

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

and

THE UNCITRAL ARBITRATION RULES 1976

- - - - -X
In the Matter of Arbitration :
Between: :
CHEVRON CORPORATION (U.S.A.), :
TEXACO PETROLEUM COMPANY (U.S.A.), :
Claimants, : PCA Case No.
and : 2009-23
THE REPUBLIC OF ECUADOR, :
Respondent. :
- - - - -X Volume 6

TRACK 2 HEARING
ESPECIALLY CONFIDENTIAL:
NOT TO BE PUBLICLY DISCLOSED BY PROCEDURAL ORDER NO. 29

Tuesday, April 28, 2015

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

The hearing in the above-entitled matter convened
at 9:30 a.m. before:

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

C O N T E N T S

PAGE

WITNESSES:

J. CHRISTOPHER RASICH

Cont. cross-examination by Mr. White
Redirect examination by Mr. Ewing

1207
1262

[REDACTED]

09:30 1 to make sure I understood you correctly, that there may
 2 have been a document that was created on the computer with
 3 the user name dot that was used as a template for
 4 Orders--for those drafts, and those drafts could have been
 5 prepared on Mr. Guerra's computer from the original
 6 template that came from dot; is that right?
 7 A. That's possible.
 8 Q. Okay. And you would agree, right, that in your
 9 experience historic files like these templates are often
 10 used for future files, and the reason to do that is so that
 11 formatting and templating will remain the same; is that
 12 right?
 13 A. That's possible. I've seen documents used as
 14 templates before.
 15 Q. Well, let's go to your 2014 Report, November 2014
 16 Report; if you still have the binder that I gave you
 17 yesterday, that's behind Tab 3. I do.
 18 I want to take you back to Paragraph 60, which is
 19 on Page 15.
 20 And in this paragraph, you're talking about a
 21 document that found its way onto Mr. Zambrano's computer,
 22 and you're suggesting that that may have been a template
 23 document that Mr. Zambrano was using to create new
 24 documents; right?
 25 A. It's possible, yes.

P R O C E E D I N G S

1 PRESIDENT VEEDER: Let's start Day 6 of this
 2 Hearing.
 3 Unless there are matters by way of housekeeping,
 4 let's continue with the cross-examination of this Witness.
 5 MR. WHITE: Thank you, Mr. Veeder.
 6 J. CHRISTOPHER RASICH, RESPONDENT'S WITNESS, RESUMED
 7 CONTINUED CROSS-EXAMINATION
 8 BY MR. WHITE:
 9 Q. I want to take you back to the 105 documents that
 10 Mr. Lynch testified about in relation to drafting
 11 non-Chevron orders for Mr. Zambrano. Do you know what I'm
 12 talking about?
 13 A. Yes.
 14 Q. Now, and I think we--I want to just go over this
 15 quickly because we talked about it a little bit yesterday.
 16 Your opinion is that because the user name on those--the
 17 user name on the computer that was used to create those
 18 documents originally was dot, and Mr. Guerra's computer
 19 user name when it was imaged was Estación, that you say
 20 those Orders weren't prepared on Mr. Guerra's computer; is
 21 that right?
 22 A. I don't think I said they weren't prepared. I
 23 said they weren't originally created.
 24 Q. Okay. And I think you said yesterday, but I want

09:32 1 Q. And then I want to focus your attention on the
 2 last sentence. You say: "In my experience, historic files
 3 like this are often used as templates for future files so
 4 that formatting boilerplate language remains the same."
 5 That's your opinion; right?
 6 A. Yes, that's possible, yes.
 7 Q. Okay. And you say "often." Right?
 8 A. Yes.
 9 Q. Okay. And that may very well be what happened
 10 with Mr. Guerra getting the template that had dot and then
 11 using it to prepare Draft Orders.
 12 A. That's possible. I don't know one way or the
 13 other.
 14 Q. Now, let's look at if you still have Mr. Lynch's
 15 slides from yesterday or if you can follow on the screen.
 16 A. I'll follow on the screen.
 17 Q. Okay. I want to take you to Slide 3 from
 18 Mr. Lynch's presentation. Slide 3.
 19 Now, you were here when Mr. Lynch presented this
 20 slide; right?
 21 A. I was.
 22 Q. And you've offered no analysis or opinion to
 23 contradict what Mr. Lynch has said concerning the dates
 24 these documents were last saved on Mr. Guerra's computer
 25 versus the dates on which the corresponding Orders were

<p>Sheet 4</p> <p style="text-align: right;">1210</p> <p>09:33 1 issued by Mr. Zambrano; right? 2 A. I don't believe there is any evidence that these 3 documents were last saved on Mr. Guerra's computer. 4 Q. The user name--this is the 105-- 5 A. Oh, the 105, I apologize. I apologize. I see, 6 okay. 7 Q. We have a smaller number of pictures on here? 8 A. Right. 9 Q. But so those, you haven't offered any opinion or 10 analysis to contradict Mr. Lynch's testimony concerning the 11 Last Saved Dates on Mr. Guerra's computer of these 12 documents versus the dates when these corresponding Orders 13 were issued by Mr. Zambrano; right? 14 A. No. 15 Q. And then if we go on to Slide 5 of Mr. Lynch's 16 presentation, this is where Mr. Lynch described files being 17 saved to thumb drives, Mr. Guerra's shipping documents by 18 TAME, and then the Orders or the documents being created on 19 Mr. Zambrano's computers--computer--and then the Orders 20 being issued. 21 You haven't offered any opinion or analysis to 22 contradict that testimony by Mr. Lynch; right? 23 A. No. 24 Q. No, you haven't offered any opinion or analysis to 25 contradict Mr. Lynch?</p>	<p style="text-align: right;">1212</p> <p>09:36 1 Q. I'm talking about testimony from Mr. Guerra and 2 Mr. Zambrano that, with respect to Orders outside the 3 Chevron Case, Mr. Guerra prepared drafts, used TAME to ship 4 them to Mr. Zambrano, and Mr. Zambrano issued the Orders. 5 A. Not from a forensic point of view, no. 6 Q. Thank you. 7 I want to turn to another topic now. One of the 8 things that you have done in your analysis in formulating 9 your opinion is to take different documents and to compare 10 their text; is that right? 11 A. Yes. 12 Q. So, for example, with the December 21 13 Providencias, you compared that with the December 28th 14 Providencias? 15 A. Yes. 16 Q. And then you compared both of those documents to 17 the Final Judgment? 18 A. Yes. 19 Q. And you drew conclusions from that comparison? 20 A. Yes. 21 Q. Okay. I want to look back to your December 2013 22 Report that's behind Tab 1. I want to take you to Page 9, 23 and it's Paragraph 27. 24 Do you recall what you said there? 25 A. Yes.</p>
<p style="text-align: right;">1211</p> <p>09:34 1 A. Correct. 2 Q. Now, at the time you prepared your December 2013 3 Report, you had not reviewed Mr. Zambrano's RICO testimony; 4 right? 5 A. That's correct. 6 Q. But you reviewed it now; right? 7 A. Yes. 8 Q. And were you aware, when you prepared your First 9 Report in December 2013, that Mr. Zambrano had testified in 10 the RICO proceedings? 11 A. I don't know. I don't think so, but I don't know. 12 Q. In any event, you weren't aware when you wrote 13 that report, but you are aware now that Mr. Zambrano 14 acknowledged that Mr. Guerra drafted Orders for him and 15 shipped them to him by TAME? 16 A. I believe that's my understanding, yes. 17 Q. And you're aware that Mr. Guerra testified 18 basically to the same effect? 19 A. For Orders outside the Ecuadorian Judgment, the 20 Lago Agrio, I believe that's the case. I believe that was 21 his testimony. I could be wrong. 22 Q. And you haven't seen any forensic evidence that 23 would contradict that testimony by either Mr. Guerra or 24 Mr. Zambrano? 25 A. Which testimony in particular?</p>	<p style="text-align: right;">1213</p> <p>09:37 1 Q. I want to take you to the second sentence of that 2 paragraph. You were criticizing Mr. Lynch for comparing 3 documents, the text of documents, on the grounds that 4 that's not an application of forensic science. That was 5 your criticism of Mr. Lynch? 6 A. I'm not sure it was a criticism. It was just a 7 statement that the software and the process he used was 8 really just comparing words from a forensic point of view. 9 It wasn't a specialized--it wasn't a specialized science. 10 Q. Let's look at Paragraph 28, then. It said, "The 11 comparison done by Mr. Lynch is akin to simply reading two 12 documents, identifying similarities and differences between 13 the documents. Doesn't require any forensic ability." 14 That was what you said? 15 A. Yes. 16 Q. But that's exactly what you did with the 17 Providencias documents you found on Mr. Zambrano's 18 computer; right? 19 A. Yes. 20 Q. Thank you. 21 I want to move on to talk about USB Devices now. 22 You said that there was no evidence that a document was 23 copied from a USB Device to either of the Zambrano 24 Computers; is that right? 25 A. Can you point me to where I said that?</p>

09:38 1 Q. Yeah. Let's look at your November 2014 Report,
 2 which is behind Tab 3. And it's Paragraph 7 that I have in
 3 mind.
 4 I'm sorry, I should identify the timeframe between
 5 October 2010 and February 2011. You said there's no
 6 evidence that any document was copied from a USB Device to
 7 any of the Zambrano Computers. I'm sorry, and used to
 8 create any part of the Lago Agrio Judgment.
 9 A. Yes, and used to create the Lago Agrio Judgment,
 10 yes.
 11 Q. Okay. Sorry, that's a little more precise
 12 formulation of what you said.
 13 PRESIDENT VEEDER: Just before you go on, as
 14 yesterday, it's important to speak a little bit more slowly
 15 both of you, and to leave gaps for the interpreters to
 16 interpret.
 17 MR. WHITE: Understood, thank you.
 18 BY MR. WHITE:
 19 Q. You would agree, Mr. Racich, that during the
 20 period when you say the Judgment was being drafted, this
 21 October 2010 to February 2011 period, 13 USB Devices were
 22 attached to the Zambrano Computers; right?
 23 A. I believe that's the case.
 24 Q. Let's now go to Mr. Lynch's August 2014 Report,
 25 and that's behind Tab 6 in your notebook. Let's go to

09:41 1 Q. And on October 12th, the next day, a USB Device
 2 was connected; right?
 3 A. Yes.
 4 Q. And then between that date, October 12th and
 5 December 21st, how many USB Devices were connected to the
 6 Zambrano Computers?
 7 A. At least seven.
 8 Q. In the period between December 21st and
 9 December 28th, two more USB devices were connected; right?
 10 A. Including the 28th, yes.
 11 Q. And then prior to the January--you've identified
 12 another document besides Providencias, Caso Texaco. Caso
 13 Texaco--between the time you recovered Judgment text and
 14 Caso Texaco from December 28th, 2010, there were a further
 15 three USB Device connections shown here; right?
 16 A. Could you give me those dates again?
 17 Q. Yeah, I'm talking about the period after
 18 December 28th when you recovered a period of Providencias,
 19 and I think it's January 19th when you recovered a version
 20 of Caso Texaco that had Judgment text. You've got the
 21 timeline?
 22 A. Yes.
 23 Q. There is a further three USBs connections recorded
 24 here.
 25 A. Yes.

09:40 1 Page 36, Table 6. And this is a table that lists the USB
 2 Device that were used during the period October 2010 to
 3 March 2011.
 4 PRESIDENT VEEDER: Let's just pause. Is the table
 5 reference right?
 6 MR. WHITE: I'm sorry, Table 23 under heading
 7 Number 6. My apologies.
 8 BY MR. WHITE:
 9 Q. Do you have that in front of you, sir?
 10 A. I do.
 11 Q. This is a list of USB Devices used during the
 12 period October 2010 through March 2011; is that right?
 13 A. Yes.
 14 Q. Okay. Now, you haven't received all of the 13 USB
 15 Devices that were connect to the Zambrano Computers during
 16 this period of time, have you?
 17 A. No.
 18 Q. There are USB Devices that neither you nor
 19 Mr. Lynch had access to; right?
 20 A. Yes.
 21 Q. I want to look at the time period when these USB
 22 Devices were being connected.
 23 So, Providencias was created on October 11, 2010;
 24 right?
 25 A. Yes.

09:10 1 Q. Now, when I asked you about the period between
 2 October 12 and December 21st, you said at least seven
 3 connections. That's because there could have been more;
 4 right?
 5 A. It's possible. I would have to look at both the
 6 first and the last to be sure of what evidence we have,
 7 but--so, with what the forensic evidence that we know we
 8 have the first and the last attachment, and that's what we
 9 can show and we can prove, and there may be certain other
 10 information with regards to, say, link files, local host
 11 information that we can look at as well. So I would have
 12 to look at all of those factors to see what our window is.
 13 Q. Okay. So, looking at this table, you know that
 14 these connections occurred and there may have been more?
 15 A. It's possible. I would have to look at all the
 16 information, and I don't have that at the top of my head.
 17 Q. Okay. And if one of the USB Devices that you
 18 haven't seen that was connected had Judgment text on it,
 19 you wouldn't know that, would you?
 20 A. I don't have any way to know that at this point.
 21 Q. Okay. Now, you did some analysis of what might
 22 have been on those USB Devices in your November 2014
 23 Report, so I would like to take you there. That again is
 24 behind Tab 3 in the notebook, and I would like to take you
 25 to Paragraph 60, again. I want to see if we can understand

09:45 1 at a high level what you're saying here.
 2 You're saying that you can look at the names of
 3 the files on these USB Devices and draw some conclusions
 4 about what the contents are; right?
 5 A. As Mr. Lynch said in his testimony, we can make
 6 some inferences. We don't know for sure exactly what's in
 7 the data without the data itself, but we can infer.
 8 Q. Okay. Let's go back to Mr. Lynch's August 2014
 9 Report--sorry that we're jumping around a little bit, but
 10 it's behind Tab 6--and take a look at the file names.
 11 Let's go to Page 37. I'll get the table name right this
 12 time. It's Table 24.
 13 This is where we see file names from documents
 14 that were connected to--sorry, from documents that came
 15 from USB Devices that were connected to Mr. Zambrano's
 16 computers; right?
 17 A. Well, to be technically accurate, these are
 18 documents that were opened from--documents that existed on
 19 USB Devices that were opened on Mr. Zambrano's computers
 20 while the USB Device was attached.
 21 Q. Okay. And if you do that, what you just
 22 described, it's possible you can open the USB Device, you
 23 can copy text from a document that's on it, paste it into a
 24 document, pre-existing document, on the computer, close the
 25 document that you opened from the USB Device, removed the

09:48 1 Q. Would you like to take a break and get your
 2 glasses, would that help?
 3 A. If it I could take a minute, I know exactly where
 4 they are.
 5 PRESIDENT VEEDER: Take your time, of course.
 6 THE WITNESS: I apologize.
 7 MR. WHITE: I don't want you to be without your
 8 glasses.
 9 (Pause.)
 10 THE WITNESS: Thank you very much. Okay.
 11 BY MR. WHITE:
 12 Q. I was drawing your attention to the document with
 13 the name "Pinochol.doc." You can't draw any conclusions
 14 from the file name as to what was in the content of that
 15 document, can you?
 16 A. No.
 17 Q. Okay. And similarly, if we go down four lines, we
 18 see KKKK.docx. You can't draw any conclusions about what's
 19 in that document, can you?
 20 A. Not from the name. You can see the dates, the
 21 Last Modified Dates of those, though. For the Pinochol I'm
 22 looking, the Last Modified Date was September 11, 2010.
 23 Q. Okay. Got it.
 24 One thing you can tell from the name, though, is
 25 one is a .doc file and one is a .docx file. Those are Word

09:46 1 USB Device, and you won't know the contents of the document
 2 that was on the USB device from which the text was copied;
 3 isn't that right?
 4 A. We would need access to the USB Device to be
 5 certain, but as you say, we don't have that, and have no
 6 evidence of that one way or the another.
 7 Q. Okay. So, I just want to be clear, if somebody at
 8 Mr. Zambrano's computer plugged in one of these USB
 9 Devices, opened one of the documents that's listed here,
 10 copied text out of that document, pasted it into a document
 11 that was already on the Zambrano Computer, closed the
 12 document on the USB Device, unplugged the USB Device, we
 13 wouldn't know what the text was in the document that was on
 14 the USB Device; right?
 15 A. We would need access to the USB Device itself in
 16 order to definitively determine that.
 17 Q. Okay. So, what we've got here and what you looked
 18 at was the names of the files--right?--and I just want to
 19 ask you if you agree with me that if we look down to the
 20 file with the Create time of November 9th, 2010, at 20:20
 21 hours, the document name there is Pinochol.doc; right?
 22 A. I apologize. I left my glasses in my bag.
 23 Q. It's on the screen there.
 24 A. That might be a little better.
 25 Yes, I can see that.

09:50 1 documents; right?
 2 A. Yes.
 3 Q. Just like Providencias?
 4 A. Yes.
 5 Q. And just like Caso Texaco?
 6 Just one other I wanted to look at, if we go down
 7 two more from the KKKK document, we have Document01; right?
 8 A. Yes.
 9 Q. And you can't tell anything from that file name
 10 other than the fact that it's a Word document like
 11 Providencias and Caso Texaco; right?
 12 A. Well, in this case, it's a doc file and the
 13 Providencias and Caso Texaco are docx files, so it's
 14 slightly different but they are Word--Office documents.
 15 Q. Let's turn from that now to the discussion of
 16 internet history, and I would like to go to Slide 14, if
 17 you have your slide deck from yesterday. I want to look at
 18 Slide 14.
 19 A. I actually don't have the slide, I apologize.
 20 Q. This is Mr. Racich's, yes.
 21 So, I want to look at Slide 14 about internet
 22 history. Your first bullet point there is the recovered
 23 internet history reveals legal research and translation Web
 24 sites. Do you recall that?
 25 A. Yes.

<p>Sheet 7</p> <p style="text-align: right;">1222</p> <p>09:51 1 Q. But to be clear, you didn't recover any evidence 2 of visits to legal research sites during the period from 3 October 2010 to February 2011, other than one visit or some 4 visits to fielweb; right? 5 A. I believe those are the ones we could establish 6 exact dates and times. 7 Q. Okay. But you didn't have any evidence of visits 8 to other legal research sites during the time period 9 October 2010 to February 2011; right? 10 A. Not all the entries had date and time stamps. The 11 ones that we did have, the fielweb was the only one with a 12 particular date and time stamp. 13 Q. Okay. And fielweb, you agree, can't be used to 14 access the English language cases that were or to locate 15 the English language cases that were found in the 16 December 21st Providencias; right? 17 A. I don't know. I didn't do any analysis as to what 18 documents were available in there. 19 Q. Okay. Now, let's go to your November 2014 Report. 20 Again, that's behind Tab 3. And I would like to take you 21 to Paragraph 49, and that's on Page 13. 22 This is where you say it's normal that old 23 internet history is deleted but cookies remain; right? 24 A. They can remain, yes. 25 Q. You didn't find any cookies or any internet</p>	<p style="text-align: right;">1224</p> <p>09:55 1 Q. Okay. You identify later in that paragraph a 2 visit to a Web site "windowslivetranslator.com" on 3 January 4th, 2011; right? 4 A. Yes. 5 Q. But that is after the English language authorities 6 appeared in the December 21st Providencias; right? 7 A. With regards to the one draft that we--the 8 snapshots that we were able to recover, there were, my 9 understanding is that there were--there was some case law 10 in that draft. 11 Q. Right. English language case law on 12 December 21st, and that's before the January 4th visit that 13 you found to windowslivetranslator? 14 A. Yes. 15 Q. I want to turn to a different topic now. This is 16 the SATJE records. And if you go to Tab 7(a) of 17 Mr. Lynch's--well, it's Tab 7(a), it's an exhibit to 18 Mr. Lynch's Report from January of this year. Have you 19 reviewed that exhibit? 20 A. Tab 7(a)? 21 Q. Tab 7. 22 A. It says Exhibit 1? 23 Q. Yes. 24 What's in here is first a translation of some 25 documents followed by the original Spanish-language</p>
<p style="text-align: right;">1223</p> <p>09:53 1 history that showed visits to legal research sites other 2 than fielweb during this period, October 2010, you say, 3 through March 2011; right? 4 A. We didn't have any metadata fields available with 5 dates and times that showed that, no. 6 Q. You say in the third sentence, this is the first 7 cookie you found, and that's at January 11, 2012; right? 8 A. There is a cookie for the "lexisweb.com," if 9 that's what you're referring to. 10 Q. And that's 11 months after--almost 11 months after 11 the Judgment was issued; right? 12 A. That's what the metadata of that particular cookie 13 file shows, yes. 14 Q. Okay. The next one you identify is on 15 May 31st, 2012, more than a year after the Judgment was 16 issued? 17 A. Yes. 18 Q. Now, let's talk about--let's talk about visits to 19 translation Web sites. You testify about this in 20 Paragraph 50; right? 21 A. Yes. 22 Q. Okay. And you talk about--the first one, 23 "traducegratis.com." The only evidence you found of visits 24 to that site happened in 2009; right? 25 A. Yes.</p>	<p style="text-align: right;">1225</p> <p>09:57 1 documents, so you will see the translation, then there's 2 the certification from Merrill Corporation, and then the 3 next page is where I want to take you. 4 So, if you go through the English-language 5 translation, you will come at the end of that to a 6 certification that says "Merrill Corporation" on it. 7 A. Okay. Got it. 8 Q. And did you review these documents before you 9 prepared your March 2015 Report? 10 A. I believe--these were attachments to Mr. Lynch's 11 Report? 12 Q. They were. 13 A. Yeah, then I read them. 14 Q. And you saw that these have official Government 15 seals from a Government department in Ecuador; right? 16 A. I don't know one way or the other. I presume that 17 they are official seals. 18 Q. Okay. What I would like to do now is look at your 19 SATJE information. It's Exhibit Respondent 1348, and it's 20 behind Tab 17 in this binder. 21 A. I'm glad I have my glasses. 22 Q. I'm glad I have a screen. 23 So, this is behind Tab 17 in the binder, and it's 24 Exhibit Respondent's 1348. 25 This is what you exhibited to your Report in</p>

09:58 1 support of your conclusion that the Judgment was uploaded
 2 from one of Mr. Zambrano's computers; right?
 3 A. Yes.
 4 Q. Okay. This doesn't have any official Government
 5 seals on it, does it?
 6 A. This was an electronic copy, no.
 7 Q. Okay. Where did you get this?
 8 A. I was provided this by counsel.
 9 Q. And what's your basis for thinking that these are
 10 official records from the SATJE system?
 11 A. I was told by counsel that these were the exports
 12 of the logs of the SATJE system--exported logs of the SATJE
 13 system.
 14 Q. Okay. And you don't explain in your Report
 15 anywhere how counsel, or whoever obtained these from the
 16 SATJE system, how they went about obtaining them for you,
 17 did you?
 18 A. I did not.
 19 Q. Okay. I want to go now to--I want to go now to
 20 your most recent report from March of this year. I believe
 21 it's behind Tab 4 in your binder. I want to go to
 22 Paragraph 18 and pick back up on a point about the internet
 23 history.
 24 You say that the internet history is necessarily
 25 incomplete; right?

10:00 1 A. Typically, yes.
 2 Q. Yeah. So--and so you don't know whether somebody
 3 using Mr. Zambrano's computers was visiting file sharing
 4 sites like Dropbox?
 5 A. There is no evidence of it.
 6 Q. Just like there is no evidence of legal research
 7 sites during this period, but it's possible in your view?
 8 A. Correct. There is no evidence, but it is
 9 possible.
 10 Q. All right. And you also don't know whether
 11 somebody on Mr. Zambrano's computer was visiting e-mail
 12 addresses like--e-mail sites like Hotmail, and downloading
 13 attachments or copying text out of attachments?
 14 A. Can you rephrase that question?
 15 Q. Yeah.
 16 If the internet history is incomplete, as you
 17 suggest, it's possible that somebody on one of
 18 Mr. Zambrano's computers could have logged in to Hotmail
 19 and found a document or found text in an e-mail and cut and
 20 pasted it into Providencias and you wouldn't know that.
 21 A. Those are two different things. The internet
 22 history itself wouldn't necessarily remove the process of
 23 downloading a document, so if you downloaded a document,
 24 the document would, in fact, be created on the local
 25 machine. So, in order to get information out of a

10:02 1 document, it would be saved on the local computer, and
 2 there would--or could--be evidence of that.
 3 As far as content of an e-mail, the internet
 4 history wouldn't tell us that one way or the other whether
 5 or not that occurred, but again, there is no evidence about
 6 that.
 7 Q. Right. So, okay, fair point about downloading a
 8 document. What if you just cut and pasted text? Then you
 9 wouldn't--the internet history wouldn't tell you that;
 10 right?
 11 A. No, the internet history would not tell us that.
 12 Q. Okay. Now, I wanted to look at some of the
 13 internet history that you did recover--oh, yeah, sorry, one
 14 other question.
 15 Hotmail allows you to open a document without
 16 downloading it; right?
 17 A. You can preview certain types of documents. It's
 18 possible.
 19 Q. Yeah. And you could cut and paste text out of one
 20 of those preview documents?
 21 A. I don't think you can cut and paste doc text from
 22 that.
 23 Q. But you can copy and paste?
 24 A. I believe so.
 25 Q. All right. Well, looking at your Paragraph 18 on

10:03 1 Page 5 of the most recent report, you've identified a Web
 2 site here where there were multiple visits--multiple hits,
 3 you call it--and that is Live.com; right? The log-in page
 4 on Live.com; right?
 5 A. Yes.
 6 Q. And this is an internet hit you got on
 7 Mr. Zambrano's computer?
 8 A. Yes.
 9 Q. And that is the log-in page or can be used as the
 10 log-in page to access Hotmail; right?
 11 A. Yes.
 12 Q. So, the user of Mr. Zambrano's computer was, we
 13 know from the internet history, going to the log-in page
 14 for Hotmail; right?
 15 A. Yes.
 16 Q. And if we go to the next page, top of Page 6, you
 17 show a hit count of 14 on January 7th, 2011; right?
 18 A. Yes.
 19 Q. And then you see a hit count of 29 on
 20 January 13th, 2011; right?
 21 A. Yes.
 22 Q. That means that, at a minimum, somebody using the
 23 Zambrano Computers had gone to the log-in page of Hotmail
 24 14 times at least by January 7th, 2011, and a further 15
 25 times by January 13th; right?

10:04 1 A. Yes. The hit count indicates an incremental
2 hitting of that page.
3 Q. So, during this period in early January 2011, a
4 month before the Judgment was issued, somebody on
5 Mr. Zambrano's computer was logging in to Hotmail; right?
6 A. Yes.
7 Q. All right. Now, did you recover the contents of
8 any e-mails that were opened from Hotmail on Mr. Zambrano's
9 computer during this time?
10 A. No.
11 Q. No. Now, one of the things that you've raised in
12 this report concerning Mr. Guerra's internet history is
13 that you found similar visits to Hotmail; right?
14 A. Yes.
15 Q. And you say that that's--the fact that that's
16 there and you can't find the e-mails, that's evidence that
17 somebody was deleting e-mails on Mr. Guerra's computer;
18 that's what you said, right?
19 A. It's a little different. What we were able to do
20 is recover fragments of the Hotmail messages themselves
21 that, the content, the body is no longer available on the
22 computer. And, as Mr. Lynch said, these types of e-mails
23 aren't really--they're not really designed to be stored
24 permanently, but parts of them are downloaded into the
25 internet history. We didn't find any--any examples of

10:05 1 fragments like that on the Zambrano Computers.
2 Q. Did you do that kind of recovery exercise on
3 Mr. Zambrano's computers?
4 A. I believe we pulled--we did the same process for
5 all three computers, yes.
6 Q. And the fact that you didn't find fragments on
7 Mr. Zambrano's computer, that doesn't mean that somebody
8 wasn't opening e-mails on that computer; right?
9 A. It doesn't, but again, it doesn't mean that
10 definitively, but we have no evidence one way or the other.
11 All we--we do have evidence of that on Mr. Guerra's machine
12 but we don't have it on Mr. Zambrano's machine.
13 As you said, there is a log-in, there is evidence
14 that someone went to the log-in a number times, but there
15 is no evidence of what e-mail was opened, if any at all,
16 from what we have here.
17 Q. Okay. So, all you're saying there is that you
18 know that whoever logged into Hotmail on Mr. Guerra's
19 computer was able to see some e-mails, but you don't--all
20 you have on Mr. Zambrano's computer is that somebody went
21 29 times to log in to Hotmail but you didn't recover any
22 e-mail fragments?
23 A. That's correct.
24 Q. Okay. So, as far as you can tell, if somebody
25 actually found any e-mails in the 29 times they logged into

10:06 1 Hotmail from Mr. Zambrano's computers, records of what
2 those e-mails said are not there; right?
3 A. We don't have any evidence of that at all.
4 Q. Okay. Now, turning to Mr. Guerra's e-mails, if
5 whoever was visiting the Hotmail site on Mr. Guerra's
6 computer simply visited Hotmail, opened their in-box,
7 looked at e-mails, read e-mails, maybe even replied to
8 e-mails, those e-mails wouldn't be stored locally on the
9 computer in the ordinary course, would they?
10 A. As discrete files, some of the data would be
11 available in the "pagefile.sys." There likely could be
12 information that would be stored there for at least a
13 finite period of time. But as far as maintaining a
14 database outside of logging in to some sort of client,
15 there is no evidence that that occurred on Mr. Guerra's
16 machine.
17 Q. Let's simplify this. What you saw on Mr. Guerra's
18 machine is fully consistent with somebody who just opened
19 e-mails and closed them without ever taking active steps to
20 delete them from the computer; right?
21 A. As far as user? I don't think I ever said that
22 the user actively deleted it. I said that they were
23 deleted.
24 Q. You're saying that they were physically present on
25 the computer and somebody went in and deleted them?

10:08 1 A. No, I said that they--that there were fragments
2 and information that were there, and then as we--when we
3 received the Guerra image, those weren't there anymore as
4 active data.
5 Q. That doesn't mean that somebody went in and
6 deliberately deleted e-mail content; right?
7 A. No, I didn't say--I don't believe I said that.
8 Q. Thank you. Now, you said that you found no
9 evidence of e-mails between Guerra and the Lago Agrio
10 Plaintiffs' lawyers; right?
11 A. Yes.
12 Q. That doesn't mean that there weren't any e-mails
13 between Guerra and the Lago Agrio Plaintiffs' lawyers. It
14 just means you didn't find any on this computer.
15 A. All I can go on is what the data has. I don't
16 have any information to show that that information existed.
17 Q. Yeah. But you don't--but you can't conclude to a
18 reasonable degree of certainty that that never happened;
19 right?
20 A. No, but I can conclude to a reasonable degree of
21 scientific certainty that it's not there.
22 Q. It's not there, but you don't know that it was
23 never there?
24 A. There is no evidence to it.
25 Q. Yeah. There is no evidence that it was there, but

<p>Sheet 10</p> <p style="text-align: right;">1234</p> <p>10:09 1 you can't exclude that it was there; right? 2 A. I just don't have any evidence one way or the 3 other. I have that it's not there. 4 Q. Okay. Let's look at Exhibit 2 to your March 2015 5 Report, and this is slip-sheeted in the binders because 6 it's a native document that we're going to have to go into 7 on the screen. 8 A. Okay. 9 Q. Okay. And let's go to the Hotmail Web mail 10 fragments here. This is an exhibit you prepared; right? 11 A. Yes. 12 Q. Okay. Let's go to File Record 32. 13 Okay? Again, this is information that you 14 prepared and put in your exhibit? 15 A. Yes. 16 Q. Okay. Now, if we right click on this and go to 17 View Source, that's the Code behind the e-mails; right? 18 A. It's the HTML/XML information there, yes. 19 Q. Okay. And down the right-hand side you--we see 20 Numbers 1, 2, 3, 4; right? 21 A. Yes. 22 Q. I want to go down to Line 1815. Okay. And ask 23 Jamie to highlight--yeah--the name that the cursor is on 24 right now. 25 Do you see that?</p>	<p style="text-align: right;">1236</p> <p>10:12 1 reference to the e-mail address, to an e-mail address 2 SDonziger@gmail.com; right? Mr. Donziger's e-mail address? 3 A. Yes. 4 Q. Okay. And would it surprise you to know--I'm not 5 going to go through the exercise, but if we do this 6 multiple times, you'll find multiple references here? 7 A. That's possible. 8 Q. Did you find these references when you were doing 9 your searches? 10 A. I can't recall sitting here. I can't imagine that 11 the searching--we used NK Search Tool to do it. It would 12 have pulled this up. 13 MR. WHITE: Thank you, sir. 14 Mr. Veeder, if we took a five-minute break, we 15 might be able to shorten this and wrap things up. 16 PRESIDENT VEEDER: Never fails. Five-minute 17 break. 18 MR. WHITE: Thank you. 19 (Brief recess.) 20 PRESIDENT VEEDER: Let's resume. 21 MR. WHITE: Thank you, sir. 22 BY MR. WHITE: 23 Q. Mr. Racich, I want to take you to another one of 24 these very large documents that we need to put on the 25 screen, and that is Exhibit 21 from Mr. Lynch's August 2014</p>
<p style="text-align: right;">1235</p> <p>10:11 1 A. I do. 2 Q. Okay. That's a Gmail e-mail address; right? 3 A. Yes. 4 Q. And that says "SDonziger@gmail.com"; right? 5 A. Yes. 6 Q. Okay. That's Mr. Donziger's e-mail address; 7 right? 8 A. I would have to go back and look, but I believe 9 that's correct. 10 Q. Well, when you searched to see if there were 11 records of any e-mails to and from the Lago Agrio 12 Plaintiffs' lawyers you had a list of e-mail addresses you 13 were searching; right? 14 A. Yes. 15 Q. Okay. And that's one of them; right? 16 A. That's an e-mail address, yes. 17 Q. Okay. And did you find this when you were doing 18 your searches? 19 A. I can't--I don't know. I don't--I honestly don't 20 know. 21 Q. Okay. Well, we can close out this part of the 22 program, and I want to look at another file record. I want 23 to go to File Record 226. Okay. And this one--Jamie, if 24 you'll just Control-F and do a search for DONZ. 25 Okay. We find in this file record another</p>	<p style="text-align: right;">1237</p> <p>10:20 1 Report. 2 You recognize this; this is the internet history 3 from Mr. Zambrano's Old Computer? 4 A. That might help. Yes. 5 Q. Okay. What I want to take you to is Page 1104. 6 This is about halfway through the document, which is why we 7 don't have it all printed. Page 1104, I want to take you 8 to an entry on January 12th, 2010, which we'll highlight 9 here. And you may be able to see it easier on the screen 10 that's in front of you rather than the big screen. 11 But that's an access to Hotmail; right? 12 A. Yes. Yes, it appears to be. 13 Q. Okay. And that's at 5:33 in the evening on 14 January 12, 2011; right? 15 A. Yes. 16 Q. Okay. Now, I want to take you down two minutes 17 later to 5:35 that same day and highlight the entry we see 18 there. 19 Do you see that? 20 A. Yes. 21 Q. That shows that somebody on Mr. Zambrano's Old 22 Computer opened the document Caso Texaco at 5:35 that day; 23 right? 24 A. Yes, that's the Old Computer, and there are a 25 number of documents that were opened in quick succession</p>

10:21 1 after that.
 2 Q. Right. So, at 5:33 on January 12th, somebody on
 3 Mr. Zambrano's Old Computer opens Hotmail, and two minutes
 4 later they open Caso Texaco; right?
 5 A. Yes.
 6 Q. Now, just so that we're oriented in time here,
 7 that is--that's the 12th of January 2011. The 19th of
 8 January 2011 is the date on which you recovered a version
 9 of Caso Texaco that had Judgment text in it; right?
 10 A. Yes.
 11 Q. Thank you, Mr. Racich.
 12 I want to move from here to the discussion of
 13 OSession logs. We can go to it if you need to, but I just
 14 ask you if you recall that in your November 2014 Report you
 15 criticize Mr. Lynch's reliance on OSession logs on the
 16 grounds that those logs are unreliable.
 17 A. No. It was more along the lines that Mr. Lynch
 18 didn't provide any support for the fact that they said what
 19 he said they said.
 20 Q. Well, let's look at your November 2014 Report,
 21 then, and I want to take you to Paragraphs 72 and 73. This
 22 is behind Tab 3 in the notebook. Page 18. And at the end
 23 of Paragraph 73 it's where you say: "In my experience the
 24 log entries have been inconsistent (if they were are
 25 created at all) on various computers I've analyzed."

10:25 1 And this is where you're using the OSession logs.
 2 You're using it to draw this comparison between two
 3 scenarios. One is a scenario where Mr. Zambrano's
 4 assistant writes the Judgment. The other is that a third
 5 party writes the Judgment and gives it to Mr. Zambrano
 6 immediately before he issued it on February 14, 2011. Do
 7 you recall that?
 8 A. Yes.
 9 Q. And that second scenario about a third party
 10 giving it to Mr. Zambrano right before it's issued, you say
 11 that didn't happen because of your analysis of the OSession
 12 logs; right?
 13 A. Well, with regard to the OSession, what I was
 14 talking about with the fact that they're not necessarily
 15 complete is they're not a--there are instances on different
 16 types of operating--well, not operating system, different
 17 versions of Microsoft Office that are installed where the
 18 OSessions are not available at all or the fact that there
 19 are instances where the OSessions aren't complete due to
 20 the fact that they are not saved and recorded. As we
 21 described at least two instances where Microsoft Office was
 22 crashed or where Microsoft Office has issues which are not
 23 necessarily recorded in the OSessions.
 24 Q. We've moved on from that point, Mr. Racich. Maybe
 25 it would be helpful if we go to Paragraph 23 of this

10:24 1 A. Yes.
 2 Q. That was your opinion in November of 2014; right?
 3 A. Yes.
 4 Q. In your March 2015 Report you relied on the
 5 OSessions logs; right?
 6 A. To the fact that they're within the context that
 7 they're available, yes.
 8 Q. So, you think that they're sufficiently reliable
 9 for purpose of the analysis you did in March of this year?
 10 A. For the purposes that I relied on them, yes.
 11 Q. And that's actually the subject of Slide 10 of
 12 your presentation from yesterday; right?
 13 A. Yes.
 14 Q. So, let's go to Slide 10.
 15 And you're saying that there is
 16 consistent--consistent Microsoft Office--sorry--Microsoft
 17 Word use between October 2010 and February 2011. That's
 18 the point you're making; correct?
 19 A. Yes.
 20 Q. And the reason that you do this is found in your
 21 March 2015 Report at Paragraph 23, so let's go behind
 22 Tab 4.
 23 Sorry. That's where you describe what's in your
 24 slide. Where I want to take you now is to Paragraph 9 of
 25 the March 2015 Report.

10:26 1 Report. This is under the heading where you discuss
 2 OSession logs.
 3 You say that there would be unreasonably long
 4 periods of use in Microsoft Word during this period in
 5 early February 2011, if somebody had given a copy of the
 6 Judgment to Mr. Zambrano at that point in time. That's
 7 what you're using OSession logs for in your Report; right?
 8 A. Yes.
 9 Q. And that's to refute the scenario you described in
 10 Paragraph 9 that some third party gave Mr. Zambrano a copy
 11 of the Judgment right before it was issued; right?
 12 A. Again, it's what evidence we have. This is the
 13 evidence that we do have.
 14 Q. Here's where I'm going with this, Mr. Racich.
 15 That's a straw man argument; right? Nobody from
 16 the Claimants--Mr. Lynch--nobody has ever suggested that
 17 somebody gave a pre-printed or pre-drafted copy of the
 18 Judgment to Mr. Zambrano right before it was issued and
 19 then it was uploaded to SATJE; right?
 20 A. I don't know one way or the other.
 21 Q. Okay. Let's talk about--sorry, one more thing on
 22 the OSession logs. Let's go to Mr. Lynch's January 2015
 23 Report that's behind Tab 7. Let's go to Page 20.
 24 Now, you described in your Report that there was
 25 near constant use--this is on your Slide 10--consistent

<p>Sheet 12</p> <p style="text-align: right;">1242</p> <p>10:28 1 Microsoft Word use between October 2010 and February 2011; 2 right? 3 A. Yes. 4 Q. When we talk about the edit time for Providencias, 5 I want to focus on the period between December 21 and 6 December 28, 2010. 7 A. Okay. 8 Q. And you've suggested that the edit time in 9 Providencias between December 21 and December 28, 2010, may 10 not tell the full story of when Judgment text was being 11 drafted because there could have been drafting going on in 12 other documents; is that your testimony? 13 A. That's possible, yes. 14 Q. So, I want to focus in on that period and the 15 issue of whether drafting was going on in other documents 16 that's not reflected in the edit time of Providencias 17 between December 21, 2010, and December 28, 2010. 18 Now, these two paragraphs are where Mr. Lynch 19 describes-- 20 A. I'm sorry, which paragraphs? 21 Q. The two paragraphs at the bottom of Page 20. 22 A. Thank you. 23 Q. Mr. Lynch sets out the edit time for Providencias 24 as 17.4 hours during the Christmas week of 2010; right? 25 A. I believe that's correct.</p>	<p style="text-align: right;">1244</p> <p>10:31 1 week of 2010 on Mr. Zambrano's Old Computer, for whatever 2 purpose, and they were outside Providencias, they were only 3 doing it for less than an hour; right? 4 A. That's the minimum amount of time based on the 5 OSessions, so the OSessions could be incomplete, but with 6 regards to--that's our minimum. 7 Q. They're only incomplete if something unusual 8 happened; right? 9 A. If something happened. I don't know if it's usual 10 or not. Microsoft Word unfortunately crashes a lot for me, 11 but if there is a crash on Microsoft Word, that would 12 necessarily limit the OSessions. 13 Q. And you have no evidence that there was a crash of 14 Microsoft Word during the Christmas week of 2010 on 15 Mr. Zambrano's computer, do you? 16 A. Well, we know it happened twice or at least we 17 suspect it happened twice based on the temporary files that 18 were saved and not deleted but once on the 21st and once on 19 the 28th. 20 Q. Okay. But between these dates, you don't have any 21 evidence that that happened? 22 A. We don't have any other instance like that between 23 those time frames. 24 Q. All right. I want to talk about the edit time in 25 Providencias, Mr. Racich.</p>
<p style="text-align: right;">1243</p> <p>10:30 1 Q. Now, if somebody was working in a Microsoft Office 2 document other than Providencias, that would be reflected 3 in the OSession logs; right? 4 A. Barring some sort of issue where it wasn't 5 recorded, yes. 6 Q. Okay. And the only time that Microsoft Word was 7 active, that the OSession logs show that Microsoft Word was 8 active on the Old Computer during Christmas week of 2010 is 9 aside from the edit time of Providencias, the total amount 10 of time is 52 minutes; right? 11 A. Can you repeat that? I apologize. 12 Q. Yeah. 13 So, Microsoft Word--sorry, Providencias has an 14 edit time of 17.4 hours between December 21 and 15 December 28, 2010; right? 16 A. Yes. 17 Q. Okay. And that's the Christmas week; right? 18 A. Yes. 19 Q. Okay. And the OSession logs show that Microsoft 20 Word was opened during that period for a total of 18.3 21 hours; right? 22 A. I'd have to go back to be sure, but that sounds 23 about right. 24 Q. Okay. And what that tells us is that, if somebody 25 was working in another Word document during the Christmas</p>	<p style="text-align: right;">1245</p> <p>10:33 1 Edit time is a type of metadata; right? 2 A. Yes. 3 Q. It shows us the amount of time a document was open 4 on a computer? 5 A. Yes. 6 Q. And you saw Mr. Lynch's demonstration yesterday-- 7 A. I apologize. It shows the amount of time the 8 document was open and then saved. 9 Q. Okay. 10 A. With a change. 11 Q. Okay. But any changes that were made that weren't 12 saved wouldn't be reflected in the document; right? 13 A. Correct. 14 Q. Okay. So, edit time is the maximum amount of time 15 a person could spend actively working in the document and 16 then saving it; right? 17 A. In general. I can think of some exceptions to 18 that, but in general, it's a fairly good indicator of that. 19 Q. But it's not the minimum amount of time; right? 20 You could have a document open in Microsoft Word and the 21 edit time accrues while you have no activity going on in 22 the document? 23 A. It begins to toll when the document starts to be 24 opened. 25 Q. Yeah. In other words, you can have edit time</p>

10:34 1 accruing in a document, getting higher in a document, while
 2 nobody is actually actively working in the document; right?
 3 A. That's possible.
 4 Q. Now, it happens a lot; right? I mean, people open
 5 a document, they type text into it or cut and paste text
 6 into it, or whatever they are doing, they get up and go do
 7 something else, they come back and do some more work, and
 8 then they Save it, the time they spent doing something
 9 else, that's recorded as edit time; right?
 10 A. It continues to toll as time goes by.
 11 Q. Yes. So, the time spent doing something else in
 12 the hypothetical I just gave you, the edit time is
 13 accruing; right?
 14 A. In the hypothetical you gave, yes.
 15 Q. Okay. Now, Providencias was first opened on
 16 Mr. Zambrano's computer on--first created on Mr. Zambrano's
 17 computer on October 11, 2010; right?
 18 A. That's what the metadata indicates.
 19 Q. And that's the Old Computer; right?
 20 A. Yes.
 21 Q. Okay. Let's look at Mr. Lynch's August 2014
 22 Report, which you may still have open--I'm sorry, it is
 23 Tab 6.
 24 Let's go to Page 28, and that's Table 8. Table 8
 25 I wanted to take you to. That's the metadata--and that is

10:35 1 metadata from the recovered versions of Providencias;
 2 right?
 3 A. Yes, that Mr. Lynch recovered, yes.
 4 Q. Yeah. So, this is where we get from Document 11
 5 the file created on October 11, 2010; right?
 6 A. Yes.
 7 Q. And then we can see the Author name CPJS, that's
 8 where we get that it's the Old Computer?
 9 A. Yes.
 10 Q. And then that document is Last Saved By CPJS;
 11 right?
 12 A. Yes.
 13 Q. And then the Last Saved Date is December 21st,
 14 2010; right? So, that's the December 21st version of
 15 Providencias.
 16 A. Yes.
 17 Q. Now, the total edit time we get here from the
 18 creation of this document on Mr. Zambrano's computer until
 19 December 21st is 2,107 minutes; right?
 20 A. Yes.
 21 Q. That's 35 hours? Approximately?
 22 A. My math is awful, but yes, I believe that's
 23 approximately correct.
 24 Q. Okay. So, the most any of time anybody spent
 25 typing any text or cutting and pasting any text into that

10:36 1 document is around 35 hours; right?
 2 A. On this particular document, yes.
 3 Q. Yeah. Now, that document had 81 pages of text;
 4 right?
 5 A. Yes.
 6 Q. So, if Mr. Zambrano was dictating text to
 7 Ms. Calva for this period October--from the Create Date to
 8 the Last Saved Date, that's less time spent dictating than
 9 one 40-hour work week; right?
 10 A. As far as the timing goes, the 35 hours is less
 11 than one 40-hour work week.
 12 Q. Yeah. So, over the course of ten weeks
 13 approximately, you've got less than a 40-hour work week's
 14 worth of actual activity in this document?
 15 A. In this particular document.
 16 Q. Yeah. Now, in your November 2014 Report--we can
 17 go there if you need to--you say that text was created at a
 18 rate of one page per day if the work was evenly spaced;
 19 right?
 20 A. Yes.
 21 Q. That works out to--if we make your assumption,
 22 that works out to less than 30 minutes a day of dictation;
 23 right?
 24 A. I'll take your word for that on that one.
 25 Q. Okay. Now, you're aware that Mr. Zambrano and

10:38 1 Ms. Calva, the assistant, both testified that they didn't
 2 start working on the Judgment until
 3 mid-November 2011--sorry, 2010; right?
 4 A. I don't recall off the top of my head. I would
 5 have to go back to the testimony.
 6 Q. Okay. Well, assume with me for a minute that
 7 that's true. The period between October 11 and the
 8 mid-November start time of their work, any edit time that
 9 was accrued then, any Saves that accrued then, obviously
 10 wouldn't be Judgment text; right?
 11 A. I don't know. All I can say is that the document
 12 was created on October 11th, and by December 21st, it had
 13 the 42 percent of the Judgment in it.
 14 And I apologize.
 15 As to when it was put in there, I don't know
 16 specifically.
 17 Q. You don't have any evidence that there was
 18 Judgment text in Providencias prior to mid-November 2010;
 19 right?
 20 A. I don't have any evidence one way or the other
 21 when the data--when the text of the document, when it was
 22 placed in. All I know is that, prior to the--it happened
 23 before December 21st of 2010.
 24 Q. And so, you can't say it happened before
 25 December 1st?

10:39 1 A. No, or after. I can't say one way or the other.
 2 Q. Okay. And another date I want to give you is
 3 December 17th. You don't have any evidence that there is
 4 any Judgment text in Providencias as of December 17th;
 5 right?
 6 A. We don't have any evidence other than the
 7 snapshots that we have.
 8 Q. Okay. And that's another way of saying there is
 9 no evidence of any Judgment text in Providencias prior to
 10 December 17th, 2010?
 11 A. Can you repeat the question?
 12 Q. Yeah.
 13 I want to be clear, I want to make sure the
 14 Transcript is clear. Your testimony is that there is no
 15 evidence that there was any Judgment text in Providencias
 16 as of December 17th, 2010?
 17 A. What I can say is that the document as of the 21st
 18 had the data from the--had the Judgment--the amount of
 19 Judgment text that was in it as of December 21st. I can't,
 20 nor can anyone else I believe determine exactly when the
 21 data was put in there. We don't have evidence of that one
 22 way or the other. We do have evidence of when it existed
 23 within the bounds of certain snapshots.
 24 Q. Mr. Racich, I'm going to ask you this again
 25 because it's important. You don't have any evidence that

10:41 1 there was any Judgment text in Providencias as of
 2 December 17th, 2010? Yes or no.
 3 A. We don't know one way or the other.
 4 Q. So you have no evidence of Judgment text in
 5 Providencias as of December 17th?
 6 A. We only have the snapshots that we have as of
 7 December 21st and December 28th, and March 4th.
 8 Q. Mr. Racich, that's not an answer to the question
 9 I'm asking. The question I'm asking is, as of
 10 December 17th, 2010, you've got no evidence that there was
 11 any Judgment text in Providencias?
 12 A. Again, what we have are our snapshots in time.
 13 Where we have evidence as to when the data was there are in
 14 our snapshots.
 15 Q. That's what you do have. I'm asking you about
 16 what you don't have. What you don't have is evidence of
 17 Judgment text in Providencias as of December 17th--
 18 MR. EWING: Mr. President, I would object. This
 19 is asked and answered I think three, maybe four times.
 20 PRESIDENT VEEDER: I think we're getting a
 21 difficulty between the question and the answer, but my
 22 colleague is going to clarify with a question from the
 23 Tribunal's perspective.
 24 ARBITRATOR LOWE: It's simply that I hear a clear
 25 answer from the Witness, and I don't understand the

10:42 1 distinction that's leading you to ask the question again.
 2 I wonder if in case this distinction should become
 3 important later on, you can make it clearer.
 4 MR. WHITE: Yes, it's simply this. I'm asking the
 5 question to confirm that there is no Judgment text--that
 6 there is no evidence of Judgment text in Providencias on
 7 December 17th. What the Witness is not doing is not
 8 answering what wasn't there. He's saying what was there on
 9 December 21st. I don't think the Transcript is clear.
 10 ARBITRATOR LOWE: Well, isn't he saying that
 11 that's the only evidence that he has?
 12 MR. WHITE: If that's clear to the Tribunal, I can
 13 move on from this question.
 14 PRESIDENT VEEDER: I think you've made your point,
 15 and we'll come back to what it is later.
 16 MR. WHITE: Thank you, Mr. President.
 17 BY MR. WHITE:
 18 Q. Now, given the testimony you've just given, it's
 19 possible, consistent with the forensic evidence you've seen
 20 that all of the Judgment text that appears in Providencias
 21 on December 21st could have been cut and pasted into that
 22 document in the days immediately preceding December 21st,
 23 or, indeed, on December 21st; correct?
 24 A. It's possible, but there is no evidence of it.
 25 Q. Okay. Now, hypothetically, if I wanted to--if I

10:43 1 received a document with Judgment text, and I wanted--on
 2 December 21st or 20th or 19th--and I wanted to create the
 3 impression that that document may have been on the computer
 4 prior to those dates, and I wanted to have it in a document
 5 that had some edit time in it and multiple Saves, I could
 6 go back, look at an old file on my computer and simply cut
 7 and paste the text that I wanted in the document into that
 8 document, and you would see what you're seeing in the
 9 December 21st Providencias: A document that was created a
 10 few months before, multiple Saves, and a chunk of Judgment
 11 text; right?
 12 A. So, I just want to be clear with the hypothetical.
 13 You're talking about opening the document that existed
 14 previously, presumably this October 11th document.
 15 Q. Yep.
 16 A. Opening it and to give the impression that it had
 17 been worked on prior to copying and pasting--I don't think
 18 the evidence supports that in this case.
 19 Q. Yeah. I'm not asking whether you have evidence
 20 that says that happened. I'm asking if it could have
 21 happened consistent with the evidence you see.
 22 A. I don't--okay.
 23 Q. So--so, the scenario is: Somebody wants to create
 24 the impression that there has been work done, there has
 25 been Saves on a document, that they--the text of which they

10:45 1 get in mid- to late-December 2010, they can just go back
 2 and find an old file on the computer, open it up, dump the
 3 Judgment text into it, and it will look like what you see
 4 here, a document that was opened a few months ago, multiple
 5 Saves, and some edit time; right?
 6 A. I think there is another datapoint that's here
 7 that doesn't support that.
 8 Q. I'm asking you to confine yourself to the
 9 hypothetical that I'm giving you.
 10 A. And I appreciate that. I'm saying that you asked
 11 if whether or not the evidence that we have here supports
 12 that theory, and I don't believe so.
 13 There is evidence--and I know in my last Report,
 14 in Exhibit 3, I believe it was, it shows that the
 15 Providencias.doc was opened hundreds of times over the
 16 lifespan of the document between October 11th and
 17 that--what I'm choking on is that when that--when that
 18 entry, the internet history entry that shows that,
 19 indicates, that's not consistent with someone opening a
 20 document hundreds of times. That's not consistent with
 21 someone doing a--open up to sort of fake people out that
 22 they were working on the document.
 23 Q. Let's go about this another way, Mr. Racich.
 24 Are you aware that Providencia is the Spanish word
 25 for order?

10:46 1 A. I am.
 2 Q. And the Spanish word for judgment is Sentencia?
 3 A. I am.
 4 Q. Okay. And that Providencias with an S is plural;
 5 right?
 6 A. Yes.
 7 Q. It means Orders?
 8 A. Yes.
 9 Q. Okay. Now, you said earlier that you can look at
 10 the title that somebody gives a document and draw some
 11 conclusions about what they put in the document; right?
 12 A. It's possible. You can infer.
 13 Q. Yeah. And using that inference, wouldn't you
 14 infer that when somebody creates a document called
 15 Providencias, they're intending to put Orders in it, but if
 16 they were going to put a judgment in it, they'd call it
 17 Sentencia?
 18 A. I can't tell as far as specifically. I said you
 19 can infer, but what people have as a matter of habit, I
 20 don't know.
 21 Q. Yeah, but it would be a logical inference that
 22 when you're looking at a document that says Providencias,
 23 when you open it up, you're going to find Orders; right?
 24 A. Again, it depends on who is writing the Order
 25 and/or Judgment.

10:47 1 Q. And that's an inference you're not prepared to
 2 draw?
 3 A. No, not here.
 4 Q. Okay. And you're aware that October 11, the
 5 Create Date of Providencias, are you aware that that's the
 6 date that Mr. Zambrano came back on to the case?
 7 A. I may have--I may have known that.
 8 Q. Are you aware that he issued an Order that day?
 9 A. No, I was not.
 10 Q. Okay. Well, with that in mind, coming back to my
 11 hypothetical, if Mr. Zambrano wanted to create the
 12 impression that he had been working on Judgment texts and
 13 Providencias for a period of months, he could go back to a
 14 document called "Providencias"--not Sentencia--in which he
 15 had been working on Orders, which there are multiple Saves
 16 and there's some edit time--and he could cut and paste
 17 Judgment text into that document, and it would appear that
 18 that document had had Judgment--may have had Judgment text
 19 for a period of time and that it may have been edited and
 20 Saved multiple times.
 21 A. What we have here is--the only datapoints that we
 22 have evidence of is that the Ecuadorian Judgment existed in
 23 this Providencias, and it's a particular Providencias in a
 24 particular folder structure.
 25 And we have two instances, one where it's been

10:49 1 opened on the Old Computer, one where it's been opened on
 2 the New Computer. On the Old Computer it's been opened in
 3 excess of 400 times between the lifespan of the document,
 4 October 11th, and--again, the latter date is where I'm
 5 tripping. I can't remember what that latter date is--and
 6 on the New Computer we have at least 39 or 40 times the
 7 same document in that particular location being opened.
 8 And the only information we have at present is
 9 that the Ecuadorian Judgment, or parts of it, existed in
 10 that document as of December 21st, the 28th, presumably
 11 February 1st as information got up to the SATJE Logs, and
 12 then the March 4th date, and then some dates after that.
 13 So, with the datapoints that we have, we have a
 14 document being opened hundreds of times between--on the
 15 lifespan of the document in that particular location, and
 16 the information that we have is the content is, in fact,
 17 parts of the Ecuadorian Judgment. That's the only datasets
 18 points that we have.
 19 Q. And if Mr. Zambrano was opening Providencias and
 20 doing whatever he was doing with Orders in that document in
 21 October before he says he was working on the Judgment and
 22 making Saves, you've got no way to know that that didn't
 23 happen; right?
 24 A. I can only point to the datapoints that I do have.
 25 Q. Okay. All right. So, let's turn to--back to

Sheet 16 1258	1260
<p>10:50 1 Mr. Lynch's slides from yesterday, and let's look at Slide 2 Number 18, if you would, Mr. Racich. 3 You agree that the edit time on the December 21st, 4 2010 Providencias was 35.12 hours; right? 5 A. As of December 21st, yes. 6 Q. Yeah. And that at that point there were 81 pages 7 of Judgment text; right? 8 A. I believe that's correct. 9 Q. Okay. Now, Mr. Lynch says 94 percent of this text 10 is unchanged in the Final Judgment. Did you do any 11 analysis to determine whether that was correct or not? 12 A. I think I validated it, and it seemed--appeared to 13 be correct. 14 Q. So, you agree with the 94 percent of the text as 15 unchanged in the Final Judgment? 16 A. I believe so. 17 Q. Okay. And you would agree that if we assume that 18 every minute that Providencias was opened was spent typing, 19 text was entered at this rate at approximately 26 minutes 20 per page? 21 A. Give or take, yeah, I believe that sounds correct. 22 Q. Let's go to the December 28th Providencias. 23 That's reflected on Slide 19. 24 And you would agree that the additional text that 25 came in between December 21st and December 28th, the edit</p>	<p>10:52 1 THE WITNESS: Of course. 2 (Brief recess.) 3 PRESIDENT VEEDER: Just before we start the 4 redirect, Mr. White, we had a question for you. You told 5 us that Ms. Calva had testified during the RICO proceeding 6 in New York. We have a reference to the direct testimony 7 C-2387 when she made a sworn declaration, and C-2458, 8 exhibited in these proceedings. But did she also subject 9 herself to a deposition, and was she cross-examined? 10 MR. WHITE: This is Ms. Calva? 11 PRESIDENT VEEDER: Yes. 12 MR. WHITE: It's my understanding she submitted a 13 declaration but that she wasn't either deposed or 14 cross-examined. 15 MR. BISHOP: She did not show up at the RICO 16 Hearing, and so she was not cross-examined and she was not 17 deposed. 18 PRESIDENT VEEDER: You need to explain that 19 because I'm looking at her direct testimony at C-2387. 20 That's simply a document put in without the witness 21 attending the trial? 22 MR. BISHOP: That's correct. She put in a 23 declaration, a RICO Declaration, but then she did not come 24 to the Hearing, and so she was not cross-examined and was 25 not deposed.</p>
<p>1259</p> <p>10:51 1 time during that period was 17.43 hours? 2 A. Yes. 3 Q. And during that period of time, 38 additional 4 pages of Judgment text were entered? 5 A. I believe that's correct. 6 Q. And did you validate that 96 percent of the text 7 is unchanged in the Final Judgment? 8 A. I believe so. 9 Q. And if we assume that every minute that 10 Providencias was opened during that time period somebody 11 was typing in it, the text was entered at a rate of less 12 than 30 minutes a page? 13 A. I believe so. 14 MR. WHITE: Could we just take a moment. 15 (Pause.) 16 MR. WHITE: I have no further questions at this 17 time. 18 PRESIDENT VEEDER: Thank you very much. 19 It may be good to take our mid-morning break now 20 but it depends on how long your re-examination might be. 21 MR. EWING: I would appreciate taking a 22 mid-morning break. 23 PRESIDENT VEEDER: Then it would be appreciated. 24 Let's take 15 minutes. We'll come back at 10 past 11:00. 25 Again, please don't discuss the case or your testimony.</p>	<p>1261</p> <p>11:13 1 PRESIDENT VEEDER: Is that because she couldn't 2 get a visa? 3 MR. BISHOP: I doubt it, but I don't know the 4 answer to that. 5 PRESIDENT VEEDER: There is some story in the 6 Transcript that we can see, but we haven't got to the 7 bottom of it. 8 We can come back to it later, but she didn't 9 actually testify in New York? 10 MR. BISHOP: That's correct. 11 PRESIDENT VEEDER: Thank you very much. 12 MR. PATE: There is a story in the Transcript as I 13 recall. 14 PRESIDENT VEEDER: At some stage give us the 15 reference, but I think there are quite a few stories in 16 this case. 17 Again, just for planning purposes--we're not tying 18 you down. Just give us some idea of how long you might be. 19 MR. EWING: I expect to be less than 15 minutes or 20 less. It should be short. 21 PRESIDENT VEEDER: You could be as long as you 22 like. 23 MR. EWING: I will try to give it 15 minutes or 24 less. 25 REDIRECT EXAMINATION</p>

11:14 1 BY MR. EWING:
 2 Q. Mr. Racich, are you aware that Providencias--one
 3 of the meanings for Providencia is also Sentencia?
 4 A. Even after six years of Spanish, I don't believe I
 5 ever got into the legal parts of it, so I'm not sure.
 6 Q. So, you don't know if it you typed Providencias
 7 into Word Sentencia comes up as one of the meanings?
 8 A. I don't know.
 9 Q. Earlier, Mr. White asked you some questions about
 10 cookies and internet history.
 11 A. Yes.
 12 Q. And if you could turn to--sorry.
 13 And you mentioned other evidence of visits in the
 14 internet history that did not include dates.
 15 A. Yes.
 16 Q. Do you remember that?
 17 A. Yes.
 18 Q. What do you mean by the fact that those entries
 19 did not include dates? What does that tell you?
 20 A. There are certain types of internet history
 21 redirects being one as well as other instances of items
 22 that are recorded in the internet history that don't have
 23 the date field populated, so what we can say is that the
 24 internet history itself shows that those particular sites
 25 are where the objects are that are being accessed--they

11:15 1 were accessed, but we don't have a specific date as to when
 2 it occurred.
 3 Q. And in your Report from November 7, 2014, at
 4 Paragraph 49, you listed a series of Web sites that were
 5 visited that don't have dates, including LEXIS, and a few
 6 others, Cervantesvirtual, Googlebooks and then an
 7 Ecuadorian legal research Web site, but those don't have
 8 dates.
 9 What does that tell you about those particular
 10 entries?
 11 A. What we have is that they were visited at some
 12 point, but we can't pinpoint the exact moment in time that
 13 occurred.
 14 Q. And do you know how often they were visited?
 15 A. I'd have to look to see if there was a hit count
 16 on those particular files, but I don't believe so from
 17 this.
 18 Q. And would the same be true of any other sites that
 19 are listed around this section of your Report about undated
 20 entries?
 21 A. Yes.
 22 Q. Moving to a different subject, you did an analysis
 23 on Mr. Guerra's computer to extract all of the HTML
 24 fragments of e-mail; correct?
 25 A. Yes.

11:17 1 Q. And that was an exhibit in your Report that they
 2 pulled up for you earlier; correct?
 3 A. The March report, yes.
 4 Q. And it was a long list of fragments that you
 5 found?
 6 A. Yes.
 7 Q. Do you remember approximately how many there were?
 8 A. At least a hundred, if I recall.
 9 Q. Now, I don't have that in front of me, so I can't
 10 pull it up for you.
 11 Did you do that same analysis on Mr. Zambrano's
 12 computer?
 13 A. I can't recall. I can't recall right now. I
 14 don't know if we did that exact analysis.
 15 Q. Did you look for HTML fragments like you found on
 16 Mr. Guerra's computer?
 17 A. I believe we did.
 18 Q. And did you find any on Mr. Zambrano's computer?
 19 A. I don't believe we did. We used the same tool,
 20 internet Evidence Finder in this case. I don't believe we
 21 did.
 22 Q. Mr. White also took you to two entries in--from
 23 Mr. Guerra's e-mails that included a Donziger e-mail
 24 address. Do you remember that?
 25 A. Yes.

11:18 1 Q. The first one was Record 31. That was an e-mail
 2 address from Mr. Donziger; right?
 3 A. Yes.
 4 Q. Was that an e-mail from Mr. Donziger?
 5 A. Looking at the text that was surrounding it, it
 6 was some part of code. There was no content that appeared
 7 there. It was just an e-mail address itself.
 8 Again, I only looked at it for the belief period
 9 of time that it was on the screen, but there didn't appear
 10 to be any content associated around that.
 11 And just so we're clear, what the tool does is it
 12 attempts to find the beginning of where the fragments that
 13 it can interpret are, and then attempts to find the end.
 14 It's not always that great at finding the end result of
 15 where the content stops, and so, subsequently, there's
 16 sometimes a lot of garbage, a lot of extra stuff that's put
 17 in, and it makes an attempt to interpret it, but the
 18 HTML--the format of HTML is what it's really trying to
 19 extract.
 20 MR. EWING: And would it assist the Tribunal to
 21 have these exhibits up while we talk about them?
 22 PRESIDENT VEEDER: Yes.
 23 MR. EWING: Would you kindly put those up? We
 24 don't have those on our--
 25 PRESIDENT VEEDER: Maybe not now, but it might be

11:20 1 useful to have a screenshot of those page or pages.
 2 MR. WHITE: Certainly.
 3 BY MR. EWING:
 4 Q. Thirty-two.
 5 Before you do that, looking at this page,
 6 Mr. Racich, do you see Mr. Donziger's e-mail anywhere?
 7 A. Not within the content here.
 8 Q. And when you view the source of this e-mail, what
 9 is that showing you?
 10 A. It's showing me underlying HTML code plus whatever
 11 the software internet Evidence Finder extracted out in its
 12 attempt to reconstruct these fragments of e-mail.
 13 Q. So, now if we view the source behind this page,
 14 you went down to Donziger, is there anything in here that
 15 indicates to you that this is an actual e-mail?
 16 A. No, it's just an e-mail address. And you can see
 17 around it, you can see "eatyourshare.live.com." You can
 18 see it says RPL@hotmail.com, Facebook Mail.com. These are
 19 just addresses that exist in this chunk of text.
 20 Q. And if we pull up record 226, please.
 21 Could you go back to the index.
 22 So, on the typed column for record 226, what is
 23 that?
 24 A. The software interprets this as a contact list, so
 25 when it attempted to reconstruct the page, this is the

11:22 1 contacts that was extracted from the fragment.
 2 Q. And if we look at that fragment itself, and
 3 Mr. Donziger's e-mail address is in there somewhere, what
 4 is this? Would you agree with the software that this is a
 5 list of contacts?
 6 A. It appears to be. It looks like it has the names
 7 and the e-mail addresses and certain other metadata
 8 information about particular contacts. Presumably from a
 9 Hotmail account here.
 10 Q. But again, this is a contact list on Mr. Guerra's
 11 computer; right?
 12 A. That's my--yes.
 13 Q. And neither of these documents is an e-mail?
 14 A. No, not from what I'm seeing, no.
 15 ARBITRATOR GRIGERA NAÓN: Excuse me, if you look
 16 at the line above, there is the full name of Mr. Donziger.
 17 Does that have any relevance in respect of what we are
 18 addressing now?
 19 THE WITNESS: So, what it looks like--and I'd have
 20 to do more analysis to see exactly how it's broken up, but
 21 what it appears is that there are different fields, meaning
 22 entries in the contact database, and you've got a name
 23 field. It looks like possibly a unique ID field, and then
 24 at least the e-mail address itself, and then it moves to
 25 the next step. So, it looks like essentially a list of

11:24 1 both the name and the e-mail address for each of these
 2 contacts.
 3 PRESIDENT VEEDER: It's misspelled. Does that
 4 mean anything?
 5 THE WITNESS: It means that there is a bad
 6 speller.
 7 PRESIDENT VEEDER: Okay.
 8 ARBITRATOR LOWE: What did you search through the
 9 materials which were sent to you for the name of
 10 Mr. Donziger? Did you also search under the misspelling of
 11 his name?
 12 THE WITNESS: I don't believe I did.
 13 BY MR. EWING:
 14 Q. Mr. Racich, when you receive an e-mail from
 15 someone through a program like Hotmail, is that person's
 16 address added to your--let me step back.
 17 When you send an e-mail to someone like Steven
 18 Dozinger (sic), is that person's e-mail added to your
 19 contact list?
 20 A. Typically it is.
 21 Q. So, that would be automatically added?
 22 A. Typically, it is.
 23 Q. And if I receive an e-mail from someone, is that
 24 e-mail added to my contact list?
 25 A. Not by default, unless you do a reply.

11:25 1 By default, it is, and otherwise you'd be adding
 2 huge numbers of spam e-mails. The e-mail addresses would
 3 be added to your contacts on a continuous basis.
 4 Q. So, if I e-mailed you for the first time and you
 5 had an e-mail from me, from Greg Ewing, and you replied to
 6 that, you would expect that my name and e-mail address
 7 would be in your contact list as I spelled them; correct?
 8 A. Typically.
 9 Q. If in this case, would you expect--let me take a
 10 step back. In this case, Steven Dozinger (sic) is
 11 misspelled. Does that indicate to you anything about where
 12 this e-mail came from, whether it be from Mr. Guerra,
 13 Mr. Donziger or someone else?
 14 A. Well, if you've got the e-mail address which is
 15 the "SDonziger@gmail.com," and you have a misspelled name,
 16 so that either means that that an e-mail came in that had
 17 that as the contact name and was replied to with that
 18 misspelling; or it indicates, which I think is more likely,
 19 that someone typed in the e-mail address and as far as who
 20 the person was, they misspelled the name. I would think
 21 that's the likely explanation unless someone has a habit of
 22 not having their name correctly on their e-mail, I think
 23 that's the most likely explanation.
 24 Q. So, the two choices are either Mr. Guerra
 25 misspelled Mr. Donziger's name or Mr. Donziger misspelled

11:27 1 his own name?
 2 A. Well, whoever sent the e-mail address, let's say,
 3 but yes.
 4 Q. Thank you for putting this up. I think we're done
 5 with it for now.
 6 Towards the end of your cross-examination by
 7 Mr. White, he asked you a hypothetical; and in his
 8 hypothetical, Mr. Zambrano created an order on October 11,
 9 2010, when he took the bench; correct?
 10 A. Yes.
 11 Q. And then sometime around February 14, 2011, he
 12 used that same document to paste the Judgment text into it.
 13 A. I don't think I have a hypothetical said that
 14 date, but at some point I think it was the December 21st
 15 date that there was text was being added to the document.
 16 That was in the hypothetical.
 17 Q. Okay. So, the hypothetical--I guess to make it a
 18 little more generic, is the question of whether in a sense
 19 Mr. Zambrano could spoof or fake the computer or you and
 20 Mr. Lynch into thinking that this document started on his
 21 computer on October 11, 2010, and finished on February 14
 22 or March 4th as a complete document, that he could--that he
 23 would use that to fake us all out.
 24 A. I think that was the purpose of the hypothetical.
 25 Q. We have heard Mr. Lynch recovered three snapshots

11:31 1 A. Microsoft Word does.
 2 Q. And are they typically visible on a computer?
 3 A. If you know where to look, you can find them, but
 4 the user doesn't typically have the ability to see them.
 5 Q. So, these are not versions of the file that
 6 Mr. Zambrano purposefully saved. They're just we happen to
 7 have found them. Is that what you're trying to say?
 8 A. Yes. I mean, in fact, we're very fortunate. This
 9 doesn't happen as often as I would like from as a forensic
 10 examiner point of view; when you're analyzing documents, it
 11 was very fortunate to find snapshots like this over the
 12 course of time.
 13 Q. And looking at Mr. Lynch's Table 23 of his--I'm
 14 sorry--of the metadata for the Providencias document--
 15 A. Which report was this?
 16 Q. This is his August 15, 2014 Report.
 17 A. And you said Table 23?
 18 Q. I have the wrong table number.
 19 In his Tables 7 and 8 on Page 28 of Mr. Lynch's
 20 August 15, 2014 Report.
 21 A. Yes.
 22 Q. And looking at the metadata for these files, is
 23 there anything else here that indicates that this document
 24 was opened--sorry, which contradict the hypothetical that
 25 Mr. White had presented?

11:29 1 or temporary files of the Judgment in between
 2 October 11th--between October 11th and March 4th; correct?
 3 A. Yes.
 4 Q. Where did those temporary files come from?
 5 A. They were tilde files. There was one card file
 6 meaning that the file was carved from unallocated space,
 7 what Mr. Lynch did in type validated but actually used his
 8 numbering system because it made more sense to look at what
 9 he was doing. It looked for the header of the document
 10 file.
 11 And we talked about this with regards to the
 12 books. We basically looked for the book without the index,
 13 and were able to pull out the data of the book, and that's
 14 the--that was one of the instances, and then we had I
 15 believe it was two tilde files, so they're essentially
 16 temporary files that when Microsoft Office opened the
 17 document or PowerPoint or what have you in this case, a
 18 document, what Microsoft Word does is it creates a
 19 temporary file with content that it could Save information
 20 to, so if Microsoft Word crashes, which unfortunately
 21 happens, it will allow you to recover certain information
 22 about what you were working on. In this particular case,
 23 those documents were maintained on the computer, and
 24 subsequently we were able to recover data from them.
 25 Q. So, the tilde files, who creates those?

11:33 1 A. Again, these, as we just discussed, are temporary
 2 files that Microsoft Word creates during the process of
 3 editing a document, so for someone to do this, they would
 4 have to know that this temporary file was--as a
 5 hypothetical, as someone trying to game the system, so to
 6 speak, someone would have to know that these temporary
 7 files were, in fact, being created, know that they were
 8 going to be maintained and then know they were going to be
 9 recoverable. To be frank, the easier thing to do is to not
 10 have them there at all.
 11 Q. When you looked at--do you address this in your
 12 Reports at all?
 13 A. In what way?
 14 Q. You didn't address this hypothetical; right?
 15 A. Not my reports, no.
 16 Q. Is there a reason why you didn't?
 17 A. A combination of things. One, it doesn't seem
 18 plausible from a realistic point of view, as well as the
 19 fact that there's evidence that the document was--the
 20 Providencias document living in this particular path is
 21 opened hundreds of times over the lifespan of the document.
 22 That's not consistent with someone opening up a document
 23 and copying data in at the last minute.
 24 Q. And you mentioned that it's opened hundreds of
 25 times. Are you just looking at Table 8, or is there

