

## DECLARATION OF GERALD R. McMENAMIN

I, Gerald R. McMenamain, declare as follows:

1. I am Professor Emeritus of Linguistics and former Chair of the Department of Linguistics at California State University, Fresno. I was retained by GIBSON DUNN in this matter and was asked to determine, to the extent possible, the authorship of certain writings. On June 30, 2011, I submitted a Declaration concluding that it is highly probable that (1) Ing. Cabrera was not the author of the *Cabrera Report* or *Supplemental Report* attributed to him, (2) the *Cabrera Report* and the *Supplemental Report* were jointly authored by Stratus Consulting in conjunction with the *Lago Agrio* plaintiffs and consultants in Quito, and (3) the *Cabrera Filings* have multiple authors, and (4) Ab. Fajardo is the author of some Cabrera Filings. I am now submitting a supplemental declaration related to the question of the authorship of the *Sentencia* of February 14, 2011 (QUESTIONED-Sentencia).

2. I am being compensated at a rate of \$200 per hour for work and time related to analysis and \$400 per hour for work and time related to conference and testimony. My compensation is not dependent on the outcome of or my opinions in this matter.

3. **Authorship Questions:** In specific terms, I was asked to resolve, to the extent possible, two authorship questions related to the QUESTIONED-Sentencia: **first**, to assess the internal consistency of style in the QUESTIONED-Sentencia, i.e., to determine if its internal style reflects a single writer, or if the QUESTIONED-Sentencia demonstrates stylistic evidence of multiple authors; and **second**, to determine if Ab. Nicolas Zambrano Lozada can be excluded or identified as the author of the QUESTIONED-Sentencia.

4. **Opinions: First**, it is *highly probable* that the QUESTIONED-Sentencia has multiple authors. **Second**, it is *highly probable* that Ab. Nicolas Zambrano Lozada did not author a significant amount of the QUESTIONED-Sentencia.

5. **Method:** Writings used for my review and analysis include the following:

### QUESTIONED WRITING:

(1) *Sentencia* of February 14, 2011

### KNOWN WRITINGS:

(2) *Zambrano Providencias* (31)

2009.09.04, 2009.09.22, 2009.10.21, 2009.11.10, 2009.11.23, 2009.11.30,  
2009.12.07, 2009.12.14, 2010.01.05, 2010.01.19, 2010.02.02a, 2010.02.02b,  
2010.02.03, 2010.02.18, 2010.09.24, 2010.09.30, 2010.10.11, 2010.10.19,  
2010.10.27, 2010.11.09, 2010.11.10, 2010.11.22, 2010.12.01, 2010.12.03,  
2010.12.10, 2010.12.10, 2010.12.13, 2010.12.29, 2011.01.05, 2011.01.19,  
2011.02.02

(3) *Zambrano Sentencias* (4)

2009-0451, 2010-0087, 2010-0294, 2010-0330

Note that included among the KNOWN-Zambrano Providencias is 2009.11.30 that demonstrates some linguistic inconsistency with other KNOWN-Zambrano Providencias. Analysis of the Providencias continues and may result in additional findings regarding their authorship.

6. In order to accomplish this assignment, I read and analyzed the language of the QUESTIONED-Sentencia, then did the same for the KNOWN-Zambrano writings. Analysis of all writings produced an aggregate set of five patterned and re-occurring markers of writing style:

- |  |             |
|--|-------------|
| 1. DIVISIONS OF TEXT INTO HEADINGS AND SUBHEADINGS | (Exhibit A) |
| 2. DOLLAR AMOUNTS                                  | (Exhibit B) |
| 3. FORM OF WRITING THE YEAR: 2.010 v 2010          | (Exhibit C) |
| 4. SENTENCE-FINAL PUNCTUATION OF QUOTATIONS        | (Exhibit D) |
| 5. FORM OF TEXTUAL ELLIPSIS: [. . .] or . . .      | (Exhibit E) |

Each of these markers is discussed and listed with its accompanying data in their respective **Exhibits A-E**.

**7. Discussion:** The five linguistic differences identified above for the QUESTIONED-Sentencia, and between the QUESTIONED-Sentencia and KNOWN-Zambrano writings, constitute an aggregate set of markers which I have used as the basis for the conclusions and opinions expressed in this report. A set of five style markers is significant, especially when most of them have high numbers of occurrence-opportunities (i.e., 1, 2, 3, and 4). This set of markers is more than sufficient to use as a means of both assessing the internal consistency of style in the QUESTIONED-Sentencia and determining if Judge Zambrano can be excluded or identified as the author of the QUESTIONED-Sentencia. It is important to note that no single marker of these five is idiosyncratic to any given writer. However, the uniqueness of these markers lies in considering the array of markers in the aggregate, i.e., as a set unified by their habitual use and patterned appearance in the writing of one given author, thus making it possible to readily observe the following: (1) Within the QUESTIONED-Sentencia: the *heterogeneity* of variants in the five-variable set of style markers; (2) Within the KNOWN-Zambrano writings: the *homogeneity* of the variants of each style-marker variable of the set; and (3) In the QUESTIONED-Sentencia vis-a-vis the KNOWN-Zambrano writings: the distinct *contrast* of all five style-marker variables in the set.

**8. Conclusions: First**, there is substantial linguistic evidence that the QUESTIONED-Sentencia was written by multiple authors, given the diversity of occurrence of variants of all five style-marker variables and the asystematic appearance of so many of these variants across the length of the QUESTIONED-Sentencia. **Second**, there is substantial linguistic evidence that Judge Zambrano is not the author of significant amounts of the QUESTIONED-Sentencia, given the highly-frequent occurrence of the five style markers, and given the extreme contrast of their variants in the QUESTIONED-Sentencia vis-a-vis the KNOWN-Zambrano writings.

9. I reserve the right to consider any additional information or writings which may be provided me, and to amend this declaration, as necessary, based on my consideration of such information or writings.

Date: 7-31-2011 *Gerald R. McMenamin*  
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