencias contains a heading, but that heading does not match the heading in the Ecuadorian Judgment as it was issued. If the heading was automatically added by SATJE, there is no explanation as to why a heading appears in the Providencias file on the Zambrano Computers, and there is no explanation as to why the heading that appears is incorrect. In addition to the heading being incorrect, the timestamp that appears in the March 18 Providencias is incorrect. Figures 1 and 2 below show the header found in the final version of Providencias on the Zambrano Computers and the header found in the issued Ecuadorian Judgment with highlighting to show the differences.

Figure 1 – Header found in the final version of Providencias on the Zambrano Computers

Figure 2 – Header found in the issued Ecuadorian Judgment

III. THERE IS NO EVIDENCE THAT THE ECUADORIAN JUDGMENT WAS UPLOADED FROM EITHER OF THE ZAMBRANO COMPUTERS

Third, since submitting the Lynch Zambrano Report, I have been provided with SATJE Logs from the National Technology Office of Ecuador. Those SATJE Logs, as described in the SATJE Log Cover Letter, provide the raw data from SATJE which "tracks the changes made while using the program." I understand that the request for which the SATJE Logs were provided was for the logs for the two computers assigned to Mr. Zambrano. Beyond the SATJE Logs, I have limited evidence of how SATJE operates. I do not have access to SATJE to test it, and am not aware that Mr. Racich has performed any testing of SATJE.

Taking them at face value, the logs show, among other things, the date on which a change was made to a case in SATJE, the computer that made the change, the username of the user that made the change, and the case number for which the change was made.[82] I have reviewed those logs and there is no evidence in them that shows that either of the Zambrano Computers was used to create or modify a document in SATJE related to the Lago Agrio Litigation or that SATJE was accessed from either computer on February 14, 2010, the date that the Ecuadorian Judgment was issued. Thus, based on the SATJE Logs, it does not appear that the Ecuadorian Judgment was issued from either of the Zambrano Computers. With more information from SATJE or access to SATJE, it may be possible to determine how the Ecuadorian Judgment was issued through SATJE.

E. MR. RACICH'S CLAIM THAT STROZ FRIEDBERG DID NOT PROVIDE SERIAL NUMBERS IS BASELESS

In relation to the USB devices used with both the Guerra Computer and the Zambrano Computer, Mr. Racich states that "Stroz Friedberg did not provide the necessary serial numbers to show that the images taken from Mr. Guerra are in fact the same devices that were attached to Mr. Zambrano's computers"[83] and that "it is highly unusual that these serial numbers were not recorded- Stroz Friedberg recorded them for all other devices…"[84] He further states that "without this information, Mr. Lynch is merely speculating that the USB images taken from Mr. Guerra's USB devices are in fact the same USB Devices…."[85] This criticism is baseless.

---

[82] As shown in the Ecuadorian Judgment, the case number for the Lago Agrio Litigation is 002-2003.

[83] Racich Zambrano Report at 57.

[84] Racich Zambrano Report at 58.

[85] Racich Zambrano Report at 58.

The serial numbers for the USB Devices discussed in the Lynch Zambrano Report are listed in Exhibits 17 and Exhibits 18 of that report.[86] Regardless of the fact that the relevant serial numbers were provided in the Exhibits, attached as Exhibit 2 is a listing of the serial numbers for all of the Guerra Media.

F. MR. RACICH'S CLAIM THAT THE COPYING OF DOCUMENTS ON SEPTEMBER 26, 2012 "WAS MOST LIKELY A NORMAL BACKUP OF FILES"[87] IS IMPLAUSIBLE

In response to my observation that the penultimate activity on the Old Computer was a bulk copying of files and the ultimate activity was the deletion of that copy, Mr. Racich claims that the evidence is consistent with this activity being a normal backup of files. In support of his theory, Mr. Racich highlights that the files only made up 734 megabytes of data and that the folder name contained the word "Respaldo," the Spanish word for backup. Mr. Racich does not discuss that the next activity on the computer was the deletion of all the files that had been copied in bulk.

While I do not know the ultimate motivation for the bulk copying of data performed on September 26, 2012, the evidence is not consistent with Mr. Racich's theory. It does not make sense that the penultimate activity on the computer was a "normal backup" if the ultimate and immediately following activity was to delete the files.

VI.   CONCLUSION

There are important areas of agreement between the Lynch Zambrano Report and the Racich Zambrano Report. For instance, we agree that the evidence is consistent with text being copied and pasted into Providencias, the document that contains text from the Ecuadorian Judgment. Additionally, we agree that USB devices were used with both Zambrano Computers. However, there are also substantial issues where Mr. Racich is silent or we disagree. While my prior reports have set forth substantial analysis of the content of the Ecuadorian Judgment and the Lynch Zambrano Report compared that evidence to the Zambrano Computers, the Racich Zambrano Report is largely silent on those issues. Where Mr. Racich does offer analysis and conclusions that disagree with the Lynch Zambrano Report, his analysis and conclusions are flawed.

A. CONTENT OF THE ECUADORIAN JUDGMENT

The analysis of the content of the Ecuadorian Judgment and the Zambrano Computers shows that, at least for portions of the document, the content was not generated or first drafted on either of the

---

[86]In addition to the fact that the serial numbers are provided in the Lynch Zambrano Report, Mr. Racich's criticism is misplaced because Stroz Friedberg did not perform the imaging of these USB devices. As set forth in my October BIT Report, the images were provided to Stroz Friedberg by Audio Forensic Center.

[87] Racich Zambrano Report at 68.

Zambrano Computers. Mr. Racich's analysis and conclusions do not address the content of the Ecuadorian Judgment described in the October BIT Report or the Lynch Zambrano Report. Instead, he is silent, offering no opinions or analysis, on two substantive issues related to the content of the Ecuadorian Judgment, and on a third issue the analysis he presents does not account for the evidence. Specifically:

1. Mr. Racich's analysis is silent on the evidence that the Plagiarized Documents served as the source of text that appears in both Providencias and in the Ecuadorian Judgment. He is also silent on the evidence that the Plagiarized Documents were not found on either of the Zambrano Computers.

2. Mr. Racich's analysis is silent on the evidence that Excel, the program that would have been used to copy text and derive statistics from the Unfiled Selva Viva Database, was essentially unused on the Zambrano Computers.

3. Mr. Racich's discussion of the Zambrano Computers' Internet usage is inconsistent with Mr. Zambrano's testimony about content found in the Ecuadorian Judgment, and the Internet usage evidence that Mr. Racich cites does not account for the presence of citations to cases from the USA.

B. OTHER DISAGREEMENTS WITH MR. RACICH

Where we disagree, Mr. Racich's conclusions are either unsupported by the evidence or contradicted by the evidence and/or by Mr. Racich's own assumptions. Additionally, to support his conclusions, Mr. Racich offers speculation inconsistent with the evidence. Based on the flawed analysis and speculation, Mr. Racich concludes that the evidence is consistent with the Zambrano Computers "being used to write the Lago Agrio Judgment."[88] Mr. Racich's conclusion is unsupported. Instead, as set forth herein, the evidence he addresses is consistent with multiple authorship possibilities, including that the text of the Ecuadorian Judgment was generated elsewhere and transferred to the Zambrano Computers through USB devices, by having someone re-type a pre-written document, or through another method.

Specifically, the Racich Zambrano Report's conclusions are flawed for the following reasons:

1. Mr. Racich's analysis of how text was added to Providencias is flawed and leaves open multiple possibilities for third party sources of the text in the Ecuadorian Judgment. Importantly, Mr. Racich's analysis of the rate at which text was added to Providencias assumes that Providencias was edited every calendar day from October 11, 2010 to December 28, 2010 and he concludes that, at least for a portion of the document, text was added at a rate of one page per day. However, the forensic evidence, specifically the 53

---

[88] Racich Zambrano Report at 6.

> hours of edit time, shows that Ecuadorian Judgment text was added to Providencias at a rate of at least 17.5 pages per 8 hour day.

2. Mr. Racich speculates that text added to Providencias between December 21, 2010 and December 28, 2010 was copied from another document found on the Zambrano Computers, Caso Texaco. However, none of that text was found in Caso Texaco or in any other document found on the Zambrano Computers.

3. Mr. Racich offers speculation inconsistent with the evidence to support Mr. Zambrano's testimony that solely the New Computer was used to draft the Ecuadorian Judgment. The evidence shows that whoever saved Providencias on multiple occasions was using the Old Computer to do so.

4. Mr. Racich's statement that "there is no evidence in the metadata that the versions of Providencias found on Mr. Zambrano's computers were provided in any way by Mr. Guerra, Pablo Fajardo, or anyone else"[89] is not responsive to who authored the content of the document. His statement refers only to the recorded Author and Last Saved By names, and only shows which of the Zambrano Computers was used to save Providencias. For example, his analysis, for one example, does not rule out that text could have been copied from a file on a USB device that was created by Mr. Fajardo, Mr. Guerra, or any other third party.

5. Mr. Racich speculates about the content of files on USB devices used with the Zambrano Computers. The content of those "USB files" is unknown to both Mr. Racich and me. It is thus not knowable to us whether any of those USB files contained Ecuadorian Judgment text.

6. Mr. Racich's claim that Stroz Friedberg did not provide the serial numbers of USB devices used on both the Zambrano Computers and the Guerra Computer is baseless.

7. Mr. Racich's claim that the copying of documents on September 26, 2012, the penultimate action on the Old Computer, was most likely "a normal backup"[90] of files is implausible because it ignores that the ultimate action was to delete that "back up."

In addition to the flaws in the Racich Zambrano Report, there are two flaws in Ecuador's Supplemental Counter-Memorial that are not discussed in the Racich Zambrano Report. First, although Ecuador states that "the entire final Judgment appears on Judge Zambrano's computer within the Providencias.docx document,"[91] there is no complete and stand-alone version of the Ecuadorian Judgment on either of the Zambrano Computers, there is no evidence that the final Ecuadorian Judgment was saved on either Zambrano Computer on February 14, 2011, the day it was issued, and evidence shows that it was not uploaded to SATJE using either of the Zambrano Computers on February 14, 2011. Second, although

---

[89] Racich Zambrano Report at 20.

[90] Racich Zambrano Report at 68.

[91] Supplemental Counter-Memorial at 75.

Ecuador suggests that CDs or DVDs may account for the source of Plagiarized Text in the Ecuadorian Judgment, there is no forensic evidence on the Zambrano Computers to support that suggestion.

C. ALLEGATIONS MADE BY MR. RACICH

Finally, Mr. Racich alleges that certain of my conclusions in the Lynch Zambrano Report are based on "speculation and without scientific merit."[92] As set forth herein, my conclusions are fully supported by the evidence.

Respectfully submitted,

Spencer C. Lynch
Director, Digital Forensics

---

[92] Racich Zambrano Report at 72.

APPENDIX 1 – OFFICE SESSION TESTING

A. OVERVIEW

This memo documents testing of Microsoft Office Session event logs ('OSession Logs') for Microsoft Office 2007. As defined by Microsoft, event logs are special files that record significant events on your computer, such as when a user logs on to the computer or when a program encounters an error.[93] OSession Logs are created by the Microsoft Office suite of software, and can relate to various Office programs including Microsoft Word and Microsoft Excel. Stroz Friedberg performed testing into how and when OSession logs are created through the use of Microsoft Word 2007 and Microsoft Excel 2007.

B. METHODOLOGY

To perform the tests, Stroz Friedberg created virtual machines in VMWare Workstation with the following operating systems:

- Microsoft Windows XP Service Pack 2
- Microsoft Windows 7 Ultimate Service Pack 1

The virtual machines also had Microsoft Office 2007 Professional installed on them. The machines were configured in the English (US) language.

Once configured, Stroz Friedberg ran the machines through scenarios simulating user activity within Microsoft Office as well as activity external to Office (such as power outages). The scenarios were run using both Microsoft Excel and Microsoft Word. Other Office programs were not tested in the scenarios. While running the scenarios, Stroz Friedberg monitored the time using an external clock so that any recorded timestamps or records of elapsed times could be cross-compared against actual timestamps or time elapsed. Scenarios were as follows:

- Normal Usage – The program was opened, a single document created through periodic user interaction, and the program was closed.
- Multiple Documents – The program was opened, multiple documents were opened, and the program was closed.
- Other Applications – The program was opened, a document created, and a different program not part of the Microsoft Office suite was opened.
- Program Hung/Frozen – The program was opened, a document created, and an extremely large file was embedded in the document. This causes the program to stop responding and eventually

---

[93] http://windows.microsoft.com/en-gb/windows/what-information-event-logs-event-viewer

for a dialog box to be presented to the user giving the option to keep waiting or kill the program. For this scenario, the option to kill the program was selected.

- Program Crash – The program was opened, a document created, and the process for the program was terminated through "Task Manager."
- Power Outage – The program was opened, a document created, and the virtual machine was stopped.

C. TESTING RESULTS

Stroz Friedberg observed several different types of OSession log entries that can be created by Microsoft Office. The different types of logs have a different 'Event ID' associated with them. The Logs for Microsoft Excel and Microsoft Word were similar, with the only observed difference being the name of the application recorded in the logs. All logs record the Application Name and Microsoft Office Version number. Certain logs recorded the "Session Time" and "Active Time."

1. DEFINITIONS

APPLICATION NAME

The Application Name is the name of the Application for which the log relates. In Stroz Friedberg's testing, the recorded values were either "Microsoft Excel" or "Microsoft Word."

MICROSOFT OFFICE VERSION

The Microsoft Office Version is the version number for Microsoft Office installed on the computer. In Stroz Friedberg's testing, all observed values were "12.0.4518.1014," the version number for Microsoft Office 2007.

SESSION TIME

The "Session Time" is recorded in seconds and represents the total number of seconds that the program was open. The value is accurate to the second. Session time increments regardless of the state that the program is in: Word can be open and active, open in the background, or in a minimised state on the taskbar, and the Session Time will increment in the same way.

ACTIVE TIME

Active Time is recorded in seconds and represents the number of minutes in which the program had 'focus' and 'activity.' The value is recorded and displayed in seconds, but is rounded down to the nearest minute. For example, if there are 55 seconds of active time, the recorded active time in the OSession log entry would be 0. If there are 285 seconds of active time (4 minutes 45 seconds), the recorded active time would be 240 seconds

In this context, 'focus' is the amount of time that the program is the front or top-most window. 'Activity' is any action performed within the window (for example moving the mouse or typing).

If the program loses focus then the accumulation of active time pauses. When the program gains focus again, the active time resumes accumulation. In the event that the program has focus but there is no activity (i.e. the program or computer becomes idle) the active time accumulates for 60 seconds and then pauses. Once there is activity again, the active time will resume accumulation.

2. SPECIFIC SCENARIO RESULTS

NORMAL USAGE

This scenario generated Event ID 7000 when the program was closed. All logged information was recorded as defined above.

MULTIPLE DOCUMENTS

This scenario generated Event ID 7000 when the program was closed. All logged information was recorded as defined above. Only one event was generated per program regardless of how many documents were opened.

OTHER APPLICATIONS

This scenario generated Event ID 7000 when the program was closed. All logged information was recorded as defined above.

PROGRAM HUNG/FROZEN

This scenario generated Event ID 7002 when the program was closed. All logged information was recorded as defined above, with the following notes:

- Session Time recorded the time elapsed from when the program was opened until the option to kill the program was selected
- Active Time recorded the active time from when the program was opened until the program hung

PROGRAM CRASH

This scenario did not generate an OSession Event unless the program was re-opened following the program crash. If the program was re-opened, Event ID 7003 was generated at the time Word or Excel was re-opened. The Session Time and Active Time were not recorded.

POWER OUTAGE

This scenario did not generate an OSession Event unless the program was re-opened after the computer was rebooted following the power outage. If the program was re-opened after the reboot, but before the

computer was shut down again, Event ID 7003 was generated at the time Word or Excel was re-opened. The Session Time and Active Time were not recorded.

OTHER EVENTS

In testing Stroz Friedberg observed Event ID 7001, but was not able to reliably recreate a scenario that generated Event ID 7001. Event 7001 records Application Name, Version, Session Time and Active Time.

D. SAMPLE EVENT LOGS

Below are samples of each Event ID.

Event ID 7000

> *ID: 0, Application Name: Microsoft Office Word, Application Version: 12.0.4518.1014, Microsoft Office Version: 12.0.4518.1014. This session lasted 76 seconds with 60 seconds of active time. This session ended normally.*

Event ID 7001

> *ID: 1 Application Name: Microsoft Office Excel, Application Version: 12.0.4518.1014 Microsoft Office Version: 12.0.4518.1014. This session lasted 120 seconds with 60 seconds of active time. This session ended with a crash.*

Event ID 7002

> *ID: 0 Application Name: Microsoft Office Word, Application Version: 12.0.4518.1014 Microsoft Office Version: 12.0.4518.1014. This session lasted 842 seconds with 0 seconds of active time. This session ended with a hang.*

Event ID 7003

> *ID: 1 Application Name: Microsoft Office Excel, Application Version: 12.0.4518.1014 Microsoft Office Version: 12.0.4518.1014. This session was terminated unexpectedly.*