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

In the Matter of Arbitration Between:	
CHEVRON CORPORATION (U.S.A.), TEXACO PETROLEUM COMPANY (U.S.A.), Claimants,	PCA Case No. 2009-23
and	
THE REPUBLIC OF ECUADOR, Respondent.	Volume 12

TRACK 2 HEARING

Thursday, May 7, 2015

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

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

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

DR. HORACIO GRIGERA NAÓN, Arbitrator

PROFESSOR VAUGHAN LOWE, Q.C., Arbitrator

Registry, Permanent Court of Arbitration:

MR. MARTIN DOE, Secretary to the Tribunal

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C O N T E N T S

P R O C E E D I N G S

PRESIDENT VEEDER: Good morning, ladies and gentlemen. We'll start Day 12 of this Hearing.

There are certainly a few housekeeping matters, although we prefer to deal with them later rather than now, but we await the agreed order that we discussed two days ago as regards the nonconfidential status of the Expert Reports.

And, secondly, the Tribunal's Secretary sent the Parties a Draft Procedural Order 36 relating to the site visit that we are very anxious to conclude, if we can, today, so any comments back from you would be welcome at the end of the lunch break, and then I hope we can put it to bed.

Apart from that, are there any other housekeeping matters? We ask the Claimants first.

MR. BISHOP: None from the Claimants.

PRESIDENT VEEDER: And the Respondent?

MR. BLOOM: Nor from the Respondent.

PRESIDENT VEEDER: Thank you very much. We give the floor to the Claimants for their closing oral submissions. We'll take our usual breaks. We anticipate finishing, I think as the Parties said, by 5:30 today.

MR. BISHOP: Yes, Thank you, Mr. President.

CLOSING ARGUMENT BY COUNSEL FOR CLAIMANTS

08:59 MR. BISHOP: I'm going to try in the next 15 minutes to put the Lago Agrio Case into some perspective and to give you a roadmap as to where our presentation will go today.

The Lago Agrio Case was fatally defective at its very inception. All diffuse environmental claims had already been settled, TexPet had properly remediated its share of the sites, and the government had approved that remediation at every site. The case was filed against the wrong party in Chevron, and the Plaintiffs had agreed not to sue the Government or Petroecuador, so they tried to ignore their responsibility.

Now, when Steven Donziger took over as lead counsel in 2005 for the Lago Agrio Case, the case quickly turned into an extortionate scheme involving an aggressive public relations campaign, falsified data, the falsified Expert Reports of Dr. Calmbacher, the bribery of Cabrera, and the ghostwriting of his supposedly independent expert reports, intimidation of judges, and the bribery of Judge Zambrano, and the ghostwriting of both his Court Orders and the Judgment.

In this process, the laws and the Constitution of Ecuador were trampled. But what was lost even more was any semblance of the truth, the objective facts, ethical restraints in any sense of proportion in the case.

09:00 The Lago Agrio Plaintiffs' lawyers' descent into an ethical hell is rather astounding, but what's most shocking about this case has been the State's role in it. President Correa adopted the Plaintiffs' case as a national cause. He committed the Government to that case, and he began an aggressive campaign to influence the Court's decisions, and it's clear that successive judges were influenced as every judge after President Correa was elected made clearly biased decisions that denied due process to Chevron.

When the $18 billion Judgment was issued and the fraud and the corruption was revealed, the State, through both the Government and its courts, refused to stay the enforcement of the Judgment, despite that evidence and despite the Interim Awards of this Tribunal. The Government also refused to investigate Chevron's claims or to prosecute or punish any of the principals behind the scheme. And the appellate courts affirmed the Judgment and certified it as enforceable without ever reviewing or deciding the claims of fraud and corruption.

And the Government has even adopted and aggressively promoted the enforcement of the Judgment as a matter of Government policy.

Now, a commonsense view of the evidence, and even of the Judgment just on its face, indicates bias and the

09:02 ghostwriting of that judgment, and I refer you to Slide 3 in that regard. $18 billion in damages, despite Petroecuador's remediation for the same sites of $70 million.

$8.5 billion in punitive damages in manifest violation of Ecuadorian law which doesn't permit or recognize punitive damages, and conditioned on an unprecedented public apology which would have effectively been an admission, and based on Chevron's attempts to defend itself in the face of pervasive fraud and corruption.

The factual absurdities of the environmental findings and damages with no grounding in scientific evidence but based instead on the fraudulent Cabrera Reports and the legal absurdities of trying to justify suing the wrong party and ignoring Petroecuador's operations and impacts.

Now, each of these, along with the Cabrera fraud and the bribery and ghostwriting of the Court Orders and the Judgment evidences a denial of justice and a breach of the Bilateral Investment Treaty.

Now, much of Claimants' case rests on unrebutted evidence. For example, the concessions which Ecuador made in the Opening Statement which reflect generally what they had already said in their Memorials, demonstrates that the

09:03 key evidence in this case is undisputed. For example, Ecuador said in the Opening Statement, and I quote it: "To be clear, the Republic does not dispute the text from some of the Plaintiffs' documents appears in the Judgment as Claimants have identified."

So, it's undisputed that the Plaintiffs' own internal documents are copied into the Judgment. And no one has found those documents that we pointed to anywhere in the Court Record.

So, Ecuador goes further and also says in the Opening Statement, and I quote it again: "It's quite impossible under these circumstances for any person to know the universe of the lawfully submitted documents."

The ghostwriting of the Judgment is clear; and, as a result, Ecuador is forced to resort to an opportunistic any port in the storm defense, that the Court record was kept by the Clerk in such a sloppy manner that no one could know what documents were filed or were not filed.

But what's not clear about this is why Ecuador could possibly believe that's a defense. It would not be a defense at a $9,000 case, and it's certainly not a defense in a $9 billion case.

Dr. Velasquez, a former judge on the Ecuadorian Constitutional Court, confirms in his Expert Reports that a Judgment cannot be based on documents not in the Court

09:05 Record. And Mr. Andrade confirmed that same principle in his testimony on Tuesday. A judgment based on unfiled documents is a nullity under Ecuadorian law.

Now, in the Opening Statement, I told you that there were at least four central characters in the Lago Case, but you would only hear from one of them, and that's Mr. Guerra. And you've now had the opportunity to see and hear Mr. Guerra. And since you've seen his demeanor and you've heard his forthright answers, you can judge his credibility for yourself. But very importantly, his testimony is largely corroborated by independent and documentary evidence.

By contrast, however, the Witness you didn't hear from is former Judge Zambrano. We challenged Ecuador to bring him, since he currently works for a company controlled by Petroecuador, the national oil company of Ecuador, and you invited him to appear. But Ecuador refused to bring him.

So, we might ask why. Why isn't he here? Why didn't they bring him to testify in this case? Well, there's a simple answer to that question, and the answer is that his testimony in the RICO case was so dismal and so devastating and his demeanor so lacking in credibility that it was clear he didn't author the Judgment. So, he's not here.

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09:06 Now it's unfortunate that you didn't get to see him and draw your own impressions from watching him testify, but fortunately, Judge Kaplan in the RICO case did get to see Zambrano in person and did get to hear from him, and he concluded that Zambrano was not a credible witness. And although his conclusion is not binding on you, it's the best evidence that you have as to the demeanor and credibility of Zambrano as a witness.

Now, what is Ecuador's defense to this case? There seems to be no coherent defense on the facts of the case. Ecuador has not brought you a single fact witness in Track 2. Its primary defense seems to be exhaustion of local remedies, but with Ecuador's highest court, the National Court of Justice now having spoken, Ecuador struggles to find a way to preserve its now exhausted exhaustion defense. So, it casts about, and it points to a new and oblique vehicle: The Collusion Prosecution Act. But that doesn't work. The direct remedy for Chevron was appealed, and Chevron fully pursued its appeals.

The Ecuadorian appellate courts had ample procedural vehicles under the Constitution to determine the claims of fraud and corruption that Chevron brought, but they ignored them.

They also had ample evidence of the fraud already in the record before them--the Cabrera fraud, for

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09:08 example--and the evidence that the Judgment copies from the Plaintiffs' internal documents that are nowhere filed in the Court Record. That evidence was before them. And they could have ruled on that basis, but instead they ignored that evidence as well. And the reason I think is clear: Donziger wanted the Government to make the Lago case into a national issue, so no judge could rule against them and get away with it in terms of his career, and he said that in so many words. And President Correa, once he was elected, accommodated exactly that and made the case into a national cause.

Now, as to the Collusion Prosecution Act itself, it's not a direct remedy; and, very importantly, it cannot be used to enjoin or arrest the enforcement of the gargantuan $9.5 billion judgment which would remain enforceable throughout the pendency of the case.

In these unique circumstances in which Chevron is condemned by the President of Ecuador as an enemy of the country and its lawyers and experts are condemned as traitors to the country, justice for Chevron in Ecuador is futile, and the CPA provides no possible remedy.

Now, Ecuador's other major theme in this case is environmental. Over the past three years, you've heard them describe what happened in Ecuador as an environmental disaster. But over the past two weeks you finally had an

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09:10 opportunity to see and hear from the Environmental Experts, and I think you've seen the gross exaggerations and distortions of Ecuador's case in this regard. And there are three simple points I'd like to make about it very quickly:

First, at all relevant times, Petroecuador was always the majority and controlling partner of the Consortium, and the Government was both the regulator and the policy-maker who set the policies that was followed by the Consortium.

Second, the Government agreed to a remediation program with TexPet at specific sites and with agreed criteria that was both effective and protective, and then it approved that remediation at every single site and fully released TexPet from all diffuse environmental liability.

What was left was Petroecuador's responsibility.

And, third, Petroecuador's own budget for the full remediation of the same sites is $70 million, not $8.5 billion.

Now, finally in terms of remedies, the Claimants request a combination of declaratory, injunctive, and monetary relief in order to wipe out the consequences of the illegal acts of Ecuador. The most important of those remedies is declaratory relief, declaring that the Republic of Ecuador committed a denial of justice under customary

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09:11 international law and also breached the Bilateral Investment Treaty and several of its provisions, including the effective means provision.

Now, in order to provide full relief as international law requires, Chevron needs a declaration of both denial of justice and a breach of the Treaty, and Mr. Kehoe will discuss this in much more detail this afternoon.

Similarly, Chevron also requests the Declaration that the Judgment is nullity and therefore devoid of legal effect under international law.

Now, I'd like to answer your first question. Throughout this presentation, various of the speakers will be answering your questions. We're going to try to answer each and every one of them.

But as to your first question, the Claimants certainly have no objection to the Tribunal having the full legal materials that you need, including the full books of Professors Paulsson and Freeman and the full legal opinions in the Loewen Case, among others. We have no objection to that whatsoever.

Now, we've divided our presentation today into seven segments. And, as I said, we've tried to weave the Tribunal's questions into these, and so we're going to answer those questions throughout, so the structure of our

argument is going to be as follows:

First, I'm going to hand the floor to Tracie Renfroe, who will address TexPet's remediation and the RAP.

Then Wade Coriell will address the remaining Track 1 issues, including the settlement issues and certainly the Tribunal's questions on veil piercing, causation, and timing that relate to the Judgment itself.

Now, at that point, that might be a good opportunity to take the mid-morning break. I think that will take about an another hour and 15 minutes to get to that point.

After that, we will then turn to the international law issues for approximately an hour and a half.

David Weiss will address the jurisdictional and admissibility issues and the relevance or irrelevance of the environmental issues.

Professor Paulsson will then address the remaining international law issues such as the treaty breaches, the denial of justice, and the exhaustion of legal remedies.

That might be a good opportunity for a lunch break.

Following that, we'll return to Tracie Renfroe, who will answer the environmental case that Ecuador has put forward.

Then we will turn to the facts of the fraud and

the corruption, and I will address that along with Caline Mouawad and Elizabeth Silbert.

Following that in our sixth segment we'll turn to the issue of remedies. Mr. Kehoe will primarily discuss the remedies, followed by Jan Paulsson discussing the offset theory.

And we will conclude with some final remarks from Mr. Hew Pate, who I think will also attempt to answer some of the Tribunal's questions with respect to the RICO issues.

And with that, I'll turn the floor over to Tracie Renfroe.

PRESIDENT VEEDER: Thank you.

Ms. Renfroe.

MS. RENFROE: Thank you very much, Mr. President, and good morning, Members of the Tribunal.

I would like to add some color and additional detail to Mr. Bishop's comments about the fact that the TexPet Remedial Action Program, or the RAP as we have called it, was both effective and highly protective.

You may remember this slide that I showed you in my opening remarks in which I set forth the division or allocation of remediation responsibilities that the Parties agreed to in 1995 in their Settlement Agreement and the Remedial Action Plan. And the noteworthy point here is

that under that Remedial Action Plan or RAP, the Parties divided not only the sites within the Concession Area, but within a given site they divided remediation responsibilities with TexPet having responsibility only for certain features at certain sites. And we've discussed that issue in detail, and you will have heard no dispute from any fact witness or any expert witness to that point.

Which then brings me to: What was done in this Remedial Action Program? With the benefit of the jointly commissioned HBT Agra audit, the Parties--meaning Ecuador, Petroecuador, and TexPet--agreed on the details of exactly what sort of remediation would be done and where.

And in this slide I've just excerpted a few of the highlights of the nature of the types of things that were to be addressed.

Contrary to what you may have heard earlier this week from Ecuador's Expert LBG, it is not the case that the remedial action work was limited to pits. If one simply looks at the Remedial Action Plan, you will find that it calls for remediation of soils and spills as well as sediments in certain areas, including, in addition to the pit remediation, plugging and abandonment of wells, et cetera; and so it's simply factually incorrect to suggest that this remediation program was limited to pits.

Now, the remediation program was conducted by

Ecuadorian remediation Contractors under the oversight and management of the Woodward-Clyde International environmental engineering firm. You may recall having heard in detail from Claimants' Expert engineer John Connor how the remediation work was done; and, on this slide from his presentation, you'll see the eight-step process that was followed by the remediation for remediation of pits.

And you will find when you look at the volume, the two-volume final report published by Woodward-Clyde International in 2000, you will find a photographic log in Volume 2 of this Report that shows you the photographs that documented the remediation of all of these pits and surrounding areas, including some streams.

And just as a reminder, the Woodward-Clyde Report is in the record as Connor Exhibit 30.

Now, Mr. Connor also, in addition to explaining how the remediation work would be done, he showed us the results of it; and, if we look at this slide taken from his presentation, you can see just one illustration of what a pit looked like before it was remediated and then what it looked like following application of the eight-step remediation process. And as you can see for yourself, the result of it is that the pit was--the contents of it were treated and solidified, it was revegetated and essentially retaken by the surrounding land area.

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09:18 We also heard from Mr. Connor's testimony about the effective nature of this type of remediation program. And it might be of interest to you to know that today, the Republic of Ecuador and Petroecuador actually use the same eight-step process for remediating pits in the Concession Area.

Now, during the testimony of LBG earlier this week, I believe you may have heard the suggestion that streams and sediments were a problem in the Concession Area that LBG is now focused on, and the suggestion that TexPet addressed no sediment contamination. As I said a moment ago, that is simply not true. And in this photograph taken from the Woodward-Clyde Report and that can be found in the clickable database, I show you an example of a stream that TexPet actually remediated, and the stream is near the Sacha 89 well platform. You will find when you look in the Actas in this record that Hinchee 175 contains a copy of the October 1997 Acta confirming from the Republic of Ecuador's Ministry that the remediation work had been done and completed.

And not only do we have the Acta confirming Ecuador's satisfaction with the remediation of this stream, but we also have this letter from members of the local community, this letter of appreciation to TexPet, thanking them for the grate--well, providing an observation of and

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09:20 expressing their testimony of, "real gratefulness to TexPet Petroleum Company for the environmental remediation work performed on the creek which has its origin near well Sacha 89." You'll find that letter in C-1174.

So, not only was TexPet's remediation of pits effective and protective, but we have the testimony of local members of the community who appreciated TexPet's remediation work of streams.

And then again to remind you of the detailed documentation from the Government of Ecuador's own representatives who monitored this remediation program, and their work notes and their monitoring of the program were documented in these 52 what we called RAT Actas, and those are all in this record. And then ultimately, all of the remediated areas that required action by TexPet were approved in the 19 Approval Actas, which are also all in this record, and then all of that culminated in the Final Acta, the final remediation Acta issued September 1998 in which the senior Executives for both Petroecuador and the Ministries of Ecuador confirmed their satisfaction that TexPet had, indeed, completed all of the remediation obligations assigned to it.

And as I said, the documentation of the oversight by Ecuador and Petroecuador's representatives is contained in these various Actas, all of which are in the record, and

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09:22 which we have provided citation, but we're happy to provide them in a handy, convenient collection if that would be of convenience to the Tribunal.

So, let me then move on to this issue, and that is, not only did we have the contemporaneous documented confirmation by Ecuador's representatives, but after the fact we've had further sworn testimony, as I mentioned in my Opening Statement, from high-level executives from the Republic of Ecuador's Ministries again confirming that TexPet, indeed, performed all of the remediation items that were assigned to it, but observing that Petroecuador had yet to do its part.

And I wish to remind you again of the testimony of the Republic's Undersecretary of the Environmental Protection Division with the Ministry of Energy and Mines, Mr. Giovani Rosanía Schiavone, whom you met in a hearing in November of 2012, and he told you under cross-examination he was brought by the Republic of Ecuador, and he told you under cross-examination that he insisted that the technical work, the environmental remediation work, had been done well.

Now, one other important observation that we learned this week and to which there is no dispute from Ecuador's own environmental experts is the fact that the Parties' agreement, their agreed remediation criteria that

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09:23 they set forth in the Remedial Action Plan called for the treatment and then encapsulation of materials that had been stored in pits. After treatment through that eight-step process, then the pits were closed and encapsulated, but the result is that there will be residues or there could be--there is not necessarily, but by agreement of the Parties there could be--residues of TPH left in these remediated closed pits. Dr. Garvey, or Mr. Garvey, and Mr. Goldstein from LBG acknowledged that and acknowledged that was the Agreement of the Parties. And so, to the extent that something untoward is suggested by Ecuador, something untoward about that, that we need only to look at the Parties' agreement and recognize that that was the anticipation and recognition.

And then we move forward in time to two other points in which different representatives of Ecuadorian agencies investigated more than a decade later the efficacy--in some cases a decade later--the efficacy of TexPet's remediation work. And here on this slide, I simply summarize the key findings of one of these environmental investigators associated with one of Ecuador's agencies.

And here, this environmental engineer, Dr. Narváez Troncoso and Dr. Bolivar García Pinos have concluded after investigating various remediation areas that TexPet had

addressed, they concluded that the hydrocarbon impact is confined to the area of the pits and does not affect underground water quality.

Likewise, they concluded that the remediated pits had no impact on the quality of life or the wildlife. Nor were there any leaks or infiltrations into the subsoil or the bottom of the pits detected.

And so, this is proof positive from representatives from the Republic of Ecuador themselves that the TexPet remediation work was both effective and protective of the environment.

Similar findings were made by another investigator, another environmental engineer associated with Ecuador's Office of the Prosecutor; and in this Report in 2006, she reports, after having inspected the surface area of a number of the RAP-remediated pits, that, "of all the pits evaluated, 100 percent of them showed no surface environmental impacts that endanger human life, flora, or fauna." 100 percent of those that she inspected.

Now, all this occurred before the Judgment was issued.

Now, I come to my final point, and that is, not only do we have the official actions of the representatives of Ecuador in the various Actas that we have included in this record, confirming in the period of the remediation

work between 1995 and 1998, that the remediation was done pursuant to the Parties' Agreement, and then we see the subsequent testimony to that effect by the two senior environmental Ministers from Ecuador. And then we have the subsequent investigations by various branches of Ecuador's Ministries.

But now we move forward in time to the Lago Litigation, where I have--where we find the observation of the Stratus Expert Doug Beltman on behalf of the Lago Plaintiffs. And on this slide at the top, I have excerpted again one of his private e-mail observations, where he's telling Steven Donziger: "I did not find any clear instances where TexPet did not meet the conditions required in the cleanup." From the observations of the Lago Plaintiffs' Environmental Expert himself.

That same conclusion was also observed by Mr. Barros, one of the Court-appointed experts who said, "TexPet completed the part of the remediation assigned to it under the RAP." And again, you heard Mr. Connor last week tell you the very same thing in his testimony, that when he went to those sites during the judicial inspection process, he too confirmed the RAP remediated areas had been perfectly and faithfully remediated pursuant to the remediation plan.

And then finally this week, Mr. Goldstein from

LBG, from actually quoting from his prior deposition, he said he believed they complied with the RAP, that TexPet complied with the RAP.

So, Members of the Tribunal, it is simply uncontroverted from any fact or expert witness that TexPet fully complied with the RAP and performed its obligations to remediate, and it did it well, its work was effective, it was protective, and it fully deserved the release that it got from the Republic of Ecuador.

And so, with that, I will now turn it over to Mr. Coriell.

(Tribunal conferring.)

PRESIDENT VEEDER: Mr. Coriell.

MR. CORIELL: Thank you, Mr. President, Members of the Tribunal.

You've heard about the effective remediation that TexPet performed, and I'll now be discussing Ecuador's liability for its legally absurd refusal to give effect to the Settlement and Release Agreements that TexPet signed on behalf of itself and its affiliates in exchange for doing that RAP work that Ms. Renfroe discussed.

And you will recall that this falls into three different and independent legal categories, Ecuador's remaining Track 1 liability. The first, of course, is breach of the Settlement and Release Agreements which you

have jurisdiction to hear under Ecuadorian law under Article VI(1)(a) of the BIT.

The second is, of course, denial of justice for the legal absurdity inherent in the Judgment's failure to account for the Settlement and Release Agreements and its reasoning with respect to those.

And the third is, of course, the treaty breaches, in particular the effective means provision and the fair-and-equitable-treatment provision because of the legitimate expectation of finality that TexPet and Chevron derived from these Release Agreements.

And then I'm going to answer a couple of your questions about causation and piercing of the corporate veil.

Now, when we submit our final brief on the Track 1 issues, we're going to walk you through Ecuador's changing and inconsistent position on the nature of the rights that were purportedly vindicated in the Lago Agrio Judgment. You may remember how in 2010, Ecuador spoke to you during our very first Interim Measures Hearing as if Chevron made up the entire concept of a diffuse right; how in 2012, Ecuador and its experts treated diffuse and collective rights as synonyms in the context of this case. Or how after your Track 1 Award they suddenly pivoted and said somehow "collective" actually means "individual." That was

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09:32 the theme at last April's Track 1b Hearing.
Just two weeks ago we heard for the first time that the Lago Agrio Case isn't about actual harm at all. It's wholly about contingent harm. But what I want to focus on today is the narrow issue of what you have left to decide on Track 1 and how Ecuador is liable for a breach of the Settlement and Release Agreements. And so, I'd like to start with your two key holdings from the final Track 1 Award.
First, at Paragraph 106, at the time when the 1995 Agreement was executed, only Ecuador could bring a diffuse claim under Article 19.2 of the Ecuadorian Constitution to safeguard the right of its citizens to live in an environment free from contamination. Only the State could represent that diffuse right.
Second, Paragraph 112 of your First Partial Award: The '95 and '98 agreements have legal effect under Ecuadorian law precluding any diffuse claim under 19.2 by any individual not claiming personal harm, actual or threatened. The State settled that diffuse right that you held that it could represent.
So, all that's left are individual allegations of, in your words--and I discussed this with you during my opening--personal harm. And you explained in your Track 1B Decision the basis for that key distinction that you made

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09:33 between diffuse and individual rights. You did it at Paragraphs 155 and 156 of that decision. You said that under Ecuadorian law, an individual claim belongs to that individual with the remedy personal to that individual. It's not a diffuse claim. A diffuse claim may belong to a community of indeterminate people with the remedy indivisible, and it is not an individual claim. So, indeterminate people, indivisible interests. These are the characteristics make that distinction.
Now, you may recall in its opening when Ecuador showed you these two paragraphs from your decision, warned you that you got it wrong in your Track 1B Decision, and told you that there was no source for this distinction that you made in Ecuadorian law. But you didn't get it wrong. Ecuador's own expert Dr. Eguiguren has agreed with you. Back in his Report in 2012, and he cited you to the source in Ecuadorian law, which is the definition of a diffuse interest in the 1999 Environmental Management Act. Let's take a look. This is Footnote 14 from his declaration: "Diffuse interest shall mean the homogeneous and indivisible interests, whose holders are undetermined groups of individuals linked by common circumstances." So, just as you said, undetermined people, indivisible interests. Ecuador can try to pretend otherwise now, but this is its law.

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09:35 And before your Track 1 Award forced them to change tune, their comparative law expert agreed with you as well. We see Mr. Chatelier's joint report with Professor Oquendo back in August of 2012, defining diffuse rights as indivisible entitlements that pertain to the community as a whole, such as the community's collective right to live in a healthy and uncontaminated environment, in other words, such as Article 19.2 of the Ecuadorian Constitution. Again, indivisible interests, community as a whole. So, you didn't get confused by civil law concepts, as Ecuador implied during its opening presentation two weeks ago. You got this right, this key distinction.
So, where does that leave us? With a single remaining Track 1 liability issue: Was the Lago Agrio Judgment diffuse or did it vindicate individual claims for personal harm, whether actual or threatened?
And in our Opening Argument, I showed you how the Plaintiffs, how Ecuador up until your Track 1 Award, and how every Ecuadorian Court in the Lago Agrio Case has answered this question diffuse: No claims for personal harm. And you have that handout of admissions that walks you through all of that, and so I'm not going to go to those provisions again.
And in Ecuador's opening, it agreed with us. You see it from the Day 1 Transcript: The Lago Agrio Case does

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09:36 not seek to address personal injury claims or health harms specific to any one person. It didn't award damages based on past or existing injury to any specific person or persons.
And not that it would change the result either way, but the health Expert that Ecuador hired and brought before you to defend this Judgment after the fact didn't even consider--wasn't asked to consider--the question of, in your words, "personal harm." She was asked if the risk assessments prove actual particular harm to a particular person, and Dr. Strauss said no, they do not. "Does that mean that you found that specific persons have been harmed by TexPet?
No, I did not mean to imply any specific person was harmed. I looked at no specific person. I did not evaluate individual harms in the least."
And then we have Ecuador again in its Opening Statement: The Aguinda Plaintiffs dropped their personal injury claims. Indeed, they did. Those personal injury claims refer to their cow claims, their claims for reparation or compensation for their individualized harm. Discrete, past harm. Personal harm. The key to the distinction that you made, that would be a 2214 type action, referring to Article 2214 in Ecuador's Civil Code.
So, what Ecuador is telling you now is that this

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09:38 is not a case of actual existing personal harm, which leaves them with one remaining possibility other than a diffuse case, and that's contingent individual harm under Article 2236, and this is the argument that Ecuador made in its opening presentation, its last remaining Track 1 argument.

But the Lago Agrio Judgment, in fact, used Article 2236 in a wholly diffuse way, and Ecuador had already released the diffuse use of that cause of action back in 1995 and 1998, and that's what I'd like to turn to now.

Now, in Article 5.1 of the 1995 Settlement Agreement, Ecuador released claims for a defined term under the Contract: Environmental impact. And those claims fall into two buckets which I've tried to illustrate conceptually on Slide 32, both of which are diffuse by definition, and that's a key point. The first bucket is harm to the environment, and that's the diffuse interest at Article 19.2 of the Constitution that you identified in your Track 1 Award; and the second is health impacts on indeterminate persons.

And the source for these two buckets of released diffuse claims is the Settlement Agreement itself, as it would have to be, and in particular Article 1.3 which defines the environmental impacts that were released under

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09:39 that Agreement. An environmental impact is any substance present or released into the environment in such concentration or condition, the presence or release of which causes, or has the potential to cause harm to two things: Number 1, human health; Number 2, the environment.

So, let's think about this for a minute. The State is releasing claims for harm to human health or harm to the environment. The State can't have an individual right in human health. The State can't have an individual right in the environment. So, the only way for it to be releasing claims based on these two substantive categories is if it is doing so in a representative capacity, if it is releasing diffuse claims. That's why with this definition of what is being released in the Settlement Agreement is so important to the Track 1 issues.

Any claim alleging harm to those two diffuse interests identified in Article 1.3 is released by this Agreement. The particular cause of action under which that substantive claim is bought is irrelevant, and we can see that in Article 5.2, where the Government and Petroecuador said they intend claims to mean any and all claims, common, civil law, equitable, Contract, tort, constitutional, like 19.2, statutory, like 2236--and here is the key part, and it's highlighted in the middle of the screen. In any way related to contamination, that have or ever may arise in

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09:41 the future, directly or indirectly arising out of operations of the Consortium, including but not limited to consequences of all types of injury. And then it says in all other types of injuries and it lists some, including nuisance. You will recall your Track 1B Decisions, nuisance analogy, strict liability, any other theory or potential theory of recovery. So substantively, what's being released here is in any way related to contamination. That's as broad as this could be. And when you read it with the definition of environmental impact and those two diffuse categories of claims that are being released, you see that the State is acting in a representative capacity.

So, it's any statutory cause of action "related to contamination" as long as it's diffuse and, thus, able to be represented by the State. That's the key: As long as it's diffuse and thus, able to be represented by the State. And that's what you'll recall I started with this, that's what you held at Paragraph 106 of your final Track 1 Award was the case with Article 19.2 of the Constitution.

So, let's look now at another such cause of action, and it's the one that Ecuador is now hanging its hat on, Article 2236. And we see the terms of it. As a general rule, a popular-action lawsuit, and that's what 2236 is, it's a popular action--is permissible in all cases of future damage that, due to a party's imprudence or

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09:43 negligence, threaten undetermined persons. And we can stop there. Because Ecuador and the Claimants and the Ecuadorian courts all agree that the Lago Agrio Plaintiffs purported to represent a group of some 30,000 undetermined persons. It's not in dispute that it is the undetermined persons prong of this Civil Code article that's being used in the Lago Agrio Judgment.

And remember the definition of "diffuse interests" that Dr. Eguiguren referred to, that you referred to, that's in the 1999 Law, remember that that definition refers to those interests that are held by undetermined persons. That's the key link, the definition of diffuse interests in the EMA to this prong of Article 2236 that is undisputedly the one purportedly vindicated in the Lago Agrio Judgment.

So, Article 2236 can be used in a diffuse way. That's what we know from this terminology read with that definition. And it could also be used by the State as representatives of those undetermined persons, and we know that from the testimony of Dr. Eguiguren back in November of 2012. He was asked: Under Ecuadorian law in 1995, you would agree that the Government had standing under Article 19.2 to seek reparation for environmental damage from any party? And he said, I think that, as a public action, it could have done it. The protected legal right

is the right to the healthy environment, to live in a healthy environment.

Public action means Article 2236 as the cause of action, the mechanism. And the substantive right is Article 19.2, the right to the healthy environment.

And for the avoidance of any doubt, he went on to specify that he was talking about Article 2236. This is his follow-up answer. He's still talking about the State. And he says: It could have initiated a legal action seeking the reparation of an environmental damage. The State in 1995: It could have followed Article 2236. And that's determinative of Ecuador's one remaining argument, and the one remaining Track 1 liability issue that you have to decide.

It comes down really to four steps: The first is that the State released all diffuse claims that it could assert for environmental impact defined in the Agreement in 1995.

Number 2, the State could assert diffuse claims under Article 2236 in 1995. It makes sense conceptually, and Dr. Eguiguren confirmed it.

Number 3, the Lago Agrio Judgment was purportedly a diffuse Article 2236 claim--Ecuador agrees with that--therefore, Number 4, the Lago Agrio Judgment was barred by the Releases.

And there is nothing unusual about that: Despite Ecuador's claims to the contrary, representatives may settle diffuse Article 2236 claims. They can bind the community if they're acting properly in their representative capacity. We can see this from a quotation and citation in the Cassation Decision itself.

This is from Professor Guidi. He is being cited in the Cassation Decision, Exhibit C-1975 at 185, and he says: A popular-action lawsuit--that's like 2236--a popular-action lawsuit is a lawsuit filed by one representative in defense of a collectively considered right, whose immutability and the authority of the Judgment will impact a group of people, res judicata. In a popular-action lawsuit, the rights of the group are represented in Court by a representative, and the Judgment will be with respect to the entire collective dispute, reaching the members of the right of the group.

And consistent with this principle, you've already held at Paragraph 107 of your Track 1 Award that representatives may settle diffuse claims, and you've talked about how the Ecuadorian State did so in one instance. You said: It is not juridically possible for a person to exercise a right which no longer exists. And I want you to remember that term "juridically possible" because as you'll recall it's a denial-of-justice standard,

as Professor Paulsson explained during in his opening presentation.

You went on: "As agreed by the Parties' Experts, that diffuse right under Article 19.2 was indivisible, either settled in full or not at all. The Tribunal rejects entirely the possibility that the same diffuse right in Article 19.2 can exist in separate parts to be exercised by multiple Claimants at different times with successive diffuse claims, thereby making any effective final settlement or adjudication of such claims illusory." You rejected that possibility because we had a contractual right and a legitimate expectation not to have that happen. The Lago Agrio Judgment embraced that possibility.

And contrary to Mr. Leonard's concern during his opening, the Romans wouldn't be surprised about this either, and you can look at the source for that in Professor Oquendo's Second Report in 2012, where he said the actions under analysis derive--and Ecuador said this--from Roman law, which explicitly recognized the erga omnes preclusion effect of these suits. And then he cites to where it does that, Title 23 of Book 47 of the Justinian Code, which deals with popular actions, that's like 2236, unequivocally proclaims: "If an action is repeatedly brought on the same cause and on the same fact, the ordinary exception of res judicata may be raised." In

other words, preclusion applies upon repetition of the suit, independently of who acts as Plaintiff" independently of the representative.

So, this is basic stuff, and it's been true for at least 1500 years in the civil law.

So, Ecuador can't escape the Releases just by pointing you to Article 2236 and saying there was a carve-out for this from the Settlement Agreement. Nor does the so-called "five Texaco Experts" or Bustamante Affidavit that they like to point to, support Ecuador's position. This is the Affidavit from the proceedings before Judge Sand in New York in 2005 that you heard referenced again a couple weeks ago.

And my colleague earlier handed out a packet with four documents for you. I will be mentioning each of them. This is behind Tab 4 and it's the entire text of the Affidavit. I'm not going to walk you through it right now, but I have pulled out the sort of two key pullouts on Slide 41. The second one is the language Ecuador always likes to point you to, the reference to Article 2236, and these Experts' opinion that the possibility of bringing those claims is not affected. But what I would like you to look at, you see that that's labeled (b), I would like you to look up at the question that they're being asked, Question 4(b): Does a settlement between the State and

09:51 TexPet affect the ability of individuals to bring claims against Petroecuador for preventive purposes under Article 2236? That's what they're responding to. They're saying it doesn't affect the ability to make these Petroecuador claims. So, this language can't carry the weight that Ecuador wants it to carry with you, especially in light of what I have just walked through, showing the clear release of diffuse Article 2236 claims in the Settlement Agreement.

So, please do take a look at the entire Affidavit, and I will point you in particular to around the middle of Page 2 of the Affidavit where these Experts talk about the use of Article 2236 to vindicate what they call collective or, indeed, diffuse rights. You've heard a lot. You heard it again two weeks ago about how the term "diffuse rights" only came up for the first time in this dispute during this arbitration in 2009 or 2010. These Experts that they like to point you to were talking about them, and talking about them in terms of Article 2236's use back in 2005.

Although--and we've discussed this before--although the Cassation Decision disagreed with Dr. Eguiguren and although it disagreed with your final Track 1 Award on the question whether the State could represent diffuse rights in 1995, I do want to give you comfort on the remaining Track 1 liability issue that you

09:52 still have left to decide because, on that one, the Cassation Decision is clear. It treats the Lago Agrio Judgment as wholly diffuse.

Now, on Tuesday morning you may recall I walked Dr. Andrade through the section of the Cassation Decision or portions of the Cassation Decision that rejected Chevron's improper joinder argument, and the reason that the Cassation Decision did so--and I'm going to show you the key passages in a moment, but the reason that the Cassation Decision rejected the argument that the Civil Code and the environmental claims were improperly joined, is based on the fact that the Claims decided in the Judgment were wholly diffuse, no matter the vehicle, they were wholly diffuse environmental claims. The reason it rejected our improper joinder defense is because these are wholly diffuse claims.

So, let's start at Pages 200 and 201 of the Decision, where the Court says "diffuse interests have to be considered as general interests, interests held by all members of a collective, the object of which consists of goods of general or collective importance." Again, that sounds a lot like the distinction that you made between diffuse and individual claims.

And I asked Dr. Andrade if he understood the Court to be saying that the interest being vindicated

09:54 substantively in the Lago Agrio Case is a general interest, a diffuse interest in a clean environment, that's Article 19.2, and he said yes, in part. So, Ecuador is admitting that the Judgment at least in part vindicates diffuse rights that we know it can't legitimately and legally vindicate because of the Settlement and Release Agreements.

These are otherwise known, by the way, to go back to the EMA glossary of definitions, as "environmental collective rights" in Ecuadorian law, and you see this again, Dr. Eguiguren citing to that term and its definition as those rights shared by the community to enjoy a healthy and pollution-free environment; in other words, Article 19.2, it's an environmental collective right.

So, this is saying diffuse is the same as collective when we're talking about these group rights to public health and to a pollution-free environment. You see again those two substantive buckets of rights I was talking about: Healthy and pollution-free.

And Dr. Andrade agrees with the Cassation Decision that the Lago Agrio Case is a collective action for environmental harm, which is distinct--again, to go back to that distinction that you made in your Track 1B Decision that's troubling Ecuador--it's distinct from an individual action. So, your understanding, he was asked, of what it's

09:55 saying is that the Civil Code does not just contemplate individual actions, it also contemplates collective actions for environmental harm, like the Lago Agrio Case. And he said yes, that is correct.

So, collective or diffuse, even if it's a Civil Code cause of action, it's vindicating the same collective or diffuse substantive right, and these are not, as a result, individual Civil Code claims.

The Cassation Decision goes on. The complaint was filed by a collective. When a case involves damage to the environment, it is always a collective that will be harmed, so the EMA itself contemplates group actions in order to enforce the Claims of a given group and achieve the corresponding remedies and exercise the fundamental right--and here is that reference to Article 19.2 again--that diffuse right to live in a healthy environment.

And then Dr. Andrade confirms three things for us: One, when there is environmental harm it's always a collective that's harmed; two, the EMA contemplates group actions; and, three, the purpose of them is to enforce the Claims of a given group. So, what the Court is saying through this analysis is that it's okay to join the Lago Agrio Plaintiffs' Civil Code claims with their environmental claims because the substance of all of those claims is a collective right, a group right, a diffuse

09:57 right. That's the reason it's not an improper joinder, according to the Cassation Court.

And then the Cassation Decision explicitly says these Civil Code claims are not being used here as individual claims. They're being used to make diffuse claims. And you have that at Page 203. It is mistaken to state that Article 2214 only contemplates individual actions, considering that this title provides for a popular-action lawsuit in all cases of contingent damage in which indeterminate persons are threatened, indeterminate persons. Again, the characteristic of diffuse right. So, the appellant cannot try to confuse the Court by arguing that the current Article 2214 only applies to individual claims. Again, that's why the National Court of Justice says that there was no improper joinder because the entire Judgment vindicated only diffuse or collective claims under the right to human health, the right to live in an environment, and that's why it was appropriate, according to the Court to be heard under Article 43 of the EMA in a summary verbal proceeding.

And finally--and this is the last one--the Cassation Decision cites to comparative law from Colombia in Footnote 221 to show how the popular action--again, Article 2236 in Ecuador--is being used here solely in a diffuse way. You see the reference: Popular-action

09:58 lawsuits are mechanisms instituted by the legal system to defend collective interests. And then it lists some types of collective interests involving public property, space, safety, health, moral administration, the environment, competitive markets and other similar rights and interests. All of these--all of these--are group rights that have to be vindicated by representatives, not individual rights, not relating to personal harm, in your terminology.

And then at the bottom, it goes on, popular-action lawsuits as a collective remedy in response to public injuries and damage as a right afforded to the community to defend itself. In a public-action suit, any person belonging to a group in the community has standing to defend the group harmed. Collective remedy, public injury, community right, individual standing to defend that community right, no personal harm, so we're talking about something that's wholly diffuse, and this is the Cassation Decision analyzing the use of Article 2236 in the Judgment and comparing it to a Colombian provision that's similar.

Now, this final slide on this issue, Slide 51, I hope puts all of the pieces together as far as why the Lago Agrio Judgment is wholly barred by the Settlement and Release Agreements. You see at the top, the EMA. It protects diffuse interests which are held by indeterminate groups. And then you go clockwise, and you see, so does

10:00 Article 2236 of the Ecuadorian Civil Code.

Go down to the Cassation Decision. That is how both the EMA and Article 2236, which were allegedly not improperly joined in the case. According to the Cassation Decision, that's how both of them were interpreted as being used in the Lago Agrio Judgment, in a wholly diffuse way, to protect--and we are back to those two key substantive buckets: The people's public health and the people's right to live in a clean environment.

So then we go to the Settlement Agreement, and that's exactly what we started with. That's exactly what the Settlement Agreement released with respect to that key defined term "environmental impact." Cases of actual or contingent harm to public health or to the environment. What else could have been being released by that term "environmental impact" when you're talking about potential or actual harm to public health or to the environment, other than the community's diffuse claims based on alleged harm in each of those categories?

So, the Releases bar the Lago Agrio Judgment, but I would like to take a step back. And I want to go back to the conversation with which I ended my discussion with Dr. Andrade on Tuesday. You'll recall it was about the State's duty under Article 397 of the Ecuadorian Constitution. Under that provision as he says here from

10:01 the Transcript: The State has to act immediately--it's a constitutional duty to act immediately and to repair in any case where it sees environmental harm.

And he was asked: In addition to whatever sanction there is for environmental harm, the State then shall seek restitution from the Operator that it thinks caused that harm. And he said: That's correct, yes.

So, what that does is it creates a right, the right to receive compensation for whatever the State had to invest in fulfilling that duty, and again he said yes.

And we walked through a hypothetical about this, but the obvious implication is, if the State saw harm in the former Concession Area, it was required to fix that harm, and then it could sue the Operator that it thought caused that harm.

But we know that it couldn't sue TexPet, and we know that it couldn't sue Chevron--both sides at least agree on that because of the Releases.

So think about what this illustrates. They released us in 1995 and 1998 for claims for environmental impact, and I've walked through what that means. In exchange, we cleaned up our percentage interest in the Consortium, and Ms. Renfroe walked you through that process. They're supposed to clean up the rest. Why? Because, as Dr. Andrade said, as the Constitution says,

it's a constitutional requirement, immediately.

Then--then--they have the right to sue the allegedly responsible party, exactly like they've sued Burlington, exactly like they've sued Perenco.

And please don't forget, as the State sits here before you today saying that it could not settle diffuse claims, it is seeking billions of dollars from those two companies for the same diffuse environmental torts that are the subject of the Lago Agrio Judgment, just in a different area, a different geographical area.

But because of the Releases, Ecuador can't sue Chevron, so the Lago Agrio Plaintiffs sued Chevron for the same alleged environmental impacts to vindicate the community's right to public health and to live in a clean environment.

And what this illustrates is that this whole entire process has become a shell game and it's not permitted by the 1995 and 1998 Releases.

So, with respect, we believe that revolves the remaining Track 1 liability issue. The Judgment is barred by the Releases.

Second, Ecuador breached the Settlement and Release Agreements. This relates to the first of the three different legal buckets. You've got a denial of justice for ignoring the Releases, you've got a treaty breach for

ignoring our legitimate expectation of finality, but you've also got a breach of the Settlement and Release Agreements. Now, you recall that we've briefed the various breaches, and we'll outline them again in our Post-Hearing Brief. Last April, Ms. Mouawad walked you through each one, and I have put her slide packet from that presentation from the Track 1B opening last year in with all the key evidentiary references in it at Tab 1 of the handout that you received this morning, and I do encourage you as you deliberate to review that slide packet because there is overwhelming evidence of breach.

For now, I want to touch on a couple of the more egregious breaches of the agreements, but before I do that, Professor Lowe had asked during the opening about the relationship between the Track 1B Decision, the complaint and the Judgment. And while we certainly maintain our view, and we believe that it's supported if you look through the handout that I gave you on opening of the various statements and characterizations about the complaint, while we maintain our view that the complaint brought exclusively diffuse claims, it ultimately doesn't matter because, as I think we have shown, the Judgment vindicated exclusively diffuse claims, so the Judgment is barred as res judicata, whether the complaint in whole or in part was barred as res judicata or not.

Now, what the decision about the complaint might do is it might have an effect on the date at which you find that a breach of the Settlement and Release Agreements occur. Now, we argue that there were various breaches of the agreements, regardless of what the complaint said, beginning with the filing of the case, extending through the criminal investigations and the criminal proceedings that took place before the Judgment was issued; the Government's collusion with the Plaintiffs up to and beyond the Judgment itself. But at the very least--at the very least--we know that there was a breach as of the enforceability date of the Judgment itself.

So, that said, I would like to walk you through some of the key breaches that, in fact, occurred much earlier than that, even consistent with your Track 1B Decision.

But, first, Ecuador's obligation, just to sort of go back to the context, Ecuador's obligation, which is to perform the Releases in good faith. You see the references on the screen: This is a substantive duty under the civil law, to do whatever is necessary to implement the objectives of the Contract. They didn't just have some sort of negative obligation. They had a positive good-faith obligation to do whatever was necessary to implement the objectives.

So with these releases, what does that mean as a practical matter? Well, it means a few things--to uphold them and implement their objectives and not to undermine them. So, for example, Ecuador can't release Chevron and then impose liability through its Judgment for claims that Ecuador extinguished. It can't help the community sue, pressure Chevron, enforce the Judgment against Chevron for the Released claims. It can't frustrate the Releases by seeking creative ways to undermine them or nullify them. That is inconsistent with them on their own terms and it's inconsistent with that good-faith obligation.

And what it is is what it comes down to is it's an obligation of result. Ecuador can't try but fail to release, acquit and forever discharge--those are the terms from the Agreement--Claimants from claims for diffuse environmental impact. That's the ultimate obligation.

And when the Lago Agrio Plaintiffs filed their case, Chevron requested way back in October 2003 that Ecuador honor its obligations under these releases. You see it on Slide 57 in the letter from Chevron to Ecuador's Minister of Energy and Mines. It asked Chevron to notify the Court that, pursuant to the Releases, Chevron, Texaco, TexPet are not liable for environmental damage or for the remediation work arising from the Consortium activities; in other words, are not liable for Environmental Impact,

capital E, capital I, was released. Please protect and defend the rights of Chevron, Texaco, and TexPet.

Now, Ecuador likes to say to you what could we do, as if it were some sort of a passive observer of the undermining of these releases. But let's take a look back at some of what it did do. It knew that the Settlement Agreements barred the Lago Agrio claims, so it sought to undermine them, by instituting criminal proceedings against the signatories to those agreements, and Ms. Mouawad walked you through that sordid story before, the timeline of the events for the investigation and the proceedings themselves--the reopening, all of it, are at Slides 39 and 40 behind Tab 1 of your handout. But let's look at some of the low lights of that process.

And we can start in August 2005 with Martha Escobar, the Deputy Attorney General, who wrote in an e-mail to the Plaintiffs' attorneys, if you look at the "to" line, to the Plaintiffs' attorneys, about how the A.G.'s Office and all of us working on the State's defense are searching for a way to nullify or undermine the value of the Remediation Contract, searching for a way to breach the Settlement Agreements. The Attorney General remains resolved, he wants to criminally try those who executed the Contract, the evidence of criminal liability having been already rejected by a prosecutor. They are going to try

again. So, the Releases are in the way, so let's undermine them.

A month later, Steven Donziger talks about the collusive plan with the Government, how the idea is to use it to convince the Government to take action against Chevron to nullify the remediation Contract, compel the Government to act against the company legally, to nullify the remediation Contract.

These Plaintiffs' lawyers knew the hurdle that the Remediation Contract had for their claims down in Lago Agrio, so they needed it nullified and they colluded with the Government to try to get it nullified.

October 6th of 2005, Donziger again, the key issue is the criminal case, can we get that going, Ricardo Veiga likely will be knocked out of the box by the criminal investigation and being called as a witness. This will be useful for us in Lago and in the ongoing criminal investigation.

And then in 2009, the honest confession from a Plaintiffs' lawyer to Mr. Donziger, he says on February 4th: Dude, if the guys at Jones Day--that's Chevron's counsel--get a hold of this, it's gonna hurt us. It's pretty much irrefutable evidence of us collaborating with the Fiscalía to get Reis Veiga and Pérez convicted." Irrefutable evidence. We agree. And then of course,

Donziger instead of agreeing, says don't worry, nothing Chevron says sticks these days.

So, collaborating with the Fiscalía, to undermine and nullify releases executed by the State. If this is not a breach, then I don't know what would be a breach of these Release Agreements.

Now, Ecuador's response to all of this, amazingly, is to shrug it off essentially before you. The charges were dismissed, they say. No harm, no foul. They want you to ignore what Mr. Veiga went through, being accused of criminal acts and fearing the consequences as he traveled around South America and continued to work on these Ecuador matters. They want you to ignore what Mr. Pérez went through living in exile in Florida away from his family and away from his Ecuadorian home for most of the last few years before he passed away. Really, what appalling conduct by a sovereign State shamelessly ignoring its own contractual obligations much less any basic sense of justice, using the full weight of its authority to support Donziger and his fellow conspirators. I should hope that we can at least agree that this kind of conduct rises to the level of a breach of contract.

But it doesn't stop there, as Ms. Mouawad referenced for you last year. Ecuador has reopened the investigation, no formal proceedings have been filed, but

they've reopened the investigation that continues to hang over the people who signed this Release Agreement. You see no less than President Correa's favorite advisor, Alexis Mera, October 7th of 2013, he said, "I have asked the Prosecutor General--recall this is the same Prosecutor General who seems unwilling to investigate any of the judicial fraud, the evidence of which you have seen in this case--but Mr. Mera focusing on the Releases said: "I have asked the Prosecutor General publicly, and privately, I have gone to see him, to ask him to bring criminal actions for embezzlement of public funds against all of these officials. They committed treason. There is that word again. President Correa has demanded that the Prosecutor reopen proceedings and there have actually been a series of so-called site inspections preliminary to just that, and we will walk you through the evidence of that in our Post-Hearing Brief as well.

You see the words from the Minister of the Environment just last summer. Ecuador is going to pursue this to the very end. All efforts by our Attorney General's Office, to ensure that this oil company acknowledges the harm that it caused and responds with the appropriate compensation. As if there hadn't been a Release Agreement and a Remediation Action Plan properly implied that already did just that.

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10:15 And, of course, flouting your Interim Measures Awards, Ecuador continues to undermine the Releases globally. To you, they complain every few months about limited resources while spending the public funds liberally across the world, promoting through payments to various publicity groups and the like, promoting their declared number one foreign policy priority, as Mr. Bishop noted in his opening presentation: The Lago Agrio Judgment.

Do you remember in 2010 when they used to come before you and say we have nothing to do with this case? Number 1, foreign policy priority.

I could go on, Mr. President, about the various breaches but please do review the materials behind Tab 1 in the handout. Before our break, though, I would like to answer a couple of your questions about causation and veil-piercing, which as you know and as I argued in my opening presentation, were additional legal absurdities in the Lago Agrio Judgment.

On causation, I think that the issue for its effect on a denial-of-justice case, what it ultimately boils down to is fairly straightforward: The Parties agree that causation is a required element for an environmental tort in Ecuador. We disagree on who has the burden of proof with respect to that element. And you can look at the references from Doctor Coronel, Dr. Barros and then

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10:17 Dr. Andrade on the other side for that discussion.

But recall from my opening that the Cassation Decision refused to consider evidence from Chevron of Petroecuador's causation, saying that it would violate due process because Petroecuador isn't a party to the case. That was the Cassation Decision's legal conclusion, and that's the legal absurdity that's at the heart of our denial-of-justice case on causation. Regardless of burden of proof, that issue transcends burden of proof to say that that can't be considered, the factual causation by Petroecuador is a legally absurd result under Ecuadorian law as it would be under the law of any system.

And I'll note before I move to veil-piercing, that as I said, Dr. Barros and Dr. Coronel spent a lot of time with these issues in their Reports. You heard from Dr. Andrade because we confronted him. You have not had the opportunity to hear from Dr. Barros and from Mr. Coronel because Ecuador did not want to confront them, did not want you to hear from them.

Now, on veil-piercing, you asked if the Judgment has findings of abuse of the corporate form as to the Chevron/Texaco merger. It does not. What it does, and I encourage you to look at pages roughly 11 through 13 of the Judgment, which is at Claimants' Exhibit 931--what it does is it cites a series of PowerPoint presentations and news

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10:18 articles for the rather unremarkable proposition that there was a form of merger between Texaco and a Chevron subsidiary.

And then it says this, what you see on Slide 66: Per the principle of good faith, any citizen, Ecuadorian or North American, who heard the public statements made by the companies Chevron and Texaco would have inevitably come to the conviction of a merger between them.

So, again, I encourage you to read Pages 11 to 13 of the Judgment to see the true absurdity in this Court's veil-piercing holding.

I also encourage you to read Tabs 2 and 3 of your handout. Behind Tab 2 is the Witness Statement of Chevron's corporate governance liaison, Frank Soler. He details the merger transaction, and he explains how Texaco, Inc. survived with even more equity value than it had pre-merger. He explains how its assets and its liabilities were fully intact because of the particular form, the reverse triangular merger that took place. And to that end I would say that Paragraph 20 of his Statement is particularly informative.

Behind Tab 3 is the Expert Report of Delaware law professor William Allen, who is a former Chief Judge of the Chancery Court there, and he explains the legality of the merger under the applicable law, which was

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10:20 ignored--absolutely ignored with no explanation by the Lago Agrio Judgment in those pages that I've asked you to review. And again, the reason I'm putting those in your handout and asking you to take a careful look at them is because Ecuador again chose not to confront these particular witnesses and chose not to let you hear from them in person.

Finally, you asked for the reference for the Plaintiffs suing the wrong party in their initial complaint, and so here it is on Slide 67, it's Exhibit 716 from Steven Donziger's diary January 24, 2006, and what he says is this goes back to Alberto's, and by Alberto he means Plaintiffs' lawyer Alberto Wray, this goes back to Alberto's errors, suing the wrong party in the complaint. This is one of the many reasons why the Plaintiffs had to ghostwrite this Judgment. They had to fix this mistake and they had to navigate numerous other issues and difficulties, like the exposure of the Cabrera fraud, the use of the cleansing Experts, lots of complications that they had to navigate, and they couldn't rely on Judge Zambrano, of course, to get it right, and so they bought the opportunity to write this Judgment. This is part of the reason for that.

So, with that, I will close my presentation and, as Mr. Bishop mentioned, this might be a good time for our

morning break.

PRESIDENT VEEDER: Thank you very much.

Let's have a 15-minute break, and we will come back at 25 to 11:00.

(Brief recess.)

PRESIDENT VEEDER: Let's resume.

MR. BISHOP: Yes, Mr. President. We will now move into the international law issues and start with David Weiss, who will discuss the jurisdictional and the admissibility issues.

PRESIDENT VEEDER: Mr. Weiss.

MR. WEISS: Thank you.

Professor Lowe asked during the opening arguments for Claimants' case regarding when the breaches are said to have occurred especially in light of the fact that Claimants filed their Notice of Arbitration in 2009; and on Friday the Tribunal asked the related question of whether this timing has any effect on your jurisdiction or the admissibility of those claims under the lex arbitri, the UNCITRAL Rules, or public international law.

First, these sorts of temporal issues have no effect on your jurisdiction. They are an attack on the effectiveness or the defects in certain claims. They are not an attack on your power to rule on those claims. To the contrary, they assume that you have the power to rule

on those claims, and this reasoning is consistent with your Award on Jurisdiction at Paragraph 4.91.

Very well. As a question of admissibility, when did the breaches occur? Mr. Coriell touched on this a little bit. Certain conduct of the Ecuadorian State violated Claimants' rights under the Release and related rights under the Treaty before 2009. Subsequent conduct has continued to violate those obligations. But Claimants did not assert denial-of-justice claims in 2009. Now, certainly conduct that's inconsistent with the international minimal standard of due process required by international law had occurred prior to 2012, but on Claimants' case, at the latest, because of questions of exhaustion, Claimants' denial-of-justice claims ripened in 2012 when they asserted them.

Does this timing affect the admissibility of Claimants' claims under the lex arbitri, the UNCITRAL Rules, or public international law? The answer is no. We consulted with our Dutch counsel. There are no applicable mandatory rules which would take us to the UNCITRAL Rules. Nevertheless, it's somewhat of a moot point because Dutch arbitral practice is consistent with the practice under the UNCITRAL Rules, which is basically this Tribunal has the discretion to allow Claimants and Respondents to amend and supplement claims and defenses, provided that they do so in

accordance with due process and in particular allow the counter-party a right to respond and prevent unreasonable delays in the course of the arbitration. And this is set forth in Article 20 of the UNCITRAL Rules.

We think this is dispositive as to the question; nevertheless, we have cited on the next few slides a few additional authorities. For instance, this is consistent with the practice of the PCIJ and the ICJ. We've also cited several investor-State cases under the UNCITRAL Rules, but I would take one moment to bring to your attention a statement from the EnCana versus Ecuador Tribunal deciding an investor-State dispute under the UNCITRAL Rules where Professor Crawford, in discussing this discretion, stated that a balance must be struck between unreasonably requiring that new proceedings be commenced where the substance of a claim of breach of a BIT may arguably have been made out or very nearly made out, and subsequent questioned events put the question beyond doubt. That is very apropos to this case. To the extent you have any concerns as to the ripeness of Claimants' claims when asserted, there can be no doubt as of today, given the conduct of Ecuador since 2012, that all of Claimants' claims are ripe, provided that they fall within the Agreement to arbitrate.

Which brings me to Ecuador's outstanding

objections to jurisdiction, and I will discuss those objections in four categories: First, objections to this Tribunal's jurisdiction under VI(1)(a), claims arising out of or relating to an investment agreement with respect to TexPet; claims under VI(1)(c) BIT breaches with respect to TexPet, and the same two categories with respect to Chevron.

I would also note at the outset that Ecuador has challenged your Track 1A Award in the Dutch courts and in so doing also your Award on jurisdiction. Therefore, as a matter of Dutch law and international law, the Jurisdictional Award is final and binding.

VI(1)(a), this Tribunal has already held that TexPet may assert claims related to its Investment Agreement. This Tribunal has held that the 1973 Concession and the 1995 Release comprise one Investment Agreement.

VI(1)(a) jurisdiction includes disputes related to. It is broadly defined. It is not limited to claims arising under an Investment Agreement. And here I depart from your prior Award and note that the Commercial Cases Tribunal expressly held that VI(1)(a) provides jurisdiction to bring claims directly under customary international law provided that they relate to an investment agreement. And as Mr. Bishop foreshadowed, this is a very important point for purposes of remedies, which Mr. Kehoe will address

later today.

Ecuador has not contested in this proceeding your jurisdiction to decide denial-of-justice claims directly under customary international law, provided that they relate to an investment agreement.

Your jurisdiction with respect to TexPet under VI(1)(c), your Award on Jurisdiction: TexPet has an investment. That investment began in the 1960s; it continues to exist today. And if I could bring your attention to the red underline, it includes the Lago Agrio Litigation, and that makes sense because, as you also state in your Decision on Jurisdiction, remediation is a normal part of an oil concession.

Now, Ecuador's principal argument with respect to TexPet historically has been that TexPet was not a party to the Lago Agrio Litigation and, therefore, it hasn't suffered any harm, and, therefore, it has no standing in this forum to complain about what transpired in the Lago Agrio Litigation. This Tribunal in its decision on jurisdiction already rejected that argument at least as to TexPet's release claims for non-compensatory relief. But even to the extent that Ecuador's argument had water as to compensatory relief at one point in time, it does not today. As you will recall when we were examining Professor Andrade, the Ecuadorian judiciary has imposed all of the

liability arising out of the Lago Agrio Judgment directly on TexPet. It has seized TexPet's bank accounts, and it has purported to seize TexPet's interest in the Commercial Cases Award.

Your jurisdiction over Chevron's claims under VI(1)(a), again, I began with your Award on Jurisdiction. There is an investment agreement that includes both the 1973 Concession and the 1995 Release. Chevron is a Releasee. Chevron may enforce its rights under the 1995 Agreement. Jurisdiction under VI(1)(a) is broad and includes claims related to the Investment Agreement and does not require original contractual privity. And as I've already noted, it provides a basis for asserting denial-of-justice claims directly under customary international law.

Now, Ecuador's argument focuses on your limited holding that the 1995 Release Agreement by itself is not an investment agreement, that Chevron was not a party to the Concession Agreement and, therefore, Chevron cannot bring a claim under VI(1)(a). We believe your reasoning has already rejected that argument at least as to the 1995 agreement; and, therefore, Ecuador's entire argument under this prong is predicated on it prevailing entirely on the Track 1 issues. I'm not going to reargue the Track 1 issues that Mr. Coriell has covered, but I would note again

that Dr. Andrade agreed when discussing the Cassation Court's Judgment and the Lago Agrio Litigation that at least in part the right to live in a clean environment was being vindicated, and I submit, at least for purposes of jurisdiction under VI(1)(a), this is sufficient to provide Chevron with the jurisdictional bases to assert denial-of-justice claims under customary international law.

Your jurisdiction over Chevron's claims under VI(1)(c). This Tribunal has already held that Chevron may bring claims with respect to its indirect investment in TexPet. You reserved for the merits the question of the extent to which whether Chevron, on that basis alone, can seek all of the relief that it seeks in this arbitration. We submit that it is more than sufficient. What precisely is Chevron's indirect investment? It's the same investment as TexPet's. The only difference is that TexPet had a direct investment from the 1960s that continues to exist today. As of 2001, Chevron acquired an indirect investment in that same investment, and that continues to exist to this day.

Thus, since 2001, Chevron has had an investment in Ecuador, and all of Chevron's claims in this arbitration concern that investment.

Now, to put a finer point on it, but for that link, but for that indirect ownership, there is no more

connection between Chevron Corporation and the impacts in the Oriente than Federal Express or Google. That alone is sufficient.

Let me address Ecuador's counter-arguments. Ecuador argues that TexPet has not suffered any harm in the Lago Agrio litigation; and, therefore, there has been no harm to Chevron's indirect investment. And that kind of makes sense with perverse logic. Again, these treaties were all designed in the wake of Barcelona Traction to provide standing for indirect investment. What does that typically entail? The most that an indirect investor in almost every investor-State case can lose is the money they contribute and the value of the company that they own. And yet here, based exclusively on indirect ownership of TexPet, billions of dollars have been imposed directly upon Chevron.

Ecuador argues that the right to limited liability is not a part of its investment. It's not an "investment treaty right." It's a legal right under municipal law. This argument confuses the components of an "investment" which is determined by the definition of investment and the relevant Treaty with the substantive treaty rights. The legal right to limited liability under municipal law is a claim to performance having economic value and associated with an investment. As such, it falls squarely within the

10:49 definition of "investment" in Article I of this Treaty. And, therefore, Ecuador has an obligation to accord Chevron's right to limited liability with fair and equitable treatment, and Ecuador has an obligation to provide Chevron with an effective means of enforcing its right to limited liability.

Next, Ecuador argues that Chevron did not contribute to the Ecuadorian economy and, therefore, it cannot complain it does not have an investment. This comes from the Salini line of cases. It is a controversial element of the Salini line of cases, but more importantly, Salini has to do with the concept of "investment" in the ICSID Convention, which famously does not have a definition of "investment," and even there it is very controversial. ICSID Awards have been annulled for applying it. In its opening argument, Ecuador cited GEA v. Ukraine, and yet that case at Paragraphs 137-143 discusses and acknowledges the controversial nature of the Salini line of cases.

It is entirely inappropriate to take a controversial element of a controversial test having to do with a different Treaty and seek to import it into an entirely different Treaty that has a definition of "investment." Nevertheless, it's an entirely moot point. Even if one accepts the contribution element entirely, the question is not whether each individual legal right that

10:51 comprises a component of the investment contributes to the Ecuadorian economy in some esoteric or vague way. The question is whether the investment contributes to the Ecuadorian economy. And TexPet and Chevron's investment contributed $23 billion to the Ecuadorian Treasury and billions and billions more to the Ecuadorian economy.

Finally, there is the open question of Chevron's status as a direct investor. We don't think this Tribunal needs to reach that question. As we've already submitted, your jurisdiction over Chevron's indirect investment is more than sufficient. Nevertheless, let me make three quick points:

The Ecuadorian judiciary has pierced the corporate veil between TexPet and Chevron. As a result, whether you think that veil-piercing was legitimate or not, as a direct result under Ecuadorian law, the rights and obligations of TexPet flow to Chevron. Dr. Coronel addressed this in his August 28th, 2012 report at Paragraph 11, and he also addressed it in his June 13, 2013 Report at Paragraphs 25 to 28. That is a separate question from our preclusion argument under international law.

In its Opening Argument, Ecuador argued that we had no authority for our preclusion argument. We cited several authorities in our Counter-Memorial on Jurisdiction at Paragraphs 82 through 96. We were not particularly

10:52 focused on the facts of those cases; we were citing it for the principle. It's a general principle of law. It's fairly straightforward. The question is how it should apply to this case, and we submit it is fundamentally unfair for the Ecuadorian State to impose billions of dollars on Chevron as if it were TexPet as if they were one and the same, and then turn around for purposes of investor-State arbitration and insist that Chevron be treated as a separate legal personality.

Again, that functions whether or not you think the veil-piercing was illegitimate. But if you were to conclude that the veil-piercing was arbitrary and illegitimate, Ecuador's objection is even worse because it seeks to benefit from its own improper veil-piercing to deprive Chevron of this forum. Ecuador cited BG Group in its Opening Argument, where that Tribunal declined to allow the parent corporation BG to bring contractual claims that belonged to a contract of Metrogas.

Let me pause on that for one second. That argument succeeded. But why did it succeed? It succeeded because that Tribunal and Argentina respected the corporate separateness between Metrogas and BG. What Argentina did not do in that case is impose billions of dollars in fake liability on BG Group for the alleged conduct of Metrogas and a State-owned joint venture partner and then turn

10:54 around and argue that BG cannot complain about that conduct in an investor-State forum.

For these reasons, this Tribunal has ample jurisdiction with respect to both TexPet's and Chevron's claims under both Article VI(1)(a) and VI(1)(c) of the Treaty and, as a result, has the power and the duty to decide the Claims before you and to discuss the content of those claims.

I yield the floor to Professor Paulsson.

PRESIDENT VEEDER: Thank you.

Professor Paulsson.

MR. PAULSSON: Good morning, gentlemen. I'll address international law issues relevant to Track 2; namely, denial of justice under customary international law and the treaty breaches, but you will find me most of the time addressing a subtopic, "exhaustion."

Members of the Tribunal, the sheer weight of evidence that Chevron has been able to put forth in this case is massive, notwithstanding the considerable efforts of those involved to conceal their misconduct. Now, in Loewen, the Tribunal found that an outrage--that's the Tribunal's word, an outrage--had been committed in the conduct of a trial by a single judge. What should one say if, instead, several appellate jurisdictions up to the U.S. Supreme Court had applauded and endorsed the Mississippi

Judgment, that U.S. prosecutors had blankly refused to consider evidence of a gross fraud--that the U.S. Government had indicated in formal submissions and in treaty arbitration that the remedy which Loewen was required to exhaust was available in a particular Appellate Court, which then denied having any authority to consider the matter, that a U.S. Federal Court nevertheless endorsed the Judgment for enforcement abroad; and that the U.S. President on a weekly telecast proclaimed that the un-investigated fraudulent judgment was the most important in the history of the country, and it was a matter of national policy of highest priority to influence other countries to enforce the Award?

And the Attorney General of the United States stands before the international tribunal and says with a straight face that although his country has flouted every order pronounced by the Tribunal, and although he has publicly condemned the arbitrators for their failure to obey the decisions of his country's courts, he invokes the very international law which he rejects to require Loewen to seek some remedy in some other Court of First Instance. What do you call this? What comes after outrage?

I would like to start off by addressing your specific question about the relevance of the environmental evidence. The only role it serves in Track 2 is to

corroborate the existence of a denial of justice, full stop. Of course, you do not sit as a court of appeal, but you can review the substance of the Lago Agrio Judgment when evaluating the denial-of-justice claims. If your Tribunal concludes that the Judgment's factual, legal, and damages holdings are objectively absurd--divorced from reality is how Dr. Hinchee put it--that proves a breakdown in the legal process. The testimony you heard this week and the various Expert Reports you have read reveal the preposterousness of the Judgment's treatment of causation and the absurdity of the $9.5 billion. Ms. Renfroe will return to discuss later the unrefuted evidence that the Judgment's remediation Award is almost 90 times more than Petroecuador's estimated total remediation costs for all environmental liabilities in the former Concession Area, where it has been the one and only polluter for the last quarter of a century.

To be sure, Ecuador argues that the environmental evidence before you support its, they call it, "offset theory," but that theory has no possible traction in this case, given that the Lago Agrio Record is completely and irretrievably tainted, which, in fact, Ecuador has implicitly conceded by instructing LBG to gather new evidence.

At any rate, this need not detain your Tribunal

from issuing a Track 2 Award since this offset request could only apply to the Claimants' tertiary request for damages, the quantum of which has been reserved for Track 3. Indeed, Ecuador has declined to quantify its allegations of environmental damage and instructed its experts to do the same, not talk about this. This confirms that the only relevance that Ecuador's environmental case has to the issues before you in Track 2 is whether the Lago Agrio Judgment satisfied minimum criteria of judicial rationality.

Turning to the question when precisely the claimed denial of justice occurred is a mere curiosity rather than a jurisdictional impediment, as Mr. Weiss explained. When I say, "curiosity," I use the word in its fundamental old-fashioned sense: Something strange. When a State is in the position of defending itself against a claim of international law, it tends to take great care, as of the commencement of the case, to stop violating its international obligations. In this case, the conduct of Ecuador is really hard to believe.

I do not even know if it is correct to say that Ecuador is defending itself in the sense of arguing that it has respected its international obligations. Rather, it recognizes no obligations to international law. Speaking repeatedly through its Head of State, it says that this

Tribunal is comprised of crooks (corrupt arbitrators) and that it is for the State and its courts to decide what it needs to do, not this institution created by the Treaty which it has denounced.

So, what is Chevron to do when faced with the fact that Ecuador breaches international law by thumbing its nose at the Orders of this Tribunal? Must Chevron file a new BIT arbitration and ask a new set of arbitrators for relief? And an arbitration after that, when the President of Ecuador laughs off whatever decisions the second Tribunal makes?

When you think about it, States who are as violently opposed to international tribunals as this one usually simply default. This at least has the merit of avoiding hypocrisy. In this case, Mr. Correa calls you corrupt while his lawyers appear politely before you clamoring for due process. What is going on here? Isn't it clear? Ecuador participates because Mr. Correa would like to give the appearance that Ecuador cares about international law. But it does not, and he must find some explanation for all the adverse BIT Awards, so he blames the system. He blames you. You're convenient. You, of course, cannot answer in kind--you can only answer in the voice of international law.

So, let's talk about exhaustion.

Chevron raised all of its complaints about the process and about the Judgment with the Appellate Court, which ignored most and rejected others on entirely specious grounds, as you have heard. Most significantly, the Appellate Court deferred to the supposed sana critica of Mr. Zambrano and affirmed the Judgment in toto without bothering to determine whether it had been secretly written by the Plaintiffs. Additional recourse then remained available to Chevron, but the Appellate Court at that point ignored the Tribunal's interim measures Awards and certified the Judgment as enforceable abroad.

Now, we do not argue and we do not ask the Tribunal to hold that the enforceability of a judgment results in the consummation of a denial of justice in all circumstance in every case when this might happen. But it clearly did in this case where Ecuador took the affirmative step of declaring the Judgment enforceable knowing full well that the Plaintiffs would immediately take it abroad, which, in fact, they did.

The irreducible premise of exhaustion is that the State has the power to remedy the harms arising from the denial of justice and to do so effectively. Mr. Ugarte stated in opening that, "the test is whether or not the local remedy is effective to address the harm complained of." Transcript Page 234. Professor Mayer likewise

acknowledged at Page 215 that a remedy must be effective, and I quote: "In some situations there is no possibility of redress when a first instance or appeal Judgment has been enforced." Although neither of them would admit it, these precepts, which they acknowledged, are dispositive here; they're decisive, where enforcement is actively being pursued abroad. Ecuadorian courts don't have the power to control the actions of foreign sovereign courts. Where there is no effective remedy remaining, there is consummation of the denial of justice.

This left Professor Mayer to argue that the mere possibility of obtaining relief through a CPA action before the Judgment is enforced abroad requires that it be pursued. This is not, and cannot be, the test for exhaustion.

Members of the Tribunal, let us, just for a moment, suspend what is surely the disbelief of every person in this room and assume that a sole Ecuadorian judge Hearing a CPA complaint unpatriotically nullifies the Lago Agrio Judgment in its entirety, and the result is then summarily and unpatriotically affirmed by the Appellate Court, the National Court of Justice, the Constitutional Court--notwithstanding their prior refusal to do so.

One would hope that this would cause the pending actions in Argentina, Brazil, and Canada to be dismissed,

but two points: First, even with the enforcement abroad forestalled, Chevron would have no effective recourse in Ecuador for the harms it has already suffered, including the significant fees it has incurred over the past three years defending the vexatious foreign enforcement actions. Complete success in Ecuador would not wipe out the injury. It would simply reduce the amount of damages flowing from the consummated delict.

Second, and more important, this partial redress would be entirely serendipitous and contingent upon events and activities beyond Ecuador's control. Let me explain.

It is just happenstance that the Plaintiffs have brought only three foreign enforcement proceedings and that they have not yet reached conclusion. The Tribunal will recall that an Argentine trial court froze all the assets of a Chevron subsidiary operating there. If that freezing order had not been overturned by the Argentine Supreme Court, it is indisputable that Chevron would have suffered substantial harm for which there is no adequate remedy in Ecuador. This is the critical point: The question of exhaustion must be answered objectively at the relevant time; it cannot turn on future possibilities and contingencies beyond the control of the Claimant and beyond the control of the State.

It's not enough that a remaining remedy might be

effective. Where the victim of a denial of justice is facing imminent harms for which the breaching State is no longer capable of providing effective redress, the delict is consummated. The victim of a denial of justice cannot have the doors of international law slammed in its face based upon the speculative possibility that things might somehow work out to some extent in the end, depending on the breaks. The uncertainty of the remedy, moreover, must be balanced against the severity of the harm. It cannot be forgotten that we're dealing with a $9.5 billion Judgment and a government actively promoting its enforcement abroad.

Indeed, when Professor Mayer in his opening finally got around to acknowledging the possibility of a foreign Court enforcing the Judgment before the completion of a CPA action, he blithely answered his question, and I quote, "the trust--that's the trust with the Amazon Defense Front as its beneficiary--would be forced to give that back the money, which it would not have had time to spend." That's what he said. Transcript, Page 218.

Really? Professor Mayer apparently is unaware of the fact that the Amazon Defense Front has signed an inter-creditor agreement in which it has promised to put any enforcement proceeds immediately into a separate escrow account with immediate and priority payment going to the Plaintiffs' counsel and offshore funders. It's a

11:08 complicated agreement, but the Tribunal will surely recall the distribution waterfall in Article 3.2. It sets out nine categories of beneficiaries, and the Order in which they will receive payments from the escrow account. The first eight categories are restricted to lawyers, funders, and advisers.

The Plaintiffs are ninth of nine. At last, the balance, if any, shall be paid to the Claimants or as otherwise required by applicable law. As for whatever might be left, who knows how much of it will make its way to the Government in return for its support of the plaintiffs which, after all, has been substantial. Not much hope for the indigenous, I fear. And Chevron would be left to seek restitution of a mere portion of its loss from a government which will be slow to accede to a claim of the demon Chevron and quick to claim sovereign immunity in its own courts.

But let's ignore for the purposes of argument the evidence on record. Let's follow Professor Mayer's logic, and assume that all enforcement money will be transferred to an Ecuadorian trust where it will sit untouched pending the outcome of a CPA action, including its three layers of appellate review. Given the amount at issue here, that money will most likely have come from the forced sale of assets belonging to an independent Chevron subsidiary.

11:10 Gentlemen, what is the remedy in Ecuador for the total loss of a going concern in another country? I could go on, Members of the Tribunal, but surely at some point theory must make some allowance for reality.

You'll note that I have been talking thus far only about the effectiveness of the remedies available in Ecuador after the Judgment was certified for enforcement abroad. If the remaining remedies are inadequate to redress the harms complained of, that brings the exhaustion analysis to its conclusion. There is no need to ask whether there is a reasonable possibility of those remedies succeeding because even if there was, they would not provide adequate redress. That's the situation here given the inherent inability of an Ecuadorian court to indemnify Chevron for the actions of other sovereigns with respect to a $9.5 billion judgment.

You'll note that I have been talking thus far only about the effectiveness of the remedies available in Ecuador after the Judgment was certified for enforcement abroad. If the remaining remedies are inadequate, the exhaustion analysis reaches its conclusion. That's different from the situation that obtained in Loewen. The issue in Loewen was whether Loewen was right to abandon further recourse and settle the case after the Mississippi Supreme Court denied its request to reduce the size of the

11:11 $625 million bond. It was undisputed that the U.S. Supreme Court had the power to reduce the Bond, so the only question was whether there was a reasonable prospect that a writ of certiorari would be granted. The Loewen Tribunal ultimately determined in Paragraphs 215-217 that Loewen had failed to present sufficient evidence to explain its decision to settle the case rather than to pursue recourse in the Supreme Court, and concluded that the exhaustion requirement had not been satisfied.

As Mr. Ugarte said in his opening, Loewen's mortal sin was failing to petition the U.S. Federal Supreme Court to strike down a bond requirement imposed by the Mississippi State courts, Page 234.

Now, as I will elaborate in a moment, all of this was obiter dicta, and the Loewen arbitrators were embarrassingly and plainly wrong, but that's what they said.

The Loewen situation has nothing to do with the issue here, which is, in any event, whether the Claimants were right to come to this Tribunal in March 2012 after the Appellate Court certified the Judgment as immediately enforceable. At that point, there were no adequate remedies available in Ecuador, not simply because the Judgment was enforceable, but because it was actively being enforced abroad, as I just said.

11:13 Contrast this with a statement in Paragraph 167 in Loewen that I quote: "Here the issue concerns the availability of the remedy rather than its adequacy or even its effectiveness." Loewen did not involve and did not address the adequacy of intra-State remedies in the face of foreign enforcement.

Nor can Chevron be faulted for allowing the Judgment to become enforceable: The appellate and cassation courts refused Chevron's request that they comply with your Tribunal's interim measures Awards, which would have obviated the need to post a bond. At any rate, both sides agree that a bond would have been in the amount of at least--at least--$1.9 billion, given the Appellate Court's affirmation of the punitive damages award, which, while not per se a denial of public international law, to answer a question from the Tribunal, is further confirmation of the denial of justice since punitive damages are a remedy which is not available under Ecuadorian law.

I invite you to conclude on the punitive damage aspect that this was a gambit invented by the Plaintiffs' U.S. counsel very familiar with punitive damages to jack up the size of the Award to do two things: Either Chevron will be so scared of the number $18 billion that it will say sorry, and pay the 9.5 billion immediately without fighting further; or if Chevron doesn't bite, have a higher

court reduce the Award to show how fair the courts are in Ecuador. Worth a try. Posting a bond of this amount in Ecuador would have been tantamount to a down payment on ransom given the fraud and collusion that had brought Chevron to this point. And here, not only were the remaining Ecuadorian judges limited in the scope of the relief that they could grant, but could hardly rule in favor of Chevron without placing their careers and livelihood at risk.

The situation is thus vastly different from that in Loewen. Still, the result here is dictated by the straightforward application of the test for exhaustion articulated in Loewen under Paragraph 168. Here it is. It's an obligation to exhaust remedies which are effective and adequate and are reasonably available to the complainant in the circumstances in which it is situated. Because the remedies in Ecuador cannot effectively and adequately redress the injuries Chevron has already suffered and may suffer from enforcement of the fraudulent judgment abroad, the exhaustion inquiry is at an end. This tracks the opinion filed in Loewen by then Professor Greenwood writing a couple of years before the Award was rendered, who wrote in Paragraph 41 of his First Opinion that, "It is well established that local remedies do not have to be exhausted when there are no effective remedies

to exhaust."

Before leaving Loewen, let me say a few more words about that unfortunate case. When it was first decided, I, as someone in the midst of writing a book on the subject, was very happy, indeed, to see that in a major international case--against the United States no less--three eminent retired judges from the appellate jurisdictions of three respectable legal systems (two of them, in fact, former members of the Supreme Courts of their respective countries) had reviewed a trial record in depth and not hesitated to conclude that the discrimination against the foreigner, whose $3 billion transaction had resulted in punitive damages of half a billion dollars was, I quote again, "an outrage," and thus a denial of justice.

But as time has passed and further details of this case have revealed themselves, I have resiled from that view and now conclude that the doubts hanging over the Loewen Award are so substantial that the case is best entirely forgotten.

The entire discussion of the outrageous denial of justice was perhaps the longest obiter dictum in history because it did not make any difference. Loewen's rejoicing must have been short-lived. Having been told by these distinguished persons at great length and with much indignant emphasis and fulsome citations of authority that

it had been the victim of an outrage, Loewen then came up against a few disastrous sentences at the end to the effect that, by the way, so sorry, your claim must be rejected because you failed to exhaust remedies. The arbitrators could have been more merciful and just contented themselves with saying that the denial of justice story was irrelevant. But wait. Wait. Even the exhaustion of remedies finding was not the ratio decidendi. Because in the end, and few people seemed to notice this, the Tribunal ruled that under NAFTA, a national of one of the three countries cannot bring an action against its own State. You see, in the course of the bankruptcy, the denial of justice has caused a reorganization which involved the reincorporation of a Loewen entity in the United States. And so the Loewen corporate Claimant became American.

Now, every comment I have read about the Loewen Case says that the arbitrators got the rule of continuous nationality wrong. And what is one to say about the fact that the arbitrators simply forgot that there were two Loewen Claimants, right on the caption of the case, the second being Mr. Raymond Loewen, a natural person who had always been Canadian and so remained. His share of the claim was significant. He was just forgotten.

As we now know, one arbitrator revealed in a recorded public address some years after the event that

when he was appointed by the U.S. Government he had been told ex parte that this was a case which would destroy NAFTA if the United States were not successful in its defense, and he had answered: "You really know how to put pressure on me." Worse, he had asserted that he, of course, had had to dissent from the inconceivable finding that the United States was responsible for denial of justice, but was relieved in the end that the case was thrown out nevertheless. This comment was all the more remarkable since there was no recorded dissent at all. The entire award, including the obiter about the outrageous denial of justice was unanimous. One can only infer one thing: The U.S. arbitrator disagreed with the denial of justice finding but was willing to go along if a way could be found on another point so that the United States could win the case anyway. It's a deal. Perhaps you see why I say the case is best forgotten.

Of course, the only thing of present interest is what was said, in what one might describe as the intermediate obiter dictum about the failure to exhaust. That's the only thing of relevance here. As you might expect, this aspect of the decision has been extensively criticized as well, including at length in my book. One cannot fail to observe that none of the three arbitrators had credentials in international law. This is not the

11:20 place to find significant jurisprudence, whatever respect one might have for the achievements in other circumstances of the three individuals who struggled with case. But for us here it really doesn't matter. Even if the arbitrators had been right about exhaustion there, our case is different, as I have explained.

Indeed, although your Tribunal need not address the issue, it is manifest that the second required element for exhaustion--that the remedy, to quote Loewen, "be reasonably available, given the circumstances," is not met here, either. Every indication is that Chevron cannot receive fair treatment in Ecuador: The quid pro quo agreement between the Plaintiffs and Ecuador; the discriminatory, indefensible, and aberrant rulings against Chevron in the Lago Agrio Litigation; the active prosecution of Guerra while complaints against Zambrano, Fajardo, and Cabrera languish in oblivion; to say nothing of the frequent anti-Chevron rants of Mr. Correa.

In considering the effect of all of this on a weak and dependent judiciary, I ask you to bear in mind two fundamental propositions: First, international law must be practical or it will be a dead letter.

Second, a denial of justice can perfectly well be consummated by the Head of State, even if he is not a judge.

11:22 The first point is crystalized in Sir Hersch Lauterpacht's observation in the Norwegian Loans Case to the effect that "the requirement of exhaustion of local remedies is not a purely technical or rigid rule. It is a rule which international tribunals have applied with a considerable degree of elasticity." I consider this to be among the most insightful of all doctrinal statements I have ever read on this subject. If international law were overly formalistic the remedy would be pure illusion. Imagine that a country whose highest Appellate Court has failed to overturn a denial of justice in an important case, enacts a decree which, on its face gives some Court a new authority to reconsider the matter. "We must be judged by our system as a whole," the Government will say. "We have just improved it, and you must go there." And, lo and behold, the Government says the same thing two years again later when the foreigner gets yet another unfavorable ruling. Gentlemen, general principles of international law do not have specific rules about the need to try new as opposed to previously established means of recourse. But if international law cannot put an end to such a charade, the rule against denial of justice will be sheer hypocrisy.

Ecuador's invocation of the CPA is a similar charade, as brought into relief during the cross-examination of Dr. Andrade earlier this week.

11:23 Dr. Andrade, in his original Report, and Ecuador in its Track 2 Counter-Memorial, stipulated that Chevron would satisfy the exhaustion requirement with petitions to the National Court of Justice and the Constitutional Court. As Chevron pursued this path and as Chevron--as Ecuador came close to losing its main procedural defense, Ecuador and its Expert reversed themselves without explanation, moved the goal posts. This is just a contrivance. If it were not the CPA, it would have been something else. Ecuador rejects international law and does not want to answer it.

At this point, I wish to make a submission to the Tribunal in the most formal terms possible. The State of Ecuador, represented by its Attorney General, who is a co-signatory of its written Memorials, represented to Chevron in front of your Tribunal that Chevron was entitled to have its claim of corruption in the Lago Agrio Judgment heard by an Appellate Jurisdiction which then refused to consider Chevron's evidence at all. In light of this, Chevron submits that Ecuador simply cannot contend that Chevron needs to proceed to some other form of exhaustion because it sought the remedy which Ecuador formally represented as the appropriate one. Your Tribunal should not allow itself to become a partner in the age-old hustle known as bait-and-switch. It is offensive to good faith and to international law.

11:25 If we were to look at the CPA anyway and its terms, there are five inherent problems with its invocation by Ecuador:

First, as noted, it does not provide an adequate remedy for the damages that Chevron has suffered and may suffer abroad. I've dealt with that.

Second, Dr. Andrade confirmed that the doctrine of ultima ratio applies here, meaning that the CPA may not be invoked if there is an alternative forum. Chevron has not pursued a CPA action because it has been advised by local counsel that the Courts reviewing the Judgment have the power and duty to consider the evidence of fraud in order to vindicate the rights of due process enshrined in the Ecuadorian Constitution. Ecuador disagrees and would have you accept that Appellate Courts considering whether to affirm a judgment are disempowered from considering whether it was procured by fraud.

But Article 838 of the Code of Civil Procedure does not mandate such a perverse result. What it provides in its relevant part is that the Court shall rule on the merits of the case, and this, as it would apply here, means that the Appellate Court's consideration of the underlying merits in the Ecuadorian system would be limited to the evidence presented and designated during the evidentiary phase set by the Court of First Instance and established in

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11:27 October 2003. By the way, the Appellate Court actually violated this provision by considering the cleansing Expert's Reports, but I digress, there are too many details.

Article 838 does not purport anywhere to bar consideration of non-merits evidence going to conduct that affects the integrity of the proceedings and the bona fides of the Judgment under review, and Ecuador can cite no authority that it has ever been so read.

Article 838 cannot be read as a prohibition or it would violate fundamental principles such as the supremacy of the Constitution; the direct and immediate application of constitutional guarantees; and the requirement that all proceedings shall provide due process. As you review the plain textual commands of these provisions, which you now see, recall the answer Dr. Andrade gave to Professor Lowe on Tuesday morning: Due process, he said, is not a duty, it "depends on the discretionality of the Judge." Transcript Page 2426.

I think all of this speaks for itself, but to answer the Tribunal's question, there is a denial of justice regardless of the proper construction of Article 838. If we are correct that the Appellate Court had, but failed to exercise, the power to correct--to consider the evidence of fraud, that is a denial of

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11:28 justice. Let me repeat. If we are correct that the Appellate Court had the power but failed to exercise it to consider the evidence of fraud, that's denial of justice.

If Ecuador is correct that its judicial system is powerless to address fraud on direct appeal or even to stay enforcement during the pendency of a CPA action, then its system falls below international standards and has in this circumstance led to a denial of justice on that hypothesis as well. That's the Kingsley Case and other authorities I mentioned on the first day, European Court of Human Rights.

Third, even if Points 1 and 2 are wrong, the CPA is still ineffective because it does not permit a stay of enforcement of the Judgment under review. Now, one might imagine a system where allegations of fraud committed in the course of the first instance proceedings are not addressed by an ivory-tower Appellate Court but rather deferred to a special Magistrate for a prompt Hearing. But for this imaginary system to make any sense, the Appellate Court would have to stay its hand until the fraud Hearing is resolved. But the CPA scenario constructed by Ecuador for the purposes of this case does not even have these basic attributes. Given that even Ecuador admits that a typical CPA action would take several years, this is not a remedy, it's an invitation to anarchy. And there is every reason to think that a CPA action brought by Chevron would

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11:30 languish. Gentlemen, recall the Commercial Cases arbitration, where eight cases filed by Chevron had sat dormant for over ten years without decision, a delay condemned by the Böckstiegel Tribunal as violating Article II(7) of the Treaty. And those were less politicized cases in a less politicized time. It is hard to believe that a CPA Court would act with greater alacrity than the office the Prosecutor General, which has either contemptuously returned or ignored the crates of evidence sent to it by Chevron over the past four years about the fraud. And this is to say nothing of the fact that any CPA Judge who dared to rule for Chevron would be deemed a vende patrias, and that ruling would then be appealed to the very same courts that have already affirmed the ghostwritten Judgment.

Fourth, as articulated in the work of David Mummery placed in record by Ecuador, as a matter of fact, local remedies should be deemed exhausted if the cost involved in proceeding considerably outweighs the possibility of any satisfaction resulting. As noted in my opening remarks, given the scope of the fraud here, Chevron would need to file not one, but several different CPA actions. This would only add to the costs and delays of an already ineffective remedy.

Fifth, under Chevron's theory of the case,

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11:31 furthermore, the remedy offered by the CPA is completely irrelevant. If you please, read together these two flatly inconsistent statements from Ecuador's Memorials. Track 2 Rejoinder, Paragraph 220:

After bringing a complaint under the Collusion Prosecution Act alleging a collusive action by means of fraud and ghostwriting, Chevron would be afforded full and proper recourse to address any claims of fraud or collusion in respect of Judge Zambrano's Judgment.

Now, Paragraph 67 of Respondent's Track 2 Supplemental Counter-Memorial: Claimants' efforts to impugn the Ecuadorian courts is focused on the Judgment rendered by Judge Zambrano. But as Dr. Andrade explains, this decision is not the operative Judgment because the intermediate Appeals Court reviewed and affirmed it de novo.

Why is Ecuador recommending that Chevron attempt to nullify a judgment that Ecuador views as inoperative? Ecuador is asking Chevron to spend years pursuing relief that it would later argue, no doubt to this Tribunal when, in 2018 and 2019, it would argue that it's completely beside the point. Inoperative. Rather, if Ecuador is seriously arguing that Chevron hasn't been harmed by the Judgment because of the supposedly curative effects of the Appellate Court's 16-page review, a point Chevron

vehemently rejects, then that issue is ripe for this Tribunal's decision now, because nothing a CPA Court could say or do will address it.

I said two fundamental propositions. The second one is shorter. It's this. While denial of justice always involves the functioning of the judicial process, extended possibly in some instances to some types of administrative determinations, international law does not limit responsibility, State responsibility, to acts of officials who are formally part of the judiciary. The reason why I thought it was worthwhile to write my book on the topic was that international law had evolved in three fundamental ways since the last comprehensive work on the subject, which was Freeman's book in 1938, and this was one of the three developments. I describe it in Chapter 3 under the subtitle "denial of justice by non-judicial authority." This is how I describe the evolution of the law. Forgive my self-quotation, written way before I had heard of this case obviously. "Once it is established that the relevant Act or Mission is attributable to the State, it does not matter whether the doors to justice were blocked by Executive fiat, legislative over-reaching, or judicial obstreperousness." What makes this case unprecedented is the innumerable confirmations of the denial of justice from various quarters.

Let me concentrate on the Head of State. I spoke a few moments ago of a weak and dependent judiciary. Perhaps I should have said despondent judiciary. Is that an outlandish claim? Of the myriad of documents you have seen in this case, if one had to pick three or four that were absolutely crucial, you might be pleased to hear there is one which is only one page long, and that's is C-127, when Mr. Correa describes who he is in his capacity as head of the entire Ecuadorian State. This is what he said in one of his Saturday radio broadcasts.

"The President of Ecuador is not only the head of the Executive Branch, he is also head of the entire Ecuadorian State." Correa added that, "The Ecuadorian State is the executive, the legislative, the judiciary, the electoral, and the transparency and citizens oversight bodies, the superintendencies, the Prosecutor's Office and the Controller General's Office. The Ecuadorian State comprises all that. Why should it be strange for the Head of State to meet with the legislators, with the members of the electoral counsel or with the Members of the Court of Justice to get to know each other, to support each other? There is nothing wrong with that. Quite the opposite, it's a very positive thing."

When the Head of State says that he not only endorses the corrupt Judgment but has instructed Ecuador's

diplomatic representatives to militate around the world to secures its enforcement as a matter of national priority on policy, as of now without waiting for any possible correction, how flaccid would international law have to be to find that the denial of justice is not ripe for assessment under international law, and that Ecuador must still be given a chance, which visibly it doesn't want to take, and when any hope of effective restoration is long, long gone.

The realities of our situation, Members of the Court, render Ecuador's argument for the obviously futile test irrelevant, we would pass with flying colors even under that. But our Memorials lay out the clear consensus that has emerged in favor of the test as being one of reasonable possibility. I will say only two things. You heard again in opening that the Sole Arbitrator's Decision in the Finnish Ships Case was seminal in the development of the obvious futility test, but no one who's actually read the case would say that Mr. Justice Bagge applied that test at all. He simply said that an appeal would have been obviously futile when it turned upon a factual finding that the Appellate Court could not review. Obviously correct. But very different from saying that appeals must be brought if they are not obviously futile. That's it.

My second observation is that the Apotex Case

recently decided under the chairmanship of Toby Landau, is not an outlier which contradicts what I have just said. The obviously futile test was applied there, but only because of a joint stipulation of the Parties, for some reason, as Mr. Landau was careful to note pointedly and repeatedly, but apparently not enough times for everyone to notice it. See, for example, his Paragraphs 257 and 268.

In short, while I believe that the obvious futility test is wrong and irreconcilable with Lauterpacht's call for common sense and realistic weighing of the circumstances, if there is a case in which the standard cannot matter at all, this must be it. There is not, to borrow from Professor Mayer, even a tiny prospect of effective redress for Chevron in Ecuador.

Let me finally, before I move to the Treaty, address among the most audacious statements Ecuador has made in this arbitration, which is that Ecuador is the victim of Chevron's deliberate failure to act. If I follow this argument, it is that Chevron allegedly knew of Plaintiffs' bribe to Zambrano before the Judgment issued, which is false, and decided to allow him to issue an $18 billion Judgment against the company, which is insane.

To put an end to this nonsense, the sole piece of contemporaneous evidence Chevron had of Zambrano's agreement with the Plaintiffs was double hearsay. This is

11:40 the Affidavit of a local Chevron attorney named Enrique Carvajal Salas, and the relevant portion is found in Paragraph 5. "In that meeting, my friend told me based on his discussion with Dr. Guerra, that Judge Zambrano would no longer try to reach some agreement with Chevron because he was aware that the company would not make financial arrangements with anybody, but, instead, that Judge Zambrano was sure to do so with the Plaintiffs." So, Guerra told a friend who told a Chevron lawyer. There is no link, no direct link, at the time with Zambrano itself, given the backlash that Chevron faced when it submitted authenticated videos of judicial malfeasance by Judge Núñez coming forward based on this double hearsay Affidavit, would surely have exposed Chevron to further charges of reckless and malicious defamation, as Mr. Bishop explained on the first day. This argument sits particularly poorly in Ecuador's mouth considering that when Chevron finally obtained sufficient confirmatory evidence of the ghostwriting scheme, it did present the evidence to Ecuador's Appellate Court, and we all know how that turned out.

Now, you could forget everything I have said about exhaustion and take a more direct route to the same conclusion. The fact is that Ecuador has, by its own actions, disqualified itself from relying on the exhaustion

11:41 argument. It's violated your Orders. In doing so, it not only declined to take all measures to avoid enforcement of the Judgment, it has done the exact opposite. That is a violation of international law. And Ecuador is shameless about this.

In the waning moments of the hearing of the Witnesses Tuesday afternoon, I heard from the back of the room that Mr. Bloom was making an application to you for some type of Protective Order regarding Expert evidence in these proceedings. Since it was the last day of very lengthy witness examinations, I thought he might have been seeking to introduce a humorous note into the case. He said--and I'm quoting from the Transcript Page 2462: "All we're asking for is for this sensitive information that was produced under certain circumstances to be treated with a certainly level of sensitivity, especially with the overlay, the evidentiary overlay in terms of potential uses abroad or somewhere in the United States." Ironic, isn't it, for Ecuador's lawyer to ask you to be its accomplice as it seeks the violation of your own Order. You ordered the enforcement of the Judgment to be suspended. Ecuador disregards that Order, and now asks you to help facilitate enforcement.

In time, I understood that Mr. Bloom is apparently not a man of irony and that he was perfectly earnest.

11:42 Ecuador doesn't get it. You're not supposed to ignore the Orders of an international tribunal. Ecuador is saying three things unrepentantly: One, we are trying with all our might to enforce the Judgment, and we don't care what the Tribunal says or thinks about it. Two, Chevron is asking for the urgent nullification of the Judgment because it was a denial of justice, but, three, we insist that Chevron cannot do this, and will be powerless to stop the enforcement actions because Chevron has to run around on a wild goose chase and we will tell them that they must seek relief from one Court and then another, as we please. This really cannot be tolerated without belittling the international legal process.

The treaty claims. The breaches in our Memorials, Gentlemen, have been specific. They concern governmental actions unrelated to the Lago Agrio Litigation. To the extent that the treaty claims do concern judicial conduct in some way, Ecuador is mistaken in treating them as denial of justice redux with the same exhaustion requirements. Although these issues have been well rehearsed in the Memorials, I will happily address the Tribunal's questions about Chevron's treaty claims and their relationship to the denial-of-justice claims.

Ecuador has breached its obligation to provide fair and equitable treatment through non-judicial conduct

11:44 in a variety of ways. Let me highlight just three:

First, the Ecuadorian Government breached the fair-and-equitable-treatment standard failing to honor but instead working in bad faith to destroy the value of the Settlement and Release Agreement, as Mr. Coriell has already explained.

Second, the Head of State, the Attorney General, and other high-ranking officials have improperly interjected themselves into the Lago Agrio Litigation--with Mr. Correa, as I noted in my opening, even offering to call the Presiding Judge. Such conduct breaches the FET requirement, not only because it is inconsistent with Claimant's legitimate expectations, but because it's non-transparent, arbitrary, and done in bad faith. As confirmed, for example, by the Petrobart Decision, CLA-219, where the Tribunal based its finding of a breach of the Energy Charter Treaty FET provisions in part on the fact that the Vice-Prime Minister sent a single letter to the Court trying to influence the outcome of the case.

Similarly, in the recent decision of TECO versus Guatemala, CLA-615, a CAFTA Tribunal found a breach of the FET obligation through a regulator's attempt to influence review of the tariffs to be charged by the investor.

And third, the Ecuadorian Government has commenced a coordinated campaign to promote enforcement of the

Judgment. And investors can reasonably expect to be involved in foreign litigation, but not that the Government will use that litigation as a form of extortion, punishment, defamation.

Altogether, the level of abuse directed against the Claimants here from the highest levels of Government is astounding. It's the antithesis of a State's obligation of fair and equitable treatment. This delict is separate and distinct from denial of justice. So is the anti-foreigner discrimination. There is no exhaustion requirement with respect to these non-judicial conduct, and they are ripe for resolution.

Now, specifically with regard to Ecuador's breach of the effective means provision, to answer the Tribunal's question as to whether Article II(7) imposes obligations beyond those of customary international law, the answer is plainly affirmative.

Article II(7) requires that Ecuador, let me quote, "provide effective means of asserting claims and enforcing rights." This is a specific and self-contained obligation, it makes no mention of customary international law. Ecuador argues that the United States intended to limit Article II(7) to the obligations of customary international law, but they do not establish a common intent of the Parties to the Treaty.

To the contrary, Professor Caron, in his Report, confirms that the preparatory work of the Treaty indicates that the effective means provision was intended to go beyond customary international law. That's in his Report of 3 September 2010. It would moreover have been senseless for the State Parties to have repeated in Article II(7) the obligation to provide the customary international law standard of treatment that is already required by Article II(3). An interpretation which denies the independent significance of Article II(7) obviously cannot be correct. This much was confirmed by the only two tribunals to have directly addressed the relationship between effective means provisions and customary international law. Those, Gentlemen, are the Tribunal's and the Commercial Cases, CLA-47, and White Industries, RLA-347 from Paragraph 92 on in that case. The conclusion of the Commercial Cases Tribunal applied to the Ecuador-U.S. BIT, which is, of course, the very Treaty before you.

So, Article II(7) is properly read to place an affirmative duty upon Ecuador to provide measures that are adequate in practice to secure the rights at issue, rather than simply a negative promise not to deny justice. It calls for practical, timely, useful recourse. For example, trying a case of this magnitude and complexity through a

summary verbal proceeding breached Article II(7) because, among other things, it prevented Chevron from impleading Petroecuador.

Your Tribunal asked specifically about Article II(7)'s application with respect, not to the Trial Court but rather to the higher courts. It's manifest that the Appellate Court breached this affirmative obligation by failing to consider the evidence of fraud before affirming and certifying the Judgment as enforceable abroad. The breach was immediate.

As Professor Böckstiegel wrote for the Commercial Cases Tribunal claims of breach of Article II(7), and I will quote, "they're not subject to the same strict requirement of exhaustion as claims for breach of customary international law," and he added that "the decision of a lower court may in certain circumstances directly violate BIT provisions." And where, if not here. The time to provide an effective remedy was before the Judgment was allowed to set sail to the four corners of the earth. The window of opportunity was gone, the genie out of the bottle, and further recourse in Ecuador could not bring it back. Contrary to Ecuador's argument, there was no need for Article II(7) to expressly waive the exhaustion requirement established under customary international law. To the extent that there is exhaustion element, it comes

form the nature of Article II(7)'s command itself, as applied to the specific circumstances which, of course, are a matter for the Tribunal to judge.

Ecuador's judicial conduct also breached other obligations in the BIT. Claimants have explained in their written submissions that Ecuador breached the obligations of fair and equitable treatment, full protection and security, and non-discrimination, such as, for example, the 100 PPM/TPH remediation standard. You can see our full arguments on this score in our Track 2 amended Reply, Paragraphs 333 to 357, Track 2 supplemental Reply, Paragraphs 393 to 407.

In short, the conduct of the judicial system here plainly violates customary international law, and the breaches of Article II(7), fair and equitable treatment, and the other treaty provisions follow a fortiori.

I thank you very much for your attention, and this is our moment for a break, I believe.

MR. BISHOP: Mr. President, we're in the Tribunal's hands. We could do--we could move forward in one of two ways. We could either take our lunch break now, which we are happy to do if the Tribunal would like that, or we could perhaps go to one other topic, which is Ms. Renfroe's discussion of the environmental case put forward by the Respondent, so we could either do that and

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11:51 then break for lunch or we could break for lunch now, however the Tribunal wishes to proceed.

PRESIDENT VEEDER: It's a little bit early for lunch. The clock says ten to 12:00. How long would Ms. Renfroe take?

MR. BISHOP: I think she plans on probably a little more than 30 minutes, but perhaps we could take a five-minute break before that, if you don't mind, to set up.

PRESIDENT VEEDER: Let's take a five-minute break, and then we will go to the next section. Thank you.

(Brief recess.)

PRESIDENT VEEDER: Ms. Renfroe.

MS. RENFROE: Thank you very much, Members of the Tribunal.

I turn now to the discussion of the environmental evidence and use it to illustrate several important aspects about the absurdity of this Judgment.

Certainly, the damage awards of the Judgment are not the only example of how this Judgment is absurd. One could point to the causation element or the lack of causation analysis in the Judgment as an equally absurd feature of it, but for now this morning I'd like to focus my discussion on the damage components because I think, standing alone, they illustrate perhaps one of the most

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11:59 shocking examples of why this Judgment is, indeed, so absurd on its face.

And so, I take you back to a slide that was presented by John Connor, Claimants' environmental expert, during his presentation in which he summarized those key Awards in the Judgment and noted that $3 billion or more of the damages awarded in the Judgment had absolutely no basis expressed in the Judgment. Those would include the groundwater remediation Award, the Award for potable water systems to be replaced, the community--the healthcare monitoring system Award, and then the healthcare program for cancer care--no basis in the Judgment whatsoever.

The other Awards in the Judgment that purported to have some basis, when analyzed we know from the record that there was no legitimate basis in the record for them.

And we know that because of the, among other things, the testimony in this Hearing from Claimants' array of highly qualified oil field petroleum experts whose testimony I've summarized again for your convenience.

Many of them or several of them you had the opportunity to meet in the last few weeks, and I think you can judge for yourself their experience, their credibility, and the quality of the scientific analysis they brought to bear to support their conclusions that there is no scientific basis for the Judgment as a whole or any of the

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12:01 damage awards contained in it.

I want to review for you, however, five of the gentlemen or experts who you did not have an opportunity to hear from in the last few weeks but whose testimony you certainly have, and the contribution they make to this conclusion that there is no scientific basis that supports these damage awards.

We start with that of Dr. Bill Bellamy, who observes and who's testified that there is no drinking water contamination from TexPet's petroleum operations and, therefore, no support for the Judgment's Award of $150 million to replace community water systems.

In fact, not only was this opinion not controverted by the Lago Plaintiffs in the Lago Litigation, but it's not controverted even in this arbitration case now.

Then there is the opinion of Dr. Suresh Moolgavkar, a renowned epidemiologist, who is the only Expert in this arbitration case to have published a peer-reviewed mortality study analyzing mortality data from the Concession Area; and, based on that study, he concludes that there is no statistical significant relationship, much less any causal relationship between exposure to TexPet's operations and any sort of human health risk.

And then we have the testimony of Dr. Pedro

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12:02 Alvarez, another gentleman you didn't have a chance to meet, but who has explained in his Expert Report the impact of Petroecuador's last 25 years of operations. And the fact that its operations from both the perspective of its expansion as well as its numerous spills and releases, how those impacts have irrevocably changed the face of this oil field in a way that makes it absolutely impossible to go back and reconstruct what it was like in June of 1990, when it was handed over.

That, of course, is very significant on one's consideration of the causation factor and the fact that the Lago Court made no effort to deal with a critical causation question.

And then we have two more opinions bearing on the ecosystem factors, and those are Dr. Robert Wasserstrom and Dr. Douglas Southgate, both of whom were experts in the Lago Case, and both of whom testified to factors that bore on ecological impacts, that those factors were driven by the Government of Ecuador's policies to promote agricultural development and population growth in the area, not by oil field operations.

So, perhaps the most important of these illustrations of why the damages award is so absurd, it has to do with the soil and groundwater remediation Awards that amount to over $6 billion. Perhaps you will remember, or

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12:04 at least I hope you will, the testimony of Dr. Robert Hinchee who was here last Friday, I believe, and who explained to you based on his widespread experience in actual real oil field contamination cases, that the damage award of $6 billion from the Lago Court to remediate soil and groundwater has absolutely no bearing to reality.

And to illustrate that point, he shared with you he shared with you his experience with the Kuwaiti oil field, where Saddam Hussein had ordered the intentional destruction of those oil fields, and there the most that was ordered for the remediation of over 350 square kilometers was $2.5 billion.

You will remember also Dr. Hinchee's comparison of the square kilometers to be remediated in the Kuwait oil fields, and he compared it to the total amount to be remediated according to the Judgment. And look at the difference: 385 square kilometers in Kuwait versus 3.1 square kilometers in the Concession Area. Just think about that difference in the amount of area allegedly to be remediated, and look at the difference in the price tag. You simply cannot support a $6 billion cost when you take into account the area to be addressed.

And then if you look at it, if you compare these numbers on the cost per square meter or cubic meter for remediation, in Kuwait, where it was actually done, $45 per

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12:06 cubic meter compared to the Judgment Award that would amount to $730 per cubic meter.

Now, if we think about this a little more closely, and we look at the elements that went into this soil and groundwater remediation Award, and we then assess it or measure it against reality, and that reality is very clear and undisputed, it's the reality of what Petroecuador does in the Concession Area today. It actually remediates in the Concession Area soil, though not groundwater because groundwater is rarely, if ever, impacted by oil field operations.

But if you remember the slide presented to you by Dr. Hinchee, he sums up as concisely as anyone could the departure from reality wrought by this Judgment.

And when you actually look at the $70 million cost estimate published by the PEPDA program for what it would cost to remediate both former Concession liabilities of Petroecuador as well as post-1990 liabilities of Petroecuador, so from two different operating eras, Petroecuador's estimate as published by PEPDA, I believe, in 2009 in Hinchee Exhibit Number 1, that estimate was $70 million. And it included remediation not only of soils, but sediments as well. And when you compare that to the $6 billion Award, you will find a 90 times exaggeration. The Lago Award of $6 billion is 90 times

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12:08 what has been estimated by Petroecuador that is actually needed to deal with Petroecuador's liabilities. That alone, Members of the Tribunal, is a profound absurdity. It illustrates that this Judgment, on its face, is nothing less than absurd. And that's just one example.

Now, we go to the health Awards, and they are equally lacking in any technical or scientific basis. When you consider what evidence was in the Lago record that could possibly have justified Awards of over $2 billion for health-related costs, it's shocking to see what we find. On this slide, I've summarized the evidence that was in the Lago record placed there by Chevron. Unfortunately, there is no comparison placed there by the Lago Plaintiffs, and to the extent that they put anything in the Lago Record, it does not survive any kind of scientific rigor or scrutiny.

Let me just review for you the fact that it was Chevron in the Lago Case; that was the Party who bothered to sample the drinking water sources during all the Judicial Inspections. That's not something that the Lago Plaintiffs even bothered to do.

It was also Chevron who was the only party who performed a quantitative human health-risk assessment. You heard Dr. McHugh tell you about that. He was the Expert who did it. There was no equivalent risk assessment performed by the Lago Plaintiffs. And it was Chevron who

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12:10 commissioned and put in the Lago Record the only study of ecological risks as well as the only study of impacts on biodiversity. Those studies and those reports in the Lago Agrio Record stand alone to demonstrate that TexPet's operations did not present a human health risk or a risk to the environment. And there was no offsetting evidence of any validity, of any legitimacy from the Lago Plaintiffs. And so, when you look at this collectively, you can see there simply was no basis for the staggering human health Awards issued by the Lago Court.

So, now we turn to the question of whether LBG, Ecuador's new after-the-fact experts who were not involved in the Lago Case, we turn to the fact or the question of whether they can endorse this Judgment or whether they can somehow rescue it. The answer, respectfully, Members of the Tribunal, is that while they endorse it in form, they do not endorse it with any scientific substance whatsoever.

I've summarized on this slide for you as concisely as I can the essence of their testimony and why I say, notwithstanding the four volumes of reports they have submitted, they simply do not offer any scientific support for this Judgment. It begins with the fact that they don't even endorse the monetary Awards. They told you here earlier this week, they didn't make any attempt to evaluate causation or attribute liability or apportion liability,

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12:11 even though they recognized that Petroecuador had operated these oil fields for 25 years. And even though they recognized numerous spills had occurred throughout the Concession Area, knowing that, they nevertheless made no attempt whatsoever to try to apportion liability.

And on the many questions I asked them about what evidence they had on the extent of sediment impacts, groundwater impacts, impacts to drinking water, or the extent of impacts to soil at any given site, they had no opinion. It's quite amazing when you consider the volume of reports they have submitted, but here is their testimony that you heard on Monday of this week: They had no opinion.

They did venture an opinion that contamination as they define it is anything over a detection limit, but they had to admit that the matter of what constitutes an actionable impact is a matter of law for which they offered no opinion as we would expect. But what they also had to concede was that they were not applying Ecuador's own oil field regulation, Decree 1215, or the RAOH, as we sometimes call it. They simply put that aside and didn't apply it in forming their conclusions.

And so, I caution you that to the extent that you consider their Reports and their use of the word "contamination," please recognize that that is a conclusion

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12:13 they've made that completely departs from Ecuador's own legal criteria for oil field operations.

And so, instead of supporting this Judgment with evidence from the Lago Record and mainstream widely accepted scientific protocols, what did they do? Well, a bit reminiscent of what Steven Donziger did, as he told us, "When the facts do not exist, facts are created." And what we find with the LBG team is that they've completely departed from accepted protocols in trying to fashion some sort of a defense to this Judgment.

I point out for you the photographs that LBG provided in their Reports, but under examination they had to admit that these photographs do not represent areas remediated by TexPet or RAP areas. Instead, what they told us was that they purposefully targeted non-RAP areas and were really oblivious to where the RAP and non-RAP areas were. They didn't concern themselves with that distinction very much. And to the extent that they did sample in RAP areas, you didn't hear one example from them this week that they found a location that TexPet had remediated; i.e., a RAP feature, for which they found any problem. You didn't hear anything about that.

And the facts are, Members of the Tribunal, that of the 13 sites where they actually took samples, they sampled only four RAP locations. Only four. But we didn't

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12:15 see any pictures or any drawings or diagrams about any problems with those four. Instead, what we saw are photographs like these that come from non-RAP areas.

So, moving then to a second reason that the LBG work simply deserves no weight and does nothing to prop up this Judgment is their departure or their failure to follow Ecuador's own oil field regulations, Decree 1215. You heard a lot about that on Monday. The facts are, as I tried to draw out from them, that when you do apply Decree 1215, Ecuador's own oil field regulations, we find that many, many of the places that LBG contends to be "contaminated" would require no action, no remediation under Ecuador's own system.

So, the fact that LBG and the Republic of Ecuador refused to apply even their own oil field regulations governing oil field operations and which are designed to protect the environment in oil field areas, the fact that they don't apply those is shocking. It's just impossible to reconcile it with any intellectual honesty. And so that's the second reason I urge you to conclude they do nothing to support this Judgment, and their conclusions deserve no weight.

To remind you of the effect of their failure to apply Ecuador's own environmental regulations, I bring you back to a graphic presented by Mr. Connor where, on the

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12:17 left, he took a map that was provided by LBG, and he shows the sample locations that LBG says are, "contaminated." And then on the right, Mr. Connor demonstrated for us that when you apply Decree 1215, in this case it's agricultural criteria of 2500 parts per million, that all but one of those sampling locations require no action. The Government of Ecuador and Petroecuador would take no action because under Ecuador's regime, 2500 parts per million of TPH is permissible to remain in soils in agricultural areas.

Another illustration of this we see at the Shushufindi 25 well platform where again, Mr. Connor was making the point that there is great agreement between the JI data that he analyzed on the left and the LBG data that they collected recently, when you apply the same Decree 1215 criteria. So, when you compare apples to apples in defining what constitutes an impact that needs remediation, when you do that, you will see that these Parties found essentially the same thing. They sampled in the same areas and got essentially the same results.

And yet, LBG continues to urge you to find widespread contamination throughout the Concession Area, which they attribute to TexPet, even though they've made no attempt to analyze causation.

And then I want to take you to this example, which I found perhaps one of the most dramatic of all

illustrations of how LBG cannot demonstrate any support for the Judgment using its approach. They showed you this photograph, as did the Republic of Ecuador in opening, this hand-dug well used by a family; and, on their slide, they told you the residents at Lago 16 used contaminated water when drinking, bathing, and washing their clothes.

And this was not the only photograph like this they showed you, but under cross-examination, Dr. Garvey had to acknowledge that his own data showed that when you applied Ecuador's TULAS regulations, this water well, this hand-dug well, met not only Ecuador's groundwater regulations, but it also meets Ecuador's drinking water criteria under TULAS.

So, I urge the Tribunal to beware, when you were shown photographs during Ecuador's closing as I suspect you will be, remember this photograph and others like it where the word "contamination" is used, but the data doesn't prove it.

Now I go to a third example of LBG's extraordinary measures to try and support this Judgment. You may remember in opening and then again during LBG's presentation this week, they showed you this drawing, and this map from the Sacha 13 well site has been annotated to show a calculation that Dr. Garvey created. His calculation was taking the Judicial Inspection soil data, developing an average, and

extrapolating that to assume that all 344 Concession Area sites would be equally contaminated. But what he didn't tell you was, but I did, or he acknowledged it under cross-examination was that, Number 1, that he relied upon soil samples from a Petroecuador spill at the Sacha 13 well site to form the basis of developing his average.

Number 2, we learned that all of the contamination that he declared to constitute six Exxon Valdezes, all of that contamination, that so-called "contamination," if you applied Ecuador's Decree 1215 criteria, it would all be below the agricultural standard for TPH.

And then we took the step of examining--well, before I move there, let me also remind you of the testimony by Mr. Connor, who tried to explain the flaws in this calculation, and he illustrated for you that the oil that Dr. Garvey fictionalizes to exist in 200-meter diameters from each of these Platforms simply does not exist when you look at the data. It exists nowhere but in Dr. Garvey's calculation, as Mr. Connor told you.

But then, if you remember I asked Dr. Garvey if he could ground-truth his model, that is, test it against the data, because, after all, as he acknowledged, data is what we should make decisions by. It is the gold standard. And as between data and a model or a calculation, there is no question that the data governs.

And I asked him whether he had any data that would validate his model, and you will see here his answer to my question: "Do you have any data here that would confirm your model, or you don't have it, do you?" And he said: "No." And you may remember that I walked him around the Shushufindi 34 well site where he had collected data, and none of those samples conformed to his predictions in his model.

So, this is another example of LBG's work really being nothing less than just some smoke and mirrors to try and add some weight to this Judgment, and it does not survive any kind of scientific rigor or scrutiny.

I take you now to another problem with that calculation, readily admitted by Dr. Garvey. It took no account of the fact that much of the--many of the Judicial Inspection sites were measuring contamination in the soils from Petroecuador's operations. He acknowledged that he had made no attempt to separate that out.

And here I showed him this photograph, and you may remember I asked him: "In developing your calculation, did you make any deductions for the oil that was spilled in these various sites by Petroecuador?"

Answer: "No, we did not."

And then we talked about the fact that, according to Petroecuador's own public records, the SIPAS database,

through 2009, 125,000 barrels of oil had been reported to be spilled throughout the Concession Area, and again, LBG has taken no account of this.

But we do know, and Dr. Garvey and LBG had to acknowledge, as did Dr. Strauss, that the Petroecuador operations over the last 25 years have indeed been, very, very extensive. I showed you this image in opening, the screenshot from the mapping tool where the green icons represent the TexPet wells, and if I can draw your attention to the screen, the red icons representing the Petroecuador wells drilled since 1990. And if you just compare, if you go back and forth, what you can do when you open the mapping tool, you will see the dramatic comparison, the dramatic expansion of Petroecuador's operations in the last 25 years.

Now, we know from observations by Pablo Fajardo in statements he made before he joined the Lago Agrio Plaintiffs' team, that Petroecuador had, indeed, caused more damage and far more disasters than Texaco, and quoting him: "There are frequent spills and broken pipes and contamination of wetlands, of rivers, of streams in great magnitude. But since it's a State-owned company, no one says a thing," quoting Pablo Fajardo. And I've shown you just two of the images that you saw in the last few weeks that are examples, they are photographs of Petroecuador

impacts in the Concession Area.

Now, I want to make another point, taking you back to the mapping tool, C-2444, and this has to do with the dramatic expansion that we find in the Concession Area. This is the Shushufindi 40 Well Platform, and I'm showing you an image on the left from the Year 2000, 10 years after Petroecuador had been operating. The red circle on the left is the well platform as it existed in 2000.

Now, if you look closely on the right-hand side, you will see the platform, and you can see in the brown sort of scarred area, the expansion of that platform, and what you're looking at, Members of the Tribunal, is a 150-pit pit farm that has been constructed by Petroecuador since 2000. Again, when you go into the mapping tool and you toggle through each year, you can see the evolution and the progression of changes.

It's a little bit hard to see in this slide, but when you look at it carefully, you will see in the upper portion what looks like little cells. Those are pits that Petroecuador has constructed recently. This is just but one example of one site where there has been dramatic expansion.

Now, I want to show you an image as I move forward with my observations about LBG and why their work deserves no weight and why it in no way validates the Judgment.

Like those photographs that we were shown declaring contamination where the data didn't support it, LBG showed you this image from their slide presentation. We hadn't seen this before. This was new. It was not included in their Expert Reports. And in this image, they purported to suggest that there are stream impacts throughout the Concession Area that caused them concern. We certainly recognized that stream impacts can be concerning and can be of concern and should be taken seriously, but the point I want to make to you now is that Dr. Garvey admitted "we don't have the details as to where it might be impacted." And you can see his testimony there.

So, what he did was to present to you this image suggesting that all of the red streams within the Concession Area are contaminated, but even he acknowledged he really didn't know.

But, Members of the Tribunal, in the Slide 137 A that I have just handed out, I want to direct your attention to something that Dr. Garvey did not share with you, and that is that we actually do know quite a bit about the condition and quality of the streams and the surface water in the Concession Area. On this image, I have taken Dr. Garvey's map and I've annotated it with information from three Environmental Impact Assessments that were commissioned by Petroecuador very recently. They're all in

this record. And what I've annotated here is the fact that these three reports include surface-water sampling results, in three--in these various oilfields.

So, for example, in the Shushufindi Aguarico field, which is Number 2 on the map, there is an Environmental Impact Assessment that reports that the vast majority of surface water and sediment samples meet Ecuadorian standards for TPH. Now, that is not to say that there aren't impacts from Petroecuador's operations and, in fact, I have shown you some those in the last few weeks. We recognize that those are there, but what I do think is very important to the Tribunal to recognize is that Petroecuador and other organizations actually monitor the quality of surface water within the Concession Area. And so I urge the Tribunal to take great caution as you listen to and consider what may be presented in the Republic's closing about what Dr. Garvey has found because as we can see from this map, he has actually found nothing about the condition of the stream system.

Now I will move on quickly to the question about Dr. Strauss and the health risks and whether she can do anything to rescue the Judgment. You may remember the testimony of Dr. Strauss last Friday. And again, with all due respect to her, she brings absolutely no support, no scientific support whatsoever to bolster the healthcare

awards in the Judgment. On their face, they, too, are absurd, and she did nothing to demonstrate otherwise. Again, on this slide, for your convenience, I have summarized her key--the key admissions that she made. Even as limited as her opinions are, we found that she backed away from many of them or she simply couldn't address critical points.

She performed her risk assessment, her quantitative health risk assessment as if the Settlement Agreement and Remedial Action Plan had never occurred. She made no effort to differentiate between impacts from Petroecuador as opposed to those from TexPet. They didn't even try to do that.

And then you might have heard that she also disregarded Petroecuador's operations throughout. She wasn't satisfied to calculate health risk using widely accepted EPA approaches. She did it that way in 2014 but not in 2015. Instead, she resorted to having to make up her own toxicity factor in trying to calculate a human health risk. Why would anyone do that? Only because using widely accepted published toxicity values, she could not calculate a risk to human health.

And then we also saw how she used unprecedented TEM data to assess health risk. Similarly, she, too, disregarded Ecuador's own Decree 1215 Regulatory Cleanup

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12:33 Criteria, she paid no attention to those. Even though purportedly the question she was trying to answer was whether remediation was needed.

You then will recall the testimony from Dr. Greg Douglas about the problems with the data that she relied upon, key data that she relied upon for her calculations has reliability problems because it's got blank contamination as well as many samples are simply plant matter.

So, now I move to the question of cancer, and while Dr. Strauss purported to do some cancer-risk calculations for future risk, I'm going to address those in a minute, but here I want to reflect a moment about the epidemiologic evidence. I told you earlier that Dr. Moolgavkar was the only Expert in this arbitration case, the only epidemiologist, who's published any kind of peer-reviewed study, and I've highlighted his key conclusion at the top of the page.

But his finding about the lack of any association between exposure to petroleum in the Concession Area and any human health risks or health impacts, his finding is actually consistent with other evidence that was in the Lago Record during the Lago Case, some of which I have summarized on this slide.

No excess cancer or cancer mortality in the

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12:34 village of San Carlos according to Arana and Arellano and according to Rourke, TexPet's operations did not cause anyone to get cancer.

And then to the extent that Dr. San Sebastian's work has been mischaracterized, he corrected it or he corrected any misinterpretation and observed that his Reports and his studies had been misinterpreted.

Turning to the question of drinking water, which is obviously an important feature or component in evaluating health risk, here we have no dispute of any kind. We know from the JI data, 520 drinking water samples were collected and 98 percent of those meet World Health Organization and USEPA Standards for drinking water.

They also meet Ecuador's own standards for drinking water criteria. And on this point, I want to be very clear, I'm talking about primary standards for drinking water that determine what water is safe to drink and what is not. Across the board the JI data shows that the water in the Concession Area is safe to drink. That was also the finding by LBG as to the four drinking water sources they sampled when they were in the field, and I've got an excerpt of their data.

To the extent that you heard any opinion or have read any opinion by Dr. Strauss or LBG in their Reports that there is a violation of drinking water standards,

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12:35 they're speaking only of taste and odor, which has nothing to do with whether the drinking water is safe.

Now, I want to return to Dr. Strauss's calculations just briefly. You may remember that we walked through this diagram, this chart from her 2014 Report. This was her non-cancer risk calculation in which most of the cells are white and recall that she admitted the white cells show absolutely no risk, no harm, nothing to worry about, not even a cause for any concern.

She also eventually acknowledged that even the pink cells and the orange cells were just areas where further evaluation may be needed. The red cells were the only ones that she indicated any concern for.

But now what I've done is I've distilled from her three the quantitative risk assessments, I've distilled them on this slide, and what did she really find?

Well, she calculated--now, bear in mind, this is a calculation of theoretical health risk. Undisputed, she did not find any actual health impacts. No one did. But in terms of her calculation of a theoretical health risk, she finds--she calculates such risk at nine sites, all of which are non-RAP locations, all of which are non-RAP locations.

But even those nine sites--let's look at them a little more closely.

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12:37 Of the nine, they break down with eight being future exposure scenarios. That is, she's assumed that someone would be exposed to something in a swamp in the future, even though today no one uses the swamp, and there is no water well in the swamp, but she made assumptions that this oilfield would be used for more residential purposes in the future.

And so that leaves us with one, only one scenario, where she calculated a current human health risk, and that was from the Shushufindi 13 Well Platform. And you may remember this, but if you would indulge me, I would like to remind you, that when I presented to her the fact that Dr. Short had concluded that the one sample from the one pit that she was relying upon to calculate human health risk, that Dr. Short, Respondent's Expert, analytical chemist, he had concluded that that sample was from oil that had been released within the last year. So that could only have been Petroecuador, and Dr. Short's Report is on this Slide 2014 at Page 15.

So, that leaves us with the conclusion that Dr. Strauss was not able to calculate any human health risk, theoretical human health risk at any RAP location, and even where she does find one, it's all in the future with the one exception, and that exception falls at the feet of Petroecuador.

So, then, to summarize collectively the work and the flaws of LBG and Dr. Strauss together, this slide does that. Some of these points I have covered for you. But when I told you in Opening Statement that Ecuador's Experts had to depart from widely accepted protocols to try and fashion some support for this Judgment, these are examples of what I was talking about. And only by doing this are they able to even attempt to support this Judgment, but as I said, under any real scientific scrutiny, their effort fails.

So, that brings me to my conclusion that there is a manifest absurdity in the damage awards in the Judgment and in the Judgment itself to the extent that no causation analysis is provided. And so, as I conclude, I bring you back to the most compelling illustration of that, and that is Dr. Hinchee's chart in which he shows you how badly the soil and groundwater remediation awards in the Judgment depart from reality, more than 90 times what is actually done in Ecuador today by Petroecuador.

So, Members of the Tribunal, I conclude with the observation that the damage awards in this Judgment cannot be supported with the environmental evidence that was in the Lago Record, nor can they be supported in any sense of the word with the new information that has been provided by LBG, Dr. Strauss, and Ecuador's other Environmental

Experts. There is simply no support for these damage awards, and they are patently absurd on their face.

Thank you.

PRESIDENT VEEDER: Thank you very much.

We will break now for the lunch break. We will come back at quarter to 2:00.

Over this lunch break, if the Parties could look at the draft Site Visit Order, and before the end of the lunch break, approach the Tribunal's Secretary to see if there is any changes we need to make to the wording, we need to complete an annex, we would very much like by this evening to issue this Order signed and countersigned.

The other matter is we have questions. They have arisen as you have been speaking to us. We thought it appropriate not to interrupt you, but you may assume that at the end of your presentation today, you will have a number of questions. You may have answered them, which is one reason for keeping quiet at the moment, but if you don't, we will raise them with you at that time. So, we come back in an hour plus.

(Whereupon, at 12:41 p.m., the hearing was adjourned until 1:45 p.m., the same day.)

AFTERNOON SESSION

PRESIDENT VEEDER: Let's resume.

Before we give the floor back to the Claimants, we understand that the current draft of the Site Visit Order is agreed, but we don't have the security protocol.

What is the position about that missing annex?

MS. RENFROE: Mr. President, we were speaking about it with our client over the lunch hour. We have one more phone call to make, and I think that we'll be in a position by tomorrow, early tomorrow, to represent that we have all the important details worked out. We certainly are aware that you would very much like to have it completed by tomorrow.

PRESIDENT VEEDER: Is the Attorney General here tomorrow?

ATTORNEY GENERAL GARCIA CARRION: Yes.

PRESIDENT VEEDER: What we're going to do because we struggled so much with this document is that we're going to give you copies during the next break, and if it's agreeable, could you please just initial to the extent it's agreeable, so that we at least have that under our belt. And then tomorrow we'll look at the security protocol, and then we can add that in if that's agreed, and then we could formally issue the order and have it countersigned. Can we do that?

MS. RENFROE: Yes, sir, we can. Thank you.

PRESIDENT VEEDER: Respondents, too?

MR. BLOOM: Yes, that's fine.

PRESIDENT VEEDER: Okay, well during the next break, you'll be given copies by our Secretary. Please just initial them. At least we've moved on.

Nothing else, so we will give the floor back to the Claimants.

Mr. Bishop.

MR. BISHOP: Thank you, Mr. President.

This brings us to the factual discussion of the evidence of fraud and corruption, but before going into that, I want to answer one of the Tribunal's questions. I think Mr. Coriell had answered one that was on Slide 148 already.

There was a second one that the Tribunal asked with respect to my reference in the opening statement to Donziger's words about having gone over to the dark side. What you find in Slide 149 is a portion of Mr. Donziger's diary where he makes that statement. And let me give you the context of this very quickly.

At this point, Donziger made a deal with Gustavo Pinto and Fernando Reyes, and this is all set forth in the Witness Statement or the Declaration of Mr. Reyes, which you have in this case, but what he did was he hired

Fernando Reyes and Gustavo Pinto to act as monitors of the Court-appointed independent settling Experts during the Judicial Inspections. He held them out as being independent, but he made a deal with them to secretly pay them, which was the forerunner of the pattern you saw later with Cabrera where he secretly paid Cabrera and held him out as independent. He was doing something similar here, and this is his statement in his diary, "feel like I have gone over to the dark side." So, that's what I was referencing in my Opening Statement, and you have the source here on Slide 149.

Now, the Plaintiffs' claims of fraud and corruption fall broadly into three main factual categories: The Cabrera fraud, which you've heard quite a lot about and which is now admitted; the ghostwriting of the Court orders in the Lago Agrio Case by Mr. Guerra, who was being paid by the Plaintiffs to do so in order to advance their case; and, of course, the Judgment fraud and corruption in which Judge Zambrano was bribed by the Plaintiffs in order to be able to ghostwrite his opinion, which they did.

In the past three weeks, you've heard the testimony of Claimants' Witnesses and Experts, and I have put up some of those gentlemen on the Board on Slide 151, but in contrast in these three weeks, you have not heard a coherent factual case from Ecuador, and so Claimants' case

and its experts stands largely unrebutted. Ecuador has no alternative narrative to explain how or why the Plaintiffs' internal documents were copied into the Judgment. The RICO Defendants had no explanation for that. Mr. Zambrano at the RICO trial had no explanation for that, and Ecuador has no explanation. They had no explanation for where in the Court Record you can find any of these Plaintiffs' documents.

Now, instead, all you've heard are disjointed and sometimes inconsistent excuses that do not in any way explain the fraud and corruption that occurred. If Ecuador had any reasonable alternative story to the evidence that we put forward, it could have brought you direct evidence. It could have put on the stand any of these people: Pablo Fajardo, Judge Zambrano, Steven Donziger, Luis Yánza or Richard Cabrera, but it's not provided you with testimony from any of those people either in the past three weeks or in any of their Memorials throughout this case.

And you didn't hear from Steven Donziger, although you have plenty of evidence--plenty of material--in his own words that demonstrate the corrupt tactics that the Plaintiffs pursued in this case. In Slide 153 I tried to provide you some of the more memorable statements by Mr. Donziger that demonstrate those corrupt tactics, and I put them up there just in case I make a reference to them

and forget to give you the source. You'll find them right there on this slide.

Instead, Ecuador, in fact, has tried to distance itself from each of those actors, saying it doesn't defend their conduct, effectively acknowledging the illegality of that conduct in the Lago Agrio Case.

So, who did you hear from in the past three weeks? You heard from Mr. Guerra because we brought him. You didn't, however, hear from Judge Zambrano because Ecuador didn't bring him to the case, so you didn't hear him rebut any of the testimony you heard from Mr. Guerra.

You did hear, however, from Dr. Robert Leonard, who testified before you that he found at least six of the Plaintiffs' internal documents were plagiarized in the Judgment, and Ecuador has no counter expert to offer in response to Dr. Leonard.

We have brought you the expert reports of Dr. Gerald McMenamin who testified that in his opinion, the judgment probably had multiple authors, and Zambrano had very little input to it. Ecuador did not call Dr. McMenamin for cross-examination, and they have no counter expert to him.

You also heard from Spencer Lynch. He testified that the Guerra computer contained drafts of Ecuadorian court orders that were later issued by Judge Zambrano, in

fact, over a hundred of them generally in other cases, including nine in the Chevron Case specifically. He testified that the forensics evidence is inconsistent with Zambrano's testimony in the RICO case, and he's testified that the content of the Ecuadorian Judgment was not generated on the Zambrano computers.

Now, this is the one place where the Ecuador has a partial counter expert in Mr. Racich, but you heard his cross-examination, and he largely, to a great extent when he was cross-examined, agreed with much of the testimony of Mr. Lynch, and he doesn't testify at all about the copying of the Selva Viva Database into the Judgment as Mr. Lynch testifies, and he also doesn't testify about Mr. Zambrano's testimony.

Now, you heard from Dr. Juola that he searched the court record, did a very careful search, and he concluded that the Plaintiffs' documents that are plagiarized in the Judgment are nowhere found in the Court Record, and Ecuador has no counter expert to Dr. Juola.

We also brought you the Expert Reports of Mr. Samuel Hernandez of Morningside Translations, who did a hand-review of all relevant portions of the Court Record, and he also concluded that the Plaintiffs' documents that are plagiarized in the judgment are nowhere found in the Court Record, and Ecuador has no counter expert to

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Mr. Hernandez.

We heard filed an expert report from Mr. Adam Torres, who marshals all of the documentary evidence that's relevant to Mr. Guerra's testimony, and he shows the clear patterns that corroborate that testimony of Mr. Guerra. And Ecuador chose not to call Mr. Torres for cross-examination, and it has no counter expert for him.

Now, I'd like to come back to another two further questions asked by the Tribunal. You asked whether the RICO Judgment is in evidence in this case. Well, we gave the RICO decision an exhibit number, so it is an exhibit in this proceeding. So, it could be treated as evidence. But, quite frankly, it's better than evidence. You had the opinion here of a Federal judge who heard all of the same testimony, he had all the same testimony before him--well, excuse me. You actually have all the testimony before you that he had before him and more. He wrote a 500-page opinion, and he came to some strong conclusions.

Now, we don't say that that opinion is binding on you, of course, but, quite frankly, it's highly persuasive, and it's entitled due consideration, so I think that probably answers the question as best we can on that subject.

Now, you also asked a question that we've struggled with somewhat, struggled with trying to

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understand it. The question is, what if the Fusión Memo were an accurate reflection of Ecuadorian law, could that be a denial of justice? Is it arbitrary to take the correct account of applicable foreign law, is that a denial of justice.

PRESIDENT VEEDER: Well, you left out a rather important phrase, "subject to respecting the Parties' procedural rights." So, assuming you don't have that as a problem, which obviously is another part of your case--

MR. BISHOP: Okay.

PRESIDENT VEEDER: --is it inappropriate for an Ecuadorian judge to take of his own motion judicial notice of the foreign law.

MR. BISHOP: Okay. I have to tell you, we understood the question differently.

PRESIDENT VEEDER: Don't worry. We will come back to it.

MR. BISHOP: We understood the question as being--as going to the Fusión Memo itself and its appearance in the Judgment, and perhaps we did misunderstand. And, of course, the ghostwriting of the Judgment using the Fusión Memo is, we believe, a denial of justice. And in this situation, we also believe that the Court, as I think Mr. Coriell has discussed at some length, did not consider the legal test appropriately, did not

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apply it to the facts, and thus that is also evidence of denial of justice.

But if the question is simply whether if the Court appropriately took notice of foreign law and got the foreign law correct in writing the Judgment, I don't think that would be a denial of justice in and of itself. So I hope that answers the question.

Now, I'll turn next to the State's role in the Lago Agrio Case, and after that I'll turn the floor over to Caline Mouawad and Elizabeth Silbert to discuss the standard of proof and adverse inferences as well as some of the evidence.

There are three aspects of the political interference in the Lago Agrio Case: The first is the Government's interference in the case to tip the scales of justice before the Judgment was issued, and this has to do with President Correa and the Government making the Lago Agrio Case into a national cause, as they were requested to do by Fajardo and Donziger, and as Donziger was trying to get them to do.

The second, which is where I'll spend most of my time today--I have spent much of my time in the past on that first issue, so I'm not going to try to retread the same ground again, but the second issue is the Government's promotion of the enforcement of the Judgment, even after

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the fraud and corruption were revealed.

And, third is President Correa's attempts to control the judiciary more generally to undermine its independence, which we think is particularly relevant to the appellate process in this case.

Now, when President Correa took office in January 2007, he found in the Plaintiffs' case a political and nationalistic issue. And just as Donziger asked him to do, Correa and the Government adopted the case as the Government's case effectively and proceeded to make it into a national cause in Ecuador. During the pendency of the case, and especially during the appellate phase of the case, the Government repeatedly proclaimed Chevron to be guilty. And in a country like Ecuador with a weak and fragile judiciary, as Donziger himself explained it, a strong President who is willing to put his own popularity and the full weight of the Government behind a case can clearly tip the scales of justice, as happened exactly in this case.

Now, the second aspect of the Government's involvement has been its actions supporting the fraudulent judgment and promoting its enforcement since it was issued. When the Judgment was issued, President Correa praised the Judgment as the most important Judgment in the history of the country, clearly signaling to the appellate courts what

his position and his Government's position was with respect to the appeals. And when the Appellate Decision was issued a year later, he again praised it, saying that justice had been done, even though during this period, the evidence of fraud and corruption was coming out.

Now, this Tribunal, in February 2012, issued its Second Interim Award, ordering that the Government maintain the status quo by preventing enforcement of the Judgment. But despite the evidence of fraud and corruption and in violation of your Interim Awards, Ecuador responded by initiating a worldwide campaign to promote the Judgment and its enforcement.

In late 2012, after your Interim Award had been issued and at a very critical moment in the enforcement proceedings in Argentina, President Correa flew to Buenos Aires, he met with the President of Argentina, and he told the press on that trip that he was there to try to ensure that the Court ruling in the Chevron Case is complied with, and you see the reference is there. That's exactly what he was talking about, and that's what he was doing.

In 2013, the Foreign Ministry even published and distributed a pamphlet saying, among other things, the Judgment is enforceable anywhere in the world. And the Government, in fact, in the past three weeks has been distributing similar pamphlets outside this very building,

and you may have seen some of them during that period. They have the Ministry of Foreign Affairs written on the outside of each of those pamphlets.

Now, this promotion of the Judgment's enforcement is a direct violation of your interim awards; and in over 40 countries--I think Mr. Coriell showed you this slide as well--in over 40 countries since that time, Ecuador's embassies in the Foreign Ministry have held demonstrations and various meetings denouncing Chevron and again promoting the Judgment in saying Chevron is guilty, and it must comply with the Judgment.

Now, you have seen this next clip before, but I think it's very important because it shows that President Correa has instructed the Foreign Ministry to make this case and this Judgment a first priority of the foreign policy, so I'd like to show it to you again.

(Video played.)

MR. BISHOP: So, in other words, President Correa and the Government have made enforcement of the Judgment a foreign-policy issue--in fact, not just a foreign-policy issue, but the number one priority of the foreign policy according to the statement of the Foreign Minister himself, and the Vice Foreign Minister has made very similar statements as well, which are also in our record.

And in doing so, what the Government has done is

made this case, made the Plaintiffs' case a matter of Government policy.

The Republic cannot now claim that it's not involved in the Lago Agrio Case. It has made itself a participant, and it has made itself a partisan in the case. And as he did before the Judgment was issued, President Correa has continued to call Chevron an enemy of the country. And as he and the Government have also sought to shame and intimidate Chevron's lawyers and expert witnesses.

Shortly after President Correa was elected--this is in February 2007--he asked Donziger for a list of the lawyers who are hurting the country, and that's a reference to Chevron's lawyers at that point.

Shortly thereafter, he started making public statements, calling Chevron's lawyers "vende patrias," basically traitors, homeland-selling lawyers who for a few dollars are capable of selling souls, homeland, family, et cetera. These are in speeches that he gave.

More recently, he has again referred to anyone who worked with Chevron as traitors and as opponents of the Government who have teamed up with Chevron.

And still again more recently, he's referred to Chevron's attorneys as collaborators who act against the interest of their own country and their own countrymen.

Now, I want you to please note those words. Correa is identifying the Plaintiffs' case and the Judgment as a national interest, and he is saying that Chevron's lawyers, who are simply defending Chevron, are acting against the interests of the country. The point of this and the point of all of these has been to try to deprive Chevron of legal counsel in Ecuador, and reflecting President Correa's statements, an Ecuadorian Web site was established entitled, "The Nation's Traitors," and it refers specifically to Chevron's lawyers--well, Chevron's lawyers and also its experts, the various people who have been working with it. This was an attempt to deprive Chevron of expert witnesses in this BIT proceeding.

And President Correa in his weekly national radio addresses has called out Chevron's lawyers and experts and Contractors by name, and the State-owned newspaper has published identifying information, personal information, about those lawyers and experts.

And it's notable that both the President in the past few weeks leading up to this Hearing and the Vice President of Ecuador have called Guerra a traitor to the nation, a traitor for giving evidence in this case, clearly trying to intimidate him and prevent him from testifying here.

Now these words, "enemy" and "traitor" are not the

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02:07 kind of words you normally hear in a lawsuit. These necessarily, as I said, implicate a national interest. Ecuador is identifying its national interest with the Plaintiffs' case, and thus it's identifying Chevron as an enemy of the country, and its lawyers and experts as traitors to the nation. It's also the language, of course, of intimidation, trying to prevent them from testifying in this case.

Now, you asked in your Friday questions if anyone involved in the fraudulent schemes has been charged. Well, I would note that Chevron has sent at least 12 letters to Ecuador's Prosecutor General in the past six years seeking investigations, first of the Núñez bribery scandal; secondly of the ghostwriting of the Cabrera Reports; and, third, of the ghostwriting of the Judgment and the corruption involved in it. So, all of these matters have been put before the Prosecutor General, and substantial, in fact, boxes and boxes of evidence, have been sent to the Prosecutor General so that he would be fully informed and have all the material. Chevron has given them all of that information.

And yet, what has happened? No one has been charged: Not Zambrano, not Fajardo, not Yánza, not Donziger, and not any others over the past six years. And, in fact, with regard to the Núñez bribery scandal in

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02:09 particular, the Prosecutor General closed the investigation not only taking no action, but he accused Chevron of recklessly and maliciously filing the complaint and threatened to investigate Chevron's lawyers instead.

Now, in contrast to the fact that Chevron's requests for investigations have gone absolutely nowhere in Ecuador, we can see what has happened in Fajardo's request for a criminal investigation of Guerra. Over the past week, the day after, in fact, Guerra testified in this case, that investigation started to move forward very quickly. The Prosecutor accepted jurisdiction. He added documents to the file. He required that Chevron's lawyers appear this week to testify in that investigation, along with other witnesses, so we have seen substantial action in that investigation, but nothing in the investigations requested by Chevron.

Now, I would also note that Ecuador's attempts at intimidation have had their effects.

In the RICO case there were four John Doe witnesses for Chevron whose identity Judge Kaplan kept confidential because of security concerns for their welfare in Ecuador, and Judge Kaplan wrote a very long opinion about maintaining confidentiality for those people.

Now, we could have produced their sworn declarations in this case, and their sworn declarations

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02:10 corroborate Mr. Guerra's testimony. We would like to have used that evidence, but because of concerns for their safety at the hands of the Government, we did not bring that evidence forward in this case.

It's this conduct of intimidation and retaliation that makes the Republic's actions so insidious. The President's counsel Alexis Mera at one point had a meeting with Fajardo in which he said you need to bring a mob to Quito to close down the streets and to demonstrate because that's the way this country operates. That's the way this country works. Now, it's that attitude that has pervaded the Government's approach to both the Lago Agrio Case and to this BIT proceeding: Pressure and intimidation. Intimidate the Judges. Intimidate Guerra. Intimidate Chevron's experts. Intimidate Chevron itself, and intimidate others.

But that strategy is the very antithesis of the rule of law. That strategy puts one man's will above the law.

Former Minister Alvarez, in his expert opinions, noted President Correa's statements, and Mr. Paulsson alluded to this earlier today, but President Correa has said that he has the right to pressure the judiciary. When he was asked about that statement, he said he's the leader of the entire State, including the Judicial Branch as well

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02:12 as the other branches. And at one point he called for a referendum in early 2011 on the judicial system, saying, among other things he was doing so, "so I could get my hands on the justice system."

And he followed that view, and I have shown you substantial evidence of this in the past. He's followed that view by firing and prosecuting judges for the rulings in specific cases, and here on slide 186 you see two Orders sent out by the Office of the Presidential Council to the judiciary in which he's essentially threatening judges about their decisions in specific cases unless they rule in favor of the Government. You can read them at your leisure, but that's essentially what they mean.

Now, President Correa may think that he's James the First, but in the 21st Century, the King's prerogative does not extend to violating the law, including international law. The rule of law is why we're here in this proceeding. It's what restrains despotic rulers. It's what makes foreign investment and economic development possible. In fact, it's the very foundation of liberty.

What we're asking in this case is that the Tribunal uphold the rule of law because that's what, in essence, this case is all about. You don't have to make a decision that Ecuador's entire judiciary is corrupt or has substantial problems. The issue before you, the issue in

this case is simply whether Chevron in the full circumstances of this case can get a fair trial and fair appeals in a situation in which the President of the country condemns Chevron as an enemy of the country, and it condemns its lawyers as traitors to the nation.

And with that, Mr. President, I think that I will hand the floor over to Caline Mouawad to discuss the standard of proof and the Judgment fraud.

PRESIDENT VEEDER: Thank you.

Ms. Mouawad.

MS. MOUAWAD: Thank you, Mr. Bishop.

Mr. Chairman, Members of the Tribunal, I will start by addressing the Tribunal's question from last Friday about the applicable standards of proof when the allegations concern what amounts to criminal conduct.

As the Chairman intimated in his question, there's a distinction between the burden of proof and the standard of proof. The Rompetrol Tribunal explained that distinction most clearly. The burden of proof defines which Party has to prove what in order for its case to prevail; the standard of proof defines how much evidence is needed to establish either an individual issue or the Party's case as a whole.

The relevant rules applicable to our case do not provide any specific standard of proof that the Tribunal

should apply. Under Dutch law, there are no relevant mandatory rules that have a bearing on the issue. Article 1039 Subsection 5 of the 1986 Dutch Arbitration Act provide that the application of the evidentiary rules is at the discretion of the Tribunal. The UNCITRAL Rules are silent on the standard of proof; so, again, it is left to the Tribunal's discretion. The BIT also has no relevant rules.

Which brings us to investment arbitral case law, which may be better suited to assist the Tribunal on the issue of the proper standard of proof in cases of fraud and serious wrongdoing.

Judge Higgins cautioned that, "the graver the charge, the more confidence must be in the evidence relied on." With that in mind, tribunals have applied different standards of proof. Some tribunals have imposed a heightened common law standard of clear and convincing evidence for fraud and corruption allegations. You see this in the Siag v. Egypt Case. You also see EDF versus Romania and Rumeli versus Kazakhstan.

Other tribunals have employed the civil law standard of reasonable certainty to determine whether corruption has been established. Reasonable certainty is the standard of proof that most civil law systems, including The Netherlands, impose to disputed facts in all

civil proceedings, and generally civil law would not impose any heightened burden on the standard of proof just because fraud and corruption are at issue.

More recent jurisprudence has rejected a heightened standard of proof for fraud allegations in favor of the ordinary common law standard of balance of probabilities. You have that in the Libananco case and as well as in the Rompetrol case.

Whichever standard of proof the Tribunal decides to apply in this case, the evidence of fraud and judicial corruption that is before you, Members of the Tribunal, is overwhelming. There has never been such clear, uncontroverted, and unrebutted evidence of fraud and corruption in any one case.

We have videotaped evidence, clip after clip after clip of government officials doing everything in their power to help the Plaintiffs against Chevron. We have videotaped evidence of the President's top legal adviser, Alexis Mera, advising the Plaintiffs on how to pursue criminal prosecution of Chevron's lawyers.

We have videotaped evidence of a supposedly independent damages Court-appointed Expert meeting with the Plaintiffs prior to his appointments.

And we have videotaped evidence of a judge caught in a bribery scandal.

We have e-mail evidence--and you saw this this morning with Mr. Coriell--we have e-mail evidence of the Attorney General's Office working with the Plaintiffs to, "search for ways to nullify and undermine the Settlement and Release Agreements." We have e-mail evidence of the Plaintiffs' lawyers worried about, "going to jail," because of their illegal conduct.

We have banking records of bribes paid and secret accounts.

We have the use of the code names, the cook, the waiter, the restaurant, the menu, the Wao, the puppet, the puppeteer, all of these code names to hide the truth of wrongdoing.

We have admissions by co-conspirators about ghostwriting Expert Reports and judicial orders.

And we have conclusive forensic evidence that the Plaintiffs ghostwrote this $18 billion Judgment.

Under any standard of proof, the amount of evidence that Chevron has put forward is staggering, and I would refer you to Judge Kaplan's decision in the RICO action in which he found that Chevron had proven among other things the Judgment fraud with clear and convincing evidence. That's Exhibit C-2135 at Pages 323 to 326.

Chevron has exposed an unprecedented record of judicial fraud and public corruption, its complexities, its

secrecy, its insidiousness, and Ecuador's only answer is show us more evidence.

But Ecuador is complicit in ensuring that more evidence is not found, and that more evidence that is in Ecuador does not come to light.

You heard Dr. Andrade tell us earlier this week that the Prosecutor General is required to investigate judicial fraud, but when Chevron asked the Prosecutor General three years ago--three years ago--to collect documents and order the forensic examination of the computers of Fajardo, Sáenz, Prieto, Yánza, Cabrera, and Zambrano, among others, in Ecuador, the Prosecutor General just ignored Chevron's request.

When Chevron provided the Prosecutor General with the latest evidence of fraud in the Lago Agrio Case, the Prosecutor General answered that, as the head of public criminal action, he could not investigate a civil proceeding, and he returned the three boxes of evidence to Chevron unopened.

The Prosecutor General repeatedly abdicates his duty to investigate the judicial fraud that has transpired in the Chevron case.

And instead of investigating Fajardo or Yánza or Zambrano, Ecuador is actively pursuing an investigation against Mr. Guerra for the alleged crime of incitement or

fostering separatism, an investigation that Ecuador opened at the request of Mr. Fajardo, whose very computer is a critical piece of evidence of the fraud. By investigating Mr. Guerra rather than Mr. Fajardo, Ecuador is again making sure that this piece of evidence never comes to light.

Ecuador has also made sure that no other witness testimony will come to light in Ecuador. As you heard from Mr. Bishop, Ecuador brazenly uses State power to intimidate persons assisting Chevron. President Correa personally denounces anyone who works with Chevron on this case as a traitor to the nation. Just a few weeks ago, on the eve of this Hearing, President Correa singled out Mr. Guerra in his weekly presidential address. And you, Members of the Tribunal, witnessed how Ecuador's counsel pushed to know where Mr. Guerra's children and grandchildren live.

Chevron tried to obtain documentary and testimonial evidence through the New York RICO action as well, but its efforts to get evidence from the Ecuadorian co-conspirators were, "largely stonewalled." Even when ordered to do so, Donziger refused to produce the Ecuadorian co-conspirators' documents. Mr. Fajardo then commenced a collusive action in Ecuador, and obtained an order from an Ecuadorian Court, again complicit with the Plaintiffs to cover up the fraud, this order enjoining Mr. Fajardo from producing any documents in the RICO

action.

And when Chevron sought Mr. Fajardo's depositions and special arrangements were made for depositions to be heard at the U.S. Embassy in Lima, Mr. Fajardo simply refused to appear and have his deposition taken.

This is the same Fajardo who, just a couple of years earlier, eagerly submitted a declaration in 17 U.S. court proceedings, a highly misleading Declaration, in which he did not disclose blackmailing Judge Yánez into canceling the judicial inspections, or the Plaintiffs' secret meeting with Cabrera, or Stratus ghostwriting the Cabrera Report, or the Plaintiffs' secret payments to Mr. Cabrera. Mr. Fajardo shamelessly went across the United States filing this false Declaration in many U.S. courts, but when it came time to be held accountable by one of those courts, the New York Court, Mr. Fajardo was nowhere to be found.

So, in answer to one of the Tribunal's questions, yes, Mr. Fajardo was requested to give evidence in the RICO case he refused to do it, and the Court drew an adverse inference from the lack of his testimony, but it did clarify that it would have made the same findings even in the absence of those inferences.

Notwithstanding Ecuador's and the Plaintiffs' efforts to keep the truth from coming to light, the

evidence that you have before you of the Judgment fraud that took place in Ecuador's courts is as shocking as it is voluminous. The starting point for examining the Judgment fraud is the text of the Judgment itself, and that starting point is an undisputed point between the Parties. The Judgment copies verbatim from the Plaintiffs' work-product documents.

Ecuador admitted this point in its Opening Statement, stating that it "does not dispute the text from some of the Plaintiffs' documents appears in the Judgment as Claimants have identified." Ecuador's own forensic expert Mr. Racich also agreed that the Judgment copied from work product documents created by the Plaintiffs. This is the Hearing Transcript at Page 1194.

We saw together the extent of that copying when Dr. Leonard testified here on the second day of the Hearing. Dr. Leonard identified five different indicia of plagiarism across 38 examples in the Judgment spanning dozens of pages. Among other things, the Judgment copied word strings of 90 words, 100 words, 150 words. The Judgment copied identical mistakes. Our starting point is thus one of common ground. Page after page, the Judgment copies multiple times and in multiple ways from the Plaintiffs' work-product documents.

But none of these Plaintiffs' documents copied

into the Judgment appears in the Lago Agrio Court Record. You heard Dr. Juola explain to you in detail how he reviewed the entire Lago Agrio Court Record with the aid of his computers. His analysis was robust and reliable. He broke down the entire Lago Agrio Court Record into millions of five word strings scouring the record for a source for the overlaps. To no avail.

Ecuador tried to poke holes in Dr. Juola's computational analysis by attacking the quality of the OCR record that he reviewed. Ecuador showed him text files of the Court Record with localized error, but as Dr. Juola testified, his reading of the record five words at a time was specifically intended to mitigate the risk of localized errors. Even if every other line of text were missing, he still would have caught a source for overlaps of 50 words, 100 words, 150 words.

Ecuador then pointed to a few documents that, when subjected to the OCR process, produced blank pages, but as Dr. Juola testified if the Plaintiffs' work-product documents which you see on the screen, if those documents had been filed in the Lago Agrio Court Record, they would have OCR'd very well and would have produced readable text, not blank pages because these documents were nicely typeset. These are not handwritten documents, these are typed and printed documents as you see on the screen.

And, in fact, looking at the Plaintiffs' filings that Ecuador showed Dr. Juola, those filings which for one of them you should have on the left, the TIFF image, produced generally good quality text which you see on the right-hand side after the OCR process. So, Dr. Juola did not find the Plaintiffs' work-product documents in the Lago Agrio Record, and Ecuador, despite having clearly spent time reviewing that record, also did not find the Plaintiffs' work-product documents in the Court Record.

None of the documents that Ecuador showed Dr. Juola, none of them was the Plaintiffs' internal work documents.

The manual review that Morningside did also came up empty-handed.

PRESIDENT VEEDER: Could I just ask you to take this piece of evidence quite slowly. There was one question that we wanted to raise last Friday, and we omitted to raise it. So, just explain a little bit more as you go through what Mr. Hernandez's colleagues looked at.

MS. MOUAWAD: Sure, I'd be happy to do this.

Morningside Translations conducted a manual review of all the documents filed, of a subset of the documents filed in the Lago Agrio Litigation, and that subset includes all of the filings by the Plaintiffs, all of the filings by third parties, and Chevron's filings after the

date of May 28, 2010, which is the date when Chevron began receiving document production from the discovery actions in the United States, and so the idea was to ensure that, prior to May 28, 2010, Chevron would have had no access to any of that work product. And after that date it would have, and we wanted to be sure that it hadn't been inadvertently put in the record through Chevron's own filings, so this is why you have the subset of documents--generally all of the Plaintiffs' filings, anything filed by third parties, and Chevron's filings after May 28th, 2010.

There was a three-level hand review that was done. First level was two reviewers who looked at every document. Second level of review was also two reviewers who looked at the entire set, so it wasn't just first pass, second pass. The first level, both looked at the entire set; second level, both looked at the entire set; and then there was a third level of review that Mr. Hernandez personally conducted.

I hope that elucidates the mystery of the hand-review.

And in doing that very thorough hand-review of every piece of document in those categories that I just described, they looked for the passages that came from the Fusión Memo, the January and June Index Summaries, the

Fajardo Trust e-mail, Draft Alegato, Moodie Memo, and Selva Viva Database.

And the conclusion that Mr. Hernandez drew and to which he testified in his Report is that none of these overlaps is in the Lago Agrio Court record, and Ecuador has offered no response to the Morningside manual review of the record.

So no one, not Chevron, not the Plaintiffs, not Ecuador--absolutely no one--has produced a copy of any single one of the Plaintiffs' work-product documents as filed with the Lago Agrio Court.

And this brings us to the Lago Agrio Court Record.

PRESIDENT VEEDER: Just one moment. Just coming back to the records that were reviewed by Mr. Hernandez and his colleagues, you say he reviewed documents filed, but they were copies of documents or copies of the file. Were they the product of OCR or were they photocopies?

MS. MOUAWAD: They reviewed the actual TIFF images, so they could be the same TIFF image record that Dr. Juola was provided for was also provided to Morningside, so they reviewed the actual documents that were filed, not a text version that had been OCR'd.

PRESIDENT VEEDER: Thank you.

MS. MOUAWAD: Sure.

So, that brings us to what the Lago Agrio Record

is or isn't.

As Chevron's Expert Dr. Velázquez testified in his Expert Report, and as you heard Mr. Guerra confirm in cross-examination, the official Court Record is the one kept by the Court Clerk. A party will file the document with the Court Clerk. That document is stamped to prove that it was received by that Clerk and that it was submitted to be included in the Court Record, and that's what we talk about and referred to as the certificate of submission.

The Clerk stamps a document, and this is a blowup of that stamp that you will see--handwrites the date when the document is received by the Clerk, writes in the time at which it was received, and then signs it.

And typically the party filing a document will bring an extra copy, have that document also stamped, signed, and dated, so that it maintains proof of receipt by the Court.

The copy of the document that is actually included in the Court Record, that's physically put into the Court Record is paginated, hand paginated by the Court Clerk and then inserted into the record, into the Cuerpo of the record.

So, this is how a Court Record becomes the Court Record. It's a finite universe of documents that serves as

a basis for a judge's decision. And the importance of the Court Record cannot be overstated. As Dr. Velázquez stated in his Report, "what is not part of the record lacks procedural value and obviously can't be used as basis or element to render a decision."

And Dr. Andrade agreed and went even further: Documents that are not properly submitted, to the Court, "do not exist."

A judge cannot consider evidence that is not in the Court Record. That is a breach of Ecuadorian law and of due process, and for that I refer you to the Expert Report of Dr. Velázquez. And yet that is precisely what the Lago Agrio Judgment does. It relies over and over again on evidence not in the Court Record. No one has ever found an official filed copy of any single one of the Plaintiffs' work product documents, but Ecuador expects you to believe that Judge Zambrano supposedly found each of these nine Plaintiffs' documents. Now, Ecuador makes a last-ditch attempt to undermine this overwhelming evidence of fraud by pointing to a handful of Fajardo e-mails in December 2010 and January 2011 as supposed evidence that the Plaintiffs did not know when the Judgment was coming, and so they could not have ghostwritten that judgment.

Mr. Bishop already addressed Ecuador's argument in detail in his opening presentation, so I will not revisit

it here except to say one thing. That among each other, the poor members of the fraud clearly discussed their plan to draft the Judgment, as is clear from this June 2009 e-mail, and they wanted to do it without having a member or Junior member of their team know what he is doing. So, it's no surprise that they wanted to keep this a secret from others. And, in fact, many individuals, funders, lawyers, other people that were part of this whole fraudulent scheme but who were not members, core members of the fraud have testified about Donziger and Fajardo misleading them about what was really going on in the Lago Agrio Litigation.

Ecuador simply cannot explain away any of the Plaintiffs' unfiled documents. It speculates, it suggests, it ignores, but at the end of the day, it cannot produce a filed copy of any one of these nine documents.

And if you step back for a moment and you look at these documents on the screen, the Plaintiffs' legal research memos, the Plaintiffs' database of sampling results, the Plaintiffs' internal index of the Court Record, the Plaintiffs' internal e-mails, these documents are precisely the types of documents that the Plaintiffs would have had at their fingertips in ghostwriting the Judgment, which explains how they left their fingerprints all over that judgment.

And if we look specifically at this Selva Viva Database, it's one of the dozen examples of the Plaintiffs' fingerprints that simply cannot be explained any other way than by the Plaintiffs' ghostwriting. The forensic evidence in this regard is conclusive, and I would refer the Tribunal to Mr. Lynch's testimony starting on Page 948 and Mr. Racich's testimony starting on Page 1195, so I will just cover this very quickly because I want you to see the points that cannot be refuted where the forensic evidence is clear, and it cannot be refuted.

We know that the author of the Judgment used the Selva Viva Database. There are data and naming irregularities that are copy-pasted into the Judgment. There are statistical percentages calculated across thousands of lab results from within the database that appear into the Judgment, and I think you will remember this slide, I should give credit to Mr. Lynch from his opening presentation. Mr. Racich agreed and testified that whoever calculated the statistics that made it into the Judgment must have had access to the Selva Viva Database.

We also know from Mr. Lynch that the Selva Viva Database, if printed, would print out to more than 2000 pages and would be completely unusable. It is only usable in electronic form.

So, we know that the Selva Viva Database

information is in the Judgment, that it must have been in electronic form. We know that the Selva Viva Database is not in the Lago Agrio Record, not in the paper record, and not in the 69 CDs. And for this I refer you to Dr. Juola's January 2013 and June 2013 Reports.

We also know that there are no electronic copies of the Plaintiffs' documents on Zambrano's computers. Both Mr. Lynch and Mr. Racich testified to that.

We know that Zambrano's computers were not used to calculate the statistics in the Judgment. Mr. Lynch testified that Excel was used for fewer than five minutes during the period of Zambrano's second tenure from October 2010 through March 2011, and that it was not used at all during the period from December 21 to December 28, 2010, where content from the Selva Viva Database was entered into the Providencias document. And Mr. Racich agreed with Mr. Lynch's testimony regarding the amount of Excel usage on Zambrano's computers.

So, Ecuador can speculate all it wants about how Judge Zambrano may have received the Selva Viva Database, but the forensic evidence is irrefutable. Judge Zambrano did not have the Selva Viva Database on his computers. He did not download it. He did not use it. He did not make calculations with it. There is simply no explanation for how data and naming irregularities and statistical

percentages from the Selva Viva Database made their way into the Judgment other than the Plaintiffs put them there, the same way that they put in the rest of their internal unfiled documents into the Judgment as we just saw. Ecuador simply cannot explain away the evidence.

I will now turn the floor to Ms. Silbert who will show you how Ecuador has tried to minimize this mountain of Judgment fraud evidence by limiting the extent of the evidence that it wanted you to hear.

Thank you.

PRESIDENT VEEDER: Thank you.

Ms. Silbert.

MS. SILBERT: Members of the Tribunal, good afternoon.

In its questions to the Parties last week, Tribunal asked the extent to which it can draw adverse inferences from the failure of certain witnesses to appear. Over the next 15 minutes, I will address that question along with the larger theme of missing Witnesses that have been so prominent in this Hearing.

With respect to Claimants' witnesses, Ecuador made a tactical choice not to confront many of the key witnesses we brought regarding the Judgment fraud. Instead, they critiqued that evidence indirectly through the argument of counsel or by questioning witnesses without direct

knowledge.

With regard to the missing witnesses on Ecuador's side, I note that Ecuador brought forward, as Mr. Bishop previewed, not one witness to support its elaborate version of events of how this Judgment came to be.

I will go through some of Claimants' witnesses that you did not hear from over the last three weeks. First is Adam Torres, a 30-year veteran of the U.S. Marshals and the IRS fraud investigation. He has a unique background of investigating thousands of public corruption claims, including thousands of judicial corruption claims in his 30-year career.

What he did in this case was to conduct an independent, from-scratch review of more than a million records provided to him directly, and looking only at the corroborating evidence of what happened and what was attached to Mr. Guerra's report. He found that the documents, standing alone, were consistent with the pattern of public corruption that he identified in his career. He also opined that none of the alternative theories brought forward survived the challenge of investigation.

And I'm going to show you a timeline of the documents culled together by Mr. Torres. Now, in order to analyze and investigate the chain of events, he assembled a timeline, and even without Guerra's words narrating the

story as you've heard before, the plot is very clear. You've seen these documents before, so I won't go into them in great detail. I just will walk through one pattern. We see on November 18 a Draft Order saved to Guerra's computer, the next day a shipping receipt of a package to Narcisa Leon at the Lago Agrio Court, and four days later Judge Zambrano issues an order with closely matching text. A few days later, there is a $1,000 withdrawal from the Selva Viva bank account as evidenced in the record itself, and the next day, an internal e-mail from the Plaintiffs' team we have seen before. "The budget is higher since we are paying the puppeteer." And that day a 1,000-dollar deposit, according to Guerra's own bank account statement.

And from there we see the pattern repeat itself again and again, and the timeline continues.

Another witness you did not hear from is Dr. Gerald McMenamin, a Spanish linguist with significant testifying expertise on Authorship issues. Dr. McMenamin concluded that it's highly probable the Judgment has multiple authors and that Nicholas Zambrano did not author a significant amount of that document.

He achieved this analysis by relying on what he calls style markers: He analyzed seven different ones, and I'll show you just one.

Mr. Zambrano, in his known writings, has a very

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unique and very consistent manner of subdividing his headings. You see a number, a period, a dash, a number, a parentheses, a period, a dash. It's quite consistent among documents.

When you look at the Judgment, however, you see all sorts of styles used. It goes back and forth from one to the other. No internal inconsistency whatsoever.

Now, Dr. McMenamin concluded that this means multiple authors, but I note that this evidence also dovetails with the forensic evidence proving that the Judgment is a collection of cut and pasted text from different sources.

Another witness, Dr. Vladimiro Alvarez, his qualifications are here on the screen, and they are many, but I also note to you that his Report attached hundreds upon hundreds of public media and NGO reports on the state of the judiciary of Ecuador and its decline in recent years.

Dr. Alvarez concluded that the Executive Branch has continually violated the rule of law by influencing courts and tribunals. Ecuador never confronted him on this conclusion. Instead, and to make a point personal that we've heard from several times in our Closing Statements today, Mr. Alvarez testified before the New York Court about the effect that President Correa's statements calling

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him and other Chevron witnesses "traitors," the effect that that had on his personal reputation, his 35-year career as a professor and his working life as an attorney.

The fourth and final witness I will go over with you is Professor Mitchell Seligson, a professor at Vanderbilt University. He's responsible for the Latin American Public Opinion Project which administers the Americas Barometer Survey throughout Latin America. Mr. Seligson has personally conducted these surveys in Ecuador since 2001. And what you did hear Ecuador do this week is tout one of Professor Seligson's own surveys in its opening. Again, without calling him for cross. You see the cover of this survey sponsored by USAID. At the bottom we see the LAPOP Project and Vanderbilt University. He is the director of this study.

Now, if Mr. Seligson had been here, he would have told you that the 2014 Report far from endorsing Ecuador's judiciary, marked the lowest point in a decade of confidence in the judiciary among the Americas, that Ecuador continued to rank among the most corrupt countries in the Americas, and that more than 68 percent of Respondents in Ecuador said that corruption is somewhat or very common among government officials in their country.

I've put Professor Seligson's ultimate conclusion up here for you: "The high level of bribery and the low

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level of confidence that the Courts in Ecuador guarantee fair trials support the conclusion that the Courts of Ecuador do not offer impartial tribunals." Again, he has never been cross-examined on that ultimate conclusion.

And these are but a few of the Witnesses you did not hear from this week--I'm sorry, this month, from the Claimants' side.

You also have not heard Ecuador challenge the testimony of many who have disavowed the Judgment. And I put up here on the board several witnesses who have publicly recanted their involvement in this case. This involves them admitting wrongdoing in many instances. And for the funders, they have forfeited their stake in the Judgment, and many millions of sunk costs towards the Lago Agrio Plaintiffs' legal case.

PRESIDENT VEEDER: Would you mind just going through their names and telling us where they came from.

MS. SILBERT: Sure. You see at the top Mr. Beltman and Ms. Maest, across, those are Stratus consultants. Mr. Russell and Mr. Quarles were early Experts who had provided assessments that they later recanted, and the cleansing Experts who gave depositions either recanting--well, recanting their findings or stating that the findings relied on the Cabrera Report and did not come from independent testing and data.

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At the bottom, Joe Kohn, an American lawyer who originally had worked with the Plaintiffs, Mr. McDermott and Mr. Shinder, also attorneys. Chris Bogart, Mr. De Leon and Woodsford were all litigation funders. Mr. Bogart, his declaration is in the record. Mr. De Leon and the Woodsford, those settlements have become public in very recent months since we last submitted a Memorial on the Merits, our last Memorial on the Merits.

PRESIDENT VEEDER: Forgive me for interrupting, when you say "settled," were they Defendants in the RICO litigation in New York?

MS. SILBERT: No, I apologize. And correct me if I'm mistaken, but they were not, those are separate settlements agreed between Chevron and those Parties.

PRESIDENT VEEDER: Okay.

MS. SILBERT: Changing gears from Claimant's case to Ecuador's. We also note that Ecuador has brought forward no witnesses to support its version of events. Of course, the key missing witness is Mr. Zambrano and Mr. Bishop will tell you more about him later, but we also note that there are several Court employees who could have come forward to discuss Ecuador's side of this case, and that includes Ms. Calva, Ms. Leon, Mr. Albán. The Plaintiffs' legal team are another category of witnesses we do not see here, and given their eagerness to defend the

Judgment in the media and tout it as a historic victory, one would presume they would be willing to defend it here before you, but none have stepped forward to testify under oath.

Now, the Tribunal asked last week about Ms. Calva's testimony before the New York Court. This timeline sets forward the events that took place there. I will note that all of the documents referenced here are on the record with two exceptions, the November 20 Court Order and the December 4 through the 7th migration records. With the Tribunal's permission, we would ask to add those to the record in response to the Tribunal's questions. We have the exhibit numbers ready, and we can distribute the documents at the end of our presentation.

PRESIDENT VEEDER: If you can first show them to the Respondent, and then we will see where we go.

MS. SILBERT: Yes, we will do that.

In brief, the timeline is as follows, two weeks into the RICO Case, the Defendants moved to add Evelyn Calva to their witness list and to submit her notarized Declaration. Judge Zambrano was deposed the very next day after that Declaration was signed and admitted Ms. Calva's involvement in writing the Judgment.

Judge Kaplan accepted Ms. Calva's Declaration on the condition that she submit to a deposition, a sworn

deposition, in New York. And over the next week, the Defendant's lawyers represented that they would obtain a visa for Ms. Calva and her sister to travel to the United States. Those visas were obtained, but the very next day, the lawyers advised the Court that they would no longer call Ms. Calva to trial. The trial concluded on November 26th, and on December 4th, Ms. Calva traveled to New York, accompanied by her sister. How did Judge Kaplan weigh Ms. Calva's evidence before him? You see how he assessed it in his ultimate decision. He noted that at first Zambrano stated in his original Declaration he was the only Author of the Judgment. Then Ms. Calva's existence was actually first disclosed by Mr. Guerra. And after Guerra had testified, the Defendants moved to add Ms. Calva as a witness, and at that point Zambrano changed his story.

Judge Kaplan said, of course, Ms. Calva readily could have confirmed or denied Zambrano's account; and while the Court does not draw any inference as to the substance of her testimony she would have given, her absence is worthy of note. We ask the Tribunal to make a similar inference with respect to Judge Zambrano's testimony at least.

The UNCITRAL Rules states that if one party duly invited to produce documentary evidence fails to do so

without showing sufficient cause, the Tribunal may make the Award on the evidence before it; in other words, the rules suggest sticking to the record at hand.

The IBA Rules, however, explicitly permit adverse inferences both with respect to documentary evidence and witness testimony. Here we see if a party fails to make available any other relevant evidence, including testimony sought by one party or fails to make available evidence including testimony ordered by the Tribunal, the Tribunal may infer that such evidence would be adverse to the interests of that party.

And, finally, we have reviewed Dutch law on this matter. As Ms. Mouawad told you, the application of Dutch procedural law is discretionary under the Dutch Arbitration Act, but we simply note that adverse inferences are permitted.

Regarding the practical application of adverse inferences by international tribunals, we point the Tribunal to a thorough survey of the practices of the Iran-U.S. Claims Tribunal on adverse inferences in particular, published in Arbitration International and which summarizes many published decisions of that Tribunal. Here you see a five-point test. We would state that all five of these factors are met. But we do note two procedural requirements that emerge from the practice of

the Tribunal.

First, there is a consensus that an adverse inference must relate to an Order by the Tribunal under the IBA Rules. And there is also a consensus that a tribunal must notify a party of its evidential obligations and give it a sufficient opportunity to produce the evidence before drawing the inference. For that reason, we suggest treating the failure of certain witnesses to appear, including Judge Zambrano, as additional circumstantial evidence of concealment of wrongdoing without drawing formal inferences as to the content of that testimony.

A similar approach was found by the Feldman versus Mexico Tribunal. In this case, the Claimant alleged discrimination. It said that it was denied export rebates that were handed out to their local Mexican equivalents. And here the Tribunal noted the utter failure of Mexico to bring exonerating evidence before the Tribunal. Instead, Mexico had focused its defense on the corporate structure of the Claimant Parties.

As the Tribunal said: Why would any rational party have taken this approach at the Hearing and in the Briefs if it had information in its possession that would have shown that the Mexican-owned cigarette exporters were being treated in the same manner as the Claimant? This allowed the Tribunal to make an inference based on that

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failure to present evidence. It was treated as another weight on the scale of evidence before the Tribunal.

At the very heart of this issue, and in conclusion of my presentation, we note Ecuador's responsibility to produce all evidence in its possession to establish the truth, whatever it may be. In this case, the Parker versus Mexico Commission took into account the Respondent's failure to produce relevant evidence in reaching its decision.

This concludes my presentation. I turn it back to Mr. Bishop, who will explain to you the evidence that is before you concerning the conduct of Guerra and Zambrano which is more than sufficient to support a finding of fraud.

PRESIDENT VEEDER: Just before that happens, you referred to Jeremy Sharpe's Article in Slide 246, Exhibit CLA-620. I don't believe we have that electronically.

MS. SILBERT: No, that's correct. I apologize. There are several Legal Authorities that we are seeking to introduce into the record in response to the Tribunal's questions of last Friday. We also have them ready to distribute at the end of our presentation, and can hand them to Ecuador before turning them in.

PRESIDENT VEEDER: Do share them to the Respondent first.

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MS. SILBERT: Yes.

PRESIDENT VEEDER: So it would be 620, 623, 621.

MS. SILBERT: Correct.

PRESIDENT VEEDER: We will sort that out later.

MS. SILBERT: And we have an index as well for everyone to view.

PRESIDENT VEEDER: Show it to the Respondent first. Thank you very much.

MS. SILBERT: We will. Thank you.

MR. BISHOP: Thank you, Mr. President.

At this point we move to the end of our discussion of the fraud and corruption facts, and what I plan to do is to take you briefly through some of the testimony of Mr. Guerra and the corroborating evidence for his testimony, and then move to Mr. Zambrano and discuss the RICO evidence or the RICO testimony that he gave. And I should be approximately 30 to 40 minutes in that endeavor.

Now, you have been able to see and hear directly from Mr. Guerra, and as I mentioned in the opening, Mr. Guerra is no saint. He's admitted to some very serious wrongdoing, but the question the Tribunal has to deal with with respect to his testimony is simply whether the testimony that he has given before you is true or not, and there are three ways in which you can go about doing that:

First, from your own view of his demeanor and his

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forthright answers in his testimony in the past two weeks;

Second, the extent to which his testimony is corroborated by independent and documentary evidence;

And, third, from the extent to which our own common sense tells us that his testimony is probably correct given the full facts and circumstances that you otherwise have before you.

So, in the next few minutes, I intend to go through the corroborating evidence in particular for the testimony you've heard from Mr. Guerra.

First of all, there is no dispute that Mr. Guerra was generally ghostwriting Court Orders for Judge Zambrano at least in other cases. Zambrano, in fact, admitted this in his RICO testimony. He admitted that Guerra, in the period from 2009 to 2012, was helping him draft Court Orders generally. So, we had that admitted from Zambrano himself.

Mr. Lynch, in his forensic examination of Mr. Guerra's computers, found over 100 draft Court Orders on Guerra's computer that were later issued by Zambrano in his other cases. So, there is no dispute that Guerra was generally ghostwriting Orders for Zambrano. There is no dispute about that whatsoever.

Now, Zambrano, however, denies that Guerra ghostwrote Court Orders in the Chevron Case specifically.

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But first of all, in light of the clear pattern that Guerra and Zambrano had established with Guerra ghostwriting over 100 Orders, Zambrano's testimony in this regard has to be viewed with substantial scepticism.

And what I had planned to do next was to walk you through but very quickly the evidence that corroborates Mr. Guerra's testimony that he was paid $1,000 a month by the Plaintiffs to ghostwrite the Court Orders for Zambrano in the Chevron Case specifically and to move the case along quickly for them, and you see Mr. Guerra's testimony in the next slide.

The first corroborating evidence I would refer you to is the Plaintiffs' own e-mails. When Zambrano was becoming the Judge in his first tenure in September 2009, October 2009, Fajardo sent an e-mail to Donziger in which he said "I understand that Zambrano himself asked Judge Núñez...that Núñez help him with the Orders."

So, what you see is that, in their own e-mails, the Plaintiffs are saying that they knew that Zambrano needed help with the Orders, his Orders were ghostwritten and they were thinking who do they want to have ghostwriting these Orders, Núñez who is being recused from the case or Zambrano?

And also, I showed you in the Opening Statement--I haven't put it up again here--the use of code names by the

Plaintiffs for Guerra and Zambrano in this period, in September, October and November 2009, they were referring to Guerra and Zambrano as the puppeteer and the puppet. And the only reason they would be using code names to hide the identities of Guerra and Zambrano is that they knew that what they were doing was illegal.

Now, secondly--and this is very important, and you see it on the next slide, I put this up in the opening statement--we can match up the bank records both of Mr. Guerra and of the Plaintiffs themselves to show that they were paying Guerra $1,000 a month during this period to ghostwrite the Orders. The Plaintiffs were using the Selva Viva company, which was set up by Donziger to support the Plaintiffs, and he's testified to that. There is no dispute about it. But what you see in this slide is that, throughout this period of Zambrano's first term on the Court from October 2009 to February 2010, you see $1,000 cash withdrawals from the Selva Viva bank account and either the same day or the next day you see that same amount of money being put into Mr. Guerra's bank account.

And for the first two deposits, we can match them up to e-mails that Fajardo and Yánza were sending referring to them paying the puppeteer.

For the last two, we have direct evidence that they were the ones who were making these payments into

Mr. Guerra's account because the deposit slips were signed by Ximena Centeno. And when she signed the deposit slips, she had to put her cédula number--that is her personal identification number in Ecuador--on the deposit slips. You can see it on the next slide, and we have matched that cédula up to the governmental records to show that, in fact, that is her number.

And Mr. Donziger, in his RICO testimony, testified that Ms. Centeno was an employee of Selva Viva at the time these payments were being made to Mr. Guerra.

Mr. Guerra has also testified that he would learn sometimes of these deposits into his account because Mr. Fajardo would call him and tell him that deposits were being made into his account on that day or the previous day.

And this pattern, as I said, occurs throughout Zambrano's first term on the Court and it corroborates Mr. Guerra's testimony that he was being paid $1,000 a month by the Plaintiffs, and the only reason they would be paying him that money was to ghostwrite Court Orders in the Chevron Case, and neither Ecuador nor Donziger nor anyone else has given any other explanation for why these payments would be made to Mr. Guerra except his explanation that it was because of the ghostwriting.

Now, third, we also have forensic evidence of

this. Mr. Lynch did a forensic examination of Mr. Guerra's computer, and he found the drafts of nine Court Orders in the Chevron Case that were ultimately issued by Zambrano, he found those drafts on Mr. Guerra's computer. The drafts on Guerra's computer pre-date the later issuance of those same Court Orders by Zambrano. And Mr. Lynch compared the contents of the drafts on Guerra's computer to the final issued documents. He found substantial overlaps of the language, but they were not identical, so they were clearly drafts as they appeared on Guerra's computer.

Now, fourth, we can also confirm that these were drafts by looking at their contents because what we find, as you will see on Slide 259, is that Guerra left blank spaces in these Orders. You heard him testify about this last week when he was here. He left blank spaces, and he put editorial notes in all capital letters for Zambrano in places where he didn't have the information, and Zambrano had to fill in, for example, the names of expert witnesses, so you see those editorial notes in the drafts on Guerra's computer that he was sending to Zambrano. And Mr. Guerra testified about this in his testimony that, in fact, these were editorial notes to Zambrano to fill in.

Now, fifth, Mr. Guerra testified, and Mr. Zambrano confirmed in his RICO testimony, that Guerra would, in fact, sometimes ship draft Court Orders to him using TAME

Shipping, and we have, sixth, the TAME shipping records. You have those before you, and they were discussed in the testimony of Mr. Guerra. Mr. Guerra confirmed in his testimony that he, in fact, sent Draft Orders to Narcisa Leon at the Lago Agrio Courthouse to submit to Mr. Zambrano. The reason was Mr. Zambrano was being very careful to avoid clear-cut paper trails, so that's why they were being sent instead of to him directly, as they were in other cases, they were being sent through the Court Clerk Narcisa Leon.

And seventh and finally, and Ms. Silbert has already addressed this particular slide, Slide 264, you see the clear patterns of how this worked. The Draft Order last saved on Guerra's computer on October 20th, for example, and the next day Zambrano issues an Order with text matching that found on Guerra's computer.

On November 18th, you have a draft Order last saved on Guerra's computer, the next day Guerra sends a shipment to Narcisa Leon through TAME shipping and in four days later Zambrano issues an Order with matching text, and that same pattern goes on.

Mr. Adam Torres, as Ms. Silbert has told you, has taken all of this evidence and has matched it into patterns, and he testifies about it in his Expert Report.

Now, Mr. Guerra, moving to the subject of the

ghostwriting of the Judgment, Mr. Guerra testified that, on instructions from Mr. Zambrano--and I should go back for a moment. Both Mr. Guerra and Mr. Zambrano in the RICO Case testified that they had a close and long-standing relationship, that was not denied by Zambrano, Zambrano admitted that. So Mr. Guerra testified that Zambrano used him as an intermediary to solicit a bribe for the ghostwriting of the Judgment. On Zambrano's instructions, he approached Chevron's lawyers about a bribe in exchange for ghostwriting the Judgment through intermediaries. In the last part of 2010, you have the Chevron lawyers' testimony in the RICO Case before you, so we know that that occurred.

After Chevron rejected that approach, Zambrano then instructed Mr. Guerra to solicit a $500,000 bribe from the Plaintiffs in exchange for allowing them to ghostwrite the Judgment.

Now, the only reason for the Plaintiffs to be meeting with Mr. Guerra as he did at this point, was because they knew that he was close to Zambrano, they knew that he had been ghostwriting Court Orders for Zambrano because they had been paying him to do it during Zambrano's first term and they knew that he was Zambrano's intermediary. So, Mr. Guerra on Zambrano's instruction, reached out to Donziger, and they set a meeting at the

Honey & Honey Restaurant in Quito, which was attended by Donziger, Fajardo and Yánza and by Mr. Guerra. And at this meeting, Guerra testifies that he passed on this offer from Zambrano to allow the Plaintiffs to ghostwrite the Judgment in return for a $500,000 bribe. And we know that that meeting occurred, and we know that that bribe solicitation occurred because Donziger, in his RICO testimony, confirmed it. He admitted, in fact, that they did have this meeting at the restaurant in Quito and, in fact, that Guerra did solicit, on behalf of Zambrano, the $500,000 bribe in order to fix the case with the Plaintiffs.

So, the fact of those meetings is established. It's confirmed and corroborated by independent testimony from Donziger himself.

And what happened after that is very interesting because Guerra has testified that Fajardo later approached him about being an expert for the RICO Defendants in the RICO Case in New York about the Ecuadorian judiciary, and Donziger confirmed in his testimony that he was aware that that approach, in fact, happened. So, we know that the Plaintiffs certainly weren't outraged by this bribe solicitation.

In summary, Guerra's testimony about the bribe solicitation is corroborated both by the testimony of Chevron's lawyers about the attempt to seek a bribe from

them which they rejected, and it's also corroborated by Donziger in his RICO testimony, so we know that this was happening.

Now, in this case, we have a rare example of direct evidence from an insider to a fraudulent scheme. Had Guerra not come forward and become a witness, Chevron would never have learned about the various details of this scheme, including, for example, the bribe solicitation to the Plaintiffs at the Honey and Honey Restaurant. And without Guerra, Chevron would not have known to ask Mr. Donziger about that in the RICO testimony, and so it never would have come to light.

Now, you've heard about Mr. Guerra's security concerns since filing his Declaration on behalf of Chevron. He testified about those concerns. You asked him about the Fajardo complaint, and you have seen the cross-examination of him with respect to his children and his grandchildren. And in the past week, as I've noted, that investigation sought by Guerra has now been moving forward. It's clearly retaliatory, but unfortunately, it's very much in line with attempts we have seen by the Respondent to intimidate Guerra and others of Chevron's Expert Witnesses by calling them "traitors."

Now, by contrast to the treatment that we see from the Respondent of Guerra, I would like to next turn to

Mr. Zambrano and see the very disparate treatment we see with respect to him from the Respondent.

ARBITRATOR GRIGERA NAÓN: To set the record straight, the investigation is sought by Fajardo, not by Guerra.

MR. BISHOP: Yes, I'm sorry. If I said that, I apologize.

ARBITRATOR GRIGERA NAÓN: I think you said that.

MR. BISHOP: I apologize. Yes, it was sought by Mr. Fajardo, that's correct.

Now, a year ago this Tribunal emphasized to the parties in this case that you wanted to see in person two witnesses, Mr. Guerra, whom you have seen, and Mr. Zambrano, who you haven't. We asked the Government to bring Zambrano to this Hearing. And as this Hearing approached, you asked Mr. Zambrano yourselves to have him come to this Hearing. Now, we asked the Government to bring him because we know that he works for, he's testified, he works for a company that is majority-owned and controlled by Petroecuador, the national oil company of Ecuador, so he is effectively controlled in that regard by the Government.

We brought Mr. Guerra for you to see, but the Government did not bring Zambrano. So now you have a major contrast in that regard. You've seen and heard from

Guerra. You haven't had an opportunity, however, to see Zambrano. And why is that? Why didn't the Government bring--why didn't the Republic bring Zambrano to testify? Well, the answer, I think, is actually a very simple answer: He didn't write the Judgment. He's not a credible witness, and they can't put him on the stand. And the evidence of that is to look at the RICO Opinion of Judge Kaplan where he finds specifically that Zambrano is not a credible witness. Now, although you didn't get to see or hear Zambrano, we do have his testimony in the RICO Case, and I would like to very briefly take you through that.

Zambrano testified there that the Lago Agrio Judgment was the largest and most significant Decision of his career. And of course, we know that's true, it's the largest Judgment in the history of Ecuador by many factors. He received a lot of attention from the media with respect to this case. And the day after the Decision was issued, he appeared with the head of the judicial council at a press conference to receive praise about this Decision. So, this was a big deal to him. And he testified in the RICO Case that he spent a lot of time on the Judgment and that he wrote every single word of it himself, with no assistance from anyone else. That was his testimony.

But when he was asked in the RICO Case about the substance of the Judgment, he couldn't answer even basic

questions about it. He was asked, for example, what theory of causation did the Judgment rely upon? Well, there is a long discussion in the Judgment about the various theories of causation, and then the Judgment comes to a conclusion, but Zambrano didn't know. He couldn't answer.

He didn't know what the English word "workover" means, which appears in the Judgment twice. But more than that, when he was asked the question why does that English word appear in the Judgment, he couldn't answer that, either. He didn't know why it's in the Judgment. He had no explanation for it.

And he didn't know what the term "TPH" means. Now, the Judgment awarded $5.4 billion to clean up TPH, so that was a very significant term in the Judgment, and that term appears in the Judgment 41 times. So, this was a term that one ought to be familiar with, if one wrote the Judgment.

Now, Ecuador's explanation for this in its Memorial was that, well, he was perhaps confused because you didn't ask him about the Spanish acronym HTP. You instead asked him in cross-examination about the English acronym TPH. But the problem with that is that the original Spanish version of the Judgment itself uses the English acronym TPH. It doesn't use the Spanish acronym HTP. So, if he didn't know what it means, it because he

didn't draft the Judgment.

Well, maybe you might ask, maybe he has something that he can use to refresh his recollection. Maybe he has some notes, maybe he has some materials that he could look at and refresh his recollection about that, so he was asked about this in the RICO Case. Well, no, in fact, he had to admit he has no documents that indicate he was the Author of the Judgment.

Now, he says he made notes, but then he says he threw those notes away about a year later, even though he knew that Chevron was appealing the Judgment, and even though he knew that Chevron was claiming that the Judgment was ghostwritten. Nevertheless, he just tossed his notes. But the bottom line is he now has nothing to indicate that he was the Author of the Judgment, and my suggestion is he never did.

Now, Mr. Guerra testified that Fajardo had a draft of the Judgment on Fajardo's computer before the Judgment was issued, and Mr. Guerra says he saw it. Now, we were never able to obtain Fajardo's computer or any of his documents, and Ms. Silbert has gone through that, so I won't go through it again. But because of that, Zambrano was asked at the RICO trial, what computer did you draft the Judgment on? So, he answered "the new one" in his office. He had an Old Computer from when he became a judge

in 2008 and he obtained a New Computer. So, when he was asked on what computer did you draft the Judgment, his answer was on the "new one." He even drew a map of his office, he showed where the old one was, he showed where the new one was, he said Ms. Calva sat only at the New Computer, typed only into the New Computer, that the Judgment was drafted exclusively and only on the New Computer, and he testified about that repeatedly, and he testified about it insistently. He was quite sure, and he said that he was quite sure because it was the more modern computer. But we know that testimony is untrue.

He says he started drafting the Judgment in mid-November 2010, but he only got the New Computer on December 7th, and Microsoft Word was only open on that New Computer from the time he got that computer on December 7th until the Judgment was issued on February 14th, 2011, Microsoft Word was only open on that computer for a total of 36 hours, not nearly enough time to draft a 188-page single-spaced Judgment. It just wasn't possible.

And every draft of the Judgment text that predates the issuance of the Judgment was saved only on the New Computer, and Mr. Lynch testified to that, and Mr. Racich also had to admit it, so the only draft of the Judgment was saved only on the Old Computer, not the New Computer. So Mr. Zambrano's testimony on what computer he used to draft

the Judgment was clearly false.

Now, Zambrano also quite frankly lied when he said that his 18 year old assistant, Ms. Calva, typed almost the entire Judgment from dictation. He said he never gave her a document to type from, and he never wrote out in longhand what he wanted her to type and just handed it her. He said everything that she typed into the computer was done from dictation.

But Dr. Leonard, in his Report and his testimony pointed out the many mistakes in the Plaintiffs' internal and unfiled documents that were copied verbatim, word for word, into the Judgment. So, is it credible that Ms. Calva typed from dictation the very same mistakes, word for word and comma for comma and period for period and number for number, exactly as they appear in the Plaintiffs' documents? What's far more likely is that the Plaintiffs themselves copied and pasted portions of their internal documents to create the Judgment.

And Zambrano also lied when he testified about how the Judgment came to discuss U.S., Australian and English law. And this is, I think, an important point. He says he asked Ms. Calva, the 18 year old recent graduate, to do legal research on the Internet in foreign law and in a foreign language, and that she is the one who found these cases from the U.S., Australia and England that are

discussed in the Judgment. That was his testimony in the RICO Case.

Well, he had to create some story about this because he doesn't speak English, and the cases aren't anywhere to be found in the Court Record, but this is a remarkable proposition, he's saying he decided to go outside the Court Record and to have his 18-year-old assistant do legal research in a foreign language, in a foreign legal system to support the Judgment without giving the Parties an opportunity to comment on them, and so Ms. Calva is the one who did this, he says.

Well, Ms. Calva, as we know, conveniently did not attend the RICO trial, and consequently she was never cross-examined about any of this, and so we don't have her testimony.

Now, the forensic evidence also does not support Zambrano's testimony. The only legal research Web site that was accessed by Zambrano's computer in the relevant period was an Ecuadorian Web site called fielweb, but that Web site cannot access U.S. cases and authorities, and we brought you an Expert Report that looked at that Web site and testifies to that, and Ecuador never refuted that, never brought a counter Expert, so that is unrefuted testimony that that Web site cannot be used, could not be used to find these cases.

And the only translation Web site that was accessed from Zambrano's computer in the relevant period could not have been used because it was accessed on January 4th, 2011 but that was after these foreign law cases appeared in the Providencias, specifically after the U.S. cases appeared in the Providencias on Zambrano's computer on December 21, 2010.

And, as a matter of fact, let's talk about the Providencias. These are partial drafts of the Judgment found on Zambrano's Old Computer on December 21 and December 28, 2010. And these are perhaps the most important aspects of the forensic examination done by Mr. Lynch. So what do they show?

Well, Ecuador refers you to the metadata, the Author name and the Last Saved name, but the metadata cannot show you who Authored the contents of this document, these Providencias. In fact, you saw that illustrated very vividly in the cross-examination of Mr. Racich and with respect to his own Report when he was shown that the metadata indicates he wasn't the Author of his own Report. And Mr. Racich, therefore, agreed that, in fact, metadata cannot tell you who created the content of a document.

Now, Ecuador also points you to the number of times the Providencias was saved, the so-called "revision number," but the revision count increases every time you

hit Control Save on the computer, regardless of whether the document is actually revised or not. And an experienced typist, I'm told--and I'm not one, but I'm told--that an experienced typist may hit Control "S" every few seconds to make sure that they are saving their documents and are not going to lose them.

In fact, you saw Mr. Lynch's demonstration about this. He hit the Save button every few seconds to make sure that his work product wouldn't be lost, and the document at the end showed 11 revisions in the very few minutes that he had it open, even though he didn't create any of the content of that document, it also showed him as being the Author. He simply cut and pasted from other documents into the document.

There is no evidence, also, that the number of Saves that Ecuador tells you about, I think it's 286 saves in Providencias, there is no evidence that that's related necessarily to the Judgment text. That relates to the entire file of Providencias over the life of its existence, and we know that there were other documents in Providencias beyond just the Judgment text itself.

Now, the best evidence of what relates to the Judgment text in this regard is probably what happened between that period, December 21 and December 28th, when 38 to 45 pages of the Judgment text were added, but there

were only 29 Saves, so the number of Saves simply doesn't tell us very much.

There is, however, other forensic evidence that's more meaningful. First is the edit time. What the edit time tells you for these Providencias is that, on December 21st, the first 81 pages of the Judgment, which were later reformatted to become the first 107 pages of the Judgment, were input into Zambrano's Old Computer in only 35 hours, less than one week. And if, from the time that file had been created back in October, that's less than 30 minutes a day. In fact, depending on whether we use the 81 pages or the 107 pages, it means that the Judgment text was input into Zambrano's computer at a rate of somewhere between 20 and 26 minutes per page. And 94 percent of that December 21st Providencias, as it appears on his computer, was never changed thereafter. That means it went in at almost final form with very little editing after that.

And between December 21st and December 28th, another 38 to 45 pages were input in only 17 hours at the rate of approximately 27 minutes per page and 96 percent of that text was never changed thereafter.

So, those consistent rates are incredibly fast for drafting a complex legal document. And as I said, these 154 pages of text were put on the computer in almost completely finished form. That's not how lawyers typically

draft documents, at least not in my experience. And in my experience, lawyers don't draft documents quite that linearly either, at least I know I go back and forth in drafting and editing my documents.

So, the edit time, I believe, indicates that the Judgment was not, in fact, drafted on Zambrano's computer but was only input to it.

Now, second, both of the Experts agree that the Providencias does show evidence of cutting and pasting or copying and pasting from other documents. Both of the Experts agree to that. And in Slide 290 you see evidence of that on the computer. There were two different fonts and two different formatting styles found in the Providencias on Zambrano's computer. And as I said, both Experts agreed that that indicates there was cutting and pasting from other documents into the Providencias.

Now, this is from Page 34, but this evidence of different fonts and different formatting actually goes for about 50 pages on and off in the Providencias.

Both Experts also agree that there were at least 13 USB Devices or flash drives connected to Zambrano's computer during the relevant period of the drafting of the Judgment, and text could have been copied and pasted from those flash drives into Zambrano's computer without leaving any forensic trail about it. And the same thing can be

done by accessing Hotmail and then cutting and pasting from it. And we know that in the relevant period, Zambrano's computer accessed Hotmail hundreds of times.

Now, I want to go to another point about the Providencias, and this is an extremely important point. And that has to do with the substance of what we find on these Providencias and December 21st and December 28th on Zambrano's computer.

The Providencias--and let's just take the December 21st Providencias--contains a discussion of causation based on U.S. and Australian case law. Part of that discussion is a discussion of the substantial factor test, and you see it on the right-hand side of the screen from the Providencias. And you see at the bottom of that discussion in the Providencias, a citation to two U.S. cases: Whitley versus Philip-Morris and Rutherford versus Owens-Illinois. Those cases are nowhere found in the Court record. Mr. Juola has testified about that. They are, however, found in one place, and that is in the Moodie Memo. You have on the left-hand side of your screen, a discussion from the Moodie Memo of the substantial factor test and citations to exactly those same two California cases, Rutherford and Owens-Illinois.

So, what you see is U.S. case law, California case law, being cited both in the Moodie Memo for propositions

about the substantial factor test and also being cited in the Providencias on Zambrano's computer in support of exactly the same legal proposition about the substantial factor test.

And no one has suggested that the Moodie Memo was ever filed in the Court Record. It's certainly not found there.

So, is this just a coincidence? Did the 18-year old Ms. Calva just happen to find exactly the same legal proposition supported by exactly the same two U.S. cases that are found in the Plaintiffs' Memo? Well, before we answer that question, there's substantially more.

The Providencias, on December 21st also cites to nine other U.S. Court cases and U.S. Legal Authorities in support of certain legal propositions. Those nine U.S. authorities are also found nowhere in the Court Record, and that was also confirmed by Mr. Juola in a supplemental review of the Record.

And I invite you to please compare the Plaintiffs' unfiled Erion Memo, which has to do with the merger issue, with the Providencias, and what you will find is exactly the same legal propositions supported by exactly the same U.S. Legal Authorities in both documents.

On Slide 295, you see, for example, references to patent injustice in both documents supported by exactly the

same U.S. case, the Penn Central Case, in exactly the same citation form. And then you see a reference to manifest injustice in both documents supported by a reference to the Acushnet River Case. And note that in both documents, the Acushnet River citation is an incomplete citation, but it appears in exactly the same form at exactly the same place in both of those documents.

In the next slide, you see the same pattern reoccurring with exactly the same legal proposition in the Erion Memo and in the December 21st Providencias supported by exactly the same U.S. case citations in exactly the same form. And you see that again in the next slide, only here it's not a reference to case law, it's a reference to the same U.S. legal treatise, the Fletcher Treatise and the Encyclopedia Private Corporations in support of the same legal proposition, but note the citation form again. Meade, the Encyclopedia Private Corporations, Section 7122, and exactly the same reference, exactly the same publisher, exactly the same year, exactly the same section number in both documents.

And on Slide 298, you see again the same legal proposition, here supported in the Erion Memo by a reference to the California Civil Code Section 3521.

And what do we find in the Providencias on Zambrano's computer? We find the same legal proposition

supported by a reference to the California Code Section 3521. It's exactly the same. And that Legal Authority, again, is not in the record, and no one has suggested that the Erion Memo is anywhere in the Court Record.

So, is it plausible--is it plausible--that the 18-year old recent graduate, Ms. Calva, did legal research in a foreign language, in a foreign legal system and just happened to find exactly the same U.S. cases and Australian cases that you find cited in the Plaintiffs' internal memos, or is it far more likely that the Plaintiffs used their own documents, which they had before them, to ghostwrite the Judgment?

Now, what is Zambrano's explanation for this. He has given an explanation of sorts in his RICO Declaration at Section 16. And his explanation is: Well, the stork just left these documents at the foot of his office door overnight. I mentioned that the documents related to the case that were not incorporated into the process were left at the door of my Office of the Court. This was relevant information that I realized could be of use in my Decision. That's his explanation.

If that happened, it's a violation of Ecuadorian law. It means that he used non-transparent documents never filed in the Court Record to write the Judgment, but quite

frankly, what's far more plausible is that the Plaintiffs themselves ghostwrote the Judgment using their own documents which they had before them.

You have seen reference to the opinion of Dr. Gerald McMenamin who found from the stylistic analysis of the Judgment, that it's highly probable that the Judgment had multiple Authors and that Zambrano himself had very little to do with the writing of the Judgment.

Now, the timing of Zambrano's testimony in RICO is also highly suspect. I'm not going to spend much time on this. My time, I think, is running very quickly, so I will hurry this along. But Zambrano was dismissed as a judge in February 2012 for "inexcusable judicial error" revealing "notorious ineptitude or carelessness" in the administration of justice. He was suspected of accepting a bribe in a drug trafficking case and releasing the drug trafficker, but he was dismissed as a judge for this basis.

He was also dismissed as a judge as a second sanction three months later, again finding him guilty of "inexcusable judicial error."

And we know that Zambrano had a history of people accusing him of soliciting bribes. There are literally dozens of people who had accused him of that, and we know that the Napo Bar Association itself requested that the Prosecutor General suspend him for soliciting bribes.

But what happened is that, after he was dismissed as a judge, he was unemployed for a year until he signed his RICO Declaration, and then the very next month he testifies he was invited to a judge as a legal adviser at the refinery, which is majority owned and controlled by Petroecuador.

But when he was asked in the RICO Case about his employment, he knew very little about his employer. He was, however, well paid. In fact, he's paid more as a legal advisor to the refinery than he was paid as a judge. He was paid more than the General Counsel, and he was paid more than the position advertised.

So, is Zambrano's testimony in RICO credible? I won't go through the factors. I did this in the opening statement. His testimony clearly is incredible, and that's exactly the finding that was made by the only fact finder, the only decision-maker who saw him actually testify, and that was Judge Kaplan in the RICO Case. He found that Zambrano was unpersuasive for a host of reasons, including the many inconsistencies in his own testimony, and between his testimony and other documents and between his testimony in the Hearing and his testimony in his deposition. He found Zambrano was a remarkably unpersuasive witness.

And with that, I will conclude my presentation so that hopefully I can keep us on time.

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03:44 Thank you, Mr. President.
PRESIDENT VEEDER: I think this is where you suggested we take the mid-afternoon break.
MR. BISHOP: It is.
PRESIDENT VEEDER: We will do that. We will come back at 4:00. Thank you.
(Brief recess.)
PRESIDENT VEEDER: Let's resume.
Before we start, we've received a draft, which looks as though it's an agreed form of wording for our order; is that correct?
We ask the Claimants first.
MR. BISHOP: Yes, it is.
PRESIDENT VEEDER: And the Respondent?
MR. BLOOM: I can confirm that, yes.
PRESIDENT VEEDER: Thank you for that.
In the meantime, as you will probably see, we're circulating the Draft Procedural Order except for the security protocol, just to be initialed tonight. We'll have a signing ceremony before 9:30 tomorrow where it will be put to bed, signed, countersigned, whatever, and we can then move on from the site--from the site order, but that's before 9:30 tomorrow, so don't forget to bring the Security Protocol, which I hope is going to be not a problem.
MS. RENFROE: We've made progress on that, and we

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04:02 expect to be able to present that to you tomorrow morning.
PRESIDENT VEEDER: Thank you very much.
Please.
MR. KEHOE: Thank you, Mr. President, Professor Naón, Professor Lowe.
Chevron seeks combination of remedies with the most important being declaratory relief which you see listed first.
The specific Declarations that are needed to help white out the consequences of Ecuador's wrongful acts are enumerated in Claimants' submission of January 14, 2015, at Paragraph 435, and I've copied them on to this slide for you at 311.
The first four declarations focus on the wrongfulness of Ecuador's acts under international law and requests five through nine relate to the legal consequences of that unlawful conduct under international law, and ten relates to monetary damages.
I will provide an introductory overview right now of Chevron's main points concerning remedies and then I'll move to the main argument which addresses these issues in more detail. I ask you to please stop me any time during my presentation with any questions that you may have.
As this Tribunal knows at this late stage in the proceedings, the reason that Chevron requires the various

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04:04 declarations and the different types of declarations that it seeks is because Ecuador will not remedy the wrongdoing at its roots in Ecuador under Ecuadorian law. If Ecuador would honor its international obligations and obey a directive from this Tribunal to take all measures necessary to wipe out the consequences of the Lago Agrio Judgment, then some of these Declarations that Chevron seeks might not be necessary, but that's not case, and I ask you to please keep this critically important fact in mind as you listen to my remedies argument today and as you deliberate on this important issue after we've all gone home.
In Request Number 1, Chevron asks for a declaration that, by issuing the Judgment, Ecuador has both committed a denial of justice under customary international law and also breached provisions of the Treaty. The Tribunal may question whether it's necessary to declare a denial of justice in addition to a treaty breach, and the simple answer is, yes, gentlemen, it is necessary. If you find that a denial of justice has occurred, we ask that you declare it in order to award full reparation that international law principle requires.
In the Commercial Cases between Chevron and Ecuador, the distinction was meaningless from a remedies perspective, so full reparation could be given without deciding the question of denial of justice. But here the

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04:05 distinction is meaningful, potentially dispositively meaningful to recognition and enforcement courts around the world where this Judgment is being taken and will be taken for recognition, enforcement, and execution, and I'll expand on that shortly with examples of why this distinction is meaningful.
The Second Declaration relates to the breach by Ecuador of Settlement and Release Agreements, which the Tribunal has deferred until after hearing the Track 2 evidence of fraud. Having heard the evidence over the past three weeks and having heard Mr. Coriell's closing remarks today, this Declaration is now ripe and ready to be ruled upon in Chevron's favor.
Declarations three and four are self-explanatory, they also relate to declarations of the wrongfulness of the conduct. Then we move down to the list, four through nine on the list which are declarations that describe the consequences of Ecuador's illegal conduct under international law arising from the violations and the breaches listed in one through four.
Now, this category of remedies five through nine was the subject of a question from the Tribunal last Friday. You asked whether or not the jurisdictional authority to issue declarations of consequences of Ecuador's conduct under international law was vested with

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you, should you find that, indeed, they did commit the wrongful acts found in one, two, three or four, and again, the answer is yes, and I'm going to go through that in great detail with you. And I would argue, sirs, that not only are declarations four through nine well within your jurisdictional authority to grant, but with due respect, they are required under principles of international reparations law to wipe out the consequences of Ecuador's act. The reason that these declarations are especially necessary in this case is not only because Ecuador has unleashed this extraordinarily egregious $9.5 million Judgment out into the international system, but importantly because Ecuador has stated unequivocally that it will not take measures to wipe out the consequences of the Acts. Ecuador will not take all measures necessary to nullify and negate this Judgment at its roots, even if directed by this Tribunal to do so.

In its Supplemental Rejoinder of March 17, 2015, Ecuador states, "It is common ground that the Judgment is enforceable under Ecuadorian law." And they go on to say, "If the Tribunal were to order the Republic to nullify the Lago Agrio Judgment, as the Claimants demand, Ecuador would have to violate its human rights obligations, Constitution, and procedural laws. And for this reason alone, nullification by Ecuador is not an available remedy in the

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case."

So, while Ecuador superficially goes through the motions of participating in these international arbitration proceedings, it simultaneously makes a mockery of them by stating in advance that it will not honor its international obligation to eradicate the Judgment if the Tribunal orders Ecuador to do so. So, this means that the Final Decision maker concerning the validity of this Judgment is actually not this Tribunal, which has been vested with the authority and the jurisdiction to decide this dispute with finality, but rather it is the trial court judges and the appellate judges sitting in different courts around the world. As a result of this unfortunate reality in which we find ourselves, if the Tribunal determines that a denial of justice and treaty breaches have occurred, the Tribunal should issue declarations that state the legal consequences of those findings under international law just as we have requested in declarations numbers four through nine. If the Tribunal does not issue these declarations, it becomes more likely that the Lago Agrio Judgment will be recognized and will be enforced. And in that eventuality, full reparation required by international law clearly will not have been afforded to Chevron. Ecuador will have succeeded in successfully breaching its international law obligations. And I'm going to come back to this point of

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successful breach in international law in a moment.

This Tribunal knows that if the Judgment is the product of a denial of justice under the Treaty, the Judgment has no legal effect under international law. Same result if it's a breach of denial of justice or the Treaty. There is no impediment whatsoever to declaring that in your Award. And Ecuador, for its part, shouldn't be heard to complain about these declarations because no one is allowed to take advantage in the law of their own wrongful act. As Ecuador seeks to do here, by opposing the declarations of nullification under international law, that its conduct has necessitated because it won't do it under its domestic law, which would be a better result, frankly.

As to injunctive relief, Ecuador states in that same Paragraph 417 of its Memorial, that because Ecuador will disregard a directive from the Tribunal to nullify the Judgment in Ecuador, an order directing it to do so is not an available remedy to Ecuador in this case, and we disagree. We believe that the injunctive requests that Chevron has asked for is an available remedy, and Ecuador's unilateral decision to preemptively breach such an order does not make it any less available to Chevron. And we ask that you do order Ecuador to take all measures necessary to render the Judgment null and void within and without Ecuador, even though we all know that Ecuador will ignore

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your Award because in order for this Tribunal in combination with the Declarations that we seek collectively and in combination may enable Chevron to resist recognition and enforcement of this Judgment.

The third form of relief is monetary claims which will be addressed in Track 3. Professor Paulsson will follow me to address Ecuador's novel monetary setoff theory when I complete my presentation, so I won't spend any real time on it now, except to emphasize one particularly important point that does tie into my argument, which is that Ecuador's monetary setoff theory has no relevance or relation to Chevron's request for declaratory and injunctive relief. Setoff applies only to Chevron's monetary claim for indemnification against Ecuador should the Lago Agrio Plaintiffs successfully execute upon the Judgment. It's an important fact, and it's important not to confuse and conflate the different forms of remedies that Chevron seeks as Ecuador has done in its written submissions and which it may do tomorrow in its Closing Argument, so I highlight that for the Tribunal.

Okay. Now, down to the basics, the fundamental principles of reparation, this Tribunal does not need to be told that under international law, reparation must, as far as possible, wipe out the consequences of the illegal act and re-establish the situation which, in all probability,

would have existed if the Act had not been committed. With the goal and purpose from Chorzow Factory of reparations to provide full reparation for the injury and to wipe out the consequences of the illegal act to the extent possible, the next step, of course, is to determine the forms of reparation that are available to this Tribunal to accomplish the result of full reparation.

We see in Article 4, forms of reparation. Full reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation, and satisfaction either singly or in combination in accordance with the provisions of this chapter.

The official Commentary notes there is--that wiping out the consequences of the wrongful act may thus require some or all forms of reparation to be provided, depending on the type and the extent of the injury that has been caused.

Now, this Tribunal has noted that Chevron's allegations against Ecuador are among the gravest accusations that one can advance against a modern State subject to the rule of law. You reiterated this sentiment at the end of the day last Friday. These are very serious allegations that we make, but we stand by them.

The evidentiary phase of this proceeding is now at

an end, and if Chevron has proven these grave and serious allegations to you, then only an equally serious combination of remedies will be capable of providing the full reparation that is needed to wipe out the consequences of Ecuador's conduct, not only because of its underlying act of rendering the fraudulent judgment, but also because it won't remedy the wrong itself, even if ordered to.

Now, while the character and the extent of Ecuador's unlawful conduct both during and after the Lago Agrio Litigation is uncommon, I daresay unprecedented, one of the most common modalities to address wrongful conduct is satisfaction, which is what we're asking for in the form of a declaration of wrongfulness of the Act by the competent court or tribunal. This would encompass both denial of justice and treaty breaches.

And, of course, the Tribunal may render declarations under its own authority, its own jurisdictional authority, to determine the lawfulness of the conduct in question and make legal findings as a necessary part of the process of deciding the case, which this Tribunal is well aware and, in fact, has done when issuing your Interim Measures Award.

These excerpts from Dr. Francis Mann's seminal publication are familiar to you. I referenced some of them during the Track 1B argument on remedies, but they bear

repeating here because declarations are critically important to the analysis in these proceedings for both Track 1 and Track 2, so he notes that the most usual remedy for an international law violation is undoubtedly declaratory relief. The emphasis was in his original. He notes that a declaration may be the only remedy of relative effectiveness which no judge or arbitrator can reasonably withhold.

And he astutely observed that a declaration would not only vindicate the innocent party in the eyes of the world, but might also serve as a defense or as res judicata in a proceeding or have some value for the victim. It's almost as though Dr. Mann predicted the circumstances of this case.

And this brings us to Chevron's request for both a declaration that Ecuador committed a denial of justice in violation of customary international law as well as a declaration that Ecuador breached the Bilateral Investment Treaty. This is request number one, and breached the Treaty in a number of ways breaching the Settlement and Release Agreement, breaching the effective means provision, breaching the fair and equal treatment provision, they're all included within the Treaty breach category.

A declaration that Ecuador's conduct in the Lago Agrio Judgment litigation and Judgment as a matter of

customary international law and denial of justice is, of course, different to some degree than a declaration that Ecuador breached the effective means provision of the Treaty. And the Tribunal may be tempted to decide this case on the more narrow basis of only Treaty breach rather than on both grounds if you perceive no meaningful difference between the two; deciding on a narrower ground is a wise thing sometimes, but only if it doesn't make a difference. Here it makes a difference and, as I said, potentially a dispositive one because recognition and enforcement courts around a the world may perceive a difference between the two.

In recognition and enforcement proceedings, Chevron must convince a domestic court to give no legal effect to a judgment that has been issued by the courts of a sovereign nation, a judgment that has not only been blessed by that State's entire relevant judiciary, but also endorsed by the country's President and other government officials who are lobbying consistently and earnestly for its recognition and enforcement. Mr. Bishop described that to you this morning.

Chevron, of course, will raise legal defenses in these proceedings. The relative strength or weakness of these defenses, the success of these defenses may very well depend on the decisions that this Arbitration Tribunal

makes with respect to the remedies that you are going to provide Chevron with respect to the declarations that you're willing to issue. And on this important point, we believe it's more likely that a foreign recognition and enforcement court will refuse to recognize the fraudulent Lago Agrio Judgment if this Tribunal declares a denial of justice, the embodiment of a denial of justice, more so than if this Tribunal finds a breach of a bilateral treaty to which the enforcement State is not a party.

I'm going to provide just two examples where the distinction of these two different types of declarations that we seek may be meaningful to a foreign Court, and the first arises under Article 16 of the ILC Draft Articles on assisting, aiding and assisting the Commission of an internationally wrongful act.

Now, this Tribunal need not decide this defense to recognition and enforcement, of course. You have more than enough to decide, but I am going through it to illustrate why a declaration of denial of justice will be more valuable to Chevron in enforcement proceedings than a declaration that Ecuador has breached the Treaty.

Under Article 16 of the ILC Articles, a State that aids or assists another State in the commission of an internationally wrongful act is internationally responsible for the consequences of such assistance if the State aids

and assists or assists with knowledge of the circumstances of the internationally wrongful act, and the underlying act would be wrongful if committed by the State. Under this analysis, the assisting State obviously does not itself engage in the underlying wrongful conduct in question. Its responsibility arises simply from the fact that it facilitates the wrongful act.

Now, these principles of Article 16 are rules of customary international law. The ICJ held this in the Bosnia Genocide Case, which is a new legal authority CLA-640. As an esteemed international law scholar and Professor at Oxford University stated in a speech to the Japanese Society of International Law in Kyoto on October 13, 2001, just a month after the terrorist attack on the World Trade Center, Article 16 represents a significant development in what one might call the moral sophistication of law. It is a decisive step in the direction of a more mature, more moral conception of State responsibility. And that is CLA-633. Hopefully we've handed it out and you have these in front of you.

PRESIDENT VEEDER: We have the English translation but not the Japanese.

(Laughter.)

MR. KEHOE: The first page was in Japanese, but I think that it was just a placeholder. Thank you.

If the Tribunal determines and declares in its Award that the Lago Agrio Judgment is the embodiment of a denial of justice under customary international law, then a recognition and enforcement court presented with your Award might conclude that both elements of Article 16 would be satisfied. If the State, through its courts, were to recognize and enforce the Lago Agrio Judgment so that the Lago Agrio Plaintiffs and their funders could execute upon it. Your first--your Award just walking through the tautology, would declare Ecuador's issuance of the Judgment to be a denial of justice. Let's just suppose and, thus, an internationally wrongful act by Ecuador.

Second, Chevron would present your Award to a recognition and enforcement court so that the foreign State would have knowledge of the circumstances of Ecuador's internationally wrongful act that you declare.

And, finally, international law bars all States from committing denials of justice under customary international law, so that State's issuance or recognition and--no, issuance of the fraudulent judgment would be wrongful if that State were to have done it itself.

So, under a mature and moral conception of its own international responsibility, a State is highly unlikely to recognize a foreign Judgment in this case--the Lago Agrio Judgment from Ecuador--that could cause a State to come

into breach of its own international law obligations under Article 16. This same State may not reach the same conclusion if the Tribunal declares only a breach of a provision of a bilateral investment treaty to which the State is not a party.

Now, we would argue that it should. We would argue, of course, to the enforcement court that they should find an Article 16 risk for enforcing your Award if you declare only a breach of the Treaty and not customary international law. But, frankly, that's a weaker argument than the customary international law argument, and Chevron should not be put in a position of having to advance a weaker argument if you find that we have proven a denial of justice. That's a principle of reparation, full reparation, under international law.

A second example, a declaration of a denial of justice might also provide Chevron with a stronger public policy argument to resist recognition and enforcement of the Lago Agrio Judgment than a Declaration of Treaty breach. As the Tribunal noted in the Worldwide Duty Free versus Kenya Case, the concept of public policy, ordre publique is rooted in most, if not all, legal systems. Violation of the enforcing State's own domestic public policy is grounds, of course, for refusing recognition or enforcement of foreign Judgments or Awards. That's what

this Tribunal held. The domestic public policy of every State that observes the rule of law prohibits conduct that constitutes a violation of customary international law.

Now, again, Chevron would likely make this same public policy argument to an enforcement court if this Tribunal stops short of declaring a denial of justice, and hopefully it will carry the day if that is all you give Chevron as reparation in the form of a declaration from these proceedings. But with due respect, Members of the Tribunal, again, if Chevron has proven a denial of justice in these proceedings, you should declare it.

Under settled principles of awarding full reparation for an international wrong and Ecuador's refusal to wipe out the consequences of its act entitles Chevron to declarations both of denial of justice and Treaty breach if Chevron has proven them both. And we maintain that we have.

Let me stop there because I'm turning to another topic and just ask if anyone has any questions.

Okay. I'm turning from Chevron's request.

PRESIDENT VEEDER: Please continue.

MR. KEHOE: From Chevron's request for a declaration of denial of justice and treaty breaches, requests numbers one through four on Slide 311, to the Declarations that state the consequences under

international law of those breaches.

And we see, for example, five, six, and seven. In request number five, Chevron asks for declarations that the Judgment is a nullity as a matter of international law. Request number 6, the Judgment is unlawful and consequently devoid of any legal effect, and we should have written, "under international law." That's what we mean by that. And the Judgment is a violation of Chevron's right under the BIT, and is not entitled to enforcement within or without Ecuador.

Now, these three declarations flow normally and naturally under international law from a finding by you that Ecuador has committed a denial of justice or treaty breaches or both. Under settled international law, Members of the Tribunal, a wrongful act cannot be allowed any effect in the law. It would be odd if wrongful acts in the law were to be treated as anything other than null and void, and these are not my words. Dr. Mann made these unremarkable observations more than 30 years ago, and Sir Hersch Lauterpacht made a similar observation 30 years before that when he noted that the absence of more direct means of enforcement tend to endow the principles of nullity of illegal acts with particular importance in the international sphere.

So, the question the Tribunal seemed to be asking

last Friday is why should the Tribunal take the extra step of stating or declaring its Award that Ecuador's denial of justice and/or treaty breaches cause the Lago Agrio Judgment to be null and devoid of legal effect. And as I mentioned earlier, the answer here follows on the same theme that Chevron has been emphasizing forcefully in these proceedings after Ecuador released this fraudulent judgment into the international system. We request these additional causation declarations because they will assist Chevron in resisting recognition and enforcement of the fraudulent judgment and because these declarations center on international law issues, an area within this Tribunal's jurisdiction and area of expertise. Local judges across the globe undoubtedly will be assisted and guided by your Award in their analysis of the Judgment and its implications under international law.

You have the jurisdictional authority to make these declarations stating the legal consequences including nullification. Logic dictates that international tribunals may make declarations of international law, and the weight of authority supports your right to do so. Ecuador has not pointed to a single case, a single authority, which suggests that you don't.

Professor Paulsson, who wrote his authoritative work on denial of justice years before he became counsel in

this case, as he mentioned this morning, stated that an obligation placed on a foreigner by a civil Judgment vitiated by a denial of justice may simply be annulled by the relevant international jurisdiction, as in the Martini case.

Professor Crawford, as he was then, made this important point during our Track 1 Hearing in London in November 2012, when he said international law supports this Tribunal's authority to nullify the Judgment as a matter of international law and as in breach of Ecuador's treaty obligations. You have the authority to wipe out the consequences of unlawful acts by issuing factual and legal findings that may prevent enforcement of the Judgment. As always, I have discovered, Professor Crawford was eloquently simple in reducing to just a few words a complicated issue that this Tribunal faces.

International precedent for declaring Judgments to be null and void exists. Other tribunals have done it. They've issued declarations nullifying legal decisions under international law. The Tribunal in the Idler versus Venezuela case declared the proceedings that denied Mr. Idler due process a nullity. In Barcelona Traction, Judge Fitzmaurice had no trouble concluding the same in his Concurring Opinion. And in the In Re: Martini case that Professor Paulsson referenced in his book, the

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04:30 international tribunal put a fine point on this issue when it said that although the Martini company had not made payment that was imposed upon it by the Venezuelan Court, the obligation continued to exist in law. As a consequence of the international tribunal's determination that the payment obligations were imposed in violation of international law, the Tribunal pronounced their annulment emphasizing that an illegal act has been committed, and it applied the principle that the consequences of an illegal act must be effaced.

Now, more recently, in May 2010, we have an award from an ICSID tribunal comprised of Professor Michael Reisman, Professor Ahmed Al Kosheri and Yves Fortier as President in the ATA Construction versus Jordan Case, together with the clarifying decision on interpretation dated March 7, 2011, which we have submitted as CLA-637 in response to your question concerning your jurisdictional authority to issue declarations nullifying the Lago Agrio Judgment under international law. In that case brought under the Jordan-Turkey BIT, the Tribunal found that the retroactive application of a new Jordanian arbitration law by the Jordanian Court of Appeals which had sought to extinguish the arbitration clause in a contract between the investor and the Jordanian State was unlawful. That was their conclusion. The Tribunal went on to apply the

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04:31 Chorzow Factory standard, just as we ask you to do here, and that Tribunal wiped out the consequences of the unlawful act by negating it as a matter of international law.

The Tribunal went further and ordered the Jordanian Court proceedings over the dispute to be immediately and unconditionally terminated with no possibility to engage further in judicial proceedings in Jordan or anywhere else on the substance of the dispute. Obviously, the facts of the cases differ, but the point that I'm making here, Members of the Tribunal, is that the strong weight of authority supports your authority to declare the nullity, the negation of the Lago Agrio Judgment.

And on the point about facts being different in each case, while no legal act can be allowed any effect in the law, the case for clear declarations of negation and nullification is particularly compelling for a finding of fraud in a court judgment because this type of fraud is the antithesis of good faith, indeed of law itself.

Wiping out the consequences of a fraudulent judgment is a universal principle, both internationally and in countries that adhere to the rule of law. As we see from the quoted language by the United States Supreme Court in the Chambers versus NASCO Inc. case, the historic power

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04:33 of equity to set aside fraudulently begotten judgments is necessary to the integrity of the courts, for tampering with the administration of justice in this matter involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public.

Once again, the remarkable and unprecedented facts of this case make the case for declarations of nullification even more compelling because here the institution itself, the Ecuadorian Court, participated in the fraud. This wasn't a fraud on the Court that we're used to seeing. This is a massive fraud with the Court with its blessing, its active support, and its intimate involvement.

The second form of relief that Chevron seeks is restitution, which would come in the form of an affirmative injunction or directive to Ecuador to take all measures necessary to wipe out the consequences of its wrongful conduct. I've listed them on Slide 335. They also appear in our Track 2 Reply Memorial at Page 223. I won't go through them. Various tribunals have taken this approach as an alternative to declaring the underlying illegal act a nullity.

And I reviewed these cases with the Tribunal in Track 1B, so I won't belabor them here again, but I would

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04:34 like to take a moment on the recent jurisdictional immunities case, Germany versus Italy, because the ICJ there not only declared the underlying acts of the Italian courts to have violated international law when they disregarded Germany's sovereign immunity, but they went on to state that, for purposes of awarding remedies, the Court was required to declare the consequences of its ruling. That's the word they used. Germany asked the Court to order Italy to take all steps to ensure that all of the decisions of the Italian courts infringing on German sovereignty would become unenforceable, and the Court states that it understood that to mean that the relevant decisions should cease to have effect. And the Court agreed, saying it must uphold Germany's request in that regard. The domestic court Judgments that were still in force must cease to have effect, and the effect of those decisions must be reversed in a way to re-establish the situation that existed before the wrongful acts were committed. Quintessential Chorzow Factory which we're arguing. In this jurisdictional immunities case, the good faith compliance by Italy to the award was assumed, and that assumption was well-founded because Italy's courts thereafter did, indeed, take measures to reverse the consequences of what its courts had wrongfully done. But in the case before this Tribunal, good-faith compliance by

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Ecuador cannot be assumed. We start with Ecuador's past conduct in these very proceedings.

In its second Interim Measures Award the Tribunal ordered Ecuador to take all measures necessary to prevent recognition and enforcement of the Judgment within and without Ecuador, including a specific directive that Ecuador refrain from issuing the certificate of enforceability.

A few months later, in May and June of 2012, the Lago Agrio Plaintiffs instituted the enforcement proceedings, as you will recall, and you'll hear from Mr. Pate in Canada and Brazil.

In August 2012, rejecting this Tribunal's general and specific directives, Ecuador went ahead and issued the certificate making the Judgment final. Emboldened, the Plaintiffs followed suit with a new filing in Argentina in October 2012. The Tribunal, this Tribunal, convened an emergency Hearing in London in November 2012; and, at that Hearing, you invited Ecuador to intervene in the foreign proceedings to prevent execution on the Lago Agrio Judgment while this arbitration was pending. Ecuador asked to respond to your invitation in writing, which it did two months later after giving the issue some thought. And what they said is this: "Under the domestic legal regime, there is no conceivable basis for the Republic to interfere in

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private litigation either within Ecuador or in foreign jurisdictions."

Now, Ecuador knew full well that it was obligated under the Treaty, the UNCITRAL Rules, this Tribunal's directives and orders themselves to honor the Tribunal's order. Ecuador was simply refusing to do so, relying instead on a faulty and baseless argument that somehow its domestic laws could prevent it from fulfilling its international obligations.

Two weeks later, the Tribunal issued its Fourth Interim Measures Award, February 9, stating neither disagreement with the Tribunal's Orders or Awards nor constraints under Ecuadorian law excuses Ecuador's failure through any branches of its Government, its organs, to fulfill its obligations under international law imposed by the Treaty, the UNCITRAL Rules, or the Tribunal's Orders or Awards.

The Tribunal went on to declare and confirm that Ecuador remains legally obligated under international law to ensure that its commitments are not rendered nugatory by finalization, enforcement or execution of the Judgment. The Tribunal's admonition in its Fourth Interim Measures Award obviously fell on deaf ears. Ecuador holds its defiant ground to this very day. We're back to Paragraph 417 of its Rejoinder.

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Again, Ecuador has no standing at this juncture to challenge Chevron's requests for the Declarations that it requires from this Tribunal under international law for full reparation because Ecuador's recalcitrance has made these declarations necessary. Ecuador can't take advantage of its own wrongdoing. No one can be allowed to take advantage of its own wrongdoing in the law.

I conclude my remarks this afternoon, Gentlemen, with an observation of the importance of your decision on remedies in this case. The form of reparation that you award is important to Chevron for obvious reasons. The harm to Chevron from the Lago Agrio Litigation and Judgment cannot be overstated as this Tribunal noted in one of its interim measures awards, but your decision may also be important to the evolution of international law itself due to the notoriety of this case and the esteemed tribunal that is presiding over it.

Professor Paulsson put it well this morning when he said that you cannot answer President Correa's rhetoric and his attack on the international legal system in kind. You can only answer in the voice of international law.

And Mr. Bishop noted this afternoon that the rule of law is why we are all here. The rule of law is what this case is about.

Sir Hersch Lauterpacht noted in his seminal work,

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recognition in international law that the results of an illegal act are a legal nullity, they are legally non-existent. And in society in which enforcement of law is precarious, there is a natural tendency to regard successful breaches of law as a source of legal right. Sir Lauterpacht's remarks about a successful breach, although in a somewhat different context, but the same general point, should carry great weight with this Tribunal when you consider the remedies to award Chevron in this case. If the Tribunal determines that Ecuador has committed a denial of justice under international law, you should declare it. If you find that Ecuador has breached the Treaty, including the Settlement and Release Agreement, the effective means provision and the other provisions of the Treaty, you should declare them all.

And finally, if you conclude that you have the jurisdictional authority to declare the consequences and the results of these determinations under international law, as I have demonstrated you do possess, then you should issue those declarations as well. If this Tribunal does not issue declarations that you determine international law allows you to render--and we would argue requires you to render under the principles of full reparation--then Ecuador will have successfully breached the law, and that successful breach may transcend Chevron and have ripple

effects through the international legal system in itself.

And with that, Mr. President, if the Tribunal does not have any questions for me, I'm going to pass the floor to Professor Paulsson for the monetary set off theory.

PRESIDENT VEEDER: Thank you very much.

Professor Paulsson.

MR. PAULSSON: Thank you, Mr. President. Your Tribunal is going to develop an admirable reputation for sitzfleisch. I hope I'm not pushing your patience too far.

What consequence did the PCIJ have in mind? Wipe out all the consequences of the illegal act. The obvious consequence here is a judgment which shouldn't exist. It must be wiped out entirely. The malfeasance here was pervasive, and there is no possibility of a partial nullity. What head of damage might conceivably have been the product of a fair and impartial weighing of all pertinent data unaffected by the malfeasance and manufactured evidence? What portion of the Judgment didn't the Plaintiffs have a hand in? Maybe the date line.

To address the Tribunal's question, there is no principled basis on which to say that there was no denial of justice with respect to some portion of the Judgment, be it $500 or 500 million or any other number pulled out of a hat. Nullification does not require consideration of Chorzów's but-for test. Under no circumstance would the

tainted Judgment ever be deemed valid, and in any event--in any event--you are a BIT Tribunal, and you have no jurisdiction over the claim of the 47 Plaintiffs.

As for the Claimants' request for an injunction to prevent enforcement of the fraudulent judgment, it's clearly nonsensical to think of a set off against an injunction. Either it's merited or not.

So, Ecuador's offset theory can relate only to the Claimants' tertiary request for monetary damages. But compensable injury arising from enforcement of the illicit Judgment would never arise--would never arise--if Ecuador had complied with the Claimants' prior request for declaratory and injunctive relief. Ecuador's offset argument is thus necessarily premised on its intent to ignore any further instruction from this Tribunal not to allow enforcement, just as it has ignored your interim measures awards. This is unbounded cynicism. An effort by Ecuador to reduce damages that it is now in a position to prevent and that it has no intention of paying in the future. This should not delay the Tribunal's issuance of a Track 2 Award. If the argument is pursued, it can be addressed in Track 3.

So, for now, you really do not need to get to the substance of this theory for which Ecuador can cite no precedent, but so you understand our position: Three

conditions would have to be satisfied for there to be any traction for this theory. The first condition is this:

The nature of the delict must allow the Tribunal to engage in the but-for inquiry. That was not the situation in Amco II, the case Ecuador claims that I have disagreed with in my book when all I said is that I regretted its lack of a fuller discussion of Chorzów. I certainly have no quarrel with the outcome. The Amco II Tribunal, presided by Rosalyn Higgins, the Tribunal was told by Indonesia that Amco, a victim, held to have been a victim of a denial of justice in a proceeding to revoke its foreign investment license, would have lost its license, so said Indonesia, even in a fair process.

You see, the license by its own terms was conditional on Amco's having brought in a certain amount of foreign capital during the first term of the license. So, Indonesia submitted, to put the investor in the same position it would have been in but for the breach is to consider that although our revocation was improper, we can still show, here and now, before you, the international tribunal, that the license is after all properly revocable for failure of that objective condition. No harm, no foul, as they say in this country.

But the Tribunal was having none of this. It made clear that its sole function was to determine if

Indonesia's acts were detrimental to the victim. In my book, I regretted that the Award did not provide fuller explanation why it rejected Indonesia's argument. In fact, Judge Higgins, somewhat to my relief, wrote me a gracious note from The Hague about my book and my comments about which I will say nothing except that it caused me to read the Award and the underlying pleadings again as a matter of sheer academic interest. That was a decade ago, and memory fades.

Now, the point comes up in this case. And so we look at Amco II again. We find two things. First of all, the circumstances are sharply distinguishable. In Amco II, just like the Commercial Cases presided by Professor Böckstiegel, the State responsible for the denial of justice was the very same party that was the victim's opponent in the underlying dispute. Otherwise, the whole setoff idea doesn't even get into the starting blocks, let alone out of them.

Secondly, even in the Indonesian situation where, of course, the very State which was responsible for the denial of justice was the one which was responsible for assessing compliance with the terms of the license, the Tribunal gave useful indications of why it wasn't going to get into a retrial of the merits of the revocation. The arbitrators found, and now I quote, that the "whole

approach to the issue of revocation of the license was tainted by bad faith" on the part of the Government officials. The arbitrators therefore refused to ask whether, if Indonesia had acted fairly, harm might have been attributed to Amco's own fault, failure of the objective condition of investing.

Judge Higgins wrote, Professor as she then was, "this is both speculative and not the issue before us."

Amco II concerned monetary compensation and illustrates that where State conduct entails a measure of bad faith, the Chorzów counterfactual analysis is simply inappropriate. That conclusion follows a fortiori here, whether it is not simply bad faith but substantive fraud.

This situation doesn't come up often, but as it happens, the U.S. Supreme Court once faced this very same problem in a case called Hazel Atlas, and it did exactly what Judge Higgins and her colleagues did. You may find its short Judgment very instructive, as a matter of interest, at CLA-431. It has nothing to do with the specifics of U.S. law and everything to do with the eternal verities of the need to protect the fundamental interests of justice.

The second point is that, even where it might be appropriate and conceptually possible to excise the denial of justice, which as I noted is not the case here, the

existing record before the international tribunal must be clean and contain everything needed to assess the proper outcome. That was the case for Professor Böckstiegel and his co-Arbitrators in the Commercial Cases arbitration. As you're aware, the Ecuadorian courts there had failed to decide cases in which the Claimants were the Plaintiffs in a remotely timely fashion. There was nothing to be declared null. It therefore fell to the Tribunal, which was applying the treaty standard of effective means, to determine the value of the Claimants' unadjudicated claims in the first instance.

As I observed on Page 227 of my book, the damages to be awarded a Claimant who was prevented by a denial of justice from having his grievance heard properly, should, of course, not uncritically be deemed equal to be whatever he had seen fit to ask initially. The task of Professor Böckstiegel and his colleagues was relatively straightforward, given the existence of a complete and uncorrupted record in each of the underlying cases, which allowed them to make their own assessment of the value of the rights of which the Claimant had been deprived. The only way to do it.

In Amco II, in contrast, where, as Judge Higgins wrote, the circumstances surrounding the Administrative Decision tainted the proceedings irrevocably. The

arbitrators were in no position to rule on the forfeiture of the license without trying the case anew and substituting themselves for the very national legal system which had committed the positive denial of justice.

It is evident that these two first points foreclose Ecuador's attempt at an offset in this case. Fraud vitiates all, and the malfeasance here goes to the core of the Plaintiffs' case. The Cabrera Report, for example, was, according to the Expert Douglas Beltman, "probably the single most important technical document for the case." This was at the inception of the plot to create facts, as Donziger put it. Beltman was one of the Experts who later recanted. Probably the single most important technical document for the case.

If the Cabrera Report wasn't critical to their case, Plaintiffs' representatives would not have spent the money and borne the risk of this considerable and risky machination. Recall the phrase "all of us might go to jail". It is surely folly in these circumstances to speak of salvaging a judgment unsullied by fraud. It cannot be cleansed.

Ecuador understands that the Lago Agrio Record is past saving. Why else has it resorted to gathering new samples secretly outside of any proper process? Your Tribunal has no basis at all on which it could speculate,

even if you were minded to do so, on how an Ecuadorian Court might have decided if it were not politicized, if it were not corrupt, and if the evidence were untainted.

Point 3, finally, is one to which I have already alluded. It follows the observation that in Amco II and in the Commercial Cases arbitration, the Parties were identical in both the underlying domestic proceeding and the international arbitration. Here, to reduce Ecuador's liability, you would have to speculate about the intention of third parties with respect to whom you have no jurisdiction, namely the Lago Agrio Plaintiffs, faced with the collapse of their fraudulent evidence. Would they really try again and go to the effort of mounting a serious claim from scratch with honest Experts who are not instructed to ignore critical factors such as the proportion of harm caused by Petroecuador's ongoing operations alone during a quarter of a century?

Fatally compounding these difficulties is the fact that Ecuador is precluded by the settlement and releases from litigating against the Claimants over environmental conditions in the Oriente. If, as Mr. Coriell has shown, the Lago Agrio action is diffuse, the Releases are an obvious bar to any offset. But even assuming counter to fact that there are individual claims not covered by the 1995 Agreement, Ecuador has already conceded in its Track 2

Counter-Memorial Paragraph 516 that it cannot act as the Plaintiffs' surrogate.

In sum, Amco II teaches that there is no second chance in these circumstances, given Ecuador's complicity in the fraud permeating this case, it is in no position to request a do-over, which would have the unpalatable effect of rendering denials of justice virtually costless. Have a go. For their part, the Lago Agrio Plaintiffs have knowingly ratified the illicit actions of their counsel, as the RICO Court found, Exhibit C-2135 at Pages 338-339, and they are actively seeking to profit from the enforcement of the fraudulent judgment abroad. Both had the opportunity to try this case in accordance with the rule of law. Their choices cannot be undone.

And so, Members of the Tribunal, I come to my final topic before Mr. Pate makes his concluding observations.

I wish to reflect on Ecuador's attempt to put forward before you two kinds of equitable considerations to excuse its conduct. One, you heard it in the openings. One had to do with what scoundrels oil companies are, ready to despoil a pristine native human habitat and then to deny that crude oil could possibly be toxic. The other had to do with the "real victims," the indigenous populations mentioned several times in Ecuador's oral opening arguments

with no little measure of sententiousness.

If Ecuador seriously wants to talk the talk of equity in this denial-of-justice case, then by all means, for a few moments let's talk of equity, but let us please make it hard talk. We hear of a native population whose life of traditional subsistence in harmonious symbiosis with nature is sacrificed to the goal of economic development, without so much as a by your leave, irreversibly transforming their habitat and their way of life, and giving back almost nothing in return. This dislocation is undoubtedly real, and so is the deprivation. It's a sad story. So who made the decisions that led to these results? Who caused this outcome? Who is accountable?

Ecuador, half a century ago, was an impoverished country with a growing population. It found great natural resources in the Oriente. The Government recognized what it had and made deliberate choices. You can take with a very large grain of salt any talk about oil companies taking advantage of ignorant officials. The Ecuadorian Governments knew how to negotiate, and they have known how to negotiate since the beginning. I will get back to that.

Consider the infinite range of alternative policies that Ecuador could have pursued. I'll just give you two extremes and something in the middle. We don't

want any oil, we want to leave our indigenous population in their sylvan idyll.

B, we need money for development, and we need it fast. We want maximal production at the lowest cost, whatever the consequences.

C, we do need money, but not at the cost of disturbing the indigenous population. In their interest, we require that operators spend whatever is necessary to restore their sites to lush glades and crystalline streams, even if that reduces our dividends, royalties and taxes. It was the Government's choice; its actions, its responsibility.

Yet, Mr. Correa would now deny this. He portrays Ecuador as a helpless victim of oil companies who have stolen vast riches from his country. Texaco has not been his only scapegoat, as you will have seen, if you read the findings of fact of ICSID tribunals which have dealt with the cases of Perenco, Occidental, Burlington. Mr. Correa's message is quoted in Paragraph 38 of the Decision on Liability in the Burlington Case, where he condemned, his words, "the opprobrious past" and decried oil companies that give us a little piece and the rest they take away.

Now, Mr. Correa may describe himself as a revolutionary, as he explicitly did in that very speech, but he got a Ph.D. in economics from the University of

Illinois in 2001. He knew very well that what he was saying was untrue. But, of course, he was speaking to the masses, and the masses, not only in Ecuador, are often ill-informed and can easily rush to poor judgment if they are told by the highest official of the land that foreigners have been running away with national treasures. But we can all do the math, so let us check this assertion of foreigners "giving us a little piece."

In the Oxy Case, for example, it was estimated that after taxes and costs Occidental received 30 percent of total net profits, that was in Paragraph 117 of that Decision and apparently not contradicted by Ecuador, RLA-587. From its share, Ecuador, of course, did not have any taxes to deduct. Nor did it have any costs.

So, what about TexPet? Luis Alberto Aráuz, a very senior Ecuadorian professor of Mining and Petroleum Law who has represented Ecuador in negotiations with oil companies, wrote a book famous in Ecuador which bears the title "Ecuadorian Petroleum Law," derecho petrolero ecuatoriano, 616 pages long. Professor Aráuz went to New York in the 1970s to participate as a member of the Ecuadorian delegation in the drafting of the U.N. Resolution of the new world economic order. I think I need say nothing more about his credentials as someone who does not lavish praise on multi-national private corporations. In his book,

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05:01 Professor Aráuz calculated that what the Ecuadorian Government received from the activities of TexPet in the 20-year period from 1972 to 1992 in the Oriente. His bottom number, $23.5 billion.

In contrast, the corporate records available to Chevron show that the cumulative income TexPet received over those years was less than half a billion, less than $500 million, in fact, $480 million as set forth in the Report of Brent Kaczmarek, Page 34.

Mr. Correa's depiction of the opprobrious past was demagoguery pure and simple. The fact is that during the five-year period in the 1970s, the Ecuadorian Government pushed Texaco's tax rate from 44 percent to 87 percent. In an interview, Professor Aráuz is quoted as saying, and I quote him: "We dictated terms to Texaco, and the company accepted." R-1202.

We couldn't be further away from the cartoonish depiction of foreign investors as thieves who steal the country's riches and leave just a little piece, as Correa says.

In addition to negotiating lucrative concessions for itself, Ecuador, beginning in 1963, also pursued a policy of colonizing the region, which was referred to as "empty territory." Eventually, tens of thousands of poor people from the highlands were offered free property if

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05:02 they would plant crops and raise cattle. No one seems to dispute the simple fact that Government-sponsored agricultural settlement resulted in vastly more deforestation than did oil development.

The indigenous population of Ecuador, less than 10 percent of the whole, looks different, speaks a different idiom, struggles to maintain vestiges of their original cultural. In the Oriente, their land has been allocated to waves of settlers from the western part of the country. And their subsoil, which they were told was not theirs, but rather the property of the State, yielded and continues to yield an abundance of hydrocarbons which fill the coffers of the Government in Quito, across the Andes. In a regulated private oil industry, the Government assesses compliance with the standards set for those who produce and sell. But when the Government takes over in the form of entities with names like Petroecuador, it becomes its own judge, and the appetite for cash and for its apportionment in accordance with political decisions in which the indigenous populations often have very little to say, seem to make them far worse polluters by far than any foreign enterprise subject to proper regulation.

Today, in our new world, seven of the world's ten largest oil companies are self-regulated and self-audited. No private shareholders. They're not exposed to any

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05:04 serious scrutiny.

In 1990, Texaco did not leave Ecuador because it wanted to, but because Petroecuador wanted to take over so the State would have everything for itself. At that time, there were significant environmental impacts from the Consortium. That's the inevitable reality at the end of any major oil operations, as your Tribunal recognized in your jurisdictional award.

After an open and transparent processes, as you were reminded again today by Ms. Renfroe, the Ecuadorian regulators established specified remedial standards for the portion of sites assigned to TexPet. This resulted in the Settlement and Release Agreement. You will remember that the Director of Ecuador's Environmental Ministry told Ecuador's Congress three years after the Lago Agrio Litigation was filed, that, and I quote, "Texaco completed the remediation of the pits that were their responsibility" while Petroecuador had done, I quote, "absolutely nothing."

So, what did the Government do for the indigenous population? Well, in 1996, while TexPet was in the process of performing the agreed upon remediation, the Government secretly concluded the "Waiver of Rights" with the Plaintiffs' counsel, who agreed to surrender forever any claims against Ecuador or Petroecuador. The Plaintiff's lead lawyer at the time, Cristobal Bonifaz, later testified

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05:05 under oath, that's C-1220, that he signed the Agreement because they knew that a suit against the Government would be futile and the Government would never pay environmental claims but Texaco would. He explained that the Plaintiffs' counsel viewed the Agreement--the Plaintiff's counsel viewed the Agreement with the Government as a quid pro quo. I think we all know what the quid was: Use your State powers to put the squeeze on Chevron.

The waiver of rights was not only a bad faith breach of Ecuador's obligations under the Settlement and Release Agreement, it was an abdication of Ecuador's duties to the indigenous population of the Oriente. It cannot be disputed that every bit of contamination that has occurred over the past 25 years in the zone you have been hearing about is that of Petroecuador and Petroecuador alone. The hard fact is that Texaco remediated its share as promised on time in a proper manner and certified as such by the appropriate public official. Ecuador did not. Petroecuador's belated remediation has been certified, and the cost of that is 1 percent of that assessed against the long-departed Texaco and now against Chevron by Zambrano.

So, Ecuador's position before you is that the foreigners, who had earned less than 10 percent of the revenues during the long ago time when the Consortium was operating and who have, of course, earned nothing at all

since then should pay a multiple of more than 90 times the remediation expenses of Petroecuador which had 90 percent of the revenues while TexPet was around, and 100 percent of the revenues ever since, and during which time Petroecuador has been exclusively responsible for all pollution.

Petroecuador alone was responsible for spilling no less than 125,000 barrels of oil through 2009, according to the Ecuadorian Ministry of the Environment. Since 2009, the flow of information about Petroecuador's spills has dried up. What a surprise.

The native population of the Oriente may well have legitimate grievances against their Government in Quito, and attorneys purporting to act on their behalf, but these are complex issues that are not matters for Chevron or the Tribunal. What is at issue here is the Lago Agrio Judgment, in which there are 47 named Plaintiffs.

Mr. Bloom in the opening lamented that they have been seeking to have their day in Court for 22 years. But what are their claims and what are their rights?

If, on the one hand, they are acting as representatives of the environment generally, their claim is properly directed to Petroecuador. As you held in your Track 1A Award, all diffuse environmental claims against TexPet and Chevron arising from the Consortium have been released. This is true irrespective of what specific code

provision they invoke in support of their diffuse claim, as Mr. Coriell showed again today.

As a side note, if these 47 are barred from suing Petroecuador in light of the waiver of rights given by their counsel, there are any number of residents in the Oriente who remain free to take up the mantle.

If, on the other hand, the 47 are suing for individual harms, they are necessarily acting only on behalf of themselves. Note well that Ecuador in its opening conceded that the 47 are not suing for individual harms, which confirms the consistent findings in all three Lago Agrio Decisions and the repeated admissions of Plaintiffs' counsel.

There, of course, might be others in the Oriente besides the 47 who have individual claims, but, if so, one would have expected them to have already brought them, given that a quarter of a century has passed since TexPet left Ecuador.

At any rate, any individual rights held by such non-parties would be unaffected by nullification of this Judgment. The key point is that the 47 Plaintiffs can have no legitimate claim to enforce a judgment issued in violation of customary international law. Yet, as recently as January 2013, they have ratified the authority of Fajardo and Donziger to act on their behalf and they are

currently seeking to enforce the fraudulent judgment, as you know, in Argentina, Brazil and Canada.

Gentlemen, we can all unhesitatingly accept that Chevron is not the only victim here, a supposedly revolutionary Government has been in power in Ecuador for the better part of a decade, yet instead of acting to improve the lives and conditions of the entire indigenous community, it has aided the fraud done in the name of only 47. I'm afraid it's business as usual. But let us not have any more logic that insults the intelligence, syllogisms like this: One, here is an ugly photograph of unknown origin and unknown date said to be from somewhere in the Oriente; two, TexPet was in the Oriente a quarter of a century ago; three, Chevron is in the oil business and is a big company; so, four, Chevron must pay. Let us not hear any more fatuous talk of equity from this Respondent.

Gentlemen, I thank you for your patience, and I now invite you to listen to Mr. Pate for his concluding remarks.

PRESIDENT VEEDER: One moment.

We are sorry to hold you up, but we will have a ten-minute break and then we will hear Mr. Pate.

(Brief recess.)

PRESIDENT VEEDER: Mr. Pate.

MR. PATE: Thank you, Mr. President, Members of

the Tribunal.

The Tribunal has now seen and heard the evidence. You've heard argument about the legal significance of that evidence. I'd like to now give you Chevron's perspective as a company. I'd like to respond as best I can to the Tribunal's questions about our RICO statute in the United States, give you an update about the enforcement and some of the other litigations that are part of this situation, and then finally address the unique and important role of this Tribunal.

Let me begin with the root of this matter: The environmental facts on the ground in Ecuador. As it turned out, the Tribunal's decision to spend time on the environmental merits of this matter has proved both wise and important. The Tribunal now understands the nature of the RAP. It understands how responsibility was divided as between TexPet and Petroecuador, how the TexPet remediation work was done, the confirmation of the effectiveness of that work by officials of Ecuador at that time and then repeatedly thereafter. And I think understands the vast gulf between the fraudulent and discriminatory Lago Agrio Judgment and actual regulatory standards and remediation costs. All of this is part of why Chevron feels so strongly about the injustice of what Ecuador and its private co-conspirators are doing.

Now, the RAP was the substantive basis of the Contract, that issue in Track 1 of this case. As you have already ruled in Track 1A, that Contract released all collective or diffuse environmental claims. The Tribunal rendered an interim decision on Track 1B, that it could not decide whether a breach had occurred until hearing the evidence with regard to the actual conduct of the Lago Agrio Litigation. And it's now just done that during this Track 2, and so the Tribunal knows that every statement of the Plaintiffs themselves and every statement of every level of the Ecuadorian Court system confirms that collective or diffuse claims were the sole basis of the sweeping liability that was imposed on Chevron. But, having heard the environmental evidence, the Tribunal can also now apply its common sense to the Contract issue.

What is it that Ecuador asks the Tribunal to believe Ecuador and TexPet agreed to? TexPet, you are asked to believe, carefully negotiated the apportionment of remedial assignments between TexPet and Ecuador in 52 interim Actas. It then performed the tasks that it was assigned through international Contractors. TexPet then participated in the extensive verification process required to complete and obtain the elaborate signature blocks on 19 Approval Actas, and then on a Final Acta.

But then, according to Ecuador, TexPet was

supposed to wake up the next morning and begin remediating everything else, including every site that was assigned to Ecuador, even those that were designated for no action because Petroecuador was at that time operating them. Really? This cannot be right.

Now, you've also seen, heard, and read about the fraud evidence, with the exception of Judge Zambrano, whom Ecuador elected not to bring to the Tribunal after his appearance in New York made the truth so vivid to everyone who saw him there. I will not revisit the evidence, not even the Honey & Honey restaurant. I will observe that this must be the most thorough documentary, video, and testimonial proof of fraud ever put before an arbitral tribunal. For Ecuador to suggest that Chevron should have had more evidence when Ecuador's courts were part of a sham litigation conducted by Pablo Fajardo in order to prevent discovery of the further evidence that was located in Ecuador is disingenuous at best.

Although you will review the scheme as a whole, the evidence before the Tribunal demonstrates at least five separate and independent denials of justice: First, the Cabrera fraud, which the private and Government conspirators never quite managed to cleanse.

Second, the paid Guerra order ghostwriting on behalf of the Plaintiffs; third, the Plaintiffs'

ghostwriting of the Judgment using their own unfiled materials; fourth, the absurd and discriminatory fraudulent judgment itself imposing enormous liability by ignoring the environmental standards applicable to Petroecuador and other companies, and then manufacturing environmental costs for remediation exponentially greater than those used anywhere else in the world.

Now, the fifth denial of justice is Ecuador's response to the exposure of the first four. This goes directly to the question of when international liability will attach for misconduct that began in a country's courts. In some cases that question is interesting. In some cases it is even a difficult question. Not so here where it has been resoundingly answered in three places: First, within Ecuador's own system; second, before this Tribunal; and, third, outside the Tribunal.

As to Ecuador's own system, ask yourself this: Have you seen any evidence that any organ of Ecuador's Government has shown any good faith interest in investigating, much less remedying, the allegations of misconduct here? No. Instead, we have attacks on Chevron for exposing the corruption, and we have ever-shifting fabrications about how the fraud might be corrected if Chevron could just find the right procedural path. Of course, no sooner does Ecuador recommend a path then it

declares that path invalid. No reasonable person believes that Chevron can get a fair hearing on this case in President Correa's Ecuador.

Now, before this Tribunal, Ecuador's responsibility is established by the very positions it has taken before you. It has not sought to separate itself from the corruption in its courts, but instead has repeatedly denied the undeniable. It claims to you that the $9 billion Judgment was not ghostwritten. It denies to you that Guerra wrote the Orders in the Lago Agrio Case which appear on his computer. It denies to you the discussions of a $500,000 bribe scheme which even Donziger admits. It denies that it has anything to do with the private litigation. The cynicism of these factual presentations to this Tribunal is breathtaking.

Now, outside the Tribunal, and in this case, I mean literally right outside the Tribunal, right outside the World Bank building, where we have seen a daily circus of Ecuador-sponsored, and, in fact, Ecuador-logo'd slanderous communications all in daily violation of this Tribunal's orders, we have Ecuador's promotion of the fraudulent judgment.

I would ask you to compare some of the statements in the pamphlets being passed out by Ecuador to what you have heard on the record in this Tribunal. The only

conclusion you'll be able to draw is that the presentations are knowing falsehoods, and I would ask you to reflect on how Ecuador repays a company that produced $23 billion for Ecuador, leaving aside the over $50 billion produced in the Concession since, during a time that Texaco made $500 million in profit, profit that has long since been swamped by the damage Ecuador has inflicted in this case.

Now, beyond this, Ecuador has publicly declared Chevron witnesses in this Tribunal and its lawyers to be traitors and sought to prosecute them. They justly fear for their safety and for that of their families. The Head of State himself continuously reviles Chevron and makes international diplomatic visits specifically to promote the fraudulent judgment, all in willful gratuitous violation of the Tribunal's Awards, through devices such as its insulting pamphlets and its malicious recusal motion, Ecuador hopes that the Tribunal will be frightened from its duty or at least that the Tribunal will delay carrying out its duty. To be sure, investor-State arbitration is under attack in some political quarters, and Ecuador is one of the leading attackers, but policy issues about the proper scope of investor-State arbitration have nothing to do with defending and promoting a fraud like this one, unless the point is that a sovereign should not be subject to any international standard at all.

Now, the Tribunal has asked about the RICO case and about the RICO statute. Perhaps the Tribunal is interested in how the Tribunal's work fits into the many other cases involved in this litigation. I'd like to try to pause and give you a brief update before I conclude to answer the questions you have on those matters.

I have two slides which I believe are going to be handed up to you to try to set some context about the different categories of litigation that have taken place. We have the so-called 1782 actions in the United States, and I'll tell you how some of the same evidence that you've seen here came to be involved in those and what the issue was and the conclusions were.

We'll talk about the RICO case currently on appeal to the Second Circuit. I'll give an update on the Canada, Argentina, and Brazil enforcement matters, and then conclude with brief mention of a currently pending litigation in the courts of Gibraltar.

Now, on the slide that I put up and that I believe you have, these constitute findings by the so-called "1782 courts" in the United States, 28 USC Section 1782 is a statute in the United States which allows discovery to be taken in aid of a foreign proceeding. During some stages, that proceeding was litigation in Ecuador, during some stages, litigation for discovery in aid of this proceeding.

Several courts issued opinions, and the most significant one came under the rubric of the crime-fraud exception to attorney-client privilege in the United States. One of the grounds on which attorney-client privilege can be breached in discovery orders is if it is found that that privilege is being asserted in furtherance of a fraud, and a few examples I will leave with you here. The District Court for the Western District of North Carolina, reviewing the evidence said, "While this Court is unfamiliar with the practices of the Ecuadorian judicial system, the Court must believe that the concept of fraud is universal, and that what has blatantly occurred in this matter would, in fact, be considered fraud by any court. If such conduct does not amount to fraud in a particular country, then that country has larger problems than an oil spill."

In New Mexico, the Court observed that the crude outtakes had sent shock waves through the nation's legal communities.

The District Court for the Southern District of California found, it said, ample evidence of the Cabrera scheme. That quote I suppose is irrelevant at this point since that's largely conceded by everyone.

More relevant to some of the evidence we spent a lot of time on, the District Court for the District of Maryland said, "Chevron has shown to anyone with common

sense that the insertion of the Fusión Memo text in the Ecuadorian Judgment is a blatant cut-and-paste exercise."

And as to the cleansing effort with respect to the Cabrera fraud, the District Court for the District of Columbia found that the Weinberg Group's work--that was the group that had been hired to perform the cleansing--was part of a fraud upon the Ecuadorian Court.

So, those 1782 cases led up to the RICO action. You will recall that initially RICO was not the primary focus of that Southern District of New York Action. In count nine of that case, using the Declaratory Judgments Act, Chevron sought protection by preemptive application of the New York Judgment Enforcement Statute to Prevent Enforcement. One of the reasons for that was that the reservation of rights by Chevron under the New York Convention to defend against any Ecuadorian Judgment was common ground among everyone in earlier stages of this litigation.

The Southern District of New York granted an injunction. Under that count nine you will recall the Second Circuit vacated it, finding that the Declaratory Judgment Act was not available for that use of the New York Judgment enforcement statute, and also observed that it had difficulty with the comity effects of an injunction that prevented enforcement in numerous foreign countries. The

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focus of that case then shifted to the American RICO statute.

You observed in your questions that that is an unusual statute. It is a statute that creates the ability of private litigants to pursue civil litigation but requires as a showing of what are called predicate acts, violation of a number of listed criminal statutes: If that predicate finding and certain other findings are made, it allows a private party to seek damages relief or, as Chevron sought to pursue, injunctive relief. In this case, the Judge, Judge Kaplan, acted as the finder of fact because the only relief Chevron sought was injunctive. He issued, as you know, and I won't belabor this, lengthy findings. The Parties to that case were Donziger and his associates, were two of the 47 LAPs. Only two of the 47 decided to appear. The others defaulted. Pablo Fajardo, Luis Yánza, the Amazon Defense Front, Selva Viva were also defaulting Defendants. Originally Stratus Consulting, Mr. Beltman, Ms. Maest, were defendants, they ultimately settled the case, and then disavowed some of what they had done. The Court as you know made findings, and the applicable standard under that statute called for findings under a standard of clear and convincing evidence. It found by clear and convincing evidence that the evidence had demonstrated extortion, wire fraud, money-laundering,

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obstruction of justice, witness tampering, violations of the Travel Act and the Foreign Corrupt Practices Act.

As an additional part of that case, Judge Kaplan examined an independent cause of action, a common-law cause of action for corruption of a judgment. That came up both as an independent action and because evaluation of the judgment was necessary to evaluate the res judicata or collateral estoppel defense that the Defendants in the RICO case, the Lago Agrio Plaintiffs, and Mr. Donziger had asserted. And as you know, he found that the Lago Agrio Judgment was obtained by corrupt means, and that for that and other reasons it was not entitled to collateral estoppel or other effect. And, indeed, was not a judgment that was worthy of enforcement.

That opinion, that judgment by Judge Kaplan is on appeal to the Second Circuit. As you know, the day before this proceeding commenced argument was heard. The principal issue in that case is whether a private party may obtain injunctive relief under the RICO statute or whether that is only available to the U.S. Government. That is an issue that's been open in American law for some time.

One thing I would note, though, is that in the briefing of that entire case before the Second Circuit, no alternative narrative or any significant challenge to the factual findings of Judge Kaplan was made.

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So, let me pause there and see if there are other questions about RICO.

PRESIDENT VEEDER: No, thank you.

Please continue.

MR. PATE: Enforcement actions, the same three that I've told you about before, continue in Canada, which was the first filed enforcement action. You will recall the history was that initially the trial court, finding that there was no basis to disregard the corporate separateness between Chevron Canada, which is present in Canada but has no connection whatsoever to the Ecuadorian litigation, and Chevron Corporation, which is the Judgment debtor in the Ecuadorian litigation but has no operations or presence in Canada. The Court found that lacking any evidence that the standards under Canadian law for disregarding that corporate separateness could be found, the action should be stayed. The trial court had rejected Chevron's further contention that a jurisdictional showing of presence on behalf of the Judgment debtor was required at the outset.

And on appeal, the intermediate Court in Canada reversed the stay finding that the trial court had made. Argument has now been had in the Supreme Court of Canada. The Court heard argument on December 11th on the jurisdictional issue, the issue whether on the pleadings,

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if you will, some basis of jurisdiction over Chevron Corp would be required. We expect a decision in that case could come at any time. It's difficult to say, if the Supreme Court finds that a jurisdictional finding was necessary, it should end the case. If the Court does not, the next stage may include a factual Hearing on the corporate separateness issues as the next step. So, that's Canada.

In Brazil and Argentina, I don't have anything quite as specific as that to report. The case in Argentina has been--excuse me, in Brazil has been moving forward to the extent that the Reporting Judge has ordered that the case file be made available to the Public Prosecutor for an opinion to be rendered as is the practice in that system. That case has been assigned to NPF prosecutor Nicolo Aldino. That was done in February, the time for the NPF opinion to have issued has run, but those time periods are frequently extended. I can't give you any more prediction about when the case will move to the next stage, but I guess I would say that it is poised, perhaps, to move to further developments in the near future, but there is no ability to predict when it might do so.

PRESIDENT VEEDER: Can I interrupt you? You referred to the Public Prosecutor.

MR. PATE: Yes.

PRESIDENT VEEDER: This would be a civil

enforcement?

MR. PATE: It is and I'm not an expert in Brazilian law, but the public prosecutor, the Ministerial Publica is under that system, often or in certain types of proceedings called upon to give opinions about what its view is of the legal issues in the case.

PRESIDENT VEEDER: I think I'm told it's not--it would not usually be a criminal proceeding.

MR. PATE: No, it's not a criminal proceeding, but actually there may be any number of people who can correct me about the fine points of Brazilian procedure, but it is a Government attorney's office that would conduct the review. The case is not criminal. It is a civil exequatur Judgment recognition case.

Argentina, a number of defenses have been filed, a number of briefs, some subsidiary motions have been argued, but I think without detailing that, the shortest way to put it is that that case remains pending but I don't have any prediction of what the next major steps would be.

So, any questions on the three pending enforcement cases? Of course, the constant threats of more enforcement filings continue, but I have no information about that.

PRESIDENT VEEDER: No, thank you very much. We have no questions.

MR. PATE: All right, finally then, I will mention

Gibraltar and put up the second slide I have. In Gibraltar, Chevron has had a litigation against certain of the funders of the litigation scheme. Mr. De Leon, an early funder, a later funder Woodsford Group, which recently withdrew claims against some of the entities that were set up to administer the funding waterfall that you heard about earlier, Amazonia, Torvia are the names of some of the companies that have been set up to distribute any proceeds that this scheme might generate.

There was a hearing on a Motion to Strike out as it's called in Gibraltar, and it's probably important for the Tribunal to know that while here it has been depicted that Chevron will, of course, have plenty of opportunities to defend against any enforcement, so this Tribunal need not be much concerned about doing anything. In the enforcement actions and other actions, it has typically been the position of the Lago Agrio Plaintiffs, Defendants in Gibraltar, that the appellate process in Ecuador has fully considered and ruled upon all of Chevron's fraud allegations so that those rulings ought to be considered issue preclusive of any further discussion of fraud, and Chevron should not be able to present that defense.

I do think it's interesting to note that Justice Butler in Gibraltar, in part it's interesting because this is not for the pamphleteers in the room, an American Court,

as the American system is often criticized by the Plaintiffs as being somehow biased or untrustworthy as this Tribunal is. This is a ruling from Gibraltar on that topic, and a few of the comments made in denying that Motion to Strike out include that "if the Appeal Court in Ecuador had before it anything like the evidence which has been put before me, it is, indeed, surprising on the face of it that at least a rehearing was not ordered."

He went on actually to call into question and was right to do so, whether the Ecuadorian appellate system had actually done anything to address or to issue de novo findings about or otherwise to treat with the fraud. He said he was not convinced that it did. In fact, quoting Justice Butler, it said specifically that it stayed out of the accusations of fraud. But at the end of the day and in this final bullet that I give you on this slide, Justice Butler said, "it would be difficult to have confidence in an Appeal Court which made the findings which it did and upheld the First Instance Decision if the Claimants' allegations are correct." I think Justice Butler has a gift for understatement.

Are there any further questions about the context of the other litigations? If not, I will conclude.

PRESIDENT VEEDER: Just one question. The reference to Annex P on your PowerPoint slide.

MR. PATE: Those are citations in the Gibraltar system. If you want to look in our record, it's C-2388.

PRESIDENT VEEDER: That's what I thought, yes.

Can you just remind us what Torvia Limited is doing as a second Defendant?

MR. PATE: Torvia Limited I guess I would say is the Gibraltar-based structure that is involved in the administration and distribution of proceeds from the Judgment, if ever there are any. It's not the only company that was set up to do that, but it's one of them.

And I guess I should note, Torvia has now settled out. It was a company with specific connections to De Leon, and when Mr. De Leon withdrew from the scheme, that took Torvia with it.

PRESIDENT VEEDER: Well, on the Judgment I'm looking at, there are only two Defendants. If those two go, who's left?

MR. PATE: There have been Parties added since the document that you're looking at. Pablo Fajardo and Luis Yánza in addition to another of the corporate structures. My recollection is they're meant to answer, and we will learn whether they will actually appear or default, when, in early June? Is that right? Early June.

So Amazonia Funding is the name of the other structure, and then it's Fajardo and Yánza who are the

remaining Gibraltar Defendants.

PRESIDENT VEEDER: Are you going to deal with the situation in Ecuador as regards the Constitutional Court?

MR. PATE: Well, Chevron's Constitutional Court submissions remain pending. I certainly couldn't give you any information about when the Constitutional Court is likely to do anything.

PRESIDENT VEEDER: And, lastly, just for the record, we also have seen people outside, but you referred to pamphlets. Those are not in the record, and we don't propose to admit them into the record, and I think we can leave it there.

Would you like to conclude?

MR. PATE: I will conclude, thank you.

One thing I hope you have been left with by my summary is that Chevron was obliged by the rules of sovereign immunity and jurisdiction to use multiple proceedings to defend against this fraud. This Tribunal uniquely is able to issue an opinion under international law in a proceeding with Ecuador as a party. In fact, only this Tribunal can provide vindication for Chevron's contract rights. It can't be done anywhere else. Ecuador cannot be made a party to U.S. litigation. It's also the case that Donziger can't be made a party here.

So, therefore, only this Tribunal can hold Ecuador

accountable for its actions and it's uniquely important that it do so.

Chevron seeks an injunction against further misconduct by Ecuador in support of this fraud. This relief will have value, even though Ecuador will not obey as it will further expose internationally that Ecuador's conduct is in violation of international law.

Chevron, as you know, also believes that a strong and clear declaratory award from this Tribunal will be persuasive to enforcement courts. A refusal by those courts to enforce the fraudulent judgment will obviously protect Chevron but it will at the same time protect Ecuador against responsibility and damages for the potential greater liability that might arise from its enforcement campaign.

And Chevron emphasizes again that if the Tribunal hopes to achieve this ends, then it must act as soon as possible on Track 1, on Track 2, or both.

So, let me end where I began three weeks ago, and that's with what is at stake in the Tribunal's work, and in the Judgment it will issue, and that is the message that's going to be sent to investors and to host Governments. The message will be either that there is a right to justice guaranteed by international treaty and made effective by neutral tribunals or, instead, that notwithstanding

overwhelming evidence, of the type you've heard here, that an official Government policy of promoting a corrupt judgment in defiance of lawful international injunctions is simply beyond the power of international law to redress.

I respectfully suggest to you that when history assesses the work of this Tribunal, only one of those messages can possibly be seen as consistent with upholding the rule of law.

So, with that, subject to more questions, either for me or other members of our team, with confidence in the wisdom, integrity and courage of this Tribunal, I confide Chevron's claims into your hands.

Thank you.

PRESIDENT VEEDER: Thank you very much.

We had questions earlier, but they seem for the moment to have been largely answered for which we thank you very much. We don't exclude that there will be further questions, but they will not be for tonight. It's been a long day, and we would like to think about what we've heard, and also we would like to hear the Respondents tomorrow.

I think unless there is some urgent housekeeping matters now, it's been a very long day for our shorthand writers, we will start with the Respondent at 9:00 tomorrow.

MR. BLOOM: Just one request, and I have spoken to counsel to Chevron about this, for personal reasons, they've agreed, and I'm asking the Tribunal if it's possible to begin 15 minutes earlier tomorrow at 8:45.

PRESIDENT VEEDER: 8:45. Does that mean you want to finish 15 minutes earlier at 5:15?

MR. BLOOM: We will keep to our schedule, but it gives a little bit more of a buffer in the event there are questions from the Tribunal.

PRESIDENT VEEDER: Fair enough. So, 8:45 tomorrow, but before that, at 8:44, we would like to put the Site Visit Order to bed duly signed/countersigned, because we're way beyond its anniversary.

(Whereupon, at 5:55 p.m., the hearing was adjourned until 8:45 a.m. the following day.)

CERTIFICATE OF REPORTER

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

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

DAVID A. KASDAN