

Exhibit 1

Filed under seal pursuant to the Stipulated Protective Order (Doc. 127)

1 IN THE UNITED STATES DISTRICT COURT

2 NORTHERN DISTRICT OF ALABAMA

3 SOUTHERN DIVISION

4
5 DRUMMOND COMPANY,)

6 INC.,)

7 Plaintiff,)

8)

9 VS.) CIVIL ACTION NO:

10 TERRENCE P.) 2:11-CV-3695-RDP-TMP

11 COLLINGSWORTH,)

12 individually and as) DEPOSITION OF:

13 agent of Conrad &) TERRENCE COLLINGSWORTH

14 Scherer, LLP, and)

15 CONRAD & SCHERER,)

16 LLP,)

17 Defendants.)

18
19 S T I P U L A T I O N S

20
21 IT IS STIPULATED AND AGREED, by and
22 between the parties through their respective
23 counsel, that the deposition of:

24 TERRENCE COLLINGSWORTH,

25 may be taken before Merit Gilley, Licensed Court

1 Reporter and Notary Public, State at Large, at
2 the Law Offices of Starnes Davis Florie, LLP,
3 100 Brookwood Place, Seventh Floor, Birmingham,
4 AL 35209, on the 17th day of August, 2015,
5 commencing at approximately 8:42 a.m.

6
7 IT IS FURTHER STIPULATED AND AGREED that
8 the signature to and reading of the deposition
9 by the witness is waived, the deposition to have
10 the same force and effect as if full compliance
11 had been had with all laws and rules of Court
12 relating to the taking of depositions.

13
14 IT IS FURTHER STIPULATED AND AGREED that
15 it shall not be necessary for any objections to
16 be made by counsel to any questions, except as
17 to form or leading questions, and that counsel
18 for the parties may make objections and assign
19 grounds at the time of the trial, or at the time
20 said deposition is offered in evidence, or prior
21 thereto.

22 ***
23
24
25

A P P E A R A N C E S

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9 ALSO PRESENT:

10 Blake Andrews
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EXAMINATION INDEX

Terrence P. Collingsworth

BY MR. WELLS 10

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1 I, Merit Gilley, Licensed Court
2 Reporter, and a Notary Public for the State of
3 Alabama at Large, acting as Commissioner,
4 certify that on this date, as provided by the
5 Federal Rules of Civil Procedure and the
6 foregoing stipulation of counsel, there came
7 before me on the 17th day of August, 2015, at
8 the law offices of Starnes Davis Florie, LLP,
9 100 Brookwood Place, Seventh Floor, Birmingham,
10 Alabama 35209, commencing at approximately
11 8:42 a.m., TERRENCE COLLINGSWORTH, witness in
12 the above cause, for oral examination, whereupon
13 the following proceedings were had:

14 THE VIDEOGRAPHER: We now
15 commence the videotaped deposition in the United
16 States District Court, for the Northern District
17 of Alabama, Southern Division; in the matter of
18 Drummond Company, Incorporated versus Terrence
19 P. Collingsworth, individually and as agent of
20 Conrad & Scherer, LLP; Conrad & Scherer, LLP;
21 Case Number 2:11-CV-3695-RDP.

22 Our witness today is Mr. Terrence P.
23 Collingsworth.

24 Today's date is August 17th, 2015.
25 The time is 8:42 a.m. We are located at Starnes

1 Davis Florie, Birmingham, Alabama.

2 Will all attorneys present please
3 state their names and whom they represent.

4 MR. WELLS: Trey Wells for Drummond
5 Company.

6 MR. PRESLEY: Ben Presley for
7 Drummond Company.

8 MR. DAVIS: Tony Davis, Drummond.

9 MR. ANDREWS: Blake Andrews also
10 present.

11 MR. BADHAM: Percy Badham for
12 Mr. Collingsworth.

13 MR. NIEWOEHNER: Chris Niewoehner on
14 behalf of the defendants.

15 MS. ECCLES: Lindsey Godfrey Eccles
16 for Mr. Collingsworth and the defendants.

17 THE COURT REPORTER: Would you raise
18 your right hand, please?

19 TERRENCE P. COLLINGSWORTH,
20 being first duly sworn, was examined and
21 testified as follows:

22 THE COURT REPORTER: Okay. The
23 usual stipulations?

24 MR. WELLS: That's fine.

25 MS. ECCLES: Before we get started,

1 I just want to make a note for the record that
2 Mr. Collingsworth has a flight at 5:15 -- I
3 mean, he has a flight this evening and needs to
4 wrap up here by 5:15. We discussed this
5 earlier. I believe we can get his full seven
6 hours in before then.

7 Also, we'd like to designate this
8 entire transcript confidential. To the extent
9 that some of it needs to be de-designated later
10 on, we can take that up.

11 MR. WELLS: We will handle that
12 according to the protective order.

13 MS. ECCLES: All right.

14 EXAMINATION

15 BY MR. WELLS:

16 Q Will you please state your name for
17 the record?

18 A Terry Collingsworth.

19 Q Mr. Collingsworth, I know you have
20 taken depositions before. Have you ever given
21 one?

22 A Once.

23 Q And what was that in relation to?

24 A A -- a fee dispute I had with a --
25 an investigating firm called Secure Pointe.

1 Q When was that?

2 A About a year ago.

3 Q Okay. And you understand how the
4 process works. You've been sworn in to tell the
5 truth, the whole truth and nothing but the
6 truth.

7 Do you understand that?

8 A I do.

9 Q We really wanted to take your
10 deposition earlier than this, but we were told
11 there were a bunch of conflicts, one of which
12 you had hearings in Dole last week in
13 California.

14 How was California?

15 A I didn't go.

16 Q Really?

17 What were you doing last week?

18 A I don't understand the question.

19 Q What were you doing last week? You
20 weren't in California. Were you in D.C.?

21 A The whole week?

22 Q Yes.

23 A What were the dates that you would
24 like me to respond to?

25 Q Monday through Friday of last week.

1 A Yes, I was in D.C.

2 Q Did you have plans to go to the Dole
3 hearing?

4 A I did.

5 Q And did those plans change?

6 MS. ECCLES: I'm going to object and
7 caution the witness not to reveal any work
8 product or attorney-client privileged
9 information in answering the question.

10 If you can answer without revealing
11 that kind of information, go ahead.

12 A What was the question?

13 Q Why didn't you go to California?

14 A Our team modified our plan.

15 Q Did you have a plane ticket?

16 A I don't believe so, no.

17 Q All right. You understand there's
18 been an issue in this case about payments to
19 witnesses and disclosure of those payments? Do
20 you understand that?

21 A Yes.

22 Q Okay. And we know now that one of
23 the witnesses who has received payments is Jairo
24 Charris, true?

25 A I'm sorry. What was your question?

1 MR. WELLS: Can you read that back,
2 please?

3 THE COURT REPORTER: Okay. And we
4 know that one of the witnesses who has received
5 payments is Jairo Charris, true?

6 A No.

7 Q He's not receiving payments?

8 A He's not, no.

9 Q Who has received payments on his
10 behalf?

11 A No one.

12 Q You understand that our view of
13 payments to witnesses includes payments to their
14 family members, payments to their lawyers,
15 payments to their inter- -- intermediaries? Do
16 you understand that?

17 A If you want to define it that way, I
18 can answer based on a definition that you give
19 me, but based on my definition, I answered my
20 question -- your question.

21 Q Okay. Based on the definition I
22 just gave you -- payment to a witness includes
23 payment to any of their family members, payment
24 to any of their lawyers -- Jairo Charris has
25 received payments, true?

1 A Based on your definition, yes.

2 Q Based on that same definition,
3 Samario has received payments?

4 A Based on your definition, yes.

5 Q Based on that definition, El Tigre
6 has received payments?

7 A Based on your definition, yes.

8 Q Based on that definition, Jaime
9 Blanco has received payments?

10 A From whom? What's your definition
11 of "payments"? From whom?

12 Q Has he received payments that you
13 are aware of?

14 A That I'm aware of?

15 Q Yes.

16 A I'm aware of payments. yes.

17 Q He was paid by Ivan Otero using
18 funds from Llanos Oil, right?

19 A As far as I know, yes.

20 Q And you were involved in those
21 payments? You knew about them as they were
22 ongoing, true?

23 MS. ECCLES: Object to the form.

24 A I was aware of them at some point,
25 yes.

1 Q And we've seen e-mails where you
2 have been provided the wire transfer
3 confirmation on the day it was made. Do you
4 dispute that?

5 A I don't recall if I received them on
6 the day they were made, but I did receive them,
7 yes.

8 Q Okay. Based on the definition of
9 payments we've been using, Rafael Garcia has
10 received payments?

11 A What's your definition of "payment"?

12 Q Money or anything of value provided
13 to the witness, to their family member, to any
14 intermediary, covering expenses for the witness.

15 A Based on that definition, yes.

16 Q Based on that definition, Libardo
17 Duarte has received payments?

18 A Based on that definition, yes.

19 Q Based on that definition, Jose
20 Gelvez Abarracin has received payments?

21 A Based on that definition, yes.

22 Q All right. Based on that
23 definition, has Peinado received payments?

24 A Who?

25 Q Jose Aristides Peinado.

1 A I'm trying to remember who he is.

2 Q He's one of your witnesses.

3 A Well, not that I'm aware of, no.

4 Q Has he ever requested payments, to
5 your knowledge, or any form of assistance?

6 A Not that I'm aware of, no.

7 Q Do you recall a man named Yuca,
8 alias "Yuca"?

9 A I do.

10 Q Has he received payments?

11 A Not that I'm aware of.

12 Q Has he requested any form of
13 assistance from you or your legal team, to your
14 knowledge?

15 A Not that I'm aware of.

16 Q Do you recall a paramilitary with
17 the alias "Mecanico"?

18 A Yes.

19 Q Ochoa?

20 A Yes.

21 Q Has he received payments?

22 A Not that I'm aware of.

23 Q Has he requested payments or any
24 form of assistance from any member of your legal
25 team?

1 A Not that I'm aware of.

2 Q Do you recall a paramilitary with
3 the alias "Pajaro" or "The Muslim"?

4 A Yes, I do.

5 Q Has he received payments?

6 A Not that I'm aware of.

7 Q Has he requested any form of
8 assistance from your legal team?

9 A Not that I'm aware of.

10 Q Do you remember a paramilitary with
11 the alias "57"?

12 A Yes.

13 Q Has he received payments?

14 MS. ECCLES: Object to the form.

15 A Not that I'm aware of.

16 Q Has he requested any form of
17 assistance from you or your legal team?

18 A Not that I'm aware of.

19 Q One member of your legal team in
20 Balcerro is Ivan Otero, right?

21 MS. ECCLES: Object to the form.

22 A Yeah, what do you mean by "legal
23 team"?

24 Q Well, that's a good question. Your
25 lawyers have disputed our characterization of

1 Ivan Otero as a, quote, "key member" of your,
2 quote, "litigation team."

3 Do you understand that?

4 A Do I understand that they have
5 disputed it?

6 Q Yes.

7 A Not specifically. Is there a
8 document or someplace where I can see what they
9 said?

10 Q Well, let me ask you this: Do you
11 dispute that characterization that Ivan Otero is
12 a key member of your litigation team?

13 A I don't know what you mean by "key."
14 Am I a key member? I -- I don't know what you
15 mean.

16 Q Well, I'm using your words. "Key
17 member."

18 A What words? I'm sorry. What words?

19 Q "Key member."

20 A Where did I use those words?

21 MR. WELLS: Give me Tab 20.

22 (Plaintiff's Exhibit No. 1 was
23 marked for identification.)

24 Q I'm showing you what's been marked
25 as Plaintiff's Exhibit 1. This is a declaration

1 that your lawyers filed into Court on November
2 7th, 2013.

3 Is that your signature on the end of
4 that document?

5 A Yes, it is.

6 Q You understood you signed that under
7 oath?

8 A Yes.

9 Q Okay. Look at paragraph 51.

10 A (Witness complies.)

11 Q It's on page -- beginning on page
12 25.

13 A Yes.

14 Q All right. On page 26, the fifth
15 line down from the top, you're describing Otero.
16 "He is a key member of our Colombia team."

17 MS. ECCLES: Take as much time to
18 look at this as you need to before you answer.

19 A Yeah, that's -- that's different
20 than the question you asked me. It says,
21 "Colombia team," not litigation team.

22 Q Well, you were asking about key
23 member. So I'm showing you --

24 A No. I was asking about --

25 Q -- key member.

1 A -- litigation team, not Colombia
2 team. There's a big difference.

3 Q Okay. The record will speak for
4 itself on that.

5 A Yes.

6 Q Do you think your use of "key
7 member" there is somehow vague and ambiguous?

8 A Not if you're talking about the
9 Colombia team, no.

10 Q But Ivan Otero is not a member of
11 your litigation team?

12 A No. He --

13 MS. ECCLES: Object to the form.

14 A -- hasn't appeared.

15 Q That's your definition of
16 "litigation team?"

17 MS. ECCLES: Object to the form.

18 A That would be my definition, yes.

19 Q Okay. So you're okay with key
20 member? He is a key member of your team?

21 A Colombia team.

22 Q Okay.

23 A That's my words.

24 MR. WELLS: Give me the Otero
25 Exhibit I.

1 (Plaintiff's Exhibit No. 2 was
2 marked for identification.)

3 Q I'll show you what I'm marking as
4 Plaintiff's Exhibit 2. This is a brief filed
5 with --

6 MS. ECCLES: Do you have a copy for
7 us?

8 Q -- Judge Proctor in this case. Do
9 you understand that?

10 A Sorry. What was your question?

11 Q Do you understand this is a brief
12 filed for the defendants in this court?

13 A It appears to be that, yeah.

14 Q Flip to page 4.

15 A (Witness complies.)

16 MS. ECCLES: I'll just note for the
17 record that part of this is highlighted. It
18 doesn't appear to be the brief as filed.

19 MR. WELLS: Okay.

20 Q I'm glad she noted that because look
21 at the highlighted part.

22 A Yeah.

23 Q Ivan Otero is represented as part of
24 defendant's, quote, "litigation team."

25 Do you see that?

1 A Yes.

2 Q And you say that's incorrect?

3 A No, he's not --

4 MS. ECCLES: Object to the form.

5 A There's a difference between saying
6 he is a part of a litigation team and a key
7 member. I'm -- I'm not sure what -- what you're
8 driving at here, but that's a different
9 statement than was previously asked by you.

10 Q Well, I'm just trying to figure out
11 if we're going to be speaking the same language
12 during this deposition because we've tried to
13 use your words in describing your litigation
14 team members, and we can't seem to get an
15 agreement on -- that that's who that person is.

16 MS. ECCLES: Object to the form.

17 A Do you have a question?

18 Q Your lawyers have now -- after
19 disputing Otero as a key member of the
20 litigation team, instead say he was co-counsel
21 with you for the Balcerio plaintiffs. Is that a
22 better characterization for you?

23 A Of what my lawyer said?

24 Q Of your understanding?

25 A I'm sorry. What -- what's your

1 question?

2 Q Is Ivan Otero, or was he during the
3 time Balcerro was active, co-counsel with you for
4 the Balcerro plaintiffs?

5 A I'm not sure how you define
6 "co-counsel," but he was an attorney working
7 with me on the case, yes.

8 Q Okay. On the Balcerro plaintiffs'
9 team, how -- however you want to describe it?

10 A On the Balcerro -- on -- on the -- he
11 was working with me on the Balcerro case, yes.

12 Q All right. You have submitted some
13 declarations stating that you met Otero in about
14 November of 2008. Is that accurate?

15 A I don't recall specifically. If --
16 if you have a declaration you want to show me, I
17 can take a look at it.

18 Q Why don't you do the best you can.
19 Sitting here today, when is the first time you
20 met Ivan Otero?

21 MS. ECCLES: Object. He's already
22 stated that his best recollection is in his
23 declarations.

24 MR. WELLS: We can keep objections
25 to the form. If we're going to get out of here

1 at 5:15, we need to not have any speaking
2 objections.

3 MS. ECCLES: Go ahead and ask your
4 questions, Mr. wells.

5 A Yeah. I'm -- what -- what's the
6 question?

7 Q When was the first time you met Ivan
8 Otero?

9 A Well, as I said, I don't recall
10 specifically. I -- sometime in the fall of -- I
11 really can't say if it was 2008, 2009. But it
12 was in the fall.

13 Q And how did you come to meet
14 Mr. Otero?

15 A He was introduced to me.

16 Q By whom?

17 A By Francisco Ramirez.

18 Q And what were you told about who
19 Mr. Otero was?

20 A By whom?

21 Q By anyone. I mean, why -- why did
22 you meet with him?

23 A I think that gets into privilege.
24 Francisco Ramirez was also working with me on
25 the Balcerro case, and what he told me is -- is

1 privileged.

2 Q So you refuse to answer that
3 question?

4 MS. ECCLES: Well, I'll instruct you
5 not to answer if you can't answer without
6 getting --

7 A Well, I can't --

8 MS. ECCLES: -- into privileged
9 information.

10 A I cannot tell and I cannot say what
11 Francisco told me --

12 MS. ECCLES: Understood.

13 A -- about Otero.

14 MS. ECCLES: I'll instruct you not
15 to answer.

16 Q When you met with Mr. Otero for the
17 first time, what did you understand he did for a
18 living?

19 A Well, my understanding of that --
20 at -- at the time I met him, my understanding of
21 who he was came entirely from Francisco Ramirez.

22 MS. ECCLES: Again, I'll instruct
23 you not to answer on that basis.

24 Q I insist on an answer.

25 MR. WELLS: Y'all are refusing to

1 answer based on privilege?

2 MS. ECCLES: He's told me that it's
3 privileged information. The answer is
4 privileged. It comes from discussions with
5 co-counsel, privileged discussions.

6 MR. WELLS: All right. All of this
7 that we're talking about today I think Judge
8 Proctor is going to want to know, and we're
9 going to insist on getting answers to these
10 questions. If y'all continue to instruct him
11 not to answer on privilege, we will bring it
12 before Judge Proctor very soon and bring
13 Mr. Collingsworth back.

14 MS. ECCLES: Okay. Well, are you
15 going -- are you going to call Mr. -- Judge
16 Proctor now?

17 MR. WELLS: No. We're going to try
18 to keep going with this deposition.

19 MS. ECCLES: Okay. That's fine.
20 But he's not going to testify about privileged
21 discussions he had with lawyers.

22 Q All right. So it's privileged what
23 Mr. Otero did for a living at the time you met
24 him?

25 A No, sir, that's not what I said. I

1 said that at the time --

2 MS. ECCLES: He's not going to
3 testify about understandings that he got from
4 conversations with lawyers from privileged
5 communications. If he has an independent
6 understanding of Mr. Otero's occupation, he can
7 testify to that, but to the extent that that
8 came from Mr. Ramirez, he's not going to testify
9 to about it.

10 MR. WELLS: All right. Stop. I'm
11 going to go off the record. We're going to call
12 the judge.

13 THE VIDEOGRAPHER: The time is
14 9:01 a.m. We're off the record.

15 (Off the video record at 9:01 a.m.)

16 MR. DAVIS: If we could, I don't
17 even think we set forth at the outset -- let's
18 do this, if we could, and then I know Trey will
19 want to say something, too. And I apologize for
20 having two lawyers say it, but what is being
21 asked today under oath of Mr. Collingsworth
22 involves issues concerning sanctions and
23 spoliation. And so we're not asking about the
24 merits of the case. So I want you to reconsider
25 when you tell your client not to answer for

1 attorney-client privilege when we are seeking
2 information that goes to the issue of sanctions.

3 MS. ECCLES: Well, is it your
4 position, just so we're clear before we call the
5 judge, that the fact that this is about
6 spoliation and sanctions means that the
7 attorney-client privilege is completely gone, or
8 would you agree that we still have an
9 attorney-client privilege to assert here?

10 MR. DAVIS: I think you need to
11 consider that yourself because it is very
12 significant.

13 MS. ECCLES: Well, we're not going
14 to agree that we've no longer got any
15 attorney-client privilege. That can't be your
16 position. Is that your position that you were
17 going to call Judge Proctor about right now?

18 MR. WELLS: Who's the attorney and
19 who's the client in this circumstance?

20 MS. ECCLES: They're co-counsel in
21 this circumstance.

22 MR. WELLS: Yeah, there's no client
23 involved.

24 MS. ECCLES: The Balcerro clients are
25 involved, right? We're discussing something

1 that happened in the context of the Balcerro
2 litigation. We're talking about
3 Mr. Collingsworth -- maybe we should go off the
4 record and I can make sure I understand exactly
5 the basis of the objection so that we can
6 clarify the issues for the judge.

7 MR. DAVIS: Okay. Who's keeping
8 time of the testimony?

9 THE VIDEOGRAPHER: I am.

10 MR. DAVIS: Okay. We're off the
11 testimony.

12 MS. ECCLES: Okay. Let's step out
13 for just a minute, Terry.

14 MR. WELLS: And while y'all are
15 gone, let's consider the fact that
16 Mr. Collingsworth has already testified as to
17 who Otero is. We're trying to create a
18 background record on pretty non-controversial
19 facts, I would think, at this point.

20 So before we call the judge on this,
21 review that declaration, specifically paragraph
22 51, and see if you really want to claim
23 privilege over this.

24 MS. ECCLES: Okay.

25 MR. NIEWOEHNER: And I would suggest

1 you also consider the question you asked, which
2 is what was his understanding when he first met
3 him, not did you ever understand he was a
4 lawyer. I think there is a difference in our
5 ability to answer those questions.

6 (Off the record at 9:07 a.m.)

7 THE VIDEOGRAPHER: The time is
8 9:07 a.m. We are back on the record.

9 MS. ECCLES: All right. So
10 hopefully this will help resolve our differences
11 on this issue.

12 Mr. Collingsworth is prepared to
13 testify about his own independent knowledge of
14 Mr. Otero and what he does for a living, but he
15 is -- but I've instructed him not to discuss
16 what he learned from his co-counsel,
17 Mr. Ramirez, when he was first introduced to
18 Mr. Otero, just to clarify our objections.

19 Now, if you want to ask a question
20 about what Mr. Collingsworth knows about
21 Mr. Otero, we'll -- we'll see if we can go
22 forward.

23 BY MR. WELLS:

24 Q All right. To the best of your
25 knowledge, what did Mr. Otero do as of December

1 of 2008?

2 A Mr. Otero is a very experienced
3 criminal lawyer in Colombia. He also teaches
4 law, criminal law. That's what I knew.

5 Q Okay. And you also knew he
6 represented paramilitaries?

7 MS. ECCLES: Object to the form.

8 A I knew that Mr. Otero was one of
9 several lawyers who had been invited by the
10 Colombian government to participate in bringing
11 paramilitary commanders into the Justice and
12 Peace program, yes.

13 Q And he represented them as their
14 counsel, true?

15 MS. ECCLES: Object to the form.

16 A Yeah, I think that there are certain
17 individuals that he participated in the process
18 with. The definition -- our definition of
19 "represented" is a whole lot different than what
20 happens in Colombia, but there's no question
21 that he acted on behalf of several
22 paramilitaries in the Justice and Peace process.

23 Q Including El Tigre, right?

24 A Yes, including El Tigre.

25 Q And Samario?

1 A Including Samario.

2 Q Okay.

3 A And that -- those are the only two
4 that I'm actually aware of.

5 Q All right. And you knew that at the
6 time you met him, right?

7 A Not necessarily at the time that I
8 met him, but certainly within a short time of
9 meeting him, I became aware of that.

10 Q Okay. And also within a short time
11 of meeting him, you promised him a contingency
12 fee in the cases against Drummond, true?

13 MS. ECCLES: Object to the form.

14 A I made an arrangement with him that
15 included a contingency fee interest in the -- in
16 the Balcerro case, yes, and in the Baloco case.

17 Q And you also arranged with him to
18 give him a lump-sum \$80,000 payment --

19 MS. ECCLES: Object to the form.

20 Q -- true?

21 A Part of my agreement with him was to
22 provide -- it was \$80,000 as -- as an initial
23 fee or payment, yes.

24 Q Now, it's been represented to us
25 that the defendants have no documents reflecting

1 how this \$80,000 was spent.

2 MS. ECCLES: Object to the form.

3 Q Is that your understanding, that
4 there are no documents reflecting how Ivan Otero
5 used that \$80,000?

6 MS. ECCLES: Object to the form.

7 A I personally am not aware of any
8 documents that reflect how the money was spent.
9 Is that your question?

10 Q Yes.

11 A Yes, I personally don't have
12 knowledge of such documents.

13 Q Okay. It's not -- "you
14 personally" is kind of an odd way to phrase it.
15 Do you have any knowledge -- whether it's from
16 hearsay or otherwise, do you have --

17 MS. ECCLES: Object --

18 Q -- any knowledge of how Mr. Otero
19 used that \$80,000?

20 MS. ECCLES: Object to the form.

21 A Well, that's a different question.
22 If you're -- you're -- you're now not asking me
23 about documents. You're asking do I have
24 knowledge; is that correct?

25 Q Well, first with the documents. Do

1 you have any sort of knowledge whatsoever if
2 there are documents out there reflecting how
3 Mr. Otero spent that money?

4 MS. ECCLES: Object to the form.

5 A As I said, I don't -- don't know of
6 any such documents.

7 Q Okay. Now, the next question, do
8 you have any knowledge as to how he spent that
9 money?

10 MS. ECCLES: Object to the form.

11 A Well, my understanding or my -- my
12 knowledge is that he used some of it for the
13 equivalent of a retainer. He used some of it
14 for his own travel expenses and logistics, and
15 he used some for his personal security.

16 Q And you did not require any sort of
17 documentation of how he was utilizing that
18 money?

19 A He could have treated the entire
20 amount as a retainer, as far as I was concerned,
21 but I did understand that he would incur certain
22 costs that were part of his work that he was
23 performing on behalf of my cases.

24 Q Okay. So the arrangement was he --
25 I think you said he could have used that whole

1 80,000 as just a simple retainer fee?

2 A He -- well, I don't -- I don't
3 recall the exact language, but there was a --
4 there was an agreement that was voided very
5 quickly but that had some language about the --
6 the various things he could use the -- the money
7 for.

8 Q But you didn't keep track of how he
9 was using it?

10 A There was no -- there was no
11 requirement that I'm aware of that he report
12 back on his use of the funds.

13 Q Okay. So he got an up front \$80,000
14 retainer plus, plus a contingency fee? That was
15 the arrangement?

16 A Yes, that was the arrangement.

17 Q Okay. And at that time, he was
18 counsel for El Tigre and Samario, right?

19 MS. ECCLES: Object to the form.

20 A At what -- at what time?

21 Q At the time y'all's arrangement came
22 together of a contingency fee and this \$80,000
23 up front payment?

24 A My understanding -- although I did
25 not review any of his own documents or his own

1 records on this, but my understanding at the
2 time I made this arrangement was that he had
3 completed his work on behalf of El Tigre and
4 Samario and was not doing any further
5 representation of any sort for them.

6 Q So your testimony is at the time he
7 joined your legal team, he had a clean break
8 with paramilitary witnesses as far as
9 representing them?

10 MS. ECCLES: Object to the form.

11 A I -- I can't say that. I can say
12 that I was -- my recollection is he had
13 completed the work for Samario and El Tigre. I
14 don't know if there were other people he was
15 representing in the criminal capacity.

16 Q Okay.

17 (Plaintiff's Exhibit No. 3 was
18 marked for identification.)

19 Q I'm going to show you what's been
20 marked as Plaintiff's Exhibit 3, which are some
21 interrogatory answers from the Balcerro case.
22 And on page 6, it's got a date of September 9th,
23 2011, and what appears to be your signature. Is
24 that your signature?

25 A Yes.

1 Q Let's look at number 3.

2 A (Witness complies.)

3 Q Are you with me?

4 A Yes, I see number 3.

5 Q All right. It says, quote,
6 "Describe the attorney client relationship
7 between Terry Collingsworth and/or any other
8 lawyer who represents any plaintiff in
9 connection with this litigation, any other
10 Colombian paramilitary, any person disclosed on
11 Plaintiff's Rule 26 disclosures or any other
12 potential witness in this matter."

13 Subject to certain objections you
14 raised, the response was, "There are no other
15 attorney client relationships between Terrence
16 Collingsworth or anyone acting on plaintiff's
17 behalf in any category of individual listed in
18 this interrogatory request or related to this
19 litigation." Is that a true response?

20 MS. ECCLES: Object to the form.

21 A You know, in order for me to assess
22 this, I -- I need to read it. Just give me a
23 moment.

24 Okay. And your question is?

25 Q Is that a true representation there

1 that there are no attorney client relationships
2 with anyone acting on the Balcerro plaintiffs'
3 behalf?

4 MS. ECCLES: Object to the form.
5 This answer is subject to the objection that's
6 set out in the document.

7 A Yeah, I -- I think that subject to
8 the objections, and I -- just sitting here now
9 reading it, I'm -- I'm -- I'm not clear. I
10 would really need to study this as to whether
11 we're talking about a -- a current attorney
12 client relationship at the time this was
13 answered versus a past relationship. And I
14 really -- it -- it strikes me that this is
15 asking for a current relationship, not a past
16 relationship.

17 So subject to that, I would say
18 then, yeah, it is accurate.

19 Q Okay. It's accurate because as of
20 the time this was signed by you in September of
21 2011, you say Otero didn't represent any
22 paramilitaries or other witnesses?

23 A He --

24 MS. ECCLES: Object to the form.

25 A As I said, the only two that I had

1 knowledge that he ever had any relationship to
2 were El Tigre and Samario, and as of this date,
3 it was my understanding that he was no longer
4 representing them.

5 Q Okay.

6 (Plaintiff's Exhibit No. 4 was
7 marked for identification.)

8 Q I'm going to show you Plaintiff's
9 Exhibit 4 to your deposition. These are
10 responses to requests for production dated the
11 very same day, September 9th, 2011. And on page
12 6, is that your signature next to the date?

13 A Yes, it is.

14 Q Request Number 4 asks for -- and I'm
15 going to paraphrase -- communications between
16 the plaintiffs' counsel and Ivan Otero.

17 MS. ECCLES: Object to the form.

18 Q The response, in the course of
19 objecting, states that, "Mr. Otero represents
20 former paramilitaries who are providing
21 testimony against Drummond in this case." Do
22 you see that?

23 MS. ECCLES: Object to the form.

24 A Yes, I do.

25 Q Is that a true response?

1 MS. ECCLES: Object to the form.

2 A No. That's actually a mistake, and
3 I -- I think that we've -- we've corrected that
4 in -- in the context of these findings of fact
5 that we filed.

6 Q That's just a -- did you know it was
7 a mistake at the time?

8 A I didn't -- I don't recall seeing
9 this mistake at the time or I would have not --
10 this mistake would not have been made.

11 Q Okay. You never supplemented this
12 answer, did you, to say we made a mistake --

13 MS. ECCLES: Object to the form.

14 Q -- during the course of Balcerro?

15 A We didn't notice the mistake until
16 well after Balcerro had been dismissed. So the
17 first opportunity that we had to correct it in
18 this libel case, we did.

19 (Plaintiff's Exhibit No. 5 was
20 marked for identification.)

21 Q I'll show you what's been marked as
22 Plaintiff's Exhibit 5. These are interrogatory
23 answers from Balcerro dated July 5th, 2011. And
24 on page 11, is that your signature next to the
25 date?

1 A Yes.

2 Q Turn to page 6.

3 A (Witness complies.)

4 Q Interrogatory Number 4, this
5 interrogatory reads, quote, "Describe anything
6 of value offered or given by plaintiffs or
7 anyone acting on plaintiffs' behalf, including
8 counsel, to any person disclosed on plaintiffs'
9 Rule 26 disclosures, any former paramilitary, or
10 any other potential witness in this litigation."
11 Did I read that correctly?

12 A Well, give me a moment to -- to read
13 it. Just for purposes of saving time, you can
14 do whatever you want, I'm just pointing out that
15 I -- if you read me something, I'm still going
16 to need to read it. So you could just direct me
17 to read it and it might save time. But I've
18 read it now, yes. Thank you.

19 Q Okay. You've read that? There is
20 no disclosure in response to that interrogatory
21 of any payments made for the benefit of any
22 witness, any paramilitary witness; is that
23 right?

24 MS. ECCLES: Object to the form.
25 These are subject to objections.

1 A I'm going to read the response
2 before I answer. Okay. I'm sorry. What's your
3 question?

4 Q There is no disclosure here of any
5 payments made for the benefit of any
6 paramilitary witness, is there?

7 MS. ECCLES: Object to the form.

8 A Well, this was -- see, this was in
9 2011. My -- my best recollection is that we
10 stood on our objections here and that there was
11 a -- an issue about whether this question
12 properly sought information of security that was
13 provided to relocate family members of the
14 witnesses who had received serious death threats
15 because they were about to testify. And my
16 recollection is that subsequently Drummond asked
17 a different question about any -- any payments
18 made to family members, and that recognized that
19 distinction, and that we then later provided the
20 information.

21 MS. ECCLES: Quick note for the
22 record. This header is misleading on this
23 document. It was not actually filed in December
24 of 2013. I just want that to be clear.

25 MR. WELLS: It was filed in this

1 case in December of 2013.

2 MS. ECCLES: The interrogatory
3 response that we're discussing was filed --

4 MR. WELLS: It's dated July 11th,
5 the way I introduced it.

6 MS. ECCLES: In July 2011, not
7 December 2013. I just want that to be clear.

8 Q You say here that plaintiffs have
9 provided Duarte with hamburgers and other food
10 on several occasions, which were served during
11 meetings to discuss the facts in this February
12 2011 declaration. Now, at this time Duarte had
13 asked for payments to be sent to his wives,
14 true?

15 MS. ECCLES: Object to the form.

16 A I -- I know that there are documents
17 that reflect that we have produced -- that
18 reflect that we relocated Duarte's family. I
19 don't recall whether it was before or after --
20 after this. It could have been.

21 Q And you say that those payments were
22 because Duarte told you his family had been
23 threatened. Is that your testimony?

24 MS. ECCLES: Object to the form.

25 A Duarte absolutely told me that his

1 family had been threatened and that he himself
2 had been attacked in the prison where he is in
3 Bogota because of his testimony.

4 Q And you say that was to keep him
5 from testifying against Drummond?

6 A That's what I think, yes.

7 Q As of the time of this
8 interrogatory, you'd also been making payments
9 to Charris' family for a few years; is that
10 right?

11 MS. ECCLES: Object to the form.

12 A I'm fairly certain that by the time
13 of this interrogatory response I had been
14 providing security assistance to Charris'
15 family. I don't recall how -- how long or how
16 much at this time.

17 Q And you have testified in this
18 proceeding that the reason those payments were
19 made was because his family was threatened; is
20 that right?

21 MS. ECCLES: Objection.

22 A Absolutely.

23 Q And again, you say that's because
24 someone was trying to keep Charris from
25 testifying against Drummond.

1 A It wasn't someone who was saying
2 that. It was -- it was Charris. Charris was
3 adamant that he was going to be killed and that
4 his family was going to be killed because he was
5 telling the truth about Drummond's role in the
6 murder of the trade union leaders.

7 Q And as of the time of this
8 interrogatory, payments were also being made to
9 Ivan Otero for the purpose of giving to El Tigre
10 and Samario's family?

11 MS. ECCLES: Object to the form.

12 A At the time of this?

13 Q Yes.

14 A I'm just trying to recall the time
15 frame. I -- I --

16 Q They started in February of 2011.
17 We've got an e-mail from May 2011 with "the deps
18 in the can." Do you recall reviewing that
19 e-mail during the course of this litigation?

20 MS. ECCLES: Hang on. Let's not get
21 into privileged information here. If you -- if
22 you --

23 A I'm not going to --

24 MS. ECCLES: -- have independent
25 recollection of the e-mail, that's fine.

1 A I don't have an independent
2 recollection of the date of that e-mail.

3 Q In any event, your explanation for
4 the purpose of those payments going to the
5 families of El Tigre and Samario is because they
6 were threatened because of their testimony,
7 because of El Tigre and Samario's testimony?

8 MS. ECCLES: Object to the form.

9 A My recollection from speaking to --
10 no. Strike that. Can you repeat your question,
11 please?

12 Q Well, you say the payments for El
13 Tigre and Samario's family were for relocation
14 assistance, right?

15 MS. ECCLES: Object to the form.

16 A Did I say that? I think they were,
17 yes.

18 Q Okay. And your position is the
19 reason they needed those payments was because
20 they were being threatened, right?

21 MS. ECCLES: Object to the form.

22 A Absolutely. Both Samario and El
23 Tigre were threatened by a number of individuals
24 and told that because they were going to testify
25 against Drummond they were -- their families

1 were going to be killed.

2 Q Okay. Look at number 5,
3 Interrogatory Number 5 of these interrogatories
4 sitting in front of you.

5 A (Witness complies.)

6 Q It says, "Describe the source and
7 substance of your claim that individuals
8 involved in this litigation have been bribed,
9 threatened, or the subject of any attempts to
10 influence testimony."

11 Now, you can read the response, but
12 none of what you just told me about Charris
13 being threatened, his family being threatened,
14 El Tigre being threatened, Samario being
15 threatened, their families being threatened,
16 none of that was included in the response.

17 MS. ECCLES: Is that a question?

18 Q Why?

19 MS. ECCLES: Well, to the extent you
20 can answer without revealing privileged
21 information, Mr. Collingsworth, go ahead.

22 THE WITNESS: I'd like to read the
23 response --

24 MS. ECCLES: Of course.

25 THE WITNESS: -- before I respond.

1 A Okay. I'm sorry. Now, your
2 question is?

3 Q Do you have any reason for no
4 disclosure of these threats you just mentioned
5 to me about family members, El Tigre, Samario,
6 Charris, Duarte?

7 MS. ECCLES: Object to the form.
8 Objection is in the response.

9 A I -- I see that we made some
10 objections about -- well, we made some
11 objections. I can't recall as I sit here what I
12 knew then. I do know that at some point we did
13 put all of those threats in the record. And
14 they're -- they're in the record. I -- I can't
15 -- I can't tell you the timing issue. I don't
16 recall.

17 Q In that same response on page nine?

18 A Yes.

19 Q Very top says, "Ivan Otero, counsel
20 for El Tigre and Samario." Do you see that?

21 A I do.

22 Q And that's not true, is it?

23 MS. ECCLES: Object to the form.

24 Q Or is it true as of the time of this
25 interrogatory?

1 MS. ECCLES: Object to the form.

2 A Not as -- as I've previously
3 testified, and I have no doubt and I believe
4 Mr. Otero himself has put a declaration in on
5 the timing of his representation, he did not
6 represent El Tigre and Samario on July 5th,
7 2011. To the extent that calling him counsel
8 for El Tigre and Samario implies or even states
9 that he was counsel, now, that's an error. As I
10 said before, it was made in a couple of places
11 and we've corrected that.

12 Q So that was just another mistake?

13 MS. ECCLES: Object to the form.

14 A It appears to be, yes.

15 Q I'm showing you what's been marked
16 as Plaintiff's Exhibit 6.

17 (Plaintiff's Exhibit No. 6

18 Was marked for identification.)

19 Q Some more discovery responses in
20 Balcerro. These are dated July 16th, 2012. And
21 is that your signature next to the date on page
22 23?

23 A Yes. That appears to be.

24 Q Number 5, you can just go ahead and
25 read it.

1 A (Witness complies.)

2 MR. WELLS: Let's go off the record
3 while he's reading it.

4 THE VIDEOGRAPHER: The time is
5 9:37 a.m. We're off the record.

6 (Off the video record.)

7 MS. ECCLES: I've just informed
8 opposing counsel --

9 THE VIDEOGRAPHER: Hang on. The
10 time -- the time is 9:38 a.m. We are back on
11 the record.

12 MS. ECCLES: I just had a discussion
13 with opposing counsel, and we've informed him
14 that Mr. Collingsworth is not going to answer
15 questions about documents that are being put
16 into evidence without reading them first and
17 that the time that he takes to read the
18 documents is going to be counted as time on the
19 record at this deposition.

20 MR. WELLS: And we have informed you
21 that he is welcome to take as much time as he
22 wants to read every document that is placed in
23 front of him.

24 MS. ECCLES: Thank you.

25 MR. WELLS: But we are going to go

1 off the record every time he sits there and
2 reads silently and it will not count against our
3 time.

4 MS. ECCLES: Well, we're not
5 agreeing to that. Please go ahead and read the
6 document, Mr. Collingsworth.

7 MR. WELLS: Going back off the
8 record.

9 MS. ECCLES: No. We don't agree to
10 that.

11 A This answer is four pages long. I
12 cannot respond to a question about it without
13 reading it.

14 Q Take your time and read it.

15 MR. WELLS: But go off the record
16 while he's reading it.

17 MS. ECCLES: No. No, we're not.
18 We're not off the record. We are on the record.

19 MR. WELLS: We are off the record.
20 This is our deposition.

21 (Discussion off the record.)

22 (Telephone call to Special Master.)

23 MR. WELLS: Hey, Mike, this is Trey.
24 Is now a good time?

25 SPECIAL MASTER: Okay. I'm

1 switching rooms here. Hold on just a second.

2 All right. What you got?

3 MR. WELLS: All right. We've got a
4 lot of documents for this deposition. We were
5 told for the very first time this morning that
6 Mr. Collingsworth has to leave at 5:15, despite
7 the fact the defendants have told us we were
8 going to have seven hours on the record. In any
9 event, we're trying to get it done.

10 Mr. Collingsworth is reading every document
11 presented to him, extremely slowly I might add,
12 which is fine. He -- we're giving him that
13 opportunity. But we are going off the record to
14 give him the time he needs to read the document
15 so that did not count against our seven hours of
16 him testifying.

17 SPECIAL MASTER: All right.

18 MR. WELLS: They are objecting to
19 that. They are saying regardless of how long he
20 reads a document, that's going to cut into our
21 seven hours.

22 MR. NIEWOEHNER: And Mike, it's
23 Chris Niewoehner here on behalf of Terry and the
24 defendants. We're obviously -- we're disputing
25 Trey's characterization that he's taking a long

1 time. It's just not true, and there's no --
2 he's got no facts to back that up.

3 They're presenting him a series of
4 documents. What they've been working through is
5 the Balcerro case from 2011 and 2012. They are
6 asking him questions, detailed questions, about
7 his memory about answers that were prepared on
8 things that were done four years ago. It is
9 reasonable to allow him to read the actual
10 question and answer that are presented, and we
11 are -- you know, in our experience, during a
12 deposition you want to show a document to a
13 witness, your time is running while the witness
14 looks at the document.

15 If they want to keep a running tally
16 of how long he -- how long he's reading
17 something and present some objective evidence
18 he's being, quote, too slow, they're welcome to
19 do so. But we are allowing him a reasonable
20 chance to read these documents and the specific
21 questions they're being answered about
22 beforehand.

23 So really the question is whether
24 they're going to be -- whether they get to go
25 off the record every time they show him a

1 document or not.

2 MR. WELLS: And we have no problem
3 with him reading the document for as long as he
4 likes, but we do have a problem with it counting
5 against our very limited time.

6 SPECIAL MASTER: Well, the parties
7 agreed to -- the parties agreed to the seven
8 hours. It's -- it's limited in scope to what
9 we're trying to accomplish or what the judge
10 wants to accomplish in the motion for sanctions.

11 Now, I know there's a lot of issues
12 there. I get that, and I'm -- I think that's
13 important. I do think that in, you know, in the
14 general course of depositions that a witness
15 is -- is entitled to read the -- to read the
16 document.

17 I think that what I would suggest
18 that we do is -- is keep tabs on the time, and
19 then maybe, Trey, if you -- you know, if you
20 get -- when y'all get to a certain point of the
21 deposition that you call me back and say, okay,
22 we've shown him, you know, five documents, and
23 he's taken this much time. That would better
24 able me to say, okay, you know, we're going
25 to -- and I understand the problem with that is

1 that you -- he's got to leave at 5:15, which is
2 a different problem in and of itself because you
3 could at that point make a decision and say,
4 okay, if he's taking that much time we're going
5 to give you another half hour or another 45
6 minutes. But without -- I think without that,
7 it's hard for me to say that you can, you know,
8 go off the record every time he's reviewing a
9 document.

10 MR. NIEWOEHNER: And Mike, just so
11 you understand the 5:15, we looked for the very
12 last flight out to Washington, D.C. this evening
13 for Mr. Collingsworth. He is taking the very
14 first flight out tomorrow morning to take his
15 daughter to college, which the judge
16 specifically allowed him to. We started early
17 this morning to try to make sure we got the time
18 in. We will move as promptly as we can. We
19 understand that they want seven hours, and we
20 will do our best to get them seven hours.

21 SPECIAL MASTER: What I'm saying
22 is --

23 MR. DAVIS: Whoa, Mike --

24 SPECIAL MASTER: -- after you've
25 gotten some time into this deposition, let's say

1 at noon, you have some, you know, as -- as Chris
2 called it objective record of how long it's
3 taking, call me back and say, okay, this is
4 what's going on. And then maybe I will -- we'll
5 adjust this.

6 MS. DAVIS: All right. We
7 understand. Mike, this is Tony. We understand
8 where we are. Let me say this on the record.
9 We do not agree to the 5:15.

10 SPECIAL MASTER: I know you didn't.

11 MR. DAVIS: We think this is blatant
12 of what they're doing, and it is very clear what
13 they're doing. And I want to remind the Special
14 Master this is an incredibly serious matter of
15 sanctions of spoliation, and we're trying to ask
16 simple questions where he has signed documents.
17 He has the knowledge about it, and he's
18 taking -- and I'll represent to the Court as an
19 offer of the Court that it's an inordinate
20 amount of time that they're taking to review
21 something for which he has signed. So we
22 disagree with what the Special Master is saying
23 right now. We disagree very much. But we
24 understand what you said. We expect we'll be
25 back calling you back probably within an hour or

1 hour and a half. But we do not agree to the
2 5:15. And I can tell you right now, we're going
3 to be in depositions at 5:15.

4 SPECIAL MASTER: I fully expect it.
5 I mean, I -- I have never understood that 5:15
6 was going to be the cutoff, so --

7 MR. DAVIS: Yeah.

8 SPECIAL MASTER: But that's -- I
9 can't --

10 MS. DAVIS: Particularly, I want the
11 Special Master to know, we set up this
12 deposition because Mr. Collingsworth was going
13 to be in California last Thursday.

14 SPECIAL MASTER: Right.

15 MR. DAVIS: It was represented to
16 us, represented to the Court. Mr. Collingsworth
17 was not in California last Thursday, as
18 represented to us. So this whole timing issue,
19 this whole arranging things, we think has been
20 misrepresented to us and to the Court. But
21 let's go forward.

22 SPECIAL MASTER: I can see that.

23 MR. DAVIS: Let's go forward.

24 SPECIAL MASTER: Okay.

25 MR. NIEWOEHNER: Thanks, Mike.

1 MR. WELLS: Thank you, Mike.

2 SPECIAL MASTER: Thank you. Bye.

3 (End of call to Special Master.)

4 MR. DAVIS: For the record, I want
5 this to show right now we do not -- and we're on
6 the record. We do not agree to the 5:15. We do
7 not. We fully expect we'll be taking testimony
8 at that time.

9 MR. NIEWOEHNER: We're on the
10 record.

11 MR. WELLS: All right.

12 MS. DAVIS: We may have to take a
13 lengthy break at lunch to gather our thoughts.

14 MS. ECCLES: We don't agree with
15 that.

16 BY MR. WELLS:

17 Q The interrogatory I was just asking
18 you about really requests certain information
19 about the various declarations that were
20 submitted in that case. And I really don't have
21 detailed questions. I've just got a few
22 questions about how things were phrased here on
23 page 11, paragraph III.

24 Do you see that?

25 A Yes.

1 Q Do you see the number 5 a couple of
2 lines down?

3 A Yes.

4 Q After that it says, "El Tigre, his
5 counsel, Ivan Otero, and plaintiffs' counsel
6 reviewed the declaration."

7 Do you see that?

8 A Yes.

9 MS. ECCLES: Object to form.

10 Q Okay. Is that a true response, that
11 El Tigre's counsel is Ivan Otero?

12 MS. ECCLES: Object to the form.

13 A No. As I -- as I've stated
14 previously in response to some other question
15 you asked, that -- that was a mistake and I
16 think we corrected the record on that.

17 Q Okay. Another mistake?

18 A Yes.

19 Q IV, again, we're going to be looking
20 at number 5 in each one of these. Parenthetical
21 number 5 says, again, "El Tigre, his counsel,
22 Ivan Otero."

23 Do you see that?

24 A Yes.

25 Q And that is not true?

1 MS. ECCLES: Object to the form.

2 A As I've said, that was a mistake,
3 and we've corrected the record on that.

4 Q It was mistakenly untrue?

5 MS. ECCLES: Object to the form.

6 A It was mistakenly inaccurate. Yes.

7 Q V, parenthetical number 5 says,
8 "Samario, his counsel, Ivan Otero, and
9 plaintiffs' counsel reviewed the declaration."
10 Also untrue, right?

11 MS. ECCLES: Object to the form.

12 A That is -- that was a mistake, as
13 I've said, and we've corrected it.

14 Q Okay. Flip over the page to IX.
15 Talking about alias "Pajaro." It says, "Pajaro
16 and his counsel, Ivan Otero, typed the first
17 draft of his declaration." Is that a true
18 response?

19 A As I sit here now, I -- I -- I
20 really don't even know if Ivan Otero represented
21 Pajaro, or if he did, when he stopped. So I
22 can't -- I don't know.

23 Q You don't know whether that's true
24 or false?

25 A As I sit here today, I don't. I

1 don't recall.

2 Q Did you know it at that time?

3 MS. ECCLES: Object to the form.

4 A I -- I assume I did, but I don't
5 know now.

6 Q Okay. XI says -- it's talking about
7 witness Peinado. "Peinado and his counsel, Ivan
8 Otero, typed the first draft of his
9 declaration."

10 Do you see that?

11 A I do.

12 Q Is that a true response?

13 A As with Pajaro, as I sit here today,
14 I don't have knowledge of any timing or
15 representation of Peinado and -- and Ivan Otero.

16 Q So you don't know whether it's true
17 or false?

18 A As I sit here today, no.

19 MS. ECCLES: Object to the form.

20 Q And so you signed this interrogatory
21 response not knowing whether that was true or
22 false?

23 A I didn't say that. No.

24 Q Well, do you believe it was true at
25 the time you signed it?

1 MS. ECCLES: Object to the form.

2 A I don't know. I don't recall if
3 that was also a mistake or if there was some
4 different situation with Pajaro and Peinado.

5 Q Okay. You will agree that Ivan
6 Otero is counsel, criminal counsel, for Jaime
7 Blanco, right?

8 MS. ECCLES: Object to the form.

9 A Not -- no, I don't agree with that.

10 Q Ivan Otero has never provided any
11 sort of criminal representation to Jaime Blanco?

12 MS. ECCLES: Object to the form.

13 A As far as I know -- well, I can
14 certainly say he had no representation to do
15 with any of the issues relating to the murder of
16 the Drummond union leaders for which Jaime
17 Blanco was being prosecuted.

18 Q That's not what I asked. Has he
19 provided any representation as a lawyer to Jaime
20 Blanco?

21 MS. ECCLES: Object to the form.

22 A I have some recall of he briefly
23 helped Jaime Blanco with a -- an issue relating
24 to Hugo Guerra, the murder of Hugo Guerra. And
25 my understanding as I'm here today trying to

1 recall it is that what he did was he helped just
2 refer another lawyer to Jaime Blanco.

3 Q So true or false, Ivan Otero is
4 criminal counsel for Jaime Blanco?

5 MS. ECCLES: Object to the form.

6 A I -- I think that I don't know the
7 answer to that. If -- if you want to say that a
8 referral was a representation, I don't -- I
9 don't know the extent. I know that he had
10 nothing to do with the issues in relating to the
11 Drummond case.

12 Q In any event, in X, number 5 says
13 Jaime Blanco, Ivan Otero, and plaintiffs'
14 counsel reviewed the declaration before it was
15 produced. It does not state that Ivan Otero is
16 Jaime Blanco's counsel like it does for these
17 other witnesses.

18 MS. ECCLES: Object to the form.

19 Q Right?

20 MS. ECCLES: Object to the form.

21 A No, it doesn't.

22 Q Was that a mistake?

23 MS. ECCLES: Object to the form.

24 A I don't believe so. No.

25 MR. WELLS: Let's take a break.

1 THE VIDEOGRAPHER: The time is
2 9:54 a.m. This concludes tape number one. We
3 are off the record.

4 (A break was taken.)

5 THE VIDEOGRAPHER: The time is
6 10:07 a.m. This is the beginning of tape number
7 two. We are back on the record.

8 MS. ECCLES: I want to note for the
9 record that counsel for Drummond just took a
10 lengthy break of their own initiative.
11 Mr. Collingsworth has been ready to resume his
12 testimony for about 10 minutes and is happy to
13 go through lunch.

14 MR. WELLS: I'll state for the
15 record counsel for Drummond needed to use the
16 restroom. I hope that's okay during the course
17 of this day.

18 BY MR. WELLS:

19 Q All right. Mr. Collingsworth, I've
20 just shown you several discovery responses from
21 Balcerro, all of which bore your signature.

22 What significance does that have for
23 you, your signature appearing on a court
24 document?

25 MS. ECCLES: Object to the form.

1 A I don't know what you mean.

2 Q Do you place any significance on
3 placing your signature on a document that's
4 provided to opposing counsel and filed with the
5 Court?

6 A Of course I do.

7 Q Do you understand that you're under
8 an obligation to assure yourself to the best of
9 your ability that everything in there is true?

10 MS. ECCLES: Object to the form.

11 A Yes, and I also have an obligation
12 if I see a mistake to correct the record at the
13 first opportunity, which I think I've done.

14 Q The first opportunity was after
15 Balcerro was over with?

16 MS. ECCLES: Object to the form.

17 A Is that a question?

18 Q Yes. Was that the first
19 opportunity?

20 MS. ECCLES: Object to the form.

21 A I don't recall when I first noticed
22 some of the mistakes that I'd made in this case,
23 but I corrected them as soon as I could after
24 that.

25 MS. WELLS: Give me 1F.

1 (Plaintiff's Exhibit No. 7 was
2 marked for identification.)

3 Q I'll show you Plaintiff's Exhibit 7.
4 This is a discovery response from this case, the
5 defamation case dated June 21st, 2013. I would
6 like to direct you to number 8, requesting
7 communications between defendants or anyone
8 working on their behalf and Ivan Otero.

9 MS. ECCLES: Object to the form.

10 Q In the middle of that response --
11 read the words -- "Mr. Otero represents former
12 paramilitaries who are providing testimony
13 against Drummond in this case."

14 Do you see that?

15 A I do.

16 Q Is that a true statement?

17 MS. ECCLES: Object to the form.

18 A As -- as I've said in my prior
19 testimony, any statement of that sort is not
20 accurate. And I guess this was signed by
21 Mr. Smith, but it -- it is not an accurate
22 statement, no.

23 Q You're not going to dispute you
24 reviewed these before they were submitted --

25 MS. ECCLES: Object --

1 Q -- are you?

2 MS. ECCLES: Object to the form.

3 A I -- I don't -- I don't recall the
4 level of review I gave to this document, no.

5 Q So this representation about Otero,
6 that's Brad Smith's fault?

7 MS. ECCLES: Object to the form.
8 And I'm going to instruct the witness not to
9 reveal any attorney-client privileged
10 information in response to that question.

11 A I'm not going to discuss what I
12 discussed with my counsel about that issue. I
13 answered your question that I don't recall
14 seeing that as I sit here today.

15 Q From where did that factual
16 representation come from?

17 A I think that that would require me
18 to discuss an attorney-client discussion.

19 MS. ECCLES: Don't do that. Only
20 answer the question to the extent you can
21 without revealing privileged information,
22 Mr. Collingsworth.

23 Q So you refuse to answer that?

24 A I don't know --

25 MS. ECCLES: Same instruction.

1 A I don't know who else my counsel
2 spoke to besides me.

3 MS. ECCLES: And don't say anything
4 else on that subject, please.

5 Q Did you inform your counsel that
6 Mr. Otero represents former paramilitaries who
7 are providing testimony against Drummond in this
8 case?

9 MS. ECCLES: I'm going to instruct
10 you not to answer the question.

11 Q Okay.

12 A But let me be clear, that --

13 MS. ECCLES: No.

14 A That is my statement.

15 MS. ECCLES: Don't answer the
16 question.

17 MR. DAVIS: And please state the
18 grounds for not answering the question.

19 MS. ECCLES: Attorney-client
20 privilege.

21 MR. DAVIS: So to be clear for my
22 information, you're claiming attorney-client
23 privilege in a sanction hearing?

24 MS. ECCLES: I'm claiming
25 attorney-client privilege over the question that

1 Mr. Wells just asked.

2 MR. DAVIS: And this is discovery in
3 a sanction hearing?

4 MS. ECCLES: This is -- this is
5 discovery for the purposes for which this
6 deposition is being taken.

7 MR. DAVIS: And you're instructing
8 him not to answer?

9 BY MR. WELLS:

10 Q So Mr. Collingsworth, the --
11 regardless of all of these documents I've just
12 shown you that represent Otero as counsel for
13 certain paramilitaries, it is your testimony
14 that the true facts are Mr. Otero did not
15 represent any paramilitaries after he joined
16 your team?

17 MS. ECCLES: Object to the form.

18 Q Is that right?

19 A I did not say that. I think that it
20 is accurate that my understanding is that
21 Mr. Otero was no longer representing Samario and
22 El Tigre when he started doing work with me on
23 these cases.

24 Q Okay. So you are prepared to swear
25 to Judge Proctor that Ivan Otero did not

1 represent El Tigre and Samario as of the time he
2 was promised a contingency fee in the Drummond
3 cases?

4 MS. ECCLES: Object to the form.

5 A As far as I know, yes.

6 Q And you're going to swear to Judge
7 Proctor that Ivan Otero did not represent
8 Samario and El Tigre at the time he was given
9 \$80,000 as an up-front payment?

10 MS. ECCLES: Object to the form.

11 A As far as I know, yes.

12 Q And you're going to swear to Judge
13 Proctor that as of the time you first started
14 meeting with El Tigre and Samario with Ivan
15 Otero, Mr. Otero did not represent either of
16 those two paramilitaries?

17 MS. ECCLES: Object to the form.

18 A As far as I know, that's correct.

19 Q And those meetings began in March of
20 2009?

21 MS. ECCLES: Object to the form.

22 A As I said earlier, I'm -- I -- I --
23 if I could see a document, I would easily answer
24 the question. I'm not sure about 2009 versus
25 2010. But right after I started working with

1 Ivan Otero, whenever that was, the -- couple of
2 months after that, so it could have been about
3 March following that that I first met with El
4 Tigre and Samario, yes.

5 Q And you went into the prisons where
6 they were staying with Ivan Otero?

7 A Every single time or the first time?

8 Q This March --

9 A Yes.

10 Q -- time.

11 How were y'all able to get in the
12 prison?

13 MS. ECCLES: Object to the form.

14 A The very first time?

15 Q Yeah.

16 A I don't recall specifically how I
17 got into the prison. I showed up there, and
18 they let me in.

19 Q Did Otero represent himself to the
20 security at the entrance to the prison that he
21 was counsel for those two paramilitaries?

22 MS. ECCLES: Object to the form.

23 A You know, I wish I spoke Spanish,
24 but I don't. And I don't -- I have no idea what
25 anyone said to anyone until I was sitting with

1 the -- the witnesses.

2 Q Okay. So it's entirely possible he
3 did make that representation that he was still
4 counsel for those individuals and that's how you
5 got into the prison?

6 A As I --

7 MS. ECCLES: Object to the form.

8 THE WITNESS: Sorry.

9 A As I said, I -- I just don't know.
10 I'm not going to speculate.

11 Q All right. Mr. Collingsworth, fair
12 to say you do a lot of your work on the road?

13 MS. ECCLES: Object to the form.

14 A Depends on the time frame.

15 Q You travel a pretty good bit when
16 you practice, don't you?

17 A Yes.

18 Q Both within this country and to
19 other countries, right?

20 A Sure.

21 Q And when you are traveling, you
22 utilize laptop computers?

23 A Most of the time, yes.

24 Q You also work from your home at
25 times, don't you?

1 A Unfortunately, yes.

2 Q And have utilized various computers
3 at your home; is that right?

4 A I typically have a computer in my
5 home office.

6 Q What have you got there now?

7 A I have --

8 MS. ECCLES: Object to the form.

9 A I have a -- a Dell laptop.

10 Q What was the computer in your home
11 office before the Dell laptop?

12 MS. ECCLES: Object to the form.

13 A I -- I don't -- it was either
14 another Dell laptop or an HP laptop, but I'm
15 not -- I'm not positive.

16 (Plaintiff's Exhibit No. 8 was
17 marked for identification.)

18 Q I'll show you what's been marked as
19 Exhibit 8 to your deposition. This is -- at
20 least the top e-mail is a March 29th, 2010
21 e-mail. But in any event, the e-mails are
22 between you and a Victoria Ryan; is that right?

23 A It appears to be that, yeah.

24 Q She was your secretary at this time?

25 A Not my secretary, but the -- she --

1 she was the office assistant for everyone,
2 including me.

3 Q Okay. The e-mail at the bottom of
4 the page dated March 24th, 2010, the
5 "Subject" line reads "Computer stuff and my
6 house."

7 Do you see that?

8 A I don't. Are you on the first page?

9 Q Yes. The bottom e-mail from you to
10 Victoria Ryan.

11 A I don't see that. Oh, the
12 "Subject" line? Yes, I see that.

13 Q If you'll flip over to the next
14 page, you reference a home desktop that you want
15 to -- to be checked for a virus.

16 Do you see that?

17 A Yes, I do.

18 Q What was that home desktop at that
19 time?

20 MS. ECCLES: Object to the form.

21 A I don't know what the brand was. It
22 probably was a Dell, but in 2010, I don't have a
23 specific recall.

24 Q And number 3, looks like there's
25 going to be an installation of a new PC in your

1 office. Is that referring to your
2 "office" office as opposed to your home office?

3 A Point 3?

4 Q Yes.

5 MS. ECCLES: Object to the form.

6 A It must be because -- yes, I think
7 so.

8 Q Okay. What -- what computer was
9 that?

10 MS. ECCLES: Object to the form.

11 A I -- I don't recall if I'm -- if I'm
12 referring to a -- a laptop or another desktop.
13 I -- I just don't recall from 2010.

14 Q All right. Number 3 says, "After
15 you install the new PC in my office and transfer
16 files, wipe the laptop I'm currently using."

17 Do you see that?

18 A Uh-huh.

19 Q So you're requesting that files be
20 transferred off of that PC -- or off -- off of
21 the laptop to that PC?

22 MS. ECCLES: Object to the form.

23 A Well I -- I -- I guess that's what
24 it says. I don't have recall of that, no.

25 Q You also mention in this same

1 paragraph that "Going forward, I will work on my
2 docs using a flash drive."

3 Did you do that on occasion, work on
4 documents using an external device?

5 MS. ECCLES: Object to the form.

6 A I recall briefly trying to do that.
7 But I don't -- I didn't -- it didn't work out.

8 Q Number 5 says, "Please also check
9 the PC in basement for viruses, et cetera."

10 What was the PC in your basement?

11 MS. ECCLES: Object to the form.

12 A I recall that I had a very old
13 desktop that at some point we moved to the
14 basement so that my kids could have a computer
15 to use.

16 Q Where is that computer now?

17 MS. ECCLES: Object to the form.

18 A I -- I believe that this is one of
19 the computers that my wife took to a recycling
20 center.

21 Q And when did she do that?

22 MS. ECCLES: Object to the form.

23 A I -- I don't recall.

24 Q Can you give me a year?

25 MS. ECCLES: Object to the form.

1 A Do you want me to give you my best
2 guess as to a year?

3 Q I -- your best judgment --

4 A I don't know.

5 Q -- as to any -- anything other than
6 "I don't recall." I mean, it was sometime
7 between 2010 and today.

8 A Yeah, it was. I --

9 Q And you can't narrow it down any
10 better than that?

11 MS. ECCLES: Object --

12 A It was before 2012.

13 Q And how can you be sure of that?

14 MS. ECCLES: Object to the form.

15 A I'm just making an educated guess as
16 to how many years it was after this e-mail. I
17 don't have specific recall. I said that.

18 MR. WELLS: Give me 51.

19 (Plaintiff's Exhibit No. 9 was
20 marked for identification.)

21 Q I'll show you Exhibit 9, which is a
22 March 30th, 2010 e-mail from Victoria Ryan to
23 you. This is shortly after the e-mails we were
24 just discussing, right?

25 A Well, it looks like it was like the

1 next day, yeah.

2 Q All right. Number 2, she's telling
3 you the new desktop has been set up, and then
4 she says, "It should have everything on it that
5 your laptop did. However, it is possible that
6 something did not get copied over. This is a
7 common occurrence, and we will find out if
8 anything is missing once you start using your
9 new desktop. We have backups." And she
10 references paragraph 4 below.

11 So y'all were being careful at that
12 point to ensure that the transfer to that new
13 computer had actually worked, right?

14 MS. ECCLES: Object to the form.

15 A Well, as I look at this e-mail, it's
16 clear that other people are doing things to my
17 machine, and it looks like they are being
18 careful, yes.

19 Q I mean, did you tell them, "No,
20 don't" -- "don't transfer anything"?

21 MS. ECCLES: Object to the form.

22 A I don't believe there's anything in
23 this e-mail to suggest that. So no, I guess I
24 didn't.

25 Q Number 4, she's talking about the

1 backup they have of the laptop and the
2 parenthetical at the end, she says, "Again, we
3 are waiting to delete because we want to make
4 sure all is good with the new desktop."

5 Do you see that?

6 A Yes.

7 Q Okay. And to your knowledge, was
8 everything good with the new desktop? The
9 transfer was successful?

10 MS. ECCLES: Object to the form.

11 A I -- I don't recall if I had to have
12 them add anything after this. Obvious -- at
13 some point, I would say absolutely, it was fine.
14 But I have general recall that on at least one
15 of these occasions where they -- they did this
16 transfer, they didn't transfer over the Word
17 Perfect program and I -- I had to have someone
18 come and do that again.

19 Q Okay. With respect to your e-mails
20 around this time, did you have any issue where
21 you just lost all your e-mails prior to the date
22 of the transfer?

23 MS. ECCLES: Object to the form.

24 A I don't know -- don't recall that
25 happening, no.

1 MR. WELLS: 52.

2 (Plaintiff's Exhibit No. 10 was
3 marked for identification.)

4 Q Showing you Exhibit 10. That's
5 another e-mail chain between you and Victoria
6 Ryan in October of 2010. I'm going to focus
7 your attention on the second e-mail from the
8 top.

9 A Uh-huh.

10 Q The third paragraph down, Ms. Ryan
11 is saying to you, "I know you like to stay out
12 of the wires, so to speak." What does that
13 mean?

14 MS. ECCLES: Object to the form.

15 A The -- I don't know what she means
16 by that. I -- I -- she might be meaning what I
17 would say "out of the weeds," like she knows I
18 don't -- I'm -- I'm very close to being a
19 Luddite and that I don't really want to hear all
20 this computer speak. I just want it to work.

21 Q You never said to her you like to
22 stay out of the wires?

23 MS. ECCLES: Object to the form.

24 A I don't know what that means.

25 MR. WELLS: 53.

1 (Plaintiff's Exhibit No. 11 was
2 marked for identification.)

3 Q I'll show you Exhibit 11. It's an
4 additional series of e-mails involving you and
5 Ms. Ryan. The top e-mail shows that she is
6 sending you the e-mail string that appears below
7 it as of January 18th, 2011.

8 MS. ECCLES: Object to the form.

9 Q Did you get this e-mail?

10 A I'm sorry. What are you referring
11 me to on here?

12 Q The top e-mail says it's dated
13 January 18th, 2011. It's from Victoria Ryan to
14 you.

15 A Uh-huh. That's what it says.

16 Q Okay. And she's forwarding you some
17 e-mails from that same day, right?

18 A I don't know how I could tell if it
19 was forwarded, but I see that I'm copied on some
20 e-mails.

21 Q All right. The bottom e-mail, she's
22 discussing that Terry has bought a new laptop, a
23 MacBook.

24 Do you see that?

25 A Yes.

1 Q So January 18th, 2011, around that
2 time you bought a MacBook to serve as your
3 primary work computer; is that right?

4 MS. ECCLES: Object to the form.

5 A My -- my primary work computer? I
6 think that's right, yes.

7 Q It also -- this e-mail also
8 references this MacBook will be replacing an
9 Acer notebook that you normally used during
10 travel.

11 So was your -- the laptop that you
12 were using prior to the MacBook this Acer
13 notebook?

14 MS. ECCLES: Object to the form.

15 A As best I can recall, during some
16 limited period of time, I got an Acer notebook
17 that I used on my travel, yes.

18 Q How long were you using that Acer?

19 MS. ECCLES: Object to the form.

20 A My best estimate is not very long, a
21 couple of months. Because my fingers are pretty
22 stocky, and the keyboard was too small.

23 Q At the bottom of this second
24 paragraph, Ms. Ryan says, "While we're at it,
25 Terry could use a short tutorial for archiving

1 e-mails."

2 When did that tutorial take place?

3 MS. ECCLES: Object to the form.

4 A I don't recall that I -- I received
5 such a tutorial.

6 Q She also says, "We will also need to
7 work out a system for backing up information on
8 that laptop, which he does plan to leave in the
9 office when not traveling."

10 Do you see that?

11 A I -- I don't see that. Which
12 paragraph is that?

13 Q Right after the "tutorial" sentence.

14 A I see that, yes.

15 Q Okay. What was the system for
16 backing up the laptop?

17 MS. ECCLES: Object to the form.

18 A I don't know.

19 Q Next sentence, she says, "We will
20 transfer his PC" -- your PC -- "to either" --
21 and this is Victoria speaking. "Either
22 Victoria's office or Susana's office."
23 "Susana" would be Susana Tellez?

24 MS. ECCLES: Object to the form.

25 A Yes.

1 Q Who ultimately was that PC
2 transferred to?

3 MS. ECCLES: Object to the form.

4 Q Who used it after you?

5 MS. ECCLES: Object to the form.

6 A I -- I really don't recall.

7 (Plaintiff's Exhibit No. 12 was
8 marked for identification.)

9 Q I'm going to show you Exhibit 12.
10 This is a January 21st, 2011 e-mail. It's three
11 days after the last one we just looked at. From
12 Ms. Ryan to you and Piper Hendricks and
13 Christian Lavesque.

14 Ms. Ryan is telling you, "Hi all,
15 Popping out to Staples to pick up a portable
16 external hard drive for Terry's files."

17 Do you see that?

18 A I do.

19 Q What files were to be saved on that
20 external hard drive?

21 MS. ECCLES: Object to the form.

22 A I don't know. This was something
23 that my staff was working on with our tech
24 people, and I was completely out of the loop on
25 that.

1 Q Did you use the external hard drive?

2 MS. ECCLES: Object to the form.

3 A Did I ever use an external hard
4 drive?

5 Q Well, you understand there is one
6 your expert has identified as missing?

7 MS. ECCLES: Object to the form.

8 A Yes.

9 Q And he has also confirmed that it is
10 this one that was bought at the time of your
11 MacBook was bought.

12 MS. ECCLES: Object to the form.

13 A I don't know that.

14 Q Okay. I'll represent to you that is
15 the case.

16 Did you ever use that external hard
17 drive?

18 MS. ECCLES: Object to the form.

19 A Probably not.

20 Q So you would leave that to your
21 staff to do whatever they would need to do with
22 the external hard drive?

23 MS. ECCLES: Object to the form.

24 A I left it to my staff to do whatever
25 they needed to do with anything to do with my

1 setups on my computer.

2 Q Did you ever personally back up your
3 e-mails to any device?

4 MS. ECCLES: Object to the form.

5 A I wouldn't know how to do that.

6 Q You left that to your staff?

7 MS. ECCLES: Object --

8 A Yes.

9 MS. ECCLES: -- to the form.

10 (Plaintiff's Exhibit No. 13 was
11 marked for identification.)

12 Q I'll show you Exhibit 13.

13 A Is there any reason why you printed
14 these out with microscopic type?

15 Q It was the way they were produced to
16 us.

17 A Oh, sorry about that.

18 Q All right. These are all dated
19 April 6th, 2011. The second one down, you're
20 e-mailing various people stating that "As this
21 e-mail demonstrates, my home computer e-mail is
22 working fine."

23 It appears you're working from home
24 at that time?

25 A Uh-huh.

1 Q "Yes"?

2 A I would say yes, that's what it
3 says.

4 Q What home computer was that at the
5 time?

6 MS. ECCLES: Object to the form.

7 A I don't recall what it would have
8 been in 2011. So I -- I don't know.

9 Q The e-mail just above the one we
10 just talked about, second paragraph down,
11 Ms. Ryan is telling you, "Terry, did you have a
12 chance to search for those e-mails you wanted to
13 grab before archiving?"

14 Do you see that question?

15 A Yes.

16 Q So at that time, you were going to
17 grab some e-mails before your e-mails were
18 archived?

19 MS. ECCLES: Object to the form.

20 A It -- it's clear that Victoria's
21 asking me that question. I -- I don't recall
22 this -- anything about archiving at this time.
23 I just don't recall.

24 Q All right. You know your e-mails
25 were archived at periodic times, don't you?

1 MS. ECCLES: Object to the form.

2 A I -- I don't know that. I -- I -- I
3 don't know that, no.

4 Q Okay. And you have no recollection
5 as to why you would want to grab certain e-mails
6 before they were archived?

7 A I don't recall what we were talking
8 about in 2011 here, no.

9 (Plaintiff's Exhibit No. 14 was
10 marked for identification.)

11 Q I'll show you Exhibit 14. This is
12 from you to Maggie Crosby, Piper Hendricks and
13 Christian Levesque dated October 7th, 2011.

14 Who was Maggie Crosby?

15 MS. ECCLES: Object to the form.

16 A Maggie replaced Victoria when she
17 went on to graduate school.

18 Q You are telling the recipients of
19 this e-mail, "Do need them to empty the inbox of
20 IR Advocates account on Outlook and archive it."

21 Do you see that?

22 A Yes.

23 Q So you were telling Ms. Crosby you
24 need your IT vendor to archive your e-mails from
25 your IR Advocates inbox?

1 MS. ECCLES: Object to the form.

2 A That's what it says. Yes.

3 Q Did you get a substantial number of
4 e-mails in 2011?

5 MS. ECCLES: Object to the form.

6 A I get a substantial amount of
7 e-mails. Yes, I did.

8 Q And such that you were archiving
9 them out of your inbox to try to reduce its
10 size, right?

11 MS. ECCLES: Object to the form.

12 A I have recollection that there was a
13 recurring issue where someone advised me,
14 probably this CTSS -- I'm having trouble reading
15 this. But I think that I recall that somebody
16 advised me that the reason I was having these
17 constant problems with my slow e-mail or slow
18 computer was that the -- it -- it had too many
19 e-mails on it. I have some recollection of
20 that.

21 Q Okay. Do you know how your e-mails
22 were archived pursuant to this instruction?

23 MS. ECCLES: Object to the form.

24 A I don't.

25 Q I mean, you would -- did you just

1 leave that to your staff?

2 MS. ECCLES: Object to the form.

3 A Well, I certainly didn't do it.

4 (Plaintiff's Exhibit No. 15 was
5 marked for identification.)

6 Q I'll show you Exhibit 15. This is a
7 work ticket from the CTSS. Appears they're
8 doing some work on your home PC.

9 Do you see that up there at the top
10 in the call description, "Home PC has a virus"?

11 A Yes.

12 Q All right.

13 MS. ECCLES: Object to the form.

14 Q And at the bottom, there's an
15 address location of the customer, Terry
16 Collingsworth, and an address there?

17 A Yes.

18 Q And that's your home address?

19 A Yes, it is.

20 Q This is dated November 10th, 2011.
21 And appears that they restored a PST file of
22 over 8.5 gigabytes on your home PC at that
23 point. What was your home PC at that point?

24 MS. ECCLES: Object to the form.

25 A I don't know which of the various

1 computers I had at that time they were talking
2 about.

3 Q Okay. Where is it today?

4 MS. ECCLES: Object to the form.

5 A Depends which one it is. I don't
6 know if this was one that was recycled or if
7 this is one that I gave to -- it depends on the
8 timing. I -- I don't recall.

9 Q All right. Are you aware you were
10 sued personally in this case in October of 2011?
11 Do you understand that?

12 A I don't have a specific recall. It
13 was the -- towards the end of 2011. Yes.

14 Q And what did you do to ensure the
15 data off your home PC that was taken to a
16 recycling center was not lost?

17 MS. ECCLES: Object to the form.

18 A I don't know whether this computer
19 is the one that was taken to the recycling
20 center. But what I did was, to try to make sure
21 that my systems were transferred from one
22 computer to the other, but during this entire
23 time I assumed that the servers that we were
24 using had everything on them and that that was
25 my backup. That was my primary backup.

1 Q As of this time, October, November
2 2011, you just assumed you don't need to
3 transfer anything off your computers?

4 MS. ECCLES: Object to the form.

5 A I didn't say that. In fact, I said
6 the opposite of that.

7 Q Was there a litigation hold letter
8 sent out on the filing of this litigation?

9 MS. ECCLES: Object to the form.

10 A By me?

11 Q By anyone. Did you receive one or
12 did you send one?

13 MS. ECCLES: Object to the form.

14 A I'm not aware of it. No.

15 Q Were any of your home computers
16 copied after the filing of this litigation?

17 MS. ECCLES: Object to the form.

18 A I'm not -- what do you mean by that?

19 Q Make a copy of the entire computer,
20 everything on it.

21 MS. ECCLES: Object to the form.

22 A Were any of my home computers copied
23 after the litigation?

24 MS. ECCLES: Object to the form.

25 A It might be, yeah.

1 Q Where are those copies?

2 MS. ECCLES: Object to the form.

3 A If there's any copy, I'm not sure
4 that there is, it would be in the possession of
5 Juan Carlos Rodriguez, who is the tech person at
6 Conrad & Scherer.

7 Q So can you not tell us today what
8 this home computer was that's referenced on this
9 work ticket?

10 A I bet that Mr. Williams' report
11 would have the proper timing of which computer I
12 had at what time, but I don't recall it as I sit
13 here, no. It didn't matter to me what brand
14 they were.

15 Q Well, Mr. Williams did not discuss
16 your home computers. That's what I'm trying to
17 get at. We have no record of where your home
18 computers went after this litigation was filed.

19 MS. ECCLES: Is that a question?

20 Q So I'm trying to ask you, you had a
21 home computer that was being worked on here in
22 November of 2011. We can agree on that, right?

23 MS. ECCLES: Object to the form.

24 A Yes.

25 Q Do you know where that home computer

1 is today?

2 A If I knew which exact one -- 2011?
3 I don't -- I don't know if this was the -- one
4 of the ones that was recycled.

5 Q Was this recycling done on one day
6 or multiple days?

7 MS. ECCLES: Object to the form.

8 A I believe that there were two
9 computers that were in my home that were
10 ultimately taken to a recycling center.

11 Q Right.

12 At the same time or at two separate
13 times?

14 MS. ECCLES: Object to the form.

15 A I think it would have been two
16 separate times.

17 Q And you could not recall exactly
18 when that was?

19 A No.

20 Q And you don't know whether this
21 computer that's referenced on this exhibit is
22 one of them that was recycled?

23 A I don't recall. No.

24 Q Okay. Do you recall what happened
25 to any of your other home computers that were

1 not recycled?

2 A Well, I know that the last -- the
3 two prior ones to the one I'm using now both
4 broke, and Juan Carlos Rodriguez had me ship
5 them to him and he preserved the hard drives.
6 And I don't know what he did with the bodies.

7 Q The two ones that you were using at
8 your home?

9 A I think so, yeah.

10 Q During what time period?

11 MS. ECCLES: Object to the form.

12 A Probably 2013 on.

13 Q Okay. How about before 2013; say,
14 2011 to 2013?

15 A Well, that's what we're talking
16 about here, and I don't recall.

17 Q Well, after the computers were taken
18 to the recycling center, what computer did you
19 have in your home?

20 MS. ECCLES: Object to the form.

21 A Well, there -- there were two
22 separate computers that were taken to a
23 recycling center. And usually -- always there
24 was a reason. Like the one that we're
25 discussing here, if they never could fix it

1 properly, I would either get a new computer or I
2 would take my office computer home and get a new
3 computer for the office. But I always had a
4 computer in my home office and a computer in my
5 "office" office.

6 Q Okay. And we've identified the two
7 computers that were in your home office were
8 taken to a recycling center.

9 A Yes.

10 Q And you can't recall if this one
11 we're talking about here on this exhibit was one
12 of those two computers?

13 MS. ECCLES: Object to the form.

14 A I've said that several times, yeah.

15 Q Okay. How many computers have you
16 had in your home office after the two were taken
17 to the recycling center, the last of the two was
18 taken?

19 A Two or three.

20 Q And where are those computers?

21 A Well, I've said I know that Juan
22 Carlos Rodriguez has two of them. I'm -- I
23 am -- I -- as I said, it might be two or three.
24 I don't know.

25 Q Were they laptops or desktops?

1 A Probably laptops.

2 (Plaintiff's Exhibit No. 16 was
3 marked for identification.)

4 Q I'll show you Exhibit 16. This is
5 an e-mail chain in November of 2011. I want to
6 look at the second e-mail from the top that --
7 the one from you to Maggie Crosby on November
8 22nd.

9 Do you see that one?

10 A Uh-huh.

11 Q Is that a "yes"?

12 A I'm sorry?

13 Q Is that a "yes"? She can't get
14 "uh-huh" on the record.

15 A Yes.

16 Q You were telling Ms. Crosby to
17 please confirm that they know how to put it on
18 an external hard driver that I can access. And
19 y'all are discussing archiving your e-mail,
20 right?

21 A Yes.

22 MS. ECCLES: Object to the form.

23 Q So have you used an external hard
24 drive to access your e-mail?

25 MS. ECCLES: Object to the form.

1 A As I said, I don't recall ever using
2 an external hard drive to access my e-mail. No.

3 Q Why would you be telling her to put
4 it on an external hard drive?

5 A So that somebody else could access
6 my e-mails.

7 Q Well, this says "that I can access."

8 A Well, this was an e-mail. The
9 intent was simply to have access. I don't do
10 stuff like that.

11 Q All right. And you go on to say,
12 "They keep wanting to do some cloud thing, and I
13 keep saying no." Now, "cloud thing," you're
14 referring to some sort of cloud backup of your
15 e-mail?

16 MS. ECCLES: Object to the form.

17 A I guess, yeah.

18 Q And you go on to say, "First, lets
19 clean out because the stuff I have is too
20 sensitive, and I don't want it out there."

21 Do you see that?

22 A Yes, I see it.

23 Q And you go on to say, "I'd like to
24 be able to save really sensitive stuff on an
25 external hard drive, and then the routine stuff

1 I don't care, they can cloud it."

2 Did I read that correctly?

3 A Yes.

4 Q Are you referring to your e-mails
5 being too sensitive to be on the cloud --

6 MS. ECCLES: Object to --

7 Q -- or some other documents?

8 MS. ECCLES: Object to the form.

9 A I -- I -- I assume -- I -- I -- I
10 don't recall. This was 2011. It was probably
11 both.

12 Q And these e-mails were written
13 during the time you were using the MacBook,
14 right?

15 MS. ECCLES: Object to the form.

16 A I don't remember exactly when I got
17 the MacBook, but it's possible.

18 Q Well, we just looked at an e-mail a
19 little while ago talking about it being
20 purchased in January of 2011.

21 A Well, if that's the case, then it
22 would have been. Yes.

23 Q All right. Well, what's so
24 sensitive about your e-mails that it can't be on
25 a cloud?

1 MS. ECCLES: Object to the form.

2 A As I -- I think I express here, I
3 had no idea what a cloud was. I generally am --
4 don't trust my stuff to be somewhere besides in
5 our office, and that was my concern here.

6 Q So you wanted to ensure if there was
7 going to be any backing up of your e-mails, it
8 would be done to something that could stay
9 within your office?

10 MS. ECCLES: Object to the form.

11 A No. No. My e-mails were always I
12 thought backed up by the server down in Florida
13 or the Conrad & Scherer system.

14 Q What about your other files?

15 MS. ECCLES: Object to the form.

16 A Everything is backed up. Yes.

17 Q You just assumed that as of the date
18 of this e-mail?

19 MS. ECCLES: Object to the form.

20 A My understanding was that the Conrad
21 & Scherer system saved everything and they
22 didn't delete anything and that was the -- the
23 backup system. I'm talking here about how to be
24 able to work without having to go through
25 Florida to -- to find a document or an e-mail.

1 Q So you had no idea that you had
2 e-mails that were stored only on that MacBook?

3 MS. ECCLES: Object to the form.

4 A I don't think I did, no.
5 (Plaintiff's Exhibit No. 17 was
6 marked for identification.)

7 Q I'll show you what's been marked as
8 Exhibit 17. This is a June 14th, 2012 e-mail
9 from Juan Rodriguez to Maggie Crosby and you.

10 Do you see that?

11 A I do.

12 Q And Juan Rodriguez is the IT
13 director at Conrad & Scherer?

14 A Yes, he is.

15 Q The bottom e-mail, Ms. Crosby is
16 asking Mr. Rodriguez, "Hi, Juan, I need to run
17 searches through Terry's old e-mails to produce
18 for defendants in a case. I know that you had
19 to have pulled them off and saved them somewhere
20 when his computer got switched over. What's the
21 best way for me to run searches through all,"
22 and "all" is in caps, "his old e-mails?"

23 And Mr. Rodriguez responds, "Maggie,
24 his old e-mails are in the Mac."

25 Do you see that?

1 A I do.

2 Q Now, what -- excuse me. Do you see
3 the times on these e-mails? One is at
4 10:33 a.m. The other one is also at 10:33. It
5 looks like it was very close in time when
6 Mr. Rodriguez responded.

7 A Yes.

8 Q And he's telling both Ms. Crosby and
9 you that your old e-mails that need to be
10 searched for defendants in a case are in the
11 Mac.

12 A I -- I -- it looks -- I'm copied on
13 his e-mail. Yes.

14 Q What defendants were you searching
15 for e-mails for?

16 A I wasn't.

17 MS. ECCLES: Object to the form.

18 A Sorry.

19 MS. ECCLES: You can answer. I just
20 objected to the form.

21 A I wasn't searching for anything.

22 Q What defendants were your e-mails
23 being searched for?

24 MS. ECCLES: Object to the form.

25 A I don't recall.

1 (Plaintiff's Exhibit No. 18 was
2 marked for identification.)

3 Q I'll show you Exhibit 18. These are
4 e-mails from the next day, June 15th, of 2012.
5 Look at the very last e-mail.

6 A (Witness complies.)

7 Q Flip to the second page. It says,
8 "Hi, Juan. As we discussed, will you please
9 pull the following and send it to me. We need
10 it by Wednesday morning. Thank you." And she
11 lists, "All of his communications with Ivan
12 Otero," and lists his e-mail address. "And all
13 his communications with Jaime Blanco," and lists
14 his e-mail address?

15 A Uh-huh.

16 Q Now, why were your e-mails being
17 searched in June 2012 for communications with
18 Ivan Otero and Jaime Blanco?

19 MS. ECCLES: Object to the form.

20 A I can only assume based on the first
21 page, the last communication here, that since
22 she said it was the Drummond lawsuit, that it
23 must have been the Drummond lawsuit.

24 Q Do you have any idea why you would
25 be searching -- your team would be searching in

1 June 2012 for your communications with Ivan
2 Otero and Jaime Blanco?

3 MS. ECCLES: Object to the form.

4 A I -- I can only assume that there
5 was a discovery request.

6 Q Okay.

7 (Plaintiff's Exhibit No. 19 was
8 marked for identification.)

9 Q Let me show you Exhibit 19, which
10 are some billing records from Susana Tellez for
11 this same time period. Look at the very first
12 one at the top, June 14th, 2012.

13 A Uh-huh.

14 Q She says, "Review and evaluate list
15 of responsive docs of Maggie. Pull and send
16 docs responsive to request for production 5-15
17 through 5-17." Do you understand that to mean
18 the fifth request for production numbers 15
19 through 17?

20 A I -- I don't understand it to be
21 anything. I didn't write that. Your guess is
22 as good as mine.

23 Q You can't decipher that?

24 A No.

25 Q Do you know what requests for

1 production, the fifth request for production 15
2 through 17 asked for in Balcerro?

3 A No.

4 Q Two of those requests asked for
5 information regarding payments to witnesses. Do
6 you have any reason that you can give us that
7 communications with Ivan Otero and Jaime Blanco
8 would be being searched in response to those
9 requests?

10 MS. ECCLES: Object to the form.

11 And also I need to caution the
12 witness not to get into privileged areas.
13 Answer without going into those areas, if you
14 can.

15 A And the answer is I don't have any
16 recall of that. I don't know.

17 Q I mean, at this time, June of 2012,
18 you were aware that payments had been made from
19 Llanos Oil to Ivan Otero to be given to Jaime
20 Blanco?

21 MS. ECCLES: Object to the form.

22 Q Weren't you?

23 A 2000 -- this is 2012? Yes.

24 Q And you did not disclose those
25 payments in Balcerro, did you?

1 A I did not.

2 Q Did you review the e-mails that were
3 returned from this search?

4 MS. ECCLES: Object to the form.
5 Counsel's pointing at something and I can't see
6 what it is.

7 Q The search for Ivan Otero and Jaime
8 Blanco e-mails?

9 MS. ECCLES: Object to the form.

10 A I don't know if I did or didn't.
11 (Plaintiff's Exhibit No. 20 was
12 marked for identification.)

13 Q Let me show you Exhibit 20. This is
14 an e-mail from you to Maggie Crosby dated June
15 14th, 2012.

16 Do you see that?

17 A I do.

18 Q The top e-mail?

19 And you are forwarding an e-mail
20 between you and Ivan Otero dated September 13th,
21 2011.

22 Do you see that?

23 MS. ECCLES: Object to the form.

24 A I do.

25 Q Where you're asking Mr. Otero, "Any

1 good news?" Right?

2 A Yes.

3 Q Why would you be asking him that
4 question in September of 2011?

5 A I -- I don't recall. I --

6 Q Isn't September 2011 the first
7 payment that was made from Llanos Oil to Ivan
8 Otero for Jaime Blanco?

9 MS. ECCLES: Object to the form.

10 A I don't know.

11 Q Okay. Why would you be sending this
12 e-mail to Maggie Crosby, Susana Tellez, and
13 Lorraine Leete on June 14, 2012?

14 A That's a good question. I have no
15 idea. That was quite a while after.

16 Q You don't have any explanation for
17 why this e-mail would be forwarded to them, I
18 don't know, ten months after it was originally
19 sent?

20 MS. ECCLES: Object to the form.

21 A No, I don't.

22 MR. WELLS: Okay. We need to take
23 another quick break.

24 THE VIDEOGRAPHER: The time is
25 10:55 a.m. This concludes tape number two.

1 We're off the record.

2 (A break was taken.)

3 THE VIDEOGRAPHER: The time is
4 11:08 a.m. This is the beginning of tape number
5 three. We are back on the record.

6 (Plaintiff's Exhibit No. 21 was
7 marked for identification.)

8 BY MR. WELLS:

9 Q I'll show you what's been marked as
10 Exhibit 21. This is a chain of e-mails, looks
11 like, in July of 2012. And if you look at the
12 top, do you see you're a CC recipient of this
13 chain?

14 A Yes.

15 Q All the "Subject" lines of every one
16 of these e-mails is "Terry's machines."

17 Do you see that?

18 A Yes.

19 Q Flip to the second page. This is
20 Ms. Crosby speaking here. She's asking, "Did
21 you wipe clean his old computer?" Meaning your
22 old computer. Do you understand that's what
23 that means?

24 MS. ECCLES: Object to the form.

25 A Well, again, your interpretation is

1 as -- as good as mine. I -- I -- I assume so.

2 I mean, he --

3 Q All right. And she's also saying
4 that you had mentioned to her that there are a
5 lot of confidential documents. So we should not
6 send it back until it was clean.

7 Do you see that?

8 A I do.

9 Q Did you instruct -- when changing
10 computers, did you instruct your staff to ensure
11 that the old computer was wiped clean of
12 sensitive and confidential documents?

13 MS. ECCLES: Object to the form.

14 A Again, I don't remember the exact
15 timing. So this was 2012. But I know that
16 prior to taking any computer to the recycling
17 center, it would have been wiped clean so that
18 we were not risking that somebody would have
19 access to our confidential documents.

20 Q So this computer y'all are referring
21 to here is one of the ones that went to the
22 recycling center?

23 MS. ECCLES: Object to the form.

24 A I'm -- I'm guessing that because
25 they're referring to an old computer and that

1 they were -- they were talking about cleaning
2 it. So that would be my guess, yeah.

3 Q Okay. And I mean -- this is an
4 obvious question, but you're a lawyer, right?

5 A I believe so, yes.

6 Q You've got a lot of very
7 confidential e-mails, documents, et cetera, on
8 your computer?

9 A I do.

10 Q Communications with clients, right?

11 A Yeah.

12 Q You may have clients' documents;
13 such as their medical records, death
14 certificates, things such as that?

15 MS. ECCLES: Object to the form.

16 A Perhaps, yeah.

17 Q You may have defendants' in your
18 cases documents, such as documents Drummond
19 produced or DynCorp or some of the other
20 companies that you've sued?

21 MS. ECCLES: Object to the form.

22 A Highly unlikely, but possible.

23 Q And because of the contents of your
24 computer, you want to make sure that before it
25 leaves your possession, you get all that

1 confidential stuff off of it so it can't be out
2 there, so to speak?

3 MS. ECCLES: Object to the form.

4 A That would be my assumption, yes.

5 Q Well, I mean, that -- that is
6 something that you, in fact, desired? That that
7 data would not be subject to being out there in
8 the world when you got rid of an old computer?

9 A Of course.

10 MS. Eccles: Object to the form.

11 (Plaintiff's Exhibit No. 22 was
12 marked for identification.)

13 Q Let me show you Exhibit 22, which is
14 an April 3rd, 2013 e-mail from Maggie Crosby to
15 you. Subject line: Your computer, right?

16 A Yes.

17 Q And in this time period, April of
18 2013, this is when you're switching from the Mac
19 laptop to a new computer, right?

20 MS. ECCLES: Object to the form.

21 A I think that's right, yes.

22 Q And Ms. Crosby is sending you this
23 e-mail discussing recommendations for
24 transferring data from that Mac to your new
25 computer, right?

1 A That seems to be what it says, yes.

2 Q But that wasn't done, was it?

3 MS. ECCLES: Object to the form.

4 A What wasn't done?

5 Q Data was not transferred from your
6 Mac to any new computer, was it?

7 MS. ECCLES: Object to the form.

8 A No, it was.

9 Q It was?

10 A I believe so.

11 Q Data was transferred from your Mac
12 to what computer?

13 MS. ECCLES: Object to the form.

14 A I -- I'm trying to recall because
15 I -- I really didn't write all this down because
16 it was just an operational issue. But I think
17 that I had Conrad & Scherer purchase a desktop
18 computer -- I think I was trying to use only the
19 Mac for a while, and that had all kinds of
20 problems. And so I think that there was a
21 desktop in my office, a Dell desktop that I
22 probably -- no. Never mind about that. And
23 there was a -- a new laptop that was a HP
24 laptop, and I think they put the files on both
25 of them.

1 Q Conrad & Scherer transferred all of
2 the data from your MacBook to both of those
3 computers?

4 MS. ECCLES: Object to the form.

5 A I can't speak to the completeness of
6 the transfer. I can say that when I left -- at
7 this time, I was going on a long trip. And when
8 I left, I was using the MacBook and it was
9 having all kinds of problems. When I returned,
10 I was using a new computer, and it had my files
11 on it. I was able to resume work without
12 missing a beat. So what -- what they
13 transferred seemed fine to me.

14 (Plaintiff's Exhibit No. 23 was
15 marked for identification.)

16 Q Okay. The trip you were mentioning,
17 you went to Spain; is that right?

18 A That's correct.

19 Q I've just shown you Exhibit 23,
20 which is an April 23rd, 2013 e-mail chain
21 between you and Maggie Crosby. And in the
22 bottom e-mail, you're giving her some
23 instructions on what to do while you're gone.
24 Is that a fair characterization?

25 A It says that, yes.

1 Q The fourth -- I don't know if those
2 are supposed to be bullets. They've got little
3 n's by them, but I'll call it a bullet.

4 The fourth bullet down says, "I
5 brought in my new laptop to be set up while I'm
6 gone. I won't worry about transferring old
7 e-mails, music, et cetera."

8 So you're not worried about
9 transferring any old e-mails or music or other
10 documents.

11 MS. ECCLES: Object to the form.

12 Q Why are you telling them that?

13 MS. ECCLES: Object to the form.

14 A Because I -- I did take the Mac into
15 the Apple Genius store, and the problem -- one
16 of the many problems I was having with it was
17 that when I turned it on, that little wheel
18 would just keep going and going and going, and
19 it would -- took forever to log on. And there
20 was some other problem. I -- I -- I vaguely
21 remember that it kept downloading my entire box
22 into my inbox. There were a lot of problems.

23 And I was told that the reason that
24 I was having those problems, among other
25 reasons, was that I had too much -- too many

1 e-mails there and that I -- in my primitive
2 understanding of computers, I was basically
3 saying, "Don't transfer that problem to my new
4 machine." That's -- that's my recollection.

5 Q Down in number 3, you say, "Set up
6 my IRA and CS e-mail. I don't need the old
7 accounts transferred. Just need it to work
8 going forward."

9 Do you see that?

10 A Yeah, exactly.

11 Q So again, you're repeating "Don't
12 transfer the old e-mail accounts"?

13 A That's correct.

14 MS. ECCLES: Object to the form.

15 A I -- I was certain that the old
16 e-mails were on the server, and I did not want
17 to import a problem to my new computer.

18 Q And you were still having this
19 problem here in April of 2013 where your MacBook
20 kept downloading so many e-mails?

21 MS. ECCLES: Object to the form.

22 A As I sit here, I know that that was
23 a problem. Whether that was still a problem in
24 April of 2013, I don't have specific recall of.

25 Q Well, if the problem had been

1 corrected, it seems odd that you would be
2 telling somebody "Don't transfer the problem" --

3 A That --

4 Q -- "over to my computer." That's
5 why I'm asking.

6 A Yeah, it does. So I -- I can, as
7 you are doing, assume that that was the case,
8 but I'm telling you I don't have specific
9 recall.

10 Q Do you have general recall that
11 throughout the time you were using the MacBook,
12 you were having this issue of just too many
13 e-mails being downloaded into your account?

14 MS. ECCLES: Object to the form.

15 A Through the entire time?

16 Q Or at least --

17 A I don't --

18 Q -- leading up to the time you got
19 rid of it.

20 MS. ECCLES: Object to the form.

21 A I got rid of it because of these
22 problems. So I can assume that at the end of
23 the -- the period of time, it wasn't working --
24 it never worked properly. It was allergic to
25 the Microsoft programs.

1 Q All right. Now, where is that
2 MacBook today?

3 MS. ECCLES: Object to the form.

4 A I don't know.

5 Q Now, we've seen some testimony from
6 you and I think your expert has said that it was
7 given away to your niece.

8 A That's correct.

9 Q And what is your niece's name?

10 A My niece's name is Sophia DeSouza,
11 and --

12 Q When was it given to her?

13 MS. ECCLES: Object to the form.

14 A Sometime in May of 2013.

15 Q Was she in the United States at the
16 time?

17 A She was visiting me, yes.

18 Q Was anyone else visiting you?

19 A I think her parents were, too.
20 Yeah.

21 Q How old was she at that time?

22 MS. ECCLES: Object to the form.

23 A Roughly 15.

24 Q All right. Prior to giving it to
25 her, what did you do to delete all the sensitive

1 information off of that computer?

2 MS. ECCLES: Object to the form.

3 Q To ensure it wouldn't get out there?

4 MS. ECCLES: Same objection.

5 A I didn't do anything because I don't
6 know how.

7 Q All right. What did you instruct
8 anyone to do?

9 MS. ECCLES: Object to the form.

10 A You know, we -- I've been over this
11 a couple of times in the -- in the course of
12 preparing our -- our expert on this. And I -- I
13 don't recall whether we -- how we wiped it, but
14 I know that we would not have released it with
15 all the stuff on it.

16 And I -- I think I -- I think the
17 expert in his report says something different
18 than that, but that's my recollection.

19 Q So it was your understanding you
20 instructed somebody to wipe that computer?

21 A That's what I would have done, yeah.

22 Q Do you have any -- any idea who
23 would have done that work?

24 MS. ECCLES: Object to the form.

25 A I don't recall. I do recall that I

1 was getting ready to go on my long, anticipated
2 vacation, and I was dealing with a number of
3 issues. And I don't recall specifically how I
4 handled that problem. But I -- I -- I -- I know
5 that I would have.

6 Q Did you make any attempt to copy
7 that computer prior to giving it away?

8 MS. ECCLES: Object to the form.

9 A I did not, no.

10 Q Did you instruct anyone to do so?

11 MS. ECCLES: Object to the form.

12 A I instructed that my files be
13 transferred, and -- and that's the only thing
14 that I recall doing. I think that I was
15 confident that any other information that was
16 not transferred was on the Conrad & Scherer
17 servers and it was preserved.

18 Q Well, we just saw the e-mail where
19 you've instructed twice not to transfer your
20 e-mails.

21 MS. ECCLES: Object to the form.

22 A Exactly. As I said, I assumed that
23 those were on the servers.

24 Q When was the MacBook stolen? I
25 think you've --

1 MS. ECCLES: Object to the form.

2 Q -- given us information that it was
3 stolen in Brazil?

4 A Yes.

5 Q When was that theft?

6 MS. ECCLES: Object to the form.

7 A I don't remember the exact dates,
8 but I do recall that it was not very long after,
9 like two or three months. And it was --
10 everyone was very upset.

11 Q Were there any e-mails back and
12 forth about the fact that this computer had been
13 stolen?

14 A Probably was phone calls.

15 Q Nobody sent a single e-mail saying,
16 "Hey, this MacBook's been stolen?"

17 MS. ECCLES: Object to the form.

18 A Not that I'm aware of, no.

19 Q How were you informed?

20 A I think my -- probably my
21 brother-in-law called me.

22 Q And how -- how was the theft
23 reported to you as far as how it had occurred?
24 It was taken out of her car? Someone broke into
25 the house?

1 A I -- she was at some sort of coffee
2 shop or cafe, and it was stolen while she was
3 probably like going to the bathroom or
4 something.

5 Q Anyone file a police report?

6 MS. ECCLES: Object to the form.

7 A Not that I'm aware of.

8 Q Did you notify anyone at Conrad &
9 Scherer that this computer that had been your
10 work computer for about two years had been
11 stolen?

12 MS. ECCLES: Object to the form.

13 A No. It was not my work computer
14 anymore.

15 Q So you didn't notify anyone at
16 Conrad & Scherer about the theft?

17 MS. ECCLES: Object to the form.

18 A I -- I recall mentioning it just in
19 passing to Juan Carlos at some point, but it
20 wasn't like I was officially reporting it, no,
21 because there would be no reason to do that.

22 Q Because, in your understanding,
23 somebody had wiped that computer?

24 MS. ECCLES: Object to the form.

25 A Yes.

1 Q Did you do any double checking to
2 make sure that had, in fact, occurred?

3 A I was in Spain.

4 Q So who told you it was wiped? It
5 happened while you were gone?

6 MS. ECCLES: Object to the form.

7 A As I think this e-mail you just
8 handed me made clear, all of this happened while
9 I was gone.

10 Q Right.

11 So who told you it had been wiped?

12 MS. ECCLES: Object to the form.

13 A I don't recall.

14 Q Did somebody tell you this while you
15 were in Spain?

16 MS. ECCLES: Object to the form.

17 A I said I don't recall. I -- I -- to
18 answer your question, though, it would not have
19 been while I was in Spain, no.

20 Q All right. You've obviously read
21 your expert's report. So you're aware that he
22 has opined that at the time the MacBook was
23 given away, that resulted in the loss of a great
24 deal of your e-mail?

25 MS. ECCLES: Object to the form.

1 A I -- I don't agree with that
2 characterization.

3 Q Well, there's a gap from March of
4 2013 all the way back to early to mid 2011.

5 MS. ECCLES: Is that a question?

6 Q Do you understand that?

7 MS. ECCLES: Object to the form.

8 A I don't. The expert's report speaks
9 for itself, and I -- I know that he very
10 precisely describes certain gaps that are very
11 specific as in cases where there was no reply --
12 it's -- it's a very complicated process that I
13 still don't understand, but yeah, his report
14 does reflect the gaps that he found.

15 Q And he has also testified that when
16 he opened up your e-mail account on the server
17 for the first time, there were no e-mails in
18 your inbox or outbox for the IRA account.

19 MS. ECCLES: Object to the form.

20 Q You're aware of that?

21 MS. ECCLES: The report speaks for
22 itself.

23 A I'm -- I'm not aware of that, no.

24 Q Well, is that a fact?

25 MS. ECCLES: Object to the form.

1 Q After you got your new computer,
2 were there no e-mails in your inbox or outbox of
3 your IRA Advocates account prior to March of
4 2013?

5 MS. ECCLES: Object to the form.
6 The report speaks for itself.

7 A I -- I really don't know what you're
8 talking about.

9 Q When you opened up your new
10 computer --

11 A When I opened it?

12 Q -- after coming back -- yeah.

13 A Yeah.

14 Q I'm asking for the facts, not really
15 what your expert has hypothesized.

16 When you opened up your new
17 computer, after coming back from Spain, did you
18 have any e-mails from your IRA account in your
19 inbox or outbox prior to March of 2013?

20 MS. ECCLES: Object to the form.

21 A I don't -- I don't remember there
22 not being.

23 Q And that would be something you
24 would notice, I would think.

25 Do you not utilize your e-mails in

1 your practice of law?

2 MS. ECCLES: Object to the form.

3 A Well, I mostly use my Conrad &
4 Scherer account for my practice of law, but I
5 don't -- I -- I can only tell you I don't recall
6 that being the case. It could be. I just -- I
7 don't recall.

8 Q After getting your new computer, did
9 you ever have an issue where you couldn't find
10 your old e-mails?

11 MS. ECCLES: Object to the form.

12 A I -- absolutely not, no. Not that I
13 noticed.

14 Q You never had occasion to look for
15 your e-mails between 2011 and 2013 and discover
16 that they weren't there?

17 MS. ECCLES: Object to the form.

18 A Absolutely not. I don't -- I don't
19 perform searches of that sort. Someone else
20 would have done it.

21 MR. WELLS: Give me 69.

22 (Plaintiff's Exhibit No. 24 was
23 marked for identification.)

24 Q I'll show you Exhibit 24. This is a
25 few e-mails in June of 2013. The bottom one is

1 from you to Juan Rodriguez. And it appears to
2 be you are opening up your new laptop for the
3 first time, or close in time; is that right?

4 A I'm trying to read this. It's very
5 small print.

6 That -- that would -- that would
7 be -- since I'm working from home, yes.

8 Q And you asked just one question.
9 "I'm working from home and have a good Internet
10 connection. How can I access my files on
11 Dropbox?"

12 Do you see that?

13 A Yes.

14 Q What files were you storing on
15 Dropbox?

16 MS. ECCLES: Object to the form.

17 A I have -- I have a lot of files on
18 Dropbox. I have my working work files. I have
19 personal files. I think I have a lot of photos.
20 They're all in Dropbox.

21 Q Do you have your work e-mails on
22 Dropbox?

23 A No.

24 Q You don't store any e-mails on
25 Dropbox?

1 A No.

2 Q None whatsoever?

3 A None whatsoever.

4 Q Is that because you're concerned
5 about the cloud issue?

6 MS. ECCLES: Object to the form.

7 A No.

8 Q Why do you not store any of your
9 e-mails on Dropbox?

10 A Because I don't know how to store
11 anything. Anything that is being done to my
12 computer to store, one, Carlos is doing it; or
13 somebody else is doing it, not me.

14 Q But you have never used Dropbox to
15 access e-mails that were stored on there?

16 MS. ECCLES: Object to the form.

17 A Of that I'm sure.

18 (Plaintiff's Exhibit No. 25 was
19 marked for identification.)

20 Q I'm going to show you Exhibit 25.
21 That's a brief that was filed in connection with
22 this case.

23 A Yes.

24 Q All right. This is a motion to
25 quash that the defendants filed seeking to quash

1 a subpoena that Drummond had issued to IR
2 Advocates. Do you understand that?

3 A I'm just trying to determine whether
4 it was the defendants or -- or IR Advocates.

5 It looks like it's the defendants
6 who filed this, yes.

7 Q And it's signed by Christian
8 Levesque?

9 A Yes.

10 Q She's a Conrad & Scherer attorney?

11 A She is.

12 Q And she was representing as counsel
13 the defendants in this proceeding?

14 A That's what it says, yes.

15 Q You and Conrad & Scherer?

16 A Uh-huh.

17 Q Is that a "yes"?

18 A I said yes.

19 Q On page 18 -- and this is filed on
20 August 16th, 2013, by the way. Do you see that
21 on the header of the document?

22 A Yes.

23 Q In the middle of the page, it
24 says -- and this is after your declaration is
25 cited. And you see those two paragraph symbols?

1 A Yes.

2 Q It reads, "As executive director of
3 IR Advocates, defendants Collingsworth and his
4 staff have already searched for and produced all
5 responsive non-privileged documents in both this
6 litigation and in the Balcerro case."

7 Did I read that correctly?

8 A Yes, you did.

9 Q And you understand the IRA subpoena
10 requested numerous things, but some of the
11 things that were requested were communications
12 and documents concerning payments to witnesses?

13 MS. ECCLES: Object to the form.

14 A I don't -- I don't have recall of
15 what the Drummond subpoena asked for. I -- I
16 don't have recall.

17 Q What had you done to make sure this
18 representation was accurate?

19 MS. ECCLES: Object to the form.

20 A I don't know that I -- well, you're
21 asking what I personally did?

22 Q Yes.

23 A I probably -- I think that's
24 privileged. I -- what I directed someone else
25 on my team to do.

1 MS. ECCLES: That's correct. I'll
2 instruct you not to answer that. But if you
3 could answer based on your individual knowledge
4 not involving communications with your team or
5 directions to your team, you can answer to that
6 extent.

7 A I would -- I would say that what
8 most likely occurred is that there was a
9 comparison to what was asked of us, what was
10 asked of the IR Advocates, and the conclusion
11 being that similar or identical materials were
12 sought, so that our response -- our response
13 would have turned up documents similar to the
14 IRA documents.

15 Q What did you personally do to search
16 for documents responsive to the requests in this
17 case?

18 A I -- I've said repeatedly I don't
19 search for documents.

20 Q Who would have been doing that?

21 A At this time?

22 Q Yes.

23 MS. ECCLES: A name of the person is
24 enough.

25 A Yeah. A couple of people, maybe,

1 yeah. Susana Tellez and Grace Kaissal, the two
2 people who were working for me at this time.

3 Q And no one informed you that they
4 couldn't locate your e-mails?

5 MS. ECCLES: I'm going to object on
6 privilege grounds to communications with his
7 team about this.

8 A I -- I know that in the context of
9 this particular subpoena to IR Advocates, my
10 counsel, Brad Smith, did supply a letter that I
11 believe did identify some -- some problems --
12 some problems in the e-mails.

13 So to the extent that that was what
14 we knew, we told Drummond.

15 Q Do you think your counsel told
16 Drummond that your e-mails between 2011 and 2013
17 were missing?

18 MS. ECCLES: Don't go into
19 conversations with your counsel, but I think you
20 can answer the question as to what the letter
21 said.

22 A I don't -- I don't recall what the
23 letter said, and whatever it does say, which you
24 have a copy of, would reflect what we knew at
25 that time.

1 (Plaintiff's Exhibit No. 26 was
2 marked for identification.)

3 Q I'll show you what I've marked as
4 Exhibit 26. It's a declaration signed by you in
5 support of that motion to quash. If you could
6 just confirm for me that it is your signature on
7 that declaration.

8 A Yes, that's my signature.

9 Q Turn to paragraph 6.

10 A 6?

11 Q Yeah.

12 A Got it.

13 Q Excuse me. Paragraph 5.

14 A (Witness complies.)

15 Q You say, "I have reviewed the
16 subpoenas Drummond has caused to be issued to IR
17 Advocates, ILRF and Parker Waichman. They are
18 essentially identical. And the document
19 requests contained in the three subpoenas have
20 either already been served on me in my capacity
21 as counsel in the Balcerro case or as a defendant
22 in the underlying libel case. Moreover, in my
23 capacity as defendant in the libel action and as
24 counsel in the Balcerro litigation, I provided
25 all responsive non-privileged documents in my

1 custody, possession or control, including those
2 in the files of IR Advocates."

3 Did I read that correctly?

4 A You did.

5 Q What did you do to ensure that what
6 you were testifying to here was actually the
7 truth?

8 MS. ECCLES: Object to the form.

9 A Well, I think -- I think that it
10 says that I compared the two, as I said. And I
11 probably reviewed our prior responses, as it
12 says, and concluded that we had responded to
13 similar or identical requests.

14 Q Did you review the documents that
15 have been produced in this case so that you
16 could testify that all responsive non-privileged
17 documents had, in fact, been produced?

18 MS. ECCLES: Object to the form.

19 A I'm fairly sure I would have
20 reviewed our actual responses, but not -- I
21 don't recall looking at the underlying
22 documents.

23 Q Well, how can you make that
24 representation then?

25 A Because --

1 MS. ECCLES: Object to the form.

2 A -- if I had -- if I had responded to
3 a request that was identical to a new request, I
4 could say that we've already responded to this
5 request.

6 (Plaintiff's Exhibit No. 27 was
7 marked for identification.)

8 Q You had asked for this. I'm going
9 to show you as Plaintiff's Exhibit 27 the
10 subpoena that was issued to IR Advocates that
11 you were saying is identical to prior requests.

12 The first request on page 6 of 10
13 asks for "any and all documents related or
14 referring to requests for payment or any form of
15 assistance, whether monetary or non-monetary in
16 nature, by any individual incarcerated in
17 Columbia or any such individual's agent,
18 including but not limited to," and then it has a
19 list of people.

20 Did I read that correctly?

21 A Yes.

22 Q One of the people on that list was
23 Jaime Blanco Baya, correct?

24 A Yes.

25 Q Another was El Tigre, Jhon Jairo

1 Esquivel Cuadrado?

2 A Yes.

3 Q Another was Samario, letter "H,"
4 Alcides Manuel Mattos Tabares?

5 A Yes.

6 Q As of the time of your declaration
7 saying you had produced all non-privileged
8 responsive documents to these requests, you had
9 not produced any documents reflecting payments
10 to Jaime Blanco, El Tigre or Samario, had you?

11 MS. ECCLES: Object to the form.

12 A No.

13 Q So it would not be true to say that
14 you had already produced all the responsive
15 non-privileged documents that would respond to
16 this subpoena, would it?

17 MS. ECCLES: Object to the form.

18 A It's not accurate because we did not
19 go back and do new searches and -- and find
20 additional documents that would reflect those
21 three individuals. So it was not accurate.

22 Since that time, we have gone back
23 and identified additional documents, and we have
24 supplemented the record in a timely fashion.
25 And I think you now have all documents that are

1 responsive.

2 So not doing it here was -- was
3 clearly a mistake. I did not do new searches in
4 comparing what we had done in Balcerro versus
5 here. But we now have done that, and the record
6 is complete.

7 Q Well, you knew in Balcerro you --

8 MR. DAVIS: Well, excuse me one
9 second. Move -- move to strike anything that
10 was done subsequent to this as non-responsive.

11 Go ahead. Excuse me. The rest of
12 the answer stands. We move to strike anything
13 that was done --

14 Q You know in Balcerro you did not
15 disclose any payments to Jaime Blanco, El Tigre
16 or Samario, right?

17 MS. ECCLES: Object to the form.

18 A We had standing objections that I --
19 I don't recall the specifics of, but I certainly
20 agree that we did not.

21 Q Is it your position that at the time
22 you signed this declaration saying all of the
23 responsive non-privileged documents had been
24 produced, that the documents showing payments to
25 El Tigre, Samario and Jaime Blanco were somehow

1 privileged?

2 MS. ECCLES: Object to the form.

3 A By this time, they were not, no.

4 Q And you knew they hadn't been
5 disclosed yet?

6 A Did I know they hadn't been
7 disclosed? I didn't know what documents were --
8 were out there that we had not yet found.

9 Q Did you think the payments to El
10 Tigre, Samario and Jaime Blanco had been
11 disclosed as of August of 2013?

12 A As of August of 2013?

13 Q Yeah.

14 A No.

15 Q And y'all didn't do any search for
16 any documents that would reflect those
17 payments --

18 MS. ECCLES: Object to the form.

19 Q -- in this case?

20 A In this case?

21 MS. ECCLES: Object to the form.

22 Q Yes.

23 A In the libel case?

24 Q Yes.

25 A Yes, we did.

1 Q Who did that search?

2 MS. ECCLES: Object to the form.

3 Please don't reveal any
4 attorney-client privileged information in your
5 answer.

6 A Well, the primary person that was
7 doing any searching would have been Susana
8 Tellez, and I would have worked with her on
9 that.

10 Q Did you review the documents that
11 had resulted from those searches prior to
12 providing them to counsel for production?

13 A In -- in which -- in which search?

14 Q In any search that had been
15 performed prior to August of 2013.

16 MS. ECCLES: Object to the form.

17 A I would have, yes.

18 Q And so you know that as of this
19 time, there were no documents in there showing
20 payments to El Tigre, Samario and Jaime Blanco?

21 MS. ECCLES: Object to the form.

22 Q Right?

23 MS. ECCLES: Object to the form.

24 A With respect to Jaime Blanco, I
25 certainly did know that Mr. Van Bilderbeek had

1 made payments to him. My initial position was
2 that those documents were not responsive to any
3 outstanding request because I didn't make those
4 payments.

5 Upon reflection, I decided that that
6 was cutting it a little too close in terms of
7 making a -- a distinction because I was involved
8 in facilitating that. So I -- I ultimately did
9 produce those documents in a timely manner.

10 And there was no reason not to
11 produce them at the outset. I -- there's
12 nothing wrong with that transaction. But I was
13 exercising my normal policy, which would be to
14 only provide discovery documents that are fairly
15 responsive, and I initially did not think they
16 were.

17 Q So it was your decision not to
18 disclose the Jaime Blanco payments?

19 A That's correct. And --

20 Q How about the El Tigre and Samario
21 payments?

22 MS. ECCLES: Object to the form.

23 Q Those were made by Conrad & Scherer,
24 correct?

25 MS. ECCLES: Object to the form.

1 Q It came out of Conrad & Scherer's
2 operating account, true?

3 MS. ECCLES: Object to the form.

4 A There were payments made to Ivan
5 Otero that ultimately he shared as security
6 relocation costs with the families of El Tigre
7 and Samario that came from Conrad & Scherer,
8 yes.

9 Q And those payments had to be
10 approved by you every month, right?

11 MS. ECCLES: Object to the form.

12 Q You had to respond to an e-mail
13 saying "Okay to pay"?

14 MS. ECCLES: Object to the form.

15 A Usually, that's what happened,
16 uh-huh.

17 Q Every month?

18 A Uh-huh.

19 Q "Yes"?

20 A Yes.

21 Q And those payments are ongoing,
22 correct?

23 MS. ECCLES: Object to the form.

24 A As far as I know, they are, yes.

25 Q Are you still responding "Okay to

1 pay" when those wires go out?

2 MS. ECCLES: Object to the form.

3 A I don't think I am now, no.

4 Q Who's approving those now?

5 MS. ECCLES: Object to the form.

6 A Somebody who is -- the -- the
7 financial management at Conrad & Scherer has --
8 has changed. And I generally think that if --
9 if it's a recurring payment that has already
10 been approved, that I don't have to approve it
11 again and again and again.

12 Q All right. But back here in 2013,
13 you were having to approve it again and again
14 and again?

15 A That's correct.

16 Q So you're clearly aware that you
17 have e-mails that would reflect these wires to
18 Ivan Otero every month, right?

19 MS. ECCLES: Object to the form.

20 A Yes.

21 Q Okay. And you know those have not
22 been produced?

23 A They have been produced now.

24 Q I'm talking about August of 2013,
25 when you're signing this declaration saying

1 everything's been produced.

2 MS. ECCLES: Object to the form.

3 A I -- I -- there's no question that
4 at the time I signed this, they had not been
5 produced. And that was a -- that was a mistake.

6 I have since gone back, and my
7 new -- my new team got in place and did
8 extraordinary searches and found every possible
9 document to link Mr. Otero to providing security
10 to Samario and El Tigre, and we have provided
11 those documents in a timely fashion and have
12 supplemented the record with supplemental
13 interrogatory responses and so on. The record
14 is now clear and correct.

15 Q Well, when you're moving to quash
16 all these subpoenas that are going out, one of
17 which does -- to IRA, which we've already looked
18 at, you're not just saying, "I think we've
19 produced everything, and you should quash this
20 subpoena." You are forceful about it, and in
21 fact, moved for sanctions against Drummond for
22 every single subpoena saying they were
23 duplicative of documents you had already
24 produced. There was nothing left to get. Isn't
25 that right?

1 MS. ECCLES: Object to the form.

2 A The -- if the issue was are they
3 duplicative, then, yes, we did point out the
4 duplicative nature of these requests.

5 Q And you moved for sanctions against
6 Drummond for serving a subpoena that would not
7 get any new documents because it was so
8 duplicative.

9 MS. ECCLES: Object to the form.

10 Q Right?

11 MS. ECCLES: Object to the form.

12 A I believe we did ask for sanctions,
13 yes.

14 Q And you participated in writing all
15 those briefs, didn't you?

16 MS. ECCLES: Object to the form.

17 A In -- in -- in one form or another,
18 I -- I would have participated, yes.

19 Q And not just reviewing, actually
20 drafting?

21 MS. ECCLES: Well, okay. This is
22 also a privileged area. You can ask him about
23 his knowledge, but not about --

24 MR. DAVIS: Well, this goes to
25 the --

1 MS. ECCLES: -- drafting pleadings
2 and not about communications with his
3 colleagues.

4 MR. DAVIS: But this goes to the
5 very essence of the sanction issues that we
6 have. I'm going to ask you to reconsider
7 telling him not to answer.

8 Q And let me ask you this: Are you
9 going to take the position that any of these
10 representations that were made in filings,
11 briefs, were not your representations? They
12 were just representations by your counsel that
13 you are not responsible for?

14 A Absolutely not. I -- I acknowledge
15 these representations were made by me. They
16 were not accurate, and I did everything that I
17 could to correct the record and make a complete
18 and total production of every document now that
19 has been responsive. I have supplemented my
20 interrogatory responses multiple times as we
21 were evolving the information, and we now have
22 completely corrected the record in a timely
23 fashion.

24 MR. WELLS: Move to strike
25 everything after acknowledging that the

1 representations are your own.

2 Ben, let me get Tab 42.

3 (Plaintiff's Exhibit No. 28 was
4 marked for identification.)

5 Q I'll show you what has been marked
6 as Plaintiff's Exhibit 28. It's a March 18th,
7 2014, letter from your counsel to Drummond's
8 counsel, and it focuses on what e-mail accounts
9 have been searched in this case.

10 Do you see that?

11 A I do.

12 Q On the second page, it says that all
13 of your e-mail accounts have been searched.

14 MS. ECCLES: Object to the form.

15 Q Or if it doesn't represent that,
16 tell me what it is representing.

17 MS. ECCLES: If you know.

18 A Your question is does this letter
19 from my lawyer say that my accounts have been
20 searched?

21 Q Yes.

22 A Yes, it says that.

23 Q And who performed those searches?
24 Was it Susana Tellez?

25 A And possibly, likely some help from

1 Grace Kaissal.

2 Q How were the searches performed?

3 MS. ECCLES: Object to the form.

4 A I don't know. With search terms.

5 Q And you had no involvement in that?

6 A I had no involvement in the actual
7 searching, no.

8 Q So they were searching -- and this
9 is again talking about the IRA subpoena. They
10 were searching your e-mail accounts for
11 documents relating to witness payments, correct?

12 MS. ECCLES: Object to the form.

13 A Regarding to -- regarding all of the
14 Drummond discovery requests, correct.

15 Q Which would include payments to
16 witnesses?

17 A Which would include the security
18 assistance issues, yes.

19 Q And you're saying nobody found in
20 those searches any documents reflecting payments
21 to Ivan Otero for the purpose of giving to El
22 Tigre and Samario?

23 MS. ECCLES: Object to the form.

24 A I -- I -- I'm -- I can only say I
25 guess they didn't.

1 Q I mean, you were approving monthly
2 expenditures to these guys every month. They
3 wouldn't have to look very far back to find one
4 of them, right?

5 MS. ECCLES: Object to the form.

6 A I -- I can only speculate about what
7 they found. I -- I -- I don't know exactly what
8 they found, but I did not see any myself.

9 Q But you knew they existed?

10 MS. ECCLES: Object to the form.

11 A I knew that I had approved payments
12 to Ivan Otero.

13 Q And you didn't see any of those
14 documents in the documents resulting from the
15 search?

16 A I -- I -- I -- I'm -- I'm trying to
17 recall things that were happening at a -- at a
18 very difficult time. I don't know that we found
19 any documents -- I know that we didn't find any
20 documents reflecting that El Tigre or Samario's
21 families were being provided with security
22 assistance.

23 Q But you knew that was ongoing?

24 MS. ECCLES: Object to the form.

25 A The -- the -- the basis of the

1 mistake that I made that I have attempted to
2 correct in the record is that I did not have
3 specific knowledge of what Mr. Otero was doing,
4 and I -- I should have done a better
5 investigation of what I could find out. And
6 I -- I relied only on my -- my memory, and it
7 was inaccurate. And I've now done my best to
8 acknowledge that I made a mistake, and I've gone
9 back and corrected the record as best I can.

10 Q So you're saying that in 2013 when
11 you're approving \$2700 a month every month going
12 down to Ivan Otero, you have no idea what that
13 money is for?

14 MS. ECCLES: Object to the form.

15 A I -- I knew that I had authorized
16 Mr. Otero to provide security for himself and
17 for really any of the witnesses if any emergency
18 happened or anything came up. I did not have
19 specific recall at this time as to -- as to what
20 he was doing, no.

21 Q And no e-mails had been recovered in
22 y'all's search where you're discussing with
23 others the fact that these payments to Ivan
24 Otero are for El Tigre and Samario?

25 A Oh, that I -- I -- I think that's --

1 I think that's true, yes.

2 Q Well, how were they missed? Did
3 they not search for the witnesses' names?

4 MS. ECCLES: Object to the form.

5 Q In the search terms they used, did
6 they not search for the witnesses' names?

7 A I would imagine they did, yes.

8 Q And their names are in at least one
9 e-mail talking about this \$2700 a month, true?

10 MS. ECCLES: Object to the form.

11 A I have more recently seen an e-mail
12 that discusses these -- the -- the initial need
13 for security. I don't believe that that e-mail
14 was found during these searches.

15 Q Do you have any explanation as to
16 how that could have occurred?

17 MS. ECCLES: Object to the form.

18 I mean, of course, I don't want you
19 to reveal privileged information, but you can
20 answer the question as to whether you have
21 personal knowledge.

22 A I can only say I -- I -- it must not
23 have been found and that I'm very happy that
24 ultimately we found it and every other
25 connection here to be fully responsive so that

1 we could correct the record.

2 There was no reason for me not to
3 disclose that security was necessary for El
4 Tigre and Samario as well. There was absolutely
5 no reason. And I -- I would have done it as
6 soon as I -- I had that kind of information.

7 But we have now since corrected the
8 record and found all of the e-mails because my
9 new team came in and did a -- just a remarkable
10 search.

11 Q All right. Let's put the documents
12 aside. I'm just talking about interrogatory
13 answers.

14 When you're asked to disclose
15 witness payments and you don't disclose El Tigre
16 and Samario, are you saying you just forgot that
17 they were getting security payments?

18 MS. ECCLES: Object to the form.

19 A I -- as I've previously said, I -- I
20 did not have specific knowledge when we were
21 dealing with Charris' and -- and Gelvez and
22 Duarte. I was personally involved in that. I
23 personally set up the accounts. And with the
24 Otero issues, I authorized him to take care of
25 his own safety, which was my primary -- primary

1 concern, and whatever else came up. And I did
2 not have those details in my head when I
3 responded to those interrogatories and -- or any
4 of the document requests.

5 Now, I am freely admitting that it
6 was a mistake not to go back to Otero and try to
7 get clarification. I did not do that. That was
8 my mistake. And I have since corrected that
9 mistake and have fully supplemented the record.
10 And I think that we did it in a timely way and
11 under the Court's order, and that's -- that's
12 all I can say about it.

13 Q Well, the whole reason -- Otero
14 wasn't getting \$2700 a month throughout the
15 entire course of Balcerro, was he?

16 MS. ECCLES: Object to the form.

17 A Are you asking me do I know that
18 now?

19 Q Yeah.

20 A Yeah, I -- I do know that now. I'm
21 extremely clear on that, and I -- I did.

22 Q And it was set up that way because
23 he said El Tigre and Samario's families have
24 been threatened, and we need money for their
25 security assistance?

1 MS. ECCLES: Object to the form.

2 A Well --

3 Q That's what's been represented to
4 the Court, isn't it?

5 MS. ECCLES: Object to the form.

6 A You're -- you've confused me about
7 who represented what when. I don't know where
8 you're going with that.

9 Q Do you understand that the \$2700 a
10 month payments to Ivan Otero were set up for the
11 specific purpose of providing security
12 assistance to the families of El Tigre and
13 Samario?

14 MS. ECCLES: Object to the form.

15 A I do know that now, and so do you,
16 in that we supplemented the record and corrected
17 any prior misstatements or inaccuracies of my
18 prior responses. And I regret that.

19 Q And is it your position that the
20 reason that was not disclosed sooner is because
21 you simply forgot about it?

22 MS. ECCLES: Object to the form.

23 A I did not know the details of what
24 Mr. Otero was doing. And I am certain that I
25 did not have that level of knowledge that I now

1 have after reviewing these documents, and that
2 my mistake was not investigating further before
3 responding to those initial responses.

4 Following that subsequent
5 investigation that we did do, I have corrected
6 the record and done my best to make sure that we
7 have even over-responded to make sure that we
8 are completely transparent now.

9 Q Those \$2700 a month payments to
10 Otero equate to over \$30,000 a year. Do you
11 understand that?

12 A Seems about right, yes.

13 Q And you're saying you don't have any
14 idea what he does with that more \$30,000 a year
15 you're paying him?

16 MS. ECCLES: Object to the form.

17 A I do now, yes.

18 Q And that is -- well, I'm talking
19 about when it was happening. You didn't know
20 that -- you were giving him \$30,000 a year and
21 just do with it what you will?

22 MS. ECCLES: Object to the form.

23 A I knew that we were sending that --
24 those funds to Ivan Otero. I knew that I had
25 authorized him to take care of himself and any

1 other security issues that came up. We were
2 extremely concerned about any of the witnesses
3 or their family members being killed.

4 We had experiences in the -- the
5 first Drummond case where a very important
6 witness' father-in-law was killed, Jimmy Rubio,
7 right before he was going to testify, and he
8 disappeared on us. I've had every one of these
9 people tell me personally what threats --

10 Q Mr. Collingsworth --

11 A -- they had received.

12 Q -- the question on the table was do
13 you know --

14 MS. ECCLES: Let him finish his
15 answer.

16 A Yeah.

17 MR. WELLS: It's completely
18 non-responsive. He's just --

19 MS. ECCLES: It is responsive --

20 MR. WELLS: -- going on a diatribe.

21 MS. ECCLES: It is responsive to
22 your question.

23 Q The --

24 MR. DAVIS: Then we'll go off the
25 record.

1 Q The question is --

2 MR. DAVIS: We will go off the
3 record.

4 Q -- do you know --

5 MR. DAVIS: We're not going to let
6 that serve as time.

7 Q Do you know what Ivan Otero was
8 doing with that money?

9 A I do now, yes.

10 Q And when you were paying him over
11 \$30,000 a year at the time, you're saying you
12 did not know what he was doing with it? You
13 just know it now?

14 MS. ECCLES: Object to the form.

15 A I have said repeatedly that I
16 authorized him to provide security for him and
17 his fam- -- and -- and anyone else who was
18 threatened, and I trusted Mr. Otero was using
19 the money properly.

20 Q Is it your sworn testimony that
21 you're paying Ivan Otero over \$30,000 a year,
22 and it's just his discretion -- that's coming
23 out of your firm's bank account, right?

24 A Yes.

25 MS. ECCLES: Object to the form.

1 Q And you're spending more than
2 \$30,000 a year out of your firm's bank account,
3 and you don't require any sort of check on how
4 he's using that money?

5 MS. ECCLES: Object to the form.

6 Q That's your sworn testimony?

7 MS. ECCLES: Object to the form.

8 A Mr. Otero was authorized to use
9 those funds for his own security and any other
10 security that he needed, and I trust that
11 Mr. Otero properly used the money.

12 Q And you did not require him to
13 document what he was spending it on?

14 MS. ECCLES: Object to the form.

15 Q Is that right?

16 A There are no documents that document
17 what he was spending it on. So I would assume
18 that that's the case, yes.

19 Q He could very well just be handing
20 that money to the witnesses, as far as you know?

21 MS. ECCLES: Object to the form.

22 A He wouldn't do that.

23 Q Well, you don't -- you weren't
24 there. You apparently don't know what he was
25 doing with the money. You were just trusting

1 him.

2 A I -- he was directed to use it for
3 security as needed, and I trust that he was
4 using it for security. And I know that
5 Mr. Otero can be trusted.

6 MR. WELLS: Let's take another
7 break.

8 THE VIDEOGRAPHER: The time is
9 12:06 p.m. This concludes tape number three.
10 We are off the record.

11 (A break was taken.)

12 THE VIDEOGRAPHER: The time is
13 12:22 p.m. This is the beginning of tape number
14 four. We are back on the record.

15 BY MR. WELLS:

16 Q Just to be clear, you're saying with
17 respect to the representations in trying to
18 quash the IRA subpoena that everything's been
19 produced, nothing left to see here, that is a
20 mistake because you had forgotten that Ivan
21 Otero was using those funds for El Tigre and
22 Samario?

23 MS. ECCLES: Object to the form.
24 I'm not sure that's a question.

25 Q Is that your testimony?

1 A I didn't have the details of -- of
2 what he was doing. I didn't -- I don't -- I
3 don't know that I could say I've completely
4 forgotten. I should have investigated further,
5 and I didn't. That was my mistake. And I have
6 now and I've tried to correct the record.

7 Q Okay. So we don't have to go
8 through each one of these subpoenas. The
9 declarations you submitted in support where
10 you're saying everything's been produced, your
11 answer will be the same. It was a mistake. You
12 should have investigated further. You now
13 realize it should have been disclosed?

14 MS. ECCLES: Object to the form.

15 A Assuming -- that -- that would be
16 accurate, that I think that those briefs are
17 very similar and that the response would be the
18 same.

19 Q When did you realize you had made a
20 mistake?

21 A It's hard to say for sure, but I --
22 it was certainly -- I would say roughly June or
23 July of 2014.

24 Q And how did you realize you had made
25 a mistake?

1 MS. ECCLES: To the extent you can
2 answer without discussing privileged
3 information, based on your own knowledge on
4 the --

5 A I've tried to reconstruct this in my
6 mind many times, and it's very, very difficult
7 to say anything certain about what I was
8 thinking when because there were so many things
9 going on.

10 I believe, my best guess, my best
11 estimate is that I saw an e-mail or a memo that
12 had some information about El Tigre and Samario
13 and it had Ivan Otero, and that caused me to
14 then say, "I" -- "I" -- "I really need to look
15 into this further."

16 Q And you saw that in June or July of
17 2014?

18 A I believe that's correct, yes.

19 Q And when you saw that, did you
20 immediately realize that you had made a number
21 of mistakes as far as what had been represented
22 to the number of witnesses that had received
23 security payments?

24 A No, I don't think I immediately
25 realized it. I immediately realized that we had

1 a lot of work to do to try to find additional
2 documents and supplement the record.

3 Q You recall in about April of 2014
4 Drummond filed a motion for sanctions requesting
5 that your computers and hard drives be
6 forensically examined?

7 A I recall the motion. Whether it was
8 March or April of 2014, I don't know. But I
9 recall it.

10 Q And you recall the basis of that
11 motion was Parker Waichman had produced some
12 e-mails that had never been produced by the
13 defendants?

14 MS. ECCLES: Object --

15 Q Do you understand that?

16 MS. ECCLES: Object to the form.

17 A Well, whether those e-mails had been
18 responsive at that time I'm not commenting on,
19 but I do recall that the basis for the -- the
20 motion was largely some Parker Waichman
21 documents, yes.

22 (Plaintiff's Exhibit No. 29 was
23 marked for identification.)

24 MR. WELLS: I'll go ahead and flag
25 for you -- I'm about to show him what's been

1 marked as Exhibit 29. This is one of the Parker
2 Waichman documents. It is redacted consistent
3 with what the Special Master has just
4 recommended.

5 So whatever --

6 MS. ECCLES: You mean --

7 MR. WELLS: -- objection you want to
8 preserve, you can do that, but we're going to
9 ask him questions about it.

10 MS. ECCLES: Based on his report
11 from this week?

12 MR. WELLS: Yes.

13 MR. ECCLES: So we're preserving all
14 our objections to his conclusions in that
15 report. So we're not prepared to go into
16 privileged information based on those Parker
17 Waichman documents.

18 MR. WELLS: And -- that's fine. I'm
19 going to ask him some questions about this
20 document that I don't think have anything to do
21 with privilege.

22 MS. ECCLES: Okay. Well, we'll see.
23 What number is this again?

24 MR. PRESLEY: Exhibit 29.

25 MS. ECCLES: Thank you.

1 BY MR. WELLS:

2 Q All right. This is one of the
3 exhibits to that motion for sanctions asking for
4 your computers and hard drives and e-mail
5 accounts to be forensically analyzed. Did you
6 review the motion for sanctions and the
7 exhibits?

8 A Yes.

9 Q Around the time Drummond was
10 accusing defendants of hiding e-mails with
11 Parker Waichman, did you do anything to search
12 your own e-mails to see if there were e-mails
13 with Parker Waichman that had not been produced?

14 MS. ECCLES: Object to the form.

15 A My recollection is that I think
16 there was a third request for production of
17 documents in the -- in the libel case was -- was
18 sent to us and it had not yet been due, and that
19 most, if not all of the responsive Parker
20 Waichman documents would be due in response to
21 the third request. So they were not overdue.
22 They were -- they were still timely.

23 Q Well, what about in response to all
24 the subpoenas that you said was just a
25 mistake --

1 MS. ECCLES: Object to the form.

2 Q -- that you didn't disclose these
3 witness payments?

4 MS. ECCLES: Object to the form.

5 A I -- I -- I don't think that the
6 Parker Waichman documents are at all -- I don't
7 think they're -- that they're related to the
8 mistake that I made, which is the Otero
9 relationship with Samario and El Tigre.

10 Q You did not e-mail with Parker
11 Waichman about the fact that you were giving
12 money to Otero to be given to El Tigre and
13 Samario or their families?

14 MS. ECCLES: I'm going to caution
15 you -- you can discuss discussions that you had
16 with them about the fact of the payments. We're
17 not objecting to that, but I don't want you to
18 get into discussions about anything further than
19 that.

20 A Yes.

21 MR. WELLS: I'm talking about an
22 e-mail that has been produced in this case.

23 A Yes.

24 MR. ECCLES: Okay. That's fine.

25 A And I was about to answer.

1 I believe that when I said in -- in
2 June or July, it might be July 2014, that the
3 document that caused me to realize that I had
4 made a mistake was an e-mail that I had sent to
5 Parker Waichman. But I don't recall that that
6 e-mail was part of this chain, nor was it an
7 exhibit to the -- to the sanctions motion.

8 Q All right. But I'm -- what I'm
9 asking is -- when you get this motion, this
10 Parker Waichman e-mail is attached to it, and
11 it's asking for some pretty serious relief about
12 copying all of your computers and having an
13 independent person search through them. Did you
14 search your own e-mails for your correspondence
15 with Parker Waichman to see what was in there
16 that may be subject to this motion?

17 A I did not search my e-mails. As I
18 said, I believe that there was a search that was
19 going on at that time of my e-mails to respond
20 to Drummond's third document request, not to
21 respond to the motion.

22 Q And who performed that search?

23 A It was still Susana. She left
24 shortly after that.

25 Q And she was searching specifically

1 for Parker Waichman e-mails?

2 MS. ECCLES: Object to the form.

3 A I don't recall precisely, but I know
4 that we were also looking at accounting
5 documents at that time. So she was searching
6 for a lot of different things, including the
7 Parker Waichman documents.

8 Q But at that time, you still had not
9 recalled that El Tigre and Samario were
10 receiving security payments; is that right?

11 A At that time, I was not thinking of
12 that, no.

13 Q So I guess it really wouldn't matter
14 if they were responsive to anything if you
15 didn't remember them, would it?

16 MS. ECCLES: Object to the form.

17 Q And back when all these subpoenas
18 are being issued, you're not making some
19 conscious decision of these aren't responsive or
20 these are privileged. It's just you did not
21 recall?

22 A That's correct.

23 Q In connection with the sanctions
24 motion, you filed a declaration in opposition,
25 and I've attached that declaration and marked it

1 as Exhibit 30.

2 (Plaintiff's Exhibit No. 30 was
3 marked for identification.)

4 Q Is that your signature on that
5 document?

6 A Yes.

7 Q All right. You recall the subject
8 of the sanctions motion was, one, there were
9 some e-mails produced reflecting a \$10,000
10 cash -- or a \$20,000 cash payment to someone in
11 Colombia that you have contended is a consulting
12 expert. That was one issue that was raised in
13 the sanctions motion, right?

14 MS. ECCLES: Object to the form.

15 A I recall that there was an issue
16 about a -- a consulting expert in the Dole case,
17 yes.

18 Q And the other issue were the Parker
19 Waichman e-mails discussing a request by Blanco
20 to pay up to \$100,000 of his legal fees, right?

21 MS. ECCLES: Object to the form.

22 A Yes, that's correct.

23 Q Now, look at paragraph 7 of that
24 declaration.

25 A (Witness complies.)

1 Q And paragraph 8.

2 A Yes.

3 Q You testify under penalty of perjury
4 in that declaration that there was merely a
5 discussion about whether payments to Blanco for
6 his attorneys' fees could be made, right?

7 A With Parker Waichman, yes.

8 MS. ECCLES: Object to the form.

9 Q You do not disclose to the Court or
10 anyone else that payments to Blanco were, in
11 fact, made with your knowledge for his
12 attorneys' fees, do you?

13 MS. ECCLES: Object to the form.

14 A As I previously testified, at this
15 time, I was maintaining a distinction between a
16 payment made by me and a payment made by someone
17 else. I've since reconsidered that distinction
18 and disclosed the Jaime Blanco payment from
19 Albert Van Bilderbeek.

20 Q Do you think that was another
21 mistake?

22 MS. ECCLES: Object to the form.

23 A I think that it was an -- an effort
24 to be completely transparent. I don't think it
25 was a mistake. I -- I've since reconsidered

1 my -- my decision on that, and I decided to
2 disclose any possible relationship here between
3 these witnesses and a payment I'm aware of.

4 Q In paragraph 8, the second sentence,
5 you testify there are no documents produced by
6 Parker Waichman or Conrad & Scherer relating to
7 a payment to Blanco or his criminal lawyers
8 because none was made by them.

9 Do you see that?

10 A Yes.

11 Q Now, it is not true that there are
12 no documents in Conrad & Scherer's possession
13 relating to payments to Blanco?

14 MS. ECCLES: Object to the form.

15 A I think the -- the sentence speaks
16 for itself in that I was interpreting it as
17 documents made -- that show a payment made by
18 them. And there are none of those, that's
19 correct.

20 Q Well, the sentence really has two
21 facts in it. One, there are no documents; and
22 two, the reason there's no documents was because
23 no payment was made by either Conrad & Scherer
24 or Parker Waichman.

25 MS. ECCLES: Object to the form.

1 Q I hear you saying the reason there's
2 no documents, that there was no payment made.
3 That's why you said that. But there are
4 documents -- you acknowledge there are documents
5 in Conrad & Scherer's possession relating to
6 payment to Blanco?

7 MS. ECCLES: Object to the form.

8 A I -- I -- I don't intend to quibble
9 with you about what that sentence says. And
10 perhaps we disagree on what it says, but I have
11 said that I interpreted the situation as
12 different than, that we had not made any
13 payments. And that's what I thought I was
14 saying. But nonetheless, I disclosed my
15 knowledge of a payment made by a third party,
16 Mr. Van Bilderbeek.

17 Q Well, we now know that there was a
18 payment made to Blanco for his criminal legal
19 fees?

20 A We do because I disclosed the Van
21 Bilderbeek payment documents, yes.

22 MS. ECCLES: Wait for a question.

23 Q Now, when the sanctions hearing --
24 the original sanctions hearing was ongoing and
25 Judge Proctor was asking your counsel about

1 that -- and your counsel represented that those
2 payments were not made. It was just a
3 discussion -- do you think that was an open
4 disclosure to the Court?

5 MS. ECCLES: Object to the form.

6 A I -- I think that, as I said,
7 that -- that statement is true. But because on
8 reflection I was concerned that we were cutting
9 it too close and making a distinction that might
10 be considered misleading, we corrected the
11 record.

12 But we did not -- Conrad & Scherer
13 or PW, Parker Waichman, did not make a payment
14 to Blanco. That still is true.

15 Q At the time of this sanctions
16 hearing, April of 2014, was Brad Smith aware
17 that Blanco had been paid?

18 MS. ECCLES: Object to the form.

19 Don't answer as to anything you know
20 from Brad Smith about that question.

21 A And I don't know -- I doubt that he
22 was aware. I doubt it, but I don't -- I can't
23 say what was in his head.

24 Q Well, I'm asking is it your
25 contention or your position that Mr. Smith made

1 knowing misrepresentations to the Court?

2 MS. ECCLES: Object to the form.

3 Q Knowing that Blanco had been paid,
4 but instead saying he had not been?

5 A I'm not --

6 MS. ECCLES: Object to the form.

7 A I'm not making that contention, no.
8 I said I -- I doubt it.

9 Q All right. Paragraph 4 of your
10 declaration, you're discussing what you claim to
11 be was an onerous production of financing
12 documents responsive to the first and second
13 discovery requests.

14 MS. ECCLES: Object to the form. I
15 don't think it says that.

16 Q Is that right?

17 A I say that it took an enormous
18 amount of time, yeah.

19 Q And you say, second to last
20 sentence, "I was in regular communication with
21 the staff, and I did not receive the last batch
22 of responsive documents until Tuesday, April
23 1st, 2014. Defendants' supplemental production
24 includes thousands of pages of these actual
25 receipts obtained through this arduous manual" --

1 arduous manual process."

2 Did I read that correctly?

3 A Yes.

4 Q So the documents -- these financing
5 documents were being gathered and sent to you?

6 A Yes. My -- yes.

7 Q And it says you didn't get the last
8 batch until April 1st, 2014. How many batches
9 were there?

10 MS. ECCLES: Object to the form.

11 A I don't recall. I assume there were
12 several because I say "last."

13 Q And they were provided to you. And
14 did you -- did your office review them prior to
15 giving them to counsel for production?

16 A Yes.

17 Q All right. Who handled the Bates
18 labeling?

19 MS. ECCLES: Object to the form.

20 A I'm pretty sure it would have been
21 Susana Tellez.

22 Q Okay. In your office.

23 You -- you would have provided the
24 documents to Mr. Smith essentially ready for
25 production. They'd already been Bates labeled?

1 They'd already been stamped "Confidential"?

2 A Well, they -- in this -- in this
3 instance in -- in particular, we -- we were
4 operating under a much tighter schedule than any
5 of us liked. But I do recall that ultimately
6 they weren't produced in the form that we
7 provided them to our counsel. So no.

8 Q Well, the -- the question is: Did
9 you provide them to Mr. Smith with Bates labels
10 already on them?

11 A I don't know if we provided first a
12 batch without the labels, but we -- we had --
13 believe it or not, as -- as primitive as I -- I
14 now feel about electronic issues, we were better
15 suited to handle such a task. So we ultimately
16 put the Bates labels on all of the documents, I
17 think, in my office.

18 Q All right. Look at paragraph 12 of
19 this declaration.

20 A (Witness complies.)

21 Q You say, "The numerous invoices and
22 documents showing payments by defendants to
23 Mr. Otero, which are part of defendants'
24 document production in response to Drummond's
25 first and second document requests and this

1 Court's discovery order, show exactly what
2 Mr. Otero was paid for, and he was never
3 compensated for any representation of
4 Mr. Blanco. The documents show that any
5 payments to Mr. Otero were for work performed
6 exclusively on the Drummond human rights
7 litigation for defendants, as well as for
8 expenses and costs incurred by him."

9 Did I read that correctly?

10 A Yes.

11 Q So you understood at that time that
12 the payments to Otero were included in the
13 documents you were prepared to produce to
14 Drummond? And as you say, they would show
15 exactly what he was paid for?

16 MS. ECCLES: Object to the form.

17 Q Is that right?

18 MS. ECCLES: Object to the form.

19 A Well, that's what I say, yes.

20 Q And you had been personally involved
21 in that document gathering process. So you had
22 reviewed the documents that you were ready to
23 produce to Drummond at that point, true?

24 A At that point?

25 Q Yeah.

1 A I -- I -- I would have reviewed them
2 before they were produced.

3 Q Well, you'd reviewed them enough to
4 know that there are payments to Otero in there,
5 and the documents will show Drummond exactly
6 what he was paid for? Or is that an untrue
7 statement?

8 MS. ECCLES: Object to the form.

9 A I'm -- I'm -- I'm pausing because I
10 think there were a couple of -- I don't recall
11 if we were also talking about his initial
12 payment and also he got a payment from Parker
13 Waichman that -- that was for services
14 performed. But at this time, I thought this was
15 a true statement, yes.

16 Q And you were prepared and you're
17 representing to the Court that you were prepared
18 as of April 2014 to produce these documents
19 showing what Mr. Otero was paid for?

20 A That's correct.

21 Q As well as the other expense
22 documentation?

23 A That's correct.

24 Q In fact, in paragraph 16 of your
25 declaration, you appear to be saying that

1 although you object to producing it and you
2 think it's prejudicial, you are nevertheless --
3 nevertheless ready and willing to comply with
4 the Court's order to produce financing
5 documents; is that right?

6 MS. ECCLES: Object to the form.

7 A That's what it says, yes.

8 Q And you were ready to produce,
9 responsive to the Court's October 2013 order,
10 your internal costs in- -- incurred in
11 litigating the case, right?

12 A That's what it says, yeah.

13 Q You were ready to produce and had
14 documents ready to produce to Drummond regarding
15 the aspects of funding your investigations in
16 Colombia, right?

17 A The funding, yes.

18 Q You were also ready to produce in
19 compliance with the Court's October 2013 order
20 documents reflecting the costs and methods for
21 personal security for your Colombian lawyers,
22 true?

23 A That's correct.

24 Q One of whom would be Ivan Otero,
25 right?

1 A Yes.

2 Q Now, y'all produced these documents
3 y'all are referencing as far as the costs
4 incurred, security for Colombian lawyers, the
5 ones that would show exactly what Ivan Otero was
6 paid for in May of 2014.

7 Do you recall that?

8 A I don't think we did, no.

9 Q You didn't produce any financing
10 documents in May of 2014?

11 A We --

12 MS. ECCLES: Object to the form.

13 THE WITNESS: Sorry.

14 A We -- my -- my recollection is that
15 we produced the financing documents but
16 concluded that the costs and expenditure
17 documents were not responsive to the Court's
18 order.

19 Q You made that decision after
20 testifying to the Court that they were?

21 A I didn't --

22 MS. ECCLES: Object to the form.

23 A I object to the form. That's not
24 what I -- I saw in my declaration, no.

25 We had gathered all of those

1 documents, but when it came time to produce the
2 documents, we determined that the Court's order
3 did not include cost documents, expenditure
4 documents, and we decided not to produce them.

5 Q Tell me how you distinguish between
6 cost expenditure documents and -- what's the
7 other category that you --

8 A Finance.

9 Q -- thought you were supposed to --
10 Okay. What was the distinction
11 there?

12 MS. ECCLES: And just to caution
13 you, you can explain the distinction, but don't
14 go into privileged areas of the document.

15 A Well, in -- in general terms,
16 finance to me means where did we get the money,
17 and expenditures mean what did we do with the
18 money, which I think is privileged, work
19 product.

20 (Plaintiff's Exhibit No. 31 was
21 marked for identification.)

22 Q Okay. I'm going to show you what's
23 been marked as Exhibit 31. This is a composite
24 exhibit with some of the selected documents
25 produced by the defendants in May of 2014.

1 And just focusing for the time being
2 on the first page, or really you can look at any
3 page, the Bates number and the
4 "Confidentiality" stamp were affixed in your
5 office, true?

6 A Yes.

7 Q The very first page is an e-mail
8 discussing an \$800 Western Union wire to Yineth
9 Baeza. The first page.

10 A Yes.

11 Q And you say that's a financing
12 document?

13 A No.

14 Q What -- what kind of document is
15 that?

16 A The Court's order as we interpreted
17 it required a production of finance documents
18 and then a subset of expenditure documents was
19 the fact of payment documents. So this Charris
20 payment is a fact of payment document.

21 Q Okay. Let's flip to -- a few pages
22 in until you get to this CS 010520, showing
23 payments to Lorraine Leete for services
24 rendered.

25 A Yes.

1 Q Those are for payments to witnesses?

2 A No.

3 Q That's an expenditure document,
4 right?

5 MS. ECCLES: Object to the form.

6 A It appears to be, yes.

7 Q Was that a mistake?

8 MS. ECCLES: Object to the form.

9 A I would have to say that, yes, we
10 provided a document that we shouldn't have.

11 Q All right. Flip to the last page in
12 the exhibit.

13 A (Witness complies.)

14 Q This is a First United Bank bank
15 statement Bates-labeled CS 011043.

16 A Uh-huh.

17 Q Shows a \$3,450 payment to
18 International Rights Advocates?

19 A Correct.

20 Q That's a payment to a witness?

21 MS. ECCLES: Object to the form.

22 A I -- this is from more than three
23 years ago. I think at that time we might have,
24 probably did handle sending funds down for the
25 Charris payment, and that might be -- it's

1 included. But we could have redacted that
2 consistent with the protocol that we are doing,
3 and we didn't.

4 Q All right. You did redact other
5 things, right?

6 A I did not redact anything, but --

7 Q Who did?

8 A -- additional documents were
9 redacted.

10 Q Who did redact it?

11 MS. ECCLES: Object to the form.

12 A In this particular instance? Well,
13 I think there are -- a couple of people did
14 redactions on our document production. If it
15 was done by machine, then we did that in -- in
16 my office. And if it was done by hand, it was
17 done in Brad Smith's office.

18 Q So the redactions where there's a
19 Sharpie-looking mark over certain information,
20 that was done in Brad Smith's office?

21 A Correct.

22 Q Look again at the last page of that
23 exhibit we were just discussing. It's the first
24 United Bank statement.

25 A Yes.

1 Q And that document itself is
2 redacted. There should be information next to
3 every one of those dates on this check register.

4 MS. ECCLES: Is that a question?

5 Q Shouldn't there?

6 MS. ECCLES: Object to the form.

7 Q I mean, this -- this is not how the
8 bank statement appears in its natural state, is
9 it?

10 A I would assume.

11 MS. ECCLES: Object to the form.

12 A I -- I -- I -- I don't -- I assume
13 so, yeah.

14 Q I mean, you'd expect like any other
15 bank statement, next to every one of these
16 dates, there would be some information as to
17 what the transaction was?

18 A Yeah, I --

19 MS. ECCLES: Object to the form.

20 Q Except for -- everything except for
21 this International Rights Advocates transaction
22 has been whited out.

23 MS. ECCLES: Object to the form.

24 A I don't know if it's been whited out
25 or how it was removed, but it has been redacted,

1 yes.

2 Q All right. And this was redacted by
3 machine I think you said earlier.

4 MS. ECCLES: Object to the form.

5 A I don't know about that one. When I
6 say "by machine," I mean like a black box. Like
7 on 10521, the bank statement where the account
8 number is blanked out, that -- that's what I
9 mean by the machine.

10 Q Okay. Well, then how was this bank
11 statement redacted with all the white on it?

12 MS. ECCLES: Object to the form.

13 A I don't know.

14 Q Whose office did that?

15 MS. ECCLES: Object to the form.

16 A I really don't know.

17 Q I mean, was Brad Smith going through
18 and making the determination as to what should
19 and should not be redacted as far as, say,
20 litigation expense for payments to witnesses as
21 opposed to some other International Rights
22 Advocates transfer?

23 MS. ECCLES: Object to the form.

24 And don't reveal communications or
25 anything you know from Brad Smith about that

1 question on privilege grounds, just for the
2 record.

3 A And my answer remains I just don't
4 know who did that.

5 Q All right. As managing partner of
6 the D.C. office of Conrad & Scherer, you do not
7 know how this document was redacted?

8 MS. ECCLES: Object to the form.
9 Asked and answered.

10 A I could tell you for the third time.
11 This came from Florida. So there are three
12 possibilities. Florida did it, we did it in
13 Washington, or Brad Smith did it. And I don't
14 know who did that particular redaction. I
15 didn't.

16 Q And you're not going to be able to
17 tell the Court who did that redaction or why?

18 MS. ECCLES: Object to the form.

19 A I'm going to be forced to give the
20 same answer I've just given you.

21 (Plaintiff's Exhibit No. 32 was
22 marked for identification.)

23 Q I'll show you Exhibit 32. This is
24 one of these documents that was produced in May
25 of 2014. So you can see it's an "Okay to pay"

1 e-mail where you're approving certain
2 expenditures, right?

3 MS. ECCLES: Object to the form.

4 A It says "Okay to pay" on the top of
5 the first message, yes.

6 Q And we've got what I'll just
7 describe as Sharpie blacking out on both pages
8 of this e-mail -- I mean, on all three pages of
9 this e-mail.

10 A Yes.

11 Q And it's your testimony that
12 everything that was not blacked out was a
13 payment to a witness?

14 MS. ECCLES: Object to the form.

15 A I didn't say that. Clearly, I may
16 have provided finance documents, and for
17 whatever reason, occasionally another form of a
18 payment.

19 Q How about Maria Gloria Rivas?
20 Who's she?

21 A I --

22 MS. ECCLES: Object to the form.

23 A You know, we've answered that
24 question in an interrogatory and --

25 Q Well, let me ask it this way: This

1 is not a payment to a witness, is it?

2 A No, it's not.

3 Q This is some other form of expense?

4 A It is, yes.

5 Q I'm going to show you another copy
6 of this e-mail as it was reproduced to us in
7 November of 2014, and we can see that that first
8 large Sharpie mark-out is a \$2700 payment to
9 Ivan Otero.

10 (Plaintiff's Exhibit No. 33 was
11 marked for identification.)

12 MS. ECCLES: Object to the form.

13 A Yes.

14 Q It says wire in the amount of
15 privileged to Ivan Otero -- Alfredo Otero
16 Mendoza, bill to Drummond Rail -- and you give
17 the case number, file number -- \$2700 is for
18 security.

19 Do you see that?

20 A Yes.

21 Q And was that security for Ivan
22 Otero, one of your Colombian counsel, or
23 security payments for witnesses?

24 MS. ECCLES: Object to the form.

25 A Well, as -- as I've -- as I've

1 testified, I -- I now know and -- and you do as
2 well because we've supplemented the record, that
3 that did include security assistance for the
4 families of Samario and El Tigre.

5 Q And your explanation for redacting
6 this is you did not remember that at the time?

7 MS. ECCLES: Object to the form.

8 A I -- I -- I didn't redact it. And
9 I -- I don't think I can say what instructions I
10 discussed with my counsel. So --

11 MS. ECCLES: That's correct. I'll
12 instruct you not to give that testimony.

13 Q So you refuse to give any
14 explanation for why this black out right here
15 (indicating) was redacted?

16 MS. ECCLES: I've instructed him not
17 to discuss communications with counsel about
18 that.

19 A But I have said that I know that the
20 purpose of these redactions was to eliminate
21 expenditure entries because we determined they
22 were not responsive to the Court's order.

23 Q How would Brad Smith have any idea
24 which one of these would be expenditure entries
25 and otherwise --

1 MS. ECCLES: Object to the form.

2 Q -- without information from you?

3 MS. ECCLES: Well, object to the
4 form.

5 If there's some way you can answer
6 that without revealing the content of your
7 conversations with Brad Smith, go ahead.
8 Otherwise, I instruct you not to answer.

9 A There -- there's not. It involved a
10 conversation between us.

11 Q Well, whose decision was it to
12 redact every single reference to payments to
13 Ivan Otero from these documents?

14 MS. ECCLES: You can't answer that.
15 I instruct him not to answer.

16 A I can --

17 MR. DAVIS: Note that on the record.
18 You're telling him not to answer
19 that question?

20 MS. ECCLES: It is on the record. I
21 just objected to the question.

22 MR. DAVIS: For the purposes of this
23 hearing, you're telling him not to answer that
24 question?

25 MS. ECCLES: That's what I just

1 said.

2 A I -- I did --

3 MR. DAVIS: I want to -- I want to
4 put this on the record. I believe we're going
5 to have to redepose Mr. Collingsworth based on
6 your instructions to the witness because that
7 goes to the very heart of the issues that we're
8 here. So we're going to re- -- in my opinion, I
9 think we'll have to redepose him.

10 MR. WELLS: I think Judge Proctor is
11 really going to want to know why this was done
12 the way it was done, who did it, whose decision
13 it was. So we would ask that you reconsider
14 that.

15 MS. ECCLES: Well, Mr. Collingsworth
16 is here to testify about his personal,
17 non-privileged information. He can -- I have
18 not instructed him not to provide that. That's
19 clear.

20 MR. DAVIS: I disagree. I think
21 you're instructing him not to answer --

22 Q Whose decision --

23 MR. DAVIS: -- as to the most
24 material issues here on -- before the Court.

25 Q I'll ask it again. Whose decision

1 was it to redact and withhold every document
2 reflecting these \$2700 payments to Ivan Otero?

3 MS. ECCLES: You -- I'm instructing
4 you not to reveal any privileged information in
5 answering that question. Your own personal,
6 non-privileged information only, please.

7 MR. DAVIS: Please note that.

8 A Can I -- can I --

9 THE WITNESS: Tony, do you mind?

10 A I -- I have said what I think I can
11 say outside of privilege, which is that the
12 protocol was to redact all cost expenditures.

13 Now, you've shown me two exceptions
14 to that, which were errors. But that was the
15 protocol that we were observing.

16 Q Well, I mean, we could spend the
17 rest of the day showing you additional examples
18 just like that, and it seemed to be the one
19 consistent thing throughout those documents is
20 Ivan Otero payments are consistently redacted.

21 MS. ECCLES: Hang on.

22 Is that a question?

23 Q Do you dispute that?

24 MS. ECCLES: Object to the form.

25 A I do not dispute that among the

1 payment expenditure documents that were
2 redacted -- and there were plenty of other
3 examples -- were to Ivan Otero.

4 Q Let me ask you this: You say after
5 the sanctions hearing, y'all made a decision
6 that, "You know what? The Court's order does
7 not require us to produce any cost documents
8 unless they relate to witness payments."

9 MS. ECCLES: Object to the form.

10 A That -- that's what I said, yes.

11 Q What was the position before that?
12 Before you changed your decision on what
13 documents to produce, what was the original
14 intention --

15 MS. ECCLES: Object to the form.

16 Q -- in producing documents?

17 A As my declaration, Exhibit 30,
18 reflects in the very final paragraph that you
19 read to me, the decision initially was we
20 were -- we were about to produce all expenditure
21 and payment documents.

22 Q Okay. Let's look at 2A.

23 MS. ECCLES: Did we ever mark this
24 document (indicating)?

25 MR. PRESLEY: Yes.

1 THE WITNESS: 33.

2 MS. ECCLES: Thank you.

3 (Plaintiff's Exhibit No. 34 was
4 marked for identification.)

5 Q And I'm going to show you what's
6 been marked as Exhibit 34 to your deposition,
7 which is another one of these bank statements as
8 it was originally produced in May of 2014. And
9 you see that this document has both the white
10 out redaction, however you want to describe it,
11 as well as the black Sharpie redaction?

12 A Yes.

13 Q So this document was processed and
14 redacted but still left visible these lines
15 where there's -- one, there's -- it's revealed
16 Claudia Balcerro, but the other ones have been
17 gone over with Sharpie.

18 MS. ECCLES: Object to the form.

19 Q And the -- the first round of
20 redaction left those Sharpie lines in there,
21 right?

22 MS. ECCLES: Object to the form.

23 A I don't know if it was the first
24 one, but you've described accurately the way the
25 document looks.

1 Q I mean, there -- there were two
2 rounds of redactions on this document, correct?

3 MS. ECCLES: Object to the form.

4 A I -- I assume so, but again, I was
5 not a redactor. So I don't know for sure.

6 Q I mean, one round would be -- and it
7 looks like it was done with a computer -- all
8 this stuff is whited out. And if you're
9 redacting with a computer, you don't need a
10 Sharpie to redact out these other lines.

11 A Okay. You're using your deductive
12 reasoning, but I don't have personal knowledge
13 of it. So I can't help you any more.

14 Q You didn't see these documents
15 before they were Sharpied?

16 MS. ECCLES: Object to the form.

17 A I don't recall seeing them before
18 they were Sharpied, no.

19 MR. WELLS: All right. Give me the
20 next one.

21 (Plaintiff's Exhibit No. 35 was
22 marked for identification.)

23 Q This is Exhibit 35, which is that
24 same document except with some of the Sharpie
25 redactions removed revealing a \$2700 payment to

1 Ivan Otero.

2 Now, whose decision was it to redact
3 that with a Sharpie --

4 MS. ECCLES: Object --

5 Q -- from this bank statement?

6 MS. ECCLES: Object to the form.

7 And caution you not to reveal --
8 sorry. Reveal privileged information.

9 A That's exactly the same back and
10 forth that we've just had, that the protocol was
11 to remove all cost expenditures. And Ivan Otero
12 was clearly considered a cost at this round of
13 the redactions.

14 Q And who made that determination?

15 MS. ECCLES: Objection.

16 I'll caution you it's your own
17 knowledge only. No conversations with counsel.

18 A I'm -- I -- I don't think I can
19 answer that without revealing a discussion I had
20 with my counsel.

21 MS. ECCLES: In that case, I
22 instruct you not to answer.

23 A I -- I -- I can say that I agree --
24 agreed that this was a cost at this time.

25 MR. DAVIS: Just to be clear on

1 that, are you refusing to answer that on --
2 based on attorney-client privilege?

3 MS. ECCLES: I just instructed him
4 not to answer based on attorney-client
5 privilege.

6 MR. DAVIS: Okay.

7 MS. ECCLES: If that's the question
8 you're referring to.

9 THE WITNESS: I -- I believe I
10 answered the question as best I could without
11 revealing attorney-client communications.

12 (Plaintiff's Exhibit No. 36 was
13 marked for identification.)

14 Q I'll show you Exhibit 36. It's
15 another bank statement produced as it was
16 produced in May of 2014. This has got both
17 the what appears to be computer-generated white
18 redaction and the Sharpie redaction. What is
19 not redacted either by computer or Sharpie are
20 two transactions of wires to International
21 Rights Advocates.

22 Do you see that?

23 A I do.

24 Q And it's your testimony both of
25 those were witness payments?

1 A No, I didn't --

2 MS. ECCLES: Object to the form.

3 A -- say that.

4 Q Okay. What are those, and why were
5 they not redacted --

6 MS. ECCLES: Object --

7 Q -- if you were just redacting all
8 cost information?

9 MS. ECCLES: Object to the form.

10 A Again, I didn't redact anything
11 myself, but I -- I believe you had a prior
12 example where International Rights Advocates was
13 left in. I -- I -- I -- I -- I surmised then
14 that at least one of these might have included a
15 Charris component, but I -- I don't recall
16 exactly. There might be another reason why we
17 didn't take out International Rights Advocates,
18 but I don't recall it as I sit here today. It
19 could have -- that's all I can say.

20 Q Let me ask you this: How long after
21 you submitted a sworn declaration to Judge
22 Proctor testifying as to your understanding of
23 the scope of his October 2013 order did you
24 change that interpretation to be completely
25 inconsistent with what your declaration said?

1 MS. ECCLES: Object to the form.

2 A I don't consider your -- your
3 characterization of my declaration accurate. I
4 will say that the -- well, there somewhere in
5 the records is going to be a date of production
6 of -- of these documents. But it was shortly
7 after the hearing that we determined that we --
8 that costs or expenditure documents were not
9 responsive.

10 Q You didn't feel any need to notify
11 the Court that your declaration was inaccurate
12 in that regard as to what you understood his
13 order to mean?

14 MS. ECCLES: Object to the form.

15 A I -- I didn't -- I did not consider
16 my declaration to be a -- a disposition of my
17 interpretation of the scope of the order. I was
18 describing what we were in the process of doing.

19 Q Well, we can go back and look at it,
20 but one of the things your declaration says is
21 you're prepared in response to that order to
22 produce all payments to Ivan Otero.

23 A Yes --

24 MS. ECCLES: Object to the form.

25 A -- that's what it says.

1 Q And sometime very shortly after
2 submitting that declaration to the Court, you
3 say you changed that interpretation and now
4 thought the order did not require any payments
5 to Ivan Otero.

6 MS. ECCLES: Object to the form.

7 A I did not represent in any way my
8 interpretation of Ivan Otero expenditure
9 documents. I instead testified that I
10 determined that we were not going to produce any
11 expenditure documents.

12 Q And you didn't feel the need to tell
13 the Court, "My declaration on that point is
14 wrong. We are not going to be producing all of
15 the payments to Iran Otero, and therefore, they
16 will not be showing Drummond exactly what he was
17 paid for?"

18 MS. ECCLES: Object to the form.

19 A Paragraph 16 of my declaration,
20 Exhibit 30, speaks for itself. I did not
21 consider that a legal opinion of the scope of
22 the Court's order.

23 Q All right. Back to this bank
24 statement, which is Exhibit 36, who gave the
25 direction to Sharpie out these line items?

1 MS. ECCLES: Object to the form.

2 And I'll instruct you not to reveal
3 any privileged information.

4 A The protocol, as I've testified
5 previously, was to redact expenditure documents.

6 Q Right.

7 But you're telling me that Brad
8 Smith's office did the redact- -- the Sharpie
9 redaction, correct?

10 MS. ECCLES: Object to the form.

11 You can answer that question.

12 A I've answered it several times.

13 Yes.

14 Q And you're going to tell Judge
15 Proctor that Brad Smith had the knowledge to
16 look at a bank statement and be able to decipher
17 for himself what was an expenditure document and
18 what was maybe a \$2,000 payment to International
19 Rights Advocates that may have included
20 something for Charris?

21 MS. ECCLES: Object to the form.

22 And you can answer that question,
23 but we're getting very close to privileged
24 territory. So I'll caution you.

25 A I've said nothing remotely close to

1 that. So no, I don't intend to say that to
2 Judge Proctor.

3 Q Okay. So who gave Brad Smith the
4 information, or whoever was holding the Sharpie
5 in his office, who provided them that
6 information of these line items need to be
7 blacked out?

8 MS. ECCLES: I'm going to make the
9 same caution here. I -- you can -- you can
10 answer as to a name, but -- but don't reveal any
11 privileged conversations about how these
12 redactions would be done.

13 A The protocol was to remove all
14 expenditures that -- that had previously been
15 unredacted. And any specific questions or
16 decisions that were made in -- in that process
17 were done through a communication between me and
18 my counsel. And so I cannot discuss that,
19 according to my new counsel.

20 Q And the scope of that communication
21 you're -- let me just ask you. What did you
22 tell Brad Smith about, "Hey, I need you to get a
23 Sharpie and redact everything related to Ivan
24 Otero"?

25 MS. ECCLES: Don't answer --

1 Q What was the subject of that
2 communication? What were the words that were
3 used, to the best that you can remember?

4 MS. ECCLES: Don't answer that
5 question.

6 MR. WELLS: Based on?

7 MS. ECCLES: Privilege.

8 Q Now, there were also documents that
9 were not just redacted, they were completely
10 withheld from that May production. Do you
11 understand that?

12 MS. ECCLES: Object to the form.

13 A Not in the abstract, no. I -- I
14 would be happy to look at a document that you
15 maintain was withheld improperly or otherwise.

16 Q Do you recall producing a Bates
17 range of documents that just looking at the
18 Bates range would have reflected 3,000 pages,
19 but the actual page count was far below that?

20 MS. ECCLES: Object to the form.

21 A Oh, yes, I -- I do recall that.

22 Q So there were documents that were
23 already processed, already reviewed, already
24 pulled for production, already Bates labeled,
25 that thereafter there was a decision made we're

1 not going to produce those documents?

2 A That's correct.

3 Q And those documents show the \$2700
4 payments to Ivan Otero?

5 MS. ECCLES: Object to the form.

6 A They might include those -- some of
7 those documents, but they would also include
8 other expenditure documents.

9 THE VIDEOGRAPHER: Three minutes on
10 this tape.

11 (Plaintiff's Exhibit No. 37 was
12 marked for identification.)

13 Q I'll show you what's been marked as
14 Plaintiff's Exhibit 37. That's an example of
15 one of the documents that was completely
16 withheld from the May 2014 production. And it
17 is a foreign outgoing wire transfer request in
18 the amount of \$2700 to Ivan Otero, right?

19 A Yes.

20 Q And if we look down at the bottom,
21 it's got the CS Bates number on there that your
22 office applied, correct?

23 A That's correct.

24 MS. ECCLES: Object to the form.

25 It's got two different Bates numbers.

1 MR. WELLS: We're going to get
2 there.

3 MS. ECCLES: Okay.

4 Q It's got the -- centered in the
5 document "Confidential Pursuant to Protective
6 Order" that was also affixed by your -- your
7 office?

8 MS. ECCLES: Object to the form.

9 A I -- I assume so. I don't know if
10 that was subsequently put on by my new counsel,
11 but it's there.

12 Q Well, look at the last exhibit.
13 This is one that was actually produced before
14 your new counsel came in, and it's got that
15 exact same font style, exact centering, exact
16 wording.

17 A And -- and --

18 MS. ECCLES: Is that a question?

19 Q I'm asking you. Do you have any
20 reason to dispute that that was affixed by your
21 office?

22 MS. ECCLES: Object to the form.

23 A I don't -- I don't have a reason to
24 dispute. I simply am being clear that I
25 personally don't know that that's the case, but

1 I -- it seems likely that it is.

2 Q All right. Now, at the bottom of
3 this wire transfer request, in the very bottom
4 right-hand corner is the new Bates number, a
5 CS_TC Bates number, affixed by your new counsel,
6 I assume, at Steptoe & Johnson.

7 MS. ECCLES: Object to the form.

8 Q Is that right?

9 A I don't know who put that on there,
10 but --

11 Q It wasn't your office, was it?

12 A No, it was not.

13 Q And underneath it, they put their
14 own "Confidential" stamp on there. That also
15 wasn't your office, right? Just the single word
16 "Confidential"?

17 MS. ECCLES: Object to the form.

18 A My office did not put that on there.

19 Q Okay.

20 MR. WELLS: Yeah, let's go ahead and
21 break. We're about to run out of tape.

22 MR. NIEWOEHNER: You just want to
23 switch the tape over? You want to grab lunch?

24 THE VIDEOGRAPHER: The time is
25 1:22 p.m. This concludes tape number four. We

1 are off the record.

2 (A break was taken.)

3 THE VIDEOGRAPHER: The time is
4 1:56 p.m. This is the beginning of tape number
5 five. We are back on the record.

6 BY MR. WELLS:

7 Q So the reasoning behind redacting
8 out the Ivan Otero payments was because y'all
9 reconsidered how you interpreted the Court's
10 order and determined that it did not -- or that
11 you could still claim privilege over those
12 payments; is that right?

13 MS. ECCLES: Object to the form.

14 A As I've testified several times, the
15 rationale was that we could claim work product
16 on expenditure documents --

17 Q Okay. So --

18 A -- including -- that would include
19 Ivan Otero.

20 Q So the Court's order was entered in
21 October of 2013.

22 Do you recall that?

23 A Yes.

24 Q Between October of 2013 and April of
25 2014, y'all are interpreting that order to

1 require the disclosure of all cost documents.

2 MS. ECCLES: Object to the form.

3 Is that a question?

4 Q Is that right?

5 A I really --

6 MS. ECCLES: Object to the form.

7 A I really don't know. I imagine we
8 had a -- I really don't know.

9 Q And we just looked at your
10 declaration from April 14th of 2014, where you
11 say in response to the order, you're prepared to
12 produce all of the payments to Ivan Otero.

13 A So that -- yes. So that means that
14 in April that was how I was interpreting the
15 order.

16 Q And you had interpreted it the same
17 way all the way back to October, or was there
18 some waffling in between?

19 A I've --

20 MS. ECCLES: Object to the form.

21 A I've said I don't recall. I assume
22 I -- I did consider it a number of times.

23 Q Did you have -- well, when were
24 these financing documents that were produced and
25 redacted twice actually gathered?

1 MS. ECCLES: Object to the form.

2 A I don't know.

3 Q I mean, did y'all start looking for
4 them in October of 2013 when they were ordered
5 to be produced?

6 MS. ECCLES: Object to the form.

7 A I don't have specific recall of when
8 the process started.

9 Q So as managing partner of the D.C.
10 firm -- D.C. office of the firm, you have no
11 knowledge of when y'all started trying to comply
12 with the Court's order as it respects -- as it
13 relates to financing documents?

14 MS. ECCLES: Object to the form.

15 A I didn't say I didn't have
16 knowledge. I -- I don't recall.

17 Q Okay. Then what's your knowledge?
18 I don't understand that response.

19 A I must have had knowledge of what I
20 did when I did it. I don't recall what I did
21 sitting here today.

22 Q Okay. In any event, by the time of
23 April 2014 when you submitted that declaration,
24 you had finished gathering the documents and
25 finished redacting the documents, finished Bates

1 labeling the documents, and they were ready to
2 be produced. And as of April 2014, they were
3 going to include the Ivan Otero payments?

4 MS. ECCLES: Object --

5 Q True?

6 MS. ECCLES: Object to the form.

7 A They were going to include
8 expenditure documents, including the Ivan Otero
9 documents.

10 Q But then sometime in the next 30 or
11 so days, that interpretation changed, and y'all
12 decided you were going to redact all of the Ivan
13 Otero documents?

14 MS. ECCLES: Object to the form.

15 A My -- my recall is that we first --
16 that I -- my recall is that we first determined
17 that we were not going to produce anything
18 because Drummond had not in any way complied
19 with our requests and the Court had not ruled on
20 our motion to compel.

21 And then we looked at the order -- I
22 looked at the order and determined that we were
23 ordered to produce the financing documents for
24 sure and that we were going to go ahead and
25 produce those.

1 I recall that there was a meeting or
2 a gathering at the Special -- not the -- not the
3 Special Master. The magistrate's office where
4 we first said we were not going to produce, and
5 we discussed the scope of the order and other
6 things of that sort, and that was all part of a
7 process that Drummond was aware of. It was not
8 a sudden change of decision.

9 MR. WELLS: What was my question?

10 THE COURT REPORTER: But sometime in
11 the next 30 or so days, that interpretation
12 changed, and y'all decided you were going -- you
13 were going to redact all of the Ivan Otero
14 documents?

15 Q And you say that -- that
16 interpretation change was in the course of a
17 meeting with the magistrate?

18 A That's not what I said.

19 MS. ECCLES: Object to the form.

20 A I believe my testimony is clear.

21 Q Okay. When was it?

22 A I have just testified that it was an
23 evolving process. There was no single date that
24 it occurred. And I believe that there was an
25 interim step where we had decided to not produce

1 any documents because Drummond had refused to
2 comply with our requests, and then we ultimately
3 determined to produce the finance documents.

4 Q Well, I thought the reason you
5 didn't produce the Ivan Otero documents was
6 because they were privileged, not because you
7 were just getting back at Drummond for not
8 producing documents.

9 MS. ECCLES: Object to the form.

10 Q Which is it?

11 MS. ECCLES: Object to the form.

12 A I did not say we withheld the
13 expenditure documents because we were getting
14 back at Drummond.

15 Q All right. You said you were just
16 not going to produce any documents, not even
17 financing documents. You weren't going to
18 produce financing documents, expenditure
19 documents, however you want to characterize it.
20 You weren't going to produce any of them because
21 Drummond had not produced similar documents to
22 you.

23 MS. ECCLES: Object to the form.

24 Q That was the position, right?

25 A You're -- you're --

1 MS. ECCLES: Object to the form.

2 A You're misstating what I -- what I
3 said.

4 Q Well, tell me what the true facts
5 are.

6 A I -- I have. For the third time,
7 regardless of whether we had a privilege -- a
8 work product privilege for the expenditure
9 documents, we had initially determined we
10 weren't going to produce any documents,
11 including the finance documents. And I believe
12 the magistrate encouraged us to rethink that
13 position, and we ultimately did.

14 Q When did the redaction take place?

15 MS. ECCLES: Object to the form.

16 A I don't recall.

17 Q I imagine it was after your April
18 14th, 2014 declaration where you said you were
19 going to be producing the Ivan Otero payment
20 documents; is that right?

21 MS. ECCLES: Object to the form.

22 A It was after the hearing that we --
23 that -- that others redacted any -- made any
24 redactions, yes.

25 MR. WELLS: Give me 47. 47.

1 Q Now, that declaration we've been
2 discussing was attached to a brief in opposition
3 to Drummond's motion for sanctions. Do you
4 understand that?

5 A I believe it was filed concurrently
6 with it.

7 Q And you wrote that brief, did you
8 not?

9 MS. ECCLES: Object to the form.

10 A I -- I would let -- do you have
11 something to show me?

12 (Plaintiff's Exhibit No. 38 was
13 marked for identification.)

14 Q I'm showing you Exhibit 38.

15 MR. PRESLEY: Yes.

16 A You're asking me did I write this
17 brief?

18 Q Yes.

19 A I had input into this brief.

20 Q Did you draft the large majority, if
21 not all of it?

22 A I wouldn't say that's true, no.

23 Q So if the Court were to do an en
24 camera inspection of your e-mails with your
25 counsel, he would not find a completed brief

1 submitted for Mr. Smith to just affix his
2 signature to?

3 MS. ECCLES: I think that's getting
4 into the realm of privilege.

5 So I'll instruct you not to answer.

6 Q On page 2 of this brief, the last
7 sentence of the first paragraph at the top of
8 the page says, "Drummond's baseless motion
9 should be denied in its entirety because
10 Drummond's latest attacks are false and
11 defendants have now completed their document
12 search and supplemental log in full compliance
13 with the Court's discovery order."

14 Did I read that correctly?

15 A Yes.

16 Q So as of that time, according to
17 your declaration, y'all had completed your
18 search and processing of documents, and at that
19 time, those documents included the Ivan Otero
20 payment documents?

21 MS. ECCLES: Object to the --

22 Q True?

23 MS. ECCLES: Object to the form.

24 A As I've said now four, five times,
25 they included expenditure documents which

1 included Ivan Otero documents.

2 Q All right. And it also says,
3 "Defendants have prepared a supplemental log in
4 full compliance with the Court's discovery
5 order." Right?

6 A It does say that.

7 Q And you recall that part of that
8 order was Judge Proctor giving you a verbal
9 instruction, if there is a molecule out there
10 that's privileged responsive to any of the
11 requests, it better be on a privilege log. Do
12 you recall words to that effect?

13 MS. ECCLES: Object to the form.

14 A I believe Judge Proctor directed
15 both parties to comply with his order and to
16 supplement or provide -- since Drummond had not
17 yet, I don't think, provided any log, to provide
18 logs, yes. My -- that's -- that's it.

19 Q I mean, you understood Judge
20 Proctor's order was anything that's responsive
21 that you claim as privileged better be on a
22 privilege log. You understood that he ordered
23 that?

24 MS. ECCLES: Object to the form.

25 A Well, now I just have a -- a concern

1 or an issue about the time. He issued
2 subsequent orders as well as, you know, that we
3 believe we did fully comply with.

4 So are you talking about his first
5 order on this? Yes. And his second order?
6 Yes.

7 Q All right. Y'all produced a
8 supplemental privilege log in July of 2014, a
9 couple of months after you had produced the
10 redacted financing documents that concealed the
11 payments to Ivan Otero, and nowhere on that July
12 privilege log were there any entries about
13 redacting payments to Ivan Otero.

14 MS. ECCLES: Object to the form.

15 Q Do you understand that?

16 MS. ECCLES: Object to the form.

17 A I -- I don't have an understanding
18 of that. I don't recall. There -- there were a
19 lot of steps in the process up till the end when
20 we submitted our final privilege log in probably
21 December. And there were interim steps. I
22 don't recall the rationales behind the various
23 of those steps.

24 Q Well, if it is indeed true that
25 there were no entries on your privilege log

1 until December of 2014, more than a year after
2 Judge Proctor had ordered everything to be put
3 on a privilege log, do you have any explanation
4 as to why that would be?

5 MS. ECCLES: Object to the form.

6 A Well, I'll begin with the -- the
7 certainty that the documents that we did
8 ultimately assert privilege over were on our
9 final privilege log, which we submitted in
10 compliance with the Court's second order.

11 I don't have recall of the interim
12 steps that got us there, but we got there.

13 Q And you don't have any explanation
14 as to why before the Ivan Otero payments, which
15 we now know were going to El Tigre and Samario,
16 before those were disclosed why they never
17 appeared on a privilege log?

18 MS. ECCLES: Object to the form.

19 A I think that -- again, without
20 having -- a lot -- there were a lot of moving
21 parts. I think that there was a -- a header on
22 that interim privilege log that said we aren't
23 logging like certain categories of documents
24 that would have included the expenditure
25 documents because we did not consider them

1 responsive.

2 Now, that's -- that's my -- my best
3 recall as I sit here, but there -- there was a
4 reason. I -- I just -- in the interim steps, I
5 don't have specific recall today.

6 Q So now they're not responsive, not
7 privileged?

8 MS. ECCLES: Object to the form.

9 A Well, now I can just say that I gave
10 you my best recollection, and if you have that
11 privilege log and you can show me that header, I
12 think I could help explain what we were doing.

13 Q Well, let's do it this way. You do
14 agree that the payments to Otero are responsive
15 to Drummond's first and second requests, don't
16 you?

17 MS. ECCLES: Object to the form.

18 A Now -- now -- today we are clear
19 that they were, and that's why we supplemented
20 our production and our privilege log and our
21 interrogatories and we gave all that stuff in a
22 timely fashion.

23 Q So the only reason they could be
24 withheld if they're responsive would be
25 privilege? I think you've told me that's why

1 y'all withheld them. You redacted them on work
2 product grounds.

3 MS. ECCLES: Object to the form.

4 A Again, I -- I've told you that I
5 think we -- we notified Drummond of what we were
6 doing with some kind of header on that privilege
7 log, and I don't recall what it said.

8 Q So as managing partner of Conrad &
9 Scherer's D.C. office, you cannot tell us,
10 sitting here today, why the Ivan Otero payments
11 were not logged at any time prior to December of
12 2014?

13 MS. ECCLES: Object to the form.

14 A I've repeated that I think that
15 privilege log has some explanation of that, and
16 as I sit here today, I don't have specific
17 recall.

18 Q Well, you knew at some point that
19 those payments were not privileged based on the
20 Court's prior order. I think you said in either
21 June or July of 2014, you realized that you had
22 been mistaken and Ivan Otero was using that
23 \$2700 a month for security payments to El Tigre
24 and Samario.

25 MS. ECCLES: Object to the form.

1 Q Isn't that what you told me earlier?

2 A I did tell you earlier, and I -- I
3 am still trying to, as I said earlier, identify
4 in my mind exactly when that -- I had that
5 realization. And I would have to say that it
6 could have been August even or maybe even early
7 September, but at some point, I did have that
8 realization and then set in motion a process
9 that allowed us to supplement our -- our
10 interrogatory responses, our document requests,
11 and that we did it prior to the deadline set by
12 the Court for both parties.

13 (Plaintiff's Exhibit No. 39 was
14 marked for identification.)

15 Q I'll show you what's been marked as
16 Exhibit 39. This is one of the documents that
17 was completely withheld from the May 2014
18 production.

19 You'll see at the bottom it's got
20 the "Confidential Pursuant To Privilege" -- or
21 "Protective Order" stamp affixed by your office,
22 as well as the "CS" Bates label affixed by your
23 office, right?

24 MS. ECCLES: Object to the form.

25 A Yes.

1 Q And this is one of those "Okay to
2 pay" e-mails where you're approving expenditures
3 for the case?

4 A Yes.

5 Q And this e-mail of April 20th, 2011
6 is Victoria Ryan telling Catherine Salomon --
7 who was the controller at Conrad & Scherer at
8 the time?

9 MS. ECCLES: Object to the form.

10 Q Is that right?

11 A I don't know what her title is, but
12 she was a person who was in charge of -- of --
13 or one of the people who was involved in -- in
14 handling expenditures.

15 Q I mean, she's not a lawyer, is she?

16 A No, she's not a lawyer.

17 Q She's --

18 A Well, she could be. I don't know
19 that.

20 Q Is she still there?

21 A Yes, yes.

22 Q Ms. Ryan is telling Ms. Salomon,
23 "Cathy, we need to set up a regular monthly wire
24 in the amount of \$2700 to be sent to Ivan Otero
25 for security. Please bill to the Drummond rail

1 case," and you give the matter number.

2 "Please send the next wire at the
3 earliest possible time. Since this will be a
4 recurring monthly payment until the depositions
5 in the case are over, going forward, can we put
6 this on the same schedule as wires that to
7 go" -- and there's two redactions, and then it
8 says, "Charris and Halcon."

9 Did I read that correctly?

10 A Yes.

11 Q And this is a document you reviewed
12 prior to it being withheld in May of 2014,
13 right?

14 MS. ECCLES: Object to the form.

15 A Oh, I -- I -- as I said, I don't
16 know that. I know that I reviewed the documents
17 post-redaction. In this particular instance, I
18 don't know that I reviewed them pre-redaction.

19 Q Well, who made the decision to pull
20 this document from the production?

21 MS. ECCLES: Object to the form.

22 A Somebody who was removing
23 expenditure documents.

24 Q Well, this document talks about
25 wires that are going to Charris and Halcon,

1 right?

2 A Yes.

3 Q How can that possibly be withheld
4 based on the state of the Court's order?

5 MS. ECCLES: Object to the form.

6 Q You said you already understood that
7 the -- payments to witnesses and you understood
8 that the Charris and Halcon were payments to
9 witnesses. You understood that needed to be
10 produced, right?

11 MS. ECCLES: Object to the form.

12 A If you're asking me to give my
13 interpretation today, I would say that
14 mentioning Charris and Halcon in this fashion is
15 not a fact of payment. It is simply describing
16 the method. And that was probably the
17 rationale. Although this happened four years
18 ago, that's my best guess of what happened.

19 Q Well, the document was withheld from
20 us about a year ago.

21 A I'm -- you could have been -- that
22 doesn't change the fact that I'm sitting here
23 today four years later trying to tell you what
24 my thought process was or someone's --

25 Q I'm trying to figure out what the

1 thought process was in May of 2014 when this
2 e-mail that references payments to the two of
3 the witnesses we know about -- it also talks
4 about to Otero that we now know were going to
5 two other witnesses. How this thing could have
6 been withheld?

7 MS. ECCLES: Object to the form.

8 A And I have stated that the protocol
9 to remove expenditure documents would have
10 included Otero documents at this time and that
11 the Charris and Halcon reference is not a fact
12 of payment document, and therefore, it was not
13 responsive.

14 Q So you think the withholding of this
15 document was totally legitimate?

16 MS. ECCLES: Object to the form.

17 A Absolutely not. With the knowledge
18 that we all have here today because we
19 supplemented our -- our production and I'm now
20 clear on what the \$2700 was in terms of
21 including security for the family members of El
22 Tigre and Samario, it needed to be produced, and
23 ultimately it was produced in a timely fashion
24 under the Court's last order.

25 Q I'll show you Exhibit 39 --

1 A That last one was 39.

2 (Plaintiff's Exhibit No. 40 was
3 marked for identification.)

4 Q I'm sorry. Let me show you Exhibit
5 40, which is a handwritten document signed by
6 both you and Ivan Otero, correct?

7 A Yes.

8 Q It says, "I, Ivan Otero, received
9 from Terry Collingsworth \$5,400 for setting up
10 security payments for families of Samario, El
11 Tigre and myself. After this initial payment,
12 we agree that \$2,700 per month will be paid for
13 ongoing security for these families." And it's
14 dated May 19th, 2011.

15 Did I read that correctly?

16 A Yes.

17 Q Nowhere on this document does it say
18 this \$2,700 payment we agree is just at Ivan
19 Otero's discretion. Does it say that?

20 A It says what you just correctly
21 ready.

22 Q Now, obviously you knew at this
23 time, this \$2,700 was going in part to El Tigre
24 and Samario's families, right?

25 A I --

1 MS. ECCLES: Object to the form.

2 A Yeah, I had to have. I mean, I did
3 sign this.

4 Q And after this point, \$2,700 started
5 being paid every month to Ivan Otero, correct?

6 MS. ECCLES: Object to the form.

7 A That's correct.

8 Q At what point after this agreement
9 was signed by both you and Mr. Otero did you
10 forget that these \$2,700 monthly payments that
11 you were approving every month were going to El
12 Tigre and Samario?

13 A And as I -- I've previously
14 testified, I -- I don't know. Somewhere in this
15 process -- we have a lot going on. I am not
16 checking in with Mr. Otero. I am not involved
17 in this transaction or this process once it
18 starts, and I just at some point concluded
19 instead that this was simply for Mr. Otero. And
20 that was a -- that was a mistake. It was a
21 terrible mistake, actually, because it created a
22 lot of problems that didn't need to be created
23 because -- I have no problem saying that any
24 witness, as I promised them all, if they were
25 threatened with death or their family members

1 were, that we were going to protect them.

2 So I can't -- I don't know why I
3 forgot this or recharacterized it in my brain,
4 but I did.

5 Q Had you forgotten it at the time the
6 Charris and Halcon payments were produced in
7 August of 2012 in Balcerro?

8 MS. ECCLES: Object to the form.

9 Q Is that why these payments also were
10 not produced?

11 MS. ECCLES: Object to the form.

12 A We had other objections that were
13 standing at that time that we're disputing and
14 making a distinction, I think, between direct to
15 the witness versus family members. There --
16 there was a lot going on. But by the time I
17 circled back and was thinking about the Otero
18 payments, I had erroneously recalled that they
19 were simply for his own security.

20 Q Okay. So is it your testimony that
21 at the time the Charris and Halcon payments were
22 produced in Balcerro, you still recalled what
23 these Ivan Otero payments were for, but that you
24 were making a conscious distinction between the
25 method of payment that one needed to be produced

1 and the other did not?

2 A No.

3 MS. ECCLES: Object to the form.

4 THE WITNESS: Oh, sorry.

5 A I'm saying I don't know one way or
6 the other when this got confused in my
7 recollection, but I do know that we made that
8 distinction with respect to Duarte and Gelvez
9 because we were handling those. I was aware of
10 them, but I still did not disclose them in
11 response to an interrogatory -- or a request for
12 production regarding payments to witnesses.

13 Q But they were ultimately produced.

14 A They were ultimately produced in
15 January of 2013, I believe, after a lengthy meet
16 and confer process in which our objections were
17 argued by us, and we ultimately agreed to remove
18 certain objections and produce those documents.

19 Q And the question is why were the
20 Charris and Halcon payments produced and the El
21 Tigre and Samario payments not? Was it because
22 you forgot about the El Tigre and Samario
23 payments, or you were making some sort of
24 distinction between the payments?

25 MS. ECCLES: Object to the form.

1 A It was not because I was making a
2 distinction in terms of El Tigre and Samario.
3 I -- what I've just said is I was making a
4 distinction from Duarte, Gelvez and Halcon.

5 Halcon was the only witness who
6 later became a non-witness who we've made
7 payments directly to. And I -- as I sit here, I
8 don't recall that we disclosed Charris before we
9 disclosed Duarte and Gelvez, but I know that we
10 did disclose Charris.

11 Q Okay. And the reason for disclosing
12 Charris but not El Tigre and Samario, is it
13 because you forgot about El Tigre and Samario or
14 you were making some sort of distinction between
15 the method of paying those two witnesses or
16 their families?

17 MS. ECCLES: Object to the form.

18 A I was not making a distinction for
19 Charris -- sorry. For El Tigre and Samario
20 regarding the method of the payment. By the
21 time I disclosed payments to family members for
22 some of the witnesses, I did not have specific
23 knowledge of this arrangement.

24 Q Okay. And you'll agree there is no
25 real distinction in the method of paying

1 Charris' family and the families of El Tigre and
2 Samario? Both go through your local counsel in
3 Colombia, correct?

4 MS. ECCLES: Object to the form.

5 A In terms of the -- the process of
6 payment, the Charris payment is called a Charris
7 payment, and we treat it as a Charris payment.

8 So it was clear to me because I helped set it up
9 that we were making a payment to Charris'

10 family. And the same would be true of Duarte.

11 And the same would be true of Gelvez. The
12 distinction, which is simply a distinction of
13 reminder or reinforcement, is that the Otero
14 security said "Otero security." And at some
15 point I assumed or characterized it as Otero in
16 my mind.

17 Q Well, I'm not really asking about
18 what you remembered at any point in time. I'm
19 asking if you agree with me now as you sit here
20 today that there is no real distinction between
21 the method of paying Charris' family through
22 your local counsel, Francisco Ramirez, or his
23 assistant, and paying the families of El Tigre
24 and Samario, which goes through your other local
25 counsel, Ivan Otero? Is there any distinction

1 there?

2 MS. ECCLES: Object to the form.

3 A There is. Again, in the document
4 that I see, it says "Charris," and there's no
5 mistaking that. The documents that say "Otero"
6 are -- are -- are not reminding me or
7 reinforcing exactly what's happening to those
8 payments.

9 Q But the method of payment, are you
10 saying there's a distinction between those two
11 that somehow makes them very, very different?

12 MS. ECCLES: Object to the form.

13 A Other than that they are
14 characterized differently from our office, no.

15 Q Okay.

16 (Plaintiff's Exhibit No. 41 was
17 marked for identification.)

18 Q I'll show you Plaintiff's Exhibit
19 41. This is the May 23rd -- or excuse me. The
20 top is the May 23rd, but the one from you is May
21 22nd, 2011 e-mail to various lawyers at Parker
22 Waichman as well as CC's to Lee Bialostock,
23 Richard Draft and William R. Scherer; is that
24 correct?

25 A Yes.

1 Q And this is the e-mail that we have
2 cited several times and referred to as the "deps
3 in the can" e-mail. Do you understand that?

4 A Do I understand that you have
5 referred to this before?

6 Q Yes.

7 A I --

8 Q As has Judge Proctor?

9 A I'm not aware of any specific
10 reference, but I wouldn't be surprised if you
11 did.

12 Q And this e-mail -- well, first of
13 all, before we get into the contents of it, who
14 is Richard Draft? Who was he at this time?

15 A Richard Draft was the -- I don't
16 know his exact title at that time, but he was
17 the top person dealing with finance expenditures
18 and so on at the firm.

19 Q In other words, does the same thing
20 a CFO would do?

21 MS. ECCLES: Object to the form.

22 A That might -- that might have even
23 been his title, but I don't know for that sure.

24 Q Also --

25 A But he was the head of such things.

1 Q Also copied on this e-mail is Bill
2 Scherer, right?

3 A It says so, yes.

4 Q The managing partner of Conrad &
5 Scherer?

6 A He is, yes.

7 Q And was at this time?

8 A He was, yes.

9 Q The next day, May 23rd, 2011, this
10 e-mail was forwarded from Pauline Kofer, who --
11 is that Bill Scherer's secretary?

12 A I think she's called an executive
13 assistant, but she works for Bill.

14 Q Does she receive copies of his
15 e-mails?

16 A I don't know.

17 Q She is forwarding it to William R.
18 Scherer, III, which is the managing partner's
19 son, correct?

20 A Yes.

21 Q As well as Danielle Kisslan. Who's
22 that?

23 A She must have been -- she -- she
24 had -- she worked for or with William Scherer,
25 III. She was either a paralegal or an

1 assistant.

2 Q How did y'all refer to Bill
3 Scherer's son? Was it Billy Scherer?

4 A I called him lots of things, but I
5 think most people made a distinction and called
6 him Billy. That's correct.

7 Q Okay. Was Billy Scherer involved in
8 the Drummond litigation?

9 MS. ECCLES: Object to the form.

10 A I don't know that he ever even
11 appeared. I don't know one way or the other,
12 but he -- he did no -- no work on the case that
13 I'm aware of.

14 Q Do you have any idea of why he's
15 being forwarded this e-mail?

16 A I didn't forward it to him. I
17 didn't include him on people who I thought
18 should get the e-mail. So, no, I don't.

19 Q And this e-mail says, starting at
20 the bottom where the redactions end, that you
21 gave Ivan, who I assume is Ivan Otero, right?

22 A Yes.

23 Q You gave Ivan Otero \$5400 for
24 security costs for him, El Tigre and Samario?

25 A Yes.

1 Q "Need to pay \$2700 per month to
2 maintain until we get the deps in the can,"
3 correct?

4 A Correct.

5 Q "And depending on what happens, we
6 may need to do more for the families," right?

7 A Correct.

8 Q And that is the same \$5400 that's
9 referenced in this handwritten agreement between
10 you and Ivan Otero as to what that money's going
11 to be for, right?

12 A It seems to be, yes. The timings
13 would match up.

14 Q Were you in Colombia at this time?

15 A When I sent Exhibit 41?

16 Q When you -- I don't know what the
17 exhibit is. The handwritten document, when
18 you -- you and Ivan Otero signed this
19 handwritten document saying that you had given
20 him \$5400.

21 A I must have been in Colombia, yeah.

22 Q And did you hand him \$5400 in cash?

23 A Well, I -- I don't have specific
24 recall of that. But I -- I -- I can safely say
25 I'm pretty sure it was cash because there was

1 no -- no check record or anything like that. So
2 it could -- it probably was cash. Yeah.

3 Q Okay. Now, Ivan Otero has a bank
4 account, correct?

5 MS. ECCLES: Object to the form.

6 A I think we've seen quite a few
7 documents showing that he has a bank account,
8 yeah.

9 Q What is the reasoning for flying
10 cash down to him rather than sending him a bank
11 wire, or just a paper check, for that matter?

12 A I don't even -- I'm -- I don't agree
13 that I flew cash down. And I've said I don't
14 really recall. But looking at the document
15 receipt, I am pretty sure it was cash.

16 Q Okay. Where did the cash come from?

17 A I -- I had cash, and I might have
18 withdrawn cash. But since I don't really
19 remember the details of that, I -- I can't say
20 anything more than that.

21 Q Where did you withdraw cash? Was it
22 taken from the United States to Colombia?

23 MS. ECCLES: Object to the form.

24 A I don't recall how much cash I took
25 down, how -- how much cash I might have

1 withdrawn while I was there. I don't recall.

2 Q What bank in Colombia would you
3 typically use to withdraw something in the
4 amount of \$5,000 in cash?

5 MS. ECCLES: Object to the form.

6 A I couldn't withdraw cash, but I
7 could take ATM withdrawals down there. I do
8 that quite a bit.

9 Q And you're able to get out of an ATM
10 in one single day \$5400?

11 A I didn't say that.

12 Q Okay. So more likely than not,
13 wouldn't you agree that this cash was likely
14 flown by you down to Colombia on your trip?

15 MS. ECCLES: Object to the form.

16 A I don't want to apply your "more
17 likely than not" standard to something I've told
18 you twice I don't recall.

19 Q Well, you don't deny that you flew
20 it down with you, do you?

21 A I do not.

22 Q You don't have enough recollection
23 to admit or deny, do you?

24 MS. ECCLES: Object to the form.

25 A I don't recall. So if that's

1 answers your question.

2 Q All right. Back to this e-mail
3 discussing payments to El Tigre and Samario, do
4 you see at the bottom in the middle with the
5 stamp "Confidential Pursuant to a Protective
6 Order"?

7 A Yes.

8 Q That is the same stamp that your
9 office was applying to all of the other
10 documents showing Ivan Otero payments back in
11 May of 2014, isn't it?

12 MS. ECCLES: Object to the form.

13 A Well, as I stated previously, I'm
14 willing to agree that it's very likely that my
15 office put on there, but I can't say that under
16 oath that was put on by my office.

17 Q When is the first time you saw this
18 e-mail after obviously seeing it when you were
19 writing it?

20 A As I've said, it is this e-mail that
21 alerted me to the fact that my recollection had
22 become incorrect across time, and this caused me
23 to then begin anew the process of -- of
24 supplementing our responses to interrogatories
25 as well as identifying additional documents as

1 payment documents. And it was the summer of
2 2014, and I don't recall whether it was June,
3 July or August. I just know that it was the
4 summer.

5 Q Was it before or after your new
6 counsel came on board?

7 A It was after.

8 Q Do you think it was a result of
9 additional computer searches that you all of a
10 sudden saw this document?

11 MS. ECCLES: Object to the form.

12 A I'm just -- I'm hesitating because I
13 don't know if I received this because I had a
14 conversation with my co-counsel or my own -- own
15 lawyers. I -- I do think that we were starting
16 to do additional -- sorry. I know that we did
17 additional searches after I saw this. I don't
18 remember exactly as I sit here how I first had
19 this shown to me.

20 Q If you look at the bottom right-hand
21 corner, and I'm not referring to the Bates
22 number, do you see the print date of this e-mail
23 of June 25th, 2014?

24 MS. ECCLES: Object to the form.

25 A I do.

1 Q Who printed this e-mail?

2 MS. ECCLES: Object to the form.

3 A I don't know. I do know now that
4 you -- I do know that when I saw this e-mail it
5 was in a printed form, that I -- I read it as a
6 document, not as an e-mail. That -- of that,
7 I'm sure.

8 Q Who handed it to you?

9 MS. ECCLES: Object. Don't reveal
10 any privileged communications or interactions
11 with your lawyers. If you can otherwise answer
12 it, then go ahead.

13 A Well, one -- one of my lawyers must
14 have handed this to me. So if I can say that, I
15 will. If I won't, then I won't.

16 MS. ECCLES: Let's not go any
17 further down that way.

18 MR. WELLS: You're instructing him
19 not to answer on privilege?

20 MS. ECCLES: That's right.

21 Q Can you disclose whether it would
22 have been old lawyers or new lawyers?

23 A I think that would be pretty much
24 tantamount to saying who it was.

25 MS. ECCLES: That's right. That's

1 going to be the same objection on privilege
2 grounds.

3 MR. WELLS: You're instructing him
4 not to answer?

5 MS. ECCLES: That's right.

6 Q And you, as the managing partner of
7 the D.C. office, do not know who printed this
8 e-mail on June 25th, 2014; is that right?

9 A That's -- that's true. Yes.

10 Q Do you know if it was you?

11 A I'm pretty sure it was not me.

12 Q Do you know if it was anyone in your
13 D.C. office?

14 A I don't know. Oh, I guess I do
15 know. Sorry. No, it was not.

16 Q It was printed by someone in the
17 Fort Lauderdale office?

18 MS. ECCLES: Object to the form.

19 A I didn't say that.

20 Q Then who was it printed by?

21 A I don't -- I told you I don't know.
22 I'd be happy to tell you if I knew. Doesn't --

23 Q Well, you know it wasn't you, and
24 you know -- I think you thought and then you
25 said, "No, I know that it wasn't somebody else

1 in the D.C. office," true?

2 A I think I've said that I'm pretty
3 sure one of my lawyers showed this to me.

4 Q I'm asking who printed it.

5 A I don't know that. It was handed to
6 me as a document. And I've said that it was
7 sometime in the summer. I don't remember
8 exactly when.

9 Q Had you seen this e-mail at any time
10 between June 25th, 2014, and the time one of
11 your lawyers handed it to you?

12 MS. ECCLES: Object to the form.

13 A I would say no.

14 Q Do you know who provided it to your
15 lawyers?

16 MS. ECCLES: Object to the form.

17 A I can't -- it -- it -- it was --
18 that would be privileged. That would be
19 privileged.

20 MR. WELLS: Are you instructing him
21 not to answer who provided this e-mail to the
22 lawyers?

23 MS. ECCLES: If that would have
24 been --

25 MR. WELLS: He clearly got them.

1 MS. ECCLES: If that would have been
2 part of a privileged communication between your
3 lawyers and, you know, you --

4 MR. WELLS: I'm not asking what was
5 said.

6 MS. ECCLES: -- or your staff, then
7 I instruct you not to answer. If there's an
8 answer you can give that does not intrude on
9 that territory, then go ahead.

10 Q I'm not asking what was said or
11 communicated when this document was handed over.
12 I'm simply asking who handed this document over
13 to counsel.

14 MS. ECCLES: Yeah. To the extent
15 that you have independent knowledge that doesn't
16 come from counsel in response to that question,
17 you can testify. But if you heard from counsel
18 who provided the document, I'm instructing you
19 not to answer on grounds of privilege.

20 A I -- it's very difficult to sort out
21 the source of information in a difficult
22 situation. I am fairly sure I have independent
23 knowledge that it was Billy Scherer who first
24 provided -- first provided the document.

25 Q Did you have any discussions with

1 Billy Scherer about this document?

2 MS. ECCLES: Independent of any
3 conversations with counsel.

4 A No.

5 Q You had no discussions whatsoever
6 with Billy Scherer about this document?

7 MS. ECCLES: Same caution.

8 Q Outside the presence of counsel?

9 A No.

10 Q When did Billy Scherer leave the
11 firm?

12 A I really --

13 MS. ECCLES: Object to the form.

14 A -- don't know. It was fairly
15 recently.

16 Q He is gone, right?

17 A He's gone. Yeah. He started his
18 own firm.

19 Q It was after this e-mail was
20 printed, right?

21 MS. ECCLES: Object to the form.

22 A I really don't know if it was before
23 or after.

24 Q Do you have any knowledge as to his
25 reasons for leaving the firm?

1 MS. ECCLES: Object to the form.

2 A Only in the most general way that I
3 believe that after years of working with his
4 father he decided to go out on his own.

5 Q So you saw this document within a
6 few months of telling Judge Proctor there were
7 exactly three witnesses in Balcerro that had
8 received security payments?

9 MS. ECCLES: Object to the form.

10 Q Right?

11 A I don't know if -- how you would
12 define a few. I -- I know the hearing was in
13 April, and I saw this document sometime in the
14 summer.

15 Q Okay. When you saw the document,
16 you did not tell Judge Proctor that you had made
17 a false statement to him, did you?

18 MS. ECCLES: Object to the form.

19 A Oh, I think we told Judge Proctor
20 clearly that I had made an inaccurate statement
21 to him, and we told you. We -- we supplemented
22 all of my interrogatory responses. We did this
23 in a timely fashion and in compliance with the
24 Court's order.

25 Q You told Judge Proctor you were

1 sorry about that after Drummond moved for
2 sanctions and informed Judge Proctor that you
3 had lied to him.

4 MS. ECCLES: Object to the form.

5 Q Not before, right?

6 MS. ECCLES: Same objection.

7 A We corrected the record, and the
8 record includes all of the discovery responses
9 and all of the document requests. And whether
10 some other step needed to be taken to inform the
11 Court, that's a decision my lawyers made, not
12 me.

13 Q You didn't feel compelled as an
14 officer of Judge Proctor's Court to tell him as
15 soon as you found out you had made a false
16 representation to him that, "I made a false
17 representation"? I have since realized I was
18 incorrect. I need to correct that statement.
19 You didn't feel any compulsion as a lawyer to
20 tell Judge Proctor that?

21 MS. ECCLES: Object to the form.

22 A Again --

23 MS. ECCLES: And also I'll just note
24 you mentioned, you know, discussions with your
25 counsel in your previous answer. I'll caution

1 you not to go any further in that direction --

2 THE WITNESS: Thank you.

3 MS. ECCLES: -- based on the
4 privilege grounds.

5 MR. WELLS: This is his own --

6 MS. ECCLES: I understand that.

7 MR. WELLS: -- decision without --
8 he's a lawyer himself. He doesn't need to be
9 told by his lawyers he needs to tell a judge.

10 MR. DAVIS: I was fixing to say, I
11 don't think there's been any testimony that
12 Billy Scherer was his lawyer.

13 MS. ECCLES: Who's asking the
14 questions here?

15 MR. DAVIS: I'm not asking the
16 question.

17 MS. ECCLES: Okay. Well, then let's
18 hear a question, and he'll continue his
19 testimony.

20 MR. DAVIS: Anyway, there's no
21 attorney-client privilege with Billy Scherer and
22 Mr. Collingsworth.

23 MS. ECCLES: I don't believe I've
24 claimed one, but let's go ahead and finish this
25 deposition.

1 Q Question is -- I don't want to hear
2 about what your lawyers may or may not have made
3 a decision to do and when they made a decision
4 to do it. I'm saying you, Terry Collingsworth,
5 as a lawyer yourself, as an officer of Judge
6 Proctor's Court, you did not feel compelled on
7 your own without even having to talk to lawyers
8 about it to tell Judge Proctor, "I have made a
9 misstatement to you"?

10 MS. ECCLES: Object to the form.

11 A This -- this e-mail that we're
12 discussing, Exhibit, 41, simply seeing this
13 e-mail was -- was not the answer to the
14 question. It was the beginning of a long
15 process with my new lawyers to get a -- as
16 complete as possible handle on what documents
17 still needed to be produced and what
18 documents -- I'm sorry -- what interrogatory
19 responses needed to be supplemented. That was
20 a -- that was a lengthy process, at the end of
21 which we corrected the record. I made a
22 terrible misstatement to Judge Proctor, which I
23 regret deeply, but that was in the context of
24 the libel case when I was asked to speak at a
25 hearing. And I am represented by counsel in

1 that case. I do not think it would be
2 appropriate for me to just unilaterally without
3 my counsel communicate with the judge in any
4 way. I'm a -- I'm a defendant in this case.

5 Q So the answer is no, you did not
6 feel any need to immediately tell Judge Proctor
7 you had made a misstatement?

8 A I didn't say that.

9 MS. ECCLES: Object to the form.

10 Q Okay. Then what is the answer?

11 A I -- I -- you can read back my
12 answer. That's my answer. I have explained why
13 it could not have been immediate on anything.
14 It took a long time to get a handle on this.

15 Q Is making payments to witnesses
16 routine for you?

17 MS. ECCLES: Object to the form.

18 A I don't know what you mean by
19 "routine."

20 Q Is it something that does not even
21 cause you to have a second thought?

22 MS. ECCLES: Object to the form.

23 Q Or is it something you take very
24 seriously and think long and hard about before
25 you do it?

1 A I was -- the biggest question or
2 concern I always had was to make sure that there
3 was a legitimate security risk, which I tried to
4 assess in each case. My biggest concern was not
5 allowing someone to be killed again because they
6 testified or were going to testify in the -- in
7 this litigation -- in the Drummond litigation.
8 That -- that was my biggest concern. And I know
9 you can't -- the stress, the -- the fast moving
10 issues and decisions that we had to make cause a
11 lot of this to be muddled in my recollection. I
12 will say that I always was concerned that I was
13 in really uncharted territory. I did not expect
14 when I went to law school to have to be figuring
15 out how to keep people alive in Colombia so that
16 they could tell the truth about a case that I
17 was -- I was working on.

18 Q Well, you had been challenged by
19 other lawyers in other cases about whether your
20 payments to these witnesses and their families
21 was appropriate, right? Paul Wolf being one?

22 A I -- I don't recall any factual
23 challenge or discussion with Paul Wolf about
24 this until, for reasons unclear to me, he
25 started cooperating with you.

1 Q So do you deny that there were
2 discussions in July of 2011 about the fact that
3 you had paid witnesses and that you responded,
4 "I have an ethics opinion about that"?

5 MS. ECCLES: I'm going to instruct
6 you not to answer, Mr. Collingsworth, any
7 questions about discussions you had with your
8 co-counsel or with new counsel with whom you had
9 some kind of joint defense agreement about the
10 propriety of witness payments on privilege
11 grounds.

12 MR. WELLS: I insist on an answer
13 because that privilege has already been waived,
14 to the extent it ever even existed. Paul Wolf's
15 deposition is out there.

16 MS. ECCLES: Same objection.

17 MR. WELLS: I'm going to insist on
18 an answer.

19 MS. ECCLES: I've instructed him not
20 to answer.

21 A I can only say for the record that,
22 bizarrely, technically Paul Wolf is still my
23 co-counsel. I've got a handful of Chiquita
24 cases.

25 THE VIDEOGRAPHER: You have one

1 minute.

2 Q So you're paying witnesses. You've
3 had other counsel raise to you whether or not it
4 could be ethical. You have had people do
5 research into whether or not it was ethical.
6 Did it not cross your mind after that, I need to
7 keep good tabs on who exactly has received these
8 payments?

9 MS. ECCLES: You can answer the last
10 part of that question.

11 A I -- I -- -- every opinion, every
12 discussion I ever had with responsible people
13 who understood the situation uniformly said that
14 this -- the need to protect people from getting
15 killed before they testify is completely
16 ethical, completely legal and necessary. That's
17 what is in my mind.

18 Q And so you didn't give it a second
19 thought?

20 A I did --

21 MS. ECCLES: Object to the form.

22 A I did not say that. I constantly
23 worried about these people and their safety.
24 When I get a call or an e-mail from Colombia, it
25 could be bad news. I always think about the

1 safety of these people.

2 Q But you forgot about the fact you
3 were making payments to keep El Tigre and
4 Samario's families safe?

5 MS. ECCLES: Object to the form.

6 A I -- I have testified that across
7 the -- that time frame I -- I began to think of
8 it as a payment to Otero. That was a mistake, a
9 bad mistake. And it was unnecessary. All I did
10 was cause myself harm. I have no reason not to
11 be happy to disclose that yet another couple of
12 witnesses had their family members threatened.
13 And this e-mail that you've referred to as the
14 "in the can" e-mail says that. "ET and Samario
15 are rattled as Bocanegra also threatened their
16 families." That was pretty clear that that's
17 what I was thinking at that time.

18 THE VIDEOGRAPHER: We're out of
19 tape.

20 MR. WELLS: We'll take a break while
21 she's changes the tape.

22 THE VIDEOGRAPHER: The time is
23 2:59 p.m. This concludes tape number five. We
24 are off the record.

25 (A break was taken.)

1 THE VIDEOGRAPHER: The time is
2 3:09 p.m. This is the beginning of tape number
3 six. We are back on the record.

4 BY MR. WELLS:

5 Q Mr. Collingsworth, we, earlier in
6 this deposition discussed the subpoena to
7 International Rights Advocates. Do you recall
8 that?

9 A I do.

10 Q Without getting the document out, do
11 you recall the various iterations of the
12 requests asking for requests for payments for a
13 various list of people, actual payments made to,
14 requests for payments by family members, actual
15 payments to family members? Do you remember all
16 those various requests for documents concerning
17 any payments to witnesses or their family
18 members?

19 MS. ECCLES: Object to the form.

20 A Yes.

21 Q Okay. And you recall we also served
22 a subpoena on Parker Waichman making a similar
23 request?

24 A I do.

25 Q And the subpoena we served on Parker

1 Waichman is Exhibit 42 that I'm showing you
2 right now.

3 (Plaintiff's Exhibit No. 42 was
4 marked for identification.)

5 Q And we can get into the documents or
6 we can just talk about it, but we'll start with
7 just talking about it.

8 Do you acknowledge that y'all moved
9 to quash both the IRA subpoena and the Parker
10 Waichman subpoena arguing that both were
11 entirely duplicative?

12 MS. ECCLES: Object to the form.

13 A That was a -- one of the arguments
14 made. Yes.

15 Q And the position you were putting
16 forth before the various courts was the
17 documents have already been requested from us.
18 We've already searched for them. We've already
19 produced whatever is not privileged.

20 MS. ECCLES: Object to the form.

21 Q Right?

22 A Yes. As I said with the prior
23 discussion on International Rights Advocates,
24 that is -- that is the case.

25 Q And your representations in that

1 regard with respect to all documents have
2 already been produced and we've already been
3 asked these questions, the reason you made
4 that -- those representations without having
5 produced the El Tigre and Samario payments was
6 because you had forgotten about them at that
7 time?

8 MS. ECCLES: Object to the form.

9 Q Is that right?

10 MS. ECCLES: Object to the form.

11 A I did not have recall of the -- the
12 specifics of their situations when I made that
13 representation. Yes.

14 Q Okay. You were not making some sort
15 of conscious decision at that time that those
16 payments had just not been requested. You just
17 couldn't remember them?

18 MS. ECCLES: Object to the form.

19 A With respect to El Tigre and
20 Samario?

21 Q Yeah.

22 A As I sit here now, I think that's
23 what happened.

24 (Plaintiff's Exhibit No. 43 was
25 marked for identification.)

1 Q Let me show you what's been marked
2 as Exhibit 43, which is third-party
3 International Rights Advocates' motion to quash
4 the IRA subpoena. I think we've already
5 discussed the defendants' motion to quash, but
6 this is the IRA motion to quash. And this one
7 was signed also by Christian Levesque as counsel
8 for IRA?

9 A Yes.

10 Q And she signs as an attorney for
11 Conrad & Scherer, a member of that firm?

12 A Yes.

13 Q Look at page 3.

14 A 3 of the brief or 3 of the document?

15 Q The brief.

16 The middle paragraph states,
17 "Moreover, as a result of Mr. Collingsworth's
18 position as a partner with Conrad & Scherer,
19 LLP, and lead" -- "lead counsel in Balcerro, he
20 has already responded to Drummond's document
21 requests, which are virtually identical to those
22 in the subpoena to IR Advocates."

23 "Then as a defendant in the libel
24 case brought by Drummond, Mr. Collingsworth was
25 served with and responded for the second time to

1 Drummond's document requests, which is virtually
2 identical to the subpoena. Now in serving a
3 subpoena on IR Advocates, Drummond seeks for the
4 third time the same documents from the same
5 people."

6 Did I read that correctly?

7 A Yes, you did.

8 Q And in serving that subpoena,
9 Drummond was not seeking the same documents that
10 had already been produced. The payments to El
11 Tigre, Samario and Jaime Blanco had not been
12 produced at that point. You acknowledge that,
13 don't you?

14 MS. ECCLES: Object to the form.

15 A Well, as I've stated before, the --
16 As I previously stated, we had not produced
17 those documents at that time for different
18 reasons. Yes.

19 Q And with respect to El Tigre and
20 Samario, it's because you forgot; is that right?

21 MS. ECCLES: Object to the form.

22 A As I said, I -- as -- as the time
23 went on, I had a -- had a -- had confusion as to
24 the purpose of the payments to Mr. Otero for
25 security and -- and was inaccurate in describing

1 them.

2 Q And with respect to Jaime Blanco,
3 those documents were not produced because why?

4 A As I've previously testified, I -- I
5 had made a distinction in the responsiveness of
6 those because they were not from me.

7 Q But you had documents reflecting the
8 payments, right?

9 MS. ECCLES: Object to the form.

10 A I did.

11 Q But you thought since it didn't come
12 out of your pocket, it did not count as a
13 payment to a witness?

14 MS. ECCLES: Object to the form.

15 A When I initially considered the --
16 the issue, the question, I made that distinction
17 in my mind. As I -- as I previously testified
18 at some point, I decided that that might be
19 cutting it a little close, and I opted instead
20 to disclose the Jaime Blanco payments by Mr. Van
21 Bilderbeek, even though I could still have
22 asserted a technical distinction as I described.

23 Q So at the time these subpoena issues
24 were going on in 2013 and the various briefs
25 going back and forth, you had forgotten

1 about the payments to El Tigre and Samario, but
2 you did recall the Jaime Blanco payments. You
3 just thought there was some distinction you
4 could draw.

5 MS. ECCLES: Object to the form.

6 Q Is that what happened?

7 A Well, as I've -- as I've just
8 stated, the -- the situation between those two
9 situations was different. At some point, I did
10 get confused about the purpose of the payments
11 to Mr. Otero. But I was aware of the Jaime
12 Blanco arrangement with Mr. Van Bilderbeek, but
13 did not disclose that until I decided to
14 disclose them despite the distinction I had been
15 making that those payments did not come from me.

16 Q The documents -- there's several of
17 them that have been produced -- that evidence
18 some of these payments to Jaime Blanco consist
19 of e-mails between you and Albert Van Bilderbeek
20 of Llanos Oil. Do you understand that?

21 MS. ECCLES: Object to the form.

22 A I -- I'm aware that there are
23 documents that are evidence of that. I am -- as
24 I sit here now, I'm not sure exactly what those
25 are. We've produced everything that we have.

1 I -- we've produced everything that we were able
2 to find in relation to those payments.

3 Q Right. But without me having to
4 fish out a document here, you can agree with me
5 that there are e-mails between you and Albert
6 Van Bilderbeek that reference these payments
7 going down to Otero to be given to Jaime Blanco?

8 MS. ECCLES: Object to --

9 Q One of which I'm simply recalling is
10 a wire confirmation.

11 MS. ECCLES: Object to the form.
12 You were talking about e-mails. Then you were
13 talking about a wire confirmation.

14 A And I --

15 MR. WELLS: It was in an e-mail.

16 A I can only say I don't have specific
17 recall. Mr. Van Bilderbeek is a client of mine.
18 So I -- I wonder whether my communications with
19 him are privileged, but I am not aware
20 specifically of what you have.

21 (Plaintiff's Exhibit No. 45 was
22 marked for identification.)

23 Q I'll show you what's been marked as
24 Exhibit 45, and then we'll come back to 44 in
25 just a second.

1 See if this refreshes your
2 recollection of an e-mail directly between you
3 and Albert Van Bilderbeek where he is providing
4 you a Credit Suisse wire confirmation of a
5 \$35,000 payment to Ivan Otero?

6 MS. ECCLES: Mr. Wells, is this
7 intended to be included in this document?

8 MR. WELLS: We can take that off for
9 right now.

10 A I should take it off?

11 Q Yeah, you can take that off.

12 A Again, I'm not -- okay. I didn't
13 see where the reference was to Mr. Van
14 Bilderbeek, but I assume that he forwarded that
15 to me, yes.

16 Q And you're also aware that Drummond
17 had requested of you all of your communications
18 with Llanos Oil or any of their principals,
19 which would include Albert Van Bilderbeek?

20 MS. ECCLES: Object to the form.

21 Q You're aware of that, aren't you?

22 A I -- yes, I'm aware of that.

23 Q So at the time of these subpoena
24 proceedings, you were aware Mr. Van Bilderbeek
25 had made payments through Ivan Otero to Jaime

1 Blanco, but you did not disclose the documents
2 you had on that subject because they were
3 privileged?

4 MS. ECCLES: Object to the form.

5 A As I've previously stated, my
6 position was they were not responsive because I
7 did not make the payments. So it was not a
8 payment from me.

9 Q Okay. Now, this e-mail from Albert
10 Van Bilderbeek to you, you can acknowledge
11 that's responsive to the requests for e-mails
12 between Albert Van Bilderbeek and you, can't
13 you?

14 MS. ECCLES: Object to the form.

15 A I believe we -- in addition to
16 privilege issues, we raised relevance and
17 overbreadth and other objections to all of those
18 requests, and if something was irrelevant or not
19 responsive, we didn't produce it.

20 Q And it's your position that that is
21 irrelevant or not responsive to the requests for
22 e-mails with Albert Van Bilderbeek?

23 MS. ECCLES: Object to the form.

24 Q That he is paying a witness in the
25 Drummond case?

1 MS. ECCLES: Object to the form.

2 A I'm -- I'm a -- a little confused
3 about the back and forth that occurred and what
4 objections were standing, but I -- I know that
5 we ultimately did produce this despite my
6 original hesitation because of the relevance
7 issue.

8 Q You acknowledge it was never put on
9 a privilege log until December of 2014, don't
10 you?

11 MS. ECCLES: Object to the form.

12 A I don't know that. I -- there were
13 some documents from Mr. Van Bilderbeek that were
14 on our first or second privilege log. I -- I
15 don't know that -- I don't know as I sit here
16 today if this was one of them.

17 Q Well, I can tell you for a fact it
18 wasn't. So why was it not? Y'all have not
19 disputed that fact. So let's just get beyond
20 that.

21 A I -- I -- I've told you the best
22 that I can at the time that we had relevance and
23 scope objections, as well as my previous
24 distinction that this was not responsive.

25 MS. ECCLES: Object to the form.

1 Q To an -- okay.

2 So even though these subpoenas are
3 asking for any documents concerning any requests
4 for payment or actual payment to Jaime Blanco or
5 any of his lawyers, you say these documents
6 showing a payment to Jaime Blanco's lawyer to be
7 given to him is not responsive to those
8 requests?

9 MS. ECCLES: Object to the form.

10 A Ivan Otero, as far as I -- I know
11 and as far as I've told you today, was not Jaime
12 Blanco's lawyer. I'm not sure when that -- that
13 little exception of helping on the Hugo Guerra
14 case occurred, but I don't think I -- I -- I'm
15 sure I didn't learn about that until very
16 recently when we were --

17 MS. ECCLES: You don't need to --

18 A Until very recently.

19 Q All right. Focusing on El Tigre and
20 Samario, there are numerous similar
21 representations in all of these back and forth
22 subpoena briefs about we've produced all the
23 documents. Nothing left to see here.

24 Is your answer the same on all of
25 those representations in the briefs? That the

1 reason the El Tigre documents and the Samario
2 documents have not been produced, nor had they
3 been logged was because you had just simply
4 forgotten about them?

5 MS. ECCLES: Object to the form.

6 A Again, as I've previously testified,
7 the documents clearly show that at the outset, I
8 was aware of the security issues with Mr. Otero
9 and Samario and El Tigre. But at some point,
10 I -- I got confused about what the Otero
11 payments were and, therefore, associated them
12 with just Mr. Otero and did not disclose those
13 payments in response to any requests until after
14 I saw documents requiring us to supplement and
15 amend our prior responses in this case.

16 Q So in October of 2013 when your
17 counsel, Mr. Smith, represented to Judge Proctor
18 that with respect to any documents reflecting
19 witness payments, y'all had produced all of them
20 other than what was on your privilege log, that
21 was simply due to the fact that you had
22 forgotten about El Tigre and Samario?

23 MS. ECCLES: Object to the form.

24 A I'm not sure what representation
25 Mr. Smith made to the Court at that time. I

1 will say that at that time, I was not aware, did
2 not recall that the payments to Mr. Otero for
3 security were being -- also helping keep the
4 family members of El Tigre and Samario safe and
5 secure.

6 Q So the reason -- the reason for any
7 representation Mr. Smith may have made on that
8 point was because he obviously also did not know
9 El Tigre and Samario had been paid?

10 MS. ECCLES: Object to the form.

11 A I don't care to speculate about what
12 my counsel knew or what I told them, which is
13 privileged.

14 Q Well, you've already told us you
15 didn't know at that time, right?

16 A I did not.

17 Q You did not know?

18 A I did not know.

19 Q And you had not provided any
20 documents to him that would reflect that because
21 apparently you had not seen them yourself,
22 right?

23 MS. ECCLES: Object to the form.

24 A I don't think -- I think that what
25 documents I gave to or discussed with my -- my

1 lawyer is -- is a privileged matter between me
2 and my lawyer.

3 Q So you're refusing to answer whether
4 or not Mr. Smith had been informed prior to the
5 October 2013 hearing that El Tigre and Samario
6 had been paid?

7 MS. ECCLES: I'm going to instruct
8 him not to answer what he told Mr. Smith before
9 the hearing on privilege grounds.

10 Q Okay. And I'm also going to ask are
11 you refusing to answer whether you had provided
12 any documents to Mr. Smith in advance of the
13 October 2013 hearing which would have reflected
14 payments to El Tigre and Samario?

15 MS. ECCLES: Same instruction on
16 privilege grounds. Any representations that
17 were made at the hearing are within our --

18 (Plaintiff's Exhibit No. 46 was
19 marked for identification.)

20 Q Let me show you Exhibit 46, which is
21 a reply brief filed in support of the motion to
22 quash the subpoena to Parker Waichman on October
23 31st, 2013. If you could, look at page 3.

24 A (Witness complies.)

25 Q The bottom of the first paragraph

1 under subsection C says, "Defendants disclosed
2 the fact of security payments in Balcerio
3 producing all responsive non-privileged
4 documents regarding funds provided to Drummond
5 witnesses through June 2012 nearly a year after
6 the letters at issue were sent, and defendants
7 recently supplemented this with over 400
8 additional pages netted by the broader request
9 in the libel case for all communications
10 regarding security payments."

11 Did I read that correctly?

12 A Yes, you did.

13 Q What requests were you referring to
14 there being the broader request in the libel
15 case for all communications regarding security
16 payments?

17 A You know, this -- this brief -- this
18 is a reply brief on the motion to quash.
19 It's -- it's signed by my lawyer, and I was -- I
20 was particularly not involved in these subpoena
21 issues after the first round. So I -- I don't
22 have -- I don't know, as I sit here, what the
23 reference there is.

24 Q Is it your testimony that you had no
25 involvement in writing this brief?

1 A In this --

2 MS. ECCLES: Object -- go ahead.

3 A This brief?

4 THE WITNESS: Sorry.

5 MS. ECCLES: No. I was just going
6 to object to the form.

7 But go a head.

8 A I -- I -- I feel fairly certain that
9 I had little or no involvement in this reply
10 brief, yes.

11 Q And you have no explanation for that
12 representation to the Court that 400 additional
13 pages were produced responsive to a request for
14 all communications regarding security payments?

15 MS. ECCLES: Object to the form.

16 Q Is that true?

17 A I don't know if it was 400 pages,
18 but I'm fairly confident that there was an
19 additional supplemental production around this
20 time or that it had already occurred.

21 Q In response to a pending request in
22 the libel case, right?

23 A Well, that's what it says. So I
24 can only --

25 Q Well, is that your understanding?

1 MS. ECCLES: Object to the form.

2 A I -- I know that in the libel case,
3 there were additional documents produced that
4 had not been produced in the Balcerro case.

5 Q In any event, the reason that 400
6 pages didn't include El Tigre and Samario is not
7 some conscious decision. It's because you just
8 forgot about them; is that correct?

9 MS. ECCLES: Object to the form.

10 A I did not consciously fail to
11 disclose the El Tigre and Samario documents. I
12 mistakenly came to think of the Otero payments
13 as payments to Otero for security.

14 Q Right.

15 You weren't making some distinction
16 that, "Well, I know I'm making these El Tigre
17 and Samario payments, but they're somewhat
18 different than these other ones. So I can
19 withhold those." That was not the thought
20 process?

21 A No, it was not.

22 MR. WELLS: All right. Give me 21.

23 (Plaintiff's Exhibit No. 47 was
24 marked for identification.)

25 Q I'm showing you Exhibit 47, which is

1 a brief filed with Judge Proctor in December of
2 2013 on behalf of the defendants, you and Conrad
3 & Scherer. If I could direct you to page 10 of
4 that brief.

5 You recognize that at this point,
6 don't you, Drummond had been filing numerous
7 briefs expressing its belief that the full scope
8 of the security payments had not been disclosed?

9 MS. ECCLES: Object to the form.

10 Q Do you understand that?

11 MS. ECCLES: Object to the form.

12 A I -- I -- I don't -- I don't know
13 that. There was a prior -- there was a motion
14 to compel, and there was not yet a motion for
15 sanctions. So I'm not quite sure what you mean.

16 Q You don't understand that the motion
17 to compel dealt with arguments that some
18 security payments have been discovered and we're
19 looking to discover others? You didn't
20 understand that?

21 MS. ECCLES: Object to the form.

22 A No. I think the -- the first motion
23 to compel that was heard in October of 2013,
24 shortly before this, that was the original fight
25 over whether fact of payment documents were

1 discoverable. I don't believe that the motion
2 was -- assuming that we did or didn't produce
3 documents, the motion was about whether we had
4 to at all.

5 Q All right. Well, in October, that
6 decision was made, and you did have to produce
7 it. You understand that?

8 MS. ECCLES: Object to the form.

9 A The October 15th, 2013 order did say
10 that we had to produce fact of payment
11 documents, yes; that they weren't privileged.

12 Q And why would you need an order to
13 do that? Because I thought your whole goal was
14 to be open and transparent about the fact you
15 were assisting these witnesses?

16 MS. ECCLES: Object to the form.

17 A I had, as did Mr. Otero have, he
18 recently expressed, concerns about Drummond
19 learning anything at all about our security
20 arrangements. Our -- our belief -- my belief,
21 my -- other members of my team's belief was that
22 Drummond was responsible for the threats against
23 my witnesses so that it struck me as a risky
24 proposition to just gratuitously inform Drummond
25 of any arrangements that we had made.

1 Q Look at page 10 of this brief. And
2 the defendants are saying in there, "The record
3 is now straight."

4 Do you see that?

5 A Yes, I see that.

6 Q At this time, it has been
7 represented that only the three witnesses in
8 Balcerro had been paid: Charris, Duarte,
9 Albarracin. Right?

10 MS. ECCLES: Object to the form.

11 A I -- I don't dispute that certainly
12 in April of 2014 and in prior briefing we had
13 inaccurately -- or I had inaccurately
14 represented that there were only three. I don't
15 know if at this time any of those were on file.

16 Q And you say in the third sentence in
17 that paragraph, "Defendants certainly made no
18 secret of the security assistance because it was
19 entirely necessary and proper."

20 Do you see that?

21 A I do.

22 Q Well, you certainly didn't disclose
23 that security assistance to Drummond during the
24 course of discovery in Balcerro, did you?

25 MS. ECCLES: Object to the form.

1 A I think the record is clear on
2 when -- when those disclosures were made. I
3 think that the -- the take-away from that
4 sentence for me is that this really reinforces
5 just how unnecessary a mistake I made in not
6 also trying to figure out any other security
7 issues. Because it's absolutely right that
8 there's nothing wrong with it and it's necessary
9 and proper.

10 So I -- I -- I do recall the Hobbs
11 declaration being the last of several opinions
12 we had on that that said, "Yeah, if someone's
13 threatened with death, you're allowed to protect
14 them."

15 MR. WELLS: Move to strike as
16 responsive (sic) everything other than "it was a
17 mistake."

18 Q If you'll look at page 12 of this
19 same brief that's saying the record has been set
20 straight, the first sentence in the first full
21 paragraph says, "The three Balcerro witnesses who
22 received security assistance from defendants" --
23 Roberto Duarte, Jose Gelvez Albarracin, and
24 Jairo Jesus Charris Castro -- "all first
25 provided a written statement to counsel for

1 plaintiffs or the Colombian authorities."

2 Did I read that correctly?

3 A You did.

4 Q And it is not true that those three
5 witnesses were the three Balcerro witnesses that
6 received security assistance, is it?

7 MS. ECCLES: Object to the form.

8 A It's not accurate. It's incomplete.
9 I am not sure that's -- 2013, we -- we did
10 subsequently complete the record and correct
11 the -- the inaccuracy by adding to that El Tigre
12 and Samario -- their families also were
13 protected.

14 Q Well, what I asked you was, that is
15 not a true statement, is it?

16 MS. ECCLES: Object to the form.

17 A It's not accurate. It's incomplete.

18 Q How many fingers do I have on my
19 hand?

20 A It looks like five to me -- or
21 actually, four and a thumb.

22 Q All right. If I told you I had
23 three fingers, would that be a false statement
24 or just an inaccurate and incomplete statement?

25 MS. ECCLES: Object to the form.

1 A We -- we obviously have definitional
2 issues here. The only -- whether you want to
3 call that statement false, inaccurate,
4 incomplete, whatever words you're using, I just
5 want to be clear that the one absolutely
6 fundamental point is that I did not
7 intentionally make a false statement.

8 Q The reason it wasn't intentional is
9 because as of December of 2013, you still didn't
10 remember that these monthly payments you were
11 approving every month to -- to Otero for \$2700
12 were actually security payments for two
13 witnesses?

14 MS. ECCLES: Object to the form.

15 A I did not recall that that -- that
16 the payment for security made to Mr. Otero
17 included assistance to relocate and to keep safe
18 the families of Samario and El Tigre.

19 (Plaintiff's Exhibit No. 48 was
20 marked for identification.)

21 Q I'll show you Exhibit 48. This is a
22 brief filed with Judge Proctor by the defendants
23 on December 20th, 2013, a few weeks after the
24 brief we just talked about.

25 Look at the first page of that

1 brief.

2 A (Witness complies.)

3 Q It's entitled "Introduction and
4 Summary of Argument."

5 A (Witness complies.)

6 Q At the bottom of that page, the
7 defendants say here, "Drummond continues to
8 falsely accuse defendants of improperly paying
9 witnesses for their testimony, when the facts
10 are clear defendants properly provided security
11 assistance to three witnesses whose family
12 members were threatened by Drummond's operatives
13 in Colombia."

14 Did I read that correctly?

15 A You know, I don't see where you're
16 reading from on the page. Is that the first
17 page? Which paragraph?

18 Q It's the very last paragraph, the
19 last full sentence beginning "In doing so."

20 A I see.

21 Q Why don't you just read it out for
22 me.

23 A Sure. "In doing so, Drummond
24 continues to falsely accuse defendants of
25 improperly paying witnesses for their testimony,

1 when the facts are clear defendants properly
2 provided security assistance to three witnesses
3 whose family members were threatened by
4 Drummond's operatives in Colombia."

5 Q And that is not true. The facts are
6 not that only three witnesses were provided
7 security assistance?

8 A Well, the first part of the sentence
9 is -- is true in terms of Drummond's improper
10 characterization of the purpose of any of the
11 payments. The second part of the -- the
12 sentence, as I've said in several other
13 contexts, is -- is not accurate. But we have
14 since corrected the record and tried to make it
15 as accurate as we could.

16 Q Flip to page 14.

17 A (Witness complies.)

18 THE WITNESS: Are we keeping you
19 awake, Percy?

20 MR. BADHAM: Yeah.

21 Q At the bottom of the page under
22 Section II, beginning with the second sentence,
23 it says, "Drummond also continues to use the
24 litigation privilege afforded by this libel
25 action against defendants to make further false

1 assertions based on speculation. Drummond now
2 accuses Mr. Collingsworth of paying for lawyers
3 of the paramilitary witnesses based solely on
4 the fact that one of his associates drafted a
5 memo to address whether it would be ethical to
6 do so."

7 Did I read that correctly?

8 A Yes, you did.

9 Q Now, you were involved in one of the
10 witnesses being paid for his criminal legal
11 fees, were you not?

12 MS. ECCLES: Object to the form.

13 A As I've previously testified, I -- I
14 did introduce Mr. Blanco to Mr. Van Bilderbeek,
15 who did provide some assistance to Mr. Blanco.

16 Q Do you think it is in any way
17 misleading for this argument to be presented to
18 the Court that Drummond is falsely speculating
19 about payments to criminal lawyers of the
20 witnesses?

21 MS. ECCLES: Object to the form.

22 A Well, as I -- as I've previously
23 testified, at this time, I continued to make
24 a -- a legal distinction about payments that I
25 made. And so the sentence which you -- you read

1 says, "Drummond now accuses Mr. Collingsworth of
2 paying for the lawyers," and -- and I didn't.

3 So this is technically accurate,
4 although I at some point became uncomfortable
5 making that technical distinction and ultimately
6 did disclose to you the -- the documents and my
7 knowledge about Mr. Van Bilderbeek's arrangement
8 with Mr. Blanco.

9 Q So after having some time to reflect
10 on it, do you now, sitting here today, recognize
11 that that is a misleading representation to the
12 Court?

13 MS. ECCLES: Object to the form.

14 A I can just say again that it's --
15 it's technically accurate, but I no longer am
16 comfortable, don't need to be skirting the fine
17 lines here about whether it is completely
18 accurate. So I disclosed completely what I knew
19 about that transaction.

20 Q But you think it would have been
21 okay just to leave it as it was --

22 A Obviously not --

23 MS. ECCLES: Object --

24 Q -- your technical distinction?

25 MS. ECCLES: Object to the form.

1 A Obviously not because I didn't. I
2 changed my mind, and in the interest of full
3 disclosure and avoiding any further problems
4 related to these issues, I disclosed it.

5 Q When did you make that decision?

6 A I don't recall when I made that
7 decision. It would have been certainly after --
8 after the -- the memo that -- or the -- the
9 e-mail that caused me to be concerned about my
10 statements of Mr. -- my -- about the purpose of
11 the payments for Mr. Otero. It was after that
12 that I decided that I didn't want to have any
13 more line drawing. I just wanted to disclose
14 everything and move on.

15 Q Okay. So once you saw the e-mail or
16 memo or whatever it was that refreshed your
17 recollection that the payments to Otero were
18 actually being used for security payments for
19 the families of El Tigre and Samario, you
20 decided we need to make full disclosure, no more
21 monkey business?

22 MS. ECCLES: I'm just going to
23 caution you not to get into privileged areas
24 here. Of course, I also object to the form of
25 that question.

1 But you can go ahead and answer as
2 long as you avoid privileged conversations.

3 A Yes. Well, I -- I certainly
4 disagree with your characterization of what I
5 had previously been doing as "monkey business."
6 We had a lot of serious -- this was not
7 something funny. It wasn't monkey business.
8 This was serious stuff. People were threatened
9 with death.

10 I, as I said, in the interest --

11 Q No, no, no. Excuse me. The
12 payments to Jaime Blanco have nothing to do with
13 security, do they?

14 MS. ECCLES: Object to the form.

15 A I --

16 THE WITNESS: Go ahead.

17 MS. ECCLES: No. I was just
18 objecting to the form.

19 Q Do they have anything to do with
20 security?

21 A No. No, they don't.

22 Q Okay. And that's what I'm asking
23 about. So we're not talking about serious
24 issues of security. We're talking about a
25 hundred some-odd thousand dollars going to a

1 fact witness for criminal legal fees or some
2 other purpose.

3 A I --

4 MS. ECCLES: Object to the form.

5 A I believe that you have
6 characterized my issues of trying to straighten
7 the record regarding El Tigre and Samario as
8 "monkey business," and it's -- it wasn't monkey
9 business.

10 Q And what I'm asking is -- it sounded
11 like you told me earlier once you had seen the
12 e-mail or memo or whatever document it was that
13 refreshed your recollection about El Tigre and
14 Samario, you said, "No more fine line drawing.
15 We're going to disclose everything: El Tigre,
16 Samario and Jaime Blanco."

17 A At some point.

18 MS. ECCLES: Object to the form.

19 A And I would like to clarify that --
20 that that e-mail that you -- you showed me
21 regarding the security issues, Exhibit 41, I
22 didn't testify that that refreshed my
23 recollection. That's still -- that was a very
24 early step one in refreshing my recollection.
25 I -- I -- there was a lot of work to do after

1 that to completely refresh my recollection.

2 Q Well, by the time your recollection
3 was completely refreshed and it was determined
4 by someone that we're going to go ahead and
5 disclose El Tigre and Samario, it was your
6 intent to also disclose Jaime Blanco; is that
7 right?

8 A I can --

9 MS. ECCLES: Object to the form.

10 A I can say that with respect to my
11 own intent that I was -- I had decided to move
12 off of my prior distinction and disclose the
13 Jaime Blanco situation, yes.

14 Q Okay. I will represent to you --
15 and we can get the document if you need it --
16 that the El Tigre and Samario payments were
17 disclosed in November of 2014 with both
18 documents, as well as amended interrogatory
19 responses. Does that sound about right to you?

20 MS. ECCLES: Object to the form.

21 A Yeah, that's about right.

22 Q Can you explain why those
23 interrogatory responses did not disclose that
24 Jaime Blanco had been paid? It only said there
25 was a discussion about paying his legal fees?

1 MS. ECCLES: Warn you to stay away
2 from privileged information.

3 A That -- that's -- the thought
4 process, the timing of that, the documents that
5 were involved, that -- that was all involved
6 with discussing this with my current lawyers.

7 MS. ECCLES: And I instruct you not
8 to answer on privilege grounds.

9 Q Did you inform your current lawyers
10 as of November 2014 that Jaime Blanco had been
11 paid?

12 MS. ECCLES: I'll instruct you not
13 to answer that.

14 MR. WELLS: Based on?

15 MS. ECCLES: Privilege.

16 MR. WELLS: We're trying to continue
17 this deposition so that we can get out of here.

18 MS. ECCLES: Understood.

19 MR. WELLS: We are going to be
20 bringing this before the Court because we think
21 the Court needs answers to these questions. I'm
22 just going to go ahead and state that for the
23 record.

24 MS. ECCLES: You're welcome to go
25 ahead and -- and file whatever motions you need

1 to file.

2 (Plaintiff's Exhibit No. 49 was
3 marked for identification.)

4 Q I'm going to show you Exhibit 49.
5 This is a letter that you sent to Paul Wolf on
6 April 17th, 2014, isn't it?

7 A This -- the first -- the first two
8 pages are a letter dated April 17, 2014 from me
9 to Paul Wolf.

10 Q And you're telling Mr. Wolf, "Dear
11 Paul, Please find attached a draft motion for
12 sanctions in the above-referenced case."

13 A That's correct.

14 Q And the attachment is also there.
15 It's a motion for Rule 11 sanctions against Paul
16 Wolf, correct?

17 A Yes.

18 Q And you are threatening Mr. Wolf
19 with Rule 11 sanctions for making certain
20 statements about the scope of your witness
21 payments, true?

22 A That's correct.

23 Q On page 5, the last paragraph, you
24 say, "Finally, Wolf's assertion that
25 Collingsworth paid witnesses who are all members

1 of the AUC" -- and you have a citation -- "is
2 false on two levels and plainly lacking in
3 evidentiary support."

4 "First, as noted, all security
5 assistance related to any witness in the
6 Drummond case went to the family members of
7 three witnesses: Charris, Gelvez and Duarte, to
8 relocate them in response to death threats."

9 Now, it is not a true statement, is
10 it, that all security assistance in the Drummond
11 cases went to those three witnesses?

12 MS. ECCLES: Object to the form.

13 A As I said, I -- in responding to the
14 same question in other contexts, that is
15 inaccurate because there was also security
16 assistance provided to El Tigre and Samario that
17 at this time I had not -- I did not specifically
18 recall.

19 Q Had you done anything to assure
20 yourself prior to levying serious threats of
21 sanctions against another counsel to assure
22 yourself that you weren't doing that under false
23 pretenses?

24 MS. ECCLES: Object to the form.

25 A Well, I -- I would -- I think it's

1 important to -- to note on page 2 of this draft
2 motion for sanctions that -- that we lay out
3 what the actual sanctions motion was about, and
4 I -- I think that I absolutely made sure that
5 the four points we actually moved on here were
6 true. And they are. I don't see any -- any
7 correction that would need to be made to those
8 four -- those four points.

9 The issue of whether there was three
10 or five or two witnesses who had security, that
11 wasn't the reason we were seeking sanctions
12 against Mr. Wolf. It was that he said I was
13 bribing witnesses or paying witnesses, including
14 some that -- just completely false and made up.

15 Q So you are not at all concerned that
16 this threatened motion for sanctions against one
17 of your co-counsel contains a false statement?

18 MS. ECCLES: Object to the form.

19 A I'm very concerned that my prior
20 representations to a Court had that incomplete
21 and inaccurate assertion.

22 This -- this -- this motion was
23 never filed. So I'm -- I'm less concerned about
24 that, and I -- as I said, the two -- page 2, the
25 points that we actually were going to move on,

1 are -- are accurate. He -- he made false
2 statements in all of those areas.

3 Q All right. And a few days after you
4 sent that letter to Mr. Wolf, you came to
5 Birmingham for a sanctions hearing in front of
6 Judge Proctor.

7 A Correct.

8 Q Do you recall that being on April
9 the 21st, 2014?

10 A I recall it being in the tail end of
11 April there, yes, shortly after this letter.

12 Q And I'm sure you have read it on
13 more than one occasion, but I can show it to
14 you, if you need to see it.

15 Judge Proctor directly asked you,
16 how many witnesses have been paid?

17 MS. ECCLES: Object to the form.

18 Q And you responded, "Exactly three."

19 MS. ECCLES: Object to the form.

20 A I -- I would -- I have read that
21 many times. I don't know that -- there's no
22 reason for you not to quote to me the exact
23 question and the exact answers before I respond.

24 Q I'm just trying to save you another
25 trip to Birmingham.

1 MR. WELLS: I'm not going to mark
2 it.

3 Q This is just a copy of the
4 transcript from that hearing. Turn to page 30.

5 A (Witness complies.)

6 MR. NIEWOEHNER: Do you have a copy
7 that we can see?

8 THE WITNESS: He's going to give you
9 one.

10 Q Starting on line 10 -- this is after
11 a discussion I was having with Judge Proctor
12 about "We think we're going to be able to build
13 a record that everyone was paid at some point."
14 Judge Proctor turned to you and Mr. Smith and
15 said, "Let me ask that question to Mr. Smith."

16 "Mr. Smith, consult with
17 Mr. Collingsworth and let me know this. Is
18 there a witness that I have received testimony
19 from south of the equator that didn't receive a
20 security payment?"

21 And after that question was asked,
22 you and Smith consulted with one another.

23 Do you recall that?

24 MS. ECCLES: Object to the form.

25 A I don't recall much of a

1 consultation. I -- I recall that the baton was
2 fairly quickly passed over to me.

3 Q Well, and you recall that Judge
4 Proctor was not requiring you to answer the
5 question, but nevertheless, you volunteered to
6 respond stating, "The shortest way to the truth
7 is to ask me." Right?

8 A That's -- that's -- that's -- that's
9 right.

10 Q And what you told Judge Proctor
11 after that instruction was not the truth, was
12 it?

13 MS. ECCLES: Object to the form.

14 A Again, the -- to the extent that on
15 page 31 at the top where I say, "Exactly three
16 witnesses," that -- that is inaccurate and
17 incomplete. And that is to me the -- the
18 greatest of the -- the situations that I regret
19 because I -- I made a mistake in -- in making a
20 direct representation to the Court, which I've
21 worked very hard to try to correct.

22 Q Well, to say that there were exactly
23 three witnesses, that's not just inaccurate,
24 that is totally untrue?

25 MS. ECCLES: Object to the form.

1 A Well --

2 Q There were exactly more than three
3 witnesses, right?

4 MS. ECCLES: Object to the form.

5 A As I -- as I responded in a -- a
6 declaration responding to the sanctions
7 motion -- there -- there was a -- there was a
8 lot going on here. But whether I said exactly
9 or there were three, I view that as the same
10 statement and it was inaccurate and incomplete,
11 and I -- I think that the subsequent filings
12 with the Court have made clear that we've worked
13 very hard to correct what is a very unfortunate
14 and regrettable statement that I made to the
15 Court that was inaccurate and incomplete.

16 Q And you did not express your dismay
17 over your making that statement to this Court to
18 Judge Proctor until March of 2015, almost an
19 entire year later; is that correct?

20 MS. ECCLES: Object to the form.

21 A I think I -- I've answered that
22 question before, that there was a long process
23 that didn't begin until several months after
24 this hearing that caused me to learn that this
25 was an inaccurate and incomplete statement and

1 that we focus- -- I focused on correcting the
2 record, amending my responses, and supplementing
3 our production so that it was clear exactly what
4 did happen; and that whether there was some
5 further step that could have been taken was a
6 decision that my -- my counsel was responsible
7 for.

8 Q In fact, Judge Proctor is not the
9 only judge or court to whom you've made that
10 representation, that there were three witnesses
11 paid in Balcerro, isn't that right?

12 MS. ECCLES: Object to the form.

13 A It's true that once -- well, there
14 was certainly once in the Dole case. I don't
15 know if -- I don't recall if it also happened in
16 the Chiquita case. But unfortunately, the error
17 that I made here simply got reproduced in other
18 settings as we took my prior statements from --
19 it was a prior brief for a declaration -- I
20 think the document number is 68 and 69 --
21 that's -- that got reproduced without -- without
22 correction, but my knowledge remained the same,
23 so that those -- those reproductions of my prior
24 statements were not intended to be
25 misrepresented -- misrepresentations. They were

1 simply carrying over a prior incomplete and
2 inaccurate statement.

3 (Plaintiff's Exhibit No. 50 was
4 marked for identification.)

5 Q Let's look at one of those. I've
6 got Exhibit 50 I'm handing to you. This was a
7 filing signed by you in the Dole case. If you
8 look at page 12.

9 A (Witness complies.)

10 Q Line 8, sentence beginning with
11 "Instead."

12 Do you see that?

13 A I do.

14 Q You tell the Dole Court, "Due to the
15 incredibly dangerous conditions in Colombia,
16 incredible death threats made to family members
17 of three of the many witnesses in the Drummond
18 matter, counsel provided security assistance to
19 relocate the family members who were threatened
20 with death immediately prior to scheduled
21 depositions of those three witnesses."

22 Did I read that correctly?

23 A You did, yes.

24 MS. ECCLES: Object to the form.

25 Q And that also was not a true

1 statement, right?

2 MS. ECCLES: Object to the form.

3 A Yes. As I said, it was inaccurate
4 and incomplete. And I'm not sure exactly when,
5 but once the -- the complete picture was clear
6 to -- to us, we corrected the record in that
7 case.

8 Q You did not tell the Dole Court
9 about this misrepresentation until Dole brought
10 it to the Court's attention, isn't that correct?

11 MS. ECCLES: Object to the form.

12 A Well, it's not a misrepresentation
13 because I did not intentionally mislead the
14 Court. I had made the same error of -- of
15 carrying forward the prior statements that I've
16 made that were inaccurate and incomplete.

17 But I -- I -- I don't -- I don't
18 want to say under oath that we did it before
19 Dole raised it, but my -- my best recollection
20 is that we supplemented it in -- in a -- in a
21 subsequent status conference or in some other
22 way we -- that we did it. We did it. I don't
23 think Dole first raised it with that Court, but
24 it -- that's possible. I -- I'm just -- that's
25 not my recollection.

1 Q And whenever it was done, it was
2 after March of 2015, when you for the first time
3 acknowledged before Judge Proctor that you had
4 made a misstatement?

5 MS. ECCLES: Object to the form.

6 A I think that's probably likely. A
7 lot of that simply had to do with about 95
8 percent of my attention span on this issue was
9 devoted to trying to fix the situation to
10 correct the record in the Drummond case, and
11 then we circled back and likewise corrected the
12 record in the Dole case.

13 THE VIDEOGRAPHER: You've got one
14 minute.

15 MR. WELLS: All right. Let's go
16 ahead and stop now then.

17 THE VIDEOGRAPHER: The time is
18 4:08 p.m. This is the end of tape number six.
19 We are off the record.

20 (A break was taken.)

21 THE VIDEOGRAPHER: The time is
22 4:14 p.m. This is the beginning of tape number
23 seven. We are back on the record.

24 BY MR. WELLS:

25 Q Switching gears just a little bit, a

1 couple of cleanup questions.

2 Your expert has opined that this
3 external hard drive that is now missing was not
4 missing at least as of December of 2014. Do you
5 understand that?

6 MS. ECCLES: Object to the form.

7 A I think -- I think that's right.

8 Yes.

9 Q Where is it?

10 MS. ECCLES: Object to the form.

11 A I certainly don't know.

12 Q Who plugged it into your computer on
13 December of 2014?

14 MS. ECCLES: Object to the form.

15 A It could have been one of several
16 people. I don't know.

17 Q Who has access to your work desktop?

18 MS. ECCLES: Object to the form.

19 A At that time, there -- well,
20 everyone does, but Grace Kaissal and whoever the
21 paralegal was at that point in time, which
22 probably was Leslie.

23 Q Is that it?

24 A Well, everybody in my office has
25 access to my machine, if -- if I'm traveling in

1 particular. So it would have included anybody
2 else in the office, but those are two people I
3 can say were working with me on any issue of
4 finding things or working on projects.

5 Q Who else worked in your D.C. office
6 in December of 2014?

7 A We had Christian Levesque.
8 Although, I think she was on maternity leave.
9 Yes, she was. And another lawyer, Cassie
10 Webster.

11 Q Is that it?

12 A I think so.

13 Q And it is your testimony it wasn't
14 you that plugged that hard drive into your
15 computer on December 8th, 2014; is that right?

16 MS. ECCLES: Object to the form.

17 A It -- it's -- it's possible. I -- I
18 can only say that it's possible that I was
19 looking for something. We were in the middle of
20 a move, very unwelcome move, an office move, and
21 there was a lot going on. I don't have a
22 specific recall of looking for anything in
23 particular on -- in that -- that time frame, but
24 I could have.

25 Q Now, eight months before that, Judge

1 Proctor had ordered you and the remaining
2 defendants to preserve in their present form all
3 hard drives, e-mail accounts, electronic storage
4 systems, et cetera.

5 Do you recall that?

6 MS. ECCLES: Object to the form.

7 A I don't recall the exact language
8 there, but I do recall that we were very careful
9 not to delete or lose or otherwise -- lose
10 any -- any electronic information. Yeah.

11 Q Did you make a backup copy of
12 anything immediately following those April
13 preservation orders?

14 MS. ECCLES: Object to the form.

15 A I certainly did not make a backup
16 copy of anything because I don't know how to do
17 that. I -- I know that -- my understanding was
18 because I -- I did discuss it with Juan Carlos
19 Rodriguez is that certainly with respect to --
20 to e-mails and to documents, that our system was
21 already set on a nothing-gets-deleted basis so
22 that I was confident that we were not -- that we
23 weren't going to lose anything because it was on
24 this -- this system that didn't delete anything.

25 Q Well, with respect to external

1 devices that -- the documents produced by your
2 expert appear to have been in use in the D.C.
3 office. Not just this one, but several of them.
4 With respect to external devices, did you do
5 anything to copy or back those devices up in
6 response to the judge's order?

7 MS. ECCLES: Object to the form.

8 Q And it was actually four orders.

9 A My -- no, I didn't because --

10 Q Did you, as --

11 A -- I don't know how.

12 Q -- managing partner of the D.C.
13 office, ensure that that was done?

14 MS. ECCLES: Object to the form.

15 Q That backup copies of those devices
16 as they existed on the date those orders were
17 entered were preserved?

18 MS. ECCLES: Object to the form.

19 A I did not order anyone to make a
20 copy of anything. I don't know if Juan Carlos
21 did. I know that everyone understood they
22 weren't to lose or destroy any information that
23 they had.

24 My general understanding is that
25 such devices -- the purpose of them was to be a

1 backup of whatever was on -- or whoever wanted
2 to back something up, put it on something
3 external, not that -- well, I'll stop there.

4 Q Well, in any event, we know it's
5 gone now, right?

6 MS. ECCLES: Object to the form.

7 A I am aware that Mr. Williams' report
8 says that there was an external -- one external
9 hard drive -- or not -- I don't know if you call
10 it a hard drive. One of those things you plug
11 in that's missing. Yes.

12 Q Have you asked your staff who it was
13 that was using it in December of 2014?

14 MS. ECCLES: Object to the form.

15 A We -- everyone in the office knew
16 that we were looking for this external drive. I
17 think everyone generally had the same response
18 that I did, that -- that the office was a mess,
19 we were moving. Everyone tried to identify
20 where it was, what happened to it. No one could
21 find it. We tore the office apart, et cetera.
22 So we had a -- yes, we had a discussion about
23 it.

24 Q When was the move to the new office
25 in D.C.?

1 A It was roughly December 18, 19,
2 somewhere in there; right before the holidays.

3 Q So after that point, you were in the
4 new office, computers set up, et cetera, et
5 cetera?

6 A After we moved, were we in the new
7 office?

8 Q I'm --

9 A Yes.

10 Q I'm asking if there was any sort of
11 transition period where for a matter of months
12 you may have continued to have computers set up
13 in your old office, and people were just slowly
14 bringing things across to the new office or if,
15 in December, the move had been completed?

16 MS. ECCLES: Object to the form.

17 A Unfortunately, because we were
18 extremely busy in the first two weeks of
19 December, I think largely working on -- all of
20 us in one way or another trying to work on this
21 large production and privilege log, that
22 whenever we finished our work on that, we had
23 about three, four days to move completely
24 everything into the new office. It was a mess.
25 It was chaos.

1 Q And in that November, December time
2 frame, there was -- you already told us there
3 was a lot of work going on to search for
4 documents and create a comprehensive privilege
5 log that had been ordered by the Court, right?

6 MS. ECCLES: Mr. Collingsworth, you
7 can answer that question; but I'm going to warn
8 you to stay out of privileged areas.

9 A There was a lot of work going on.
10 But as far as I know, my new lawyers were doing
11 it. And anything that they asked me to do or
12 directed me to do is -- is privileged.

13 Q All right. Computers were copied,
14 or were they at that time?

15 MS. ECCLES: Object to the form.
16 And, you know, don't reveal communications with
17 your counsel. If you can answer based on your
18 knowledge, that's fine.

19 A If you're talking about my
20 computers, I can say that I'm not sure -- my
21 computer was copied at some point, but I -- I
22 don't recall whether it was before or after we
23 moved.

24 Q All right. Well, December 8th,
25 2014, is the last record your expert could find

1 of that external hard drive being used. That
2 was four days before the defendants filed their
3 comprehensive privilege log.

4 Do you have any explanation as to
5 why that external hard drive was not provided to
6 counsel for purposes of searching?

7 MS. ECCLES: Object to the form.

8 A I -- no, I don't know. I assume
9 it's because someone did not -- that there was
10 nothing relevant to the searches that was on
11 that external drive. That's all I can
12 speculate, but I -- I don't know.

13 Q And it's your testimony you have
14 never seen it again?

15 MS. ECCLES: Object to the form.

16 Q Since December or even earlier in
17 2014?

18 MS. ECCLES: Object to the form.

19 A I certainly haven't seen it since we
20 started looking for it.

21 Q And y'all started looking in
22 December or when?

23 MS. ECCLES: Object to the form.

24 A We didn't start looking for it, as
25 far as I know, until probably our expert

1 identified it as missing.

2 Q This handwritten agreement between
3 you and Ivan Otero about the \$2700 security
4 payments, who was translating for you as you and
5 Mr. Otero were discussing this agreement?

6 A I'm going to look at it again to see
7 the date. Can I have your copy to save time?

8 It is -- there were two
9 possibilities. One is that it would have been
10 Lorraine Leete. We occasionally used a local
11 guy, but I -- I'm -- I'm fairly sure that would
12 have been Lorraine. Yes.

13 Q Okay. Who was the local guy?

14 A I don't remember his name because
15 I -- I'd never employed him. He was sometimes
16 brought in. I just remember that he was -- that
17 he was Irish and that whenever he did translate,
18 I could not understand his English because he
19 had such a thick accent; and I complained about
20 using him.

21 Q All right. In one of the various
22 iterations of the defendants' supplemental
23 interrogatory answers in which witness payment
24 information is disclosed, there is a disclosure
25 of around \$100,000 being paid to a quote,

1 unquote, consultant. Does that ring a bell for
2 you?

3 MS. ECCLES: Object to the form.

4 A The -- the -- the situation is
5 familiar to me. Yes.

6 Q Okay. Who is that consultant?

7 MS. ECCLES: I think this is outside
8 the scope of this deposition.

9 A I think we --

10 MR. WELLS: Well, the scope of the
11 deposition is whether the full scope of witness
12 payments and any other inappropriate contact
13 with witnesses has been disclosed. And that
14 was, for some reason, disclosed in response to a
15 witness payment interrogatory. We still have
16 not been disclosed or informed of the identity
17 of this consultant and have not been able to
18 discover what this money was for.

19 MS. ECCLES: You're talking about an
20 issue in the Dole case, I think.

21 THE WITNESS: No. No.

22 MS. ECCLES: Okay.

23 A As far as I know, that -- that
24 information was designated work product, and we
25 did not disclose his name because of that.

1 Q He is a Colombian lawyer? You did
2 disclose that. Is that right?

3 A I don't know how much I can talk
4 about him.

5 MS. ECCLES: I'm going to have to
6 instruct you not to answer on the work product
7 and privilege grounds.

8 Q Is he a Colombian criminal lawyer?

9 MS. ECCLES: Same instruction.
10 Privilege and work product.

11 Q Do you have any record of how he
12 spent that \$100,000?

13 MS. ECCLES: Same objection and
14 instructions.

15 Q Do you have any explanation for why
16 the \$100,000 came out of your personal bank
17 account?

18 MS. ECCLES: This is the same
19 objections and instructions.

20 And just to be clear, this is not an
21 issue related to a fact of witness payment.

22 MR. WELLS: Well, we're trying to
23 find that out.

24 A Well, yeah, if you -- sorry.

25 MS. ECCLES: And let me just be

1 clear -- let me make sure my instructions to the
2 witness are clear. If we're not dealing with a
3 fact of witness payment issue here, I'm not
4 instructing you not to answer. You can answer
5 to the extent that this is about a fact witness.

6 I did? Did I flip it?

7 Oh, okay. Let me try one more time
8 to clarify to my instruction.

9 To the extent that this is not about
10 a fact of witness payment, I'm instructing you
11 not to answer.

12 A I can -- I can state clearly that
13 that situation that we are discussing has
14 nothing to do with a fact of payment issue, and
15 so I will -- I'm not going to -- it's -- it's
16 privileged.

17 MS. ECCLES: In that case, I'll
18 reiterate my instruction to you not to answer
19 based on privilege and work product.

20 Q Can you swear today that this
21 Colombian lawyer never represented any
22 paramilitary?

23 A I -- the -- your question is
24 inaccurate in that he is not a Colombian lawyer,
25 and I can accordingly also say that he did not

1 represent any Colombian paramilitaries or any
2 other Colombian witnesses involved in this or
3 any other case that I have.

4 Q Is this person involved in any of
5 your other cases?

6 A No.

7 Q Just the Drummond case?

8 A Yes.

9 Q What is his nationality?

10 A If I -- if I -- if I can't say his
11 name, I don't think I should be answering
12 questions about narrowing it down so that you
13 might be able to pick him out of a lineup.

14 MS. ECCLES: If you can't answer the
15 question --

16 MR. WELLS: Are you instructing the
17 witness not to answer?

18 MS. ECCLES: Yes.

19 (Plaintiff's Exhibit No. 51 was
20 marked for identification.)

21 Q I'm showing you what's been marked
22 as Exhibit 51, which is a July 9th, 2014, brief
23 on the crime fraud exception.

24 Were you involved in the drafting of
25 this brief?

1 MS. ECCLES: As you're answering
2 that question, Mr. Collingsworth, I'll caution
3 you not to reveal any communications that you
4 had with your counsel at the time about the
5 drafting of this brief.

6 A I -- I was -- excuse me. I was
7 involved in the -- the factual part of this
8 brief. I had very little involvement in the
9 legal argument and corresponding research
10 section of the brief.

11 Q Who was the primary author?

12 MS. ECCLES: I think you can answer
13 if it was you.

14 A It was not me. No.

15 MS. ECCLES: Well, then I'll
16 instruct you not to answer further about who did
17 what in relation to the drafting of this brief.

18 Q Was anyone in your office the
19 primary author -- author of this brief?

20 MS. ECCLES: All right. I'll give
21 you the same instruction then.

22 MR. WELLS: Refusing to answer on
23 privilege?

24 MS. ECCLES: Yes.

25 I mean, to the extent that -- that

1 you're responsible for drafting any of this, I
2 think you can answer the question. Otherwise, I
3 don't want you to reveal information about who
4 did what, communications with counsel, any of
5 that sort of thing, involved in the drafting of
6 this brief on privilege -- privilege and work
7 product basis.

8 MR. WELLS: I think the question is
9 more geared toward if this brief was written
10 without any communications with their counsel,
11 other than, "Hey, here's the brief. Let's get
12 it filed."

13 MS. ECCLES: I'm going to object to
14 the form. And I'm not sure I understand the
15 question.

16 But, again, to the extent that you
17 can answer it without getting into those
18 privileged areas, go ahead. I -- I doubt you
19 can.

20 Q All right. Did anyone in your
21 office author this brief? Do you have knowledge
22 of that other than what you have been told by
23 Mr. Smith?

24 MS. ECCLES: Or any other counsel or
25 co-counsel.

1 A I'm -- I'm just confused about
2 the --

3 MS. ECCLES: And I'm going to object
4 to the form. I don't -- I really still don't
5 understand the question myself.

6 A I can say that I was involved in --
7 in putting together the -- the factual section,
8 as I said. I think my counsel worked with other
9 people in my office, but I don't know that
10 that's not privileged.

11 MS. ECCLES: I believe that is
12 privileged, and I'll instruct you not to discuss
13 it.

14 Q All right. Let's look at page 4
15 beginning with the factual representations. The
16 very last sentence on that page, which continues
17 on to page 5.

18 A Yes.

19 Q Which it says, "The three witnesses
20 who received security assistance" -- Libardo
21 Duarte, Jose Gelvez Albarracin, Jaime Jesus
22 Charris Castro -- "all first provided a written
23 statement." And it goes on.

24 The question is: It's not a true
25 statement that those were the three witnesses

1 who received security assistance, is it?

2 MS. ECCLES: Object to the form.

3 A As I've testified in several other
4 similar instances, the -- the -- the assertion
5 that there were only -- that there were three
6 is -- is, at this time, inaccurate and
7 incomplete; and we subsequently supplemented
8 that and clarified the record.

9 Q Let me ask you this: Do you dispute
10 that -- telling the Court that the three
11 witnesses who received security assistance is
12 equivalent to telling the Court that's the only
13 three?

14 MS. ECCLES: Object to the form.

15 A I -- I think that whatever the
16 language used here is that at the April hearing
17 before Judge Proctor, the language I used there
18 did create that impression. And that's --
19 that's the statement that's probably -- the
20 statement that is most restrictive. And we
21 worked very hard to clarify the record, and I --
22 I sincerely regret having in any way made an
23 inaccurate statement to the Court.

24 Q Multiple inaccurate statements,
25 right?

1 MS. ECCLES: Object to the form.

2 A There -- there certainly are more
3 than one, and each of them is based on the same
4 initial mistake that I made.

5 Q Well, let's look at page 6. The
6 bottom of the first paragraph, the last two
7 sentences. It says, "Drummond also asserted
8 defendants improperly paid the attorneys' fees
9 of another witness, Jaime Blanco Maya. Again,
10 the various e-mails discussing the topic
11 conclusively reveal defendants and their
12 co-counsel discussed whether" -- and whether is
13 italicized and bold faced -- "it was ethically
14 permissible to assist a witness with his
15 attorneys' fees and concluded that it was
16 ethical under certain conditions, but then
17 declined to do so for tactical reasons."

18 Did I read that correctly?

19 A Yes, you did. And at this time, I
20 guess this morning in July of 2014, I -- I --
21 I'd still maintain the distinction that we did
22 not and in fact did not make the payment to
23 Mr. -- Mr. Blanco.

24 Q Now, Blanco had asked you to make
25 the payment, right?

1 MS. ECCLES: Object to the form.

2 A Blanco had first requested that --
3 that we -- I help him with his attorneys' fees.
4 Yes.

5 Q And we've seen discussions between
6 you and Parker Waichman about -- this is what
7 you're referring to -- whether it was ethically
8 permissible. And that's in April and May of
9 2011, right?

10 MS. ECCLES: Object to the form.

11 A I don't know as I sit here the dates
12 of those e-mails, but we did have that
13 discussion between us. Yes.

14 Q And subsequent to that, you had
15 another discussion with Jaime Blanco where you
16 said, "We will not be able to pay your
17 attorneys' fees directly," or something to that
18 effect; is that right?

19 MS. ECCLES: Object to the form.

20 A I didn't -- I didn't use -- I -- I
21 did have a conversation with him in which I told
22 him that we would be unable to provide for his
23 criminal attorneys' fees. Yes.

24 Q And you also informed him that
25 although you would not be able to, Albert Van

1 Bilderbeek might be willing to assist with his
2 attorneys' fees, right?

3 MS. ECCLES: Object to the form.

4 A I don't know that it was in the same
5 sitting, but I did at some point say that I
6 thought Mr. Van Bilderbeek would be interested
7 in having Mr. Blanco help him with an
8 investigation of his own case and in that
9 context, might be able to provide funds that
10 could be used for attorneys' fees.

11 Q And Blanco's response was what?

12 A He basically asked me to make the
13 introduction.

14 Q To one of your other clients, Albert
15 Van Bilderbeek?

16 A Yes.

17 Q And you made that introduction?

18 A I did.

19 Q How did you make it?

20 A I did make the introduction. I
21 think the -- the communications that followed
22 regarding the introduction are privileged.
23 They're communications I had with my client.

24 MS. ECCLES: I'll instruct you not
25 to reveal any communications you had with your

1 own clients.

2 MR. WELLS: You're claiming
3 privilege over his discussions with Albert Van
4 Bilderbeek about paying Jaime Blanco? Just so
5 I'm clear, that's -- that's what you're
6 instructing him not to answer on?

7 A I -- I have answered that question.
8 I -- I -- I heard you to ask a different
9 question, which is sort of what happened then,
10 and there was a lot of logistical discussion, et
11 cetera, that went beyond the fact of payment.
12 And that is, I think, beyond the -- the
13 privilege is -- does not apply to the fact of
14 payment, and we've answered that.

15 MS. ECCLES: Let me be clear what my
16 instruction is, Mr. Collingsworth. I don't want
17 you to answer questions about the fact of
18 payment that we're discussing here. Beyond
19 that, to the extent that they -- you've had
20 privileged conversations, don't discuss those.

21 Q How long did it take for Albert Van
22 Bilderbeek agree to the idea of paying Jaime
23 Blanco?

24 MS. ECCLES: I'm going to give you
25 the same instruction there.

1 Q When did you first raise the
2 prospect of paying Jaime Blanco to Albert Van
3 Bilderbeek?

4 MS. ECCLES: Same instruction.

5 MR. WELLS: How is that privileged?
6 We know it happened. He's already told us it
7 happened. The only question we're asking is the
8 date.

9 MS. ECCLES: He can testify about
10 the fact of the payment. That's not what I
11 heard you to ask. You're asking him what day
12 the payment happened? If he knows, he can
13 answer that question.

14 Q No. What day did you inform Albert
15 Van Bilderbeek of this proposal that you had
16 made to Ivan Otero -- I mean to Jaime Blanco
17 that Mr. Van Bilderbeek might be willing to
18 assist with his attorneys' fees?

19 MS. ECCLES: Mr. Collingsworth,
20 again, only -- we're only discussing the fact of
21 payment here. We're not going to discuss any
22 discussions that you had with your client beyond
23 that.

24 THE WITNESS: Yes.

25 MS. ECCLES: So I -- I understood

1 your question not to ask for the date of the
2 payment, but to ask for the date of conversation
3 that he had with his client, and I'm instructing
4 him not to answer that question.

5 Now, if I misheard your question,
6 you can ask it again; and I apologize.

7 MR. WELLS: I'm not asking what was
8 said. I'm asking about the date of a
9 conversation that it's already been disclosed
10 occurred.

11 Q I mean, you didn't telepathically
12 communicate to Van Bilderbeek that you had
13 offered to Jaime Blanco he might be willing to
14 pay his attorneys' fees. That was communicated
15 to him, correct?

16 MS. ECCLES: I'll give you the same
17 instruction.

18 MR. DAVIS: I hate to object -- or
19 interfere on this; but I would, for the record,
20 like to say that we believe very strongly that
21 this goes to the heart of one of the key issues
22 on the sanctions. And you are telling this
23 witness not to answer. And that's why we're
24 taking discovery is to find out about this
25 issue, but you're instructing him not to answer.

1 So I'm putting you on notice lawyer to lawyer
2 that we believe he should answer because this is
3 a sanctions matter, not a merits deposition.

4 MS. ECCLES: Well, I understand that
5 your position seems to be that by filing a
6 sanctions motion you have destroyed our
7 attorney-client privilege. We don't agree with
8 that position, and I'm instructing him not to
9 answer questions that impinge on the
10 attorney-client privilege. We have a
11 disagreement there. I understand that.

12 MR. DAVIS: Okay. And we would like
13 to know when Mr. Collingsworth is going to be
14 able to come back to Birmingham again because we
15 believe we will have another opportunity.

16 MS. ECCLES: Well, we'll -- we'll
17 have to discuss that idea another time. But we
18 certainly don't concede that it will be
19 necessary or appropriate.

20 MR. WELLS: Just to be clear, you're
21 not going to let him answer any questions about
22 the set-up of the payment between Van Bilderbeek
23 and Jaime Blanco?

24 MS. ECCLES: He can -- yeah. I
25 mean, we have -- we -- we've disclosed

1 information about the payment. We have
2 interrogatory responses that deal with this.
3 I'm -- I'm not -- I'm instructing him not to
4 answer any questions beyond what we've already
5 disclosed.

6 MR. DAVIS: Well, what's the purpose
7 of this deposition?

8 MS. ECCLES: It's your deposition.
9 And as I think we heard Mr. -- Mr. Brown say on
10 the phone earlier, it's to explore issues that
11 are relevant to the sanctions in the spoliation
12 motions.

13 MR. WELLS: Of which --

14 MS. ECCLES: But -- but I did not
15 hear --

16 MR. WELLS: -- the non-disclosure of
17 Jaime Blanco is very, very --

18 MS. ECCLES: I did not hear
19 Mr. Brown --

20 MR. WELLS: -- much a part of the --

21 MR. ECCLES: -- say anything
22 about --

23 THE COURT REPORTER: Wait, wait,
24 wait.

25 MR. ECCLES: I did not hear

1 Mr. Brown say anything about no, you can't
2 assert attorney-client privilege at this
3 deposition. I didn't hear you ask him that, and
4 I didn't hear him say that.

5 (Plaintiff's Exhibit No. 52 was
6 marked for identification.)

7 Q I'm going to show you Exhibit 52.
8 This is a July 18th, 2014, brief on the crime
9 fraud section. Were you involved in the
10 drafting of this brief?

11 MS. ECCLES: Same instruction. You
12 know, you can -- you can speak to your own
13 personal knowledge about your own involvement.
14 But I'm instructing the witness not to reveal
15 any communications he had with his lawyers about
16 the drafting of this brief, including which of
17 his lawyers drafted which parts of it and so on.

18 A I -- I would again say as -- as I
19 said with the -- with the prior brief that in --
20 in any of these at this time, I -- I was
21 involved on the -- on the factual side. And to
22 the extent that factual representations are made
23 here, those would have originated from me.

24 Q All right. So on page 2, the second
25 full sentence beginning with "Defendants

1 previously documented."

2 Do you see that?

3 A Yes.

4 Q It says, "Defendants previously
5 documented, based on documents they disclosed in
6 discovery in Balcerro, that they provided
7 security assistance to relocate family members
8 of three witnesses: Libardo Duarte, Jose Gelvez
9 Albarracin and Jairo Jesus Charris Castro."

10 And the words "family members" and
11 "three" are both bold faced and italicized,
12 correct?

13 A Yes. I see that.

14 Q To set them out from the remainder
15 of that sentence, right?

16 A It was for emphasis. Yes.

17 Q Yeah.

18 Now, that again is not true, is it?

19 MS. ECCLES: Object to the form.

20 A As I've said in response to similar
21 questions involving similar assertions, this
22 turned out to be incomplete and inaccurate
23 regarding the number of witnesses who needed
24 their families protected and that we
25 subsequently supplemented the record and -- and

1 provided additional documents to disclose
2 additional security issues.

3 Q Who else within Conrad & Scherer, at
4 either the D.C. Office or the Florida office,
5 was involved in either the drafting or review of
6 this brief?

7 A If anyone, other people from Conrad
8 & Scherer who were involved were working with my
9 counsel at the time.

10 MS. ECCLES: In that case, I
11 instruct you not to answer that question.

12 Q I'm asking from your knowledge, not
13 from anything you learned from counsel. Are you
14 aware of anyone else, whether through
15 discussions with Christian Levesque or any of
16 your other lawyers or anybody in the Florida
17 office, whether they were reviewing and/or
18 assisting in the drafting of this brief?

19 MS. ECCLES: I don't see how the
20 witness can answer that question without going
21 to privileged grounds.

22 If there's some answer that you've
23 got, Mr. Collingsworth, based on your own
24 personal knowledge that has nothing to do with
25 privileged conversations about drafting the

1 brief, you can answer. Otherwise, I instruct
2 you not to answer.

3 MR. DAVIS: Is that -- let me say
4 this on the record. Is that the defense to the
5 sanctions is that if this was done by lawyers
6 and not by Mr. Collingsworth?

7 MS. ECCLES: I'm not being deposed
8 here, Mr. Davis.

9 MR. DAVIS: I'm asking you, though,
10 as an officer of the Court.

11 MS. ECCLES: Well, I'm not going
12 to -- I'm not going to get into this discussion
13 with you --

14 MR. DAVIS: You're not going to
15 answer that?

16 MS. ECCLES: -- on the record.

17 MR. DAVIS: Chris, are you going to
18 answer it? Because that goes --

19 MR. WELLS: It bears directly on --

20 MR. DAVIS: -- to whether or not you
21 want to ask questions about the lawyers
22 involved.

23 MR. WELLS: It bears directly on the
24 legitimacy of the instructions not to answer
25 that you're making right now.

1 MR. DAVIS: Absolutely.

2 MR. WELLS: If y'all at all are
3 going to take the position that that wasn't my
4 representation, that was the lawyer's
5 representation; then we are entitled to know who
6 was involved in writing this brief.

7 MR. NIEWOEHNER: Why don't you ask
8 him specific questions about specific things.
9 He's given you --

10 MR. DAVIS: She won't let him answer
11 anything.

12 MR. NIEWOEHNER: Well, no. That's
13 not so. He's given you factual information
14 about what he did, which seems relevant to what
15 you're saying. He's not refusing to answer that
16 question. Knowledge about what other people
17 said to other lawyers does not bear on his --
18 his knowledge, which I think is what your point
19 is.

20 MR. WELLS: I'm not talking about --

21 MS. ECCLES: And I've repeatedly
22 instructed him to -- to testify as his own
23 personal unprivileged knowledge.

24 MR. WELLS: And I'm not asking about
25 his communications with Brad Smith or any other

1 outside counsel. I am talking about whether he
2 witnessed in the office in which he works or
3 discussed with any of the other defendants in
4 this matter or representatives of the defendants
5 that are not counsel for the defendants the
6 drafting of this brief and the representations
7 that were being made?

8 MS. ECCLES: Those aren't the
9 questions I -- I recall hearing.

10 MR. WELLS: Well, let me start
11 again.

12 MS. ECCLES: But I will say --
13 Q Did you have any communications --

14 MS. ECCLES: I'm sorry. Go ahead.

15 MR. WELLS: Well, let's just keep
16 going and see if we get an instruction not to
17 answer.

18 Q Did you have any communications
19 outside the presence of counsel with any member
20 of Conrad & Scherer about this brief?

21 MR. NIEWOEHNER: Give me just one
22 second.

23 MS. ECCLES: I'm going to instruct
24 the witness not to disclose any conversations he
25 had with his other lawyers, his colleagues at

1 the firm, at his own firm, in addition to his
2 outside lawyers, about the drafting of this
3 brief or about any other privileged
4 communication.

5 MR. WELLS: All right. I'm going to
6 go ahead and ask some questions. I think I know
7 what you're going to do in response to them, but
8 I'm going to go ahead and create the record.

9 Q Who, other than you, at Conrad &
10 Scherer knew about the representations being
11 made in this brief?

12 MS. ECCLES: I'll instruct you not
13 to answer.

14 A I -- I was the --

15 MS. ECCLES: I've instructed you not
16 to answer, Mr. Collingsworth.

17 Q Who made the decision to represent
18 to the Court continually in late July of 2014,
19 that it was only three witnesses that had been
20 paid?

21 MS. ECCLES: I'll instruct you not
22 to answer, and I'll also object to the form of
23 that question.

24 Q Did you have any discussions with
25 Bill Scherer about this brief?

1 MS. ECCLES: Don't answer that
2 question. Privileged grounds.

3 Q Did you have any discussions with
4 anyone else at Conrad & Scherer about this
5 brief?

6 MS. ECCLES: I'll instruct you not
7 to answer that question as well.

8 Q Did you have any discussions with
9 the person that printed out the "deps in the
10 can" e-mail about a month before this brief was
11 filed?

12 MS. ECCLES: Instruct you not to
13 answer. Also object to the form.

14 MR. DAVIS: Keep going.

15 MS. ECCLES: Don't answer.

16 MR. WELLS: We're going to have to
17 raise this with the Court. These are extremely
18 critical questions, and the defendants are
19 taking the position that Conrad & Scherer had no
20 knowledge. Obviously, Conrad & Scherer, someone
21 other than Mr. Collingsworth printed out the
22 e-mail that would reveal this and everything
23 around it is false. So for the defendants to
24 take that position and then try to obstruct
25 discovery into whether that position is actually

1 true is entirely improper.

2 MS. ECCLES: We are not obstructing
3 discovery. We are just asserting
4 attorney-client privilege.

5 MR. DAVIS: Let's get Judge Proctor
6 on the phone.

7 MR. PRESLEY: Let's go off the
8 record if you want to do that.

9 THE VIDEOGRAPHER: Do you want to go
10 off the record?

11 The time is 4:55.

12 (Off the video record.)

13 (Phone call to Judge Proctor.)

14 MR. WELLS: This is Trey Wells. Do
15 you know if Judge is available?

16 JUDICIAL ASSISTANT: Hold on just a
17 second. He's right in the middle of doing
18 something. Does he know what the call is about?

19 MR. WELLS: No. We're in the middle
20 of a deposition in the Drummond versus
21 Collingsworth matter.

22 JUDICIAL ASSISTANT: Okay.

23 MR. WELLS: And we have an issue
24 that we needed to discuss with him.

25 JUDICIAL ASSISTANT: All right.

1 Hold on just a moment, please.

2 Trey, I'm going to transfer you to
3 his conference phone in his office; okay?

4 MR. WELLS: Okay.

5 THE COURT: Hello?

6 MR. WELLS: Judge Proctor, it's Trey
7 Wells. How are you?

8 THE COURT: Hey, Trey.

9 MR. WELLS: We have got a lot of
10 people in here. I'm not going to list them all
11 off, but we've got kind of a full house in here
12 for Mr. Collingsworth's deposition.

13 THE COURT: Okay.

14 MR. WELLS: And we have run into a
15 series of instructions not to answer on
16 privilege grounds that we have tried to continue
17 the deposition while making a record of them,
18 but it's getting to the point where we're not
19 able to ask questions that we think are really
20 critical to the issue that's going to be before
21 the Court.

22 THE COURT: Okay.

23 MR. WELLS: We have not been allowed
24 to receive answers for discussions between
25 Mr. Collingsworth and Mr. Van Bilderbeek

1 regarding the circumstances of the payments to
2 Jaime Blanco.

3 THE COURT: All right. Is the court
4 reporter typing now?

5 MR. WELLS: Yes, she is.

6 THE COURT: Okay. Who instructed
7 not to answer on that question?

8 MR. NIEWOEHNER: Your Honor, this is
9 Chris Niewoehner, lawyer for the defendants, and
10 the -- and Mr. Collingsworth and Conrad &
11 Scherer. I'm here with Linsey Eccles.
12 Ms. Eccles has been -- been the one providing
13 instructions to the witness on these and some
14 other attorney-client privileged matters.

15 THE COURT: Why is it privileged as
16 to discussions between Van Bilderbeek and
17 Collingsworth regarding getting money to pay
18 witnesses, whether it's witness protection or
19 otherwise, in case -- a case that Van Bilderbeek
20 isn't in?

21 MR. NIEWOEHNER: Well, Your Honor,
22 we understand -- as we represented,
23 Mr. Collingsworth has a separate attorney-client
24 relationship with Mr. Van Bilderbeek.

25 THE COURT: But it's got to be --

1 the attorney-client privilege communications
2 have to be involving a matter under which
3 Mr. Collingsworth is undertaking representation
4 of the client at issue.

5 Why -- back to my question. Why
6 would conversations about payments and the
7 witnesses in the cases before me or Judge Bowdre
8 have any connection whatsoever to Van
9 Bilderbeek's business interests that -- for
10 which Collingsworth was representing Van
11 Bilderbeek or an entity connected to Van
12 Bilderbeek?

13 MR. NIEWOEHNER: Because, Your
14 Honor, I believe the conversations that we are
15 trying to protect -- and to be clear, we've
16 provided an interrogatory answer in this case
17 disclosing what we felt we could about the fact
18 of witness payment because we recognize in this
19 case that is not protected.

20 THE COURT: Well, the old saying is
21 if you want to find out what the lawyers have to
22 say about something, you send an interrogatory.
23 If you want to send out -- find out what the
24 client has to say something about, you ask at a
25 deposition.

1 MR. NIEWOEHNER: And --

2 THE COURT: I'm not sure you can
3 inoculate a relevant discoverable deposition
4 question by having served interrogatory response
5 in connection to the same subject matter. But
6 back to my question --

7 MR. NIEWOEHNER: And, Your Honor, I
8 wasn't trying to suggest the fact we gave an
9 interrogatory means he cannot answer questions,
10 but I -- and I --

11 THE COURT: I'm not sure why you
12 brought it up. I'm just explaining why that's
13 not relevant to what I'm trying to get at. What
14 I'm trying to get at is: What is the interest
15 that Van Bilderbeek's interest would have in
16 connection with payment to Collingsworth as a
17 conduit to make payments to witnesses in -- in
18 my case or Judge Bowdre's case? Explain that
19 one to me.

20 MR. NIEWOEHNER: Because the payment
21 that was made was not in relation to this case.
22 The payment that Mr. Van Bilderbeek made to
23 Mr. Blanco was for work done in Mr. Van
24 Bilderbeek's case, not in this one. So the
25 payment that was made, a conversation that

1 Mr. Collingsworth had with his client, Mr. Van
2 Bilderbeek, about a payment that Mr. Van
3 Bilderbeek made in his case would retain its
4 privilege. If they had a conversation about a
5 payment made in this case, we would not take
6 that position.

7 THE COURT: All right. Let's go
8 back. What was the question?

9 MR. WELLS: The question -- well,
10 there were several. But it just started with
11 when -- we'd already discussed the fact that
12 Ivan Otero or, excuse me, Jaime Blanco had
13 requested payment of his criminal legal fees.
14 Collingsworth apparently told him we cannot pay
15 them, but Albert Van Bilderbeek may be able to
16 pay them.

17 The next question was, when did you
18 inform Mr. Van Bilderbeek about this proposal
19 you had made to Jaime Blanco? And we couldn't
20 get an answer of even the date. And everything
21 beyond that was instruction not to answer.

22 THE COURT: All right. Well, first
23 of all, so the question was -- just give me the
24 question. Read it back for me. I just want to
25 make sure I understand what the question was

1 without all the editorial.

2 MR. WELLS: This was a ways back in
3 the deposition.

4 THE COURT: That's fine. Just go
5 back and read it. Did somebody mark it?

6 THE COURT REPORTER: No. We didn't
7 mark it.

8 MR. WELLS: The court reporter is
9 having a difficult time locating it.

10 THE COURT: And I know she was
11 typing what I was saying and trying to find that
12 at the same time, which is at least physically
13 impossible, if not metaphysically impossible.

14 MR. WELLS: I will repeat the
15 question to the best of my ability without any
16 editorializing.

17 THE COURT: That would be great.

18 MR. WELLS: Mr. Collingsworth, after
19 you had this discussion with Jaime Blanco about
20 the fact that Van Bilderbeek may be able to pay
21 some of his attorneys' fees, when did you relay
22 that to Mr. Van Bilderbeek?

23 THE COURT: Okay.

24 MR. WELLS: Instruction not to
25 answer.

1 THE COURT: All right. Why is that
2 privileged?

3 MR. NIEWOEHNER: Because, Your
4 Honor, that conversation now is a request in
5 Mr. Van Bilderbeek's case, his investigation.

6 THE COURT: But what's Mr. Van
7 Bilderbeek's case? I'm not getting that. What
8 case are you referring to that is Mr. Van
9 Bilderbeek's case?

10 MR. NIEWOEHNER: Mr. Van Bilderbeek,
11 as I understand it, had his own investigation
12 relating to an oil -- a lease that his company,
13 Llanos Oil, had had and had been taken away, and
14 he believed --

15 THE COURT: So how is that relevant
16 to paying witness' attorney fees, witness
17 protection payments or otherwise, in this case?

18 MR. NIEWOEHNER: Our view is that
19 from Mr. Van Bilderbeek's perspective, it was
20 not. He was making a payment in his
21 investigation to a -- someone who could
22 facilitate, Mr. Blanco in this case, facilitate
23 him getting witnesses in his case. So from
24 Mr. Van Bilderbeek's perspective, this is not
25 a -- whatever label you want to put on it in

1 this case, that's not the purpose for why
2 Mr. Van Bilderbeek was making the payment.

3 THE COURT: So now the theory from
4 the -- your client is that my case is not the
5 only one in which he was paying witnesses to
6 obtain information. He's now doing it in Van
7 Bilderbeek's case, which wasn't filed. It's an
8 investigation into whether there is a case
9 against Drummond and/or the Republic of
10 Colombia, right?

11 MR. NIEWOEHNER: I don't understand
12 that Mr. Blanco was a witness in that -- in
13 Mr. Van Bilderbeek's investigation. I
14 understood he was going to provide a role in
15 getting witnesses for that investigation.

16 THE COURT: So that's running
17 essentially.

18 MR. NIEWOEHNER: Did you -- did you
19 say "running"?

20 THE COURT: Running witnesses. He
21 was going to be paid to go obtain witnesses.

22 MR. NIEWOEHNER: Yes. I believe he
23 was going to be providing assistance of Mr. Van
24 Bilderbeek for Mr. Van Bilderbeek to get
25 witnesses.

1 THE COURT: All right. Why isn't --
2 why isn't this at least discoverable in light of
3 the crime fraud exception, and then we'll make a
4 decision later about whether there's a crime
5 fraud involved?

6 MR. NIEWOEHNER: Right. I don't --
7 you know, if Your Honor is going to investigate
8 that, we would request the opportunity to brief
9 that specific point.

10 THE COURT: Well, you -- that's what
11 we're doing on September 1st, 2nd, and 3rd.
12 We're having a hearing. Right now we're going
13 discovery for that hearing. Why isn't this at
14 least discoverable under the crime fraud
15 exception? You can explain now what your theory
16 on that is.

17 MR. NIEWOEHNER: Because we don't
18 believe there's any crime for Mr. Van Bilderbeek
19 to pay legal assistance to Mr. Blanco in Mr. Van
20 Bilderbeek's case, nor do we believe it to be a
21 crime in our case for Mr. Blanco to receive
22 legal assistance from Mr. Van Bilderbeek.
23 Either way, the payment is appropriate, ethical
24 and legal.

25 THE COURT: What was Blanco's --

1 what was Blanco incurring attorneys' fees for?

2 MR. NIEWOEHNER: Mr. Blanco had his
3 own -- he had been charged criminally in
4 Colombia with -- in relation to the murder of
5 the labor unionists. So he -- and we've tried
6 to explain this in briefing, so I apologize if
7 I'm doing not the best job of it. But his
8 decision to speak truthfully would expose him to
9 further criminal prosecution in the Colombian
10 criminal case; and, thus, that is why we believe
11 it is proper for him to receive legal
12 assistance.

13 THE COURT: Well, that's -- I guess
14 my question is this: That is your theory.
15 There are other rationales as to why these
16 payments occurred, what their intent and effect
17 was, correct? At least give me that.

18 MR. NIEWOEHNER: I'm sure Drummond
19 has a -- Drummond has expressed a different view
20 of the world. Absolutely.

21 THE COURT: So in order to for me to
22 sustain your objection, wouldn't I have to
23 essentially decide the merits of the controversy
24 between you and Drummond without giving Drummond
25 the opportunity to explore the rationale

1 supporting your theory as to what all this
2 involved and why it occurred?

3 MR. NIEWOEHNER: Well, Your Honor, I
4 understood their sanctions motion to be on a
5 failure to disclose and on a spoliation matter.

6 THE COURT: I think the sanctions
7 motion goes beyond that, at least how I read it.
8 It's the fact that he was -- payments made to
9 witnesses.

10 MR. NIEWOEHNER: All right. And we
11 are --

12 THE COURT: Excuse me. Unethical
13 behavior.

14 MR. NIEWOEHNER: And we are -- I
15 think Drummond has recently taken the position
16 that all of that's irrelevant for this hearing,
17 but we agree that the -- that the ethics of this
18 was something that we intended to put before
19 Your Honor. And I guess I'd encourage Your
20 Honor to hear that evidence before essentially
21 deciding a crime fraud exception exists. I
22 mean --

23 THE COURT: Well, I hear what you're
24 saying, but here's -- here's the rub. In order
25 for me to decide the crime fraud exception does

1 not exist, I'd have to -- I would have to adopt
2 your explanation, your client's explanation, as
3 to why these payments occurred, correct? Your
4 client says there's a perfect -- perfectly
5 innocence appropriate explanation for all this.

6 MR. NIEWOEHNER: That's right.

7 THE COURT: But your client also
8 misled me clearly as to the facts of this case
9 previously, correct?

10 MR. NIEWOEHNER: And we've
11 apologized for that misleading statement.
12 You're right.

13 THE COURT: All right. So where
14 does that leave us? Why wouldn't that, in and
15 of itself, be sufficient to at least permit
16 Drummond to test the accuracy of your
17 explanation or your client's explanation as to
18 the -- and how else would they do it except by
19 getting your client to explain what occurred
20 from his standpoint?

21 MR. NIEWOEHNER: I believe they can
22 test the intent of -- I hear you to say that
23 they need to test his intent and the purpose of
24 payments. They have him sitting in deposition.
25 We've been talking for the last six hours and

1 forty minutes about that.

2 THE COURT: Yeah. But he's not been
3 answering questions that they think -- that go
4 to what was the purpose and intent behind the
5 payments and testing his version of the events
6 that these were perfectly acceptable, ethical,
7 and proper actions on his part considering the
8 environment he was in in Colombia.

9 MR. NIEWOEHNER: Your Honor, we --
10 we've answered those questions all day. It's
11 this specific one on Van Bilderbeek that
12 we've --

13 THE COURT: I'm going back. That's
14 a pretty -- I would think Drummond thinks that's
15 a pretty significant portion of their case that
16 one of their competitors was making payments to
17 Mr. Collingsworth that, for whatever nature and
18 purpose, were being delivered to witnesses in
19 this case that changed their testimony from one
20 point to another. No question that occurred,
21 right?

22 MR. NIEWOEHNER: I -- I --

23 THE COURT: There's no question that
24 Blanco at one point said "X" and another point
25 said "Y".

1 MR. NIEWOEHNER: He said different
2 things at different times. I would agree with
3 you on that, Your Honor.

4 THE COURT: And isn't there evidence
5 that in between those different things at
6 different times, there were payments that he
7 received?

8 MR. NIEWOEHNER: Well, our
9 contention, Your Honor, is that he said the
10 statements implicating Drummond before he
11 received any payments.

12 THE COURT: I didn't -- I didn't ask
13 the ultimate question. I said isn't there
14 evidence -- let me rephrase it. Isn't there
15 evidence going both ways on that question?

16 MR. NIEWOEHNER: Oh, I don't know
17 what Drummond has said about that. I don't
18 recall specifically on Mr. Blanco.

19 THE COURT: Mr. Wells, am I missing
20 the boat on that?

21 MR. WELLS: No. The Blanco issue,
22 he -- he testified first there is no truth to
23 this, it's accounting-wise impossible for any
24 payments to have been filtered through my
25 company. Between that time and him changing his

1 testimony and signing a declaration for
2 Mr. Collingsworth, he received payments from the
3 Van Bilderbeeks. There is no record of any
4 testimony he provided other than what he gave to
5 Mr. Collingsworth before he signed his
6 declaration for Mr. Collingsworth attributing
7 Drummond to --

8 THE COURT: Here's my question: Is
9 there evidence that you can put forth that the
10 payments from Collingsworth, either from Van
11 Bilderbeek or otherwise, were made to Blanco
12 before he signed his declaration?

13 MR. WELLS: Oh, absolutely, Your
14 Honor. I'll read from Mr. Collingsworth's
15 signed sworn response.

16 THE COURT: All right. Why isn't
17 that enough to implicate the crime fraud
18 exception at least for limited discovery under
19 the purpose behind these specific payments and
20 the nature, intent, and effect of the payments?
21 And that's a question for Mr. Niewoehner.

22 MR. NIEWOEHNER: Your Honor, we
23 just -- I guess it fundamentally boils down to
24 the notion that we don't believe they've
25 established the crime fraud exception, which I

1 believe was your -- your question. We believe
2 they can establish their -- crime fraud
3 exception is narrow. It allows limited
4 discovery historically to -- to pierce that
5 veil. It is a high burden to pierce the
6 privilege even to investigate in that instance.

7 THE COURT: So you'd say it's the
8 extraordinary case when that occurs?

9 MR. NIEWOEHNER: Yes, Your Honor.

10 THE COURT: And you're trying to
11 suggest to me that this is not an extraordinary
12 case?

13 MR. NIEWOEHNER: Not on this
14 specific question, Your Honor. We recognize all
15 the issues that Your Honor is referring to, I
16 believe. But on this matter we think it would
17 make most sense for Your Honor to get an in
18 camera review on this.

19 THE COURT: Let me ask you this:
20 Were there other payments by Van Bilderbeek to
21 Collingsworth that went to anybody other than
22 Blanco?

23 MR. NIEWOEHNER: And to make sure
24 the record is clear, Mr. Van Bilderbeek did not
25 pay Mr. Collingsworth. Even in this Blanco

1 situation, the money did not route through
2 Conrad & Scherer.

3 THE COURT: Okay. That's a fair --
4 that's a fair correction. Let me rephrase my
5 question. Are there other -- is there other
6 evidence of payments by Van Bilderbeek to
7 someone other than Blanco related to that --
8 that had some connection to the Drummond
9 litigation?

10 MR. WELLS: Rafael Garcia.

11 THE COURT: Who was a witness?

12 MR. WELLS: Yes, Your Honor. He was
13 really the only witness in Drummond 1.

14 THE COURT: All right. Any others?

15 MR. NIEWOEHNER: Your Honor,
16 sitting -- I'm going to confess. I -- I'm
17 really trying to do this off the top of my head.
18 I'm not aware of anybody other than Mr. Blanco
19 or even the allegation that Mr. Wells just made
20 about Mr. Garcia.

21 THE COURT: All right. What else --
22 before I make a decision on this, what else is
23 out there in terms of a dispute -- in terms of
24 an instruction not to answer or what might
25 reasonably be an area that, Mr. Wells, you might

1 expect an instruction not to answer that you
2 have ahead of you?

3 MR. WELLS: One thing, we have an
4 issue, obviously, Judge, in April of 2014 there
5 was a misstatement made to you about the scope
6 of the witness payments. There was exactly
7 three witnesses paid. That representation was
8 continually made in briefs in the months
9 following that hearing. We have just shown
10 Mr. Collingsworth in this deposition an e-mail
11 that's the "deps in the can" e-mail I think Your
12 Honor is aware of that clearly shows that El
13 Tigre and Samario were receiving payments.

14 And that e-mail was printed out by
15 someone at Conrad & Scherer in June of 2014.
16 Yet subsequent to that, that representation
17 keeps being made. So we've been asking about
18 all these representations in the briefs and who
19 at Conrad & Scherer knew they were being made,
20 and those were not answered.

21 MR. NIEWOEHNER: And, Your Honor,
22 many I explain what we did answer?

23 THE COURT: Yes.

24 MR. NIEWOEHNER: Mr. Collingsworth
25 would answer what his personal knowledge was in

1 terms of doing a brief. If he drafted a section
2 or contributed to a part, he would answer that.
3 We -- we believed his communications with his
4 lawyers at the time is outside counsel, which is
5 I think in the time frame Mr. Wells is talking
6 about, would have been Brad Smith and his firm.
7 We have -- believe that that is still privileged
8 and have not permitted him to answer questions
9 with his -- with Brad Smith or the lawyers of
10 that -- of that firm.

11 THE COURT: Mr. Wells, is that what
12 you were getting at, what conversation he had
13 with Mr. Smith?

14 MR. WELLS: No. The questions were
15 phrased as outside of any communications you had
16 with Mr. Smith, did you have communications with
17 Bill Scherer? Did you have communications with
18 anyone else within Conrad & Scherer about these
19 representations that are being made in these
20 briefs?

21 THE COURT: So the -- the Brad Smith
22 issue is a red herring?

23 MR. WELLS: We have tried to make
24 clear to them we are not asking for
25 communications with outside counsel.

1 MS. ECCLES: That's not accurate.

2 MR. NIEWOEHNER: I think they did
3 make that objection. But, Your Honor, I'll
4 switch to the one Mr. Wells is now raising.

5 We also instructed Mr. Collingsworth
6 not to answer questions if the information he
7 got to answer the question would have come from
8 a -- come sort of inevitably from his
9 conversations with the lawyers working on this
10 case. So if the answer was, what other person
11 at Conrad & Scherer worked on a brief; I would
12 view that as akin to if Mr. Collingsworth was
13 working with a lawyer "X" who works at Conrad &
14 Scherer, essentially the in-house legal team of
15 corporate -- of a corporation that is assisting
16 outside counsel on a brief. So we believe that
17 is still privileged. Mr. Collingsworth is
18 answering what he personally did.

19 THE COURT: All right. Well, the
20 only thing he can answer is what he has personal
21 knowledge of, correct?

22 MR. NIEWOEHNER: That's --

23 THE COURT: And what you're saying
24 is we're pulling the curtain back a little
25 further than that even. Say if his personal

1 knowledge came from record counsel in this case
2 or a previous case, is that what you're saying?

3 MR. NIEWOEHNER: I think a little
4 further -- we are saying that, Your Honor, and a
5 little further, which is if Mr. Collingsworth --
6 I'm making up a hypothetical -- worked with a
7 lawyer on a brief, and then the lawyer was at
8 Conrad & Scherer; we have -- we have been
9 instructing him not to answer that I worked with
10 lawyer "X" on this particular brief. He has
11 only answered what he personally has done.

12 THE COURT: And is that you're
13 relying upon work product?

14 MR. NIEWOEHNER: Yes, Your Honor.

15 THE COURT: Not that he's asserting
16 attorney-client privilege?

17 MR. NIEWOEHNER: Not in that
18 context.

19 THE COURT: Why would -- why would
20 you have a work product objection available to
21 you under these facts when there's a question
22 about -- there's no question that a
23 misrepresentation was made. The question
24 becomes who knew what and when did they know it,
25 to borrow the old Watergate question. Why is

1 work product available to protect against that
2 type of inquiry under these facts?

3 MR. NIEWOEHNER: Well, Your Honor, I
4 think -- I will say lawyers all the time make
5 misstatements; and that doesn't open up
6 attorney-client work product. I understand Your
7 Honor is particularly concerned with these
8 statements, but there is a --

9 THE COURT: I hope -- I hope you're
10 not suggesting that lawyers all the time get in
11 my courtroom or another judge's courtroom and
12 look me right in the eye and tell me something
13 was absolutely false and they knew it was false
14 at the time.

15 MR. NIEWOEHNER: No, Your Honor.
16 I'm not trying to suggest that. But I do
17 believe --

18 THE COURT: There's one thing
19 about -- there's a difference between being
20 mistaken and being misleading. There's no
21 question that we're dealing with misleading
22 here, not mistaken here. All right? And that's
23 a problem. That's an issue for you guys. I'm
24 try -- that doesn't mean that's the whole ball
25 game, but that is a factor that has to be

1 applied as I weigh out these things.

2 So let's get back on track with this
3 response. It's not -- this wasn't a case of a
4 lawyer saying something that was mistaken. This
5 is -- the question is, there was a
6 misrepresentation to the Court that was repeated
7 in subsequent communications. Who was aware of
8 that communication being made in the first
9 instance and the repetition of it. And then I
10 take it that plaintiff's counsel would evaluate
11 who was making it and what did they know or
12 reasonably know at the time in order to inform
13 their litigation position with respect to those
14 issues, right? So the question comes back to
15 this: Why does work product shield that type of
16 inquiry?

17 MR. NIEWOEHNER: The -- I -- I
18 believe that the knowledge of the misstatement
19 is fairly focused on Mr. Collingsworth, and
20 those are the questions we've been answering.
21 To the degree that somebody else was working on
22 the brief, I've never understood Your Honor to
23 be saying we're piercing the privilege with Brad
24 Smith. I think we're still talking about --

25 THE COURT: I'm not talking about

1 Brad Smith. I'm talking about people at Conrad
2 & Scherer.

3 MR. NIEWOEHNER: All right. So our
4 view has been that that is akin to other folks.
5 I guess I establish what our position is. It's
6 akin to an in-house legal team is how we
7 analogize it.

8 THE COURT: Yeah. But in-house
9 legal teams wear different hats. I mean, we're
10 in a situation where you can have a legal
11 counsel giving business advice, not legal
12 advice, or business counsel helping to cover
13 something up that would not fall neatly within
14 legal advice. So that's why I think -- that's
15 why I suspect that Drummond's counsel has been
16 careful to carve Brad Smith out of it because
17 there's not -- there would not be the same type
18 of confusion of roles in terms of what he was
19 doing.

20 The question here is: Why should
21 you be able to stand on work product with
22 respect to communications between a client and a
23 lawyer who is not involved directly in defending
24 the case in terms of being appearing counsel?

25 MR. NIEWOEHNER: For the reason that

1 an in-house counsel who isn't necessarily on
2 papers even if they assist in the legal framing
3 of a brief, it would still typically be work
4 product because they are acting in a legal
5 capacity. They're not acting in a business
6 capacity when they're assisting with a brief
7 that's being filed.

8 THE COURT: Well, but again, we're
9 having -- in order to sustain your objection,
10 we're having to trust you on that, right? Not
11 trust you, but trust your client in terms of
12 what their role was.

13 MR. NIEWOEHNER: Well, I --

14 THE COURT: It's almost Alice in
15 Wonderland. First the verdict, don't worry
16 about the trial. We don't -- we don't want to
17 share any information that may conflict with
18 what our position is. We're just asking you to
19 accept our position.

20 Now, in the normal course of events,
21 that's not problematic because the other side
22 doesn't have a -- any Rule 11 or other -- other
23 valid basis to be making these inquiries. The
24 calculus changes when there's been a bold
25 misrepresentation to the Court, and we're trying

1 to figure out exactly what effect that has on
2 the case, who else knew about it, who else was
3 involved with it, what extent to -- the extent
4 of a cover-up, why it was made, what advantage
5 was gained in previous litigation or this
6 litigation by it being made, all sorts of
7 inquiries like that.

8 So my inclination right now -- and
9 I'm going to give you my inclination, but I want
10 to hear from you about why you think I'm wrong
11 or right, and then I'll make a final decision.
12 But my inclination right now is that these
13 questions will be answered subject to a
14 preserved privilege as far as essentially what
15 would be a motion in limine. I do think there's
16 sufficient information here that the crime fraud
17 exception applies.

18 Obviously, in discovery it's not the
19 plaintiff's burden in doing discovery to
20 establish that the crime fraud section is a
21 winner, only that there's a -- there's a
22 sufficient basis to allow the discovery. They
23 can't very well litigate the fraud,
24 misrepresentation, or other misconduct unless
25 they have discovery regarding its parameters.

1 Having said that, I don't think
2 they've shown enough for me to say that this is
3 going to be admissible at the hearing or that
4 this should be publicly disclosed at this point.
5 But I do think there's sufficient -- my
6 inclination is there is sufficient information
7 to require Mr. Collingsworth to answer these
8 questions. I don't think he can hide behind the
9 attorney-client privilege or the Work Product
10 Doctrine by saying this is the characterization.
11 Trust me.

12 MR. NIEWOEHNER: Your Honor, I'm
13 going to -- two observations. I think he's been
14 discussing his -- his intent and purpose of
15 these statements all day. So he hasn't been
16 trying to hide in that sense.

17 THE COURT: Well, I'm talking about
18 hiding in this sense, not wanting to disclose
19 his communication with Van Bilderbeek or not
20 wanting to disclose who else was involved in or
21 possibly aware of the misrepresentations he made
22 as to the number of witnesses involved and the
23 amounts involved and the scope of the payments.

24 MR. NIEWOEHNER: Your Honor, I would
25 make -- I would ask -- ask Your Honor for this

1 favor: We would ask for the opportunity, even
2 within 24 hours, to give you a short brief on
3 this. And that's done for two reasons. One,
4 because I think this is a significant legal
5 issue for us that we just -- I appreciate that
6 Your Honor is getting it quickly -- we are
7 reacting quickly, and it is significant.

8 Secondly, there's just a very
9 logistical concern for Mr. Collingsworth. If he
10 doesn't leave these offices soon, he's going to
11 miss his flight back to Washington which means
12 he will miss tomorrow morning, his flight to
13 take his daughter to college.

14 So we would ask with your indulgence
15 to allow us to provide a short brief. There is
16 something like 20 minutes or -- I don't know.
17 It's only like 20 minutes left. We've been
18 going for about 6 hours, 40 on my count. We --
19 we will not finish, but we will have the
20 opportunity to get this question resolved. And
21 --

22 THE COURT: All right. Mr. Wells,
23 what's your position on that? I take it
24 Mr. Collingsworth would be committing to,
25 depending upon my ruling, to reappearing and

1 answering the questions dependent upon what the
2 ruling I make is.

3 MR. NIEWOEHNER: That's correct,
4 Your Honor.

5 THE COURT: And what date would that
6 occur?

7 MR. NIEWOEHNER: It would, I think,
8 have to be next week, although I haven't spoken
9 with the other folks.

10 THE COURT: I take it the week
11 before my hearing y'all probably are going to be
12 spending some time working on my hearing.

13 MR. DAVIS: Your Honor, this is Tony
14 Davis. And let me just say a couple of things.
15 There have been all day long instructions by
16 counsel to tell -- to Mr. Collingsworth not to
17 answer, not to answer, not to answer. We have
18 many, many, many; and we have brought that to
19 the attention of counsel saying that we believe
20 it is improper instructions. But that has been
21 done. We really don't think there needs to be
22 briefing. This -- this case is all about
23 pushing the can down the road and there being
24 another brief.

25 And one other thing I think the

1 Court needs to know is: We tried very hard to
2 take Mr. Collingsworth's deposition last week,
3 to accommodate all of this about college. We
4 were told and represented to us in no uncertain
5 terms that he was going to be in California last
6 Thursday at a Dole hearing. He did not go to
7 that hearing. We found out today, or actually
8 found out after the hearing and confirmed it
9 today. So these schedule issues we believe
10 are -- are the defendant's own issues. That
11 being said, we believe that we need another
12 opportunity to depose him. We don't think there
13 necessarily needs to be briefing, but we -- we
14 are not opposed to doing that. But we are --

15 THE COURT: All right. So here's
16 what we're going to do, Tony. I appreciate all
17 that. You guys are going to pick whether it's
18 going to be on August 25th or 26th as far as the
19 continuation of the deposition. Okay.
20 Everybody is going to file a brief in by
21 Friday -- no. Let's -- by Thursday the 20th on
22 the scope of what I should permit or require
23 that Mr. Collingsworth answer. You're going to
24 attach the cleanest copy of a dirty transcript
25 you can get to me by then with a word

1 concordance at the end of it, full transcript,
2 not excerpts.

3 Replies will be due on the following
4 Monday, and then we will have a conference
5 call -- well, let's see. I'm going -- I'm going
6 to revise one thing I've said here. I just
7 realized I'm in Denver Monday and Tuesday. So
8 replies will be due on -- on the Tuesday. I
9 guess the question is we'll have to depose --
10 we'll have to end up the deposition on the 27th.
11 Does that work for everyone?

12 MR. WELLS: Does for us, Your Honor.

13 MR. DAVIS: Yes, Your Honor.

14 THE COURT: Mr. Collingsworth and
15 Mr. Niewoehner?

16 MR. NIEWOEHNER: Your Honor, that
17 looks like it works for Mr. Collingsworth. It
18 does not work for me, but we will figure
19 something out.

20 THE COURT: Well, you guys have a
21 bunch of lawyers; and you might could free
22 yourself up after all.

23 MR. NIEWOEHNER: Okay. Understood,
24 Your Honor.

25 THE COURT: All right. So the

1 deposition will continue on the afternoon or the
2 morning of the 27th at your choice. I've got
3 scheduling conferences in the morning. In the
4 afternoon I'll be free to be consulted if need
5 be. I'll try to have a ruling to you as soon as
6 possible on the 26th as to what the scope of the
7 continuation is going to look like.

8 MR. NIEWOEHNER: Your Honor, may
9 Mr. Collingsworth just go pick up his car? I
10 apologize. We -- we truly are pushing.

11 THE COURT: That's fine.

12 MR. NIEWOEHNER: Okay.

13 THE COURT: We're going to be coming
14 back on the 26th anyway -- the 27th anyway.
15 We'll be getting back on the 26th and getting a
16 ruling.

17 The other thing is I think what
18 we'll do is schedule a conference call for
19 11:00 a.m. Central Time on the 26th in case I
20 have any further questions to give you my
21 ruling. I'll have the court reporter here for
22 that. You won't need to supply one then.

23 MR. NIEWOEHNER: Thank you, Your
24 Honor.

25 THE COURT: And I'm doing this for a

1 couple of reasons. I've got an inclination, but
2 I told you it's not a ruling. I have thought
3 about this quite a bit. This isn't a surprise
4 to me that y'all have gotten to this point. I
5 suspected there would be disagreements about the
6 scope of this deposition.

7 I have thought carefully about the
8 crime fraud exception. But in fairness to
9 Mr. Collingsworth in particular and everyone, I
10 think he ought to be given one last chance to
11 make his argument as to why I should not let the
12 plaintiff go into this territory. Because once
13 -- once the plaintiff goes there, you can't
14 unring the bell. I can limit it. I can keep it
15 from public disclosure. I can say it's not
16 going to be admissible in a future hearing or
17 trial, but we can't unring the bell in terms of
18 confidential information has now been disclosed
19 to the other side. I get -- I get that.

20 On the other hand, that -- that's
21 the bad news, I guess, for the plaintiff. The
22 bad news for the defendant is there's been a lot
23 of water that's gone under the bridge already in
24 terms of Mr. Collingsworth's conduct that
25 affects whether he can stand behind

1 attorney-client privilege or work product right
2 now. And he was acting as an agent of fact of
3 his clients down in Colombia when he did these
4 things, so at some -- to some degree, that rubs
5 off on them as well. We'll see to what extent
6 it rubs off on the 26th, and then y'all will
7 take your deposition on the 27th.

8 MR. WELLS: Thank you, Your Honor.

9 MR. NIEWOEHNER: Thank you, Your
10 Honor.

11 THE COURT: Okay.

12 MR. DAVIS: Thank you, Judge.

13 MR. WELLS: Thank you, Judge.

14 (The deposition of Terrence
15 Collingsworth adjourned at
16 5:29 p.m.)
17
18
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25

1
2 C E R T I F I C A T E
3

4 STATE OF ALABAMA)

5 JEFFERSON COUNTY)
6

7 I hereby certify that the above
8 and foregoing deposition was taken down
9 by me in stenotype, and the questions and
10 answers thereto were reduced to computer
11 print under my supervision, and that the
12 foregoing represents a true and correct
13 transcript of the deposition given by
14 said witness upon said hearing.
15

16 I further certify that I am
17 neither of counsel nor of kin to the
18 parties to the action, nor am I in
19 anywise interested in the result of said
20 cause.
21
22
23

24 _____
25 Merit Gilley, Commissioner
ACCR NO. 67

	8:12;87:9	279:2;280:1	56:5	51:2;52:15;54:5;
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	286:12	162:10	357:3;363:16	143:5;272:22;
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