

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

and

THE UNCITRAL ARBITRATION RULES 1976

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

TRACK 2 HEARING

Wednesday, April 22, 2015

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

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

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DR. HORACIO GRIGERA NAÓN, Arbitrator

PROFESSOR VAUGHAN LOWE, Q.C., Arbitrator

Registry, Permanent Court of Arbitration:

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MR. RAYMUNDO TREVES

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P R O C E E D I N G S

1
2 PRESIDENT VEEDER: Good morning, ladies and
3 gentlemen. We'll start Day 2 of this Hearing in Track 2.
4 There are certain housekeeping matters the
5 Tribunal would like to raise with the Parties, which is why
6 we started early today. There are five matters. I'll go
7 through them because we want to make sure that if they're
8 not moot, we need to address them as soon as practicable.
9 The first item is really the scope of the direct
10 examination of witnesses, which was in dispute between the
11 Parties as we saw in the Claimants' letter--I'm sorry, the
12 Respondent's letter of the 17th of April to which the
13 Claimants replied by letter of the 20th of April.
14 Now, we can ask the Respondents first, has that
15 been resolved, or is that something where we need to make a
16 ruling?
17 MR. BLOOM: I'm going to defer to my colleague,
18 Mr. Ewing.
19 PRESIDENT VEEDER: Mr. Ewing.
20 MR. EWING: Good morning. That has, by and large,
21 been resolved, but there is still at least one outstanding
22 issue related to that.
23 PRESIDENT VEEDER: Do you want to tell us what it
24 is or is that for later?
25 MR. EWING: Well, I'm happy to tell you what it

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09:01 1 is. I'll be representing what they've said.
2 There is one--the Racich Report from December 2013
3 raised some issues which was not responded to or which were
4 not responded to by Claimants, and we would object to those
5 issues being responded to now for the first time at the
6 Hearing.
7 PRESIDENT VEEDER: So, that doesn't arise for
8 today, does it? Or does it?
9 MR. EWING: I don't know. Would that arise today?
10 MR. WHITE: No, that will probably first arise
11 when Mr. Lynch testifies.
12 PRESIDENT VEEDER: Okay. Do you need it resolved
13 today or is that something we can put off if we have
14 witnesses waiting for today? I mean, the question is, do
15 you want more time to talk to each other to see if you can
16 resolve it without a decision?
17 MR. BISHOP: I think this is an issue that we need
18 to get resolved. I don't think that more discussion is
19 probably going to lead to an agreement on it, and we needed
20 to get it resolved before Mr. Lynch testifies.
21 It doesn't necessarily have to be today, but
22 relatively soon.
23 PRESIDENT VEEDER: Well, we've got time at least
24 to begin to understand what the point is.
25 Do you want to explain to us the Claimants'

09:03 1 perspective.
 2 MR. WHITE: Certainly.
 3 Mr. Veeder, I'm Brian White. I'm with King &
 4 Spalding, and I'm going to present this issue for the
 5 Claimants.
 6 Members of the Tribunal, the issue arose and the
 7 reason that we wrote to you about this is because one of
 8 the themes that was developed in Ecuador's most recent
 9 pleading, the Track 2 Supplemental Rejoinder that was filed
 10 last month, one of the themes was that there was a host of
 11 issues they said that they had raised previously that the
 12 Claimants had never responded to; and, at the same time
 13 that they were doing that, they were putting in new
 14 materials of their own.
 15 And so, to illustrate this, I've provided a small
 16 bundle to the Tribunal. If you have that handy, I would
 17 take you to Tab 3 of that bundle--
 18 PRESIDENT VEEDER: Just before, we were given
 19 something called "Scope of Direct."
 20 MR. WHITE: Yes. This is something that I handed
 21 up just and passed it on to Ecuador as well that has
 22 excerpts from three expert reports that are in the Record,
 23 and I thought it might be helpful to you if you had the
 24 relevant excerpts handy because we don't need all of the
 25 reports, and they're found in different places on the

09:05 1 not seen before.
 2 Now, in our discussions with counsel for Ecuador,
 3 I understand that that particular issue is one on which
 4 they're not going to object, but that was one of the
 5 reasons that we wrote to you because we were concerned that
 6 having put in new analysis with their Rejoinder last month
 7 and taking the position that if we hadn't responded to
 8 anything, it was un rebutted, that we were going to have an
 9 issue, and we wanted that to be addressed or put out front
 10 before the Witnesses went up so we didn't have that kind of
 11 objection during the direct exam.
 12 Now, we provided in our for correspondence last
 13 week some other examples of this type of thing, and the one
 14 that appears to be still in contention relates to an issue
 15 that was developed first in Mr. Lynch's Report from
 16 October 2013, and I've got that behind Tab 1 of the
 17 mini-bundle.
 18 We don't need to spend long on this, but we've
 19 attached two pages here, Pages 3 and 4, and we've
 20 highlighted the relevant, which is Paragraph 1(a), where he
 21 was asked to authenticate certain media, including
 22 Mr. Guerra's hard drive, and then in his summary of
 23 findings in Paragraph 2(a) on Page 4, he says that's what
 24 he's done.
 25 Behind tab 2 you'll see where Mr. Racich picked

09:04 1 Record.
 2 And what I'd invite you to do is to look behind
 3 Tab 3--these are all reports that were referenced in the
 4 correspondence of in the last week. Behind Tab 3 is the
 5 Third Expert Report of Christopher Racich, which is dated
 6 March 16, 2015, and if you just turn to the second page of
 7 that, you'll see that the Table of Contents is there. And
 8 under "analysis," Section 4(a), you see the first topic is
 9 additional analysis of Mr. Guerra's hard drive, and the
 10 second, 4(b), is further analysis of Mr. Zambrano's hard
 11 drives.
 12 So, this is some new analysis that came in for the
 13 first time in connection with the Track 2 Supplemental
 14 Rejoinder.
 15 And I'll highlight one issue in particular which
 16 is found on Page 4 of that report. At the bottom of the
 17 page, Paragraph 14 comes under a heading relating to
 18 Mr. Guerra's internet history. This is some analysis that
 19 we had not seen before; and, if you look on to Page 5 at
 20 the bottom of Paragraph 14, you'll see that in essence what
 21 Mr. Racich is saying here is that he's retrieved internet
 22 history relating to Mr. Guerra's Hotmail e-mail account,
 23 and he's found some evidence he says that e-mails have been
 24 deleted. That's not correct. We need to have an
 25 opportunity to respond to that issue, and it's one we've

09:07 1 that up in his December 16, 2013 report. On Page 5 which
 2 is the second page in the little bundle, Paragraph 11, he's
 3 talking about--so I need to explain briefly what the issue
 4 is. He's talking about the time period when Mr. Rivero, a
 5 lawyer for Claimants, gained access to Mr. Guerra's hard
 6 drive on July 13th of 2012, and Mr. Racich says that
 7 files--sorry, Mr. Rivero--in his testimony, which was
 8 available to Mr. Racich in which he references in his
 9 Report, Mr. Rivero says they opened up some files on that
 10 computer because they were looking to see if certain things
 11 were there or not.
 12 Mr. Racich says that this--what the forensic
 13 evidence shows is that the last access dates of these files
 14 were updated on the afternoon of July 13th. You see that
 15 in the footnote to Mr.--on Page 5 of Mr. Racich's Report.
 16 In this Report, Mr. Racich then goes on to say that this
 17 means that those files were touched or manipulated on
 18 July 13th of 2015.
 19 What the forensic evidence also shows--and this is
 20 in the Record--is that the last modified dates, another
 21 piece of metadata, were not changed during that period of
 22 time. I think Mr. Lynch would say that that means that
 23 there wasn't any manipulation going on there.
 24 Perhaps more significantly, though, Mr. Racich
 25 picks this point up again in the report that he filed last

09:08 1 month which is behind Tab 3, and he says this is a summary
 2 of his prior report. But if you look at Page 2, it's
 3 Paragraph 5(e), he then expands the timeframe. He's not
 4 talking about July 13th anymore. He's now talking about a
 5 two-day window, July 13, July 14, July 15, during which now
 6 he says he doesn't know what happened. He says there is no
 7 way to know what was done to those files or their metadata
 8 during this time period. That's a different opinion than
 9 the one he'd offered before. It's new, it's one we hadn't
 10 seen before, and so that is the issue that we say Mr. Lynch
 11 must be permitted to address on his direct examination and
 12 which, as I understand it, Ecuador objects to.
 13 PRESIDENT VEEDER: Just to make sure I've
 14 understood it, the only issue to your understanding relates
 15 to this Paragraph 5(e)?
 16 MR. WHITE: That's my understanding from my
 17 discussions with Ecuador. There were some issues relating
 18 to the environmental experts in our discussions, but I
 19 believe those have been resolved.
 20 PRESIDENT VEEDER: Thank you very much for that.
 21 We'll hear from the Respondent.
 22 MR. EWING: Yes. I can just address this sort of
 23 in a principle level, and then we can talk about the
 24 details of what Mr. White has raised.
 25 At a principle level, we have no objection to

09:10 1 Claimants responding to new evidence or new analysis that
 2 we've done that support prior conclusion. For instance, on
 3 the environmental side, Dr. Strauss has concluded in her
 4 First Report and her Second Report and all of her Reports
 5 that cancer is a significant risk for the individual in the
 6 Oriente. In her latest report she added some more
 7 calculations supporting that conclusion. We have no
 8 objection to that.
 9 So, as an example, the principle is we don't
 10 object to, you know, bringing up or discussing new evidence
 11 relating to arguments which have already been raised. So,
 12 my understanding is that that addresses all of the
 13 environmental issues, and the vast majority of what we
 14 have, that that principle does.
 15 In terms of the specifics of Mr. Racich's Report,
 16 this packet, I think, proves or shows our concern here.
 17 Mr. Racich or Mr. Lynch first, "authenticated and analyzed
 18 the forensic images in October 2013, when he replaced
 19 Mr. Younger. Mr. Racich responded to that in
 20 December 2013, and in that report, which is behind Tab 2,
 21 you can see the highlighted text where he raises the
 22 concern that the files had been accessed during this time
 23 period. Mr. white says the new issue is whether or not
 24 that we expanded the time period to a two-day time period.
 25 You will see in the sentence just past the highlighting

09:11 1 there also appears a two-day gap after the media was
 2 released to Andres Rivero, and when the imaging occurred
 3 during which time data manipulation could have occurred.
 4 Said issue was raised, we have the argument out
 5 there, and I think the fact that there is no Lynch Report
 6 after this highlights my point. Mr. Lynch had an
 7 opportunity to respond in May 2014, but Claimants, instead,
 8 submitted his October 2013 report again, so you actually
 9 have two copies of that in the Record.
 10 They had another opportunity to respond to it in
 11 January 2015. They didn't. And now they're proposing to
 12 have an opportunity to respond to it on direct.
 13 And that underlies the concerns, that if they had
 14 raised this issue, we would know what they were going to
 15 say, and we would know how we could respond; but by waiting
 16 until now, despite having two years and two opportunities
 17 to do so, we think that it is unfair to us to be surprised
 18 with that.
 19 And from my listing or, you know, as Mr. Racich
 20 did, he listed the issues that he believed had not been
 21 addressed by Mr. Lynch in his earlier reports, and I can't
 22 believe that listing unaddressed issues can be an avenue to
 23 allow a new party to respond to them then at a hearing for
 24 the first time.
 25 Unless you have any questions, that's all I need

09:13 1 to say.
 2 PRESIDENT VEEDER: Can I press you as to where you
 3 see the unfairness. Is it the unfairness that you'll by
 4 caught surprise when you first hear this expert testimony
 5 during the examination-in-chief or the direct examination
 6 or would it go beyond that?
 7 MR. EWING: Exactly. We don't know how Mr. Lynch
 8 will respond to these arguments that were first raised in
 9 December 2013, and have not had an opportunity to review
 10 the Record, review the evidence to figure out if there is a
 11 response to what he may or may not say. We just have no
 12 idea.
 13 PRESIDENT VEEDER: I mean, we don't have Mr. Lynch
 14 today, but if he were to produce a short statement directed
 15 at Paragraph 5(e) as to what he would be minded to say in
 16 direct examination by lunchtime today, would that help you
 17 with your problem regarding surprise?
 18 MR. EWING: Mr. Veeder, it would clearly help us
 19 understand what has been done. With all due respect,
 20 though, we are now in the middle of the Hearing with much
 21 of this already sort of laid out, the preparation is done,
 22 and we are incredibly limited in time. With that
 23 understanding, we will do as you request, but we would be
 24 hard-pressed to respond.
 25 PRESIDENT VEEDER: You just have to read it and

09:14 1 see what happens. It may be a storm in a teacup, it may be
 2 something very major, but it's hard at the moment for us I
 3 think to understand the scope of what is lying behind this
 4 Paragraph 5(e) as a debate between the two experts.
 5 MR. EWING: Just to be clear, we do have to read
 6 it, but we also then have respond and analyze, and that
 7 takes significance amounts of time and resources that are
 8 extremely limited right now.
 9 (Tribunal conferring.)
 10 PRESIDENT VEEDER: Well, let's put it to the
 11 Claimant.
 12 What we have in mind is obviously it's awkward for
 13 a cross-examiner to hear something dramatically new in the
 14 few minutes he has to prepare for the cross-examination,
 15 even with his Expert sitting alongside.
 16 Now, this may not cure the problem, but we don't
 17 really know the nature of the problem. Could Mr. Lynch
 18 produce--and it wouldn't be, I suspect, more than one page,
 19 what he would be minded to say in direct examination in
 20 regard to Paragraph 5(e)? This could be given to the
 21 Respondent, and then we could see where we're going. It
 22 may be a storm in a teacup. It may require Mr. Racich to
 23 do another six months' work, in which case it's a different
 24 kind of problem, but would that be a way forward which
 25 would remove the sting of surprise, which is obviously

09:16 1 what's concerning the Respondent?
 2 MR. WHITE: Absolutely, sir.
 3 We say the issue has already been joined on this.
 4 PRESIDENT VEEDER: Forget that. We're just trying
 5 to deal with a pragmatic issue.
 6 MR. WHITE: It will not be difficult at all to do
 7 what you just suggested.
 8 PRESIDENT VEEDER: Well, why don't we do that.
 9 Can he do it by lunchtime, by the end of the lunch break?
 10 MR. WHITE: That should be no trouble.
 11 PRESIDENT VEEDER: And hand it over to the
 12 Respondent and we'll come back to it, but obviously we've
 13 all been counsel, and we know what it's like to
 14 cross-examine blind. And it's not fun, whatever led to
 15 that situation in the past.
 16 MR. WHITE: Well, this is why we raised it in
 17 advance of the Hearing because we didn't want this to come
 18 up in the middle of a direct examination, and there were
 19 several different issues.
 20 PRESIDENT VEEDER: Well, thank you very much.
 21 And again, keep your powder dry. Just have a look
 22 at what is going to be said. It may be a storm in a
 23 teacup, or it may require, as I said, six months more work
 24 by your Expert, in which case you can certainly come back
 25 to us.

09:17 1 MR. EWING: I certainly hope it will be the
 2 former, but we will let you know after we've seen what
 3 they've given us. Thank you.
 4 PRESIDENT VEEDER: That was the first item.
 5 The second item is the site visit order and the
 6 Protocol, et cetera. We've got the Claimants' letter of
 7 the 16th of April, we've got the Respondent's letter of the
 8 17th of April with respect to the enclosures.
 9 We understand the only remaining debate on this
 10 document is Paragraph J(6), and that relates to the
 11 requirement by the Respondent for the site visitors to be
 12 accompanied by a small audio-video team, and we understand
 13 that's opposed by the Claimant.
 14 Can we just give the floor first to the Respondent
 15 as to what kind of small audio-video team is being
 16 suggested.
 17 MR. EWING: Yes, Mr. President. We anticipate
 18 having similar as to what was done in Burlington, and if we
 19 can procure the exact same team. It's two people. One
 20 person has a camera, and one person has a microphone to
 21 record.
 22 PRESIDENT VEEDER: Let me stop you there. Does
 23 the microphone work? It's going to be 30, 40, 50 feet
 24 away.
 25 MR. EWING: It seemed to have worked very well in

09:18 1 Burlington. From what I have seen of the video and what
 2 I've heard from co-counsel, it worked incredibly well.
 3 PRESIDENT VEEDER: So, this is going to be fully
 4 recorded what people say during the site visit or was it
 5 simply the presentations that are being made?
 6 MR. EWING: The part that would be recorded is
 7 wherever the presentations are being made, so conversations
 8 elsewhere, et cetera, are not recorded. It's directed at
 9 the presentations that are being made.
 10 PRESIDENT VEEDER: And how far away would this
 11 team be from the main group? Are we talking of 30 feet or
 12 3 feet?
 13 MR. EWING: They're on the edges of the outskirts
 14 of the group, so if we have a group of, you know, however
 15 many people are actually listening to the presentations at
 16 the time, they would be inconspicuous or off to the side to
 17 record what's being done and what's being said.
 18 PRESIDENT VEEDER: Were you indicating
 19 Mr. Leonard?
 20 MR. EWING: No, I was looking for our Dechert
 21 folks who were actually down in Burlington. If you would
 22 like to hear more, I don't know if any of the actual folks
 23 who were down there are here. Perfect.
 24 PRESIDENT VEEDER: Why don't we hear from you
 25 exactly what's involved.

09:19 1 MR. SILVA ROMERO: There is one person with a
 2 camera and another with a microphone, and they're together
 3 with the people listening to the presentation, just to
 4 record as if they were taking the Transcript of the
 5 different comments, questions, and observations.
 6 PRESIDENT VEEDER: So, in a sense, what you're
 7 looking for is a transcript of the presentations. Is that
 8 what you were looking for in Burlington?
 9 MR. EWING: Are you asking about Burlington?
 10 PRESIDENT VEEDER: I'm asking just about
 11 Burlington, and then I'll come to this case.
 12 MR. SILVA ROMERO: In Burlington that was the case
 13 indeed. Even I understand David is now transcribing the
 14 video to have a transcript.
 15 PRESIDENT VEEDER: We can't ask him because he's
 16 transcribing; otherwise, he'd be our next witness.
 17 MR. SILVA ROMERO: I would be happy to
 18 cross-examine him.
 19 (Laughter.)
 20 PRESIDENT VEEDER: Well, the scope of the direct
 21 might be an issue.
 22 Thank you for that.
 23 Do you want to add anything more about what you
 24 have in mind for us?
 25 MR. EWING: Only to the extent that this Tribunal

09:20 1 has already said that it is not interested in having a--or
 2 does not ask for an official Transcript, and we're not
 3 proposing that there be an official Transcript be made.
 4 While we would--we do think one should be made, we
 5 understand that that ship has sailed. So this would be
 6 slightly different in that we would not be expecting that
 7 to be transcribed for use in this proceeding.
 8 PRESIDENT VEEDER: Okay. Thank you.
 9 The Claimants?
 10 MR. BISHOP: Yes, Ms. Renfroe will address that.
 11 MS. RENFROE: Thank you, Mr. President.
 12 I'm happy to tell you that I was the lead lawyer
 13 for the Burlington side, and I have just returned from the
 14 jungle and having had the experience with that site visit,
 15 I do want to express objection to the presence of an
 16 audio-video team for this upcoming site visit for the
 17 following reasons:
 18 First, one important difference: In the
 19 Burlington site visit, the Tribunal, not the Parties, the
 20 Tribunal--ordered that that site visit would be
 21 transcribed, and it was their direction that there would be
 22 an audio and video team. And so, of course, we the Parties
 23 accepted that. But in this situation, the Tribunal has
 24 already decided that there will be no official Transcript
 25 of this site visit, and so let me now express to you the

09:21 1 concern I have and why we have an objection to it.
 2 The problem--one physical, practical problem is
 3 that we were constrained in making our presentations in
 4 that site visit situation because we couldn't freely move
 5 around because the video camera and the audio team could
 6 not follow us, and so we were forced to make our
 7 presentations standing in one location, then we would have
 8 to stop, relocate, allow the audio-video team to regain
 9 their position, and we're moving in a group of about 25 to
 10 30 people.
 11 It was a very large logistical challenge, and in
 12 that situation, because the Tribunal wanted it, we
 13 accommodated it. But in this situation, where we have
 14 limited time--that we had limited time there as well, but
 15 it's very limiting and confining, and I think interferes
 16 with the ability of the Parties to actually conduct the
 17 tour of the sites in the way that we would like to do it.
 18 So, for that practical reason, we have a strong objection
 19 to being constrained by having an audio-video team follow
 20 us around.
 21 Now, the second concern we have is the manner and
 22 the risk that the audio and video recording will be used
 23 for purposes outside of the--outside of the process of this
 24 arbitration, and I can tell you that having a video camera
 25 in your face, whether you are an advocate or whether you're

09:23 1 an Expert Witness is a--it's a chilling effect, and we
 2 would prefer to have this site visit and be able to conduct
 3 it freely without concern that some alternative use may be
 4 made of the video which we have no ability to control. So,
 5 there is the concern about that.
 6 And Number 3, there is a confidentiality issue
 7 which we have, of course, navigated through the
 8 confidentiality provisions in the site visit. And so we've
 9 just got real concerns about having the interference and
 10 the risks of confidentiality being breached by having an
 11 audio-video team.
 12 Now, I understand that the Attorney General may
 13 wish to have aspects of the site visit recorded for their
 14 purposes, and I respectfully submit they can do that on the
 15 side, they can do it outside of the conduct of the actual
 16 site visit itself.
 17 So, those are--first reason, practicality; second
 18 reasons concerns about what use will be put to the video;
 19 and third concern, potentially breaching confidentiality.
 20 PRESIDENT VEEDER: Can I just press you on the
 21 practicalities of Burlington. My personal experience of
 22 video and video recording has been catastrophic and don't
 23 understand if the Tribunal wanted a Transcript why a
 24 shorthand writer wasn't used to accompany the site visitors
 25 rather than an audio which we all know can go very wrong

09:24 1 and give rise to the difficulties you've described, but
 2 there are many site visits where I have seen shorthand
 3 writers with portable machines which don't cause difficulty
 4 because they simply stand as one of the crowd, as indeed we
 5 have two here. Now, why wasn't that done in Burlington?
 6 Why wasn't the audio requested?
 7 MS. RENFROE: Mr. President, respectfully, I have
 8 great and the utmost respect for our Tribunal in the
 9 Burlington Case, and I really can't--I don't know what
 10 motivated their decision to have an audio or video recorder
 11 instead of a stenographer. I just can't--I can't speak to
 12 that. I'm not trying to avoid your question, but it was
 13 the decision of that Tribunal to do it that way.
 14 PRESIDENT VEEDER: But on the practicality,
 15 wouldn't a stenographer solve some of the problems that
 16 you've described?
 17 MS. RENFROE: Well, in my opinion it certainly
 18 would have.
 19 One of the things that we want to be able to do is
 20 to move freely around the sites, and from that last
 21 experience, it's my conclusion that the ability to move
 22 freely around the sites and make the demonstrations we need
 23 to make is a very important requirement, and that's where
 24 the audio and video attachment really constrains you. It's
 25 a real problem.

09:26 1 PRESIDENT VEEDER: Thank you for that.
 2 Would you like to reply on all those points?
 3 MR. EWING: Of course, Mr. Veeder.
 4 First, I will just try and take these in the order
 5 that Ms. Renfroe raised them.
 6 First is the practical concern, I would submit is
 7 far overblown. We have a videographer who is going to be
 8 able to carry his self-contained camera on his shoulder. I
 9 have seen pictures of this gentleman that was in
 10 Burlington, it's a small camera that he was able to hold in
 11 his hand. That would not in any way harm any of anyone's
 12 movement around. He's probably able to get around the
 13 sites much easier than most of us.
 14 The same with the sound person. Again,
 15 self-contained, able to walk around anywhere. Does not
 16 affect where we can or cannot go.
 17 And I would submit that if that becomes an issue,
 18 then we can have the videographer and the sound people stay
 19 behind or walk behind slowly if they really truly cannot
 20 get somewhere, which I find incredibly difficult to believe
 21 would be the case. So, the practicality concerns I would
 22 submit are really not an issue here.
 23 And as we heard, and we can hear more from Dechert
 24 in terms of the practicality, I know that was not the
 25 Republic's experience of these folks by any stretch.

09:27 1 So looking at the use of the videos outside and
 2 the fact that the other Tribunal in Burlington sought to
 3 have a Transcript, we still believe that an official
 4 Transcript should be taken, should be made of these
 5 proceedings, just as here, it is part of the evidentiary
 6 value of this proceeding. The Tribunal will be seeing this
 7 evidence, and understanding what they're seeing cannot be
 8 captured in words. Like I showed you yesterday with our
 9 environmental slides, it's one thing for me to tell you,
 10 now we found buckets of oil come out of a monitoring well.
 11 It's another thing to see a picture of that. Seeing and
 12 reading words are just dramatically different, which is
 13 exactly why we requested that you come down to Ecuador to
 14 see what we've seen, and understand from a visual
 15 perspective the arguments that we're making and how the
 16 arguments that Claimants are making don't stand up.
 17 In terms of the--where we go from here, we
 18 would--I also would submit that my understanding is the
 19 Tribunal has already ordered that the Parties may make a
 20 video, so I would be freely permitted to video, it would be
 21 a little awkward as I speak to you, but I would be able to
 22 hold a video camera and make this record which I then could
 23 use, yet I couldn't have someone stand next to me and make
 24 the same video. Again, the practicality, the pragmatic
 25 problems are truly not what is at issue here.

09:29 1 And I would again suggest that the real concern
 2 from Claimants is they don't want anyone to see this
 3 because it is ugly, and no one wants to see it. So with
 4 that, unless you have more questions.
 5 PRESIDENT VEEDER: I take your point about the
 6 practicality of a video recording because the person can be
 7 30, 40 feet away, he can use a zoom lens, and it wouldn't
 8 interfere, but what I'm curious about is that if you want
 9 the audio in order to have a Transcript, I think that's
 10 where the practicalities come in. Why not have a
 11 transcriber? Would it be prejudiced if there was a
 12 stenographer as opposed to an audio or maybe an audio
 13 backup, but at least a stenographer would be less, how can
 14 I put it? Of a practical problem.
 15 MR. EWING: Correct me if I'm--David cannot
 16 obviously testify today, but my understanding of what a
 17 stenographer would need to bring in terms of his portable
 18 Stenography equipment would probably actually be more of a
 19 practical--something to lug around as opposed to an audio
 20 person who just carries a microphone.
 21 Again, I'm not an expert in Stenography or in
 22 audio, but my understanding is that would actually be a
 23 little more practically difficult.
 24 But the more fundamental problem with a
 25 stenographer is that it does not capture what you see. The

09:30 1 words are, like I said, oil in a bucket is very different
 2 from a picture of and what you actually see when you're
 3 down there. So, a stenographer would not satisfy or
 4 capture that aspect of this record.
 5 MS. RENFROE: Mr. President--
 6 PRESIDENT VEEDER: Just one moment.
 7 (Tribunal conferring.)
 8 PRESIDENT VEEDER: I'm sorry, yes, please.
 9 MS. RENFROE: Thank you, Mr. President. If I may,
 10 just to respond to a couple of critical points. Another
 11 very important difference between this arbitration and the
 12 Burlington arbitration is there, in the Burlington
 13 arbitration, the Tribunal has ruled that the audio-video
 14 Transcript is confidential and may not be used outside of
 15 the arbitration, and we have serious concerns about the use
 16 that would be put to this audio-video recording by the
 17 Republic of Ecuador. They have not stated how they would
 18 intend to use it, and we're very concerned that it could be
 19 used for improper purposes, and so that is a concern of
 20 ours as well, and I wanted to be very clear about that. I
 21 mean, we've already as it is, had leaks of materials that
 22 have been submitted in this arbitration that were supposed
 23 to have remained confidential. So, I cannot stress that
 24 enough about our concern.
 25 And then finally, the Tribunal has already ruled

09:33 1 reasons behind why they are kept confidential. Otherwise,
 2 this proceeding is generally considered public, according
 3 to Procedural Order Number 1. And we would submit that
 4 there is no reason why walking around four sites in Ecuador
 5 should be considered confidential to a level similar to a
 6 judge's hard drives from Ecuador.
 7 Again, we're not asking to revisit this issue. My
 8 understanding is the Tribunal said that the Parties are
 9 free to make their own audio-video recordings. What we are
 10 asking is whether or not we can have an audio-video person
 11 or two or whether I have to do it myself, is ultimately
 12 what this comes down to.
 13 And if I could just cede the floor quickly to--if
 14 his microphone works.
 15 MR. SILVA ROMERO: It does.
 16 Only three points, very rapidly, Mr. President.
 17 The first of all, regarding practicalities, I tend
 18 to disagree with my friend Ms. Renfro because the camera
 19 man and the sound person followed us during the site visit,
 20 and I remember many instances in which the Tribunal at the
 21 end of the presentations wanted a specific site to be
 22 recorded, so the cameraman followed the Tribunal. The
 23 Tribunal said, well, please record this part, then go there
 24 and record this part, so it's really very, very practical,
 25 and these two people can really follow the Tribunal or the

09:32 1 that there will be no official Transcript made of this site
 2 visit. I did not recognize that we were going to be
 3 revisiting rulings already made by the Tribunal. So, this
 4 has only to do with the request by the Republic to make its
 5 own recording. And if we're now going to start revisiting
 6 the Tribunal's rulings on other aspects of the site visit,
 7 then I'm afraid we're going to lose the progress that we've
 8 made that's taken us so many months to get here on the eve
 9 of the site visit.
 10 PRESIDENT VEEDER: Thank you for that. The
 11 Tribunal will reserve its decision and we will come back to
 12 you I hope as soon as we can.
 13 MR. EWING: Mr. Veeder, if I could respond briefly
 14 on two quick points and give the floor to Mr. Silva Romero
 15 from his perspective on Burlington, very brief.
 16 PRESIDENT VEEDER: Let's get to the bottom.
 17 Please go ahead.
 18 We will certainly give you another word, too, on
 19 the Claimant's side if you need it but let's get to the
 20 bottom of it.
 21 MR. EWING: Very briefly. Ms. Renfro raises this
 22 issue of public and confidentiality. You will remember
 23 that the only thing at this point that is truly
 24 confidential in these proceedings is the Zambrano hard
 25 drives, which have a whole separate set if principled

09:34 1 Parties, whatever the Tribunal and the Parties would like
 2 them to follow.
 3 Second, I cannot obviously guess what's in the
 4 mind of the Tribunal in Burlington, but my understanding is
 5 that the Tribunal wanted to see the sites. They got maps,
 6 they got submissions on the contamination in the Blocks 7
 7 and 21 in Ecuador. They wanted to see the topography, they
 8 wanted to see the sites. And the best Transcript of such
 9 an exercise is obviously a recording of the different
 10 images. I can guess that the Tribunal whilst deliberating
 11 on the different issues, would like to look at the video
 12 again just to recall issues of topography, for instance.
 13 And lastly, third and last point, the Burlington
 14 Tribunal has not decided that the video recording is
 15 confidential. What the Tribunal decided in that case is
 16 that the Parties can use the video recording outside the
 17 proceedings, but they need first to ask for leave from the
 18 Tribunal and explain what is the purpose of the different
 19 point, which is a different rule in a different arbitration
 20 anyway. Thank you.
 21 MS. RENFROE: Mr. President, I will be brief.
 22 PRESIDENT VEEDER: Last word.
 23 MS. RENFROE: Thank you very much.
 24 You heard no answer to the concern that I
 25 expressed about how the Republic intends to use this video.

09:36 1 And let's be very clear about it. Our concern is that it
 2 will be misused as another piece of the Republic's
 3 propaganda campaign against Chevron.
 4 And as you know from the presentations yesterday,
 5 there is significance impacts in these fields from the
 6 operations of Petroecuador, and what I'm concerned about is
 7 that you will be presented with something on the site
 8 visit, and then it will be videotaped and held--and it's
 9 something caused by Petroecuador, and yet it will be--we
 10 will be seeing it in media campaigns as the actions of
 11 TexPet or Chevron.
 12 And so, and we will be dealing with still
 13 different evidence that's not within this record, so it
 14 will be an ever-evolving problem.
 15 What we're trying to do is work within the Record
 16 we have here, the Record that has been made, and we are
 17 happy for the Tribunal to see these sites, but what we are
 18 concerned about is the further misimpression that will be
 19 created by videotaping an impact that is of Petroecuador's
 20 making and it will be mischaracterized as a problem created
 21 by TexPet or Chevron.
 22 PRESIDENT VEEDER: Thank you. Let's stop the
 23 debate there. The Tribunal will come back to you, I hope
 24 later today. If not, tomorrow early.
 25 We should turn to the next item which is, first of

09:37 1 all, Mr. Klasfeld. We have the Claimants' letter of the
 2 16th of April with certain suggestions about what we should
 3 do, what the Tribunal should do in regard to this further
 4 inquiry from this particular journalist. I don't think
 5 we've received anything from the Respondent in regard to
 6 the second and third points made by the Claimants in their
 7 letter of the 16th of April. If you can deal with it now,
 8 so be it, but if you want to take a little bit more time,
 9 we've certainly got more time before we have to respond.
 10 MR. BLOOM: I can respond.
 11 PRESIDENT VEEDER: Please.
 12 MR. BLOOM: And first let me thank the Tribunal
 13 for not requiring an immediate submission in the days
 14 leading up to this Hearing. We did appreciate that.
 15 In short, we really don't have any opposition to
 16 the Claimants' representations either that both Parties had
 17 opposed having a court reporter or a reporter in the
 18 hearing room, nor do we have an objection to advising
 19 Mr. Klasfeld, and I'm quoting from Claimants' letter that,
 20 "the Parties have always agreed that they may disclose
 21 submissions in their arbitration absent a specific
 22 Confidentiality Agreement or order of the Tribunal." We
 23 also have no objection, as Claimants suggested, that we
 24 advise Mr. Klasfeld that all of the Tribunals' awards,
 25 along with the Parties' pleadings and numerous other

09:39 1 documents related to the case, are publicly available on
 2 legal research and academic Web sites," again except as
 3 otherwise ordered by this Tribunal.
 4 I also have no objection to their suggestion that
 5 we advise Mr. Klasfeld that "the fact that the Hearing will
 6 be held in camera does not mean that the proceedings are
 7 confidential."
 8 Nor do we have any objection to their proposed
 9 language that the Parties are "free to distribute the
 10 Transcripts publicly in redacted form if necessary to
 11 protect information under confidentiality restrictions."
 12 And nor do we have any objection to their
 13 suggestion that the Tribunal advise Mr. Klasfeld that--and
 14 as I said earlier--that "both Parties opposed opening the
 15 Track 2 Hearing to third parties."
 16 The only thing that we would ask is any
 17 communications that go out to Mr. Klasfeld or any third
 18 party are first distributed to the Parties for comment.
 19 PRESIDENT VEEDER: Well, it sounds as though maybe
 20 the first draft should be prepared by the Claimants. And
 21 then, if you can agree it with the Respondent, you can give
 22 it to the Tribunal, and we can adopt it and send it to
 23 Mr. Klasfeld. Would that be a convenient way of
 24 proceeding?
 25 MR. BISHOP: Yes. The Claimants would be happy to

09:40 1 do that.
 2 PRESIDENT VEEDER: Why don't we do that.
 3 The Second Circuit, I take it there was no
 4 application by Mr. Donziger?
 5 MR. BISHOP: There was--as I understand it, there
 6 was no application as such. However, in the rebuttal
 7 argument, Mr. Donziger's lawyer got up and tried to talk
 8 about the Racich Report. I don't think it went very far or
 9 very deep, but I understand that he did try to bring it up
 10 at that point, so my understanding is that's where it
 11 stands there.
 12 However, of course, there is a bigger issue here,
 13 which is that the Racich Report itself has now been leaked.
 14 It's been published on the so-called "Chevron Toxico" Web
 15 site of the Plaintiffs, and it's now been picked up by
 16 Ecuadorian newspapers and is being discussed.
 17 Now, there is only two parties that could have
 18 leaked that, and Chevron certainly did not leak it. It had
 19 to come from the Government itself. So, what the situation
 20 we find ourselves in is that Chevron is effectively
 21 unilaterally bound by the Confidentiality Order which is
 22 now--which was requested by Ecuador, but Ecuador has now
 23 violated by leaking this Racich Report. So, we're in a
 24 very unfair and prejudicial situation of not being able to
 25 respond. The only way to respond is through the Release of

09:42 1 Lynch's Reports so that they can be discussed publicly as
 2 Mr. Racich's Reports now are. So, that's the bigger issue.
 3 PRESIDENT VEEDER: Let's turn to the Respondent.
 4 MR. BLOOM: Just like Mr. Ewing mocks me for
 5 dictating everything rather than writing, when it comes to
 6 Twitter, I would rely on people under 40 years old.
 7 Here is my understanding as to what happened: As
 8 I understand it, Pablo Fajardo, counsel for the Plaintiffs,
 9 re-tweeted something that was posted or tweeted by somebody
 10 else. And it was identified, it was a woman's name, we
 11 don't know who the woman is. She made reference to--and
 12 I'm paraphrasing--ashamed of my company. I think the
 13 Plaintiffs suggested it's a whistle-blower, but there is a
 14 lot of misinformation out there. I think our very quick
 15 due diligence suggests that this was a new account. We
 16 don't know if this is a fictional person. We don't know
 17 who she is. We're not casting any stones. We just don't
 18 know.
 19 The reality is it's out there.
 20 So, we take a step back and we analyze this. You
 21 will recall that when our Memorial, our unredacted Memorial
 22 was leaked, we readily agreed to allow the Claimants to use
 23 their Memorial. It wasn't for purposes of evening the
 24 playing field as it related to the RICO case or any
 25 corollary proceeding because, as a practical matter, we

09:44 1 always believed that the Memorial couldn't really be used
 2 in a substantive way in any corollary proceeding. It was
 3 for public relations purposes, which is not something, I
 4 don't think, any of us here are terribly focused on. You
 5 know, maybe the principals from both sides, but not the
 6 lawyers, not the Tribunal.
 7 So, when you're talking first off about the public
 8 relations consequences of the Racich Report being in the
 9 public domain, and you analyze it, one has to reach the
 10 conclusion that there is no public relations impact. Why
 11 is that? Because both Parties addressed the Racich Report
 12 and the Lynch Report in great detail in their respective
 13 Memorials. So, their arguments are effectively out there
 14 already.
 15 I think the question is, when one takes a step
 16 back, is what is it the Claimants want to do or, for that
 17 matter, other Parties. The Claimants, by the way, are
 18 asking for the hard drives also for everything to be
 19 available to them for use in any form. They want there to
 20 be no confidentiality provision at all. We agreed to
 21 provide, pursuant to your order, the forensic evidence
 22 attached to Judge Zambrano's hard drives that were in the
 23 hands of a prosecutor under the Confidentiality Order.
 24 Now, when it comes to the use of even the Memorial
 25 in a corollary proceeding, we do know this: That the

09:46 1 Plaintiffs filed a motion to the Second Circuit some time
 2 in March to use the Memorial. Very importantly, not to
 3 prove authorship of the Judge Zambrano Decision, but just
 4 for the sole purpose that the issue is pending before this
 5 Tribunal. And in response, Chevron filed on April 1 its
 6 Opposition to Appellant's Motion for Judicial Notice, and
 7 Chevron also, attached to it, put in many hundreds of pages
 8 of information including its own Memorial, understandably,
 9 attached to this Motion. But just three points.
 10 Quoting from Chevron's brief, they say "neither
 11 Donziger nor the Lago Agrio Plaintiffs or the LAPs
 12 challenged any of the District Court's factual findings in
 13 this appeal, including the detailed findings concerning the
 14 LAP team's bribery of Zambrano and ghostwriting of the
 15 Judgment."
 16 In other words, the fact of authorship of the
 17 decision is not an issue on the appeal. Therefore, they're
 18 saying it's not relevant what's before this Tribunal, and
 19 even the Memorial ought not be accepted.
 20 Chevron said: "Second, even if Donziger or the
 21 LAPs had not waived this argument on appeal, 'it is rarely
 22 appropriate for an appellate court to take judicial notice
 23 of facts that were not before the District Court.'" And
 24 they cite to a couple of Court of Appeals decisions.
 25 And then Chevron goes on and says, "Third, courts

09:47 1 may not take judicial notice of the contents as opposed to
 2 the existence of a party's filings in another proceeding."
 3 Also with a citation.
 4 And the point is that for public-relations
 5 purposes, Chevron already is playing on an even field
 6 because the Parties' respective arguments are now already
 7 out in the public domain.
 8 But as to the issue of admissibility, I would
 9 suggest that only if and when another Court were to go
 10 ahead and accept and admit into evidence the Racich Report
 11 should we then have a conversation, and it could be very
 12 well a very different conversation. And I think the folks
 13 on my side would also have to revisit our position.
 14 I should add just one thing, if I may. One of the
 15 concerns that we've had is--and I think the timing of this
 16 was not by accident--and I understand the Plaintiffs are
 17 waving it around, you know, waving around the fact that
 18 there is this forensic evidence out there. But the reality
 19 under U.S. law, certainly with respect to an appellate
 20 argument that is and was under an hour-and-a-half, is
 21 you're not going to get into evidence that's outside the
 22 judicial record. So, we certainly recognize it was not
 23 going to be considered by the Second Circuit on Monday. It
 24 just was never going to happen.
 25 So, we were a little bit concerned, especially

09:49 1 with respect to members of a tribunal that may be less
 2 familiar with U.S. law than we, that it's something the
 3 Tribunal may not have understood, but our concern was that
 4 Claimants were using the immanency of the RICO Hearing on
 5 April 20th to precipitate a ruling that might be
 6 inconsistent with U.S. legal principles as it relates to
 7 the Federal Rules of Evidence.
 8 Thank you.
 9 PRESIDENT VEEDER: Mr. Bishop.
 10 MR. BISHOP: If I may respond, I think that there
 11 was perhaps some confusion between certain other issues,
 12 some Amazon watch information in the Racich Report. We're
 13 not dealing with the Amazon watch videos or that issue.
 14 That's not what's concerned here.
 15 What we are concerned with is the Racich Report is
 16 now in the public domain. I think you just heard Mr. Bloom
 17 effectively admit that, and suggest that we should continue
 18 to be bound unilaterally by the Confidentiality Order and
 19 not be able to release the Lynch Report. Well, that is an
 20 inherently unfair situation, and it's an inherently
 21 prejudicial situation to us.
 22 There are two different issues here. One was the
 23 Second Circuit issue, but the other is the discussion
 24 within the public domain. We are getting inquiries now
 25 from media about the Racich Report itself, but we're not

09:51 1 allowed, because of the Confidentiality Order, to fully
 2 respond to that. We're not allowed to point to the Lynch
 3 Report itself to rebut what's now in the public domain
 4 through Racich's Report. And this is not a tenable
 5 situation.
 6 If there is a confidentiality order from this
 7 Tribunal, it has to bind both Parties. If it doesn't bind
 8 both Parties, if it's only going to be applied unilaterally
 9 to one Party, then that is inherently prejudicial and
 10 unfair, and that's the situation in which we find
 11 ourselves.
 12 We simply need to be able to do the same thing
 13 that Ecuador has obviously taken it on itself to do without
 14 regard to your Confidentiality Order. We need to be able
 15 to respond publicly to the inquiries we're getting and to
 16 be able to respond specifically to what's in the Racich
 17 Report publicly because it's out there. And it being out
 18 there, you can't put the genie back in the box now. We
 19 simply need to be able to respond, and we can only do that
 20 with--if the Lynch Report is Released from the
 21 Confidentiality Order, and that's what we're requesting.
 22 (Tribunal conferring.)
 23 MR. BLOOM: Just one evidentiary point.
 24 If the Lynch Report were made public, there is
 25 certainly a chance that Chevron would then be able to use

09:53 1 it in a corollary proceeding because he would be their
 2 Expert. They could offer it up, and they would be--they
 3 might be able to use it. I see certainly arguments why
 4 they might not be able to use it.
 5 Ecuador is not party to any other arbitration or
 6 dispute or litigation involving this case. I don't see how
 7 the Plaintiffs could use the Racich Report. He's not their
 8 Expert. So, for us it's an issue of the use and the uses
 9 to which the respective reports could be put.
 10 Again, if you're talking about the public domain
 11 and the arguments of both sides are already in there, I
 12 think you pretty much have the level playing field. But if
 13 you're talking about the evidentiary use, which is really
 14 what I'm keeping an eye on, I think the Release of the
 15 Lynch Report raises the specter that the Claimants might be
 16 able to use it in a corollary proceeding.
 17 PRESIDENT VEEDER: Let me stop the debate there
 18 because we don't need to make a ruling immediately, but we
 19 do need to think about it together as a tribunal, and we
 20 will have more questions for you about this, I hope, later
 21 today or tomorrow. So, we will stop this particular item
 22 at this stage.
 23 And we come to the last item, which is the
 24 schedule for this Hearing. We don't need to take it
 25 through to the end, but just for the next few days,

09:54 1 starting with today, obviously, we have Mr. Leonard as the
 2 next witness, and we will have two witnesses today. We
 3 will have Mr. Guerra tomorrow.
 4 Now, has there been any more, by way of
 5 estimate--and this is simply for planning, you're not being
 6 tied--as regard when we might complete Mr. Guerra's
 7 evidence? Because on the draft schedule it looked as
 8 though we might go into Saturday with Mr. Guerra.
 9 It's really a question for the Respondents more
 10 than the Claimants.
 11 MR. BLOOM: Yeah. Yeah. And it's something that
 12 we've had a lot of conversation about.
 13 The difficulty I think we have, and especially
 14 with Mr. Guerra, is, number one, we don't know how the
 15 Spanish to English/English to Spanish will elongate the
 16 schedule. And with respect to the two experts who are
 17 going today, from my perch, we also don't know whether the
 18 Claimants will use the entire 45 minutes for their direct.
 19 My best guess is that we will have the two witnesses today,
 20 we will finish the two witnesses today. My best guess is
 21 that we will finish with Mr. Guerra Friday evening. But
 22 again, we don't know--he's the third witness, so we don't
 23 know whether these witnesses will wind up running long. We
 24 also don't know how long Claimants' redirect of Mr. Guerra
 25 may be. So, we wanted to reserve Saturday in case the

09:56 1 schedule is going longer than we anticipate, and especially
 2 not knowing how this English to Spanish and Spanish to
 3 English might be, which is the reason why we kept Saturday
 4 on the schedule.
 5 PRESIDENT VEEDER: Is it Saturday morning or the
 6 whole of Saturday?
 7 MR. BLOOM: I really seriously doubt it would be
 8 the whole day. I would think a half a day would be more
 9 than sufficient. But again, we're talking three days in
 10 advance.
 11 PRESIDENT VEEDER: Yes. Let's keep it under
 12 review day by day.
 13 Just limiting ourselves to this week, is there
 14 anything we need to know from the Claimants?
 15 MR. BISHOP: I'm going to let Mr. Coriell address
 16 that.
 17 MR. CORIELL: There's nothing--what Mr. Bloom
 18 represented was the nature of our discussions. We had
 19 agreed specifically with respect to Mr. Guerra that if he
 20 went on a Friday we would not object to completing and we
 21 would complete any examination that spilled over into
 22 Saturday. I think we will finish the two witnesses today,
 23 and we will finish Mr. Guerra by Friday evening.
 24 PRESIDENT VEEDER: But it's not proposed that we
 25 would start with Mr. Lynch on Saturday?

09:57 1 MR. CORIELL: No.
 2 PRESIDENT VEEDER: Okay. Nothing? That brings us
 3 to the end of our housekeeping.
 4 Anything we need by way of housekeeping raised by
 5 the Claimants that we haven't addressed at this stage?
 6 MR. BISHOP: No, Mr. President.
 7 PRESIDENT VEEDER: And the Respondent?
 8 MR. BLOOM: Nothing from Respondent.
 9 PRESIDENT VEEDER: Let's take a 15-minute break,
 10 and then we will start with Mr. Leonard. Thank you.
 11 (Brief recess.)
 12 ROBERT A. LEONARD, CLAIMANTS' WITNESS, CALLED
 13 PRESIDENT VEEDER: Let's resume.
 14 Mr. Leonard, I'm sorry we kept you waiting, but
 15 what you have before you is a form of wording Declaration
 16 for Expert.
 17 MR. BISHOP: I'm sorry, Mr. President, I
 18 apologize. But there is one clarification we needed to
 19 make before we go to the Witness. I apologize. I should
 20 have said that.
 21 PRESIDENT VEEDER: Scratch that. Let's proceed.
 22 MR. BISHOP: Mr. Coriell has one quick
 23 clarification.
 24 MR. CORIELL: It's quick. I just didn't want to
 25 leave the wrong impression. If we go early and finish with

10:12 1 the two expert witnesses earlier than anticipated this
 2 afternoon, we'd be willing, and I think Respondent would be
 3 willing to start with Mr. Guerra today, so that examination
 4 could at least potentially begin today, in which case we
 5 could even potentially begin Mr. Lynch on Friday. So, I
 6 just didn't--there is no sort of--we didn't have a firm
 7 agreement that we would stop early on any certain day, and
 8 we might be able to move more quickly.
 9 PRESIDENT VEEDER: That's agreeable to the
 10 Respondent?
 11 MR. BLOOM: Yeah, it is. It's something we talked
 12 about. Again, you have three scenarios, kind of what do we
 13 kind of expect to happen, what happens if it moves a little
 14 faster than expected, what happens if it moves a little
 15 slower than expected, and my experience is it's usually the
 16 latter, but we'll see.
 17 PRESIDENT VEEDER: Thank you for that.
 18 Let's start again.
 19 Mr. Leonard, you have the Declaration for an
 20 expert before you, and if you're willing to make the
 21 Declaration, we'd ask you to give your full name and then
 22 to read the words on the piece of paper before you.
 23 THE WITNESS: Very well. I'm Robert A. Leonard.
 24 I solemnly declare upon my honor and conscience
 25 that I shall speak the truth, the whole truth, and nothing

10:13 1 but the truth, and that my statement be in accordance with
 2 my sincere belief.
 3 PRESIDENT VEEDER: Thank you very much.
 4 There will first be questions from the Claimants.
 5 MR. BISHOP: Thank you, Mr. Chairman.
 6 DIRECT EXAMINATION
 7 BY MR. BISHOP:
 8 Q. Dr. Leonard, you should have before you a notebook
 9 or a binder with three of your expert reports that are of
 10 record in this case. They are Tabs 1, 11 and 12 of that
 11 notebook.
 12 Do you have any corrections that you wish to make
 13 to those reports?
 14 A. No.
 15 Q. Do you affirm that the opinions in those reports
 16 represent your sincere and genuine beliefs?
 17 A. I do.
 18 Q. Now, am I correct your expertise is in linguistics
 19 and forensic linguistics?
 20 A. That's correct.
 21 Q. Have you been accepted by courts as a qualified
 22 Expert to testify about linguistics before?
 23 A. Yes, my testimony has been accepted in five
 24 Federal District Courts under Daubert and under both
 25 Daubert and Frye in state courts in 12 different U.S.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 A. Would you repeat that?

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

23 A. No.

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

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

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

12 A. Yes.

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

14 A. Yes.

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

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

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

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

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

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

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

7 A. That's correct.

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

15 A. That is an accurate quote.

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

19 A. That's correct.

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

22 A. Yes.

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

25 A. Yes.

11:17 1 this Witness.

2 BY MR. BLOOM:

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

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

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

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

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

16 Q. Well--

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

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

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

24 BY MR. BLOOM:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 A. I did.

19 Q. What did you do?

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

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

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

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

01:48 1 Report.

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

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

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

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

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

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

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

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

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

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

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

10 A. I did.

11 Q. What did you do?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

03:12 1 A. Actually, I didn't think I said it was going to be
 2 a little bit greater. I think I just said greater.
 3 Q. Okay. And I will represent to the Tribunal, and
 4 to you, I personally find it easier when I do this to take
 5 these out, but defer to you however best you want to do it.
 6 So, these four lines, if you go to the
 7 fourth paragraph of Tab 2, the last few words are "perforo
 8 y contruyo el mejor numero de," and those are the last
 9 words on Line 4 of Tab 1 on that same paragraph that are
 10 readable, and then you would agree with me that the
 11 entirety of the next five lines are erased?
 12 A. I would.
 13 Q. I'm sorry?
 14 A. I would agree with that.
 15 Q. And because they were erased, they were entirely
 16 unsearchable through the OCR review; correct?
 17 A. What do you mean by the OCR review?
 18 Q. You would not have been able to find the word
 19 strings or the sentences that are in the fourth paragraph
 20 of Tab 1 on the fifth through ninth lines in the OCR
 21 version?
 22 A. I would not have. On the other hand, this is also
 23 a relatively small section of the document. If we were
 24 dealing with the passage, for example, from Leonard's
 25 Example 1, which is 90 words long or Leonard's Example 2,

03:10 1 manually reviewed?
 2 A. If you want to simply represent it to me that it
 3 is, I will accept that representation.
 4 Q. That is my representation, but never accept a
 5 lawyer's word for it.
 6 It's also Tab 65 in the same binder, if that's
 7 easier for you. Right? The very last tab.
 8 And the Cuerpo and page number are on the screen.
 9 A. The issue is, is this the initial page of the
 10 document?
 11 Q. Is this document--was this document manually
 12 reviewed by you or someone under your supervision?
 13 A. Is this the initial page of the document?
 14 Q. Yes, it is.
 15 A. Is this document, in fact, 92442?
 16 Q. Yes.
 17 A. And not a subset of 92440?
 18 Q. Yes. This is the first page.
 19 A. This was not on my list of manual review.
 20 Q. Okay. Now, given the darkness, you said that the
 21 error rate of these four or five lines is likely to be a
 22 little bit greater than the first four lines; correct?
 23 A. That is correct.
 24 Q. Okay. Now, sir, if I could have you turn to
 25 Tab 2--

03:13 1 which is 150 words long, a minor localized issue like this
 2 would not have prevented us from finding it.
 3 Q. Can you tell me how many character errors there
 4 are on these five lines, even approximately?
 5 A. Approximately? 200.
 6 Q. So, you're assuming fewer than 40 characters on a
 7 line?
 8 A. Hmm?
 9 Q. You were assuming fewer than 40 characters and
 10 spaces on a line?
 11 A. Well, there's four complete lines, so I'm assuming
 12 about 50 to 60 characters in a line and an incomplete fifth
 13 line.
 14 Q. And then if you could walk up on Tab 2 to the
 15 first paragraph, do you see how Maria Aguinda came out?
 16 The "A" looks like a one and a back slash?
 17 A. That is correct.
 18 Q. If you look at the second paragraph, the word
 19 sitios--S-I-T-I-O-S--comes out S-I-T-L-O-S; correct?
 20 A. Correct.
 21 Q. The next paragraph, the time, 17H55, comes across
 22 as 171-155; is that correct?
 23 A. That is correct.
 24 Q. If you could turn with me to Tab 3, which again
 25 comes from your hard drive R-1545, and this is

03:15 1 CL1338-0123454, which correlates to a document that the
 2 Claimants put into the Record at C-189.
 3 Now, sir, with respect to the very first paragraph
 4 after the caption, the paragraph beginning "Pablo Fajardo
 5 Mendoza," approximately how many errors do you believe the
 6 OCR copy will reflect? Simply on that first line?
 7 A. Simply on that first line? 30 to 40.
 8 Q. Well, again, I'm going to take this out because
 9 we're going to be spending a lot of time on this document,
 10 or some time.
 11 If I can ask you to turn to Tab 4 which is the OCR
 12 version that came from your hard drive, you will first see
 13 that there is what looks like a quotation mark after Pablo
 14 Fajardo Mendoza's name.
 15 Do you see that?
 16 A. I do.
 17 Q. And that really should not be there; correct?
 18 A. As I said, punctuation marks are fragile.
 19 Q. And you see on the very first line, after Pablo
 20 Fajardo Mendoza's name, that there are words entirely
 21 missing from the OCR text. The original begins
 22 "Procurador," and then there are one, two, three, four,
 23 five, six, seven or eight words that are missing?
 24 A. That is correct.
 25 Q. None of the letters of any of those words are

03:18 1 there; correct?
 2 A. That is correct.
 3 Q. Do you know why that is?
 4 A. Again, it looks like we have a certain degree of
 5 salt-and-pepper noise on the image.
 6 Q. What do you mean by "salt-and-pepper noise?"
 7 That's what people used to call my hair, and now it's just
 8 white, but...
 9 A. I sympathize, sir.
 10 (Laughter.)
 11 A. I mean the little dots. It looks like somebody
 12 put a whole bunch of very small dots approximately one
 13 pixel in size.
 14 Q. Then if you turn back to the original document at
 15 Tab 3, you will see at the very top of the document "Señor
 16 Presidente" is this caption. It's in bold.
 17 Do you see that?
 18 A. I do.
 19 Q. And if you turn to and compare that to Tab 4,
 20 again you've got words entirely missing, do you not?
 21 "Justicia de nueva" are entirely missing.
 22 A. That is correct.
 23 Q. You also have what I'm referring to as the heading
 24 or the caption transposed with the first substantive
 25 paragraph of Tab 3.

03:19 1 Do you see that too?
 2 A. I'm sorry, I didn't understand.
 3 Q. The first document, meaning Tab 3, begins: "Señor
 4 Presidente."
 5 Oh, I'm sorry. I'm reading it incorrectly. My
 6 error, not yours.
 7 Let's take a look at the first page of Tab 3, the
 8 penultimate paragraph beginning with "considerando."
 9 A. Okay.
 10 Q. And let me ask you to match that up with that same
 11 paragraph in Tab 5. The they both begin "considerando que
 12 para la evacuación de," and then can you read the rest of
 13 that paragraph for me in Tab 4.
 14 And we do have the OCR version of this paragraph
 15 on the screen, if that's any help.
 16 A. "Considerando de para la evacuación," and at that
 17 point it turns into a localized high error rate related to
 18 additional salt-and-pepper noise on this particular page.
 19 Q. So, most of that paragraph is, in fact,
 20 unreadable; correct?
 21 A. Most of that specific paragraph is unreadable,
 22 although it comes back--you can see, you get "participación
 23 de un Perito; y," and so, basically anything that appeared
 24 on the left side of the page is fine, anything that
 25 appeared on the right side of the page is obscured by

03:21 1 salt-and-pepper noise, which, again, is an argument in
 2 favor of use of the N-grams because we will pick up, for
 3 example, "participación de un Perito; y" as a match and
 4 then can investigate further.
 5 Q. But you won't be able to pick up anything that's
 6 not there; correct?
 7 A. True, but when we're dealing with--when we're
 8 dealing with passages such as Leonard's Example 2, which is
 9 150 words long, we can find the bits of it that are not
 10 obscured, which is the reason for doing the lowered N-grams
 11 in the first place.
 12 Q. And if the passage at issue does not use the last
 13 several words that are there, you would not be able to find
 14 the relevant passage?
 15 A. If the passage at issue does not use any of the
 16 words because we're looking for every 5-gram in that, so
 17 you would need to wipe out an entire 150-word passage,
 18 which you can see in this is not typically what
 19 happens--what's happened. Even in a case where there are
 20 localized errors, they are localized errors, and you get
 21 some degree of readability, which can be--which can be
 22 zeroed in on by the use of the N-grams. That's basically
 23 why we did the N-gram approach in the first place, because
 24 we knew we were looking for long passages that would be
 25 unlikely to be masked by localized noise.

03:22 1 Q. Let me ask you to turn to Tab 5, and let's begin
 2 with what I call the caption, Señor Presidente--and I would
 3 suggest for this again taking it out if it's easier for
 4 you, but we're going to be going back and forth a lot with
 5 this one, so, again, whatever is your pleasure, Doctor.
 6 So, here, if you're looking at the caption, Señor
 7 Presidente, am I correct again that there are missing
 8 words?
 9 A. That is correct.
 10 Q. What words do you see that are missing?
 11 A. Well, I can't vouch for the validity of "señor,"
 12 because there is a binding hole, but "superior" has a
 13 missing space before it, and the "I" has become an
 14 exclamation point, and then "justicia de" has been lost in
 15 a combination of the salt-and-pepper noise and possibly the
 16 handwriting.
 17 Q. And then if you look at the next paragraph of the
 18 original, beginning with "Dr. Adolfo Callejas Ribadeneira,"
 19 you will also see words missing entirely, do you not?
 20 A. That is correct.
 21 Q. And what words are missing?
 22 A. "Callejas" appears to be misspelled, and again the
 23 words covered by the salt-and-pepper noise did not come
 24 through.
 25 Q. How many words are missing here?

03:24 1 A. It looks like four words on the first line.
 2 Q. Anything on the second?
 3 A. Looks like seven.
 4 Q. And here the caption that begins "Señor
 5 Presidente" actually has been transposed with the first
 6 substantive paragraph beginning with Dr. Callejas' name?
 7 A. That is correct.
 8 Q. Out of curiosity, why did that happen?
 9 A. I'm not sure. Possibly it has to do with the
 10 handwritten annotation in the upper right corner.
 11 Documents are usually segmented prior to
 12 processing, and so because of the way this segmentation
 13 works and the degree to which the initials drop down, the
 14 computer might have believed that these were actually two
 15 side by side paragraphs instead of one above another, and
 16 arranged them--and arranged the output as appropriate. You
 17 can--this would be the correct thing to do, for example, in
 18 a document in a columnar format where you had Column 1 and
 19 Column 2 that should be processed separately instead of
 20 reading the lines across.
 21 Q. Now, if I can refer you to the next paragraph
 22 beginning "me refiero." Do you see that in the original?
 23 A. Just a second.
 24 Q. Certainly.
 25 A. Beginning "me refiero." Yes.

03:26 1 Q. The third paragraph, "me refiero a su."
 2 A. Um-hmm.
 3 Q. And if you take that to the very end of the line
 4 and disregarding any errors there, it's the next paragraph.
 5 Can you match that up with the OCR version?
 6 A. There is a section in the middle where it says (in
 7 Spanish), and so there is actually--there is actually a
 8 substantial section that emerges from the noise. So,
 9 again, this is an example of a localized error that
 10 wouldn't mask as many as 150 words.
 11 Q. And there are also a lot of missing words, are
 12 there not?
 13 A. There are a lot of missing words in this case,
 14 depending on what you consider "a lot" to be, there are
 15 certainly missing words.
 16 Q. There are more missing words than accurate words
 17 in the OCR version as to this paragraph; correct?
 18 A. As to this paragraph, I would have to count. It
 19 looks about the same to me.
 20 Q. Okay. And then if you continue on in this page,
 21 it begins with, after that indented quote, it says, "al
 22 respecto manifiesto."
 23 Do you see that? Or "manifiesto?"
 24 A. I do.
 25 Q. And then there is a Number 1, and then a Roman

03:27 1 numeral II?
 2 A. Yes.
 3 Q. And how did the Roman numeral two indented
 4 paragraph come out? Do we have a number of missing words
 5 and mistakes in this paragraph as well? Yeah, it's on the
 6 screen, if that would help.
 7 A. No, I can't agree with that characterization. I
 8 don't think there are that many missing words.
 9 Q. Okay. Let me ask you another question, sir. You
 10 see the seal on the bottom right-hand corner, do you not?
 11 A. I do.
 12 Q. Now, you said earlier, and I read your language,
 13 you said that all the documents from the Court Record have
 14 the seal; correct? That's in your Report.
 15 A. That is in my Report.
 16 Q. And did you see a number of the documents that did
 17 not have the seal?
 18 A. I did not notice any documents in the course of my
 19 manual review that did not have the seal.
 20 Q. Were you looking for that?
 21 A. I was not.
 22 Q. How does the seal affect the OCR process?
 23 A. It's another example of the sort of localized
 24 noise that will cause localized errors in the OCR.
 25 Q. Let me ask you to turn to the fourth side of this

03:29 1 page; and, at the top, the page number ends in 968.
 2 A. Yes, I see it.
 3 Q. Can you tell us what that correlates to in the OCR
 4 version?
 5 A. The 968?
 6 Q. Yes. I'm sorry.
 7 If you turn to that page, turn to Number 7,
 8 beginning with "otros antecedentes a los que."
 9 A. If you will give me a moment.
 10 There appears to be with a section beginning with
 11 a one and a comma and the phrase "otros antecedentes a
 12 los."
 13 Q. And I'm looking for the one and the comma. Can
 14 you be a little more specific where we can find this?
 15 A. This would be the fourth side, about a third of
 16 the way down the page, immediately--in the seventh
 17 paragraph.
 18 Q. And can you go ahead and read the language under
 19 that. Under Number 1.
 20 A. "La parte," probably "pertinente del escrito
 21 presentado por la parte actora el 29 de Octubre del 2003 a
 22 las 171145 que," probably "textualmente dice."
 23 Quote--and at this point the original goes into an
 24 unusual script which is slightly more difficult to read,
 25 but you can see that it's pulling out some--

03:31 1 Q. And on the original document, sir--
 2 A. Um-hmm.
 3 Q. You will see under seven, little two, there are
 4 underlined words. It goes on for about five lines.
 5 Do you see that?
 6 A. I do.
 7 Q. Beginning with an "esta"?
 8 A. Yes, I see that.
 9 Q. Can you match that up to anything in the OCR
 10 version?
 11 A. Give me a moment, please.
 12 (Pause.)
 13 PRESIDENT VEEDER: Mr. Bloom, we do need a break.
 14 If this is a convenient time?
 15 MR. BLOOM: Why don't we just finish this
 16 document.
 17 PRESIDENT VEEDER: Up to you. Finish the
 18 document, and we will have a 15-minute break.
 19 MR. BLOOM: Okay. Thank you.
 20 THE WITNESS: There is some--what looks like OCR
 21 errors between the phrase "peritos" and "Director del
 22 Instituto," where there is actually substantial structure
 23 in the noise. It is not what I would considered
 24 gobbledygook, but I will certainly acknowledge that it's
 25 not textbook Spanish, either.

03:33 1 Q. Let's turn back--well, actually, you know what?
 2 Let's take a break now.
 3 PRESIDENT VEEDER: Let's do that.
 4 MR. BLOOM: And then I will finish up. Thank you.
 5 PRESIDENT VEEDER: Yes. You were about to say
 6 something.
 7 MS. MOUAWAD: I just wanted to ask whether we
 8 could get a sense of how much longer we will be going after
 9 the break, or you can tell us after the break.
 10 MR. BLOOM: I'm guessing about an hour 15.
 11 MS. MOUAWAD: Okay.
 12 MR. BLOOM: It might be less.
 13 PRESIDENT VEEDER: We'll come back at ten to 5:00.
 14 I'm sorry, that's a bit of a long break. Ten to 4:00.
 15 (Brief recess.)
 16 PRESIDENT VEEDER: Let's resume.
 17 We have more questions from the Respondent.
 18 BY MR. BLOOM:
 19 Q. Dr. Juola, if you can stick with the same
 20 document, and you can look at either Tab 5 or 6, maybe we
 21 will begin with Tab 5, and on the second page that is the
 22 back of the first page, you will see a Number 2 beginning
 23 with "esto."
 24 Do you see that? Or "esta."
 25 A. I do see that.

03:51 1 Q. And under that we have--we have a quote,
 2 "Presidencia de la Corte."
 3 Do you see that?
 4 A. I do.
 5 Q. And the first couple of lines are kind of there,
 6 but then we have a lot more difficulty in the OCR version
 7 at Tab 6.
 8 Would you agree with me?
 9 A. I agree.
 10 Q. It's a high error rate for this quote; correct?
 11 A. For this quote, yes.
 12 Sorry, can you hear me?
 13 I apologize, I have a lot of papers in front of
 14 me.
 15 Q. And then if I can ask you to turn to the fifth
 16 page where there are Paragraph Numbers 8, 9, and 10, and if
 17 you look at the last two lines and compare them to the OCR
 18 version, you're going to have a most difficult time
 19 comparing them to the OCR version. In fact, can you tell
 20 us where we can find it in the OCR version?
 21 A. No, it's not there at all.
 22 Q. It's not there at all. And then if you turn to
 23 the next page, the back of that page, Page--it's the sixth
 24 side, Paragraph 12, and you will see towards the bottom of
 25 the page, it seems to get a little darker for about the

03:53 1 last eight lines or so.
 2 Can you direct our attention to where it is in the
 3 OCR version?
 4 A. Give me a moment, please.
 5 Q. Certainly.
 6 A. The last three lines did you say?
 7 Q. No, I'd say about one, two, three, four, five,
 8 six--the last seven lines of Paragraph 12 seem to be
 9 slightly darker than the first number of lines in
 10 Paragraph 12, beginning with I believe, "aprobo,"
 11 A-P-R-O-B-O.
 12 Do you see that?
 13 A. I do.
 14 Q. And if you turn to the sixth page or side of
 15 Tab 6, you'll see Paragraph 13, so this language, these
 16 last seven lines ought to be there.
 17 Do you find them there at all?
 18 A. I do not.
 19 Q. So, just to be clear, the entirety of all seven
 20 lines are missing from the OCR version; correct?
 21 A. Yes, this appears to be another example of a
 22 localized OCR error.
 23 Q. Let me ask you to turn to the penultimate page of
 24 the original "petición C."
 25 Do you see that?

03:55 1 A. I do see "petición C."
 2 Q. Okay. And then I'm going to ask you to turn to
 3 the OCR version on the last page. Again, you'll see
 4 "petición C."
 5 A. I do.
 6 Q. And you'll see at the bottom of the--well, you'll
 7 see the last couple of words of the second line; it says,
 8 "en la que." This is on the OCR version, second line.
 9 A. It's, I'm sorry, on the OCR version, yes, "en la
 10 que," on the second line.
 11 Q. Okay. And then it tries to pick it up after some
 12 spurious notations; correct?
 13 A. Yes.
 14 Q. But there is a healthy error rate on this line
 15 too; correct?
 16 A. Yes, there is, there is an elevated error rate.
 17 Q. And then as we go through this paragraph we begin
 18 to lose not only characters, but words and lines; isn't
 19 that correct?
 20 A. That is correct. This is another example of
 21 isolated OCR error due to salt-and-pepper noise. I think
 22 Payton may have called that "speckling" in his Report.
 23 Q. I'll represent to you that this document was not
 24 hand-reviewed by you, but again I want to give you the
 25 opportunity to please double-check, if you would like.

03:56 1 A. It was not. On the other hand, it actually does
 2 not appear to be the sort of document that would have
 3 required it because the N-grams would have picked up
 4 snippets from the relevant sections.
 5 Q. Well, we're going to get to that a little bit
 6 later, again, as to how you chose what should be reviewed,
 7 so trust me, sir, we will certainly get to that.
 8 If we could turn to the next tab, Tab 8. And
 9 Tab 7. Tab 7 is the original, Tab 8 is the OCR version.
 10 You would agree that, on the first page, you have
 11 "señor" incorrectly spelled in the OCR version?
 12 A. That is correct.
 13 Q. And Justicia de Nueva Loja has some problems
 14 presumably because there is a line through the V and the A
 15 of Nueva; am I correct?
 16 A. And the initials immediately above.
 17 Q. And at the bottom of the page you will agree with
 18 me that this Court Seal adversely affected the OCR which is
 19 at the bottom of the first page of the OCR version, Tab 8.
 20 A. Yes, I agree.
 21 Q. You'll see a lot of spurious marks and a high
 22 error rate on those lines where the--where the Court Seal
 23 is; correct?
 24 A. That is correct.
 25 Q. Okay. Now, we're going to turn to Numbers 9 and

03:58 1 10, and this will be just be very quick. I just want you
 2 to confirm for me the existence of the Court Seal at the
 3 bottom right-hand side of Tab 9?
 4 A. I'm sorry, you asked me to confirm the existence
 5 of the Court Seal at the bottom right-hand of Tab 9?
 6 Q. Correct.
 7 A. Yes, it is there.
 8 Q. And what was the effect of the OCR version?
 9 A. I'm sorry, did you say the effect of the OCR
 10 version?
 11 Q. But now I'll correct it.
 12 (Laughter.)
 13 Q. What is the effect of the Court Seal on the OCR
 14 version?
 15 A. It produces a localized error--set of localized
 16 errors.
 17 Q. There is also an extraneous line perhaps initials
 18 on the lower left, and would that have any effect on the
 19 OCR version?
 20 A. It's not clear whether that had an effect or not.
 21 The letter "E" in "estas" has disappeared, which might be
 22 an effect.
 23 Q. How about the word above "estas"?
 24 A. Yes, it appears to have knocked out everything
 25 except the "O" in the word above the "estas."

04:00 1 Q. Let's turn to Tabs 11 and 12.
 2 MR. BLOOM: For the record, that's CL0847-0093031,
 3 which corresponds to our R-479, and this is a multi-page
 4 document.
 5 I'm not going to ask you about the first page,
 6 back or front of Tab 11. I do, however, have a few
 7 questions about the next page, which, in the original,
 8 begins "informe que presente el Señor Mayo."
 9 BY MR. BLOOM:
 10 Q. Do you see that in the original?
 11 A. I do. I do.
 12 Q. Can you tell me how that four-line heading comes
 13 out in the OCR version?
 14 A. It does not appear to be there.
 15 Q. Okay. Now, do you see the first "antecedentes"?
 16 A. I do.
 17 Q. And you see something that resembles that, do you
 18 not?
 19 A. I do.
 20 Q. What about Desarrollo? Do you see that word?
 21 A. I see something very close to that word.
 22 Q. And then what about for the rest of that page?
 23 Are you able to match up the words or the sentences or the
 24 paragraphs?
 25 A. There are some phrases that I believe I can match

04:03 1 up.
 2 Q. Well, there are 35 to 40 lines on the original
 3 under that heading.
 4 Do you see that?
 5 A. I do.
 6 Q. And it carries over onto the next page, so there
 7 are a total of about 45 lines, and now that's been
 8 remarkably reduced to about a dozen lines; correct?
 9 A. That is correct.
 10 Q. So, there are an awful lot of words missing in
 11 their entirety in this OCR version; correct?
 12 A. That is correct.
 13 Q. And sentences that are missing entirely; correct?
 14 A. That is correct.
 15 Q. And then if you continue in the original, you will
 16 see a section called "reservado." I'm able to say that
 17 word. Kind of.
 18 A. Yes, I see that.
 19 Q. I see in the OCR version towards the bottom of the
 20 third page the word, "reservado."
 21 Do you see that?
 22 A. Yes.
 23 Q. In the original, there are about 20 to 25 lines.
 24 Do you see that?
 25 A. That is correct.

04:04 1 Q. And it's all missing, isn't it?
 2 A. It is.
 3 Q. Approximately how many words do you estimate are
 4 missing here?
 5 A. Let's see. That's single-spaced, but it's got
 6 extremely wide margins.
 7 At a guess, 300.
 8 Q. As a matter of fact, in the OCR version you see
 9 "reservado" followed by what word?
 10 A. Two words?
 11 Q. The word after "reservado" is identified in the
 12 OCR version. Can you tell me what word follows.
 13 A. There was a word immediately after it which begins
 14 with a 15 and a period.
 15 Q. Okay.
 16 A. And then immediately after that, there is another
 17 word.
 18 Q. And then in the original--can you tell me what
 19 that word is?
 20 A. My bet is that it is "recomendación."
 21 Q. And in the original, how many sentences should
 22 have been in between the title of "reservado" and the
 23 recommendation?
 24 A. Probably about 4 or 5 hundred.
 25 Q. And that's all missing?

04:06 1 A. Was that a question?
 2 Q. Yes.
 3 A. Yes, it's all missing.
 4 Q. We're going to skip a couple so we could move this
 5 examination along, so if I could ask you to turn to Tab 15,
 6 and Tab 15 correlates to our document that the Claimants
 7 put into the record as C-664--I'm sorry, 644.
 8 And if you look at the original--I guess the first
 9 question is, do you see a Court Seal on this first page?
 10 A. I see some lines, but not a Court Seal.
 11 Q. How about the second page?
 12 A. No.
 13 Q. And the third page?
 14 A. No.
 15 Q. And the fourth page?
 16 A. No.
 17 Q. And the fifth page?
 18 A. Yes.
 19 Q. And in this instance it's not a little Court Seal,
 20 is it?
 21 A. I have actually two copies--two Court Seals.
 22 Q. Fair enough.
 23 The little Court Seal at the bottom right-hand
 24 side of the page cuts through, in part, three lines;
 25 correct?

04:08 1 A. Possibly a fourth.
 2 Q. And the big seal cuts through approximately how
 3 many lines?
 4 A. About 25.
 5 Q. And the big seal has what looks like words around
 6 it; correct?
 7 A. That is correct.
 8 Q. And it also looks like it has a picture in the
 9 middle. Can you make that out?
 10 A. I can--I can see the picture.
 11 Q. Would you agree with me that the picture and the
 12 lines and the seal and the words all have an adverse effect
 13 on the readability in the normal course in during the--of
 14 the OCR version?
 15 A. I would.
 16 Q. Now, the first page of this document, at least to
 17 me, to the naked eye to someone who might be a little bit
 18 less familiar with the page looks pretty readable. What
 19 about to your eyes?
 20 A. There is a higher level than I would have expected
 21 of individual character errors, but most of the words seem
 22 to be recoverable.
 23 Q. How high of an error rate do you think we have
 24 here in terms of character errors?
 25 A. At a guess, that would be somewhere--in this

04:12 1 Court Seal is somewhere on that first page, although it's
 2 not as dark as the one we saw previously?
 3 A. It is extremely faint, and it has mostly
 4 degenerated into intermittent speckling.
 5 Q. By the way, do you know why it would have
 6 degenerated? Would that be because it's multiple copies?
 7 Would it be because the seal when it was placed may have
 8 not been pressed hard enough?
 9 A. I don't know why.
 10 Q. Do you believe that even these extraneous lines
 11 might have an effect on the OCR version?
 12 A. It's possible, yes.
 13 Q. Then if you turn to the second page, you don't see
 14 the little Court Seal there at all, do you?
 15 A. I do not.
 16 Q. And then if you turn to the next page, you do see
 17 the Court Seal?
 18 A. I do.
 19 Q. If you turn to the next page, there is no Court
 20 Seal again?
 21 A. That is correct.
 22 Q. And then if I ask you turn to Tab 18, which is the
 23 OCR version, would you characterize this as a high-quality
 24 OCR version of the document?
 25 A. I would not.

04:10 1 particular paragraph? Around 10 percent.
 2 Q. In this particular paragraph, it seems like in
 3 Ecuador they write in just one paragraph, so I'm not sure
 4 what you're referring to?
 5 A. I'm sorry, on this particular page.
 6 Q. I see.
 7 A. Okay. This particular section to which you drew
 8 my attention. This document appears to be one huge
 9 paragraph, I agree.
 10 Q. Can you just tell me how you estimated your
 11 10 percent?
 12 A. Looked at some words and kind of counted the
 13 number of changes, probably closer to 20 percent on further
 14 inspection because there is--I'm not sure how the spaces
 15 were processed. Most of the short words appeared to have
 16 passed through fine, but the longer words.
 17 We get typically one or two in an eight or nine
 18 word thing.
 19 Q. Sir, if you could take a look at Page 17. And
 20 this correlates to R-538, the CL number is 1495-0159416.
 21 First question is, you see the Court Seal at the
 22 bottom right-hand corner?
 23 A. One moment, please.
 24 Okay. Yes, I do.
 25 Q. Can you tell that it looks like the great big

04:13 1 Q. Would you care to estimate the error rate here?
 2 A. This is probably closer to 40 percent.
 3 Q. In fact, the OCR version is about two and a half
 4 pages, is it not?
 5 A. Two and a half double pages, five page sides.
 6 Q. When you referred to error rate right now, are you
 7 referring or including text that's missing entirely?
 8 A. No, I was not.
 9 Q. So, when you were referring to error rate, you
 10 were referring to the characters that are mistaken from one
 11 version to the next; correct?
 12 A. That is correct, in the estimates I just gave you.
 13 Q. And then in addition to that, we have missing
 14 words; is that correct?
 15 A. Can you show me some missing words in this
 16 example?
 17 Q. I suspect we could have some fun with this.
 18 Well, I think the low-hanging fruit here would be
 19 certainly--
 20 (Cellphone rings.)
 21 Q. Do you see on the very first line in the original
 22 the month of November is there in Spanish?
 23 A. I do.
 24 Q. Do you see that in the OCR version?
 25 A. I do not see it in the form of the word

04:15 1 "November," but I believe that, in fact, the section that
 2 says tilde, tilde, EMP, tilde, comma, comma, comma, D is
 3 actually the word November.
 4 Q. Would that be an N-gram?
 5 A. Depending on context, it could be, although it
 6 would be a character N-gram, not a word N-gram.
 7 Q. Is that an N-gram that was used here?
 8 A. Hmm?
 9 Q. Was that an N-gram used here?
 10 A. I'm not understanding the question.
 11 Q. Was that N-gram specifically searched for?
 12 A. That was not part of anything for which I
 13 searched.
 14 Q. And I'm not going through the OCR version, but
 15 would you agree with me that the words in the bottom
 16 right-hand part of the first page are likely absent in
 17 their entirety, if for no other reason because of the Court
 18 Seal?
 19 A. I don't think I can agree with that without
 20 looking at this document further.
 21 Q. Let's turn to 19 and 20, sir, and Tab 19 again
 22 comes from your hard drive identified as CL1587. That is
 23 from Cuerpo 1587-0168517. This is a document that the
 24 Respondent had put into the Record as R-689.
 25 And, sir, on the first page again you see this

04:17 1 great big seal, do you not?
 2 A. I'm sorry, did you say Tabs 19 and 20?
 3 Q. Yes, sir.
 4 A. Yes, I do.
 5 Q. And this is a little darker than the faded one we
 6 saw a few moments ago; correct?
 7 A. It is.
 8 Q. Can you tell us by looking at the OCR version at
 9 Tab 20 what the effect was of this Seal?
 10 A. It introduced a lot of errors.
 11 Q. And even above the Seal, it's very difficult to
 12 make out some of the words.
 13 Can you explain that for me, because again this
 14 looks like to the naked eye as someone who doesn't do this,
 15 this looks like a very readable copy?
 16 A. Actually, there is still a fair amount of
 17 salt-and-pepper noise on this one.
 18 If you'll look, a lot of the individual characters
 19 look like they have been badly scanned through a dot
 20 matrix, and there are little white flecks in a lot of the
 21 characters.
 22 Q. You're raising something I'm just curious about as
 23 someone who doesn't do this. Is this based on scanning or
 24 is it based on the quality of the document?
 25 Let me rephrase that because you look confused as

04:19 1 to what I'm asking.
 2 The OCR version is not very readable to somebody
 3 like me, and my question to you is, are all of the spurious
 4 characters on the OCR version due to, for example, the
 5 darkness of the original or could it be due to some kind of
 6 scanning error?
 7 A. Scanners are in general fairly reliable. They're
 8 essentially cameras, so if you imagine taking--getting a
 9 digital camera and taking a picture, it is rare that the
 10 camera does not faithfully reproduce what you see.
 11 Q. But if you take a picture of a picture of a
 12 picture of a picture and you're talking fifth or sixth
 13 generation, that would start affecting the quality?
 14 A. That would have an effect on the quality.
 15 Q. So, you don't believe it's a scanning issue. You
 16 believe it's an issue of the document itself?
 17 A. It could be an issue of the document itself. It
 18 could also be an image of how the document was processed
 19 electronically prior to being entered into the paper
 20 record. There are a number of potential sources for how
 21 this document could have gotten the way it did. It could
 22 also simply have been printed on a bad--old model printer
 23 that did not print very well.
 24 Q. And again, you had nothing to do with this
 25 scanning; correct?

04:21 1 A. I had nothing to do with the scanning.
 2 Q. Or the printing?
 3 A. Or the printing.
 4 Q. And what would you estimate the error rate is on
 5 this first page?
 6 A. I couldn't really come up with an estimate off the
 7 top of my head. I would need to sit and count.
 8 Q. But would you agree that putting the quality of
 9 the document aside, the presence of these two Court Seals
 10 would cause a number of words to be missing in their
 11 entirety?
 12 A. That is possible.
 13 Q. And even putting aside the Court Seal, if you were
 14 to look at second line, which again to the naked eye looks
 15 pretty good, after "Nueva Loja," which I'm not even sure
 16 that's there, do you see the rest of the line?
 17 A. Um-hmm, I do.
 18 Q. Where do you see it? Where is the version?
 19 A. No, I'm sorry. I misunderstood your question. I
 20 thought you were drawing my attention to a certain section
 21 of the--
 22 Q. I think you interpreted my question as the
 23 original document. So, let me ask it again so the Record
 24 is clear.
 25 On the second line of the original document, it

04:22 1 begins with the words "Nuevo Loja."
 2 Am I correct that every word on the rest of that
 3 line is missing?
 4 A. It's not clear whether the words are missing or
 5 masked by a high degree of noise.
 6 Q. How does it come out on the OCR version?
 7 A. It comes out as a collection of apparently random
 8 characters.
 9 Q. Can you tell us what those characters are for that
 10 one line?
 11 A. Yes. There is the word "Nueva," the letter--lower
 12 case "R," a capital "O," a capital "U" with an acute
 13 accent, a back slash, a--what looks like an em-dash, a
 14 tilde, a closing square bracket, the letter "Q," an upside
 15 down exclamation point, another em-dash, a keyboard
 16 apostrophe, and octothorp, the letter "I," another keyboard
 17 apostrophe, the letter "O"--
 18 Q. I think we can stop there. Thank you, Doctor.
 19 If you turn to the back of that page, there is no
 20 Court Seal there at all; correct?
 21 A. I see no Court Seal.
 22 Q. And then on the final page, again, you see the big
 23 Court Seal?
 24 A. I do.
 25 Q. And on the second page there is not a big Court

04:25 1 Q. Next page you have no Seal, big or little?
 2 A. That is correct.
 3 Q. Next page they make up for it and give you both
 4 the big and little Seal; correct?
 5 A. Correct.
 6 Q. Now, without even looking at the OCR version,
 7 unless it's too late, do you want to hazard a guess as to
 8 how reliable the OCR process was here?
 9 A. Not--again, we have a lot of speckling or
 10 salt-and-pepper noise, and, of course, the Seals to which
 11 you drew my attention, so it could be acceptable or it
 12 could be bad.
 13 Q. Sir, if you could look at Tab 22, and you can't
 14 compare the original with this OCR version, can you?
 15 A. It looks like it extracted a total of seven words
 16 from the document.
 17 Q. So, we essentially have a blank page; correct?
 18 A. Yes.
 19 Q. Would you tell us what the error rate in your view
 20 would be here?
 21 A. Nearly 100 percent.
 22 Q. Well, you said a few moments ago that you didn't
 23 focus on missing words, missing sentences?
 24 A. I'm sorry, you asked me for an estimate of the
 25 error rate in those specific passages. For the reports

04:24 1 Seal or a little Seal.
 2 A. That is correct.
 3 Q. Okay, so, let's now turn to--we're going to go to
 4 21 and 22. This is CL1760-0185866, which correlates to a
 5 document the Respondent put into this record as R-1489.
 6 Sir, again, do you see that great big Seal on the
 7 first page of the document?
 8 A. I do.
 9 Q. And can you remind the Tribunal what the effects
 10 could be on the OCR version as a result of this great big
 11 Seal?
 12 A. The great big Seal could produce errors.
 13 Q. And a Seal of this size and of this darkness has
 14 the potential of creating a lot of errors; correct?
 15 A. Possibly, yes.
 16 Q. And on the next page there is no Seal?
 17 A. That is correct.
 18 Q. And the page after that you've got another great
 19 big Seal?
 20 A. That is correct.
 21 Q. Next page you don't have any Seal at all, big or
 22 little?
 23 A. That is correct.
 24 Q. Next page you've got a great big Seal?
 25 A. Again, correct.

04:27 1 that I gave, it was a more formal definition of error rate
 2 related to Levenshtein distance, which is somewhat
 3 technical, but it relates to missed characters, inserted
 4 characters or deleted characters, so it includes all three
 5 kinds of errors under the rubric of calculating error rate.
 6 Q. So, employing the analysis that you used in your
 7 report, what would the error rate be as it relates to Tabs
 8 21 to 22?
 9 A. Nearly 100 percent.
 10 Q. You would have had this whole thing deemed an
 11 error?
 12 A. I beg your pardon?
 13 Q. You would have considered 100 percent error?
 14 A. For this particular document, the error rate would
 15 be nearly 100 percent.
 16 Q. Employing the analysis that you used?
 17 A. Yes.
 18 Q. Could you explain why?
 19 A. Well, there are approximately, call it 30
 20 characters on this page that were correctly detected, and,
 21 so if I deleted everything on the page except for the first
 22 "E" and then I deleted everything from that point to the
 23 first "S" and then everything on the page to the first "C"
 24 and similarly, I would essentially be deleting all of the
 25 document except for about 30 characters.

04:28 1 Q. Could you confirm with me that you did not hand
 2 review this document?
 3 A. I did not. I did not.
 4 Q. Okay. Let's now turn to Tab 23. Again, it's got
 5 the big Seal on the first page.
 6 A. Yes.
 7 Q. Nothing on the second?
 8 A. That is correct.
 9 Q. In fact, every other page has a Seal and every
 10 other page has no Seal; is that correct?
 11 A. Every other page has two Seals. It's got the big
 12 one and the little one.
 13 Q. Okay. Now, if you look at the OCR version, do you
 14 want to try to match up the text where the Seal is on the
 15 first page?
 16 (Pause.)
 17 Q. You're having difficulty finding it, sir?
 18 A. I am.
 19 Q. Could you estimate the error rate on this page?
 20 A. Not quickly.
 21 Q. Let me ask you to turn to Tab 27 just for a
 22 moment, but not 28 quite yet.
 23 A. I'm sorry, Tab 27?
 24 Q. Tab 27. Thank you, sir.
 25 And Tab 27 is a fairly short document. It's only

04:32 1 two paragraphs, but this is a little bit slanted; correct?
 2 A. That is correct.
 3 Q. And I'm sorry, would the fact that it's slanted at
 4 all have an effect on the OCR, without looking?
 5 A. It would not.
 6 Q. Okay. And I think you testified earlier that that
 7 problem was solved in the Eighties?
 8 A. Yes, I did.
 9 Q. Is it that the OCR software now is just better
 10 software than back in the Eighties?
 11 A. We are better at blocking documents, which is to
 12 say that we recognize regions of the documents that contain
 13 text. And then once the regions have been identified, they
 14 will be normalized to a local set of axis so the text is
 15 analyzed as though it were horizontal.
 16 Q. And then if you--and I should just for the record
 17 say that this is CL0951-0104226.
 18 If you do turn the tab to Tab 28, you will see
 19 that there is very little text there. And we have this one
 20 on the screen.
 21 A. That is correct. Although I don't believe it's
 22 the slanting that is the issue.
 23 Q. I was just going to ask you that. You think it's
 24 the quality of the image itself?
 25 A. As you will notice, there is a lot of

04:33 1 salt-and-pepper noise on this thing. It is probably
 2 significant that the areas where there are no
 3 salt-and-pepper noises, that noise is the date, the
 4 salutation and the signature block.
 5 Q. Walk with me, if you would, to Tab 29. This is
 6 also slanted.
 7 MR. BLOOM: For the record, it's
 8 Cuerpos 951-0104227.
 9 BY MR. BLOOM:
 10 Q. And does this have a lot of salt and pepper?
 11 A. It does.
 12 Q. And if you turn to Tab 30, you would agree with me
 13 that it's mostly--the document is mostly gone; correct?
 14 A. Correct.
 15 Q. If I can walk you to document or Tab 31, which is
 16 CL Cuerpos 1144-0124242, you would agree with me that the
 17 quality of this document is not particularly good?
 18 A. I would.
 19 Q. And if you turn to Tab 32, you would agree with me
 20 that it came out largely as--what was the technical word
 21 you used? Gobbledygook?
 22 A. Yes.
 23 Q. What's the difference between gobbledygook and
 24 gibberish?
 25 A. I'm not sure there is one.

04:34 1 Q. Okay.
 2 If I can ask you to turn to 33, Tab 33, which for
 3 the record is Cuerpos 1144-0124254, you will see another
 4 document that is not particularly strong in terms of its
 5 quality?
 6 A. That is correct.
 7 Q. And if you look at Tab 34, you will see the OCR
 8 version, and it's not surprisingly of poor quality;
 9 correct?
 10 A. That is not good--that is not a good
 11 representation of the document.
 12 Q. And what would you say is the error rate?
 13 A. High.
 14 Q. And when you say "high," you're talking in the 50,
 15 60 percent range?
 16 A. Probably higher than that for this document.
 17 Q. If you turn to document 35, which is
 18 Cuerpos 1144-0124255, you would agree with me that the
 19 quality of this document is not very good?
 20 A. Agreed.
 21 Q. Maybe slightly better than the previous document.
 22 But if you look at the OCR version at Tab 36, you would
 23 agree with me that most of the language is gone entirely;
 24 correct?
 25 A. Correct.

04:36 1 Q. And, therefore, not searchable?
 2 A. Correct.
 3 Q. It's not usable for your purposes?
 4 A. Correct.
 5 Q. And the error rate would be approximately what?
 6 A. Approximately 100 percent again.
 7 Q. And then if we turn to documents behind Tab 37,
 8 and again, this is an image from your hard drive, it comes
 9 from Cuerpos 1145-0124328, you would agree with me, I take
 10 it, that the quality of this document is not very good?
 11 A. Agreed.
 12 Q. And if you look behind Tab 38 you would agree with
 13 me that almost all of the document is missing?
 14 A. Agreed.
 15 Q. And if you turn with me to Tab 39, which is
 16 Cuerpos 1146-0124378, you would agree with me that the
 17 quality of this document is not very good?
 18 A. I would agree.
 19 Q. Would that include the backside of the document?
 20 A. That would, although I think the backside is
 21 marginally higher quality than the front.
 22 Q. And if you look behind Tab 40, you will see how it
 23 came out in the OCR version, and you would agree with me
 24 that that has an exceedingly high error rate, probably in
 25 the 90 percent or more range?

04:37 1 A. I would agree.
 2 Q. If you look at Number 41, Tab 41, which for the
 3 record is Cuerpos 1469-0156739, here the document appears
 4 to be of relatively good quality at least again to my naked
 5 eye, but I know I need glasses.
 6 A. No, I would concur with that.
 7 Q. But if you look at the OCR version at 42, most of
 8 the text is gone. Do you have any explanation for this?
 9 A. Actually, my explanation would be that the person
 10 who did the scanning only scanned one side of it, but
 11 that's merely speculation, of course.
 12 Q. So, you think that might be a scanning error--an
 13 error committed by somebody else?
 14 A. Yes, that one looks like human error.
 15 Q. And as a result, an entire page was missing?
 16 A. That is correct.
 17 Q. Now, we had the TIFF image because we provided
 18 that to you in Tab 41, so would that change your opinion as
 19 to whether or not it was merely a scanning error?
 20 A. It's not clear the process--it's not clear to me
 21 the process by which the TIFF images were selected for
 22 scanning, for OCR. If they were selected on a page by page
 23 basis, they may have not clicked on the correct page.
 24 Q. The bottom line is you don't know why we have a
 25 blank OCR version; correct?

04:39 1 A. The bottom line is I don't know.
 2 Q. If you look at Tab 43, you have a document that
 3 has the big Seal on it?
 4 A. That is correct.
 5 Q. Otherwise a relatively clean version?
 6 A. Well, it's got a lot of Seals and it's got some
 7 strange signature over the signature block.
 8 Q. And then if you look at Tab 44, this document is
 9 largely blank; correct?
 10 A. Correct.
 11 Q. And, therefore, again, we have a high error rate;
 12 correct?
 13 A. Correct.
 14 Q. If I can take you to Tab 45, which, for the
 15 record, is Cuerpos 0605-0067022.
 16 And is this document of fairly good quality?
 17 A. I would say moderate.
 18 Q. And then if you look at the OCR version behind
 19 Tab 46, we're missing most of the document, are we not?
 20 A. Apparently.
 21 Q. And you would agree with me that the error rate is
 22 quite high with respect to this document?
 23 A. I would.
 24 Q. If we can turn to Tab 47, you would agree with me
 25 that the quality of this document--strike that.

04:40 1 For the record, the document is
 2 Cuerpos 1145-0124322. You would agree with me that the
 3 quality of this document is not very high?
 4 A. Agreed.
 5 Q. And, in fact, when you look at the OCR version, it
 6 is missing entirely lines and sentences, is it not?
 7 A. It is.
 8 Q. And, therefore, we have a high error rate again?
 9 A. Agreed.
 10 Q. If you look at the document behind Tab 49, we're
 11 looking at Cuerpos 814-008936.
 12 And is this of moderate quality or less than
 13 moderate quality?
 14 A. I would say less than moderate.
 15 Q. And, in fact, you can look document--behind
 16 Tab 50, most of the document is gone?
 17 A. That is correct.
 18 Q. And, in fact, we have a high error rate, do we
 19 not?
 20 A. Yes. Most of the document is missing.
 21 Q. Okay. You would agree with me that the same is
 22 true of the next document which is Cuerpos 1227-0132498,
 23 that the OCR version has eliminated most of the document?
 24 A. Agreed.
 25 Q. Let's turn to Tab 53, which is Cuerpos

04:42 1 1482-0158130. And this is of moderate quality except for
2 the fact you got a great big seal. Would you agree with
3 me?
4 A. I would. Well, a great big seal, two little seals
5 and a huge signature block.
6 Q. And in any event, the OCR version found behind
7 Tab 54 wipes out most all of the documents; correct?
8 A. Because they're behind most of the--behind the
9 great big seal, possibly.
10 Q. And, therefore, the error rate is very high on
11 this page.
12 A. Granted.
13 Q. Close to 100 percent?
14 A. Yes.
15 Q. If you turn to the document behind Tab 55, which
16 is Cuerpos 410-0046213, how would you describe the quality
17 of this document?
18 A. Overall not good. There is a lot of
19 salt-and-pepper noise on the top half, and the characters
20 are not well-defined even on the lower half where there
21 isn't as much salt-and-pepper noise.
22 Q. And if you look at the document behind Tab 56, it
23 came out as a blank. Do you know why that is?
24 A. I do not.
25 Q. If you turn with me to the document behind Tab 57,

04:43 1 at CL1133-0123011. It's a one-page document, I think you
2 will agree, of less-than-terrific quality?
3 A. That is correct.
4 Q. And if you look at the document behind Tab 58, you
5 will see it came out entirely blank through the OCR
6 process.
7 Do you see that?
8 A. That is correct. I see that.
9 Q. And the error rate would, therefore, be what?
10 A. 100 percent. All characters deleted.
11 Q. And if you turn with me to Tab 59, a document
12 comes from Cuerpos 1145-0124291. This document is not of
13 good quality?
14 A. No, it is not.
15 Q. It's a two-page--or two-sided document; do you
16 agree?
17 A. Agreed.
18 Q. And the OCR process yielded blank pages; correct?
19 A. That is correct.
20 Q. If we turn to the document behind Tab 61, that's
21 CL1483-0158180.
22 A. That is correct.
23 Q. You will see a document that has some dark images?
24 A. That is correct.
25 Q. And how would that affect the OCR?

04:45 1 A. That would possibly produce errors.
2 Q. And if you turn the page it produced a blank
3 document.
4 Do you know why it produced a blank document?
5 Would it be because of those shaded areas?
6 A. Probably not because of those shaded areas because
7 the shaded areas don't cover things like the salutation,
8 for example.
9 Q. So, do you have any other hypothesis as to why
10 that turned out blank?
11 A. As a hypothesis, human error.
12 Q. And then if you turn to Page--I'm sorry, Tab 63,
13 we have a very lengthy document.
14 Do you see that?
15 A. I do.
16 Q. It's about 25 pages.
17 And how would you characterize the quality of this
18 25-page document as you flip through it?
19 A. The textual sections are not good, and then when
20 we get to the list at the end of the tables, it's still not
21 good, made worse by the fact that the text itself is no
22 longer usefully Spanish.
23 Q. And then if you turn the page, that's the OCR
24 version?
25 A. Yes. It appears to be a blank page.

04:46 1 Q. So, what was the error rate here?
2 A. A hundred percent.
3 Q. Twenty-five pages gone?
4 A. Twenty-five pages gone.
5 Q. Not searchable?
6 A. Not searchable.
7 Q. And you would not disagree with me--well, strike
8 that.
9 Do you want to accept my representation that none
10 of these documents were hand-reviewed, or would you like to
11 take the time here?
12 A. I will accept your representation.
13 Q. Okay. Now, did you know, prior to today, that the
14 OCR process sometimes yielded blank pages altogether?
15 A. Yes, I did.
16 Q. That wasn't in your Report, was it?
17 A. It was not.
18 Q. You chose not to note it in your Report; correct?
19 A. It did not seem relevant.
20 Q. And you, in fact, hand-reviewed some pages--not
21 the document--some documents--not the ones we showed
22 you--where you knew that they were blank; correct?
23 A. Yes, I believe so.
24 Q. In fact, many of the hundred thousand pages that
25 you tried to hand-review were ones that were blank, blank

04:47 1 when you did the OCR review?
 2 A. I wouldn't say "many."
 3 Q. Approximately how many?
 4 A. A relative handful.
 5 Q. Including some of the largest documents; correct?
 6 A. I'm sorry?
 7 Q. Including some of the longest documents; correct?
 8 A. I'm sorry, are we doing statistics on the basis of
 9 the documents now instead of pages? Yeah, I could not
 10 estimate how many documents had been blank.
 11 Q. I mean, based on my--
 12 A. No, let me--
 13 Q. Please, go ahead.
 14 A. Give me a moment to think.
 15 Q. Certainly.
 16 A. My best recollection is maybe five of them.
 17 Q. I mean, honestly, I was trying to determine how
 18 you determined which documents to hand-review. And I guess
 19 what I noticed is that many of those that were completely
 20 blank, that might be 1,000 pages, were some of the
 21 documents you hand-reviewed. So, my question to you is:
 22 Was that a basis for you to do a hand-review, a lengthy
 23 document that you knew to be blank?
 24 A. It was not.
 25 Q. Now, in Paragraph 50 of your 2013 Report, you

04:49 1 stated that you conducted five separate analyses of the
 2 quality of the Court Record compared with the controlled
 3 Cuerpos.
 4 Do I understand that correctly?
 5 A. Paragraph 50, you said?
 6 Q. Paragraph five-zero.
 7 A. Yes.
 8 That is correct.
 9 Q. And you explain this at a little greater length in
 10 your Appendix A at Pages 13--I'm sorry, at paragraph--or
 11 Pages 13 and 14, so if you want to turn to your Report, you
 12 should certainly feel free to.
 13 So, if you turn to the Appendix A at Paragraph 92,
 14 you state here that using one of your quality-control
 15 analyses that you would expect an error rate of not more
 16 than 4 percent, right?
 17 A. I'm sorry, which paragraph is this from?
 18 Q. Ninety-two.
 19 A. That is correct.
 20 Q. And 4 percent of 216,000 pages is what?
 21 A. It's not relevant because 4 percent of the
 22 documents, not 4 percent of the pages.
 23 Q. But you don't know whether the 4 percent of
 24 documents where there are error approximate or don't
 25 approximate 4 percent of the pages. It might be a higher

04:51 1 percentage or lower percentage, no?
 2 A. That is correct.
 3 Q. So, if you could still answer my question then,
 4 4 percent of 216,000 pages would be how many pages?
 5 A. 4 percent of 216,000 pages would be about 10,000
 6 pages.
 7 Q. And if we turn to your Paragraph 88, you determine
 8 there, and I quote: "We can estimate that no more than
 9 10 percent of the documents contained in the Court Record
 10 were unusually difficult to analyze".
 11 A. That is correct.
 12 Q. Ten percent of 216,000 pages is how much?
 13 A. It's still not relevant.
 14 Q. I'm asking you how much.
 15 A. Ten percent of 200,000 pages is 20,000 pages.
 16 Q. Now, to be clear, differences in documents that
 17 are not more than even a single deviation could at least
 18 theoretically cause the OCR review to miss a word string or
 19 an N-gram you're looking for.
 20 A. I'm sorry, is that a quotation?
 21 Q. No.
 22 A. I'm sorry, can you repeat the question?
 23 Q. I'm asking you.
 24 A. Can you repeat the question?
 25 Q. Differences in documents that are not more than

04:52 1 even a single deviation from the Spanish corpus could still
 2 cause the OCR review to miss an N-gram, at least
 3 theoretically?
 4 A. At least theoretically, but the probability of
 5 that happening is low.
 6 Q. Now, to be clear, you never determined the error
 7 rate by directly comparing the OCR version to the original
 8 version; correct?
 9 A. I did not.
 10 Q. You, instead, compared the OCR version to the
 11 Spanish corpus; correct?
 12 A. That is correct.
 13 Q. And what you're looking for are, among other
 14 things, one, whether the letters A through Z were
 15 replicated in the same approximate percentages as the
 16 Spanish corpus. Would that be a component of hat you're
 17 looking for?
 18 A. I don't believe that letters was one of our
 19 components.
 20 Q. Okay. You're looking to see whether the letters
 21 follow one another in the same approximate percentages as
 22 the Spanish corpus?
 23 A. That is correct.
 24 Q. So, this exercise is premised on the assumption
 25 that statistically significant differences between

04:53 1 character strings--my term--I don't think you used
 2 that--character strings in the OCR version of the Lago
 3 Record and the Spanish corpus might indicate a problem?
 4 A. That is correct.
 5 Q. Or, in other words, if the Spanish corpus will
 6 withdraw that.
 7 Now, if an entire paragraph is illegible to the
 8 OCR software, the error rate on that page, according to
 9 your quantitative analysis, should not be affected by the
 10 loss of an entire sentence, should it? That is, if the
 11 letters are random? Not well put. Let's go back to the
 12 initial question.
 13 If an entire paragraph is illegible to the OCR
 14 software, the error rate on that page, according to your
 15 quantitative analysis, should not be affected by the loss
 16 of the entire paragraph?
 17 A. What do you mean by illegible and/or loss?
 18 Q. That no part of that paragraph is replicated in
 19 the OCR version.
 20 A. Thank you.
 21 If a paragraph is missing from the document in
 22 question, then we will have a smaller document which is,
 23 therefore, less subject to the law of large numbers, which
 24 is, therefore, more likely to display wild variations from
 25 the established statistics. So, it would be slightly more

04:57 1 A. Yeah, I'm assuming that the--I'm assuming that the
 2 words are generally of the same length. So, what you would
 3 be talking about is you would be talking about deletion
 4 errors that affect 75/300ths of the page.
 5 Q. How does the OCR version know that there are
 6 deletions? Because you're comparing it to the Spanish
 7 curpos.
 8 A. I'm sorry? Oh, you asked me what the error rate
 9 was.
 10 Q. I'm asking you what the error rate was
 11 using--maybe this is where we had a disconnect--using the
 12 analysis that you used in your Report. When you say that
 13 90 percent--you have a 90 percent error-free rate--you
 14 determined that by comparing the document--I thought you
 15 were comparing the document, the OCR version, to the
 16 Spanish corpus. Am I correct or incorrect on that?
 17 A. I am comparing it but I'm not comparing it using
 18 an error rate.
 19 Q. So, what are you doing?
 20 A. I'm doing a frequency analysis, as I testified on
 21 direct.
 22 Q. And if you deleted 75 of the 300 words, you are
 23 still comparing the remaining 325 words to the Spanish
 24 curpos; correct? 225 words to the Spanish curpos.
 25 A. Two hundred twenty five. Yes. Yes.

04:55 1 likely to show high error rates.
 2 Q. But as you said, only slightly more; correct?
 3 A. It would depend on how much of the document had
 4 been not read. If we are talking about a two-paragraph
 5 document and we lose half of it, that would display
 6 substantially more effect than if we were talking about a
 7 200-paragraph document and lost one paragraph.
 8 Q. Let's assume that the remainder of the document
 9 other than this missing paragraph is otherwise perfect.
 10 What would your error rate be? In other words, you have a
 11 perfect document other than the fact it's missing a
 12 paragraph.
 13 A. How long is the document in question?
 14 Q. A one-page document.
 15 A. How many--how many characters are on this page,
 16 how many characters are in the--how many characters are in
 17 the missing paragraph?
 18 Q. If I have a document that's, let's say, 300 words,
 19 and it's missing 75 words.
 20 A. Thank you.
 21 Q. And the remainder of the document is otherwise
 22 perfect, there are no other errors other than the missing
 23 75 words, what would the error rate be?
 24 A. Approximately 25 percent.
 25 Q. Can you explain the analysis?

04:58 1 Q. And if those 225 words line up without errors,
 2 then you would actually have a zero percent error rate,
 3 would you not? Or would your error rate, using this
 4 analysis, take into consideration the fact that we're
 5 missing 75 words?
 6 A. It would take into account the fact that with only
 7 225 words there would be more missing words and more words
 8 that occurred at a higher frequency, so we would have
 9 greater difference.
 10 Q. Okay. So, let's--we have a 25 page document.
 11 Let's say we have 5,000 words, and it's missing an entire
 12 page. The other 24 pages are all perfect; is that going to
 13 substantially increase the error rate under your analysis
 14 that you deployed for purposes of your Report in your
 15 opinion?
 16 A. I don't know. I haven't looked at that specific
 17 situation.
 18 Q. Now, let me ask you another question that we were
 19 curious about. The files on your drive starting with
 20 T-E-M-P, TEMP files, are not official documents; right?
 21 A. My understanding is that they were.
 22 Q. If they have--if they're TEMP and there are no
 23 seals, no Foja numbers, do you have an understanding
 24 whether they came from Chevron--in other words, were they
 25 Chevron copies, versus the official Court Record copies?

05:00 1 A. I represented that what I was given--I was
 2 represented--they represented to me that what I received
 3 was the Court Record.
 4 Q. I mean, I'll just ask you, to take very--and I
 5 think your answer is going to be you don't know--but if I
 6 could just ask you to turn to Tab 63. There is no Court
 7 Seal on this document?
 8 A. There is no Court Seal.
 9 Q. And you don't know whether--other than what was
 10 represented to you, you have no idea about this document;
 11 correct?
 12 A. Correct.
 13 Q. Did you receive the TEMP files at the same time
 14 that you received all the other documents?
 15 A. I don't recall. I believe so, because I believe
 16 they were on the same hard drive.
 17 Q. Now, when you executed your original Declaration
 18 in this case, you had been operating on the assumption that
 19 you had searched the entire lower--this is a quote now from
 20 your December 20th Report that "you searched the entire
 21 lower court Lago Agrio Court Record for potential sources
 22 that may have served to provide the text and data cited by
 23 the experts in this case."
 24 Did you write those words yourself?
 25 A. I did.

05:02 1 Q. But you would agree with me that the OCR process
 2 did not accurately identify some of those documents; isn't
 3 that also correct?
 4 A. They did not represent it with 100 percent
 5 accuracy, which we knew going in because that's what OCR
 6 does, and that's why we applied the error of robust
 7 techniques.
 8 Q. Would you agree with me that there are more
 9 documents--we can hand out more binders--do you--would you
 10 agree with me that there are going to be more documents
 11 that--where the OCR version also came out blank other than
 12 what we showed you here today? It would not surprise you,
 13 would it?
 14 A. It would not surprise me to learn that.
 15 Q. Let me just ask you one more question: You'd
 16 represented that you had the entire record, but there seems
 17 to be missing certain of the CL documents, the Cuerpos.
 18 Is it your--or can you explain why some of these
 19 documents would be--might be missing from your hard drive?
 20 A. I cannot.
 21 MR. BLOOM: Okay. I'll pass the Witness.
 22 PRESIDENT VEEDER: Thank you very much.
 23 We will have some questions from the Claimants no
 24 doubt, but how long do you think you will be?
 25 MS. MOUAWAD: I shouldn't take more than ten

05:04 1 minutes, but I would appreciate a short break if I may.
 2 PRESIDENT VEEDER: How short is short?
 3 MS. MOUAWAD: Not even ten minutes.
 4 PRESIDENT VEEDER: Let's take ten minutes.
 5 (Brief recess.)
 6 PRESIDENT VEEDER: Let's resume.
 7 REDIRECT EXAMINATION
 8 BY MS. MOUAWAD:
 9 Q. Good afternoon, Dr. Juola.
 10 A. Good afternoon.
 11 Q. Mr. Bloom showed you some OCR pages that were
 12 blank. Do you remember that?
 13 A. He did.
 14 Q. And he also showed you the TIFF images--well, on
 15 the slides that were next to it, but I think you had the
 16 hard copy to look at as well; correct?
 17 A. That is correct.
 18 Q. Were any of the TIFF images that you looked at in
 19 the past two hours with Mr. Bloom the Fusión Memo?
 20 A. They were not.
 21 Q. Were any of those TIFF images the Draft Alegato?
 22 A. They were not. They were not even similar to the
 23 Fusión Memo or the Draft Alegato.
 24 Q. Were any of those TIFF images an e-mail from Pablo
 25 Fajardo?

05:14 1 A. They were not.
 2 Q. Now, Mr. Bloom also asked you about TEMP files on
 3 the hard drive that you received and whether or not you
 4 knew they were in the Record, so I want to take you back to
 5 what we looked at in your direct examination, and
 6 specifically I'd like to pull up R-1545, TEMPS0003303. If
 7 you could pull that up.
 8 MS. MOUAWAD: I think the Tribunal Members have
 9 gotten a copy. Maybe that's an easier way to do that.
 10 (Pause.)
 11 PRESIDENT VEEDER: Could we ask if the Respondent
 12 have hard copies, too?
 13 MS. MOUAWAD: So, now we've got it sorted out.
 14 BY MS. MOUAWAD:
 15 Q. This is what we looked at in your direct
 16 examination. As I said, in the record it is R-1545,
 17 TEMPS0003303.
 18 Do you remember that document that we looked at as
 19 one of the Chevron motions that was filed?
 20 A. I remember looking at it with you this morning.
 21 Q. Okay. And let's take a look again at the last
 22 page of that document, and that has a court stamp; correct?
 23 On the last page, where we looked at the date and the time
 24 earlier?
 25 A. We looked at the date and the time. That's

05:16 1 not--that is, of course, not the same Court stamp that has
 2 been shown to me extensively during cross.
 3 Q. Right. So, let's take a look at R-1544, which is
 4 specifically the Page Cuerpo 1990, the entire Cuerpo that
 5 was submitted by Respondent, and you'll see at the top of
 6 the page it has the page, the Foja number which is 208915.
 7 Do you see that?
 8 A. I do.
 9 Q. And that's the except same document that I just
 10 showed you, except that it's one that's marked with the
 11 page number from the Court Record. I will make that
 12 representation to you.
 13 If you could look at the third page, that
 14 also--you'll recognize that has the stamp that we just
 15 looked at and the time of 1745.
 16 A. Although it appears to be a different stamp.
 17 Q. Right.
 18 A. It's in a slightly different location than the
 19 stamp that I have.
 20 Q. Right. It's still marked 1745; correct?
 21 A. It's still marked 1745.
 22 Q. And it has an official page number in the Cuerpo?
 23 A. It does.
 24 Q. Mr. Bloom also spent some time showing you
 25 examples of localized errors.

05:17 1 Do you remember that?
 2 A. I do.
 3 Q. And when he asked you about that, you mentioned
 4 that your methodology of breaking down the Court Record in
 5 successive 5-grams mitigated against that risk. Can you
 6 explain to us what you meant by that.
 7 A. Yes. This is more or less the same argument that
 8 I made on direct when you asked me about pages being out of
 9 sequence. If we assumed that there is a 150-page--sorry, a
 10 150-word passage somewhere on a page but somebody has put a
 11 Court stamp on it or somebody has spilled coffee on it or
 12 somebody has signed across a particular passage or even
 13 somebody has put a crease across the document, that will
 14 produce localized errors that will cause local issues with
 15 the OCR. It will knock out, for example, in the case of a
 16 single line maybe ten to 12 words.
 17 However, if it you knock out ten words from the
 18 exact middle of a 150-page passage, that will still leave a
 19 70--sorry, 150-word passage, you knock out ten words from
 20 the middle of that 150-word passage you will still have 70
 21 words above it and 70 words below it which would still be
 22 searchable and could still be found by the methodology that
 23 we used.
 24 In fact, you could have knocked out every other
 25 line in that passage, and that would still have created a

05:19 1 number of overlapping approximately ten-word passages with
 2 each of the successive lines, so there would still have
 3 been enough material in that, again in Example 2 of Leonard
 4 to find the relevant passage, even if every other line in
 5 the document had been knocked out.
 6 MS. MOUAWAD: I have no further questions.
 7 PRESIDENT VEEDER: Thank you very much. The
 8 Tribunal has no questions. We've come to the end of your
 9 testimony.
 10 THE WITNESS: Thank you very much.
 11 PRESIDENT VEEDER: Thank you for coming to assist
 12 the Tribunal, and you may leave the table.
 13 (Witness steps down.)
 14 PRESIDENT VEEDER: It's 20 past 5:00. We don't
 15 suggest we start with the next witness now. We prefer to
 16 start clean tomorrow.
 17 We seem to be doing quite well on time, so shall
 18 we start at 9:30 tomorrow?
 19 We ask the Claimants first.
 20 MR. BISHOP: That would be fine for the Claimants,
 21 yes.
 22 PRESIDENT VEEDER: And the Respondent?
 23 MR. BLOOM: At your pleasure.
 24 PRESIDENT VEEDER: Well, it's your pleasure, too.
 25 MR. BLOOM: You want to start at 8:00 a.m. or

05:20 1 10:00 a.m.
 2 PRESIDENT VEEDER: We don't to want fall behind,
 3 we may have to adjust the time forward, but for the moment
 4 we think 9:30, and tomorrow is obviously going to be a long
 5 day, as will probably be the following day.
 6 MR. BLOOM: Yes.
 7 PRESIDENT VEEDER: 9:30 a.m. tomorrow, and we will
 8 think about the housekeeping overnight and we'll come back
 9 to you at some appropriate time tomorrow. Until tomorrow.
 10 Thank you.
 11 MR. BLOOM: Thank you.
 12 (Whereupon, at 5:20 p.m., the Hearing was
 13 adjourned until 9:30 a.m. the following day.)
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CERTIFICATE OF REPORTER

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

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


DAVID A. KASDAN