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

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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 3

TRACK 2 HEARING

Thursday, April 23, 2015

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

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

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

DR. HORACIO GRIGERA NAÓN, Arbitrator

PROFESSOR VAUGHAN LOWE, Q.C., Arbitrator
Registry, Permanent Court of Arbitration:

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MR. RAYMUNDO TREVES
MS. NAYA PESSOA

Additional Secretary:

MS. JESSICA WELLS

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C O N T E N T S

WITNESSES:

ALBERTO GUERRA BASTIDAS

Direct examination by Mr. Kehoe 598
Cross-examination by Mr. Bloom 604

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PRESIDENT VEEDER: I think we're going to be okay.

MR. LEONARD: We all have two.

PRESIDENT VEEDER: Okay. If not, we can call the technician. It's up to you.

THE INTERPRETER: Mr. Leonard, can you hear the Spanish now?

MR. LEONARD: Let's proceed. I have the screen in front of me. I can manage.

(Pause.)

MR. LEONARD: Could we test it one more time, please.

THE INTERPRETER: Now the English.

What about the English? Can you hear the English?

Channel one.

(Pause.)

THE INTERPRETER: English, can you hear the English now? All right. Thank you.

PRESIDENT VEEDER: Let's proceed. We seemed to have resolved the technical difficulties.

Could I ask you to look at the piece of paper which is on your left side on the table, and you will there find a form of words in Spanish. It's a single sheet of paper. Would you pick it up.

And if you will, I will ask you to state your full name and then to read the Declaration in the Spanish language.

THE WITNESS: Yes, with pleasure, Mr. President. I'm Alberto Guerra Bastidas, and I solemnly declare upon my honor and conscience that I shall speak the truth, the whole truth, and nothing but the truth.

PRESIDENT VEEDER: Thank you.

We have certain rules about the way in which you will be questioned, first of all, of course, by the Claimants, and then by the Respondent, and then by the Claimants again, and possibly by the Tribunal.

Because you're giving evidence in Spanish, it will be translated into English, and some of the questions will be in English will be translated into English; it's very important that the lawyers who question you and you do not overspeak. There has to be a pause between each question and each answer, not only for the shorthand recorders because they can't record two people speaking at the same time, but also we need a pause to allow the interpreters to complete their interpretation, so we ask all the lawyers who ask questions, and we ask you, too, just to pause between the question ending and your answer beginning.

Do you understand what I'm saying?

THE WITNESS: Yes, sir, I understand.

PRESIDENT VEEDER: If there's any problem, please signal to us, and we will try to resolve them, but we start with questions from the Claimants.

MR. KEHOE: Thank you, Mr. President.

DIRECT EXAMINATION

Q. Mr. Guerra, I have a few questions for you, but first there is a binder in front of you with four Declarations. Would you look at each of them briefly, please, and tell us whether they're your Declarations and your signature on the last page of each one.

Since we're limited in time, I'm going to help the Witness find the pages, if that's not a problem.

PRESIDENT VEEDER: Not at all.

THE WITNESS: Yes, these are my signatures.

Q. Sir, when you signed these declarations, did you state the facts truthfully and to the best of your ability and memory at the time that you signed them?

A. Yes, that is correct, I did.

Q. Sir, what country were you born in?

A. I was born in Ecuador.

Q. Until recently, have you lived in any country other than Ecuador?

A. I did not. I have lived in Ecuador.

Q. Yes, until recent--well, can you reside in Ecuador now?

A. I cannot.
Q. Do you speak any English?
A. I do not, sir.
Q. Mr. Guerra, I’m just going to take a few moments to review some of the facts that you say facilitated the truth coming to light in this case. Did you have a meeting with anyone in September or October 2010, at the Honey Honey restaurant in Quito?
A. I did. At that time I met with Mr. Steven Donziger, with Pablo Fajardo, Luis Yanza, who represented the Plaintiffs against Chevron in Ecuador.
Q. What did you say to them at that meeting?
A. Specifically at that meeting, I conveyed a message from Judge Nicolas Zambrano related to the fact that he would accept for them to prepare the draft Judgment in the Chevron Case, in exchange of the sum of at least $500,000.
Q. What did they say in response to that, and who said it?
A. Specifically, and mainly, Mr. Steven Donziger stated that at that time, unfortunately, they did not have the money to conduct negotiations or to provide a specific offer.
Q. Did you report that back to Mr. Zambrano?
A. I did, yes. Immediately, and then later on, he told me that he

Q. One last thing before I hand you over for cross-examination, Mr. Guerra.
A. You met with the lawyers for Chevron about 53 times during the period of 14 months from September 2012 to November 2013; is that right?
A. That is correct, the number of meetings is correct because I have a habit of writing relevant information—including that relevant information in my personal diary.
Q. I would like to clarify the fact that those meetings were due to a number of factors, many factors, such as issues related to immigration, the situation of my children, issues that had to do with leasing of housing, looking at documents, also my provision of certain documents—well, a large number of issues and matters.
Q. Has anyone choreographed your every statement for testimony?
A. No, no one has done so in any way whatsoever.
Q. Has anyone choreographed your every facial expression and mannerism for testimony?
A. By Chevron’s lawyers or the individuals that I have met with, I have never observed or seen that kind of attitude.
MR. KEOHE: Mr. President, I tender the Witness for cross-examination.

PRESIDENT VEEDER: Thank you very much.
MR. BLOOM: Thank you.
PRESIDENT VEEDER: Just one further matter, Mr. Bloom, at some stage we’re going to need a break for the shorthand writers, the interpreters, for the witness, for counsel, for the Tribunal. You decide when that best comes during the course of your cross-examination this morning.
MR. BLOOM: Certainly. Do you want to give me an estimate as to how long you would like to go before we break? Because what I’ll do is, at the end of a line of questions around that time, I’ll suggest a break, and I could get some guidance.

MR. BLOOM: Approximately 11:00?
PRESIDENT VEEDER: Whenever you choose.
MR. BLOOM: Thank you.
CROSS-EXAMINATION
Q. Good morning, Mr. Guerra.
A. Good morning to you, sir.
Q. I would like to begin with some housekeeping matters. We have provided you with two binders. You now have two binders in front of you?
A. Yes, I do. You're referring to the ones that I'm touching right now; right?
Q. That is correct.
The bigger binder—
[Overlapping interpretation.]
Q. The bigger binder should have a series of statements that you have made. I'd like to walk briefly with you through that binder so that you understand what is there in the event you want to refer to it. Do you understand?
A. Yes, I do. I understand.
Q. At Tab 1 reflects a May 6, 2012, telephone discussion that you had with an unidentified representative of Chevron. Feel free to take a look at Tab 1, but can you confirm that that meeting or that conversation was in fact, recorded and that the transcript is at Tab 1?
A. Yes, sir, I'm looking at it.
Q. Very well.
And then at Tab 2 should be the transcript of a very well.
Q. And then at Tab 2 should be the transcript of a

Q. And then on June 4th, 2012, you had three more telephone calls with the same individual. Do you recall that?
A. Are you referring to which document? Where is it?
Q. What's the tab number?
A. If you refer to Tabs 6, 7, and 8, which, for the record are exhibits in this arbitration at 1338, 1341, and 1342, for these transcripts of conversations that you had with the same unidentified Chevron representative.
A. Yes, sir, that's correct, I remember.
Q. And then on June 5, you had two more telephone conversations, this time with an attorney from Chevron named Andres Rivero and a Chevron investigator named Yohir Akerman. Those transcripts should be behind Tabs 9 and 10 which are exhibits in this arbitration as R-1343 and R-1344.
Q. Can you confirm that those are transcripts of your conversations on June 5?
A. Yes, sir, they are.
Q. And then behind Tab 11 is Exhibit R-1213, which is a transcript of a June 25, 2012, interview that you had with the same Chevron attorney, Mr. Rivero. Do you recall that conversation, and can you confirm that that Transcript is at Tab 11?
A. Yes, sir. I'm looking at it, and I recognize it.

MR. BLOOM: And, for the record, that exhibit is R-1213.
BY MR. BLOOM:
Q. And then, sir, you had a further interview with Mr. Rivero and Mr. Akerman on July 13, 2012. I believe you will find that Transcript behind Tab Number 12, which is Exhibit 1345. Can you confirm that, please?
A. Yes, sir, that is correct.
Q. And you recall that conversation as well?
A. In general terms I do, but details—well, I would have to read it.
Q. I understand.
A. And then if you look behind Tab 13 is our Exhibit R-1346 which should reflect a July 31, 2012 interview by Mr. Rivero and Mr. Akerman. Could you take a moment and confirm that that document is, in fact, a transcript of that conversation?
A. Yes, sir, that is correct.
Q. And then behind Tab 14 we have Claimants' Exhibit 1616a, and this is a declaration you were just asked about in direct examination. It's your Declaration of November 17, 2012, on Chevron's behalf filed both in the New York Action and in this arbitration. Can you confirm that that is your Declaration?
A. Yes, sir, it is.
09:57  1  Q.   And then if I may take you to Tab 15, which for
2 the record is Claimants' Exhibit 1648. Am I correct, sir,
3 that the document at Tab 15 is a supplemental Declaration
4 dated January 13, 2011, that you signed?
5  A.   You are correct, sir. I did sign that document.
6  Q.   Thank you, sir.
7    And then if you can take a look behind
8 exhibit--I’m sorry, behind Tab 16, which is R-1331, and can
9 you confirm that this is a second supplemental Declaration,
10 this one dated April 11, 2013, signed by you?
11  A.   Yes. That statement was signed by myself.
12  Q.   And then you offered a witness statement on
13 October 9, 2013, that you provided to Chevron's counsel for
14 Chevron to submit in the New York Action. That document
15 should be behind Tab 17. It is marked as Claimants'
16 Exhibit 2138. Can you please confirm that that is the
17 Witness Statement that was submitted to the New York
18 Action?
19  A.   Yes, sir, that is correct.
20  Q.   And then do you recall being deposed by counsel
21 for the Lago Agrio Plaintiffs for that New York Action on
22 May 2, 2013?
23  A.   Yes, I do remember.
24  Q.   And you were under oath that day, were you not?
25  A.   Yes.

10:01  1  Transcript by your counsel on your behalf?
2  A.   I am not aware of any.
3  Q.   And then let me represent to you, sir, that
4 Tab 19, which has been marked as Claimants' Exhibit 1978,
5 is a transcript of your testimony in the New York Action
6 from October 23 to October 25.
7    Let me ask you, sir, do you recall testifying in
8 the New York Action?
9  A.   I do remember, yes, offering my testimony under
10 oath for the RICO Case as stated in the document at Tab 19
11 identified as C-1978.
12  Q.   And then finally, sir, at Tab 20, which has been
13 marked as Respondent's Exhibit 907 is a transcript of a
14 deposition by you by one of my colleagues on
15 November 5, 2013, in New York.
16    Do you recall being deposed for purposes of these
17 arbitral proceedings?
18  A.   Yes, sir, I do remember that.
19  Q.   And you provided testimony that day also under
20 oath, did you not?
21  A.   That is correct.
22  Q.   And again, your answers were recorded by a Court
23 Reporter; correct?
24  A.   Yes.
25  Q.   And would you confirm for me that neither you nor

09:59  1  Q.   You swore to tell the truth?
2  A.   Yes.
3  Q.   And you have never objected to the accuracy of the
4 Transcript of that deposition, have you?
5  A.   Would you repeat your question?
6    THE INTERPRETER: Would you please repeat your
7 question, says the Witness?
8    BY MR. BLOOM:
9  Q.   Certainly. The official Transcript is behind
10 Tab 18 at R-906. Under the U.S. Rules of Evidence, a
11 witness who has been deposed has an opportunity to correct
12 mistakes in a deposition Transcript.
13    Did you ever seek to correct mistakes made in the
14 deposition Transcript that is at Tab 18?
15  A.   No, unfortunately, I do not speak English. When I
16 read documents sometimes in connections with depositions
17 and answers to questions, I did notice that there was some
18 difference in the way that I said the things as to what was
19 transcribed after the interpretation or translation, but I
20 have not done what you have suggested—I did not do what
21 you said I could have done.
22  Q.   At that deposition, you were represented by
23 counsel, were you not?
24  A.   Yes.
25  Q.   And are you aware of any corrections made to the

10:03  1  your counsel sought to correct any errors in the
2 Transcript?
3  A.   I cannot give you any certainty whether the
4 counsel did anything in that regard, but I can tell you
5 that, in general, at the end of my deposition, be it
6 Mr. Clayman, the counsel or any other attorney with Gibson
7 Dunn, the representing law firm, I was asked to clarify
8 certain answers that I had offered given certain questions.
9  Q.   And you availed yourself of that opportunity and
10 clarified, did you not?
11  A.   That is correct, yes.
12    COURT REPORTER: Can you repeat that?
13    THE WITNESS: That is correct. I did so. I
14 answered the questions that were meant to clarify the
15 Transcript.
16    BY MR. BLOOM:
17  Q.   And so that the Record is clear, after that
18 deposition, you never sought to correct the Transcript;
19 isn’t that correct?
20  A.   Honestly, I don’t know what you are referring to.
21 But it’s true, I have not participated in any act to
22 correct the contents of the translations.
23  Q.   Now, I provided you this binder for your reference
24 in the event you needed it during the course of your
25 examination. As I have said to other witnesses, this is
10:06 1 not a memory test so, if you need those documents, please
2 let me know, okay?
3 A. I will do so.
4 Q. So, now, I want to discuss your relationship with
5 Chevron's legal representatives. As you were asked in
6 direct exam by Mr. Keohoe, you, in fact, met with lawyers
7 from Chevron on 53 occasions during the 14-month period of
8 September 2012 through November 5, 2013; isn't that
9 correct?
10 A. I should tell you that there is a mismatch in
11 connection with the time--I don't know if it is my mistake
12 or a mistake in the interpretation. I was referring to the
13 meetings that I had starting in November 2012 to
15 Q. But to be clear, it began in November 2012 rather
16 than September 2012?
17 A. That is correct.
18 Q. Sir, over that 12-month period, you had 53
19 meetings, and am I correct that your meetings generally
20 lasted on each occasion from four to six hours?
21 A. Not exactly.
22 Q. I should tell you that, out of the 53 meetings,
23 most of them were the meetings that I held with them
24 initially in Chicago, later on in New York, then in Miami
25 because of migration issues and I had endless meetings that

10:08 1 sometimes dealt with reviewing documents or submitting
2 documents to the migration attorneys, signing documents
3 that had to do with the asylum process. Also, I visited
4 the migration offices in Florida, and I had several
5 processes like these, so it is not accurate for me to say
6 that these meetings lasted as long as for as long as, as you
7 are saying.
8 Q. Sir--and I understand that you don't speak English
9 so, I will be asking the Court Reporter to translate some
10 of your prior deposition testimony, but I want to confirm
11 again that at both of your depositions you swore to tell
12 the truth, the whole truth, nothing but the truth; isn't
13 that correct?
14 A. That is correct.
15 Q. And I will represent that at Page--at Tab 19 in
16 that deposition of October 24, 2013, Page 1049. Line 24,
17 you were asked: "When you come for three or four days a
18 week, do you meet with the Gibson Dunn attorneys?"
19 Your answer was: "Yes."
20 "For how many hours a day?"
21 Your answer was: "Between four and six hours a
22 day."
23 Q. That was your testimony on October 24, 2013.
24 A. At no time am I saying that the content of that
25 answer is not the truth. But, the question you are
26 referring to specifically refers to my meetings with Gibson
27 Dunn lawyers to prepare depositions, statements, or any
28 interventions that I needed to have before U.S.
29 authorities.
30 Q. Could you identify the names of the lawyers from
31 the law firm of Gibson Dunn with whom you met?
32 A. Yes. I basically held meetings with
33 Mr. Randy Mastro, Mr. Avi Waltzman as representatives of
34 Gibson. I only met with them or mainly with them, there
35 were others but the last names were sort of difficult to
36 remember for me, so I wouldn't be able to tell you the
37 names--the last names--are English names.
38 Q. Were there members of the King & Spalding legal
39 team?
40 MR. KEHOE: I have an objection. The line of
41 questioning began with the meetings over a period of 14
42 months. Now the Witness is being asked questions about
43 meetings over three months and now he's being asked
44 questions about meetings with King & Spalding. I would
45 just request that counsel be more specific when he's asking
46 about particular time frames and particular meetings

10:10 1 because it's confusing to me, so it must be confusing to
2 the Witness.
3 MR. BLOOM: I will clarify.
4 BY MR. BLOOM:
5 Q. At any time, can you tell me what lawyers from
6 Gibson--sorry, from King & Spalding you had met with?
7 A. For the purposes of preparing for this commitment,
8 for this testimony, I met with King & Spalding lawyers, in
9 March and April. Their names are Ed Keohoe and Caline
10 Mousawd. They are the ones that I met with mainly. These
11 meetings, to clarify, have taken place approximately in
12 March six times, in April two or three times.
13 PRESIDENT VEEDEER: Excuse me for intervening, you
14 said March and April. Of what year?
15 THE WITNESS: Yes, thank you, Mr. President. I
16 said last March and April, so I'm referring to the current
17 year 2015.
18 BY MR. BLOOM:
19 Q. Did you ever meet with King & Spalding lawyers for
20 any purpose before March of 2015?
21 A. No. No, I did not--I did not meet with King &
22 Spalding lawyers before these dates, but I should explain,
23 clarify that at some point when I held meetings with Gibson
24 Dunn lawyers, the lawyers that I just mentioned from King &
25 Spalding used to--used to also attend those meetings,
10:15 1 but at no time did they talk to me on a personal or 2 professional basis.
3 Q. Just so that I’m clear, I believe what you’re 4 saying is that, during at least some of the 53 meetings 5 that you had with the Gibson Dunn lawyers, King & Spalding 6 lawyers were present; is that accurate?
7 A. Yes, sir, that is correct.
8 Q. You’ve testified that you had 53 meetings with 9 Chevron’s lawyers from November 2012 to November 2013. Can 10 you tell us how many meetings you’ve had with Chevron’s 11 lawyers since November 2013?
12 A. I do not have the specific information regarding 13 your question, but in general terms, I counted 53 meetings 14 total with the participation of migration lawyers, my 15 personal lawyer, Mr. Clayman and some other people.
16 Q. Fifty-three times over what time period?
17 A. You said it a couple of minutes ago:
18 November 2012 to November 2013.
19 Q. It was a miscommunication. What I’m now asking 20 you is: How many meetings have you had with Chevron’s 21 attorneys since November 5, 2013?
22 A. If you allow me to tell you that immediately after 23 the deposition in the RICO Case--
24 THE INTERPRETER: I was just waiting for him.
25 PRESIDENT VEEDER: If you could restart your

10:20 1 A. The statements--are you referring to the 2 discussions I’ve had with Chevron representatives, or are 3 you referring to my sworn statement?
4 Q. We went through 20 statements. Some were recorded 5 conversations with Chevron, some were deposition 6 transcripts, some were declarations, some were trial 7 transcripts. Is it your statement today that your 8 statements regarding the Lago Agrio Case have always been 9 consistent, that you have always told the same story the 10 same way every time?
11 A. The specific answer to your question is yes. And 12 if the Tribunal allows me, I would like to elaborate.
13 Certainly, the recorded conversations that I had 14 initially with Chevron representatives include some 15 inconsistencies, some discrepancies, but in the sworn 16 statements that I signed myself or ratified or 17 authenticated myself with my signature, those statements do 18 not include them any discrepancies or inconsistencies.
19 Q. As a pre-atory matter and to be clear, you do not 20 claim to have had any involvement at all in the Court of 21 Appeals Decision in respect to the Lago Agrio Case; isn’t 22 that correct?
23 A. Yes, sir.
24 Q. And you had no knowledge about the Court of 25 Appeals Decision-making process--isn't that
understand, for purposes of this arbitration, Chevron and
Texaco Petroleum are the Claimants, and it may be when you
are referring to "Claimants" that you are referring to
Chevron in this arbitration or you may be referring to--
(Pause.)
Q. --you may be referring to Chevron in this
proceeding or to the Plaintiffs in the Lago Agrio Case.
So, I need to know--rather than use the word "Claimants,"
if you could be a little bit more specific.
So let me ask it this way: It was your
understanding that Chevron was trying to delay the
adjudication of the Lago Agrio Case; isn't that correct?
A. If you allow me, and to clarify this question,
when we are referring to Lago Agrio, I am referring to
Plaintiffs, and those that represented by Mr. Yanna,
Donziger, and Pajardo. And yes, in the opinion of both Mr.
Zambrano, at that time, as well as the Plaintiffs
represented by Mr. Pajardo and others, in their opinion,
Chevron was delaying, slowing down or was intending to slow
down that proceeding.
Q. And you agreed with the opinion that Chevron was
trying to slow down those proceedings; isn't that correct?
A. I shared the view and the intention of the
Plaintiffs represented by Pajardo and others, and clearly I
had the same opinion.

10:27
Q. And you believed that Chevron was trying to
generate as many legal issues as possible to help it
justify the existence of fundamental errors; correct?
A. Under Ecuadorian law, those are essential errors,
and I did share that opinion, yes.
Q. And when you spoke with Chevron's representatives
in your very first meeting in June of 2012, you, in fact,
told them that Chevron was playing games in the Lago Agrio
Case, did you not?
A. I told them what is stated in the recording. I do
not remember saying 'playing games.' I don't remember
saying that.
Q. You said: 'The attorneys from Chevron would bitch
over everything, right? We call it 'generating incidents.'
They generated incidents about everything. They liked
nothing. Approved nothing. If there were two lines in a
court order containing ten lines--damn! They would say,
'we agree with half of this line and half of the other,
what it says. As for the rest, we oppose it because of
this, that, and the other.' Meaning, they created
incidents, but the whole issue was aimed at delaying.
Damn! I hope that, because of them, the trial will be
delayed 100 years. First point. And second point,
otherwise, they were very interested in generating
incidents which, would definitely cause the

10:29
Q. And you believed that the justification, from their point of view, of the existence
of fundamental errors, right?
A. That was your opinion in June of 2012, sir, was it
not?
Q. A. Id you allow me, upon reading the document, that
confirms my earlier position in the sense that the
translation is not exactly exactas expressed in
Spanish--when, for example, you are saying fundamental
errors, I was saying that they are essential errors. Well,
but in any case, if you allow me, that confirms that indeed
I was informed of the daily process, precisely because to
be able to draft the rulings, the Court orders in the
Chevron case as asked by Mr. Zambrano, I needed to have the
statements by the Parties on a weekly basis or whenever it
was necessary to make an order statement.

So, because of this I was--that statement of mine
indeed is an appraisal, a position of mine because I
noticed that, that specific conduct by Chevron, just as I
also noticed the conduct to speed up the proceeding by the
representatives of the Plaintiffs against Chevron.
Q. Sir, my question was: That was your opinion in
June 2012? Is the answer yes, that was your opinion in
June 2012?
A. That is what I stated, and that was my opinion.
Q. And I'm going to ask you, sir, to listen very
carefully to my questions and to answer only my questions.
Your counsel will have an opportunity to ask you questions
on redirect.
Q. Now, you also advised Chevron's representatives
that 'the administration never influenced the process';
isn't that correct?
A. Yes.
Q. In fact, you also said that they never butted in.
Your quote was, "during this whole time, the administration
never butted in." That was your statement to Chevron's
representatives; is that correct?
A. That is correct. But that is my position. My
position is that the Government did not intervene.
Q. And you also stated that the Government never
sought to influence the process "during this whole time."
That was what you told Chevron; correct?
A. Yes.
Q. You also called the administration "idiots." You
said: "These guys are idiots, but the truth, the truth, I
attest, damn, they never got involved." That was also your
position and your understanding; correct?
A. Yes, that is the way in which I understood things.
Q. Now, you also said that there was a time, a long
time ago, that a prior Attorney General of Ecuador spoke to
you and thought that, if anything, the case should be shut
10:34 1 down. So, that wasn't on behalf of the Plaintiffs;  
2 correct?  
3 MR. KEHOE: Objection. That's a confusing  
4 question. I don't understand it at all.  
5 MR. BLOOM: I would like to see if the Witness  
6 understands it.  
7 MR. KEHOE: Okay,  
8 THE WITNESS: Yes, I also talked about that  
9 specific matter. I was talking about the Attorney General  
10 of the State when I was the Presiding Judge of the Court of  
11 Justice; and, consequently, I was the first judge in the  
12 Chevron Case.  
13 BY MR. BLOOM:  
14 Q. So, no one in the administration, to your  
15 knowledge, ever sought to intervene on behalf of the  
16 Plaintiffs, but there was a single phone call back in about  
17 2003 suggesting that maybe you dismiss the case on behalf  
18 of Chevron; is that correct?  
19 A. Yes.  
20 Q. Before we get too specific as it relates to the  
21 general allegations that are contained in your Declaration,  
22 I want to address some general matters first about your  
23 testimony regarding the Lago Agrio Case. Is that okay?  
24 A. Yes, please.  
25 Repeat your question or your statement.  

10:38 1 connection with who, indeed, in truth wrote that judgment.  
2 Q. And, sir, we will deal with those other pieces of  
3 evidence I think you're referring to during the course of  
4 this examination. But what I was simply asking here is you  
5 have nothing from Judge Zambrano himself, whether it's by  
6 e-mail or by written correspondence, indicating that he was  
7 letting someone else write the Sentencia; am I correct on  
8 that?  
9 A. Yes. As far as I know, there isn't.  
10 Q. And nor do you have any written communication from  
11 the Plaintiffs, from Mr. Donziger, from Mr. Pajardo,  
12 whether by e-mail, whether by handwritten notes of any  
13 kind, indicating that the Plaintiffs had written or  
14 intended to draft any part of the Judgment?  
15 A. I know that those pieces of evidence do not exist.  
16 Q. Nor do you have any recorded conversations with  
17 anybody--Judge Zambrano, Mr. Donziger, Mr. Pajardo, or any  
18 of Plaintiffs' counsel--suggesting that the Plaintiffs and  
19 Zambrano reached an agreement to let the Plaintiffs write  
20 the Sentencia?  
21 A. In that regard, I don't have any recording, but I  
22 do have a real personal memory that Mr. Zambrano did say  
23 that to me.  
24 Q. I understand, and we'll talk about your  
25 recollections. Again, I'm going to ask you to listen to  

10:40 1 the questions. That question was limited to recorded  
2 conversations.  
3 A. Yes, there are no recorded conversations in my  
4 possession in that regard.  
5 Q. Do you have any documentary evidence showing that  
6 Judge Zambrano ever received even a single dollar from  
7 Plaintiffs' counsel?  
8 A. I do not, sir. No.  
9 Q. At no time--in 2009, 2010, 2011 or after--at no  
10 time, do you have any evidence of any payment to Judge  
11 Zambrano from Plaintiffs; correct?  
12 A. I do not have any document, no.  
13 Q. And while you say that you edited the draft  
14 Sentencia, there is no electronic evidence that shows that  
15 you actually edited the Lago Agrio Judgment, is there?  
16 A. There isn't, because precisely the forensic  
17 analysis of the computer that I worked on was not  
18 conducted.  
19 Q. And you haven't produced any handwritten edits  
20 made by you to a draft of the Lago Agrio Judgment; am I  
21 correct?  
22 A. Yes, sir.  
23 Q. Okay. Now, may we turn to your allegation that  
24 Judge Zambrano paid you money to help him while he was a  
25 judge. Could we just turn to that subject?
10:42  1  In your November 17th, 2012, Declaration--and if you need to look at it, it is at Tab 14 at Paragraph 7, but I will read it for you and have the Court Reporter or Court Interpreter translate.

5  You say--and let me give you a moment to look at it. And again, sir, it's Tab 14, Paragraph 7.

7  A. The document you are making reference to is in English. If we could have a copy in Spanish.

9  Q. There should be a Spanish version for you. Can you confirm that, sir?

11  MR. BLOOM: May we approach the Witness?

12  PRESIDENT VEEDER: Of course you may. And I think he may need a permanent helper.

14  It is, in fact, in the Claimants' bundle. It's the first document in the Direct-Examination Bundle. If that could be found for him, we could move on. But I can't see the Spanish in the Respondent's bundle. It seems to be missing.

19  You mean it was there? I will look again. I'm sorry.

21  [Comments off microphone.]

22  BY MR. BLOOM:

23  Q. Sir, you said: "After he was appointed judge of the Sucumbíos Court, Mr. Zambrano and I reached a financial agreement in which I would help him by writing writs and rulings which Mr. Zambrano had to issue in civil cases assigned to him randomly, in exchange for compensation, a payment 1,000 U.S. dollars per month approximately, for this work. At that time I was dealing with financial hardships after having been dismissed, unjustifiably, from the Sucumbíos Court of Justice, and for this reason I agreed to this arrangement."

8  Now, sir, to be clear, you did not always contend that you received $1,000 every month, did you?

10  A. I'm stating that that was the content of the agreement, and I am indicating that the commitment on my part was to write the rulings for him and to receive from him $1,000 a month on a permanent basis.

14  THE INTERPRETER: Mr. Bloom, this is the interpreter speaking. When you are referring to the paragraph, please indicate where you're reading, what line or--it's difficult for me to find it otherwise.

18  Thank you.

19  PRESIDENT VEEDER: Mr. Bloom, just be careful, because as you read it and as the statement says, it's "$1,000 per month, approximately."

22  MR. BLOOM: I said that.

23  PRESIDENT VEEDER: The first time you did, not the second.

24  MR. BLOOM: Oh, okay.
10:50 1 years?
2 A. That is correct, yes.
3 Q. And if my math is correct, about 42 months?
4 A. Forty to 42 months, yes.
5 Q. Do you have evidence of 42 payments?
6 A. I do not.
7 Q. The evidence of the payments are the ones that I
8 have provided to Chevron. And specifically the reason for
9 that is that, in most instances, Judge Zambrano gave me
10 cash.
11 Q. So, you have evidence of exactly six of the 42
12 payments; correct?
13 A. If you say so, possibly that's the case.
14 Q. And exactly how many months do we have payments of
15 exactly $1,000 supported by the evidence that you provided
16 to Chevron that has since been provided to the Tribunal?
17 A. Could you please repeat the question.
18 Q. You said that there were 42--approximately 42
19 payments of approximately $1,000. And my question to you,
20 sir, is, with respect to the evidence that you have
21 provided, how many times does that evidence support
22 payments of $1,000?
23 A. As far as I can recall--as far as I can
24 recall--there is no evidence supporting payments of exactly
25 $1,000, but other amounts, yes.

10:52 1 As in the specific case of February 2012, when
2 Judge Zambrano makes a $2,000 deposit to me.
3 Q. So, we have a slide here that identifies the six
4 payments. On June 24, 2011, the payment was for $300.
5 Would you agree with me that that is considerably less
6 than $1,000?
7 A. Yes. $300 is 300, and 1,000 is 1,000. I
8 understand the difference perfectly well.
9 Q. And on June 27th, 2011, there was another payment
10 that you've identified of $300; is that correct?
11 A. Yes, sir.
12 Q. And that also is significantly less than $1,000;
13 correct?
14 A. Yes, sir, it is.
15 Q. And on June 28th, 2011, you've offered evidence of
16 a payment of $200, which is also significantly different
17 than $1,000; correct?
18 A. Yes.
19 Q. And then on July 15, 2011, there was a payment of
20 $500; correct?
21 A. Yes.
22 Q. And you would agree with me that there are also
23 payments or evidence of payments on October 14, 2011, and
24 February 24, 2012, of $500 and $2,000 respectively;
25 correct?
11:16 1 2012, I remember that correctly, $2,000, that went into the
2 savings account that I had or have with the Pichincha Bank.
3 This is a very old account. The deposit receipt was signed
4 by Mr. Nicholas Zambrano, and I think that there is another
5 one dated June 24th, 2011, those $100 were also deposited
6 by Mr. Nicholas Zambrano, and the deposit slip is also part
7 of the Record.
8 Q. Let's look at the specific notations, the first
9 relating to the alleged payment on July 15, and here you
10 have a notation that $500 was received from Nicolas. This
11 is your notation, correct?
12 A. Yes, that is correct.
13 Q. And I will represent--we will get to the bank
14 records separately, but at least focusing on this document,
15 you would want us to take your word that this $500 came
16 from Nicolas Zambrano; correct?
17 A. I say that I received $500 from Nicolas Zambrano.
18 Q. And if we take a look at the next slide, there's a
19 reference to having received $2,000 from a Nicolas on
20 February 24, 2012; is that correct?
21 A. This is Nicolas Zambrano. I ratify that, and the
22 date is correct, and the amount is also correct.
23 Q. By the way, sir, do you perchance know anybody
24 else named Nicolas?
25 A. No.

11:19 1 Q. Isn't your son-in-law's name Nicolas?
2 A. No, sir. My current son-in-law's name is Nick,
3 it's not Nicolas. But, rather, Nick.
4 Q. Well, if we look at the next slide, which
5 references a payment of $500, this time you say it's from
6 Nicolas Zambrano as distinguished from Nicolas; correct?
7 A. Yes. And what it says there, but the substance is
8 the same. I am referring to the only Nicolas Augusto
9 Zambrano Losada that I know, and that was a former judge.
10 Q. There is no e-mail thanking Mr. Zambrano, is
11 there?
12 A. There is no e-mail.
13 Q. No electronic communication at all regarding these
14 payments; correct?
15 A. There is--it is what it is. What's there is
16 there.
17 Q. And you didn't tell anyone else about these
18 payments who has vouched for you; isn't that also right?
19 A. Back then I discussed it with Chevron's
20 representative, and I also discussed this with my wife in
21 particular about the income I had, and she was aware
22 because she knew what it for and where it came from.
23 Q. And she did not offer a witness statement to these
24 proceedings; isn't that right?
25 A. That is correct. She didn't do it.

11:20 1 Q. And even if there were payments from Judge
2 Zambrano on these days, again different amounts other than
3 the $1,000, we don't know what the money was for based on
4 your handwritten notations; isn't that correct?
5 A. I am saying in my sworn statement what the cause,
6 the grounds and the reason, and this was because of the
7 work I was conducting for his benefit.
8 Q. Right. So, we should relying on your word;
9 correct?
10 A. That is what is also shown by the facts.
11 Q. Now, we also have bank records with respect to the
12 three payments showing that you made deposits of $300, $300,
13 and $200 in June of 2011, again four months, five
14 months after the Sentencia was issued.
15 Q. Now, these bank records do not indicate where you
16 got the money; isn't that right?
17 A. I understand that there is no specific information
18 in that regard.
19 Q. Nor do the bank records show what any of this
20 money was for; correct?
21 A. At one point I'd requested the bank to give me all
22 of the information if possible, in connection with the
23 operations of deposits and debits in the account, the
24 moneys kept at that bank but there were in that account,
25 but there were some problems, and they did not provide all

11:22 1 of the information.
2 Q. And if--even if these funds had been from Judge
3 Zambrano, based exclusively on the records you produced and
4 which are in this record, the money could have been a loan
5 to you; correct?
6 A. No, not at all. Judge Nicolas Zambrano did not
7 loan me any money, not a single penny at no time.
8 Q. And we should take your word for that; correct?
9 A. That is correct.
10 Q. In fact, you considered yourself very good friends
11 with Judge Zambrano over many years?
12 A. We had a good relation for about ten years.
13 Q. Now, sir, you were financially struggling in 2011,
14 were you not?
15 A. Back then, I as anyone else, needed some financial
16 resources to conclude with a housing project.
17 Q. And in 2012, you told Chevron's investigators that
18 you had no savings; isn't that right?
19 A. That is correct.
20 Q. And that you could not afford airfare to the
21 United States to visit your children who were then living
22 in the United States?
23 A. That is correct.
24 Q. How much money did you have in the bank at that
25 time? Did you have even a thousand dollars?
A. I do not remember.
Q. In fact, according to your July 2011 bank statement, you had all of $146 in your bank account; isn't that correct?
A. If it's stated in the bank statement, it is correct.
Q. Now, sir, are you aware that even Chevron's own expert, Adam Torres, concluded that your claim of receiving $1,000 a month from Judge Zambrano, 'is not entirely consistent with statements made by Guerra during prior recorded conversations'? Are you aware of that?
A. No, sir. I was not aware.
Q. Now, given that the February 24, 2012 payment, according to your notation, took place an entire year after Judge Zambrano's Lago Agrio Court Judgment was issued, would you agree that that alleged payment was not related to any work you allegedly did in connection with the environmental case?
A. This last payment, as well as the previous one, ones to that date and also the ones after March 2011 were obviously payments made to me by Mr. Zambrano on a regular basis for the work that I conducted drafting the rulings in civil cases that he had been assigned to him through the raffle system.
Q. Other than the Lago Agrio Case; correct?

A. Yes, the Lago Agrio Case concluded in March 2011 for Judge Zambrano.
Q. Just so that the record is clear, so that the payments received beginning in June of 2011 going through February of 2012 were unrelated to the Lago Agrio Case; correct?
A. The payments that I received from Mr. Zambrano starting in April 2011 to February 2012 had no connection with the Chevron Case.
Q. Now, sir, you say that you used to send packages to Judge Zambrano in relation to the Lago Agrio Case; isn't that correct?
A. Yes, sir.
Q. And in your November 17, 2012 Declaration, you stated, "another mechanism we would use, less frequently, is that Mr. Zambrano would send me the documents in freight packages on TAMÉ airline, and I would return them in the same manner, via shipment on the same airline, TAMÉ." And that's still your testimony; correct?
A. Yes, sir.
Q. Now, maybe you could help me understand something. When a party makes a submission to the Court in Sucumbíos, does it file just one copy, or is a duplicate copy also provided to the Judge?
A. Yes, well--when a party to a proceeding submits a document or incorporates it into the case record, that document is provided to the Secretary of the Court in its original form, and in as many copies as there are parties. If there are only two parties, there might be a need to submit extra copies, so that even one of them is stamped, with what we call a certificate of filing. This documentation is provided to the Clerk so that the Clerk's Office may enter this into the record or the proceeding, and that's it. At no time does the Judge receive from the Parties to the proceeding, from the counsel, or their representatives any documents. That is done through the Clerk's Office.
Q. So, how can the Judge resolve disputed issues if he doesn't receive from the Party a duplicate copy of the court submission?
A. Let me explain. Immediately after the litigant submits to the Clerk's Office the corresponding document, the Clerk's Office gives the litigant submitting the document a receipt evidencing the receipt of the document. The Clerk of that case has the obligation to include in chronological order that document into the file, and then it has to number each one of the pages of the file.
Q. Once that was done, the original file is physically submitted to the Judge of the case, so that the Judge may rule as he or she deems fit, study the issue, and make the decision that he or she sees fit.
Q. So, the Judge actually receives the original copy when it's time for the Judge to rule on a matter?
A. Correct.
Q. And then the Judge is supposed to return it to the Clerk?
A. Immediately thereafter, yes.
Q. Does a party who wants a copy of the submission deemed official get the copy stamped by the Clerk?
A. Yes.
Q. Yes, allow me please--allow me, it is necessary for me to clarify this matter.
A. Once the Judge takes cognizance of the petition evidenced in the latest writ presented by the litigant, the Judge issues an order, the corresponding administrative order via a procedural mechanism known as a decree in Ecuador. This ruling--ruling is a general term--I'm using the term 'ruling' as a general term, Providencia in Spanish, the decree specific--this Decree is used by the Judge to notify the opposing party of the contents of the document that the Judge is deciding on, and the Judge issues decisions in connection with whatever it is that the Party requested in the writ, in the documents.
Q. For example, this needs to be sent to the Ministry of Agriculture, whatever is relevant.
11:34 1. So that once the Clerk’s Office notifies the contents of the Decree issued by the Judge, the opposing party gains knowledge of the decision by the Judge—aside from becoming aware of the judge’s order—and it receives the original copy, so to speak, of the document submitted by the other Party.
2. Q. And let me just stick with this subject just a little bit longer and allow my question to be just a little bit more precise. How does a party prove receipt of, let’s say, a motion that it submits to a Court? Does it get back a copy of the motion with a receipt stamp on the submission?
3. A. Yes. The Party receiving the document that has been submitted by the opposing party generally receives it with a certificate of submission that the Clerk’s Office put on the document once the document was received.
4. Q. And is that certificate of submission different from the stamp that is put on the official copy?
5. A. No. Usually, everything is exactly the same. Documents are filed before the Court, they appear to be the official copy. And then we have also seen stamps that are not in circles, indicating it’s been received, and my question is whether or not there is a significance to those two different stamps. And perhaps I can show you after lunch, if you have any questions.

11:36 1. Lunch, if you have any questions.
2. A. Look, unfortunately, up until the time when I was a judge in Ecuador, as far as I know, there was no administratively obligatory norm, talking about within the judiciary, whereby the shape of the seals was to be determined to the degree that especially in the Oriente Region in Ecuador, a region far away from the capital, oftentimes the Clerk or the Judge took money out of his or her own pocket to have a seal made. We’re talking about places that are not very sophisticated. We’re talking about ordinary seals that had a rubber base, and then the handle is made of wood. Later on, in the capital, in the large cities’ courts, the clerks used seals that were a little bit more sophisticated, for example, numbering seals that were made of metal, and they were quite elegant. But the judiciary itself did not provide, at least to the Lago Agrio courts, not even seals. Everyone had to do as best they could, but there were seals.
3. President Vedeer: Mr. Bloom, let’s come back to this after the lunch with the two examples you had in mind. We saw them yesterday.
5. By Mr. Bloom:
6. Q. Sir, coming back to the TAME shipments, you have specifically testified that you sent Court documents, including Court files, relevant to the Lago Agrio Case through the airline carrier TAME; correct?
7. A. Yes, that is correct.
8. Q. So, I want to put on the screen the list of the TAME packages that Chevron has identified in this arbitration as coming from you, and I want to walk through these one at a time.
9. Now, to be clear, you’ve identified 11 packages from you directly to Judge Zambrano through TAME, and we have the 11 on the screen. There were also other shipments that did not go to Judge Zambrano, and we will go through these too, but I believe these are the 11 that you’ve identified that went to Judge Zambrano.
10. I would like to work from the bottom up, and you’ll see on the slide before you one shipment of February 28, 2012.
11. And other than your word, we don’t know what you were sending to Judge Zambrano, whether you were sending books, a postcard, a thank you for lending him money, or whether you were paying him back for a loan, do we? All we know is you sent him something on February 28, 2012?
12. A. On February 28, 2012, I sent him the originals or a number of files with the relevant judgments.
13. What’s more, at that date, for whatever reason, I kept with me four or five cases that I was not able to send to him because I had not finished the relevant judgments. The cases I’m making reference to that I was not able to send on February 28 I delivered personally in early March to the Clerk of the Court at that time.
14. Q. Now, I want to be crystal clear here. This shipment was made more than a year after the Sentencia was issued in Lago Agrio; correct? February 28, 2012?
15. A. Correct.
16. Q. And what you were sending to Judge Zambrano had nothing to do with the Lago Agrio Case; correct?
17. A. No, but it did have to do with the work he performed as a judge in the civil cases.
18. Q. And the October 3, 2011, shipment had nothing to do with the Lago Agrio Case; isn’t that correct?
19. A. Yes, not with the Chevron Case, but yes, with the court cases of Mr. Sambrano’s.
20. Q. And again, I understand that you’ll have an opportunity when your counsel asks you questions, but I’d like you to confine your answers to the questions that I’m asking.
21. You would agree with me, sir, that the shipment of September 27, 2011, didn’t have anything to do with the Lago Agrio Case; isn’t that right?
22. A. Yes, sir.
Q. And the shipment of July 5, 2011, had nothing to do with the Lago Agrio Case; isn't that also correct?
A. Yes, sir.
Q. And would you agree with me that the shipment of May 30, 2011, had nothing to do with the Lago Agrio Case?
A. Correct.
Q. And the shipment of May 24, 2011, was postdated the Sentencia by three months also had nothing to do with the Lago Agrio Case; would you agree with me?
A. Yes, sir, that is correct, I agree.
Q. And on April 21, 2011, you would agree with me, sir, that that shipment also had nothing to do with the Lago Agrio Case?
A. That's correct.
Q. And then the March 8th, 2011, shipment similarly had nothing to do with the Lago Agrio Case; isn't that also correct?
A. Yes.
Q. Now, sir, as to the July 22, 2010, shipment, that was an earlier package to Judge Zambrano. Do you see that on the screen? The very first one?
A. July 22, 2010. I do see it.
Q. And you're not contending that that shipment had anything to do with the Lago Agrio Case, did you?
A. I am not. I'm not maintaining that.

Q. In fact, Judge Zambrano was not the Presiding Judge of the environmental case at the time of the shipment; isn't that also right?
A. Your statement is correct.
Q. He first served as Presiding Judge from October 2009 to March of 2010, so this July payment came about four months after he had stopped serving his first term; you would agree with me? I'm sorry, I misspoke.
A. He served first as Presiding Judge from October 2009 to March 2010, so this July shipment came about four months after he had stopped serving his first term, would you agree with me?
A. Yes.
Q. And he began serving as Presiding Judge again when? In October of 2011—-I'm sorry, October 2010; correct?
A. Correct.
Q. So, this package was sent almost three months prior to him beginning his second term as Presiding Judge; correct?
A. Yes, sir. Correct.
Q. Now, Mr. Guerra, can you confirm for me that there was, however, one instance in which you offered evidence that you sent a package directly to Judge Zambrano through TAME while he served as the Presiding Judge of the Lago Agrio Case?
A. Yes, that is correct.
Q. So, you can confirm that none of the shipments directly to Judge Zambrano for which Claimants have offered the evidence in this arbitration relate to the Lago Agrio Case specifically. Could you confirm that for me, sir?
A. It seems to me, if you allow me, I would like to tell you that I think there are a couple of shipments that are—-
Q. I will certainly allow you to answer, but I thought you just confirmed for me one by one under oath that none of these shipments related to the Lago Agrio Case. That was your testimony over the last ten minutes, was it not?
11:51 making reference to, well, those were located in my computer and are dated one day before this shipment, and the rulings issued by Mr. Zambrano during the proceedings were issued one or two days immediately after this date. So, this confirms that I did send documents related to the Chevron Case to Mr. Zambrano, all this looking at it from a context, with all due respect.

BY MR. BLOOM:

Q. Sir, my question that was pending that you did not answer was relative to the 11 shipments made directly to Judge Zambrano. We will get to the other shipments. With respect to these 11 shipments directly to Judge Zambrano, you have confirmed that ten of them were made after the Sentencia was issued and had nothing to do with the Lago Agrio Case; isn't that correct?

A. Yes, sir.

Q. And you have testified that the July 22, 2010, shipment had nothing to do with the Lago Agrio Case and that Judge Zambrano was not even President Judge at that time; would you agree with me, sir?

A. Yes, that's correct.

Q. And you also testified that the February 11 shipment of 2011 also had nothing to do with the Lago Agrio Case. In fact, you've testified previously that all of your work as related to the case had ended weeks before;

11:53 isn't that also correct?

A. Yes, sir.

MR. BLOOM: And for the Tribunal's reference, at our Tab 27 is where we have the TAME records.

BY MR. BLOOM:

Q. Now, Mr. Guerra, you understand that Chevron claims to have found what it refers to as nine Draft Orders related to the Lago Agrio Case on your computer; correct?

A. Yes, sir. I wrote those rulings.

Q. Could you turn to Tab 41 of your binder.

PRESIDENT VEEDER: Just help us with that number.

MR. BLOOM: Forty-one.

THE WITNESS: I cannot find that number.

PRESIDENT VEEDER: Just wait a minute. We're all having trouble.

MR. KEHOE: Eric, if it helps, they're Attachments Q through Y in the white binder that he has in front of him as declarations.

MR. BLOOM: Thanks. Let's do that. That will be easier.

BY MR. BLOOM:

Q. Mr. Guerra, did you hear Mr. Kehoe?

PRESIDENT VEEDER: Would you stay there and make sure he's looking at the right tab. Tab Q.

MS. BEES: Yes, he's there.

11:56 PRESIDENT VEEDER: Thank you very much.

BY MR. BLOOM:

Q. Sir, I'm going to ask you to read the dates of these nine Orders.

A. Yes. The first one, if you allow me, the first one is dated 20 October 2009; November 20, 2009; December 1st, 2009; December 7, 2009; December 14, 2009; January 5, 2010; January 19, 2010; February 2, 2010; and February 18, 2010.

Q. May I ask you to stop for a moment because we're going to have a little bit of a difference.

Let me offer up as Slide 26 the issuance dates of these nine Orders, and I will quickly read them into the record. They're October 21, 2009; November 23, 2009; November 30, 2009; December 7, 2009; December 14, 2009; January 5, 2010; January 19, 2010; February 2, 2010; and February 18, 2010.

And again so that the record is clear, these are the dates of the nine Lago Agrio Orders that, according to Chevron, correlate to the nine Orders found on your hard drive.

Now, I wanted to ask you, sir, some questions back to the TAME shipments.

The October 21, 2009, Order was issued well before any of your TAME shipments to Mr. Zambrano; would you agree with me?

A. Allow me to tell you that I didn't understand your
12:06  1 any of the shipments made directly to Judge Zambrano which 
2 began in July of 2010?  
3  A. Yes, sir.  
4  Q. In fact, all nine of these Lago Agrio Orders were 
5 issued by the Court prior to the first shipment of which 
6 you have offered evidence that went directly to Judge 
7 Zambrano; isn’t that also correct?  
8  A. I understand that that is the case.  
9  Q. So, none of the shipments that went directly to 
10 Judge Zambrano contained any of these nine Orders; isn’t 
11 that correct?  
12  A. These Orders or most of these Orders were given 
13 personally by me to Mr. Zambrano.  
14  Q. Now, you and Chevron have identified 12 additional 
15 packages from you to people other than Judge Zambrano 
16 through TAME; isn’t that also correct?  
17  A. Yes, sir.  
18  Q. And three of them went not to Lago Agrio but to 
19 Coca, which is a couple-of-hour car drive from Lago Agrio; 
20 isn’t that also right?  
21  A. Some shipments were sent to Coca, but they are 
22 unrelated to Lago Agrio.  
23  Q. So, now we are down to nine TAME shipments to talk 
24 about.  
25 Now, you sent packages to Narcisa Leon, to Juan 

12:04  1 made directly to Judge Zambrano?  
2  A. The nine Orders--rather, the nine drafts or the 
3 contents of nine rulings related to the procedural dispatch 
4 of the Chevron case that were found in my computer were 
5 drafted in my computer by myself and sent to Judge Zambrano 
6 for him to sign and send to the Parties--for him to sign 
7 and send to the Parties and serve on the parties as his 
8 own. I should say that, of the nine rulings in my computer 
9 also include three or four additional rulings that I 
10 drafted in Lago Agrio on a computer that was given to me 
11 back then by Mr. Pablo Pajardo. And if you allow me, I 
12 would like to conclude this by indicating in the first 
13 stage I sent these rulings to Mr. Zambrano through third 
14 parties because that is what he requested me.  
15  Q. Sir, do you remember my question?  
16  A. Yes, yes. You--yes. You are trying to link the 
17 time when these rulings were drafted to the time or the 
18 moment when the documents were directly sent to 
19 Mr. Zambrano, and clearly there are inconsistencies.  
20  Q. Can you answer the question I asked, if you 
21 remember it?  
22  A. I consider that I have already answered your 
23 question.  
24  Q. I asked you a timing question. I asked you 
25 whether the six Orders that were issued in 2009 pre-dated 

12:02  1 with me?  
2  MR. KENOE: Objection. Mischaracterizes his 
3 testimony. I didn’t object previously because counsel said 
4 “directly” each time. There was no evidence of a shipment 
5 directly to Judge Zambrano. Here, he did not, and the 
6 Witness has clearly testified that he would send them 
7 indirectly through the intermediaries, and that’s why I 
8 object to that question.  
9  PRESIDENT VEDDER: Mr. Bloom, can you rephrase the 
10 question?  
11  BY MR. BLOOM:  
12  Q. And, sir, when I’m talking about shipments to 
13 Judge Zambrano, I’m referring to shipments made directly to 
14 Judge Zambrano. I want you to understand that. 
15 Would you agree with me, sir, that the first 
16 shipment of which you have evidence that went to Judge 
17 Zambrano--and again, I mean directly to Judge 
18 Zambrano--happened in July 2010, some nine months after 
19 this October 21, 2009, Order was issued from the Lago Agrio 
20 Court?  
21  A. Yes, sir.  
22  Q. In fact, there are a total of six Lago Agrio 
23 Orders issued in 2009 that Chevron contends that you wrote, 
24 but I want you to confirm for me that each of these six 
25 Orders was issued well before any evidence of any shipments
A. Correct, yes.
Q. Have you ever given any seminars or presentations with him?
A. No. With Mr. Albán, we wrote the legal book. We promoted it and sold the books.
Q. Did you attend with him the “Seminario de derecho procesal el penal con leyes y codigos”?
A. I recall attending some seminars and courses on---the ones that were promoted by the Government, the Judiciary, the office of the Attorney General, or the Office of the Prosecutor General.
Q. Now, you have exactly seven---you have documentary evidence of exactly seven TAME shipments to Mr. Albán, and you will see them on the screen. And those shipments, sir, were on what dates?
A. They are dated December 22, 2010, and up to February 3rd, 2011.
Q. And am I correct, therefore, that each of the Lago Agrio Orders found on your hard drive was issued by Judge Zambrano many months prior to any of these shipments to Dr. Albán?
A. The Chevron Judgment was issued on February 14, 2011, and the rulings in that case or the Decrees that allowed for the continuation of the proceeding were issued around the dates stated in the rulings found in my computer.
Q. Would you agree with me, sir, that each of these shipments substantially postdated the issuance of the nine Lago Agrio Orders found on your computer?
A. We would need to review one by one in connection with the shipment and the date, but I can assert and assure you that I personally handed the rulings to Judge Zambrano because for the most part, that was our tradition.
Q. The first of the shipments to Mr. Albán was on December 22, 2010; correct?
A. Yes, sir.
Q. If we can turn back to the slide of the nine Lago Agrio Orders. Just a moment.
(Pause.)
Q. So, the last of the Orders that you say were found on your computer is dated February 18, 2010, and that's some ten months before your very first shipment of which you have evidence that was sent directly to Fernando Albán; would you agree with me, sir?
A. Excuse me, did you say February 18, 2010?
Q. Correct, was the date of the actual order.
A. Yes, I have it here. It says January 18th, 2010.
Q. So, that’s 11 months before the first shipment directly to Mr. Albán; isn’t that correct?
A. It might be like that. But—if we take the first
THE WITNESS: This is Attachment F in the white binder.

PRESIDENT VEEDER: Could somebody find it for the Witness. It will save time.

MR. BLOOM: Or Tab 27 of Respondent’s slides.

MR. KHOJD: Mr. President, would it help if we had one of our attorneys sit next to Mr. Guerra and turn the binders?

MR. BLOOM: We have no objection.

PRESIDENT VEEDER: It’s not right for the Witness to take time looking for documents.

So, bring up another chair.

MR. KHOJD: Okay.

PRESIDENT VEEDER: Mr. Guerra, we’re going to provide you with an assistant to help you find the right document. It’s getting a bit dangerous because these bundles are very heavy.

MR. KHOJD: Scoot over just a little. This is Elizabeth Gilbert.

BY MR. BLOOM:

Q. So, Mr. Guerra, again, the two points that I would like you to focus on, the two dates, are as follows: The first is that the first of the TAME shipments directly to Fernando Albán was December of 2010. Can you confirm that now? You confirmed it earlier, but you wanted to look at something right now.


Q. Then the second fact that I wanted you to focus on is the last of the nine Lago Agrio Orders found in your computer. We had February of 2010, you said January of 2010, but in either event, you would agree with me that January or February of 2010 is ten or 11 months before--before--your first shipment to Mr. Albán; correct?

A. I sent--I made the first shipment to Mr. Albán in December 2010--that is clear--and this is also ratified here by the document.

As to the rulings that you’re referring to, the dates are stated in the documents themselves. I cannot tell you directly whether Ruling 1, 2, 3, 7 or 9 were sent or not through TAME. What I can assure you is that all of these documents, without any exceptions, including the ones that I worked on Lago Agrio were used by Mr. Zambrano for the Chevron Case.

Q. And, sir, you should feel free to look at the last of the nine Orders found on your computer, and if you could be kind enough to share with us the date of that.

MR. BLOOM: I think he’s looking at the Claimants’ binder. That’s why I don’t know why he’s using it.

THE WITNESS: If you allow me, would you please tell me the tab in your binder?

MR. BLOOM: If we can take a five-minute break.

We’re going to give out another binder that I think might be helpful.

PRESIDENT VEEDER: Let’s take a five-minute break for that.

Again, we ask that you not discuss this case, Mr. Guerra, during this five minutes away from the Tribunal.

THE WITNESS: Yes, sir.

(Brief recess.)

PRESIDENT VEEDER: Let’s resume.

BY MR. BLOOM:

Q. Sir, we just handed to you Tab 41, and I--which contains the nine Lago Agrio Orders, and I wanted to ask you, did you have time during this break to page through those Orders to look at the dates of those Orders?

A. I was concerned with the first ruling that was delivered by you, 21 October 2009, in connection with the one that I have as the first one worked, drafted in my computer.

Q. And there may be some confusion, sir, because the ones that were prepared on your computer are in the white binder provided by Chevron’s counsel. The ones that are in the black binder were the Orders as they were issued. So, they might be different and the dates might be different.

But I really have only a couple of questions on this.

Can you tell us or can you confirm for me that the last of the nine Lago Agrio Orders that correlated to your so-called "Draft Orders" was, in fact, issued in February of 2010?

A. Yes, sir, that is what is evidenced here.

Q. And that was approximately ten months before your first shipment of which you have offered evidence directly to Fernando Albán; is that correct?

A. Yes, sir.

Q. And as a result, we know that the seven shipments to Albán beginning in December of 2010 had nothing to do with the Lago Agrio Orders found on your computer; correct?

A. That is your statement, yes.

Q. Do you agree with my statement? I realize you contend that you performed other work for Judge Zambrano, but my question is very specific: Would you agree with me that the seven shipments to Mr. Albán beginning in December of 2010, that post-date by nearly a year the Lago Agrio Orders found on your computer, can you confirm for me that the shipments to Albán had nothing to do with the nine Orders found on your computer?

A. If the dates that you’re making reference to are correct, yes, that is correct, your statement is correct.

Q. And you have never alleged that the shipments to
12:40 1 Juan Jurado had anything to do with the Lago Agrio Case; 2 correct? 3 A. What name did you say? Excuse me? Juan Jurado? 4 Q. Yes. 5 A. Yes. I maintained that the shipments sent to the 6 City of Coca have nothing to do with the Lago Agrio Case. 7 Q. Nor have you ever alleged that any of the 8 shipments to Pedro Moreira had anything to do with the Lago 9 Agrio Case, am I right? 10 A. Pedro Moreira. I cannot identify him. If they 11 were sent to Lago Agrio, it is possible that they had to do 12 with the case but if they were sent to the City of El Coca, 13 most certainly they did not have anything to do. 14 Q. So then, among all of the shipments of which you 15 have offered evidence, we are left with just two 16 unaccounted for packages, both of which went to Marcisa 17 Leon. But as before, there is no document or electronic 18 evidence or other contemporaneous evidence confirming that 19 the package contained--let me withdraw that. 20 As before, there is no documentary or electronic 21 evidence indicating what was in these packages other than 22 what you have indicated? 23 A. I sent documents to Ms. Marcisa Leon for them to 24 be delivered to Judge Zambrano. And, indeed, there is no 25 other evidence. You will understand that I was not able to

12:42 1 go to the TAMBE office and provide a detailed account 2 saying, okay, I'm sending ruling for the case 2020 of A 3 versus B. The only thing I said was documents are being 4 sent. 5 Q. So, there is no other evidence, is what you said? 6 A. Yes, sir. 7 Q. And you left the Court in 2008? 8 A. Yes. 9 Q. So, we don't know whether you're sending documents 10 back to the Court that you may have had in your house now 11 that you were no longer a judge, again, other than your 12 testimony, other than your word; correct? 13 A. When I left the Court--when I officially left the 14 Court in early February 2008, I recall that I formally 15 delivered all of the files that I had under me, and also 16 all of the property--computers, equipment--that I had. 17 By May 2008 and going forward, I didn't have to go 18 back to the Court or send documents that I owed the Court. 19 Q. Am I correct that neither Mr. Leon nor Mr. Albán 20 has ever corroborated your allegations? No one has stepped 21 forward with a declaration or a witness statement saying 22 that they acted as a messenger for you and Judge Zambrano? 23 A. I have no personal knowledge in that regard. 24 Q. Now, you've testified--sir, you provided to 25 Chevron all of the evidence that you had at your disposal

12:45 1 about your shipments to Judge Zambrano; am I correct? You 2 weren't holding anything back? 3 A. I didn't hold anything back. That documentation I 4 obtained officially from TAMBE. 5 Q. And you provided no other TAMBE records showing 6 deliveries to Judge Zambrano or Mr. Albán or Marcisa Leon. 7 You provided everything to us, did you not? 8 A. I provided everything that TAMBE certified to me. 9 Q. Sir, let's talk a little bit about your 10 travel--changing subjects--you have also offered testimony 11 affirming that you regularly traveled between Quito and 12 Lago Agrio to work on the Court rulings for the 13 environmental case; correct? 14 A. During Mr. Zambrano's second mandate, yes. 15 Q. And we have on the screen, and if your assistant 16 wants to turn to Paragraph 45--I'm sorry, Paragraph 44 of 17 his Witness Statement, that can be found at C-2358. It's 18 Tab 17 of our binder. It's also in the Claimants' binder. 19 We also have the relevant language on the screen. 20 Paragraph 44. 21 And I will just read it for the record, and then 22 we are going to discuss this for a little bit. 23 You wrote, and you affirmed under oath: "From 24 that point forward, a modus operandi regarding my role as 25 ghostwriter in the Chevron Case changed. Mr. Zambrano

12:47 1 advised me that we had to be more careful because the 2 attorneys for Chevron will be very attentive to any 3 irregularities. Because of that, there were times when I 4 traveled to Lago Agrio to work on the Court rulings for the 5 Chevron Case. I would regularly travel to Lago Agrio by 6 bus, and less frequently by plane on TAMBE. True and 7 accurate copies, certified by TAMBE, of TAMBE's records 8 reflecting my travel between Quito and Lago Agrio from 2009 9 through 2010 are marked as PX 1722 through PX 1726. Those 10 records reflect, for example, that I traveled via TAMBE from 11 Quito to Lago Agrio on August 4, 2010, returning to Quito 12 on August 6, 2010; and that I again traveled from Quito to 13 Lago Agrio on August 11, 2010, 2011, 2010, returning to Quito on 14 August 12, 2010." And then it goes on. 15 Now, sir, is it your testimony that you had no 16 reason to travel to Lago Agrio during this time other than 17 to help Judge Zambrano with the environmental case? 18 A. What period of time are you referring to? What 19 timeline are you referring to? Can you be more specific? 20 Q. In your Declaration, and the time that I'm 21 focusing on, is August of 2010, and my question to you is: 22 Did you have any reason to travel to Quito other than the 23 Lago Agrio Case? You had no family there? 24 A. My wife and my children, my family used to live in 25 Quito. When I traveled to Lago Agrio, I was doing it
regularly, and specifically because I was to assist Mr. Zambrano in his own cases, and specifically in the Chevron Case, this in the period of time that you're making reference to.

Q. You had--okay, well, let's back up. So, during this time period, you were helping Mr. Zambrano in the Lago Agrio Case; correct?

A. Yes.

Q. In fact, you were a Claimant in several actions in Lago Agrio in the 2009 and 2000 (sic) timeframe; isn't that right?

THE INTERPRETER: Did you say 2009 and 2010, sir?

MR. BLOOM: Yes.

THE WITNESS: It seems to me that as a lawyer I participated in one or two cases. Perhaps just the one.

BY MR. BLOOM:

Q. And you were also the subject of disciplinary actions at the time; isn't that right?

A. No, sir, not at that period of time. I was no longer a judge at that time and no disciplinary action was current against me.

Q. So, focusing specifically with respect to these trips, the first one is August 4. You declared that you traveled from Quito to Lago Agrio and that you returned on August 6, and you just testified that that related to work on the Lago Agrio Case; am I correct?

A. At that date in August 2010, between August 4 and August 6, 2010, Judge Zambrano was not the Judge of the case. So, if I traveled during those dates, it wasn't for me to provide assistance to the Chevron Case but possibly to assist him in other matters that were—that had to do with the cases that he also heard.

Q. The Presiding Judge in August of 2010 was Judge Ordoñez, isn't that correct?

A. Yes.

Q. And Judge Zambrano did not resume the bench until sometime in October, a couple of months after this travel; isn't that also correct?

A. Yes, sir, that is correct.

Q. In fact, the motion to recuse Judge Ordoñez was not filed until August 26th, sometime after your August 4th travel; isn't that correct?

A. Yes, sir, that is correct.

Q. And also after your travel of August 11 to August 12th?

A. Yes.

Q. In which case neither of those trips related to the Lago Agrio Case; isn't that correct?

A. Yes, sir, that's correct.

Q. Do you have friends in the Lago Agrio area whom you would visit when you were in Lago Agrio? Do you consider Mr. Albán a friend of yours with whom you collaborated on a number of occasions?

A. I considered that he was a good friend, but I am not an individual that does--goes on trips exclusively to visit friends.

Q. Now, you have produced two deposit slips allegedly signed by a Ximena Centeno; correct?

A. Yes, sir.

Q. But you claim never to have met anybody named Ximena Centeno; isn't that also right?

A. That is correct, yes.

Q. Nor have you ever spoken to a Ms. Centeno?

A. That is correct, yes. I don't know her.

Q. And Pablo Pajardo never spoke to you about a person named Ximena Centeno; isn't that also right?

A. That is correct, yes.

Q. Now, you believe she is associated with the Plaintiffs, but that's based on information provided to you from the Gibson Dunn law firm; isn't that right?

A. Yes, and also because, on the Web page of the Internal Revenue Service of Ecuador, we see the fact that she is an employee of Selva Viva, and Selva Viva is connected with the Lago Agrio Plaintiffs.

Q. You have provided to Chevron, and Chevron has provided to this Tribunal exactly two deposit slips with her name on them; isn't that correct?

A. Those documents were provided to me by Banco de Pichincha, once I requested them.

Q. And they were dated December 23, 2009, and February 5, 2010; isn't that also right?

A. That is what the documents themselves evidence.

Q. And just to be clear, again, the Lago Agrio Judgment was issued on February 14, 2011; correct?

A. Yes, sir.

Q. And you allegedly did not agree to cooperate with Chevron until 2012; isn't that also right?

A. That is correct.

Q. And there is no evidence of any payments from Ms. Centeno at all in 2012.

A. There is no evidence because at that date the agreement had ended. My agreement with them was to receive $1,000 a month while I assisted in the preparation of the rulings.

Q. Nor is there any evidence of any payments from Ms. Centeno at all in 2011, the year the decision was issued; correct?

A. There are none because the payments were made personally by Mr. Pajardo to me in cash.

Q. So, there is no evidence of those payments other
12:57 1 than your word; correct?
2 A. Possibly in Mr. Fajardo's accounts that evidence can be found.
3 Q. You're not aware of any other corroborating evidence, are you?
4 A. No.
5 Q. Nor do you have any evidence of any payments from Ms. Centeno or from anyone else associated with the--nor do you have any evidence of any payments from Ms. Centeno or from anyone else for the entirety of Mr. Zambrano's second term as judge in the Lago Agrio Case?
6 A. The payments were made to me by Mr. Fajardo in person.
7 Q. Again, I'm going to ask you to listen carefully to the question.
8 Do you have any evidence of any payments from Ms. Centeno or anyone else associated with the Plaintiffs for the entirety of Mr. Zambrano's second term as a judge in the Lago Agrio Case beginning in October of 2010 forward?
9 A. I do not. I don't know if that exists or if it doesn't exist.
10 Q. And you have evidence of exactly two payments with Ms. Centeno's name on them; correct?
11 A. In accordance with the evidence, yes.

01:01 1 Zambrano's second term; can you please confirm that?
2 A. MR. KEHOE: Objection. For the third time can he confirm that? This is getting repetitive.
3 MR. BLOOM: I'm obviously asking for an answer.
4 PRESIDENT VEEDER: I think you got it.
5 MR. KEHOE: Three times.
6 THE WITNESS: For the fourth time, and with all due respect, I am saying that I did not have that physical evidence. I don't know if anybody has it.
7 BY MR. BLOOM:
8 Q. And there is nothing on the deposit slips that had Ms. Centeno's name written on it that indicate what these payments were for; correct?
9 A. If you allow me, I should tell you that based on the configuration of the bank document, the deposit slip does not have any area where you can state the reason for the deposit.
10 Q. And to be clear, the deposit slip indicated that the money went into your bank account; correct?
11 A. Yes. The money went into the bank account, and the bank states that. And I received it and spent it.
12 Q. And not the bank account of Judge Zambrano?
13 A. The values deposited by Ms. Centeno were sent to myself, Alberto Guerra Bastidas.
14 Q. And there is no evidence that that money ever went

12:59 1 Q. And both of those alleged payments would have occurred well before you or Judge Zambrano allegedly negotiated a deal to let the Plaintiffs draft the Judgment; can you confirm that, please? You earlier confirmed that the two payments by Ms. Centeno were December 23, 2009, and February 5 in 2010, and both of those alleged payments would have occurred well before you and Judge Zambrano allegedly negotiated a deal with the Plaintiffs to let the Plaintiffs draft the Judgment?
2 A. Your statement is correct, but I must say that those payments have to do with the work I performed in connection with the preparation of the rulings during the first mandate of Mr. Zambrano.
3 And the last part of your question has to do with the second mandate of Mr. Zambrano, so it's one year after the payments by Mrs. or Ms. Centeno.
4 Q. And there is no evidence of any payments to you during his second--during Judge Zambrano's second tenure; isn't that correct?
5 A. I have said that the payments were done personally, personally to me.
6 Q. I understand that. I'm asking you about the physical evidence.
7 There is no physical evidence reflecting any payments to you at all from the Plaintiffs during Judge

01:03 1 to Judge Zambrano; correct?
2 A. Honestly, I do not understand your question.
3 Q. Not one dollar--
4 A. Your question is very--it is very elusive. The money deposited by Mrs. Zambrano goes into my account, and I don't know if any other money deposited by Mrs. Zambrano, Mrs. Centeno was deposited into Mr. Zambrano's account. If you're referring to that, I'm not aware of it.
5 Q. So, the only person you know who received money from the Plaintiffs is you?
6 A. Yes.
7 Q. Okay. Let's turn back to the general nature of your allegations. You've claimed that Judge Zambrano agreed to let the Plaintiffs prepare the Judgment for $500,000; correct?
8 A. Yes.
9 Q. And the money would come from the Plaintiffs to Judge Zambrano?
10 A. That is what was indicated to me by Mr. Zambrano.
11 That was what he had negotiated with the representatives those are the terms that Mr. Zambrano indicated to me that he had negotiated with the representatives of the Plaintiffs against Chevron.
12 Q. And it would be paid to him when?
13 A. Based on what Mr. Zambrano told me, the agreement
1 was that he would be paid once the Chevron Claimants received the product of the Judgment when it was implemented. From what Mr. Zambrano indicated, the agreement was set so that he would be paid once they, Chevron's Plaintiffs, received the product of the judgment, upon enforcement.

7 Q. And you've testified that the money would be paid to Judge Zambrano only after the Plaintiffs actually recovered a money judgment from Chevron?
8 A. I said that because Mr. Zambrano personally indicated to me that situation.
9 Q. And, of course, that meant necessarily that Judge Zambrano would not be paid for a very long time; isn't that right?
10 A. I didn't think about that back then.
11 Q. Well, you knew that there were layers of appellate review in Ecuador; correct?
12 A. Of course.
13 Q. You know, the Court of Appeals and the National Court; correct?
14 A. Yes.
15 Q. And now the Constitutional Court is reviewing the Lago Agrio Sentencia; correct?
16 A. Yes, sir.
17 Q. Were you aware that this arbitration has been pending since 2009?
18 A. No, I wasn't aware of that detail.
19 Q. And, of course, you recognized that there would inevitably be enforcement actions to try to enforce the Judgment?
20 A. I didn't think about that back then.
21 Q. But you did testify earlier that you knew Chevron was trying to delay things as it related to the Lago Agrio Case at least; correct?
22 A. I said that in connection with the first-instance proceeding.
23 Q. And did you have reason to believe that Chevron would try to expedite payment to the Plaintiffs after the Sentencia was issued?
24 A. I didn't think about that. Or I didn't think about it back then.
25 Q. So, it's your testimony, sir, that Judge Zambrano accepted a bribe for some future uncertain date that might never come to pass; correct?
26 A. I cannot forget that Mr. Zambrano asked me to present--submit that proposal to the Plaintiffs against Chevron and that's what I did. When we--when I had a second meeting with Mr. Donijger and his friends at the Honey Honey hotel in Quito, Mr. Zambrano later on told me that he had reached that agreement. This is to allow them to draft the Judgment, and that was the biggest concern.

1 to draft the Judgment, and that was the biggest concern Mr. Zambrano had. He would not have known how to do it. He had no experience with civil proceedings.
2 Q. And, of course, there would be no way for Judge Zambrano to enforce in a court of law his alleged agreement with the Plaintiffs if they chose not to pay him at this uncertain date in the future; correct?
3 A. I cannot answer that specific question. I am not aware of the agreement, the core elements, whether this was only an oral agreement, or if it's in writing, or if there's some document, some bill of exchange, a promissory note signed by a third party, et cetera, et cetera. I cannot give you any certainties in that regard.
4 MR. BLOOM: Members of the Tribunal, I come to at the end of a line of questions, if you would like to break.
5 PRESIDENT VEEDER: Let's break now. It's ten past 1:00. We will come back at ten past 2:00.
6 Again, Mr. Guerra, we ask you not to discuss the case away from the Tribunal or your testimony. Do you understand that? Thank you.
7 THE WITNESS: Thank you.
8 (Whereupon, at 1:10 p.m., the Hearing was adjourned until 2:10 p.m., the same day.)

1 after the record.)
2 PRESIDENT VEEDER: Let's resume.
3 Mr. Guerra, we were just having a discussion with counsel. We are not going to sit today beyond 6:00 p.m., but we may finish earlier, possibly at 5:30 p.m. But if at any stage you want to break or you feel tired, let us know.
4 Let's proceed.

9 CONTINUED CROSS-EXAMINATION
10 MR. BLOOM: Thank you, Mr. President.
11 BY MR. BLOOM:
12 Q. Mr. Guerra, could you please tell us how much you were making as an Ecuadorian judge at the time that your employment there was terminated.
13 A. At the end of my tenure as a judge of the Superior Court of Sucumbios--that was May 2008--I was making about 5,000 U.S. dollars a month.
14 Q. And am I correct that shortly before you were removed as a judge, you had begun to build a new house; is that right?
15 A. Yes.
16 Q. You worked with an architect; correct?
17 A. Yes.
18 Q. And how far did the construction of your new home get? Was it completed?
02:20 1 A. No. When I was removed from my functions as a 2 judge—that was in May 2008—the level of progress was 3 about 15 to 20 percent in the construction of the house. 4 Q. Can you describe the construction that was 5 completed?

02:22 6 A. Well, the structure, the house is on a lot that 7 has 1,000 square meters in surface. It has two floors, two 8 stories, with a total of 375 square meters in terms of the 9 main house; and there is also an ancillary house next to 10 the main house, and this is a small guest house of about 60 11 square meters of construction.

02:23 12 Q. And you were pleased with the construction that 13 was done; correct?

02:24 14 A. Back then I wasn't very satisfied, because when I 15 lost my job, in the future I knew I would have problems 16 continuing with the construction project that was already a 17 little bit advanced.

02:25 18 Q. And I believe you've already testified that you 19 were terminated in 2008; is that correct?

02:26 20 A. The Council of the Judiciary issued a resolution 21 in May 2008 that was clearly a unilateral decision, and I 22 was removed, terminated as a judge.

02:27 23 Q. And the termination happened exactly in the middle 24 of this construction; correct?

02:28 25 A. It could be said that the construction had been

02:29 26 completed a third rather than 50 percent.

02:30 2 Q. Then you've testified as a result that your 3 removal obviously came at, quote, "precisely the worst time 4 possible"; isn't that Yes. The impact is the same. I don't 5 perceive correctly the term you use, but for me, it was a 6 dismissal from my duties. That is what I understand, the 7 term "rescission" or "recession", I understand it 8 differently as a legal term. Here it would be a 9 termination, termination of my duties due to a dismissal by 10 the proper authorities; right?

02:32 11 A. Yes. The impact is the same. I don't perceive 12 correctly the term you use, but for me, it was a dismissal 13 from my duties. That is what I understand, the term 14 "rescission" or "recession", I understand it differently as 15 a legal term. Here it would be a termination, termination 16 of my duties due to a dismissal by the proper authorities.

02:33 17 Q. And you stopped getting paid about $5,000 a month 18 when you were removed; correct?

02:34 19 A. Yes.

02:35 20 Q. And therefore you tried to get another job after 21 your removal?

02:36 22 A. Yes.

02:37 23 Q. And you, in fact, worked as an attorney for the 24 Municipality; is that also right?

02:38 25 A. The job with the Municipality came about a couple

02:39 1 of years after I left my judicial office.

02:40 2 Q. So you were removed in 2008, and your best 3 estimate is you began working as a Municipality attorney in 4 2010?

02:41 5 A. I was removed from office in May 2008; and 6 starting in July—rather, June 2008, I started to work for 7 a company as an attorney for that insurance company in 8 Quito.

02:42 9 Q. And then after you worked for the insurance 10 company, is that when you took on a job as an attorney for 11 the Municipality?

02:43 12 A. If you allow me, I worked for the insurance 13 company. And later there was an opportunity to advise the 14 National Congress with one of the Assembly members, and I 15 worked for six to eight months there, and that was between 16 November 2009 and August 2010. And I worked for the 17 Municipality in 2012, between May, June—-in May, June, 18 July.

02:44 19 Q. I want to make sure I understand this.

02:45 20 A. Yes.

02:46 23 Q. And then you worked for an Assembly member from 24 November 2009 until August of 2010; is that right?

02:47 25 A. Yes, it is correct.

02:48 1 Q. And then you said you worked for the Municipality 2 from May until July of 2012; is that correct?

02:49 3 A. Correct.

02:50 4 Q. Were you receiving—did you have a job from 5 August—or September 2010 until April 2012?

02:51 6 A. I worked for the insurance company starting in 7 June 2008 up to February—rather, December 2012. And I had 8 some down times, and that was, for example, when I 9 mentioned that I worked for the Assembly member and also 10 for the Municipality.

02:52 11 Q. That's clear. Thank you.

02:53 12 A. Yes, sir.

02:54 13 Q. Now, your salary as a Municipality attorney was 14 just $1,012 a month; isn't that right?

02:55 15 A. Yes, sir; that is correct.

02:56 16 Q. So that was about one-fifth of your salary as a 17 judge at the time of your removal; is that correct?

02:57 18 A. Yes, sir.

02:58 19 Q. And your salary at the insurance company was, at 20 its most, $1,500 a month; correct?

02:59 21 A. Yes, sir.

02:60 22 Q. But towards the end, it was approximately only 23 $500 a month; is that also right?

02:61 24 A. Yes, sir.

02:62 25 Q. So the funds you were getting from the insurance 26 company was something between 10 and 30 percent of what you
02:29 1 received as a judge?
2 A. Yes.
3 Q. Now, you accumulated a debt from all that
4 construction; isn’t that right?
5 A. I kept--I practically continued the
6 construction--it took basically about five years total.
7 And I generally accumulated debt due to the work that was
8 being done little by little.
9 Q. And, sir, at the time of your removal as a judge,
10 you owed about $20,000 for that construction. Would you
11 agree with me, sir?
12 A. I cannot confirm that. I cannot confirm that that
13 was the amount of the debt when I left the judicial
14 function. Later on the answer is yes.
15 Q. Meaning the debt--you can confirm later on that
16 you owed $20,000?
17 A. The $20,000 that your question I understand refers
18 to, I needed that money because I owed that amount by mid
19 or late 2012. This because of the expenses made through
20 the advances in the construction.
21 Q. So the construction continued to take place even
22 after your removal as a judge?
23 A. Yes.
24 Q. And so by the middle part of 2000--or 2012 or so,
25 you owed approximately $20,000 for the ongoing

02:31 1 construction. Am I understanding correctly?
2 A. Yes.
3 Q. And you also advised Chevron’s investigator that
4 you had no savings at that--in that time period in 2012;
5 isn’t that also right?
6 A. Sir, I was talking about my own savings.
7 Q. So to be clear, from the time of your termination
8 in 2008 until you worked out an agreement with Chevron in
9 2012, you’re making a living or earning wages that range
10 from about 10 percent to maybe 30 percent or a little bit
11 more of what you made as an Ecuadorian judge; is that
12 correct?
13 A. Yes, sir.
14 Q. And during all of this time, from 2000--from the
15 middle of 2012 through the time of you negotiating a deal
16 with Chevron, you continued to owe $20,000 on the
17 construction of your new house; is that correct?
18 A. I owed approximately that amount of money, and I
19 needed more resources to finish the construction.
20 Q. How much more did you need?
21 A. I did not recall, but about 20- or $30,000 more.
22 Q. Now, in 2009, when it became apparent that Judge
23 Zambrano was going to preside over the Lago Agrio Case for
24 the first time, it’s your testimony that he asked you to
25 get in touch with the attorneys of Chevron; isn’t that

02:33 1 right?
2 A. That is correct, sir. That is the case.
3 Q. And you say that the purpose was for you to try
4 and negotiate an agreement pursuant to which Chevron would
5 pay Judge Zambrano and pay you for issuing the final
6 Judgment in Chevron’s favor. Would you agree with me, sir?
7 A. In part, yes. But I would like to clarify that
8 the purpose was to establish a connection between Chevron
9 and Judge Zambrano, for discussions to be had for
10 agreements to be made by both Parties, Chevron and Judge
11 Zambrano, in connection with relevant aspects of the
12 procedure of the case and also discussions related to the
13 possibility of a Draft Judgment.
14 Q. When you refer to the possibility of a draft
15 Judgment, am I understanding correctly that what you mean
16 is that you are offering to assist Chevron in ensuring that
17 the Sentencia be issued in Chevron’s favor?
18 A. The message, or the position, the intention and
19 the will of Mr. Zambrano that I conveyed to Chevron was
20 that a connection had to be made, friendships had to be
21 forged, a link had to exist for enough trust to exist.
22 And then from that moment on, when Mr. Zambrano
23 started to work as a judge in the case, from that point
24 forward work with a view toward a foreseeable future,
25 Chevron to draft the Judgment, of course obviously in their

02:36 1 favor.
2 Q. And what did you hope to get out of that?
3 A. Sincerely, if that situation ensued, I was hoping
4 to obtain a financial benefit of some sort myself.
5 Q. A bribe?
6 A. It pains me to say it. I recognize it: A bribe.
7 That is what it was--sought.
8 Q. You sought a bribe from Chevron; correct?
9 A. Mr. Zambrano was mainly who was looking for the
10 bribe, and I was going to take up a portion of that.
11 Q. So you sought, on your behalf and Judge Zambrano’s
12 behalf, a bribe from Chevron?
13 A. Excuse me. I by myself was not able to seek that.
14 What I was doing ultimately was to be the spokesperson that
15 conveyed the intention of Mr. Zambrano to Chevron; and
16 obviously I understood if that situation was forged, then I
17 collaterally was going to obtain an economic benefit.
18 Q. So to be clear, you sought a bribe from Chevron to
19 benefit Mr. Zambrano and yourself; is that right?
20 A. Yes, sir.
21 Q. And, in fact, you have testified that you reached
22 out to a Mr. Racines about this proposal; isn’t that
23 correct?
24 A. Yes.
25 Q. And could you tell the Members of the Tribunal who
02:38  1 Mr. Racines is?
2 A. Mr. Racines, his name is Alberto Racines. He has
3 a doctorate in jurisprudence; he is a lawyer. And he works
4 for the law firm of Mr. Adolfo Callejas, it is precisely
5 Adolfo Callejas' law firm in Ecuador—they are the lawyers
6 for Chevron in the Lago Agrio case.
7 Q. And you called Mr. Racines on his cell phone;
8 correct?
9 A. Yes, that is correct.
10 Q. And you've talked about a proposal with them, did
11 you not?
12 A. Yes.
13 Q. And the proposal was that you would be a link
14 between Chevron and Mr. Zambrano for the purpose of
15 discussing or agreeing on certain important issues of the
16 Chevron Case and the Judgment; isn't that also right?
17 A. In the way you are stating it, well, not exactly.
18 What I maintained is that I was saying that I was the
19 spokesperson or the intermediary for that link to exist
20 between Chevron and Zambrano.
21 Q. Sir, you remember being asked questions about your
22 communications with Mr. Racines during the New York RICO
23 trial, do you not?
24
02:41  1 Q. And you took that to mean he had to consult with
2 A. Mr. Racines, his name is Alberto Racines. He has
3 a doctorate in jurisprudence; he is a lawyer. And he works
4 for the law firm of Mr. Adolfo Callejas, it is precisely
5 Adolfo Callejas' law firm in Ecuador—they are the lawyers
6 for Chevron in the Lago Agrio case.
7 Q. And you called Mr. Racines on his cell phone;
8 correct?
9 A. Yes, that is correct.
10 Q. And you've talked about a proposal with them, did
11 you not?
12 A. Yes.
13 Q. And the proposal was that you would be a link
14 between Chevron and Mr. Zambrano for the purpose of
15 discussing or agreeing on certain important issues of the
16 Chevron Case and the Judgment; isn't that also right?
17 A. In the way you are stating it, well, not exactly.
18 What I maintained is that I was saying that I was the
19 spokesperson or the intermediary for that link to exist
20 between Chevron and Zambrano.
21 Q. Sir, you remember being asked questions about your
22 communications with Mr. Racines during the New York RICO
23 trial, do you not?
24
02:43  1 Q. And you took that to mean he had to consult with
25 his client, Chevron; correct?
2 A. What I understood is, because that's how I
3 understood it, that he had to convey this suggestion or
4 this concern to Mr. Adolfo Callejas, who is the immediate
5 superior of Mr. Racines. Possibly Mr. Callejas had to talk
6 to a representative of Chevron, someone from Chevron
7 specifically. And then, later on, I was going to be given
8 the relevant answer. That was my understanding.
9 Q. In fact, you understood that, as a lawyer, he or
10 one of his colleagues would have had a duty to tell the
11 client, to tell Chevron; correct? And that was your
12 understanding?
13 A. Yes, sir, that is what I understood.
14 Q. And Mr. Racines eventually got back to you;
15 correct?
16 A. Yes, later on he did.
17 Q. But it was not a matter of hours, was it?
18 A. No, no, not at all. Not hours, no. A few days.
19 A few days, as far as I can recall.
20 Q. In fact, it took him weeks, not even days. Do you
21 believe it was days or weeks?
22 A. Well, I think that perhaps a couple of weeks
23 transpired. In other words, up to 15 days.
24 Q. So you understood from Mr. Racines--no.
25
02:45  1 He eventually did get back to you; correct?
2 Q. I will represent to you that--for the Members of
3 the Tribunal and Counsel, Tab 19 of our binder, Page 916,
4 Line 20. The official transcript is in English, so I would
5 ask the court reporter--or the interpreter to translate.
6 But at Page 916, Line 20, you were asked, "What was that
7 proposal, sir, that you made to Mr. Racines?"
8 A. Your answer--and these are the precise words I
9 used in my question--"Specifically, the proposal was that I
10 would be a link between Chevron and Mr. Zambrano for the
11 purpose of discussing or agreeing on certain important
12 issues of the Chevron Case and the Judgment, if need be."
13 You do not deny that that was your testimony;
14 correct?
15 A. MR. KEHOE: And I have an objection. To the
16 extent that that was an attempt at impeachment, that is
17 exactly what the Witness just testified to during
18 cross-examination as well.
19 MR. BLOOM: I think the record will speak for
20 itself.
21 Q. BY MR. BLOOM:
22 A. And Mr. Racines told you he had to consult with
23 his superiors; isn't that right?
24 A. Yes, sir.
Q. Your understanding at the time—and I think I'm confirming your prior testimony, but it would serve as the predicate of the next question. Your understanding at the time was that your proposal was made to Chevron; correct?

A. I was waiting for the answer that Mr. Alberto Racines was going to provide to me. And when he did, my understanding was that the source of that answer was Chevron itself.

Q. Do you have a different understanding today?

A. No, in no way whatsoever.

Q. So based on that prior answer, you believed in 2009 that Chevron knew at that time that you made an unlawful attempt to solicit a bribe.

A. At that time, Chevron did not know me and I did not know Chevron via its representatives. I knew Chevron’s lawyers, the ones that I have indicated, and the lawyers representing the opposing Parties—the opposing Party to Chevron. And I’ve also cited them.

Q. At that time, sir, you were in debt by about $20,000—no. I strike that.

A. I would not be able to assert that, but I was constantly making small expenses, expenses that were accumulating as we were moving forward with the construction.

Q. And by the time that you reached out to Mr. Racines in the last quarter of 2009, you had already been removed as a judge; correct?

A. Yes.

Q. So you were no longer making your $5000-a-month salary at this time?

A. I did not have that revenue; that is correct.

Q. Your salary instead at that time that you made the proposal was a mere fraction of what it once was?

A. At that time, apart from the $1,500 that I earned at the insurance company—well, that was added to other revenue that was—that were smaller in nature because of legal advice or legal fees that are provided to private institutions or third parties; and I--I got that--that kind of revenue.

Q. But you were still struggling financially given the fact you didn’t have your job as a judge and given the construction; correct?

A. Well, mainly because of the construction, I required higher income.

Q. Higher income than what you were actually receiving at the time?

A. That was a construction pending, and I couldn’t really leave up that investment and leave it unfinished. This would have been more serious economically speaking.

Q. So it was not only an issue of any debt incurred already; you also were facing the prospect of trying to finish the construction, which you knew would cost another 20- or $30,000?

A. Possibly, yes.

Q. And meanwhile, Judge Zambrano did not attend that meeting with Mr. Racines, did he?

A. No, he did not.

Q. Nor did Judge Zambrano, during this period of time in 2009, himself talk to any representatives of Chevron, to your knowledge, about the solicitation of a bribe; isn’t that also right?

A. I have no knowledge in connection with that matter, but my understanding is that he did not.

Q. So when you testified that you reached out to Chevron through Mr. Racines in 2009, there’s no evidence to support your claim that you were doing so on behalf of Judge Zambrano, other than your word; correct?

MR. KEHOE: Mr. President, I’m going to object to this. It’s happened this morning, and it’s happening now. Counsel is asking the Witness if he knows whether or not there’s evidence in the record to support something one way or the other. It’s just not a proper question.
02:55 1 MR. BLOOM: I think it's clear, and I'll try to be
clear on my questions. But I--what I'm really asking is,
3 have you provided any evidence to Chevron--
4 PRESIDENT VEEDER: Well, that would be different--
5 MR. KEHOE: I'm fine with that.
6 PRESIDENT VEEDER: Stop, stop.
7 MR. KEHOE: Sorry.
8 PRESIDENT VEEDER: That would be a different
9 question, and that you can ask. Because I think the
10 broader question is really a question that you're asking of
11 the Claimants, which is not appropriate for this witness.
12       BY MR. BLOOM:
13  Q.  When you testified that you reached out to Chevron
14 in 2009, you're not aware of any corroborating evidence to
15 support your claim that you were doing so on behalf of
16 Judge Zambrano, other than your word?
17       A.  As Alberto Guerra, I wasn't able to go tell the
18 company, "Look, I guarantee that I am going to rule in your
19 favor in the Judgment." But I could say precisely what I
20 said to you, that I was going to be a link for a connection
21 to be established between Chevron and Zambrano for them to
22 agree in that situation.
23  Q.  But you could have made that representation
24 whether or not you were, in fact, acting at the behest of
25 Mr. Zambrano. So let me ask you this question again, sir.

02:57 1 When you reached out to Mr. Racines to communicate
2 your proposal to Chevron in 2009, you're not aware of any
3 corroborating evidence to support your claim that you were
4 doing so on behalf of Judge Zambrano, other than your word?
5       A.  When I reached out to Mr. Racines, I conveyed to
6 Mr. Racines the proposal, if you will, coming from
7 Mr. Zambrano. It wasn't my own.
8  And yes, as far as I know, I was unable to say to
9 Mr. Racines, "Look, allow me, I will record this contact to
10 have it in evidence."
11  But I do know that Mr. Racines, at some point in
12 time, gave a sworn statement somewhere, and somewhere in
13 these proceedings evidence of that must exist.
14  Q.  In 2009, when you approached Mr. Racines, did you
15 provide him with any physical evidence that you were acting
16 on behalf of Judge Zambrano?
17       A.  I did not.
18  Q.  Have you provided any evidence to Chevron since to
19 show that when you approached Mr. Racines in 2009, that you
20 were acting on behalf of Mr. Zambrano at that time?
21       A.  I did not.
22  Q.  And Mr. Zambrano has never admitted, to your
23 knowledge, that you were acting on his behalf as it related
24 to your proposal to Chevron--isn't that also correct?
25       A.  I have no personal knowledge of the decision of

02:59 1 Mr. Zambrano in that regard. I have not looked at his
2 statement or nothing of that nature. Mainly, no.
3  Q.  And no Chevron representative has come forward, to
4 your knowledge, to say that they had a direct dialogue at
5 any time with Judge Zambrano. Is my understanding correct?
6       A.  I am not able to state anything about situations
7 that I have no personal knowledge of in connection with
8 other individuals or institutions.
9  Q.  And again, you have nothing in writing and no
10 recording of any communications with Mr. Zambrano
11 reflecting his authorisation that you act on his behalf;
12 correct?
13       A.  I do not, sir. Physically I do not.
14  Q.  And in either event, you're not aware of Chevron
15 reporting to the Judicial Council your solicitation of a
16 bribe of Chevron, correct?
17       A.  I have no knowledge of that, sir.
18  Q.  And you're also not aware of Chevron reporting
19 Judge Zambrano to any governmental body in 2009. Is that
20 your understanding, sir?
21       A.  That is my understanding. I have no knowledge of
22 that matter.
23  Q.  And you are also unaware of any attempt by Chevron
24 to seek to recuse Judge Zambrano on the basis that he was
25 allegedly complicit in your solicitation of a bribe?
03:03 1 MR. KEHOE: I object to that question. And I
2 don't want to telegraph anything to the witness, but it's
3 obvious that the Judge is a Member of the Court, which is a
4 Member of the--an organ of the Government. So it's a
5 misleading question.
6 PRESIDENT VEDER: Let me stop you there.
7 I think you're pushing against an open door. I
8 don't think--on the facts, if you're talking to this
9 witness as a fact witness, you need to pursue this much
10 further. But it's a matter for you. But I think we're
11 going to get the clear answer, and I'm not sure it's going
12 to help us any further than the material you've already
13 received.
14 MR. BLOOM: Okay.
15 BY MR. BLOOM:
16 Q. Sir--
17 A. Am I allowed to answer?
18 PRESIDENT VEDER: No. The question has gone. So
19 we'll move on to the next question.
20 BY MR. BLOOM:
21 Q. Judge Zambrano's first term as Presiding Judge in
22 this case ended in the middle of March of 2010. Do you
23 recall that, sir?
24 A. Yes, March 4th.
25 Q. And he resumed his position as Presiding Judge

03:04 1 again on October 11, 2010. Does that sound right to you?
2 A. Yes, that is correct.
3 Q. And you say that you approached Chevron again
4 seeking a bribe at the beginning of Judge Zambrano's second
5 tenure; is that correct?
6 A. Yes, sir. That was the--that was my conduct on
7 behalf--or at the request of Judge Zambrano.
8 Q. And that was my next question.
9 You've testified that your second approach to
10 Chevron was also on behalf of Judge Zambrano; correct?
11 A. Yes, sir.
12 Q. And you've previously testified that you reached
13 out to Chevron on the assumption that Chevron could pay
14 more money than the Plaintiffs; isn't that right?
15 A. That was mainly the idea Mr. Zambrano had. And
16 that was also my idea, I supported it. I must be truthful,
17 but the aim was--it was understood that, if an agreement
18 was reached with Chevron in connection with the acceptance
19 and--and also the payment of a bribe, this was going to be
20 made effective immediately.
21 Q. So if you could consummate a deal with Chevron,
22 the idea was that you could get paid more money and get
23 paid more quickly. Is that a fair characterization?
24 A. That was not the situation. When we look at the
25 facts, no agreement was reached with Chevron. Chevron

03:07 1 always rejected that possibility. Therefore, with due
2 respect, I wouldn't be able to say that that would have
3 been the case from the economic point of view.
4 Q. And, sir, I'm just asking you what your thinking
5 was at that time.
6 A. Correct that it is your testimony that you
7 and Mr. Zambrano wanted to reach out to Chevron because at
8 that time you believed, rightly or wrongly, that Chevron
9 had more money that it could pay and that you could get
10 paid more quickly than the Plaintiffs?
11 A. In essence, the answer is yes.
12 Q. And it's your testimony that you and Judge
13 Zambrano wanted to get as much money as you could; correct?
14 A. Yes.
15 Q. And you really didn't care who actually won the
16 case so long as it yielded a substantial financial benefit
17 to you; isn't that right?
18 A. Would you please restate your question?
19 Q. Certainly.
20 A. You really didn't care who actually won the case
21 so long as it yielded a substantial financial benefit to
22 you; isn't that right?
23 A. I was not the Judge in the case--the Presiding
24 Judge that could have had the moral, ethical and legal
25 commitment in connection with the result of the proceeding.

03:09 1 Therefore, the final outcome was not something that
2 concerned me in connection with the impact of the result
3 back then.
4 Q. I wanted--I'm sorry. I wanted to know what your
5 motive was--we've been talking about Mr. Zambrano, but I
6 want to know what your motive was.
7 PRESIDENT VEDER: Mr. Bloom, I think he answered
8 that question: "Therefore, the final outcome was not
9 something that concerned me in connection with the impact
10 of the result," and he added "back then."
11 MR. BLOOM: I'm trying to get something,
12 Mr. President.
13 PRESIDENT VEDER: Please, there's a certain
14 flexibility, which you can deploy.
15 MR. BLOOM: I'm happy to discuss when the witness
16 is not present.
17 PRESIDENT VEDER: Please continue.
18 BY MR. BLOOM:
19 Q. Sir, if I may ask that again, I want to know what
20 your personal motive was. What was your personal motive in
21 involving yourself in this solicitation of a bribe?
22 A. I would like to say again that the bribe was not
23 requested on a personal basis. I wouldn't have been
24 capable of approaching Chevron without any backing and just
25 show up and say, "Look, I want money, and I offer nothing
in exchange.

My motive was to help my friend, Nicolas Zambrano, so that he could have a good result in the---in addressing the civil issues and also have some sort of economic benefit for me.

Q. And that's all I was asking. You were looking for an economic benefit for you as well; correct?

You wanted to help pay off any debt to complete your house? Would that be accurate?

A. Yes. Somehow I also needed some income. The regular income was not enough, and that was one of the reasons why I was also acting as a ghostwriter to Mr. Zambrano---and also as a paid ghostwriter, writing the rulings on behalf of the Plaintiffs suing Chevron.

Q. And as in your solicitation back in 2009, there's no physical evidence to corroborate your testimony that your bribery solicitation in October of 2010 was on behalf of Judge Zambrano. You want us to take your word for it; correct?

A. I relate the facts just---I have related the facts just as they happened. That is my truth. And if---whether I am believed or not, it no longer---allow me, it is not longer, not greatly a concern of mine. But that is the truth.

Q. And you're not aware, sir, of any attempts by Chevron after your second solicitation of a bribe to seek the recusal of Judge Zambrano; is that correct?

A. I am not aware that may have happened.

Q. Do you recall the circumstances of Judge Zambrano becoming Presiding Judge for the second time in October of 2010?

A. Yes, sir, I do remember that.

Q. And if you allow me, I can elaborate on that.

A. Mr. Leonardo Ordoñez Piña became the Presiding Judge for the court of Sucumbios; and as a consequence, he was also the Judge in the Chevron Case, and that was in February 2010. Based---under the law in force at that time, he had a two-year tenure, and he was going to be leading the Chevron Case for two years, and also based on the law up to January 2012.

In August 2010, Judge Leonardo Ordoñez neglected issuing rulings in the proceeding and for that reason has given grounds for his recusal. These grounds state specifically: regarding not ruling in triple the time provided by law. Chevron's attorneys took advantage of this situation and it is they who proposed the recusal. The recusal had to be presented before the Office of the Courts---of the Clerk of the Court.

And as far as I know, that recusal writ was received by the office of the clerk of the Court's Presidency, and this was presented to Judge Ordoñez Peña. Judge Ordoñez Peña I think kept that in the drawer of his desk for almost a month and a half. And for that reason, the whole thing was delayed after a month and a half.

Approximately a month and a half later, Judge Ordoñez, due to the pressure exerted by Chevron lawyers and also by the Plaintiffs' lawyers, returned the petition to the Clerk's office and it is at that point that it is transferred to the substitute judge, who is Nicolas Zambrano, who had to rule over the Ordoñez recusal. Judge Zambrano as the substitute president, at the end grants the recusal and due to that reason, he becomes, in his capacity of substitute president, the presiding judge for the rest of the time, the two years that Judge Ordoñez purportedly had to fulfill.

And then Judge Zambrano was going to be presiding over the Chevron Case between October--for the second time, between October 2010. And from the legal point of view, he could have continued up to January 2012. That was going to be the end of his tenure as the alternate or substitute judge in the Chevron Case.

Q. Thank you.

So as I understand your testimony, Chevron took advantage of Judge Ordoñez taking too much time in ruling on certain motions, and that constituted grounds under Ecuadorian law for recusal. Am I understanding that correctly?

A. If you allow me, I wouldn't say that they took advantage---advantage, but they benefited from the lack of attention to the case provided by Judge Ordoñez.

Q. They had the legal right to seek Judge Ordoñez's removal, because Judge Ordoñez was too slow in issuing Providencias; is that correct?

A. If you allow me, the term you are---the term you're using is not the right one. It's not to ask for the removal of the judge. There is some other causes for the removal of the judge. In this case, there is a lack of competence or jurisdiction in connection with a specific case, in particular because there has been a lack of timely decision-making.

Q. Very well. And this is the same Chevron you earlier testified this morning that was seeking to generate incidents to delay the adjudication; isn't that right?

A. Yes. During the time I was the ghostwriter for Mr. Zambrano and also after---upon noticing the contents of the pleadings presented by Chevron, I did notice that that was the intention of the Ecuadorian lawyers of Chevron.

That is to say, to create some confusion. Definitely, they were trying, at any cost, to delay the regular process, the
Q. Would you agree with me, sir, that Judge Zambrano became the Presiding Judge in October of 2010, for his second tenure, only after and because Chevron successfully filed a motion to recuse or replace or remove Judge Ordoñez?

A. Yes, sir; that is correct.

Q. So if Chevron had not filed the motion, Judge Ordoñez was in line to draft the Sentencia; correct?

A. I cannot offer you any certainties.

Q. Once Chevron filed the motion, did you understand that Zambrano would take over as the Presiding Judge?

A. In connection with the presentation of the motion by Chevron to recuse Judge Ordoñez--this is something that I learned of from Mr. Zambrano. Let's not forget that back then, my permanent domicile was in Quito. The case and the domicile of the Judge were in Lago Agrio. This is, at least, six hours away by car and 45 minutes by plane. The distance was 45 minutes by plane. And Mr. Zambrano and myself, knowing that the motive for recusal was legitimate, that it was supported on a valid motive, on a valid ground, I discussed this with Mr. Zambrano, and we knew that if Mr. Zambrano was going to accept this request and that, in short, Mr. Zambrano was going to become the Presiding Judge in the Chevron Case.

Q. So there were valid grounds to remove Judge Ordoñez; correct?

A. Yes.

Q. And how did you know that it would be Judge Zambrano, rather than another judge, who would succeed Judge Ordoñez?

A. This has to do with the legal provisions. The Presiding Judge has also an alternate judge. In the absence of the presiding judge, the alternate judge is the one who takes over. And so based on the law, it was Judge Zambrano who would take over over.

Q. So anyone who was knowledgeable of Ecuadorian law should have known that, if the motion were granted, Judge Zambrano would take over the case; correct?

A. Yes, sir.

Q. In which case, Chevron sought the removal of Judge Ordoñez knowing that, if it were successful, that it would result in Judge Zambrano taking over the case?

MR. KEHOE: Objection. The Witness doesn't know what Chevron did or didn't know.

MR. BLOOM: I'll withdraw that.

BY MR. BLOOM:

Q. Now, sir, you're aware, are you not, that one of Chevron's former contractors, Diego Borja, allegedly offered a bribe to Judge Nuñez in 2009?

MR. KEHOE: I'm going to object to these questions. To the extent that the Witness learned of anything through the media, it seems to be somewhat irrelevant to his direct examination or his cross-examination.

PRESIDENT VEEDER: Mr. Bloom, where are you going?

MR. BLOOM: I'd rather not disclose it in front of the Witness. I'm happy to do it if it's not being translated.

MR. KEHOE: What we object to is I see the slides that we're going through. If the Witness is going to be asked questions about something that he's learned about through the media--

PRESIDENT VEEDER: Stop, stop.

Interpreters, could you please stop interpreting into Spanish.

MR. KEHOE: 52. For some reason, they put it on the screen already.

PRESIDENT VEEDER: No. Stop there, and take it off the screen.

MR. BLOOM: Take it off the screen. That's fine.

PRESIDENT VEEDER: Let's just see where you're going. But you keep going. And if there's a problem, we can come back to this.

MR. BLOOM: And we can do this also without slides, if that will help accommodate Claimants.

PRESIDENT VEEDER: It might make it worse.

MR. KEHOE: I don't know. Let's just see.
PRESIDENT VEEDER: You take your own course for the moment, and let's start the interpretation again.

BY MR. BLOOM:

Q. You're aware, if you saw those videotapes, that a con—that Diego Borja was a contractor or former contractor of Chevron?

A. I do not remember getting to that conclusion after watching the videos, but this was a comment afterwards, whether he was a contractor or former contractor with Chevron.

Q. Are you aware, sir, that Mr. Borja received substantial financial benefits from Chevron?

A. I understand he may have, but this is not information I have. I haven't seen any documents.

Q. And what information did you receive? Was it through the media?

A. Yes, through the media, on the Internet.

Q. Do you recall the nature of that information and specifically whether the media reported and whether you read that he received financial benefits from Chevron?

A. Specifically I do not recall. But it seems to me that it was said that the individual who filmed these videos was taken out of Ecuador and got asylum in the U.S., and, just like me, he lives in the U.S., and the expenses—his expenses are somewhat covered by—somehow, rather, covered by Chevron.

MR. KEHOE: Objection; asked and just answered.

PRESIDENT VEEDER: You can continue.

MR. BLOOM:

Q. At the time that you began to cooperate with Chevron in 2012, you believed that if you ingratiated yourself with the company, if you made yourself important, then maybe you could help yourself financially?

MR. KEHOE: November 17th? Yeah. It's the first tab on the— it is there. It's behind the English version.


MR. BLOOM: Thirteen.

MR. KEHOE: I'm sorry. You're looking— you're looking at two different things, Eric. You're asking him about November 17th, and I believe they're looking at the RICO October Declaration.

(Pause.)

Q. At the time that you began to cooperate with Chevron in 2012, you believed that if you ingratiated yourself with the company, that maybe you could receive a financial benefit also from the company?

A. With all due respect to the Tribunal and to everyone present here, Mr. Zambrano and I believed that if Chevron was told about the real circumstances that led to the issuance of the Court Judgment at the trial level, Chevron could pay a substantial—that is to say a substantial amount of money. And I thought that a portion of that amount was going to come into my pockets, and that was the reason.

Q. And I think I'm asking a question that's different than the one you think I'm asking. So I'd like to focus your attention on the time period of 2012, after the Sentencia was issued, at the time that you began to cooperate with Chevron.

A. I'm listening to you, yes.

Q. Thank you.

When you agreed to cooperate with Chevron, you believed at that time that if you ingratiated yourself with the company, if you made yourself important, then maybe you could help yourself financially?
03:37 1 Q. And if I understand you correctly, when
2 Mr. Zambrano came back into the case in the last quarter of
3 2010, he already had a preexisting agreement with the
4 Plaintiffs to move this case along; is that right?
5 A. Yes.
6 Q. But it is also your testimony that notwithstanding
7 his alleged preexisting agreement with the Plaintiffs to
8 move this case along, Mr. Zambrano allegedly authorized you
9 to then solicit a bribe from Chevron?
10 A. Yes, that is correct. Your statement is correct.
11 Q. Now, you've never alleged in any of your
12 statements that you've ever had any information from any
13 source that the Plaintiffs paid Judge Zambrano any money
14 pursuant to this first agreement to move the case along;
15 isn't that right?
16 A. I have not stated that because I have no personal
17 knowledge of the fact that Judge Zambrano and the
18 Plaintiffs, in their agreement, included transfers of
19 money. In that regard, Mr. Zambrano didn't tell me whether
20 he received moneys for that purpose.
21 Q. Right. Judge Zambrano never told you that the
22 Plaintiffs paid him any money; correct?
23 A. As regards the issues of moving the case ahead,
24 Judge Zambrano at no time told me that he was going to
25 receive moneys from the Plaintiffs for such an agreement.

03:40 1 Q. And you've never testified that the Plaintiffs
2 ever represented to you that they paid any money to Judge
3 Zambrano; am I correct?
4 A. In that regard, I have not stated anything. If
5 Judge Zambrano didn't affirm nor did he deny that he
6 received money or that he didn't receive money in
7 connection with moving ahead the case on behalf of
8 Chevron's Plaintiffs, then I would not be able to make any
9 statement in that regard. I have no personal knowledge of
10 that.
11 Q. Nor have you ever testified that in exchange for
12 moving the case along, there was even a promise by the
13 Plaintiffs to pay Judge Zambrano any amount, isn't that
14 also; right?
15 A. I have not stated that, because I have no personal
16 knowledge of that. I repeat.
17 But I have stated that I received $1,000 a month
18 by the Plaintiffs in order to move the process along in a
19 faster manner.
20 Q. So you're the only one who received money from the
21 Plaintiffs, to your knowledge?
22 A. I was the only one that was working in preparing
23 the rulings. There was no other lawyers—no other lawyer
24 providing assistance, working.
25 Q. So Judge Zambrano returns to the bench in October

03:42 1 of 2010, after Chevron has moved for the recusal of Judge
2 Ordoñez.
3 Now, at this time, Mr. Zambrano does not ask you
4 to immediately go back to the Plaintiffs; right? He asks
5 you, instead, to go back to Chevron?
6 A. Notwithstanding adverse situations, et cetera,
7 Mr. Zambrano, in his heart of hearts, felt that, at some
8 point in time, the Chevron thing could work. And far from
9 benefiting from an amount of money promised at a future
10 point in time, perhaps possibly he could receive firsthand
11 the moneys. That is why, given these circumstances, up to
12 a point he forces me or demands that I insist with my
13 friends, with Chevron, with the lawyers, to put forth the
14 specific proposal to allow them to draft the judgment in
15 exchange for an amount of money to be negotiated.
16 Q. And after Chevron declined, it's your testimony
17 that Mr. Zambrano allegedly authorized you to seek an
18 agreement with the Plaintiffs?
19 A. Yes; that is correct.
20 Q. And in the New York trial, you testified that
21 Mr. Zambrano came up with the proposal that you personally
22 transmitted to the Plaintiffs; correct?
23 A. Yes, sir.
24 Q. But again, you've got nothing to—no physical
25 evidence to corroborate your discussion with Mr. Zambrano;

03:44 1 correct?
2 A. But I do have them in connection with the proposal
3 that I made to Plaintiffs' representatives on behalf of
4 Zambrano when I said that I talked to Mr. Donziger. And I
5 know that Mr. Donziger accepts that he spoke to me—that he
6 spoke to me.
7 Q. And to be clear, I'm not talking about your
8 communications with Mr. Donziger with the Plaintiffs. I
9 just want to focus you for a moment on your discussions
10 with Mr. Zambrano. And I'm asking you, sir, whether you
11 have any physical evidence to corroborate that Mr. Zambrano
12 authorized you to have this conversation with the
13 Plaintiffs—any email, any correspondence.
14 A. With all due respect, I'm telling you I don't
15 because it's obvious. Zambrano was the Presiding Judge in
16 this case. And he, well, had given me a written order from
17 his computer to mine, or a letter with a signature, well,
18 had he done that--well, no person in his or her right mind
19 would do that. That's my understanding.
20 Q. I don't have that in the terms that you want me to
21 state it. I don't have them.
22 Q. Now, you've previously testified that Mr. Zambrano
23 had a lot of trust in you; correct?
24 A. Yes, sir.
25 Q. You've said that, 'he had enough confidence in me
03:46 1 that he trusted that I would do what was proper and
2 prudent."
3        Would you generally agree that that was your
4 testimony?
5 A. Yes, sir.
6 Q. And it was generally known in the community that
7 you were close to Mr. Zambrano; isn't that right?
8 A. The community knew that we had a very good
9 communication and a good friendship, yes, the Lago Agrio
10 legal community.
11 Q. And specifically that you were close to
12 Mr. Zambrano?
13 A. I don't know from your viewpoint what you mean to
14 say when you said that we were close to each other.
15 We had a good friendship, a good communication,
16 good understanding, and that is all. And there was trust,
17 so much so that he asked me to be his writer--to help him,
18 to be his ghostwriter, and I did it.
19 Q. Are you comfortable to represent that you were
20 close with Mr. Zambrano?
21 A. I don't feel as comfortable when you talk about
22 being close. Being close, it sounds to me that the matter
23 is a bit askew.
24 But I can tell you that we had a good friendship.
25 Q. And if you turn to your Declaration of

03:50 1 presume or believe that you were, in fact, close to Judge
2 Zambrano and was acting on his behalf; correct?
3 A. Look, the representatives of Chevron, at least the
4 lawyers--the Ecuadorian lawyers that represented Chevron
5 knew that I was the first judge in this case. And they
6 knew that I knew them; I was able to identify them, both
7 Chevron's lawyers and Plaintiffs' lawyers.
8 And when I came to them with the relevant
9 proposal, well, at no time--at no time was I asked to
10 justify the status that I was holding when I was discussing
11 this with them.
12 Q. If Chevron believed that you were close to
13 Mr. Zambrano, you believed that you had a better chance of
14 having Chevron agree to pay money; isn't that right?
15 MR. KENOE: Objection. It's another hypothetical
16 as to what Chevron believed.
17 MR. BLOOM: No. I'm asking him what he understood
18 at the time.
19 BY MR. BLOOM:
20 Q. Did you understand at the time--
21 PRESIDENT VEEDER: I think it's a fair question.
22 IT'S HIS BELief THAT'S BEING QUeried.
23 Please proceed.
24 BY MR. BLOOM:
25 Q. Do you understand the question, sir?

03:48 1 November 17th, at least as translated, it has you saying,
2 not me--has you saying, "It was publicly known that I was
3 close to Mr. Zambrano."
4 MS. BEES: Which paragraph are you--
5 MR. BLOOM: I'm sorry. Paragraph 12.
6 BY MR. BLOOM:
7 Q. Sir--
8 A. I know that that is what it says.
9 Q. Those are your words, are they not?
10 A. Yes, sir.
11 Q. And you wanted Chevron to know that you were close
12 to Mr. Zambrano, didn't you?
13 A. At that point in time, many lawyers in the legal
14 community of Lago Agrio--authorities, court employees,
15 other judges, and other individuals--knew that Mr. Zambrano
16 and I were very good friends, and we also had a
17 professional relationship.
18 Q. When you approached Chevron in 2009 and 2010, you
19 wanted Chevron to know that you were close to Mr. Zambrano,
20 didn't you?
21 A. When, at that time, I approached Chevron via
22 certain individuals, what I wanted was for Mr. Zambrano's
23 position to be accepted for him and I to obtain a financial
24 benefit at some point in time.
25 Q. In which case, the Chevron representatives had to

03:52 1 PRESIDENT VEEDER: Please ask it again.
2 THE WITNESS: Could you please repeat the
3 question?
4 BY MR. BLOOM:
5 Q. Yes. At the time that you solicited Chevron for
6 bribes, you understood that it was important, in order to
7 secure a bribe from Chevron, that Chevron, in fact, believed that you were acting on behalf of Judge Zambrano?
8 A. When I approached Chevron in--on two occasions, in
9 2009 and in 2010, I did not expressly held [sic] that I was
10 looking for a specific amount of money on behalf of myself
11 or Ms.--on behalf of Mr. Zambrano.
12 What I said is that I had the authority--or,
13 rather, the authorization of Mr. Zambrano. I was looking
14 for the possibility, if they so chose, if they so want, to
15 establish a contact through me between them and Judge
16 Zambrano, so that for some benefit to be determined at some
17 point between them, certain goals be achieved.
18 Now, in connection with that specific offer in the
19 approximate terms that I'm expressing to the Tribunal, they
20 said that they had no intention of heeding that kind of
21 request.
22 Q. When you say "that kind of request," what are you
23 referring to?
24 A. To the request of establishing a link to reach a
03:54  1 certain objective, in 2009, to speed up the process, 2 preferably and, in 2010, to specifically draft the draft 3 Judgment.
4  Q. And you understood that if Chevron did not believe 5 that you were acting on Judge Zambrano's authorization, 6 that you would have no chance of securing a bribe from 7 Chevron; isn't that right?
8  A. I do not know what Chevron believed. I cannot 9 speak to that.
10  Q. That's not my question. I want to focus on what 11 you believed.
12 At the time that you solicited a bribe, you 13 understood that if you could not persuade Chevron that you 14 were acting on behalf of Judge Zambrano and that you were 15 close with Judge Zambrano, that the prospects of securing a 16 bribe from Chevron would diminish markedly; isn't that 17 correct?
18  A. That is not correct.
19 If you allow me, I think you're interpreting my 20 answers in a manner that is not correct; you're 21 mischaracterizing it.
22 When I approached Chevron via third parties, 23 Mr. Racines and via John Doe 1 in the second case, I did 24 not say, "I come here on behalf of Mr. Zambrano to ask for 25 $10 million," just talking about an amount of money.

04:17  1 RICO case that Mr. Zambrano had assured you that once he 2 had received the $500,000 from the Plaintiffs, whether in 3 installments or lump-sum, he would share 20 percent with 4 you; correct?
5  A. Well, if you allow me, if one can be explicit or 6 implicit in regards to that of Mr. Zambrano, at no moment 7 did he tell me that he was going to share 20 percent with 8 me, but he said that I was going to receive a proper 9 benefit to be subtracted from the total amount.
10  Q. So, your testimony today is that he never assured 11 you that you would receive 20 percent of $500,000?
12  A. That is correct.
13  Q. But your testimony in the RICO case was a little 14 bit different, was it not?
15 A. For some circumstance, an abrupt remark due to a 16 momentary situation of a mental nature, I got confused, and 17 I mentioned the 20 percent but there was no statement in 18 those terms.
19 Q. Was there or was there not a sworn statement by 20 you under oath that Mr. Zambrano, "had assured me that once 21 he had received the $500,000, whether in installments or 22 lump-sum, he would share with me 20 percent"?
23 MR. KEHOE: Objection. The Witness just answered 24 the question. He said that he was confused, and he's 25 asking it a second time now.

03:56  1 I said, "I come here on behalf of Mr. Zambrano, 2 the judge of Chevron's case, to state to you, as the 3 Chevron company, the possibility that, if you so wish, 4 Judge Zambrano agrees to reach an agreement to establish a 5 contact, hold conversations, friendly discussions to allow 6 you eventually to draft a sentence as much as you like or 7 dislike. This in exchange for some benefit, some amount, 8 that is going to be determined in the future. And at an 9 opportune time, that may be agreed between the both of 10 you.'  11 As you see, Counselor, I did not go there to say, 12 "I would like a bribe for Mr. Zambrano or for myself." I 13 was not there saying that I was seeking a bribe. I was 14 there just to establish a contact for that relationship to 15 exist. That is how things transpired.
16 Would this be a good time?
17 MR. BLOOM: I was just going to say that.
18 PRESIDENT VEEDER: Let's go back at 4:15.
20 Again, we ask you, please don't discuss the case away from 21 the Tribunal. Thank you.
22 (Brief recess.)
23 MR. BLOOM: Let's resume.
24 Q. Mr. Guerra, it's your testimony from the New York
04:19  1 MR. BLOOM: I was clarifying because the end of 2 his answer was there was no statement to that effect.
3 PRESIDENT VEEDER: Please proceed.
4 MR. BLOOM: It will need to be translated because 5 this is the official English transcript, so if I may ask 6 the interpreter to please interpret for the Witness the 7 answer as he provided under oath, and I will quote it:
8 "Mr. Zambrano had assured me that once he had received the 9 $500,000, whether in installments or lump-sum, he would 10 share with me 20 percent.'
11 BY MR. BLOOM: 12 Q. Sir, do you dispute that that was your sworn 13 testimony under oath in New York?
14 A. That was my sworn statement in New York, but what 15 I said is that, because of a circumstance, because of a 16 situation, I mentioned 20 percent when it wasn't true, and 17 I think that, as a gentleman, I should say the truth, and 18 we did not discuss--I did not discuss 20 percent with 19 Mr. Zambrano--but we did discuss that he would share with 20 me from what he received.
21 Q. Sir, I'm not going to ask you about all of the 22 financial benefits you received from Chevron. That's 23 largely in the record, but at this time I want to ask you 24 about the nature of some of your negotiations. Do you 25 understand?
A. Yes.
Q. Now, there came a time in 2012 when you met Chevron's representatives in a hotel in Ecuador; is that correct?
A. Yes, sir.
Q. And they approached you in 2012; right?
A. Yes, sir.
Q. And the purpose of this meeting was their solicitation of you, of your cooperation with them; is that also correct?
A. The purpose of that meeting, based on my understanding, was to request my cooperation for me to be the liaison with Mr. Zambrano.
Q. So, they were asking for you to cooperate and also to ask you to cooperate by creating a connection with Judge Zambrano; was that correct?
A. If you allow me, I would like to elaborate briefly on your question.
Q. Sir: Chevron's representatives told you that they had money with them: isn't that right?
A. At some point in time, yes.
Q. And they specifically told you that they had $20,000 in cash; is that right?
A. Yes, sir. That's what they said.
Q. Approximately the same amount of your construction debt at that time?
A. It is possible that was the case.
Q. Possible, or likely?
A. Likely, and possible.
Q. Back then the 20,000 as a debt advance--yeah, it could have been that amount, a bit more, a bit less.
Q. Do you recall one attorney for Chevron, Mr. Rivero, telling you, in fact, that he was an attorney for Chevron?
A. Yes, I do remember that.
Q. And do you remind--I'm sorry. And do you remember him telling you that he did not mind setting a starting figure?
A. He may have said that.
Q. Do you recall him saying that?
A. I do not remember in those words. I need to look at the translation into Spanish.
Q. We do have the translation in Spanish of this if you want to see that, and that is at Tab 12 at 49.
A. While it's being looked for, let me represent to you that the Transcript does say, "I'm an attorney. I don't mind setting a starting figure, right? Starting. Understand? Or what do you think?"
Q. And my question to you, sir, is what does the term "starting figure" mean to you?
A. Upon reading the content of what Mr. Rivero said, it is a little bit confusing because it is not precise, straightforward, but this is another person who is speaking and saying, yes, we do have $20,000 in our hand, so that certainly led me to understand what they wanted, to make the proposal, what was the proposal? That they had $20,000 to begin conversations or to talk about the possibility of giving them to me.
Q. So, you understood that this would be a negotiation; right?
A. Yes, because they had already told me that they could buy my computer and the evidence that I had said I had, and I had also already told them the issue, specifically, in relation to the planners--with the calendar, with the calendar that I always had at hand.
Q. And after Chevron told you that they had $20,000 of cash with them, you responded by asking Chevron's representatives to add a few zeros as your price as part of your negotiation. Do you remember that?
A. Yes, I do remember that at some point regarding this I've said that was a joke. And Ecuadorians sometimes are playful, and we're not very serious as other people as in other cultures. We're not dry.
Q. You stated several times that $20,000 was very little, or so little. Isn't that also right?
04:30  1 If it's in some of the transcripts, then I did it.
2 Q.   So, you were trying to negotiate a better price
3 than the $20,000 in cash that they brought with them; isn't
4 that right?
5 A.   Possibly I intended to do that because I had the
6 mental assurance, if you will, that the draft judgment was
7 in my computer. Later on, hours later, on the same date,
8 when a technical person that was called by them reviewed
9 the computer and was unable to find the draft
10 Judgment, well, in the end I accepted: They said, "Look,
11 we can only give you $18,000," and I accepted without
12 qualms, and I said okay, well, 20,000, they had and they
13 needed 2,000 to go back to their country to cover their
14 expenses, and I thought, well, I'm not going to leave them
15 without some pocket money that they can use to meet their
16 needs. That's okay. I have no issue with that, and I
17 received the 18,000.
18 Q.   During this negotiation, the Chevron
19 representatives even showed you the money in the hotel, in
20 the safe, did they not?
21 A.   I was shown it, yes.
22 Q.   Did they offer to show you the money, or did you
23 ask to see it?
24 A.   As far as I can recall, one of them took me by the
25 arm and said, "Look, look, look what's down there. We have

04:32  1 $20,000 there." "Oh, okay very well, very well." That was
2 it. I didn't ask to see that. Specifically, one of them
3 was the one that led me to take a look at it. It was
4 inside a safe.
5 Q.   And it was your understanding that they were
6 trying to use the cash to induce you to cooperate with
7 them; is that correct?
8 A.   I understood at that point in time that the time
9 had come to make the decision to provide part of the
10 evidence I had, collect the money or not to do it.
11 Q.   And they ultimately went to your house; correct?
12 A.   Yes, they did.
13 Q.   And they brought the cash with them, didn't they?
14 A.   Yes, I understand--yes.
15 Q.   And they paid you at that time the $18,000 in cash
16 at your house; isn't that right?
17 A.   Not at that time.
18 Q.   We arrived at my home at about 1:00 p.m. in the
19 afternoon, and I allowed myself to invite them to lunch.
20 After that, with my authorization, they reviewed the
21 contents--the contents of the computer. Later on, they
22 called an American man who was a computer technician, and I
23 also allowed him to come into my home and to revise my
24 computer.
25 And at the end, when the technical person said

04:34  1 that he did not find the draft Judgment, that he was unable
2 to find the draft Judgment, amongst other things, then at
3 around 5:00 or 6:00 p.m. that day, they told me, look, we
4 have $18,000 to give you for this. We were unable to find
5 it. We were unable to find the main document. Had we been
6 able to find it, we would have been able to offer you a
7 larger amount, something like that, we have 18,000 for you,
8 and we're going to take the computer with us.
9 A.   I agreed, and at the time, at the end of that day,
10 close to the nighttime, I received the $18,000 that were
11 given to me. Earlier on, I had accepted to receive a
12 laptop computer that was going to replace the one that they
13 were going to take with them.
14 Q.   So, you received the $18,000 of cash the same day
15 that they came to your house, and within hours of coming to
16 your house, correct?
17 A.   Yes, sir.
18 Q.   And at that time did you discuss the value of what
19 you were giving to them?
20 A.   Excuse me, could you repeat the question? I
21 wasn't--it wasn't clear, in my mind.
22 Q.   I'll ask you a different question, then.
23 From your perspective, at the point that you gave
24 then your evidence, you understood what you gave them
25 wasn't worth anything to you; correct?

04:36  1 A.   It's an expression that I've used in one of the
2 statements, but I can say to you that this computer was
3 somewhat old, a bit oldish--that's what we say--and the
4 data, the information included in that computer, from my
5 viewpoint, was not beneficial to me, financially beneficial
6 to me. There were a number of other rulings, 100-some
7 rulings, from cases that I had prepared for Judge Zambrano;
8 that had already been issued, so from that viewpoint, for
9 me at that point in time, the computer and the contents
10 thereof didn't have a lot of significance, economically
11 speaking. Other than practical. It was the only computer
12 at home. I had pictures of my family, things from my
13 grandchildren, etcetera.
14 Q.   And because what you were giving them had no value
15 to you, you understood that they were essentially gifting
16 you the $18,000 of cash; isn't that right?
17 A.   At some point in time I did state it in that way,
18 but, given the explanation that I gave in my previous
19 answer, well, that also corresponds to this one.
20 Q.   And you were hoping for still more money from
21 Chevron; wouldn't you agree?
22 A.   At that date? No, sir.
23 Q.   Well, you understood from the Chevron
24 representatives that you would get more money if you could
25 establish a connection with Judge Zambrano; isn't that
A. Yes, sir.

Q. In fact, you don't dispute that you testified in deposition under oath, and I quote, "I understood from the representatives of Chevron that I would get more money once I was able to establish a connection between them and Mr. Zambrano"? You don't dispute that that was your sworn testimony, correct, sir?

A. No, sir. I knew that because the representatives of Chevron expressly told me that once I was able to arrange a meeting between them and Zambrano, then there was going to be a little bit of money, additional money for me, some financial benefit, additional financial benefit.

Q. So, that became a goal of yours, didn't it?

A. Let us not forget, with all due respect, that in all this mess, in all this matter, I got into it because of the initial insinuation by Mr. Zambrano. I thought that the specific physical evidence in connection with the Judgment was going to be given by Zambrano and not by myself. I thought that Chevron's purpose--the purpose of Chevron's representatives had to do with Mr. Zambrano and not with myself.

Then, at the end, all my struggle, my actions, my telephone calls, my work--all that was focused on Mr. Zambrano, and Mr. Zambrano insisted and insisted in saying, how much am I going to get? And I said, you have to meet with him, and they said, no, they need to tell you how much they're going to give me, and that was the...
04:47 1 position was to falsely tell the Chevron representatives
2 that the Plaintiffs had offered you $300,000; isn't that
3 right?
4 A. Yes, sir. I lied there. I recognize it. I
5 wasn't truthful. That statement was never made by the
6 representatives of the Plaintiffs.
7 Q. But your intent was to improve your negotiating
8 position, your leverage, with the Chevron representatives;
9 correct?
10 A. Yes, sir. Somehow that was it, yes.
11 Q. And how did you believe lying to the Chevron
12 representatives and falsely stating that the Plaintiffs had
13 offered $300,000 to you would give you more leverage with
14 Chevron in your negotiations?
15 A. That way—I possibly didn’t think about it, I was
16 careless, certainly I was hasty. They were asking
17 questions in an abrupt manner, if you will. I never went
18 ready to face that kind of answers, and they posed those
19 questions. And I answered those questions without thinking
20 duly thinking about my answers. I answered right away.
21 And, obviously, I made mistakes. I know it.
22 Possibly I thought that, in this specific case, the
23 well, if I said to them that I was going to get a benefit
24 of $300,000, and you, Chevron representative, can do
25 something, well, perhaps you can give me double or would be

04:48 1 able to give me double. Perhaps that was it.
2 Q. You wanted Chevron to outbid how much you
3 represented the Plaintiffs were paying to you; is that
4 correct?
5 A. No, sir. I didn't want that. I didn't think
6 about that. The only thing that I thought was to improve
7 my position vis-a-vis further benefits that I could receive
8 down the line.
9 Q. In fact, in deposition, you testified that you
10 made what you called a number of exaggerations; correct?
11 A. Yes, sir. Yes.
12 Q. You said: "A number of those things were
13 exaggerated, well, they weren’t very precise as to space
14 and time." Do you remember that testimony generally, sir?
15 A. Yes, I have stated that, and I know that that has
16 been evidenced in documents, recordings related to these
17 inconsistencies that were to be found in my answers.
18 Q. And also in that same deposition, you testified
19 under oath that you were “hoping that in the future I could
20 obtain a larger benefit or earning.” You don’t dispute
21 that testimony, do you?
22 A. I do not dispute it.
23 Q. And you saw your cooperation with Chevron as one
24 way of making some money; isn’t that correct?
25 A. Truth be told, when I understood that I had to

04:51 1 specifically accept or not accept the challenge to speak
2 the truth in connection with my intervention, well, that
3 time was by mid-October 2012. Then I finally took the
4 decision, and I said to myself, okay, I will either--either
5 I speak the truth or I will forever hold my peace, and I
6 decided to tell the truth to keep a clear conscience.
7 Q. But you also just testified that you were in a
8 negotiation, you were trying to leverage your position to
9 make more money and that you were hoping to make more
10 money.
11 MR. KENDRICK: Objection. We have confusing time
12 frames. The question about hoping to make more money was
13 in connection with the conversations he was having with the
14 investigators, and then counsel went to the January
15 Cooperation Agreement, and there is confusion.
16 MR. BLOOM: I have not talked about the January
17 Cooperation Agreement at all.
18 MR. KENDRICK: I believe you did, when you said an
19 agreement with Chevron. That’s certainly what I
20 understood, and it’s apparently what the Witness
21 understood.
22 PRESIDENT GEBER: If you would specify the
23 particular date, I think you can rephrase the question.
24 BY MR. BLOOM: 25 Q. To be clear, I’m still focused on your

04:52 1 conversations with the investigators.
2 Now, you provided certain evidence and you got
3 $18,000, so you did reach some kind of agreement with the
4 investigators in Ecuador in 2012; isn’t that correct?
5 A. Yes, sir.
6 Q. And while you were talking to the investigators in
7 Ecuador, you were trying to leverage your position. You’ve
8 already testified to that; correct?
9 A. In my initial discussions with representatives of
10 Chevron in Quito, in Ecuador, I sought to improve my
11 position. But then I ceased to do that when I understood
12 that the dye had been cast, that the objective was
13 Zambrano, and I stopped doing that even more when Zambrano
14 told me on 14 October that he was no longer going to go.
15 Q. You got $18,000 in cash, promises or hopes of more
16 money while you were talking to the investigators, and at
17 this very time, you falsely said you were getting $300,000
18 from the Plaintiffs, and my question, in light of all of
19 that which you have testified to, is you saw that by
20 cooperating with Chevron, by giving Chevron what it wants,
21 that that would be an avenue through which pursuant to
22 which you could make money: “Money talks, gold screams.’”
23 Can you confirm for us that you saw your cooperation with
24 Chevron as a way of making money?
25 A. I started conversations with Chevron’s
representatives at the request of Mr. Zambrano. He wanted to know specifically how much Chevron was going to offer to Mr. Zambrano for expressing its truth in connection with the preparation of the Chevron Case Judgment, but he didn’t want to do it personally. He wanted to do it through me, and possibly he wanted to receive the money, if that had been the case, not personally by through me. That’s my understanding.

And these comings and goings, in these discussions, these gentlemen, of evidence that I gave to them, they gave me $18,000, and I received it, yes. Then later on--and they told that to me, and I understood, that perhaps other revenues could be given to me. Probably that would be the case once Chevron’s representatives met or spoke with Mr. Zambrano.

When this never happened, when that possibility was forever closed, this happened by mid-October 2012, Chevron’s representatives expressly told me that the purpose in those circumstances was myself. And given those circumstances, in November of that year, I provided another set of documents, evidence, and I received an additional $20,000 because at that point in time I asked them for that amount of money.

Q. I’m just going to ask this one more time, then I promise I will move on. You have my assurance, sir.

Mr. Khoe: I have to object to the question because counsel went from June to November. It’s confusing because the Witness has just testified that things changed in October when Zambrano said that he wouldn’t participate, so it is a very confusing question, based on what the Witness had just testified a moment ago.

Mr. Bloom: I will ask it a little bit differently.

Mr. Khoe: Okay.

By Mr. Bloom:

Q. At any time between June and November 2012, did you see your cooperation with Chevron as a way for you to make money?

A. The money that I received from Chevron was in July 2012, and later on, the final money in Ecuador was on November 20, 2012. Before July in the month of June, I didn’t think that I was going to receive anything from Chevron. I thought that my actions of becoming an interlocutor, a link between Chevron’s representatives and Zambrano, and then the "connector" between Zambrano and Chevron’s representatives, I thought that that was going to yield some benefit for me, however small that benefit may have been.

Q. I promised to move on, and I will. Let’s turn to the subject of the Memory Aid.

Now, what you called a Memory Aid was yet another source of cash from Chevron, was it not?

A. Look, the Aide Memoire when in late March/early April 2013, well, when I obtained that document and I provided it to Chevron through my lawyer, well, at that time I didn’t know that the possibility existed that I was going to get 10,000 additional dollars for that document. That matter had been discussed by my lawyer, and I did not expressly ask to be given not even one cent. This, regardless of everything else, I had my heart, I had my feelings, I have never been a thief with a gun--so that you understand what I’m trying to say--in those kinds of things, and the $20,000 came from Chevron. It was said to me that my lawyer had obtained that, and I said you are very kind, thank you very much.

Q. So, providing the Memory Aid of Chevron was, in fact, another source of cash from Chevron?

A. That was the effect, but at any time, as I said,

From June of 2012 to November 2012, when you were paid the 18,000, the subsequent 20,000, the period of time when you asked Chevron’s representatives to add zeroes to their offer of $20,000, to your counteroffer of $50,000, to your misrepresentation that the Plaintiffs were paying you $300,000, did you, in fact, see your cooperation with Chevron as a way of making money for yourself?

MR. KHOE: I have to object to the question because counsel went from June to November. It’s confusing because the Witness has just testified that things changed in October when Zambrano said that he wouldn’t participate, so it is a very confusing question, based on what the Witness had just testified a moment ago.

MR. BLOOM: I will ask it a little bit differently.

MR. KHOE: Okay.

By MR. BLOOM:

Q. At any time between June and November 2012, did you see your cooperation with Chevron as a way for you to make money?

A. The money that I received from Chevron was in July 2012, and later on, the final money in Ecuador was on November 20, 2012. Before July in the month of June, I didn’t think that I was going to receive anything from Chevron. I thought that my actions of becoming an
mentioned to Chevron's attorneys in Quito, and yes, I
remembered, I had it in my mind, in those circumstances,
that I received the memory aid by email or that I received
it in Quito on a memory flash," et cetera, et cetera. And,
yes, I requested said memory aid from Mr. Pajardo once I
reviewed the draft Judgment, and I saw some concerns in
connection with some issues that I had discussed with
Mr. Pajardo over the phone, and Mr. Pajardo proceeded in
due time to provide me the memory aide.
Q. And I'm going to walk you slowly through the
different statements that you have made as it relates to
the provision of the so-called "Memory Aid."
In June of 2012, you told Chevron's investigators
that Pablo Pajardo e-mailed you that document. I think you
just confirmed that, but is that correct?
A. Yes. I said that on that date.
Q. In fact, you told them that several times on that
date, on June 25, 2012; isn't that correct?
A. Back then, that was my recollection. But you also
need to remember that, that talk, those assertions, at that
time I did not swear over the life of my mother that that
was the final word. That's how I remembered it.
Q. And then on November 17, 2012, which is, again,
the Declaration that we have relied on previously, that
was--that Declaration was, in fact, made under oath, was it
not?
A. Yes, sir.
Q. And in that Declaration, you did swear to tell the
truth, and you said, and I quote--and this is at
Paragraph 26--"I remember that I called Mr. Pajardo on his
cellphone to ask him about some sections of the document
that confused me. Mr. Pajardo told me not to worry, and
that he would e-mail me a Memory Aid to clarify my
questions. Mr. Pajardo e-mailed me a document around ten
pages titled 'Memory Aid' with some information about
the case."
So, that's what you said on November 17th, sir;
correct?
A. Yes, sir. That's on the record.
Q. And you specifically represented that you called
Mr. Pajardo on his cellphone; is that right?
A. Yes, sir.
Q. And there are no cellphone records that you are
aware of that confirm that phone call to Mr. Pajardo; isn't
that also right?
A. I tried to obtain those records. I requested
those, but it seems that my phone did not maintain those
records since it was a pre-paid phone as I was informed by
the company. Mr. Pajardo may have those records; that is
likely.
Q. But you nonetheless have testified that you at
least remember calling Mr. Pajardo on his cellphone; isn't
that right?
A. Yes, sir, I did call him.
Q. And you remember that he told you not to worry.
A. I remember that he said that, given my concerns,
the concerns that I stated, I detailed the concerns I had
in connection with the document that I had just read; and,
in that regard, he told me that for me to have a better
vision, a better view of the problem, he was going to give
me an Aide Memoire that had some aspects connected to the
decisions that I mentioned.
Q. And both in June of 2012 and then in your
Declaration of November of 2012, you reaffirmed that your
recollection at that time was that Mr. Pajardo also told
you that he would e-mail you a Memory Aid; correct?
A. That is stated--if that is stated in the
Declarations in the testimony that you mentioned, the
answer is yes.
Q. But Chevron's representatives did not want your
word for it; they actually wanted to review your hard
drive, did they not?
A. I do not know what Chevron's gentlemen want. If
they are referring to my hard disk or--I don't know what
hard disk you're referring to.
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<th>Page</th>
<th>Time</th>
<th>Speaker</th>
<th>Text</th>
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<td>05:11</td>
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<td>Q.</td>
<td>referring to was not going to be found there because it had been lost.</td>
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<td>Q. You initially recalled receiving the e-mailed document from Mr. Fajardo while you were at your home in Quito; correct? That's how you first recalled it.</td>
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<td>A. Yes. I had said that I may have received it through-via e-mail or a USB drive.</td>
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<td>Q. While you were at your home?</td>
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<td>A. Yes.</td>
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<td>Q. And then your memory changed after that, and you subsequently recalled working not from Quito but from Lago Agrio. And instead of receiving it while at home, you recalled receiving it at an internet cafe. That was a later recollection, was it not?</td>
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<td>A. Look, with all due respect, the human mind cannot be totally infallible, absolute, like a computer. And there are memories that evolve over time little by little. As when one focuses mentally on certain facts. When Chevron's representatives were asking me questions that way, by that very way, or sharply, so to speak, well I would say just about anything without paying too much attention to its essence. So I accept, admit that there are inconsistencies, but definitely in the main these are details I fine-tuned, especially regarding the final November affidavit I submitted for the RICO case.</td>
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<td>Q. And that's very different from having received it by e-mail.</td>
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<td>A. I was in Lago Agrio. Mr. Zambrano was in Lago Agrio back then. And logic tells us that there was no need to send me an e-mail when Mr. Zambrano did not have internet or a computer at home.</td>
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<td>PRESIDENT VEEDER: Just stop. Are you meaning to refer to Mr. Zambrano in your answer?</td>
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<td>THE WITNESS: Mr. President, I meant that when I received this document, the Aide Memoire, Mr. Zambrano did not have internet connection at home, and he did not have a personal computer at home.</td>
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<td>MR. BLOOM: The one concern that a colleague is asking is whether the interpreter might be getting a little bit tired.</td>
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<td>PRESIDENT VEEDER: I think that is a real concern.</td>
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<td>05:15</td>
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<td>MR. BLOOM: I could stop now.</td>
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<td>PRESIDENT VEEDER: Let's stop now.</td>
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<td>MR. KEHOE: Thank you.</td>
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<td>PRESIDENT VEEDER: Let's stop today now. It's 5:15. We're going to resume tomorrow at 9:30. If you could come back, please, for further questions at 9:30 tomorrow morning. In the meantime, we ask you not to discuss the case or your testimony with anyone, not until you come back before the Tribunal at 9:30 tomorrow.</td>
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<td>Do you understand that?</td>
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<td>THE WITNESS: Yes, sir. Please rest assured that I will observe this order.</td>
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<td>PRESIDENT VEEDER: You may leave the table.</td>
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<td>THE WITNESS: Thank you.</td>
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<td>PRESIDENT VEEDER: Mr. Bloom, we're not tying you down, but just to get some idea of planning.</td>
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<td>MR. BLOOM: I think I am on pace to finish by late morning, by lunch.</td>
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<td>PRESIDENT VEEDER: I understand. And, again, you probably can't say, but on redirect re-examination, it will take us to the end of tomorrow, or will it take us into Saturday?</td>
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<td>MR. KEHOE: It will not take us into Saturday. It may take us towards the ends of the day, but that's--</td>
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<td>PRESIDENT VEEDER: That's fine.</td>
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<td>Q. And today, your recollection is no longer that you received it in an internet cafe or even by e-mail. Your current recollection is that it was hand-delivered to you by Mr. Fajardo; correct?</td>
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<td>A. Yes, sir, at some point. I already said it. That is the case.</td>
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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

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