INTERNATIONAL CENTRE FOR THE SETTLEMENT OF INVESTMENT DISPUTES

In the matter of Arbitration:
between:

OMEGA ENGINEERING LLC AND
MR. OSCAR RIVERA,

Claimants,

and

REPUBLIC OF PANAMÁ,

Respondent.

HEARING ON JURISDICTION, MERITS AND QUANTUM

Wednesday, February 26, 2020

The World Bank Group
1225 Connecticut Avenue, N.W.
C Building
Conference Room C1-450
Washington, D.C.

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

MR. LAURENCE SHORE, President

PROF. HORACIO A. GRIGERA NAÓN, Co-Arbitrator

PROF. ZACHARY DOUGLAS, Co-Arbitrator

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PROCEDINGS

JORGE ENRIQUE VILLALBA, RESPONDENT'S WITNESS, CALLED

PRESIDENT SHORE: Good morning, everyone.

Third day of the first week of the Final Hearing in Case 16/42.

Before we begin with the Witness,

Ms. Gorsline, any procedural points that Claimants would like to raise?

MS. GORSLINE: None for Claimants, Mr. President.

PRESIDENT SHORE: Thank you.

Mr. Weisburg?

MR. WEISBURG: No, thank you. We're good.

PRESIDENT SHORE: Thank you very much.

JORGE ENRIQUE VILLALBA, RESPONDENT'S WITNESS, CALLED

PRESIDENT SHORE: Mr. Villalba, good morning.

THE WITNESS: Good morning.

PRESIDENT SHORE: I believe you have right in front of you a declaration from the ICSID Arbitration Rules on speaking the truth. Can you please read out that declaration?

THE WITNESS: I declare, upon my honor and
conscience, that I shall speak the truth, the whole
truth, and nothing but the truth.

PRESIDENT SHORE: Thank you.

I believe that we have two Witness Statements
from you in this proceeding, sir: one dated 7
January 2019, and the other 14 November 2019; is that
correct?

THE WITNESS: Correct.

PRESIDENT SHORE: So, there will first be some
questions for you from Mr. Weisburg and then there will
be cross-examination from Ms. Gorsline. I think it is
probably best, since you're one of the principal
speakers this morning, if you leave your microphone on.

THE WITNESS: Okay.

PRESIDENT SHORE: Mr. Weisburg.

MR. WEISBURG: Thank you.

DIRECT EXAMINATION

BY MR. WEISBURG:

Q. Mr. Villalba, can you tell us where you are
currently employed, please?

A. I am Deputy Director, or number two, in the
unit--in the Financial Analysis Unit, UAF, in Panamá.
Q. Can you just tell us very briefly what the Financial Analysis Unit is and does?

A. It is a version or something similar to FINCEN in the United States. It is the unit that compiles and analyzes all of the financial intelligence information related to crimes of money laundering, terrorism financing, and financing of the proliferation of weapons of mass destruction.

Q. Okay. If you could turn in your First Witness Statement to Paragraph 11, please. First Witness Statement, Paragraph 11.

At the time of this Witness Statement, which is January of 2019, you say that you currently work as an independent forensic auditor, which I take to be a job in the private sector.

At what point did you go to become Deputy Director of the Financial Analysis Unit?

A. In late October 2019.

Q. Okay. Thank you.

And if I could also direct your attention to, on that same page, to Paragraph 13.

A. Yes. I'm there.

Do you have a correction to make there?

A. Yes. The correct date is 7 October 2014.

Q. Okay.

MR. WEISBURG: And if I could just mention to the Tribunal, that same error, which was a transliteration of the American dating style and the South American dating style, also appears in Footnotes 3, 4, and 45. In each case, it says "July" when "October" is the correct date.

And with that, we have no further questions.

PRESIDENT SHORE: Thank you, Mr. Weisburg.

MS. GORSLINE: Thank you very much Mr. President.

CROSS-EXAMINATION

BY MS. GORSLINE:

Q. Good morning, Mr. Villalba.

A. Good morning.

Q. Am I pronouncing your name correctly?

A. Yes. Yes.
Q. Okay. All right. If I get it wrong, just let me know. My name is Melissa Gorsline. I'm one of the lawyers for the Claimants, and I will be asking you some questions today.

Can you respond for the record. You have to speak orally because they can't record nodding on the Transcript.

A. Yes. Yes.

Q. Okay. Thank you. And--sorry. I'm speaking over the translation.

There is a lawyer sitting behind you, and she is also going to be handing you some documents during your examination. Okay?

A. Yes. Fine.

Q. Okay. Now, you testify in your First Witness Statement that starting in 2010 you were the Chief of the Financial Analysis Section in the Prosecutor's Office specialized in organized crime; is that correct?

A. Chief of Analysis, yes.

Q. And in that position, you worked as an auditor, an analyst in financial investigations; is that right?
A. Correct.

Q. Now, you left that role in 2016; correct?
A. Yes. February of 2016.

Q. And then I understand that you were in the private sector until late October of 2019; correct?
A. Correct.

Q. Okay. Now, you state--and, actually, let's look at Paragraph 2 of your First Witness Statement. I think it will be easier.

Now, if we look at the very bottom of Paragraph 2, you explain that you provided your witness testimony in this arbitration to "explain the nature of the National Assembly's investigation, its findings, as well as the work subsequently performed by the Public Prosecutor's Office"; is that correct?
A. Correct.

Q. So, the basis for your testimony in your Witness Statements is the investigations that you were personally involved in; correct?
A. Correct.

Q. Okay. And that includes both the National Assembly investigation; right?
A. Correct.

Q. And the Public Prosecutor's investigation?

A. Correct.

Q. And with respect to the Public Prosecutor's Office, the Prosecutor for Organized Crime was investigating; correct?

A. The Prosecutor, yes.

Q. Yes. And there was also an anticorruption prosecutor who was investigating; correct?

A. I worked in the Office of the Public Prosecutor for Organized Crime. That was the Prosecutor's Office in charge. Now, if the Anticorruption Prosecutor helped out with other aspects, well, I did not work in that office. Just to clarify that point.

Q. Okay. So, your testimony is based on the Organized Crime Prosecutor's investigation; correct?

A. Correct.

Q. Okay. But do I understand correctly that you did not directly participate in the Anticorruption Prosecutor's activities; is that correct?

A. No.
Q. No, it's not correct, or, no, you did not participate in the anticorruption?

A. No, I did not participate in the investigations carried out by the Anticorruption Prosecutor.

Q. Okay. Thank you, Mr. Villalba.

If we could just try really hard not to speak over each other. The Court Reporter has a difficult job, and when we're both talking at the same time, it makes that job even harder. Okay.

So, I will try not to interrupt you, and if you could try not to interpret me, I would appreciate it. Okay?

A. Okay.

Q. Thank you.

Now, you are presently employed by the Government of Panamá; correct?

A. Correct.

Q. Okay. And you've held that position since October of 2019; correct?

A. Late October 2019.

Q. Late October. All right.
A. Yes.

Q. So, at the time you submitted your First Witness Statement, you were not employed by the Government of Panamá; correct?

A. Correct.

Q. At the time you submitted your Second Witness Statement, you were employed by the Government again. Do I have that right?

A. Correct.

Q. Okay. Now, this is just a standard question. Are you being compensated for your testimony in this case in any way?

A. I asked that I have my hours remunerated when I was working on independent basis.

Q. Thank you, sir.

Now, Mr. Villalba, you have stated that from October of 2014 to March 2015, you were seconded to the National Assembly for purposes of the investigation into Justice Moncada Luna; right?

A. Correct.

Q. And Congressman González was the Designated Prosecutor for that investigation; right?
A. Correct.

Q. And he asked you to help lead the investigation into Justice Moncada Luna. Do I understand that correctly?

A. Yes. That is right, on the technical aspects.

Q. Okay. What do you mean by "on the technical aspects"?

A. The Prosecutor is in charge of the investigation. We were divided up in the legal part and the technical part: the technical part was my main work, with a small team to be able to carry out the investigative steps on the financial side, which is the same thing that I did when I previously worked in the Office of the Prosecutor for Organized Crime.

Q. Okay. So, as I understand it, your job was to collect the facts on the financial side; is that right?

A. Yes, practically speaking. All of the investigative steps that needed to be carried out: Inspections that had to be carried out in relation to the banking institutions.

Q. Solely into the banking institutions, or did your role extend beyond that?
A. In addition, information was requested from
the Judiciary; the Ministry of Economy and Finance
regarding the contract documents that existed; the
checks paid by the State; financial information in
relation to banks, as I already indicated; and any
steps that the Prosecutor might order in order to
collect that information, process it, and subsequently
analyze it and present it to the Prosecutor.

Q. So, it was your job to collect the
information, and it was the Designated Prosecutor's job
to decide if legally a crime had been committed.

Is that a fair statement?

A. Yes. The decisions were in the hands of the
Prosecutor.

Q. Okay. Now, if we could turn to Paragraph 17
of your First Witness Statement, please, Mr. Villalba.

Are you there, sir?

A. Yes.

Q. All right. So, in your direct testimony, you
corrected the date of a report from the National Bar
Association, which essentially started the Moncada Luna
investigation; is that correct?
A. Yes.

Q. Okay. Based on that Report, you say in Paragraph 17 that: "Congressman González identified four criminal claims that could possibly be brought against Justice Moncada Luna"; correct?

A. Correct.

Q. And those four claims were making false statements; correct?

A. Correct.

Q. Unjust enrichment; right?

A. Correct.

Q. Corruption?

A. Correct.

Q. And money laundering; right?

A. Correct.

Q. And you also state here that you "reviewed the elements of these crimes under the Penal Code and identified the type of evidence you would need to support a conviction under each"; right?

A. Correct.

Q. In reviewing the elements for corruption, you would have seen that it requires a showing of intent;
correct, sir?
   A. Correct.
   Q. And in reviewing the elements of money laundering, you would have seen that it requires an underlying predicate criminal offense, doesn't it?
      A. Correct.
      Q. And corruption can be such a predicate offense; right?
         A. Correct.
         Q. Now, at the time you were reviewing the elements of these crimes under the Penal Code, the only information you had were the materials submitted by the Bar Association; is that right?
            A. Correct.
            Q. At that time, you hadn't yet begun investigating; correct?
               A. No, not yet. You're right.
               Q. Okay. So, you hadn't collected any evidence yet; right?
                  A. All that existed was what had been presented by the bar association.
                  Q. Okay. And you would agree with me, wouldn't
you, that you can't start an investigation with the assumption that a crime has been committed and then fit the facts to that assumption, can you?

A. Could you repeat the question to make sure I got it?

Q. Sure. Of course.

So, when you begin an investigation, you can't start that investigation with the assumption that a crime has been committed, can you?

A. There may be—well, we're in a stage where we're talking about probabilities.

Q. Can you explain what you mean by that, sir?

A. Okay. I have to explain to you the genesis. Let's take it by parts.

Initially, the only thing that existed at that time in the National Assembly, or on the part of the Prosecutor in the case, Pedro Miguel González, were just the elements set forth in the complaint by the Bar Association and others, I believe Alianza as well, who were also involved in filing this complaint.

Now, once having these elements in hand, the principal elements, the Prosecutor determines, in order
to begin a possible investigation—we are just
beginning an investigation on possible crimes that
could—we’re talking about indicia—that could have
been or may have been committed.

Now, due to those four possible crimes, we met
both the technical part and the legal part to examine
the conduct set forth in the Criminal Code so as to be
able to determine what type of investigative measures
we should pursue in order to collect those elements of
evidence that were required in order to be able to
determine certain conduct. So, there we started
initially with some investigative steps.

So, that is why I say probable indicia. At
that precise moment to be able to begin the
investigation, one would have to begin with various
different steps for collecting evidence, and that's
what was done, and that went forward as the various
investigative steps were carried out in relation to the
institutions that might be able to provide us with that
information.

Q. Yes, sir. I understand.

I think the question I was asking was a little
simpler, which is: You could not just assume that the information in the bar complaint was accurate, could you?

A. Yes. One had to validate everything that they had submitted, and that's what was done.

Q. Okay. Now, I'd like to look back at Paragraph 17 of your First Witness Statement, sir. And if we look there about four lines down, you explain that you were reviewing the elements of the Penal Code to determine what you would need to support a conviction.

Do you see that?

A. Yes. And that's what I just explained a moment ago.

Q. Yes. I heard your explanation, but shouldn't you have been focused on determining whether a crime occurred as opposed to supporting a conviction?

A. We were at a preliminary stage of the investigation. At that time, no one was being convicted. There was a presumption of innocence in relation to the justice at that time.

Q. Okay. So, we agree that there is a
presumption of innocence until proven otherwise; correct?

A. Yes, exactly.

Q. Now, focusing on that same paragraph of your Witness Statement, sir, you describe that, to collect evidence, the National Assembly subpoenaed various financial documents from entities and persons linked to your investigation; correct?

A. Correct.

Q. And those subpoenaed documents included bank records; right?

A. Correct.

Q. Checks?

A. Checks.

Q. Yes. And invoices?

A. Invoices. They were necessary, yes.

Q. Yes. And you don't list any other types of documents here, do you?

A. Bank records, checks, invoices, and interviews that were conducted. So, an array of steps that could be taken in the investigation at that point.

Q. Okay. Based on your Witness Statements and,
in fact, the Report that you authored—which we'll talk about in a little bit—you didn't subpoena any phone logs, did you?

A. No, I did not do any investigating into phone records.

Q. Okay. So, that would mean that you also didn't subpoena any text message records; correct?

A. No.

Q. Okay.

A. I did not.

Q. Okay. No emails; right?

A. Okay.

Q. I'm sorry. Does "okay" mean you did or you did not subpoena emails?

A. That we investigated emails as part of our investigation? Is that what you're asking?

Q. Yes.

A. During the assembly investigation? Not that I recall. We did not.

Q. Okay.

A. In my work, the part of my work, we did not do any investigation into emails.
Q. Okay. And I think I know the answer already, but you didn't subpoena any calendar entries, anything to suggest when the people you were investigating might have been meeting other people; correct?

Nothing like that?

A. For my part, no, not that I recall.

Q. Well, are you suggesting that others investigated those types of documents in the National Assembly?

I should be clear what I'm talking about.

In the National Assembly investigation, did anyone subpoena those kinds of documents?

A. As far as I recall, I would say--well, since I was focused just on my part--we had a division of labor--I can talk to you about what I did, or the taking of evidence and the elements that were collected or that were analyzed by us.

Q. Okay. I understand that, sir.

But you understand--right?--that you were the only person who was involved in the Panamanian Government's investigations that has been put forward as a witness?
Did you know that?

A. Okay.

Q. So, unfortunately, I may be asking you things that seem to you a little outside your scope, because I don't have anyone else to ask.

Also, I just want to go back. Now, you testified that you were helping to lead the investigation in the National Assembly; correct?

Do you remember saying that in your Witness Statement, Mr. Villalba?

A. Yes. Yes, I was part of the team that was heading up the investigation.

Q. So, in that leadership role, wouldn't you have had some idea of what other members of the team were doing?

A. There were certain times when we would be working around the table together and looking at the information, but the one who directed the investigation was the Prosecutor.

Q. Okay. But as far as you're aware, other than the categories of documents that you have listed in your Witness Statement, which were bank records,
checks, and invoices, no other documents were subpoenaed or collected during the National Assembly investigation.

Is that a fair statement?

A. The Prosecutor may have taken other kinds of evidence with the legal team also.

Q. Okay. But you never saw any of that evidence; is that a fair statement?

A. Not necessarily. The Prosecutor was the one who pulled things together, met separately with some groups, would bring us all together for working meetings from time to time, so that he would have a general overview of everything that was going on.

Q. I understand that, sir.

I think my question is: At those meetings that you attended, you never heard anyone discussing having collected emails, text messages, phone logs, or evidence of other meetings or communications between the Parties; is that correct?

A. I would prefer, since--I don't really know for sure whether the answer to that would be yes or no. I didn't necessarily have to have access to that.
Q. No. I understand, sir. I'm not asking you about what people did outside your presence.

I'm simply asking if you ever saw--you, Mr. Villalba--ever saw any evidence like the type I've just been discussing being collected in the National Assembly investigation?

A. I don't recall that.

Q. Okay. So, as far as you know, evidence that might have shown the intent of the Parties being investigated during the investigation in the National Assembly was not collected; correct?

Again, I understand you don't know what other people did outside your presence. I'm just asking, based on what you know, you never saw that type of evidence of intent being collected; right?

A. I can only talk about what I've testified in my Report and of the evidence that I took.

Q. So, is that a no, sir? No, you never saw that type of evidence being collected?

A. Well, if it happened, I can only testify in connection with the taking of evidence of financial issues, which is the kind of evidence that we took in
Q. Okay. And to recap, that was--those financial records that you collected were bank statements, invoices, and checks; correct?

A. Umm-mmm.

Q. Sir, can you say "yes" or "no"?

A. Yes.

Q. Thank you. Now, in January 2015, Congressman González engaged Mr. Julio Aguirre to review the evidence collected in the National Assembly investigation and provide an opinion as to whether it indicated any form of financial crime; is that right?

A. He was hired, yes.

Q. And you describe Mr. Aguirre as a money laundering Expert. Do you remember saying that in your Witness Statements?

A. Yes.

Q. Okay. Now, on February 23, 2015, Justice Moncada Luna entered into an agreement with the National Assembly in which he pled guilty to certain offenses; correct?

A. Correct.
Q. And those offenses that he pled guilty to were unjust enrichment and making false statements; right?
   A. Correct.
   Q. Okay. He didn't plead guilty to any other charges, did he?
   A. That had to do with the Agreement that was reached. This was born of the Agreement.
   Q. Yes. But my question was more simple than that: He didn't plead guilty to any other charges other than unjust enrichment and making false statements; right?
   A. Correct.
   Q. So, he never pled guilty to corruption, did he?
   A. Correct.
   Q. Or money laundering; right? He didn't plead guilty to that, either?
   A. Correct.
   Q. Okay. Then, after Justice Moncada Luna pled guilty to unjust enrichment and making false statements, Mr. Aguirre then filed the Report he had prepared on money laundering; correct?
A. Correct.

Q. Yes. And so, that Report was filed on March 2, 2015. Does that sound right to you? It's in Paragraph 26 of your First Statement, if you'd like to look, sir.

A. Umm-hmm.

Q. I'm sorry, sir. We need you to say "yes" or "no."

A. Correct.

Q. Now, Mr. Aguirre's Report was based on the evidence that you and your team had collected during the National Assembly investigation; correct?

A. Yes. He used the same elements.

Q. Well, not just the same elements. The same evidence; correct?

A. Correct.

Q. Okay. Now, as far as you know, he didn't have any evidence other than the evidence you collected; is that right?

A. Correct.

Q. Okay. You read Mr. Aguirre's report at the
time, didn't you?

A. Yes, I had access to it.

Q. Okay. And you read it; right? I believe I read that in your witness evidence, that you read his Report and you agreed with it?

A. Yes. That's correct.

Q. Okay. Then, just three days after Mr. Aguirre filed his Report on March 5, the National Assembly terminated its investigation, didn't it?

And again, this is Paragraph 27 of your Witness Statement, if you'd like to look, sir.

A. Yes.

Q. After that time, you returned to the Public Prosecutor's Office and your original position there; right? You were no longer seconded?

A. Correct.

Q. I believe you said that was in the latter half of March--correct?--that you returned to the Public Prosecutor's Office?

A. Yes. Around that period of time.

Q. Okay. Let's turn to Paragraph 28 of your First Witness Statement, please, sir. And you say
there that: "Because the National Assembly's jurisdiction was limited to the investigation of Justice Moncada Luna, Congressman González referred the evidence and information as to others involved, including Omega Engineering and its principal, to the Public Prosecutor's Office for further action."

Did I read that correctly?

A. Correct.

Q. And you also say that you were put in charge of that investigation; correct?

A. Correct. I was the head of that unit; therefore, I was in charge of it.

Q. Okay. When you say "that unit," you mean the unit within the Organized Crime Prosecutor's Office; correct?

A. Okay.

Q. Okay. And then if we look at Paragraph 29 of your Witness Statement, your First Witness Statement, we see that you say: "Investigations"--plural--"into Mr. Rivera and Omega Engineering were started by both the Organized Crime and the Anticorruption Divisions within the Public Prosecutor's Office."
Did I read that correctly?

A. Correct.

Q. So, these were two separate offices within the Public Prosecutor's Office; right?

A. These are two different Prosecutors' Offices. These are two separate specialized Prosecutors' Offices.

Q. Okay. Thank you, sir. That's helpful. It helps me to understand.

So, these were two separate investigations; correct?

A. Yes.

Q. Okay. And as I understand it from your earlier testimony, you only were participating in the Organized Crime Prosecutor's investigation; is that right?

A. Okay. Correct.

Q. Okay. Did you have any interaction with the investigators for the Anticorruption Prosecutor's Office?

A. I was only seconded to the Organized Crime Prosecutor's Office.
Q. Okay. So, you wouldn't have any knowledge about what the Anticorruption Prosecutor's Office was doing? Is that your testimony?

A. That is correct.

Q. Okay. Now, if we look back at Paragraph 28, sir, of your Witness Statement, you say that your first task when you returned to the Organized Crime Prosecutor's Office was to prepare a report detailing what was done in the National Assembly investigation; right?

A. Correct.

Q. And that Report was submitted by you on June 5, 2015 to the Organized Crime Prosecutor; right?

A. That is correct.

Q. Can we now turn to R-62, if the Witness could be provided with that document? And we're just going to be looking at the first page for right now.

A. I got it.

Q. Thank you, sir. Okay. Thank you.

This document is labeled "Preliminary Financial Analysis Report, Case Number 049-15."

This is your June 2015 Report; right?
A. That is correct.

Q. So, this was the starting point for your investigation at the Public Prosecutor's Office; is that fair to say?

A. It wasn't really the starting point. The Organized Crime Prosecutor had already received part of the information from the Assembly. And he asked the unit that I was in charge of to conduct a factual analysis, an analysis of the facts and of all the investigative steps that were being taken, by the Prosecutor's Office at the time.

Q. Okay. Now, you mentioned that the Prosecutor's Office had already received part of the information from the Assembly.

That was because the Prosecutor's Office had requested the information; correct?

A. Yes. The Report says this very clearly. I can make reference to the Report. This document has the purpose of submitting the factual notices related to the criminal case 049-15 that was examined in connection with the financial information provided by the banking institutions, related documents to the
contracts and collections with the Judiciary, and information provided by the National Assembly, which was the Prosecutor's Office that was assigned the case.

Q. Yes. I see that. That's from Page 1, for those following along.

And if we look to the top of Page 2 of your Report, it says: "At the request of this"—the English says "audit agency," but I understand that means the Prosecutor's Office; right?

A. That is correct.

Q. Thank you. "At the request of this Prosecutor's Office, pursuant to a note dated 5 March 2015, we have been sent a duly certified copy of the documentation collected by the designated oversight entity."

And that's referring to the National Assembly; correct?

A. Are you asking me that?

Q. Yes. I'm asking you to confirm that the designated oversight entity was the National Assembly; correct? That's what this means here in your Report?

A. No. This Report was prepared on the basis of
the information that was provided by the designated Prosecutor's Office.

Q. Yes, sir. I think we're saying the same thing. I'm just saying--sorry.

You had mentioned--I asked you if the Prosecutor's Office had requested the information. You said yes. And that's what is being recorded here in this first sentence on Page 2?

A. Yes, correct.

Q. Okay. Thank you.

All right. If we could look at--

PRESIDENT SHORE: So, I think the Transcript, Professor Naón, reads "R-26," but it should be R-62.

Thank you.

Sorry, Ms. Gorsline.

MS. GORSLINE: Thank you very much. That's an important catch.

BY MS. GORSLINE:

Q. All right. If we turn to Page 25 in the English--and I'm told it is Page 99 in the Spanish--of R-62--

MR. WEISBURG: If I can interject: You seem
to be using different page numbers. There's a codified page number in the middle and a page number on the right. If you could be consistent, that would be helpful.

MS. GORSLINE: That's a fair point, Mr. Weisburg.

BY MS. GORSLINE:

Q. Let's use the page numbers on the bottom right corner, because I believe those are identical in English and Spanish. And so, if we turn to Page 24.

A. Correct.

Q. So, on this page you have created a diagram; correct?

A. Correct.

Q. And you conclude here that "Omega made two payments"--well, excuse me--"one payment of $250,000 to another of Mr. Rivera's companies called PR Solutions"; correct?

A. Correct.

Q. Okay. And can we now turn to Page 39, using the numbers in the bottom right corner. Using those numbers, it is the same in Spanish and English.
And here we see another
diagram—correct?—that you've created?

A. Correct.

Q. And, again, here we see 250,000 going from
Omega Engineering to Mr. Rivera's other company,
PR Solutions; correct?

A. Correct.

Q. Okay. Now, you concluded—if we use those
same two diagrams—right?—on Page 24 and Page 39, you
concluded that PR Solutions, in turn, made two $250,000
payments to Reyna & Associates; correct?

A. Correct.

Q. Thank you, sir.

And then if we look at Page 24, you conclude
that Reyna transferred some of that money to a company
called Sarelan, which was controlled by Justice Moncada
Luna; correct?

And we see that, again, on Pages 24 and
39—correct?—in your diagrams?

A. Correct.

Q. Now, during the course of your investigations,
you were informed that the payments from PR Solutions
to Reyna & Associates were part of a Land Purchase Agreement Mr. Rivera had entered into as part of a potential property development project through a company called Punela; correct?

A. Yes. That information had been provided to us.

Q. Okay. Ms. Maria Gabriela Reyna is a lawyer from Reyna & Associates, isn't she?

A. Yes.

Q. Okay. Now, Ms. Reyna testified in both the National Assembly investigation and the Public Prosecutor's Office investigations; correct?

A. Correct.

Q. Okay. And by July of 2015, Ms. Reyna had repeatedly testified that the payments from PR Solutions to Reyna & Associates were part of that land purchase, hadn't she?

A. Correct.

Q. And that testimony started in January of 2015; right? That was the first time she testified before the National Assembly?

A. Yes. If memory serves, yes.
Q. Okay. And she testified that—in that first testimony, she said that she had brokered the sale of property to Mr. Rivera through a company of his called Punela but that the property sale had not closed due to issues with a mortgage and the provision of electricity.

And if it would help you to look at the document, we can do that, sir. Would you like to look at the document recording her testimony?

Let me withdraw the first question. I'll just ask the second question right now.

The second question is, would you like to look at Ms. Reyna's testimony?

A. It's not necessary, no. It's not necessary.

Q. Okay. All right. So, then I'll ask the first question again.

In January 2015, Ms. Reyna testified to the National Assembly that she had brokered a sale of property, of land, to Mr. Rivera through a company called Punela Development; correct?

A. Correct.

Q. And she also testified that the property sale
had never closed because there were issues with clearing mortgage and with providing electricity to the property; correct?

A. I don't recall that part of her Statement, but if it's in her Statement...

Q. Okay. Thank you, sir.

Can we please show the Witness R-139? And I'd like to look at Page 6 of the English, which I am told is Page 27 of the Spanish.

And about midway down the page, do you see--the questioner says "2014."

Do you see that, sir?

A. I do.

Q. Thank you, sir.

And then Ms. Reyna says: "Yes, because we had a delay because I committed to materialize when power reached the property and that happened at the end of this year. At that time, I released the mortgage, and I think the day came in early November"--or, excuse me--"early December."

Do you see that?

A. I do. I do. I just read that. Yes.
Q. Okay. So, as early as January 2015, the National Assembly investigators had been told that the 500,000 coming from Mr. Rivera's companies to Reyna & Associates was for the purchase of real property; correct?

A. We had received the financial information. Is that what you're referring to, the information given to us from the banks?

Q. I understand that you had received information from the banks, but you had also received testimony from Ms. Reyna that that money was part of a land purchase; correct?

A. That is what she submitted to support her statements.

PRESIDENT SHORE: Sorry. Can I interrupt, Ms. Gorsline?

MS. GORSLINE: Of course.

PRESIDENT SHORE: Mr. Villalba, were you in this interview with Ms. Reyna, this one on January 27, 2015, that counsel is asking you about?

THE WITNESS: I was not.

PRESIDENT SHORE: Why not?
THE WITNESS: The interviews were conducted directly by the Prosecutor. The secretary of the Prosecutor was there and also a team of lawyers were there. After the interviews, if there were any issues, we received feedback regarding the outcome of the interviews.

PRESIDENT SHORE: Thank you.

MS. GORSLINE: Thank you, Mr. President.

BY MS. GORSLINE:

Q. So, at the time that she first told you about the land transaction in January 2015--and I apologize--at the time she testified, because I now understand that she didn't tell you.

At the time she testified about the land transaction, she also made clear that the transaction had not closed; correct?

A. In accordance with this testimony, yes.

Q. Now, Ms. Reyna testified again during the Public Prosecutor's investigation; correct?

A. Correct.

Q. And I believe the first instance of her testimony in that investigation was on June 23, 2015;
correct?

A. That's correct.

Q. Can we look at Exhibit C-894. Now, I'd like to start on Page 1 of this document, which, in the Spanish, would be Page 22. And if we look at the top of the page, we see that she is appearing before the Special Prosecutor's Office Against Organized Crime; is that correct, Mr. Villalba?

A. That's correct.

Q. All right. Were you present for this interview with Ms. Reyna?

A. I was not. The interviews at the Assembly, this just to be clear, and the sworn statements, those are conducted by the Prosecutor with his assistant.

Q. Okay.

A. No, physically present at the examination, I was not.

Q. Okay. Do you know the name of the person? Who was the Organized Prosecutor, the Organized Crime Prosecutor who would have been present for this interview?
A. The signature must be here. Mr. Nahaniel Murgas Moreno.

Q. Okay.

A. And also the secretary that was in charge of the examination. If you look at Page 41, I think it is, it looks like it's 41.

Q. Okay. Now, Mr. Murgas Moreno, was he the Organized Crime Prosecutor? Was he the boss?

A. That is exactly right.

Q. All right. Now, even though you weren't in the interview, you would have seen this transcript of the interview shortly thereafter; right?

A. Yes. Yes. I had access to this. I gained knowledge of the interview later on.

Q. Okay. So, if we could look on Page 3 of the English. I'm told it is Page 24 of the Spanish, about midway down the page.

We see it says: "Omega Engineering and PR Solutions are part of a holding, along with another company called Punela Development Corp. The latter currently has a contract for a promise to enter into a Purchase Agreement with a client of mine concerning
Property 35659 which is located in the Province of Los Santos, Tonosí District, Cañas Township."

Did I read that correctly, sir?

A. Correct. Yes.

Q. Okay. So, again, she's, once again, saying this money was for a land transaction; right?

A. Correct.

Q. All right. And then if we could turn to Page 7, which I'm told is Page 28 in the Spanish.

Again, about midway down the page, Ms. Reyna is discussing some tax issues, and she says: "This year I had to declare and the declaration has been postponed pending the definition of the destination of the promissory purchase as we currently have a conflict, since Omega is demanding that the money be returned and I, as a lawyer, I have demanded that they pay the remainder or terminate the contract."

Do you see that, sir?

A. Correct.

Q. So, again, she's also saying that there has been a conflict that arose and that the sale has not closed; right?
A. Correct.

Q. Okay. Now, as I understand it, Ms. Reyna provided testimony one more time in the Organized Crime Prosecutor's investigation in July of 2015; correct?

A. I think it was an enhancement, an expansion of the previous one.

Q. Okay. Let's turn to C-0089, please. And if we look at Page 1 of this document--if we look at Page 1, the Spanish is on Page 18, Page 1 of the Spanish.

A. Okay.

Q. And we see this is what you were just mentioning. It says, in the English, "extension to the suspect statement," but that's what you were referencing; correct? I think you said an "expansion of her testimony"?

A. Yeah, something like that.

Q. Okay. All right.

So, if we look at Page 8, in the middle of the page--I'm told that is Page 25 in the Spanish--and we see there Ms. Reyna is saying: "I just want to clarify that the real estate operations carried out with Punela
Investment, Omega, and with Alpha Business Corp. are perfectly legal and legitimate acquisitions. I don't believe that there are any links of any other kind of relationship between Omega and the people related to Mr. Ricardo Calvo and other people."

And then she goes on to say: "And I have only explained what happened and how I involuntarily ended up preparing some support documentation."

So, did I read that correctly, sir?

A. I'm looking, trying to find it.

Q. I'm sorry, sir.

A. Yes.

Q. Did I read that correctly, sir?

A. Yes, you did read it correctly, what it reads here.

Q. Okay. So, again, we see her testifying that this was a legitimate real estate transaction; correct?

A. Yes, that's what she states.

Q. Yes. And here we even see that she is now admitting her own guilt--correct?--although she is making excuses for it, but she's still saying that the Omega transaction was a legitimate and legal piece of
business; right?

A. Yes, that's what she states.

Q. Okay. In fact, Ms. Reyna's testimony on this point was consistent throughout her various interviews and throughout the various investigations; correct?

A. Consistent? Could you be a little bit clearer? What do you mean when you say "consistent"?

Q. Sure. That with respect to the land deal between Punela and JR Bocas, she never changed her testimony, did she?

A. Yes. She was--yes, she was saying the same. She maintained her statement.

Q. Okay. Now, Mr. Frankie López also testified in the National Assembly investigation; correct?

A. Yes.

Q. Could we please turn to C-888. The Spanish in this document begins on Page 19, sir.

A. Correct.

Q. Yes. And if we--if you look at that page--and those of us following along in English will be looking at Page 1--we see that this is testimony in the National Assembly investigation by Mr. Frankie López in
January of 2015; correct?
   A. Correct.
Q. Okay. And I take it you were not present for this interview, Mr. Villalba?
   A. No, I wasn't there.
   Q. Okay. But you did have access to the document after; correct?
   A. Yes. There was--I didn't receive any feedback on the interview.
   Q. I'm sorry. I don't understand what that means.

You "didn't receive any feedback on the interview"? Does that mean you never saw this document?
   A. Rather, that we were not present but, based on some comments that were within our competence or jurisdiction, we were communicated the elements that were addressed in the interview.

THE INTERPRETER: The interpreter misunderstood. He said no, but he added a final "s" that says "nos," so it was the interpreter's mistake.

BY MS. GORSLINE:
Q. Okay. Thank you, sir. I appreciate that. Now, you're aware, aren't you, sir, that Mr. Lopez testified that the money paid from PR Solutions to Reyna & Associates was to purchase the land for development pursuant to the Agreement between Punela and JR Bocas; correct?

A. Yes, that is what he stated.

Q. Okay. And if we look at Page 2, the bottom of Page 2 in the English, and I'm told it is on Page 21 in the Spanish.

And we see there Mr. López testifying: "Well, it was done. It was formalized. A contract of sale was perfected by establishing an amount with some items. Not all"

PRESIDENT SHORE: "Terms."

BY MS. GORSLINE:

Q. Oh, I'm sorry, "terms."

"Not all conditions were met. Some initial payments were made according to the commitment, but, in turn, there was an understanding that the work part had not met. At one point, they mutually agreed to extend deadlines, which were conditioned to the development or
connection of the electrical system. At the same time, we had made the caveat that the property had a lien, a mortgage, that really was part of the transfer to be able to finalize the buying and selling process."

Did I read that correctly, Mr. Villalba?

A. Correct.

Q. And then if we look a little further down on that same page, there's a question from the examiner that says: "And now, after that procedure, have you given up?"

Do you see that, sir?

A. Yes. Now, after that, they have given up. Yes.

Q. Yes. And if we look midway through the Response to that question, Mr. López says: "And, obviously, Mr. Rivera was quite upset with the situation, talking about taking some kind of legal action against this person."

Do you see that, sir?

A. The complete text?

Q. Just the part I read, sir.

A. What paragraph is this in?
Q. So, we--you saw the question: "And now, after that procedure, have you given up?"

Do you see the question, sir?

(Interruption.)

PRESIDENT SHORE: Do you have the right paragraph, Mr. Villalba?

THE WITNESS: I am trying to identify the paragraph, the line. "And now, after that procedure..."

PRESIDENT SHORE: "And now, after that procedure, have you given up," and then counsel is asking you about a couple of sentences in to the paragraph under that question: "Mr. Rivera was quite upset with the situation." Can you find that line?


BY MS. GORSLINE:

Q. Thank you, sir.

So, Mr. López had testified to the same things that Ms. Reyna had testified to; correct?

A. Correct.

Q. Both had said that that money was transferred
pursuant to a land deal; correct?

A. Correct.

Q. And both had testified that there were issues with the deal and that the sale had never closed; right?

A. Based on the statement, yes.

Q. Okay. And I don't want to necessarily walk through all the documents, but you also heard from a witness named Mr. Francisco Feliú in the National Assembly? Do you remember--do you recall that, sir?

A. Yes. Yes. He appeared, yes.

Q. Yes. And do you recall that he also testified that the money was transferred for a land transaction?

A. I think I need to refresh my recollection.

Q. Okay. Let's look at C-899.

A. Okay.

Q. All right. And if we look at Page 6 of the English, which I believe is Page 13 in the Spanish. On the Spanish, I think it is most of the way down the page. In the English it is about halfway down the page. And Mr. Feliú says: "Yes, I don't sign a check if they don't explain to me that was an investment in a
land, a purchase of a land."

Do you see that, sir?

A. Yes.

Q. Okay. And then do you recall that a man named Salvador del Toro also testified in the National Assembly? Excuse me. I said that wrong. I withdraw that question.

He also testified in the Special Prosecutor's investigation.

Do you recall that?

A. Yes. Salvador. Yes.

Q. Yes. And he also said that, while he didn't have many details, he understood that the money was transferred for a land purchase; correct?

A. Yes, but I would like to look, if you have it, at the document. I think that's the way it was, I think.

Q. Okay. Let's look at C-887. All right. If we look at—in the English, it is Page 4. In the Spanish, I believe it's on Page 9. In the Spanish and in the English, it is close to the top of the page.

And Mr. Salvador del Toro says: "It was a
purchase and sale Contract, but I did not know about it when I entered the record. That record was entered through the Timberline system. This promise of purchase and sale document was provided to me by Mr. Frankie López, and they gave me the document as support or justification for the transaction."

Do you see that, sir?

(Interruption.)

MR. WEISBURG: He answered, "yes," I thought.

PRESIDENT SHORE: Let's hang on. Mr. Villalba is still reading. I'm sorry. Go ahead and answer now.

THE WITNESS: Correct.

BY MS. GORSLINE:

Q. Now, I would just like to go back and look at Paragraph 31 of your First Witness Statement, sir. And you say there that: "In July 2015, as part of the Public Prosecutor's investigation, Omega Engineering submitted materials to show that the two suspect payments identified by the National Assembly's investigation were not made to Justice Moncada Luna, but were part of a personal project by Mr. Rivera to develop a residential complex he referred to as the
'Verdanza Residences.'"

Did I read that correctly, sir?

A. Correct.

Q. So, would you agree with me, sir, that, by July 2015, and starting as early as January 2015, you had repeatedly received evidence which showed that those transactions you had identified in the financial documents were part of a legitimate land transaction; correct?

A. Yes, I am stating that there.

Q. Yeah. And isn't it true that, regardless of any illegal activity that you may have uncovered on the part of Mr. Moncada Luna or others, no one ever testified in your investigations that the land purchased by Mr. Rivera's Company was anything other than legitimate; correct?

A. Well, the statements by the appearing Parties indicated that it was a legitimate purchase. Based on what we just reviewed in their Statements and interviews.

Q. Yes. Thank you, sir.

Now, I just want to back up a little bit. You
began investigating Justice Moncada Luna for the National Assembly in October 2014; is that right?

A. Sorry, yes, 2014.

Q. Yeah. And then that initial investigation ended in early March 2015; correct?

A. Correct.

Q. And then you returned to the Public Prosecutor's Office and began a new investigation in late March 2015; correct?

A. Correct.

Q. Okay. Now, you didn't obtain any documents from Omega's offices until November 2015; correct?

A. You are referring to the ones that they provided to support the various movements? Is that what you're referring to?

Q. No, sir. Thank you for asking for the clarification because I wasn't clear.

I'm talking about when a search order was issued for Omega's offices. That happened in November 2015; correct?

A. I don't recall accurately.

Q. Okay. Let's look at C-893. And I believe,
sir, that the Spanish language begins on Page 9 but the text actually begins on Page 10.

    A.   Correct.

    Q.   All right. So, if we look at Page 1 of the document, which is Page 10 in the Spanish—excuse me, Page 2 in the English, 10 in the Spanish, we see that this search and inspection Order was issued by the Office of the Special Organized Crime Prosecutor; correct?

    A.   Yes. Based on the description here, yes.

    Q.   Okay. And that was your office; correct?

    A.   Yes. I worked there.

    Q.   Okay. You personally did not participate in this search and inspection, did you?

    A.   Hiroko Tinoco, Attorney Esperanza Montenegro as the Judicial Secretary are the ones who participated directly.

    Q.   Yes, sir. And we see that on the signature page; correct?

    A.   Yes.

    Q.   Were you aware of this search and inspection at the time it occurred?
A. Yes, I was aware of that.

Q. Okay. Now, this is more than a year after when the investigations first started—correct?—November 2015.

A. It could be that it's basically that, yes. October for the Assembly and then up to November 2015, and this is the Office of the Prosecutor. Yes, it's basically a year.

Q. Okay. Thank you, sir.

Now, if we could turn to Page 4 of this document, which is C-893. I'm told it is Page 12 in the Spanish. Do you see a heading labeled "3," sir?

A. Umm-hmm.

Q. And this is a--

A. Yes. Fine.

Q. Thank you, sir.

This paragraph is a description of the information that the Prosecutor's Office intended to obtain; correct?

A. Correct.

Q. Okay. And if we look at this paragraph we see that the Special Prosecutor's Office--excuse me.
The Public Prosecutor's Office wanted to
determine what accounting systems Omega used; right?
   A. Correct.
Q. They wanted to search Omega's ledgers for
records of the two transfers to PR Solutions; right?
   A. Correct.
Q. They wanted to verify when those records were
entered and if there had been any changes or
modifications to those records; correct?
   A. Correct.
Q. They wanted to see what justifications were
provided and what descriptions were entered for those
transactions; right?
   A. Correct.
Q. And then to collect any other evidence or
documentation related to the investigation.
   Do you see that?
   A. Yes.
Q. Now, we don't specifically see anything
referenced here about emails, do we?
   A. Well, here in particular, no. The description
is whatever it says there, yes. The purpose of the
inspection, of the search, rather. Yeah.

Q. Okay. Is it fair to say that the focus of the inspection was on financial records, sir?

A. Yes, that was practically the intention.

Accounting, financial information, justifications.

Q. So, the same types of information you had collected in the National Assembly investigation; correct?

A. Yes. But at the National Assembly, there was no access to records or accounting books.

Q. That was not collected during the National Assembly investigation; correct?

A. No. No. That was done here as part of the work done by the Special Prosecutor's Office and also the search for the accounting records of the Company.

Q. Now, this does not suggest that you were looking for any evidence with respect to the land transaction, is that fair to say?

A. Yes. As it says, what was sought was what justification was there for the accounting records that had been described in the accounting information, what kinds of systems they had, what justifications and the
descriptions, or any evidence or indicia, as it says. Exactly.

Q. Okay. And this search Order also didn't seek communications between Omega and Reyna & Associates, did it?

A. Well, this search was just done at Omega, I think it says clearly. And the justifications that existed between Omega and PR Solutions. For it had transferred funds from Omega to PR Solutions as is described in the documents.

Q. Okay. Thank you, sir.

Could we now turn to Exhibit C-904. And this is a very short document, so the Spanish begins on Page 5, I believe. Oh, no, I'm sorry. 7, with text beginning on Page 9.

Now, this is the search and inspection Order issued by the Office of the Special Organized Crime Prosecutor with respect to PR Solutions; correct, Mr. Villalba?

A. Yes. That is correct.

Q. Okay. And this is also done in November 2015;
correct?

A. Yes. The date indicates 17 November 2015.

Q. Okay. Now, if we look on Page 4 of the English, and Page 11 of the Spanish, we again see a heading that says "3."

Do you see that?

A. Yes, correct.

Q. And there it says: "The purpose of these proceedings is to conduct a search and inspection of the Company in order and obtain"—I suspect that is an error in translation—"the accounting records of the PR Solution Company."

Do you see that, sir?

A. Yes.

Q. So, this search is also focused on accounting records; correct?

A. Correct.

Q. It wasn't focused on any evidence with respect to the land deal and its legitimacy, was it?

A. Well, the objective of the search is crystal clear, spelled out in no uncertain terms.

Q. Yes, sir. And that objective also did not
include any communications between PR Associates and Reyna & Associates--I'm sorry, I said that wrong. I withdraw.

The objective of the search did not include any communications between PR Solutions and Reyna & Associates, did it?

A. In this search, no.

Q. Are you aware of any other searches, sir?

A. Well, we're talking about this one; right?

Q. We have been talking about this one, but I'm asking you if there are others you are aware of, because I'm not aware of them.

A. Well, this investigative step, which is the search of Omega, I think these were the only ones that were done, if my memory serves me well.

Q. Okay. Thank you, sir.

A. Okay.

Q. Can we now turn to Exhibit C-210.

And the Spanish of this document is on Page 4, sir.

A. Yes. Yes.
Q. Mr. Villalba, have you ever seen this document before?

A. Yes. On the part of the Prosecutor.

Q. So, the Prosecutor's Office had this document?

A. Yes. It was the communication indicating that he would not be able to attend, the Statement.

PRESIDENT SHORE: I think you might be looking at a different document.

BY MS. GORSLINE:

Q. Sir, yes, I believe you're not at the right document. C-210. Sir, it should be an email from someone with an email address that says Gabby, minigap@gmail.com to Mr. Frankie López at Omega.

Do you see that, sir?

PRESIDENT SHORE: Mr. Villalba, focus on the email. There's a subject stating "Declaration at the Prosecutor's Office," but counsel is asking you about the email.

THE WITNESS: Yes.

BY MS. GORSLINE:

Q. Okay. Now, have you ever seen this document before, sir?
A. Yes.

Q. And where did you see this document?

A. It was just shown in due course.

Q. Shown by whom, sir?

A. By the Office of the Prosecutor.

Q. So, you remember seeing this contemporaneously?

A. Contemporaneously?

Q. And so, you understand that this is not the email from Mr. Rivera that you were referencing just a moment ago.

Do you understand that, sir?

A. Which document are you referring to that you say I made reference to?

Q. Earlier when I asked you if you had seen this document, you said it was the--it was an email from Mr. Rivera explaining that he was not available to appear in the National Assembly.

Do you remember that, sir?

A. Yes, in my statement.

Q. Okay. This email--well, maybe we should talk about the email first, and then I can ask you follow-up
questions.

And I'm not talking about the email at the very top. I'm talking about the second one down. From Gabby, minigap@gmail.com.

Do you see that, sir?

A. Yes, I do.

Q. Okay. And this is to FLLópez@omegacorp.net; correct?

A. Correct.

Q. And it's dated January 28, 2015; correct?

A. Correct.

Q. Now, FLLópez@omegacorp.net, that's Frankie López, isn't it?

A. Yes.

Q. Okay. Well, if we look at the very top of the page, we see that email address in the very first line, associated with Frankie López; right?

A. Correct. Yes.

Q. All right. And if we turn the page--actually, in the Spanish, it's on the same page. In the Spanish it's at the very bottom of Page 4. In the English it is at the very top of Page 2. We see that the email is
signed "M.G. Reyna."

Do you see that?

A. Yes, I do.

Q. So, this is an email from Maria Gabriela Reyna to Mr. Frankie López; correct?

A. That does appear to be so.

Q. Okay. And then, if we look at the very first sentence of her email after it says "Dear Mr. López."

She says: "Yesterday, I was called to declare at the Special Prosecutor's Office in the framework of the case of the removed Magistrate Alejandro Moncada Luna. I know this situation must be strange and awkward for you, and I am sorry about that. Yesterday, I explained to them that we got to know each other because we were office neighbors, but that you are not my clients, simply people who were looking for properties in the Pedasí, Azuero area, and that I offered you a real estate property in the middle of 2012. And that, after carrying out your investigations and other diligences, we finalized the obligation in April 2013, when I was back from my maternity leave."

Did I read that correctly, sir?
A. Yes. I would like to say something. This email is not the communication where I testified that is related to the inability to be able to appear to make a Statement?

Q. Yes, sir. Okay. And I want to look at one more part of this email, and then we'll--I'll ask you a few more questions about it, okay, sir?

So, at the very bottom of the email, Ms. Reyna says: "I am so sorry about this situation, and I hope it won't affect the closing of the sale. I have been a victim of some unnecessary prosecution, and this has affected you. My most sincere apologies. M.G. Reyna."

Do you see that, sir?

A. Yes.

Q. Okay. So, my first question, now, is have you seen this email before today, sir?

A. What I would not like is for there to be any confusion between the communication or email--well, it's not a summons because the drafting of it does not seem familiar to me. It does not seem to me to be the non--the letter related to the nonappearance of Franklin or of Mr. Rivera. I wouldn't want to be
confused about that email communication.

Q. Yes, sir, I agree, we don't want you to be confused. And I agree with you, this is not that email that you're referring to. I agree with you.

A. Okay.

Q. So, my only question is, have you seen this email before today?

A. Okay. I don't remember.

Q. Okay. And that's likely because in the investigations in the National Assembly and in the investigation you participated in in the Special Prosecutor's Office, emails between Omega and Ms. Reyna were not collected; is that true?

A. Well, I did not participate in any investigative steps relating to emails.

Q. Okay. Thank you, sir.

Would you agree with me, though, sir, that, based on what we just read, Ms. Reyna was still trying to close the land transaction with Mr. Rivera in January 2015?

A. According to what one reads here, yes. That is what is communicated.
Q. Okay. And she's apologizing for getting Omega caught up in the National Assembly investigation; correct?

A. Correct. That is how it is drafted.

Q. Thank you, sir.

MS. GORSLINE: Mr. President, I have just finished and moving on to something slightly different, so if now would be a good time for a break.

PRESIDENT SHORE: It was the question I was just about to ask you, Ms. Gorsline. Yes.

Let's take a 15-minute break.

Mr. Villalba, sir--

THE WITNESS: Yes, please, tell me.

PRESIDENT SHORE: During the break, because you are still giving testimony, please don't speak to anyone about the case.

THE WITNESS: Okay.

PRESIDENT SHORE: Thank you very much.

We are back in 15 minutes.

(Brief recess.)

PRESIDENT SHORE: Back on the record.

Ms. Gorsline.
MS. GORSLINE: Thank you, Mr. President.

BY MS. GORSLINE:

Q. Now, Mr. Villalba, could I ask you to look at Paragraph 31 of your Witness Statement, your First Statement.

A. Right.

Q. Okay. And there we already noted that you are talking about Omega Engineering submitting materials to show the legitimate purpose of the payments that went from Omega to PR Solutions to Reyna & Associates; correct?

A. Correct.

Q. Okay. And are you aware, sir, that the Organized Crime Prosecutor opposed the admission of that evidence into the investigation?

A. I did not know that.


A. Okay.

Q. I moved away from my microphone. So, if we look at—and I'm going to ask that you be given some help finding this in the Spanish. The Spanish language begins on Page 7, and I believe the portion that I want
to look at first begins at the top of Page 8 for you. It's the top of Page 2 in English. And it says--I'm sorry, sir. Let me know when you're there.

A. Yes. Okay.

Q. It says: "Applicant presented evidence related to the preliminary sale of Property 35659 located in Cañas, Tonosí, province of Los Santos, as well its existence in the Public Registry; that the property effectively corresponded to JR Bocas Investment Inc., a client of Reyna y Asociados; financial records of the payments to such company for the acquisition of such land and also the documents for the Project named Verdanza Residences proposed to be carried out, once this property was acquired, which consisted of a luxury residential development."

Do you see that, sir?

A. Correct.

Q. And then below that you see a heading that says "Second"; right?

A. Yes.

Q. Okay. And toward the middle of that very long paragraph, where it says "Second," we see--for me, it
begins at the bottom of Page 2 with "the Office of the Special Prosecutor for Organized Crime."

Do you see that?

A. Umm-hmm.

Q. And it says that the Special Prosecutor for Organized Crime alleges that: "This underscores the fact that the purpose of this investigation does not correspond determining if the contracts tendered by the Judicial Authority and awarded to several companies, inter alia, Omega Engineering Inc., were executed in strict compliance with regulations established to that end, whether or not they are valid and whether or not the works tendered have been completed or not."

Do you see that?

A. I do.

Q. And then it goes on to record that "the Office"--I'm sorry. I'm looking at the very last paragraph of that section: "Therefore, the Office of the Special Prosecutor."

Do you see that, sir?

A. Yes.

Q. "Therefore, the Office of the Special
Prosecutor for Organized Crime considers that the evidence presented by the defense is irrelevant because it does not correspond to the subject of discussion in this investigation before us."

Do you see that, sir?

A. I do.

THE INTERPRETER: Counsel, this is the interpreter, if you would be so kind as to tell me exactly where you're reading, like what sentence, that would help a lot. It's a little difficult to find the exact verbiage in the document.


THE INTERPRETER: Thank you very much, ma'am.

BY MS. GORSLINE:

Q. Okay. And then if you look at the very bottom on Page 5, in the English, which I believe will be the very bottom of Page 11 in the Spanish, we see that "the Court deems the motion of objection by Mr. Giovani Olmos unproven." In other words, Mr. Giovani Olmos is the lawyer for Mr. Rivera and Omega, and the Court here is denying the motion to admit the evidence.
Do you see that, sir?

A. In paragraph 31 of the statement?

Q. Repeat, please, what you just said.

A. I'm reading it right here, yes.

Q. Okay.

A. Okay.

Q. So, then turning back again to Paragraph 31 of your Witness Statement.

(Comments off microphone.)

Q. I'm sorry, sir, can you please repeat your last answer for the record?

A. Yes. I just read what you indicated me to read.

Q. Okay. On my screen, it is showing that the original answer was "I'm reading it right here, yes," to the extent that makes a difference.

A. Yes.

Q. All right. Sir, could we turn to Paragraph 31 of your First Witness Statement.

A. Okay.

Q. So, again, talking about the evidence submitted by Omega Engineering with respect to the land
transaction, you say at the bottom of Paragraph 31 of your Statement: "The Prosecutor's Office reviewed the materials submitted by Omega and conducted its own investigation"; correct?

A. Correct.

Q. Okay. I'd like to talk a little bit about that investigation. Let's turn to Paragraph 32 of your Statement, so the very next paragraph.

And you state there that: "On November 20, a special agent from the Prosecutor's Office visited the Office of Public Works and Construction for the Los Santos Province, where Tonosí is located."

Correct?

A. Correct.

Q. And that is November 20, 2015; right?

A. Correct.

Q. Okay. Now, let's--

A. November 2015; right? We would have to look at the document.

Q. All right. Well, we will look at the document, sir.

A. Okay.
Q. Let's turn to R-88.

A. Right.

Q. All right. So, we see here that this was done on November 20, 2015; correct?

A. Correct.

Q. And this is the Visual Inspection Report prepared by the investigators with respect to the search for a construction permit, which you're discussing in your Witness Statement; right?

A. Yes.

Q. Okay. Now, by this time, November 2015, you had already heard repeated testimony from multiple Witnesses that the land transaction had never closed because a dispute had arisen between the Parties over certain unfulfilled terms; correct?

A. Yes.

Q. Now, given that the transaction had not closed and that the Parties were in dispute, there was no reason to suspect at that time that any sort of permit applications for construction would have been filed, was there?

A. I don't know what the processing is. I don't
You didn't participate in this inspection, did you, sir?

A. No, I did not. I had knowledge of the outcome of the inspection, yes.

Q. Okay. So, you would have read this Report at some later time.

A. Yes. I describe it at 32.

Q. Yes. I see that, sir.

Now, this inspection, if we look at the top line of the document, it began at 9:20 in the morning. Do you see that, sir?

A. Correct.

Q. And it was conducted by Secretary Alexis Rodriguez G.; correct?

A. Correct.

Q. And this Report tells us that after undertaking a review of the database in the civil works
and construction department for Los Santos Province, Secretary Rodriguez concluded that no process was carried out for the approval of a project titled "Verdana Residences"; correct?

A. Correct. That is the outcome of this Report.

Q. Okay. And that outcome is unsurprising, given that the land transaction had never closed and the Parties were in dispute; correct?

A. You're asking me?

Q. Yes, sir, I'm asking you.

A. If I knew the procedure for the works here and what had to be commenced in connection with the construction permit, in connection with that, before the Agreements and everything else, and in accordance with the statement of Ms. Reyna, I don't think that would be consistent for me to say that because I don't know what the process is for these types of steps. Perhaps, that is why this inspection was taking place, to determine that.

Q. Okay. But you did testify about this inspection in your Witness Statement; right, sir?

A. I did. The outcome of the inspection.
Q. Okay. And I understand that you're not a construction expert, sir, but it stands to reason that one would not seek a construction permit before one even owned the land on which to construct; correct?

A. I don't know the procedure.

Q. Okay. Understood, sir.

Now, can you look back at Paragraph 33 of your First Witness Statement.

A. Right.

Q. Okay. And here, you're describing the investigator's inspection of the actual site where the Verdanza Residences would have been constructed had the sale closed; is that right?

A. I didn't say anything about if the sale was closed.

Q. Okay. Let's look at exactly what you do say because I don't want to misrepresent your testimony, sir. Okay. You say: "On the same day, the investigators went to the area where the Verdanza Residences were supposedly being developed."

Do you see that?

A. Correct.
Q. Okay. All right. Let's look at R-89.
A. Right.
Q. Okay. And this is the Visual Inspection Report for that site inspection that you discuss in your Witness Statement, isn't it, Mr. Villalba?
A. Yes.
Q. And if we look at the very top of the Report, we see that the inspection began at 10:30 in the morning; correct?
A. Correct.
Q. On Friday, November 20, 2015; right?
A. Correct.
Q. So, that's the same day as the permit inspection we just looked at; right?
A. Correct.
Q. And then if we look at the second and third line, we see that this inspection was conducted by Secretary Alexis Rodriguez G.
A. Do you see that, sir?
A. Yes.
Q. And that's the same secretary, Alexis Rodriguez G, who conducted the inspection permit;
Q. And we know that that other inspection by the same person on the same day began at 9:20 a.m. Do you remember that, sir?
A. Yes.
Q. Okay. So, if we account for traffic or at least the time it takes to get from one location to the other, at most, Secretary Alexis Rodriguez G spent maybe an hour looking for the permit. Is that fair?
A. I wouldn't be able to say that. We would have to look at the timelines and the location of each one of these sites. An hour roughly; from 9:20, that was the first one, and to 10:30, this was the one that came later.
Q. Okay. Thank you, sir.
Now, if we can look at Visual Inspection Report, which is R-89. If you look down--let's count--16. If you look in the 16th line of text, sir, we see that: "The investigators state that they were directed as to how to arrive at where Verdanza Residences was supposedly constructed."
Do you see that, sir?

A. Right.

Q. But no one had ever claimed that the Verdanza Residences were already constructed, had they?

A. There was a project.

Q. You were told--

A. There were steps taken to do the projects.

Q. Well, sir, I think we already established, haven't we, that you knew that the sale of the land had never closed; correct?

A. According to the testimony and the documents that you showed me before.

Q. Yes. And those were all documents that were in your investigation; correct?

A. Yes. Those were the testimonies and interviews with individuals.

Q. And you knew that the Parties were in dispute about the sale too, didn't you?

A. That's what they stated.

Q. Okay. But nobody had ever suggested that the Verdanza Residences had actually been built, had they?

A. On the basis of their testimonies and on the
basis of what they communicated.

Q. Well, sir, you didn't have any evidence that this potential development had been built, did you?

A. That is why the inspections took place.

Q. But you were inspecting for property that had already had development on it; correct?

A. No. The inspection is clear. The investigators went to the site to determine if allegedly there was development there or not. I think that this Report is clear. It says here for the purpose of conducting visual inspections, and this is required within the investigations as by this office, according to the document before--stated before. Once there, we were greeted for those purposes, and we let them know about why we were there, the purpose of there, and the purpose was to provide evidence of whether the construction was conducted or not.

Q. Sir, I agree with you, that it is clear that the investigators were looking for the location where "Verdana Residences was supposedly constructed."

That's what it says; right?

A. Right. Correct.
Q. But every statement that every witness had given you made clear to you that no construction had ever begun because the sale hadn't even closed; correct?

A. According to their testimonies.

Q. So, any search of a constructed development was doomed from the start, wasn't it?

A. Possibly, but the purpose of this Report was to identify the location of the potential project that was going to be developed. And this is what I say at 33. I talk about the outcome of this Report.

Q. Yes, you do, sir. Let's talk about that.

You say at Paragraph 33 of your Witness Statement that: "Despite multiple passes through the area, the investigators were not able to identify the specific location on which the Verdana Residences were to be built."

Do you see that?

A. Correct.

Q. All right. Now, let's look at R-89, again, which should be the document that is already in front of you, sir.
A. Okay.

Q. And if we look at the very last sentence of that main paragraph of the document, it says: "It is important to note that overviews, (sic) photographs, were taken of the site and of our tour, and, therefore, the Report was considered closed by all the participating parties."

Did I read that correctly, sir?

A. Yes.

Q. So, the investigators took pictures of the site, according to this; right?

A. Yes. That is what's written there.

Q. So, clearly they were able to find it if they took pictures of it; correct?

A. Yes. This is what the drafting says.

Q. Okay.

A. Yes.

Q. And this is the official document of this visual inspection; correct, sir?

A. Yes, correct.

Q. All right. Now can you turn back to Paragraph 34 of your First Witness Statement, please?
A.  Yes.

Q.  Now, there, you note that a search was done to determine if Ms. Reyna was a registered real estate broker or land developer; correct?

A.  Correct.

Q.  Now can we turn to R-90, sir?

Do you have it, sir?

A.  I do.

Q.  All right. And there, if we look at Page 2--which I'm told is Page 4 of the Spanish; do you have it, sir?--we see in the English it is one, two, three lines down on Page 2. I believe it is the same in the Spanish.

We see it says: "After a review of its Excel database, Ms. Maria Gabriela Reyna Lopez, [REDACTED], does not appear registered as real estate registrar."

Do you see that?

A.  Yes, correct.

Q.  Okay. But Ms. Reyna had never asserted that she was a real estate broker, had she?

A.  I do not recall.
Q. Okay. Well, you knew she was a lawyer; right?
A. Yes.

Q. Okay. And she had never testified that she was a land developer, either, had she?
A. I know that she was following the steps. As I recall from the Statement, she was in charge of the various processes, but I don't recall whether at some point she said that she was a broker or a real estate registrar.

Q. Well, you knew she was a lawyer; correct?
A. Yes. She was an attorney. She was a lawyer, because I think she stated that at some point.

Q. Yeah. And she had also been clear that she was the registered agent for JR Bocas, which was the property owner; right?
A. If she said it in her statement. I just follow what she said in her statement.

Q. Okay. Now, I didn't see anywhere in your Witness Statements that the investigation attempted to verify whether or not JR Bocas owned the finca in question.

Did you do anything to try to verify that
JR Bocas owned the property in question?

A. Well, not me directly.

Q. Understood, sir. Are you aware of anybody else in the Prosecutor's Office doing that?

A. I don't think I have seen any inspection to that end. If there is any, you should show it to me.

Q. I haven't seen it, either, sir.

Are you--I also didn't see any mention in your Witness Statement that the Prosecutor's Office attempted to verify whether or not there was a mortgage on the property that needed to be cleared.

Are you aware if that was done?

A. I don't recall. And if there was, I would like to see the document.

Q. I don't have a document to show you, sir.

So, is it fair to say, based on your Witness Statements and what you've told us today, that the three things the Prosecutor's Office did to verify the legitimacy of the land transaction was to search for a construction permit; correct?

A. Correct.

Q. To conduct an inspection of the Property site
to see if there was any construction yet; correct?

   A. Correct.

   Q. And to do a search of an Excel file to see if Ms. Maria Gabriela Reyna was a real estate broker; is that correct?

   A. Correct.

   Q. Okay. And so, on that basis alone, the Prosecutor's Office determined that the land transaction was illegitimate?

   A. At that stage in the investigation, the Prosecutor had not decided whether it was illegitimate or not. We were still working on it to determine that. There could have been others later on.

   Q. Okay. Is your testimony today, Mr. Villalba, that you have no reason to conclude that the land transaction was illegitimate?

   A. I am not the Prosecutor. I am not the one that had the power to decide, and if that was taken to a hearing, to be able to prove that, to evidence that, once the evidence is presented.

   Q. Okay. Well, let me ask the question a different way.
When you left--strike that.

You left the Special Prosecutor's Office for Organized Crime in February 2016; correct?

A. Correct.

Q. And based on what you've just told us, at that time you had no reason to conclude that the land transaction between Punela and JR Bocas was illegitimate; correct?

A. Illegitimate or not, I am not the person that had the power to determine that. Not at the time when we took the first steps. And we should recall--and here I should add that the unit, the unit I belonged to back then, was not only intended to provide support for this investigation, but also, at that point in time, that was not the only process underway. There were other processes that had to do with other accounts and also other practices that were underway. But at that point in time, that's the process that was underway up to the date and time when I was with the Prosecutor's Office.

Q. Sir, can I ask you to turn to Page 3 of your Second Witness Statement?
A. Okay.

Q. All right. And turning to--do you see the word "first" in the first line of that paragraph, sir?
A. Yes.

Q. Okay. So, there, you--I'm jumping the gun again. My apologies.

There you say, sir: "First, the evidence uncovered in the investigation of Justice Moncada Luna by the National Assembly and in the subsequent investigation of the Claimants conclusively proved that a portion of the money given to Claimants by the Judicial Authority was transferred by Omega Engineering through an intermediary into an account controlled or used for the benefit of Justice Moncada Luna, and that such money was then transferred through a series of intermediaries and was ultimately used by Justice Moncada Luna to pay, in part, for two luxury condominiums."

Did I read that correctly?
A. Correct.

Q. How could the evidence have conclusively proved this, when you've just told us today that there
was no evidentiary basis as of February 2016 to conclude, as far as you're aware, that the real estate transaction between Punela and JR Bocas was illegitimate? How can this be, sir?

A. Based on the transactions that I describe here--and here I am referring to the flows and--the flow of cash at that point in time during the investigation--this is what the various transactions showed in connection with those funds, and also based on those cash flows, I include those descriptions.

Q. Yes, sir, but you agreed with me earlier that, upon your review of the elements for corruption, you became aware that that crime requires a showing of intent; correct?

A. I am referring to the transactions, financial operations; correct? So, in due course, the Prosecutor would have to require the relevant elements to prove corruption. Here, I am not talking about corruption, in particular, in a direct fashion. And this is not what we see in my description.

What I say is I am addressing first that the evidence uncovered in the investigations of Justice
Moncada Luna by the National Assembly and in the subsequent investigation of the Claimants conclusively proved that a portion of the money given to Claimants by the Judicial Authority was transferred by Omega Engineering through an intermediary into an account controlled or used for the benefit of Justice Moncada Luna.

So, my text is clear; I am not adding any additional element to what you just mentioned.

Q. Okay. Sir, I want to make sure I understand your testimony. Your testimony is that your Report does not establish that there was any intent on the part of Omega to send money to Justice Moncada Luna; is that correct?

A. My Reports and my Statement do not use those terms. I never said in my Fact Report or in my Statements--I never said that there was no intent.

Q. Well, sir, if the land transaction was legitimate, then that would show that there was no intent, wouldn't it?

A. That had to be proven if all of the elements of evidence provided by Omega in the case of the
Projects, and also the diligence carried out at the beginning, because we also need to remember that the process, as far as I know, was suspended after I left. So, at that point in time, there could have been as part of the hearings other evidence that supported the theory presented or put forward by the Prosecutor.

So, I would not be in a position to determine on a preliminary basis, and I am not the person that has the power to do so. I am not an attorney. It is the judge, the one that validates the evidence presented at the inception of an investigation. As an analyst, I am not ready to determine whether the evidence is legitimate or not. That is determined at a subsequent hearing process.

Q. Okay. And the reason for that is that in Panamá, as everywhere else, an accused is presumed innocent until proven guilty; correct?

A. I think that that is a rule that you are more familiar with than I am with.

Q. Okay. Why don't we look at a slightly different topic now, Mr. Villalba?

A. Yes.
Q. Let's look at Paragraph 28 of your First Report. Now, we talked about this a little bit earlier.

Actually, I'm sorry. I referred you to the wrong paragraph. I want to look at 29. I'm sorry, sir.

A. Yes. Fine.

Q. And here is where you state that: "Investigations were started both by the Organized Crime and the Anticorruption Prosecutors"; correct?

A. Yes.

Q. Okay. Now, it would appear that the Anticorruption Division was investigating because there was a suspicion that Omega had to have been involved in corruption when it acquired its contract with the Judicial Authority; is that correct?

A. Yes. It was not only corruption; I think that there were other potential--when they were called to be interviewed, I don't know if they mentioned other crimes, but I think we can look into that later.

Q. Okay. Now, your Report proceeds from the
basis that Omega took money from its Contract with the Judicial Authority and paid it to Justice Moncada Luna; correct?
   A. Yes.
   Q. And that is also the premise in your Witness Statements; right?
   A. Yes.
   Q. And the allegation is that that was some sort of corruption; right?
   A. Moncada Luna was being accused of three offenses, so this was also--part also of the illicit enrichment. That was another additional crime that is also a precedent or a predicate of money laundering.
   Q. Okay. But as I understand it, the Organized Crime Prosecutor was investigating money laundering; correct? That was your job?
   A. Correct.
   Q. Okay. Now, as part of the Prosecutor's Office's investigation, did you ever review the bid documents with respect to the La Chorrera Contract?
   A. Yes. We were given part of all of the Contracts. All of the Contracts, we did do that. And
the information was provided through the Judiciary, I think; the Ministry of Economy and Finance, that also had information on this topic; and I think it was also provided by the Office of the Comptroller General.

Q. Okay. So, you received the Contracts.

Did you receive the documents pertaining to the bidding process?

A. Yes, I did see part of the documents. They were not so much related to the bidding as to the Order to Proceed, the main documents, the resolutions. But, as such, in the bidding process and its documents, that is not something that I had access to, to be able to review all that. But the main part ones, the Contract was awarded, and also payments related to the Contract, yes, that was analyzed by the unit.

Q. Okay. You didn't think it was important to determine if the Contract had been won through a transparent and legitimate bidding process?

A. We were given the document once it was awarded, and also the Order to Proceed that was offered by the Comptroller. So, we were given that document, too.
Q. Yes. But I'm not asking about the Contract. I'm asking about the documents related to the bidding process and whether or not Omega won its contract with the Judiciary fairly and transparently. Did you ever investigate that?

A. It was not part of my analysis to verify the contracting process, whether it took place as you mentioned. I assume that once the process was determined, and also the Order to Proceed, that must have met an administrative process, including the law, the Regulations that also developed all of the steps to be followed.

Q. So, is it your assumption, then, Mr. Villalba, that the Contract was won fairly and transparently by the Omega Consortium?

A. If the Comptroller's Office grants the Order to Proceed, everything must have been reviewed, all of the earlier processes. So, this is the power of the Comptroller's Office, to review all of the processes and observance of the processes.

Q. Okay. So, in your view, if the Comptroller General endorsed the Contract, that means it was
legitimately acquired; is that fair?

A. I could say that there was--due process was followed so far.

Q. Okay. Now, are you aware, sir, that there were four bidders for the La Chorrera Project?

A. I think I saw a document that indicated that there were other bidders. I think I did see a document.

Q. Okay. I can show it to you, if you want, but that's your recollection: There were four bidders total?

A. I didn't say four. I would say others. I said that there were others.

Q. Okay. Well, why don't we look at it? Because I don't want to--

PRESIDENT SHORE: Yes, look at it, and give me 90 seconds for a comfort break while you look at it.

(Comments off microphone.)

PRESIDENT SHORE: Back on the record.

Ms. Gorsline?

MS. GORSLINE: Thank you, Mr. President.

BY MS. GORSLINE:
Q. So, Mr. Villalba, turning to Exhibit C-83, this document is the Report of the Evaluating Commission for the La Chorrera Contract for the Judiciary.

And if you look at the first page, which in the Spanish is Page 4 of this document, you can see that there were four bidders for this Contract; correct?

A. Correct.

Q. And that the Omega Consortium's bid was the lowest by almost $1 million; right?

A. Yes. According to the figures that are shown here, yes.

Q. Okay. Then, if we look at the bottom of page, we see that there was a verifying commission of three different Judicial body employees?

Do you see that? Their names are listed at the bottom.

A. Three persons?

Q. Yes.

A. Okay.

Q. Do you see that, sir?
A. Yes, I do, where it indicates the three persons.

Q. Yes. And it says that their job was—to evaluate the technical and financial proposals of the proposing companies, a Verifying Commission was appointed which was made of the following clerks of the Judiciary body; right? That's what it says there?

A. Yes, that's Point B, to evaluate the technical and economic bids.

Q. Yes. Now, it's fair to say, isn't it, that if Mr. Moncada Luna was to rig the bid for the La Chorrera Contract, he would need the involvement of the Bidding Commission, wouldn't he?

A. Could you repeat the question, please?

Q. Let me ask it another way, Mr. Villalba. It was the job of the Vetting Commission to evaluate the proposals and to make a recommendation as to the winner; correct?

A. Yes, that was the job of the Vetting Commission.

Q. Yes. And let's turn to the very last page of this document, which is Page 7 in the Spanish. And we
can see there that the Vetting Commission chose the Omega Consortium as the winner of the bid, not just based on the lowest price, but also because the Omega Consortium had the maximum possible amount of points to be awarded.

Do you see that, sir?

A. Yes, I do see that.

Q. Alright. And I will represent to you that the evidence also shows that Justice Moncada Luna awarded the bid to Claimants upon the evaluation of the Vetting Commission.

So, my question, sir, is this: Isn't it true that, in order for Justice Moncada Luna to rig the bid, he would have needed the involvement of the Vetting Commission?

MR. WEISBURG: Objection. I don't accept that representation.

PRESIDENT SHORE: Do you want to explain before?

MR. WEISBURG: What the question says: "I will represent to you that the evidence also shows that Justice Moncada Luna awarded the bid to Claimants upon
the evaluation of the Vetting Commission."

That looks into Mr. Moncada Luna's head, and we don't have evidence of what's inside his head, other than his conviction and his guilty plea, et cetera. So, I don't think--this assumes a huge fact which is in dispute.

MS. GORSLINE: Mr. President, if I may. That huge fact that you state is in dispute is actually in the testimony of your own Witness, Ms. Vielsa Ríos. We included it in our Opening Presentation.

MR. WEISBURG: Fine. Then present it to us, but I don't think we can have summary in question of some huge matter in dispute here.

PRESIDENT SHORE: So, why not put the question as to taking it from the Ríos testimony rather than you, Ms. Gorsline, asserting it as a given, accepted fact, and then put it to the Witness in that way.

MS. GORSLINE: Yes, sir.

BY MS. GORSLINE:

Q. Could we have the Witness Statements of Ms. Ríos put in front of the Witness, please.

All right. Can we please turn to the First
Witness Statement of Ms. Vielsa Ríos.

Paragraph 12, sir. All right. Do you see Paragraph 12, Mr. Villalba?

A. Yes, I'm taking a look at it.

Q. It says: "On October 17, 2012, Justice Moncada Luna, taking into consideration the Report from the Evaluation Commission designated to evaluate the companies that participated in the public act, selected Omega as the Contractor for the La Chorrera Project and, at Justice Moncada Luna's direction in accordance with the law of public contracts, the Judicial Authority executed the La Chorrera Contract with Omega on November 22, 2012."

Do you see that, sir?

A. Yes, I do see it.

Q. And it's clear from the Report of the evaluating commission that we just looked at that Omega had both the lowest bid and the highest score; correct?

A. Yes.

Q. So, my question, sir, is if Justice Moncada Luna attempted to rig the bid in favor of Omega, he would have needed the involvement of the bidding
commission; correct?

A. Giving an answer that he could or could not
would be very subjective. How can I determine that the
bid went through an administrative process and now
determining that it was or was not rigged.

Q. Sir, you just testified--

PRESIDENT SHORE: You're allowed to give a
subjective response. It is your testimony,
Mr. Villalba. You can answer that question--hang on,
hang on, hang on, sorry. You can answer the question
that counsel posed to you.

THE WITNESS: From what is observed, yes, the
statement itself and the documents that have been shown
complied with the proceeding--procedure, rather.

BY MS. GORSLINE:

Q. Thank you, sir.

Now, as part of the National Assembly
investigation into these matters, did you ever
interview all three members of the Bidding Commission?
And when I say "you," I mean the investigators.

A. Well, while I was there, as far as I recall
any interviews being done of the members, I don't
remember that being done. Unless there is some statement by them, but as far as I recall, no.

Q. And just to be clear, the members of the Vetting Commission for the La Chorrera Contract were never investigated, were they?

A. As long as I was there and based on what I recall.

Is there some document that states otherwise?

Q. No, sir. I have no such document.

A. They were not part of that inquiry at some point in time. Or at any point in time.

Q. Thank you, sir.

A. Okay.

Q. I'd like to turn now to your Report, but first, do you recall your agreement earlier that money laundering requires a predicate offense; correct?

A. Yes. A related crime.

Q. Yes. Well, it has to--you have to prove that the money being laundered was illegitimate; correct?

A. Yes.

Q. Yes. And that would require some type of intent on the part of Mr. Rivera or Omega to pay money
to Justice Moncada Luna, wouldn't it?

    A. Possibly. It depends on the conduct.

Q. Are you saying that Mr. Rivera or Omega could be guilty under Panamanian law simply by transferring legitimate money from one bank account to another?

    A. At that time, we are looking at the possibility that that might be the case. One would have to go forward with the investigations to be able to determine more elements, if necessary.

Q. Well, one of those elements would be intent, wouldn't it?

    A. Yes. And I have heard that said quite a bit.

Q. Okay.

    A. I've heard you say that quite a bit.

Q. Well, sir, I've been asking you questions. You agreed with me, didn't you?

    A. With your questions? Have been in agreement with your questions?

Q. I think we'll just move on, Mr. Villalba. Now, as we discussed, you have no evidence of any irregularities in the bidding process for La Chorrera; right?
We just discussed that.

A. What came to us, I repeat, were the documents of all that had been done, the payments received by the contracting Parties. There were several of them at that exact moment. I'm saying this in the general context of the overall investigation, and that is what came to us at that moment. And that was also in the Office of the Prosecutor on Organized Crime.

And what was sought to be done once we had that information—-and I think I included this in one of my Statements—is where were those funds deposited, into which accounts, and there we continued the trail, tracking the funds, both for acquisition of the accounts.

PRESIDENT SHORE: That wasn't the question posed to you. The question posed to you--please focus on.

Was there any evidence of irregularities in the bidding process? Counsel just asked you to confirm that you're not aware of any evidence of irregularities in the bidding process.

THE WITNESS: They just gave us the documents
of everything that had been done in the proceeding and
that was approved by the agencies that were part of the
process.

BY MS. GORSLINE:

Q. Yes. And I believe you told us a little while ago that your presumption is that if the Comptroller General signed off on a contract and endorsed it that that meant that everything was legitimate; correct?

A. Up until that time, the whole procedure, complying with—if one complies with due process and there is not, I assume, any complaint by any other contractor and the first payments were then made, then I think that phase of the contracting process had culminated with that order to proceed in a satisfactory manner.

Q. All right. Mr. Villalba, can you please turn to R-62, which is your Report in the Organized Crime Prosecutor's investigation.

A. Yes, I have it right here.

Q. All right. So, if you can try to keep that open in front of you but also turn back to your Second Witness Statement in this case at Paragraph 6.
Are you there, sir?

A. Yes, I am.

Q. Okay. And you say: "Evidence collected by the National Assembly and the Public Prosecutor's Office clearly shows that Justice Moncada Luna was the beneficiary of at least $275,000 in payments from Omega Engineering."

Did I read that correctly?

A. Yes.

Q. Okay. Now, I would like to turn to Page 21 of your--excuse me, Paragraph 21 your First Witness Statement.

A. Correct.

Q. So, in Paragraph 21, you describe in April and May of 2013 a series of transactions with [redacted] going from Reyna & Associates to Sarelan Corporation; correct?

A. Correct.

Q. Okay. And then if we look at Paragraph 23 of your First Witness Statement, you describe a series of transactions in July 2013 which you say resulted in $150,000 going from Omega to Reyna & Associates to
Sarelan Corporation; right?

A. Correct.

Q. And specifically in the first bullet in that paragraph at the top of Page 9, you say: "On July 10, 2013, the Judicial Authority made a payment of USD [redacted] to Omega Engineering for work on the La Chorrera Project"; correct?

A. Correct.

Q. And then in the next bullet you talk about going from Omega to PR Solutions--correct?--on July 12?

A. Correct.

Q. Then you record 250,000 going from PR Solutions to Reyna & Associates; right?

A. Correct.

Q. And then you say that on July 17 and 18, Reyna & Associates issued two cashier's checks in the amount of $75,000 each payable to Sarelan; right?

A. Correct.

Q. And ultimately you conclude that 130,000 of that money was used to pay Desarrollo Coco del Mar for an apartment owned by Justice Moncada Luna's wife;
right?

A. Correct.

Q. So, your testimony in this Arbitration is that, with respect to the July transactions, $150,000 of PR Solutions' money went to Sarelan and was used to pay $130,000 toward the purchase of an apartment on behalf of Justice Moncada Luna; correct?

A. Correct.

Q. All right. Now, let's please look back at R-62, which is your 2015 Report.

A. Sure.

Q. Now, this Report contains your conclusions from June 2015, based on the evidence that was gathered in the National Assembly investigation; correct?

A. Yes.

Q. And that is the same evidence that Mr. Aguirre's March 2015 Report relied on, isn't it?

A. Yes.

Q. Okay. Sir, can you please turn to Page 32 of your Report, which I'm told is Page 106 in the Spanish.

A. Yes.

Q. Okay. Sir, can you please turn to Page 32 of your Report, which I'm told is Page 106 in the Spanish. Well, again, I should be clear, 32 is the
number at the bottom right. That should be the same in Spanish, but if you're looking at the record number, it is 106.

A. Correct.

Q. Actually, sir, first, let's look one page early, at Table A1.

Do you see that?

A. Yes.

Q. And there this chart, Table A1, is showing $130,000 going from Sarelan through Summer Venture to Desarrollo Coco del Mar for the apartment; correct?

A. Correct.

Q. And that is the same transaction that you describe in your Witness Statement; right?

A. Yes.

Q. Now, I'd like to turn to Table A2, which is on the next page.

A. Yes.

Q. And this table is telling us what the sources of that $130,000 payment are; correct?

A. Correct.

Q. Okay. And we see here that you attribute it
to two sources; right? The first one--

A. Correct.

Q. I'm sorry, sir. I'll try really hard not to interrupt you.

The first source is a $125,000 transfer from Reyna & Associates on June 12, 2013.

Do you see that?

A. Yes.

Q. And the second source is $75,000 transferred from Reyna & Associates on July 18, 2013; correct?

A. Correct.

Q. Now, if we look a little further down the page to Table A3, we see where Reyna & Associates received that money, don't we?

A. Correct.

Q. And we see at the bottom that the $75,000 in July, according to you, came from the $250,000 from PR Solutions that was also transferred in July.

Do you see that?

A. Correct, yes.

Q. But the $125,000 transfer from June, you attribute to Alexandre Tchervonnyi and it transferred
to Reyna & Associates of $200,000; correct?

A. Yes.

Q. Now, in your current testimony, you don't mention Mr. Tchervonnyi at all, do you? Sir, we can look back?

A. At Point 23.

Q. Yes, sir.

A. Yes.

Q. Yes, meaning you do not mention Mr. Tchervonnyi at all?

A. No, I don't mention him.

Q. In fact, in Paragraph 23 of your Report, you say that the entire $130,000 mortgage payment originated from Omega, don't you?

A. The point indicates that.

Q. So, your financial analysis in June--

A. I'd like to clarify this point.

Q. Of course.

A. Because you say that I say the total was from Omega. The point indicates on the 17th and 18th of July 2013, Reyna y Asociados issued two checks, cashier's checks, in the amount of $75,000 each payable
to Sarelan Corporation. These cashier's checks were deposited into the Sarelan Corporation account.

The next point indicates on 18 July, Sarelan Corporation--here we're in the account of Sarelan Corporation, which is reflected in Table A2, transferred USD 130,000 to an account at Universal Bank of Summer Ventures. There, there is no description. I am not saying that all of the 130,000 come from Omega.

Q. Sir, can you please turn back to the beginning of Paragraph 23 of your First Witness Statement.

There you say: "On July 10, 2013, Omega Engineering received a [redacted] advance payment from the Judiciary for work on the La Chorrera Project. We were able to trace [redacted] of that money to an account that was used to make payments on the PH Santorini apartment."

So, with respect, sir, you do say that the full 130,000 is attributed to Omega in your Witness Statement?

A. I say we were able to track $130,000 of that money in an account that was used to make the payment for the PH Santorini apartment. We were able to trace
$130,000. At no time is there a description that this is a reference to the entirety. It was possible to track 130,000 that were directed to payment of PH. And so, there is a description as to the form.

Q. Sir, is it your testimony as you sit here today that not all of the $130,000 can be attributed to Omega?

A. According to the Report, one can clearly observe at this point of the transaction that two deposits were made on the 17th and 18th, as I describe correctly, and in Table 3, well, it clearly reflects--Table 3 clearly reflects that once the funds were received at the Reyna y Asociados account, then she made a deposit on 17 July 2013 for $75,000 once, having received from Omega, the sum of 250,000.

After that, there's a description in the table--well, once Sarelan receives the 75,000 from Reyna y Asociados, they are dispersed through transfers. 130,000 is disbursed that goes to Summer to then buy the cashier's checks.

Q. Yes, sir. I understand all that. I also understand that your Table A3 clearly shows that you
are attributing $125,000 coming out of Reyna's account and into the Sarelan account as being from someone named Alexandre Tchervonnyi, aren't you?

A. There are other additional deposits that Reyna makes into the account of Sarelan for 125,000, exactly, just a few days earlier. These are the $120,000 that you've described.

Q. Sir, it's also true that your Table A3 shows only 75,000 of Omega's money going to Sarelan, not 150,000, as you say in your Expert Report; correct?

A. 150,000? Where does it say 150,000?

Q. Sir, let's look at Paragraph 23 of your First Witness Statement. And I apologize; you are not an Expert Report, I should have not...

You are not an expert in this proceeding. I should not have called it your Expert Report.

A. Where does it say 150,000?

Q. Are you at Paragraph 23, sir?

A. I am.

Q. All right. If we look at the fourth bullet in that paragraph, so it's on Page 9 of the English, you say--
A. Yes.

Q. "On 17 June 2013, and July 18, 2013, Reyna y Asociados issued two cashier's checks each in the amount of $75,000 payable to Sarelan Corporation." Two $75,000 checks would be $150,000; correct?

A. That's correct. That's what happened.

Q. Well, sir, if we look at Table A3 in your 2015 Report, that is not what you are describing as having happened? Is it, sir?

A. Under the two deposits, again, Omega--the two deposits. The preliminary Report describes in practical terms the flows of money that were used directly for the acquisition of the two PHs. That's what it describes. The deposits made by Omega to Reyna and then, later on, after Reyna received those deposits, and in this specific case on the 17th and 18th of July, well, those were for $75,000. $75,000 went directly to Sarelan.

That was the account that, according to the theory of the case by the Prosecutors, was directly related to Justice Moncada Luna. Both deposits were received directly by Sarelan. Let me explain. I'm
coming there, because you're looking at a different part of the Report.

At Page 21 of the Report, a description is made of those $75,000 that you are making reference to. Once that deposit was received, Reyna & Associates--and I'm talking about the one of the 18th of July--the first 75,000 was 17th of July were used for the purchase and the transfer of the $130,000.

The other 75,000, that were part of deposits made to Reyna's account, once the $250,000 were received by Omega, well, those funds were used for a different purpose. And I describe this in my Report. This, once the deposit was received by Sarelan, and that was made by the judge.

Let me look at this page.

Q. Sir, I believe you're referring to page--

(Overlapping speakers and interpretation.)

A. If you look at Page 53 of the Report, you'll see there the destination of those $75,000 that were deposited into the Reyna y Asociados account on 18 July. The one done on the 17th went directly to the account used for the purchase. This by the judge and
Sarelan Corporation, and the other $75,000 that Sarelan Corporation had at its disposal, this was done on 18 July. This is what the table at Page 53 shows. It shows how those funds were used after the deposit was made by Omega to Reyna & Associates. That's it.

Q. Yes, sir. And I would appreciate it if you just try really hard to answer my question, because I've let you explain many times now, and my time is getting short. Okay?

MR. WEISBURG: Objection. The Witness is entitled, as the Tribunal has said repeatedly, to complete his answer.

PRESIDENT SHORE: We'll monitor it from here on in. We've given this particular Witness some particular latitude, which is ending now.

BY MS. GORSLINE:

Q. Now, Mr. Villalba, if we look at the table which is marked Table A on Page 53. Are you there, sir? It is where you just referred us.

A. Okay.

Q. We see there that you attribute the $75,000 going to Sarelan as coming from Reyna & Associates;
correct?

A. Yes, correct. That's the date when the deposit was made.

Q. Sir, you don't in any way attribute that money as having come from PR Solutions on Page 53 or 54 of your Report, do you? You're making that argument today, but you never said that in 2015 in your Report, did you?

A. The deposits were made. We have annexes and we find there that those deposits were received by...

Q. Sir, please show me in your Report from 2015 where it records the second $75,000 that you attribute to PR Solutions. Where is that, sir?

A. Well, the movement later on to Sarelan is not described in precise terms. The flow of monies was related to a fixed-term deposit, a term deposit under the name of Corporación Luxol.

Here, we see deposits made to a number of accounts, amongst them Reyna & Asociados in 2013, July 2013, and perhaps we could look at the statements of account of the day prior to the 18 July 2013 deposit. That is why in my First Report, in my
first--well, first, when the property was acquired, we only see the way in which the $130,000 were used to purchase the property.

Q. Sir. We will look at those bank statements in a moment, but, right now, I would like you to just answer my question.

A. Okay.

Q. Okay. Nowhere in your 2015 Report do you attribute a second $75,000 transfer to Sarelao as originating from PR Solutions, do you?

A. I only show the one that was used for the purchase of the property, for the payment of the property. That portion of the money that was used for that purpose.

Q. Sir, if we look at Page 52 of your 2015 Report, which is R-62, for the record. Actually, beginning on Page 51, we see that you were talking about money in the amount of $1 million, which was put into a fixed-term deposit; correct?

A. Yes, correct.

Q. You are not talking here about money that was
used to purchase apartments; correct?

A. Yes. In the first part where we describe that, the $75,000. Here, I was only talking about the funds that were used for the fixed-term deposit.

Q. Exactly.

A. That's all I wanted to say.

Q. Yes. Exactly.

You're not talking about the apartments in this portion of your award—or your Report. Excuse me, your 2015 Report; correct?

A. Exactly. That's correct.

Q. Okay. And when you attribute the $75,000 that's used for the million-dollar fixed-term deposit, you attribute it, on Page 53, as coming from Reyna & Associates; correct?

A. 19 July 2013? Is that what you're referring to?

Q. Yes. Yes. You attribute it to Reyna & Associates.

(Overlapping speakers and interpretation.)

A. They come from Reyna & Associates.

Q. Yes. Now, can we please turn to your First
Witness Statement at Paragraph 23?

A. Paragraph 23, you said?

Q. Paragraph 23, yes. And if we look at bullet point 4, 5, and 6, there you describe $150,000, two $75,000 payments—not one—going to Sarelan, and Sarelan then taking $130,000 of that money and transferring it to Summer Venture, which then transferred it on to Coco del Mar for the apartments; correct? Actually, we need to look at the final bullet, which is bullet 7.

You don't mention a fixed-term deposit of $1 million anywhere in your Witness Statement, do you?

A. No, because here we're only talking about the monies related to the payment and acquisition of the apartment.

Q. Yes. So, let's turn back to paragraph—excuse me, to R-62, which is your Report, and let's look at Page 32, Table A3.

And there you are saying—again, if we look at Table A2 at the top, we see the 130,000 for the apartment, and if we look at the bottom of the page at Table A3, you're saying that that $130,000 was made up
of $75,000 only, from PR Solutions, and $125,000 from a
Mr. Alexandre Tchervonnyi; correct?
   A. Correct.
   Q. And just to be clear, you never investigated
Mr. Alexandre Tchervonnyi, did you?
   A. We were never able to identify the individual.
Likewise, when Reyna was asked about it, she was unable
to provide an answer that was satisfactory as to who
this individual was, as far as I can remember.
   Q. So, in 2015, you determined that
Mr. Tchervonnyi had been a part of the movement of
money to Mr. Moncada Luna that you were investigating,
and now, because you can make no proof with respect to
Mr. Tchervonnyi, you're simply attributing all of that
to Omega; isn't that true?
   A. Tchervonnyi? Who is he?
   Q. Mr. Villalba, we just talked about
Mr. Tchervonnyi. He's listed in Table A3 of your
Report at Page 32.
   A. Alexander, yes. What was the question, again,
about him?
   Q. The question is: You've admitted, that in
2015, you say you were unable to investigate him; correct?

A. We were unable to determine who this individual was.

Q. Okay. So, now to avoid that problematic issue, you're simply saying that Omega contributed all of the money; is that correct?

A. The part of those monies, according to what the table says.

Q. Yes, but we've already established that this table in your 2015 Report is different from Paragraph 23 in your current Witness Statement, haven't we?

A. We are talking about the $75,000, and, again, I will hold my statement to the $75,000 amount. There were two deposits made, but one of those was later on destined to the payment of the purchase of one of the PHs.

Q. So, Paragraph 23 of your First Witness Statement is wrong?

A. Not at all. In total, Omega, disbursed to Reyna $250,000 -- well, after Reyna received the
$250,000, she made two disbursements for 75,000. This is described here. According to the Report prepared, the Report highlights that, out of that amount, once it was deposited, well, it indicates the amount used to do the transfer to the other account and to purchase the cashier's check that was the amount of $75,000. The other one was registered under Sarelan Corporation later on.

So, in total, after the deposits were made to the Reyna account by Omega--so, we had 75--two checks for $75,000. Before one of those payments, a transfer was made for $130,000.

Q. Mr. Villalba, I think the Tribunal is able to decide for itself if your Witness Statement is or is not consistent with your Report, and I think we should move on.

A. Right.

Q. All right, sir. Now, you testified earlier that you had read Mr. Aguirre's Report; correct?

A. Correct.

Q. And Mr. Aguirre's Report was issued three months before yours; correct?
A. I think it was way before, yeah.

Q. Yeah. Well, Mr. Aguirre's Report was March 2015, and yours was June 2015; correct?

A. Correct.

Q. Okay. And you've already testified that Mr. Aguirre's Report was based on the same evidence as your Report; correct?

A. Correct.

Q. Okay. So, then, you are aware, aren't you, that Mr. Aguirre's Report makes no mention of Mr. Alexander Tchervonnyi and his payments to Reyna & Associates and, instead, focuses exclusively on Omega.

Are you aware of that, sir?

A. Correct.

Q. Okay. Now, you had seen Mr. Aguirre's Report when you created your June 2015 Report; correct?

A. Exactly.

Q. Yeah. And, yet Mr. Aguirre's financial transaction analysis and your financial transaction analysis are different, aren't they, sir?

A. They have different focuses. Mine was more
general in nature, the one that I submitted to the
Prosecutor, it was more general. It included all of
the operations. I think Aguirre's Report focused on
the traces that were directly related to Omega.

Q. Okay. So, your testimony is that your 2015
Report was broader and contained additional information
than Mr. Aguirre's Report; correct?

A. Yes. As the Report says itself, this was a
factual Report. It had to do with things in general.
It didn't really have anything specific.

Q. I'm sorry. Which Report didn't really have
anything specific? Are you saying Mr. Aguirre's Report
didn't have anything specific?

A. No. Aguirre's Report was more specific in
connection with some suppliers, not only in the case of
Omega. You will find there are other suppliers. He
took specific suppliers. My Report provides a
compendium of things, not only in connection with how
the payments were made for the acquisition of the PH
and other things, but it also shows other events that
have nothing to do with Omega, but events that were
related to the investigation.
In the case of Aguirre, well, he was more specific in connection with certain points.

Q. Okay. So, your Report is more informed and more reliable than his Report? Is that fair to say?

A. I would not be able to state that. He had certain instructions under contract, and I think he, in his Report, set forth the purpose of his Report.

PRESIDENT SHORE: Ms. Gorsline, in a couple minutes, if you can get to a good closing spot.

MS. GORSLINE: In order to break for lunch, sir? Or--

PRESIDENT SHORE: Yes. Break for lunch.

MS. GORSLINE: Okay.

BY MS. GORSLINE:

Q. All right. Is it fair to say, Mr. Villalba, that you intentionally changed your financial transaction analysis from what you saw in Mr. Aguirre's Report because you felt there were additional details that needed to be included; is that fair?

A. Modify as such, change as such, no. Recall that my Report not only talks about--well, does not only talk about one supplier. It also talks about the
purchase of other property like cars and vehicles that were acquired. You've seen that. You've seen other additional elements in it.

Q. I have, sir.

My only question, I guess, is this: Why, having created a more in-depth analysis in 2015 that took into account transactions involving Alexandre Tchervonnyi, did you in this case revert to an analysis that is identical to Mr. Aguirre's analysis in R-0063, where you mention nothing at all about Alexandre Tchervonnyi and attribute all of that money as coming from Omega? Why did you do that, sir?

A. If we're talking about my testimony, we're talking about Omega right now.

Q. Okay. Sir. Just to be clear, regardless of which analysis we look at, either the one in your Witness Statements or the one in your 2015 Report, it is clear that of the $500,000 that Omega transferred to Reyna & Associates, at most 275,000 of that went on to Sarelán.

Is that fair?

A. That is--yes, that is very clear.
Q. Okay. And you have no idea what happened to the remainder of that $500,000; correct? You have no idea where at least $225,000 of that money went; right?

A. At that initial stage, I don't have the certainty to say what happened to the remainder, what use it was put to.

MS. GORSLINE: Okay. I think now would be a good time for a break, Mr. President.

PRESIDENT SHORE: Thank you, Ms. Gorsline.

So, we will take an hour break for lunch.

Do you have just, without committing, do you have like an estimate that you could give us, Ms. Gorsline, about how much more with this particular Witness?

MS. GORSLINE: I'm going to try to cut it down a little bit over the break, but I would say, if we can stick to answering the questions, probably about half an hour.

PRESIDENT SHORE: So, thank you.

Mr. Barsallo Abrego is--will be available at that point; is that right, Mr. Ryan?

MR. RYAN: Yes, that's correct, sir.
PRESIDENT SHORE: Okay. And just so counsel know, I need a hard stop today at 5:30 because I have a much less interesting matter than this case to deal with after that for a procedural hearing. So, if you can gear to be done today by 5:30, that would be good for me.

MS. GORSLINE: Yes, sir. We will.

MR. RYAN: Yes, sir.

PRESIDENT SHORE: Thank you very much. Thank you.

So, Mr. Villalba, it's a lunch break for one hour, and it's the same instruction. Please don't speak to anyone about the case, however the Respondent's counsel will be able to show you where you can get a lunch.

THE WITNESS: Okay.

PRESIDENT SHORE: Thank you very much.

(Whereupon, at 1:00 p.m., the Hearing was adjourned until 2:00 p.m., the same day.)
AFTERNOON SESSION

PRESIDENT SHORE: Back on the record.

Ms. Gorsline?

MS. GORSLINE: Thank you, Mr. President.

BY MS. GORSLINE:

Q. Mr. Villalba, can you please turn to Exhibit C-421, please.

And while that is being put in front of you, I will tell you that these are the Reyna & Associates bank statements that I believe you obtained during your investigation in the National Assembly.

Do you have it, sir?

A. Yes.

Q. And these are bank statements from Reyna & Associates from Banistmo Bank; correct?

A. Correct.

Q. Now, if we look at the bottom right corner of the first page—and with the Spanish, I believe that is on Page 56—so if we look at the bottom right corner, it says Page 1 of 59.

Do you see that, sir?

A. Yes.
Q. So, that indicates that there are supposed to be 59 pages in this particular bank statement; correct?

A. Correct.

Q. All right. Now let's turn to Page 10 of the English and Page--I'm told 65 of the Spanish. Do you see there, sir, at the top right corner there's a stamp?

A. Yes.

Q. Now, am I correct that that stamp was put there by Banistmo to indicate that this was the official copy that was produced?

A. Yes.

Q. Okay. And if we look at the top right corner of that stamp, we see a number, and it says 2536; correct?

A. Correct.

Q. If we look at the very next page, the stamp on that page says 2537; correct?

A. Yes.

Q. If we turn the page again, in that same top right corner, we see 2538; right?
A. Correct.

Q. And then the next page says 2539; right?
A. Yes, that is correct.

Q. So, we know, don't we, that this is the order in which these pages were produced by the bank; right? Because the numbers on these stamps are going in consecutive order; correct?
A. Yes.

Q. Okay. Now, if I could ask you to turn back to the page which that has the number 2538 at the top, which would be one page before the last one we looked at.

Do you see that at the bottom of that page? The last entry is dated 14 July 2011.
A. Where?

Q. Do you see the page, sir, where the stamp at the top right corner says 2538? It's Page 12 of the English.
A. Got it now.

Q. Okay. Do you see on that page, the last entry on the bottom of the page is dated 14 July 2011?
A. Yes.
Q. Okay.

A. Yes.

Q. Okay. And then if we look at the very next page, which we know is the next page that was produced by the bank because it is Number 2539, you see that at the top of the page, the very first entry is from August 29, 2011; correct?

A. Yes.

Q. , it looks like?

A. Yes, correct.

Q. Okay. So, it's pretty obvious, from the fact that we jumped from July 14 to August 29 and from the fact that we jumped from , that there are pages and transactions missing; right, Mr. Villalba?

A. Yes, we can see that.

Q. Okay. And then if we look at Page 31 of the English, which is Page 86 of the Spanish, do you see at the bottom right corner, you see Page 59 of 59?

Do you see that?
A. Yes.

Q. So, that's the end of this particular bank statement; correct, sir?

A. Yes.

Q. But if we look at the page number, we see it is only Page 31 or, in your case, 86. But it is roughly 30 pages in from the start of the document; correct?

A. Correct.

Q. So, that tells us that half the pages of this document are missing, doesn't it?

A. Yes.

Q. Okay. And this is the Reyna & Associates bank statements that you used for purposes of your investigation; isn't that right, Mr. Villalba?

A. Correct.

Q. So, this is a key document on which you based your financial transaction analysis; correct?

A. Correct.

Q. All right. Sir, can we please turn back to R-62, which is your 2015 Report? And I'd like to turn to Page 39.
Looking at the number in the bottom right corner, Page 39, which is the same in both documents, I'm told it's Page 114 if you look at the official record page number for the Spanish.

A. I am at Page 39.

Q. Okay. And this is the diagram that we looked at earlier--right?--of your financial transaction analysis for the payment that went from Omega Engineering to PR Solutions to Reyna & Associates in July 2013; correct?

A. Correct.

Q. Okay. Now, you state in your Report, and we see here in this diagram, that the source of the USD 250,000 was a payment from the Judiciary to Omega for the La Chorrera Contract in the amount of about \[**\text{250,000}**\]; correct?

A. Approximately.

Q. Yes. And that's the same as what you say in your Witness Statements--right?--that this $250,000 that left Omega came from the Judiciary; right?

A. Correct.

Q. Alright. Could I now ask you to turn to
R-114?

A. Okay.

Q. Now, Mr. Villalba, this document is described by you in your Witness Statement as a compilation of bank account statements and documentation of transfers from Oscar Rivera to Justice Moncada Luna; correct?

A. Moncada Luna, yes, correct.

Q. Okay. If you could turn to Page 146 of this document, please, which is marked in the top right corner as 114.14.

A. Correct.

Q. And here we see a series of transactions, almost all of which are for July 11, 2013; correct?

A. Yes.

Q. And the third entry from the top shows a credit of [redacted]; correct?

A. Correct.

Q. And the balance after that transfer is [redacted]; correct?

A. The balance in--which account are you talking about? Are you talking aboutOmega?

Q. Yes. Thank you, sir. I should have made
that clear.

So, this page that we're looking at, at Page 114.14, this is part of the bank statement from Omega Engineering Inc., which is Omega Panamá; right?

A. Correct.

Q. And so, then, with that background, three transactions down, we see a credit of [redacted]; correct?

A. After what? After the one on July 11?

Q. I'm just asking you to look at the third line down of the transactions, sir, and we see that on July 11, [redacted] is deposited into that account; correct?

A. Yes.

Q. Okay. And then four lines below that, we see [redacted] deposited into this account; correct?

A. Correct.

Q. And that [redacted] is money that you say came from the Judiciary; correct?

A. Correct.

Q. And so, when the [redacted] is deposited, it's
combined with the more than [REDACTED] that is already in Omega Panamá's account; correct?

   A. Correct.

   Q. And we can agree, can't we, that money is fungible?

   A. There is a mixture.

   Q. Okay. But of the, you know, [REDACTED] that's in the account when the [REDACTED] is deposited, there is no way to identify specifically which of those [REDACTED] is the money that came from the Judiciary.

   Would you agree with me on that?

   A. It is part of the [REDACTED] in the balance. You have [REDACTED]. So, that's how you get to [REDACTED] as a balance.

   Q. Okay. Thank you, sir.

   Now, these entries that we've talked about, as well as several others, are all for July 11, 2013; correct?

   A. Correct.

   Q. And these entries are presumably appearing in the order that they were processed by the bank; right?
A. Correct.

Q. And I'm sure you know, as I do from my own bank account, that the order in which a bank processes a transaction is not necessarily the same order in which the account holder made payments and deposits; right?

A. When you're referring to the order, you're talking about disbursements?

Q. I'm just talking about the order in which transactions appear on a bank statement. They are in the order in which the bank processes the transactions, not the order in which the owner of the account makes the transactions; correct?

A. It could vary, yes, depending on the period, if that's what you're referring to.

Q. Okay. Well, maybe it will help if I use an example.

Let's say I use my bank card to pay for gas today, and then tomorrow I go to the supermarket and I use my bank card, and the day after that maybe I go to the post office. But that doesn't mean that, when my bank statement appears, those transactions are going
to appear in exactly that same order; right?

A. It could be, yes. It could be.

Q. Okay. So, just from looking at a bank statement, we don't necessarily know the order that the account holder made payments or received credits; correct?

A. The case could be, depending on the time and the hours for each of the transactions, so it depends on the format followed by the bank, the software, the tools, as to how they record. It should be accurate. There shouldn't be such a variability.

Q. Okay. Well, did you investigate with respect to the various banks whether their software worked the way you are suggesting?

A. No. That is quite relative. That is quite relative, or it could be quite relative, but, to us, the bank, whether the transactions are recorded immediately, no, we did not ask the bank.

Q. Okay. So, now let's turn to the next page, which is 114.15. And there we see the transfer from Omega--well, out of Omega Panamá's account.
Do you see that?

A. Correct.

Q. And that's July 12, 2013; right?

A. Yes, July 12.

Q. Yes. And at the time that transfer goes out, there are still way more than $8 million in that account; correct?

A. In the balance, there were, yes. In the balance.

Q. Okay. So, you would agree with me that Omega had more than enough funds to make the $250,000 transfer without using any money from the Judiciary; correct?

A. As a balance, they did have the funds. From the balance, yes, they did have the funds to be able to transfer the money to another account. They did have the balance.

Q. Okay. And you have no testimony from anyone at Omega indicating that the $250,000 land payment was intended to come from the money from the Judicial Authority, do you?

A. You are asking me about someone from Omega
saying that the money was coming from the payment of 587? Is that the question? Is that what you're referring to?

Q. Yes, but we can maybe make this a little simpler. You don't have any testimony from anyone at all that Omega intended to use the money from the Judicial Authority to pay for the land transaction, do you?

A. From them, no. From someone in Omega, no.

Q. Well, not from anyone at all; correct?

A. Yeah, that's what I'm saying. Based on the statements made and also the interviews and the statements, none of them said that.

Q. Okay. And you don't have any documents that would indicate such an intent, do you?

A. Are you talking about the payments for the PH?

Q. I'm talking about the money that went from Omega Panamá to PR Solutions.

A. Well, I think that there were some recent statements, some declared that the payments were for some residential purchases. That's what we read
Q. That the 250,000 was for the purchase of land?

A. Yes. That's what it was said by the people.

Q. Okay. Now, Mr. Villalba, I'd like to turn back to R-62, which is your Report. Now, we looked at these earlier, but you have diagrams of both of the transactions of $250,000 on Pages--in the English, it is 24--well, in both documents, in both languages, if you look at number at the bottom right corner, it is Pages 24 and 39.

Do you remember looking at those, Mr. Villalba?

A. Yes.

Q. Okay. And if you look at these two diagrams on Page 24 and 39, you conclude that $200,000 of Omega's money was paid on to Justice Moncada Luna through payments to Sarelan for the purchase of his two apartments; correct?

A. For the acquisition, yes, of the apartments. Those were the funds used directly for the acquisition of the apartments.
Q. Okay. And if we look at these diagrams, you have the money going from Omega Engineering, which is Omega Panamá, to PR Solutions; correct?

A. Correct.

Q. And then from PR Solutions to Reyna & Associates; right?

A. Correct.

Q. Okay. And then Reyna takes some portion of that money that she receives and she sends it on to Sarelan; correct? That's what your diagrams say?

A. Correct.

Q. Okay.

A. Some funds were later on transferred to Sarelan.

Q. Yes. So, as we discussed earlier, Ms. Reyna testified multiple times during your investigations; correct?

A. Yes.

Q. And she testified that she uses this account for Reyna & Associates for many things; correct?

A. Yes. I think that that's--she said something to that end.
Q. Okay. Let's look at R-139. And we looked at this document earlier. This is Ms. Reyna's testimony in the National Assembly investigation on January 27, 2015; correct?

A. Correct.

Q. Now, if we look to Page 6 of the English, which is Page 27 of the Spanish, at the bottom of the page in the English--let me just verify where it is for you in the Spanish, sir. Yes. It's at the bottom of the page, I believe, for you. Yes.

So, in the Spanish it begins: "Nosotros somos."

Do you see that?

And in the English it reads: "We are depository agents of everything JR does. JR's accounts disappeared a long time ago, in addition to us, for tax purposes, we propose to do so"--or, excuse me--"we prefer to do so, so that she does not have to be making extraordinary statements there in the United States because she is the beneficiary."

Do you see that?

A. Yes, I'm reading it.
Q. So, what she's saying there is that she is the depository agent for all business of JR Bocas; correct?
A. Correct.
Q. All right. Now, sir, can you turn to C-894. All right. Sir, and if you could--well, first, I should state that this is Ms. Reyna's testimony in June 2015 in the Organized Crime Prosecutor's investigation; correct?
A. Correct.
Q. And if we look at Page 8 in the English, which I'm told is 29 in the Spanish, we see there towards the bottom of the page, there's a question that reads: "The account of Reyna y Asociados of Banistmo is regularly used to receive payments from the commercial activities of the company JR Bocas Investment, Inc."
Do you see that, sir?
A. Yes.
Q. And her answer is: "Yes, and from third parties too. For many years I have been receiving money from third parties for real estate transactions
or for loans, always presenting the necessary bank
justifications to the banks, since 1999".

Do you see that, sir?

A. Yes.

Q. And now, if we could turn to Page 12 in the
English of this same document, which is 33 to 34 in
the Spanish.

If we look at the bottom of the page, the
question is: "Did the account of Reyna y Asociados in
Banistmo receive their own money from their activities
as a law firm, which was not related with the exercise
of the Power of Attorney that Mrs. Jo Reynolds had
conferred on you to manage her assets?"

Do you see that question, sir?

A. Yes, I do.

Q. And the answer was: "Of course, of all the
other clients, as can be seen in the account
movement."

Did I read that correctly, Mr. Villalba?

A. Yes, that's right.

Q. So, Ms. Reyna told investigators that she
used this account that we looked at earlier at
Banistmo, not just for her law firm business, but also for all business of JR Bocas Investments and also for business related to third parties as well; correct?

A. Yes, that is what she stated.

Q. Okay. Now, I would like to turn back to Page 8 of the English, which is Page 29 of the Spanish. And at the bottom of the page, we see the question from the investigator, which is: "You can explain to the Office the origin of the funds that were deposited at the account [redacted] of Reyna y Asociados in Banistmo, for the date of June 6, 2013, for an amount of $200,000?"

Do you see that?

A. Yes.

Q. And then her answer is: "It is a real estate transaction. The purpose was to buy an apartment for Mr. Alexandre"—it says "T Chevron," but if you read down, they later refer to him as Mr. Tchervonnnyi. I think that's a reference to Alexandre Tchervonnnyi who we discussed earlier; correct?

A. Correct.

Q. All right. And I don't want to take time to
read all this, but if you start with "I was an intermediary between."

Do you see that?

It's just a few lines down from what we just read.

Do you see that?

A. Correct.

Q. She's describing there that she was an intermediary between the real estate and the person"--the person meaning Mr. Tchervonnyi, and that his money "took a while to arrive and I got some funds to guarantee the purchase sale and those funds were finally reimbursed when the transaction arrived."

Do you see that?

A. Yes.

Q. And then later the question is: "With whom did you get the money that Mr. Tchervonnyi owed?"

Do you see that? That's a few more lines down.

A. Yes.

Q. And her answer is: "One part came from Mr. Rafael Leonard, a person who for many years has
managed loans occasionally for my clients."

Do you see that, sir?

A. Yes.

Q. So, what Ms. Reyna is describing there is how, because it took a while for Mr. Tchervonnyi's funds to arrive, she used other funds that were in her account from a Mr. Rafael Leonard to make payments which she then reimbursed when the money from Mr. Tchervonnyi arrived; correct?

A. Correct.

Q. So, essentially, Ms. Reyna has testified that she was taking money from one transaction in order to pay obligations under another; right? That's what that means, what we just read?

A. Yes, according to her statement.

Q. And this testimony was part of the investigation record from the--or, excuse me, this one is from the Organized Crime Prosecutor's investigation; correct?

A. Correct.

Q. And, based on that evidence and the other evidence we've looked at today, it's entirely possible
that Reyna & Associates received money from Omega for a land transaction and then used that to pay off a debt with respect to Sarelan; correct?

A. Possibly. It could be, based on the mechanics that she describes here, in the case of Mr. Alexandre.

Q. Yes. Now, are you aware, Mr. Villalba, that Panamá sought to have Mr. Rivera extradited from the United States on charges of money laundering in December 2015?

A. No, I was not aware of that. Extradition, you say?

Q. Yes, sir.

A. No, I did not know.

Q. Okay. Let me ask you to look at document C-900. In the Spanish, sir, I believe of the first document begins on Page 3. And there is an English portion behind it and, unfortunately, we do not appear to have a translation of that document.

So, if I can ask you to look at Page 3, which is the Spanish? This is a letter--

A. Yes, I have it right here in front of me.
Q. Okay. So, this is a letter from February 2016 from the Ministry of Foreign Relations of the Republic of Panamá; right?
A. Yes.

Q. And it's going to the Deputy General Director--oh, I'm sorry.
It's going to the Office of the Attorney-General; right?
A. Correct.

Q. Okay. And we see here that the Ministry of Foreign Relations is reporting to the Attorney General's Office that the request for extradition was made; correct? That's Paragraph 1?
A. Yes. I would like to note a caveat seeing the date, 29 February 2016. That's why I'm not familiar with the document. I was no longer working in the Office of the Public Prosecutor. I left on 22 February, 2016, but, of course, I can read the document.

Q. Yes. Well, I do understand when you left, sir, but if you look at the first paragraph, it says that the request for extradition was dated
17 December 2015?

Do you see that?

That's in the first line.

A. Yes.

Q. And that was while you were still employed by the Organized Crime Prosecutor; correct?

A. Yes, but I did not have access to this document.

Q. Okay. So, as we see in this second paragraph, "the Ministry of Foreign Relations is advising that the United States has said that the provisional arrest of Mr. Oscar Ivan Rivera Rivera cannot proceed, considering that the documentation which was provided lacks sufficient facts connecting the aforementioned person with the charges of money laundering and which provided some suggestions, to once again, to reiterate such request which we are sending to you in the attached note."

Do you see that, sir?

A. Yes, I do.

Q. All right. And then I apologize for the fact that we have no translation into Spanish, but I will
read the English and the interpreters can translate for you in Spanish. So, if we look at this next few pages, starting on Page 4, this is the actual note, it appears, that has come from the United States.

And it explains, if we look at the bottom of Page 4, that Panamá, if it wished to move forward with extradition, would need to provide evidence such as "an explanation of bank records which showed the movement of money by Mr. Rivera and reflect that he knew the money was obtained through illegal means, a summary of testimony given by a coconspirator, or any other evidence which clearly indicates that Mr. Rivera knowingly participated in the money-laundering operation described in the provisional arrest request."

Now, sir, it's your testimony that you didn't know about this? You didn't know that the United States had denied extradition of Mr. Rivera?

A. No. As of the time of the response when this was answered, I didn't have access to this information.

Q. Okay.
MS. GORSLINE: All right. Mr. President, we have no further questions.

PRESIDENT SHORE: Thank you, Ms. Gorsline. Mr. Weisburg, same offer to you, if you want to hear Tribunal's questions before redirect.

MR. WEISBURG: I absolutely do.

PRESIDENT SHORE: All right.

QUESTIONS FROM THE TRIBUNAL

ARBITRATOR DOUGLAS: Good afternoon. I just have a question for you about the process which appears to be ongoing in relation to this matter. Why, in your view, has it taken—well, let me phrase it differently.

The guilty plea from Justice Moncada Luna was in 2015, and if I understand correctly, we're now five years later in 2020, and it doesn't look like this matter is anywhere near being resolved.

So, in your view, what are the reasons for the delays in relation to this matter? And are those delays typical in Panamá?

THE WITNESS: You are referring to the appeal that is still ongoing and in respect of which there
has not yet been a response? Well, I don't know the reasons why the Court has yet to issue a ruling. The terms, if I could explain what the relevant legal provision says, well, I don't—I'm not familiar with them, I don't know if there is a prudential term or time frame for giving a response. What I can say is that I do know that there's not been a firm response since the latest appeal.

ARBITRATOR DOUGLAS: And depending on what happens in that appeal, wouldn't it be the case that the investigators are going to basically have to start from scratch? I mean, there is some work that's being done, but it doesn't look like that this matter is anywhere near being resolved, because they haven't been working on this case over—in the interim period, since the original Court Decision.

So, would the investigation even be continued if the Court decides to overrule the original Decision?

THE WITNESS: Yes, it would continue, I assume. I believe that it is in cassation. I don't recall exactly, but, yes, the process could be
reactivated.

ARBITRATOR DOUGLAS: But from your perspective as an investigator, isn't that a problem to begin an investigation again some five years after the original investigation was opened, when everything has gone cold in the meantime?

THE WITNESS: Well, one would have to then see whether the Court rules on what investigative measures to carry out. I assume that the Office of the Public Prosecutor would take it up once again, and, here, assuming that the Office of the Public Prosecutor would take it up, once again, and the facts are there. They would have to take it up once again.

I don't know if they would provide for some prudential period, once again, to collect new evidence, or carry out other measures. As far as I understand it, the Office of the Public Prosecutor has suspended and then remedies were pursued, appeals, and then the Office of the Public Prosecutor was not able to continue the investigations and it was left there, even much after I left--long after I left.

I assume that, if the Court rules on this
matter, it would have to, once again, activate to pick up where it was suspended and then go forward. All of the elements brought together would be part of it, but then new investigative steps would have to be taken and then go to trial.

ARBITRATOR DOUGLAS: Thank you.

PRESIDENT SHORE: Mr. Weisburg, over to you.

MR. WEISBURG: After the long deliberation, we have no further questions.

PRESIDENT SHORE: Thank you very much, Mr. Weisburg.

Ms. Gorsline, anything coming out of Professor Douglas's question you'd like to pursue.

MS. GORSLINE: No, Mr. President. Thank you.

PRESIDENT SHORE: Mr. Villalba, thank you very much for your appearance and your testimony today. We appreciate your appearance, and your testimony has now concluded.

THE WITNESS: Thank you. I'd like to thank everyone.

MS. GORSLINE: Thank you, sir.

(Witness steps down.)
PRESIDENT SHORE: So, I believe we have Mr. Barsallo Abrego is ready to appear. While we're making the shift, why not take a five-minute break? Is that okay for everyone?

MR. WEISBURG: I think we need more like 10.

PRESIDENT SHORE: So, we'll take a 10-minute break on Application of Mr. Weisburg. Hearing no objection.

MS. GORSLINE: No objection.

(Brief recess.)

PRESIDENT SHORE: Back on the record.

NESSIM BARSALLO ABREGO, RESPONDENT'S WITNESS, CALLED

PRESIDENT SHORE: Good afternoon and welcome, Mr. Barsallo.

THE WITNESS: Good afternoon. Good afternoon, President.

PRESIDENT SHORE: I believe you have in front of you a declaration, a witness declaration, on a page right in front of you, and if you could read that out loud, please.

THE WITNESS: Yes, Mr. President.

I solemnly declare, upon my honor and
conscience, that I shall speak the truth, the whole truth, and nothing but the truth.

PRESIDENT SHORE: Thank you, Mr. Barsallo. I believe we have two Witness Statements, which should be on the desk with you there: one is dated 7 January 2019, and a Second Statement dated 18 November 2019; is that correct?

THE WITNESS: Yes, that is correct, President.

PRESIDENT SHORE: So, I'm sure the process has been explained to you, but, first, there may be some questions from Mr. Ryan, and after Mr. Ryan concludes, there will be some questions from Mr. Daly. So, as you have already appreciated, there's a slight delay because of the Interpreter, and so please do be patient. Let the questioner finish the question, and then you'll be permitted to give a complete answer.

THE WITNESS: Okay. Thank you very much.

PRESIDENT SHORE: Mr. Ryan.

MR. RYAN: Thank you, Mr. President.

DIRECT EXAMINATION
BY MR. RYAN:

Q. Mr. Barsallo, welcome to these proceedings. Just one question: Do you have any corrections that you would like to make with respect to your Witness Statements?

A. Yes. Good afternoon. That's right, I would like to make a correction in my First Witness Statement of 7 January, specifically at Paragraph 27, which I will read, and it corresponds to Heading Number 5, which is "Execution of Omega's MINSA CAPSI Projects During the Martinelli Administration."

The correction I'd like to make at Paragraph 27 is in the third sentence, which states that: "During those periods, Omega formally communicated to the Ministry of Health, first, that it would reduce personnel and thereafter would suspend the work by the end of the year, given the lack of a current contract."

The correction that I'd like to make is that, based on my knowledge and the documents reviewed, Omega, during the time of President Martinelli, did not formally submit any suspensions or any personnel...
reductions.

Thank you very much.

Q. Thank you, Mr. Barsallo.

MR. RYAN: No further questions.

PRESIDENT SHORE: Mr. Daly.

CROSS-EXAMINATION

BY MR. DALY:

Q. Good afternoon, Mr. Barsallo.

A. Good afternoon.

Q. My name is Michael Daly, Counsel for the Claimants, and I'm going to be asking you a few questions today about MINSA. If you don't understand any question that I ask you, please let me know and I'll do my best to clarify. Okay?

A. Okay. Correct.

Q. As President Shore just said, we're communicating through an interpreter, so in the event that you don't understand the translation or have a question about the translation, please just let us know. Okay?

A. I shall proceed in that manner, sir.

Q. Okay. So, I'd like to start with your
background at MINSA. Now, you worked for MINSA from May 2010 until August 2019; is that correct?

A. That is correct, sir.

Q. And most of that time, between 2012 and 2019, your title was as the Subdirector of the Administration of Special Projects at the Ministry; correct?

A. That is correct, sir.

Q. And you were involved with each of Omega's MINSA CAPSI projects, there were three projects: the Rio Sereno Project, Kuna Yala, and Puerto Caimito; correct?

A. That is correct.

Q. You oversaw the administration of Omega's MINSA projects; isn't that correct?

A. Correct, sir, together with my immediate superior, my boss.

Q. And who was that?

A. During the first part of the Martinelli Administration, it was Mr. Napoleón de Bernard. The second period of the Martinelli Administration, it was Mr. Alex González, those two. And at the end of the
Martinelli Administration, Ms. Karina Mirones. Three--these were my three immediate superiors in the direction where I worked. During President Varela's Administration, Mr. Gabriel Cedeño was also there.

Q. Thank you.

And these are standard questions. Have you or will you receive any form of personal benefit of for your Witness Statements?

A. No, sir.

Q. And have you or will you receive any personal benefit for testifying at the Hearing?

A. No, sir. I am just being compensated for my time, my fees.

Q. Can you clarify what you mean by that?

A. Fine. I am a lawyer. I exercise the profession freely, and my time, well, I charge for my time, and I am involved in this hearing providing my time, and my fees are precisely based on the time that I'm using up here, for being here, and not because I provide testimony. I'm charging for the time basically.

Q. Okay. Just to clarify, though, you're not
acting as counsel in this arbitration; correct?
   A. I am not.
Q. Now, you're no longer employed by MINSA or by the Panamanian Government; correct?
   A. That is correct, sir. No longer.
Q. In your Second Witness Statement, you state that you left MINSA as of August 2019; right?
   A. That is correct, sir.
Q. Your Second Witness Statement doesn't say why it is that you left MINSA, does it?
   A. Well, I left because of the change in the administration, a new administration took office, and the position that I had, well, this is a position where people are freely removed, and the new administration decided to terminate my position.
Q. So, just to be clear, you were fired.
   A. I was sent on vacation, and I was never called back.
Q. Now, you filed your Second Witness Statements in this Arbitration after that point; right? Your First Witness Statement is dated January 2019; correct?
A. My First Statement is dated January 2019, correct.

Q. And your Second Witness Statement is dated November 2019; correct?

A. That is correct.

Q. And in between your First and Second Witness Statements, Mr. López files a witness statement in this arbitration, didn't he?

A. With my Second Statement is that I found out about that.

Q. You found out about it before you filed your Second Witness Statement; right? You filed your First Witness Statement in January 2019, and Mr. López, Frankie López, filed his Witness Statement, his First Witness Statement in May 2019. You left the Government in August 2019 and filed your Second Witness Statement in November of 2019; is that correct?

A. What is correct is that I submitted my Second Statement in November 2019. I had no precise knowledge that Mr. López had submitted his Statement in May 2019.
Q. Okay. Mr. Barsallo, are you aware that you cite Mr. López's Witness Statement in your Witness Statement extensively?

A. That's correct. My Second Statement I provided and I was relying amongst the documentation that I looked at on the First Statement by Mr. López.

Q. Okay. When you filed your Second Witness Statement, you addressed assertions that Mr. López has made in his First Witness Statement; correct?

A. That is correct, sir.

Q. And Mr. López attached to his First Witness Statement text messages between you and him; correct?

A. That is correct.

Q. And you reviewed those text messages and commented on them in your Second Witness Statement?

A. Correct, sir.

Q. And you were terminated from your job within a few weeks of Mr. López disclosing those text messages; is that correct?

A. I don't recall exactly if it was within those dates that I was terminated. The messages were made known to me. But to clarify, I don't know if I
haven't been clear or if there is something that is not being understood. When Mr. López gave his statement, I'm being told that May 2019, and May 2019 exactly I had no knowledge of that statement.

When I produced my Second Statement, and because of the statements made by Mr. López, I provided a Second Statement with the knowledge that I had gained after May 2019 of the fact that one statement had been provided that included a series of WhatsApp messages.

Q. Let's discuss your role at MINSA and how it evolved.

Now, during the first few years of Omega's projects, of Omega MINSA projects, you were the key point of contact for Omega; is that correct?

A. Could you please repeat your question, please?

Q. Yes.

During the first few years of Omega's MINSA projects, you were the key point of contact for Omega, were you not?

A. That is correct. One of the key point of
contacts.

Q. You were regularly on correspondence during those first few years; correct?

A. That is correct. I was cc'd on the correspondence.

Q. You also authored some correspondence, didn't you?

A. Well, we are talking about something that happened eight years ago. I can't really pinpoint exactly, but in connection with the functions that I discharged in my position, definitely.

Q. Understood.

If I told you that there are at least 11 pieces of correspondence in the record, MINSA correspondence, up until May 2014 that you either wrote or received, would that seem about right to you?

A. That are included in the file and that I have reviewed documents? Yes, that's correct.

Q. Could you please turn to C-0365.

PRESIDENT SHORE: It's going to be given to you in a moment.

THE WITNESS: Thank you very much,
Mr. President. Got it.

BY MR. DALY:

Q. Okay. And if you'll just follow along with me, this is an email from December 6, 2012, from Omega to MINSA; correct?

A. That is correct, sir.

Q. And you're the first person listed on the "to" line of the email.

Do you see that?

A. That is correct, sir.

Q. And the email begins, "Good afternoon, Nessim," which is you, and then goes on to discuss various Certificates of Nonobjection; correct?

A. That's correct.

Q. And at the end, it says: "Thanks for your usual help"; right?

A. That is correct.

Q. Now, after May of 2014, you shifted to more of a background role on the--Omega's MINSA Projects, didn't you?

A. Initially, yes. And during the full period, yes, more secondary in nature, yes. Not as much as
during the Martinelli Administration.

Q. Can you clarify what you mean by "initially" and afterwards?

A. When I indicated "initially," well, when there's a change in the Administration generally--and that's been my experience, at least, and I was working with two different Administrations--well, the new Administration comes in and it brings in their personnel of trust. And I was part of that group.

Generally, trust positions are replaced. They are replaced with people from the new Government. At that point in time, although it is true that I wasn't really fired, I was kept "at bay," quote/unquote, when the new team came in and looked at all the documentation. Then, slowly but surely, thanks to my work and the knowledge I had, I gained the trust of the Minister and the Minister's team, and then I was allowed--again, because of the trust I had gained--to be the person looking at the turnkey contracts of the MINSA CAPSI hospital Projects, although I was not 100% in charge.

Q. You mentioned there that this is a process
that happens with a change in administration; correct?
   A. During my stay--and I had been there only for two changes in the administration--that has been the case, sir.

   Q. Don't you say in your Second Witness Statement that you've been through at least three changes in administrations?
   A. No. Four changes of Ministers.

   Q. Okay. Thank you for that clarification.

   So, would it surprise you if I told you that after May 4, 2014, there's only one official MINSA communication in the record from Omega sent to you?
   A. I would be surprised, yes.

   Q. Would it surprise you if I told you that, in the record of this Arbitration, there is only one MINSA communication that you sent to Omega after May 4, 2014?
   A. Now, within this file, this case file, or this Arbitration, you say, I would be surprised as well.

   Q. Would it surprise you if I told you that none of the exhibits that you cite to in either of your
Witness Statements that postdate May 4, 2014 have your name on them?

A. I would not be surprised, no.

Q. You were still working at MINSA and involved after May 4, 2014. No doubt about that; correct?

A. Yes, but I didn't really understand what you mean, "involved." What kind of involvement do you mean?

Q. You were still working on Omega's three MINSA Projects?

A. Only using reference data for the new authorities. They were getting knowledge of all the information that was in existence, and they came to me when it came to statistical data, progress data, percentages.

Q. Okay. But you have knowledge of Omega's MINSA Projects after May 4, 2014; correct? You're the Government's Witness on behalf of MINSA to testify as to all matters that relate to MINSA; right?

A. Correct, sir.

Q. Would you please turn to, and could someone pass to him, the Second Witness Statement of
Mr. López? And turn to Paragraph 11.

A. Excuse me. I'm looking for the Spanish version of this document.

Q. Take your time.

A. Got it.

Q. I'm going to read a portion of this here at Paragraph 11. Mr. López says: "With regard to communications with MINSA, before the change of administration, I had open and ongoing communications with MINSA through Nessim Barsallo, who was responsible for the MINSA CAPSI Projects with the Omega Consortium as the Sub-Director of Special Projects Management. When the Administration changed, Mr. Barsallo was no longer in charge, and engineer Gabriel Cedeño and Dr. Temístocles Díaz took on that role. It was at that time that I realized that communications with MINSA had changed. I remained in contact with Mr. Barsallo (more than anything because, in my view, we were friends), but all matters related to official communications with MINSA to resolve problems and ensure the progress of our MINSA CAPSI Projects had completely changed."
Do you agree with that statement?
A. Not 100 percent, no.
Q. How not?
A. Shall I explain?
Q. What is that you disagree with about that statement?
A. Where Mr. Frankie López says about myself and the fact that I was no longer a decision-maker. During the Martinelli administration, I had no decision-making powers. My boss had decision-making powers with the approval of the Minister. My involvement had to do with providing advice, management activities, and also I gave this information to my boss and then to the Minister. I never had decision-making power.

Second, the official communications, according to the Contract, were to be conducted with the Minister. We were the support team for the Minister, and we communicated by email, like you've said, via notes that I drafted, but when it came to formal communications--for example, a request for an addenda or the signature of a contract--that had to do
with the Minister. When he said that official communications were only with me, I disagree. There were other means where official communications could take place with the Minister.

Q. Okay. So, it's correct to say that you did not have decision--final decision-making power, either before President Varela was elected or after President Varela was elected?

A. I did not even have final decision-making power or initial decision-making powers. I made recommendations to my immediate superior, I provided the work, and I provided recommendations to whether things were good or bad. If anyone asked me, well, a legal opinion or a technical opinion, fine; I provided those opinions. But I did not have final decision-making power or initial decision-making power, sir.

Q. Thank you. I want to bring you back to something that you said, though, a few minutes ago before this. You said--and I think you used the words "kept at bay." You said that after the change in Administration, you were kept at bay, and you also
said that the new Administration preferred to have personnel of trust, and you didn't have--you were not one of those personnel of trust after President Varela was first elected; isn't that correct?

A. Let me correct something, sir. When the Administration changed, my position as the Sub-Director, well, it is a part of the position of trust that the Government has--Director and Sub-Director, those two positions.

In my experience in the two chambers of Government, well, the new administration comes in with new Directors and new Sub-Directors. In connection with my position, although it's true that in the Varela Government I wasn't removed from my position, I was not a person of trust because I didn't belong to the political party of Varela's team. And consequently, the decisions and the reviews that they conducted of the documentation, well, those were conducted by their team. I was a member of the prior administration.

I don't know if you remember this, because I said it before: They resorted to me initially to come
and look for statistical data and other data for the turnkey contracts.

Q. You mentioned you were part of the prior administration. You began working for MINSA in 2012; is that right?

A. No, 3 May 2010 exactly.

Q. You began working for the Government generally in 2003; correct?

A. Let me explain.

Q. I think we can break this down.

A. Yes. Yes.

Q. You obtained your law degree in 2002; correct?


Q. Will you please turn to Paragraph 6 of your First Witness Statement?

A. I've got it, sir.

Q. The first sentence says here: "I received my law degree from the Universidad de Panamá in 2002"; correct?

A. That's correct.
PRESIDENT SHORE: Maybe ask him when he qualified as a member of the bar.

THE INTERPRETER: This is the interpreter. In Spanish--it says 2004 in the Spanish version.

MR. DALY: For the record, we have a discrepancy between the English and Spanish version of your First Witness Statement.

PRESIDENT SHORE: Well, there's no longer a discrepancy, because I'm sure that we're going to hear that it's 2004, because that's how the Witness would have done it in Spanish.

Can you confirm that it is 2004 you that received your law degree?

THE WITNESS: That is correct, Mr. President. I got my law degree in 2004.

PRESIDENT SHORE: So, there is no longer a discrepancy?

Continue, Mr. Daly.

BY MR. DALY:

Q. Thank you, Mr. Barsallo.

From the time that you obtained your degree in 2004 until August of 2019, you held several
positions, all within the Government of Panamá; is that correct?

A. That is correct. The correct way to say it in Spanish is "within the State of Panamá."

Q. You worked for the Judiciary, and you also worked for MINSA, and you did some work for—competition law and other areas; correct?

A. That is correct. In connection with consumer matters and competition law, yeah, those also have to do with the Judiciary.

Q. I want to go to the text messages that you had with Mr. López.

Could you please turn to Exhibit 0681?

MR. RYAN: Is that C or R?

MR. DALY: Yes, C. Excuse me. That's C-0681.

BY MR. DALY:

Q. Now, you reviewed this before you filed your Second Witness Statement, as we discussed; correct?

A. That is correct.

Q. And you wrote the text messages that are reflected here in this exhibit yourself; correct?
A. That is correct.

Q. I'd like to focus on this message here that is on March 3, 2016 that you discussed in your Second Witness Statement. It is on Page 6 of the Spanish version.

Okay. I'm going to refer to this, just for clarity, by the time stamps, so we know that we're discussing which message we're actually discussing.

At 7:43:47, you said: "What's happening at the Comptroller General's Office?" And then at 7:43:54, you say: "Is it a conspiracy?"

Do you see that?

A. I see it.

Q. So, you thought that there was a conspiracy; is that correct?

A. I didn't think that. I'm asking Mr. Frankie López whether he had that information or not. If you look at it, it has a question mark. Is this a conspiracy--is it or not? It is just a question; not an assertion of something I was thinking.

Q. Who was it that used the word "conspiracy"?

It was you, not Mr. López; correct?
A. That's correct. I used the word "conspiracy."

Q. So, you were suggesting to Mr. López that there was a conspiracy, even if you were asking it in the form of a question. That was your word; correct?

A. I do not agree. I was asking a question. I was not suggesting anything.

Q. But you chose the word "conspiracy." That was your word, not his; correct?

A. That is correct.

Q. And then Mr. López confirmed it. He said at 7:58:16: "It looks like it"; right?

A. Yes. He said, "It looks like it."

Q. And you were asking if there was a conspiracy because you thought that there was something out of the ordinary in the way that Omega's contracts were being treated, didn't you?

A. I indicated a conspiracy as part of a conversation I had with a friend, we had a friendship relationship, not because I thought that there was something unusual. We can see that this is the result of a sentence that I indicate when I think that
everything is resolving, everything is complicated, and I am saying, what is it? "Is it a conspiracy?"
And he says, "It looks like it."
I wasn't sure whether it was or it was not.

Q. You said, "I indicated a conspiracy, not because I thought that there was something unusual."

Would it be usual for you to have known about a conspiracy related to a MINSA--related to one of the Government contractors for MINSA?

A. Would you please repeat the question because I don't think--there was a silence. I don't think I got the full translation.

Q. You said, "I indicated a conspiracy as part of a conversation I had with a friend, we had a friendship relationship, not because I thought that there was something unusual."

My question to you is, are conspiracies usual at MINSA or with the Comptroller General?

A. I don't know whether conspiracies are usual or not within the Comptroller General or the Ministry of Health.

Q. A conspiracy is some sort of a secretive plan
to do something unlawful; right?
   
   A. Yes, I agree with your description.
   
   Q. It is also often a crime; correct?
   
   A. Under the Panamanian legislation, it is a crime.
   
   Q. Now, let's keep going on the text message here.
   
   At 7:58:35, you say: "I conclude they have orders."
   
   Do you see that?
   
   A. That is correct. I see that.
   
   Q. Now, a minute ago you said "I was asking my friend questions."
   
   This is no longer a question; correct?
   
   A. No, it is not a question. It is a conversation we are having.
   
   Q. It's actually a conclusion, isn't it?
   
   A. Based on the meaning, the accurate meaning of the words, yes, it is a conclusion. "I conclude."
   
   That's what I have written in the message. There are no doubts of what's written. "I conclude."
   
   Q. So, there were no doubts that you concluded
that there were orders coming from the Presidency?

A. No. When I said that there are no doubts about what you see here, about what is written here, is whatever you see. When you're asking me whether I have no doubts that there was a conspiracy, I have no knowledge beyond the information or the comments that I received from Omega staff to--for me to confirm, for me to say, for me to show that there was some sort of illegal manipulation.

Q. You just raised the idea of legal manipulation--or excuse me, illegal manipulation, which brings me to the next line in the text message, if you'll please follow along with me.

At 7:58:50, Mr. López says: "They say they are verifying in legal blah, blah, blah, because of the case."

Do you see that?

A. That is correct. I do see that.

Q. And when Mr. López says "because of the case," is he referring to this arbitration?

A. No, sir.

Q. What is he referring to?
A. Mr. López, before all of these messages, that are messages that are four years old, when we talked a lot, he was one of the persons who informed me of what was going on from his own point of view with an investigation of Omega that was being carried out by the Ministry, by the Public Ministry, plus his opinion. But he was sharing with me his opinion as part of the Omega staff. He was sharing his frustration.

My job is not to investigate whether there is any investigation with the Public Ministry. It is not my area, and I have nothing to do with that.

His frustration was based on the fact that he and Omega thought that the administration of President Varela was moving forward with some investigations on a personal basis and specifically targeting Mr. Rivera.

So, all of my friendship with Frankie is based on the facts as I mentioned in my previous response. Beyond these conversations, I have no documentation, I have no knowledge to assert that what they were saying and that was their version was a
Q. So, just to clarify, your understanding of the words "the case," was the Moncada Luna investigation; is that correct?
A. Yes, that was the origin for everything, as they mentioned to me at the outset.
Q. The next line down, at 7:59:03, Mr. López says: "It sucks, bro."
A. Where does it say that?
Q. This may be a translation issue, but at 7:59:03, the English translation says: "It sucks, bro."
A. Okay.
Q. Do you see that?
A. Yes.
Q. Okay.
A. Yes, I see it.
Q. Okay. And in response to that, at 7:59:07, you say: "Bluff."
A. That is correct.
Q. What did you mean by that?
A. With "bluff" you mean?

Q. Yes.

A. Mr. Frankie López is giving me some information. If you look at this, at 7:58:50, he says that they are verifying with the legal, that means the legal department, blah, blah, blah. I should understand or I should have understood that verifying--verifying because of the case.

The case, as I just mentioned in my previous answer, it was the case of an investigation between the Public Ministry and what they indicated to me. My "bluff" refers to the fact that if he's giving me that information, I have no way to ratify that information, and I worked with the Ministry of Health, so I didn't have any knowledge that that's the way it was. That cannot happen because the Comptroller's Office has no powers to review an investigation that is in a different area with the Public Ministry in connection with some document or any document that is to be endorsed by the Comptroller's Office.

So, he's telling me that this is information
that he is sharing with me. This is not something that I was--and this is something that I was able to ratify. So, "bluff" means that is impossible. It is not possible.

MR. RYAN: Michael, before you step in. Just, Mr. President, in aid of the translator, when we can tell they are having a little bit of trouble, could you speak a little bit more slowly, Mr. Barsallo?

THE INTERPRETER: Sir, this is the interpreter. I'm not having a problem with the speed. The problem we are having is finding the documents and when the time slot is given, I mean, probably when you are indicating what time the conversation was, probably a little bit slower. But as to the rest, there is no problem with the pace. It is just finding the document, the right document. That's all.

PRESIDENT SHORE: So, Mr. Daly, you appear to be the culprit. So, if you could slow down when you do the time.

MR. DALY: Thank you very much, Mr. President. I'm sorry. I'm happy to fall on the
sword and read the time stamps more slowly.

PRESIDENT SHORE: You don't really have a choice.

BY MR. DALY:

Q. I want to get back to this word "bluff," though.

Isn't a bluff an attempt to deceive someone into believing something that is not true?

A. That is your idea. It is not mine, and I respect it, sir.

Q. But it was your word, Mr. Barsallo. You're the one who wrote it in a text message; correct?

A. That is correct, and I use it quite often.

Q. Do you play poker?

A. No, sir.

Q. Do you know what the word "bluff" means in poker?

A. No, sir. I would like to know.

PRESIDENT SHORE: Maybe we'll wait for another time for you to find out.

(Laughter.)

BY MR. DALY:

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Q. When Mr. López says, at 7:59:03: "It sucks, bro," why would it suck if there was a valid legal process that was underway?

A. Let me explain.

THE WITNESS: Question, is it necessary to come this close to the mike? Can you hear me?

SECRETARY KETTLEWELL: It's better if you come closer.

THE WITNESS: Now, this is, "It sucks, bro," in Spanish, "ta cabrón, bro" is something regional of Puerto Rico. It is something that is used frequently in Puerto Rico, and it is used for several reasons to--for greetings to a friend, in a friendly manner, but also in--with a negative meaning.

When you asked me--when he asked me "it sucks, bro," in Spanish, "ta cabrón, bro" it is because of the previous sentence. He is giving me an example, he's indicating or he is communicating to me or he is letting me know--I don't know whether it is based on his information, whatever he was told, that the legal Office of the Comptroller General's Office, they are investigating a lot of this blah, blah, blah,
because of the case, Mr. Moncada's case, and that this situation is--"sucks" is strong, is difficult, with due respect. That is his assertion.

BY MR. DALY:

Q. But in response to his assertion, you didn't--you did not tell him that there was a valid legal process that was underway, did you?

A. Would you please repeat the question, please?

Q. In response to his text message, you did not say that there was a valid legal process that was underway, did you?

A. Definitely. This is a conversation with a friend. There are not many technical terms or technical words, if you look at this.

Q. If we move down at 8:01:22, Mr. López says: "Do you know anything" and then, at 8:01:27, he clarifies the word "know."

Do you see that?

A. Correct. I see it, sir.

Q. He's relying on your knowledge of how the Panamanian Government works at this point in time, isn't he?
A. That is your statement, sir. I don't know if it is—if he's relying on my knowledge because in the context and at the time of these messages, my relationship with the Government and also with the Administration was not the best. It was the last person he had to resort to, to know what was going on. And, as I mentioned before, the knowledge I have of the version as to the investigation, but not the one in the newspaper, is based on what they told me. It is not based on what I know or what I do not know because I am not an investigator of this sort.

Q. But Mr. López—you had more knowledge than Mr. López about how the Panamanian Government worked; correct? At this point in time, this was in 2016, and you had spent your entire career working for the Panamanian Government; correct?

A. Would you please repeat to tell me what is it that I have specific knowledge of?

Q. Mr. López is inquiring about your knowledge of MINSA and of the Comptroller General's Office; correct?

A. That is correct, sir.
Q. And you had more knowledge than he did about those two subjects; right?
A. In connection with the working, yes. Clearly.
Q. And in response to his question you said, at 8:01:34: "That comes from the Presidency"; right?
A. That's what the message says.
Q. And by "that," you're referring to the orders that you had referred to above at 7:58:35; right?
You're saying: "I conclude they have orders and they come from the Presidency"; correct?
A. That's what the message says.
Q. Let's move to the text message that you had with Mr. López on March 10, 2016.
I'm sorry, sir. On--
Before we move to that, at 8:01:40, you said: "I'll cut off my balls."
Do you see that?
A. I do see that.
Q. And by saying that, you meant to emphasize that you really meant what you had just said, didn't you?
A. That is a Panamanian expression, sir.

Q. And it means that you meant to emphasize what it is that you had just said; isn't that right?

A. Yes. As part of the conversation, yes, clearly.

Q. And you had just said that there were orders that came from the Presidency; right?

A. In connection with the information that Mr. Frankie relayed to me.

Q. Okay. Let's move to the next text message chain, which is on March 10. It is in the same exhibit, so I'm still within C-0681, and there's a text message chain that starts at 8:07:28 in the evening. It's on Page 7 of the Spanish version.

A. I have it, sir.

Q. Okay. And at 8:07:38, you say: "The anticorruption Prosecutor jumped on me." And then the next line, 8:07:55, you say: "They are investigating the Tender for the CAPSIs."

Do you see that?

A. I see that.

Q. So, you're telling Mr. López here that the
Tender, that Omega's tender for two of its MINSA CAPSI Projects were being investigated; is that right?

A. Correct, three Contracts. Three Contracts were being investigated, three Contracts of two different Tenders, not just one, for MINSA CAPSI.

Q. Three Contracts were being investigated, two of which were Omega's; right?

A. That is correct, sir.

Q. And this was one week after you raised the idea of a conspiracy with Mr. López, isn't it?

A. Well, based on the dates, the calendar dates, yeah, there are no doubts. That's the way it is.

Q. And so, you were telling him that a prosecutor wanted information from you about Omega's MINSA Projects, and the words that you used--again, this may be a translation issue--but you said that they had "jumped on" you; right?

I think you said "me callo" in Spanish?

A. I understand. Let me explain. This conversation, even though--

PRESIDENT SHORE: So, you're trying to ask a witness, Mr. Daly, about a series of text messages
which encapsulate many different ideas when people communicate, and in that case, he is going to be given a full opportunity to explain what might be in these messages, because these types of communications are not ones that are contractual communications which we can read the same way. So, you can go down this line, but if you do, we're going to hear him in full about what the context is.

    MR. DALY: Understood, Mr. President.

    BY MR. DALY:

    Q. My question—and you're welcome to explain—is what did you mean by "jumped on you?"

    A. First, it says—I'm sorry. The anticorruption office made it to my office, arrived to my office. They came.

    Q. Okay. They came to your office, and you're writing this on March 10 at 8:00 in the evening. March 10 is a Thursday. If you look at the text message that is sent at 8:15:01 and the one following it at 8:15:05, you say: "Since Tuesday," and then the next says "until today."

    Do you see that?
A. I see that.

Q. So, the Prosecutors were searching for information for three days, weren't they?

A. That is correct, sir. Based on what I see here, I have said that this was as of Tuesday and up to today, on the 10th, I don't know what day of the week that was in 2016.

Q. And you say that the--this--the Prosecutors were prompted to do so by a news article; is that right?

A. Are you asking me whether I said this here or whether I know that?

Q. No. I should clarify my question. In your Second Witness Statement, when you address this text message, you say that the Prosecutor wanted information based on a news article; right?

A. That is correct, sir.

Q. But you didn't say anything about the news article in your text message to Mr. López?

A. That is correct. I did not say anything.

Q. And you don't have a copy, a full copy of that news article; right?
A. This was on the internet, and this was part of the documents that are included in my first Statement, and it was later on deleted. It is a page by an official newspaper of Panamá that indicated an investigation or the investigation of three CAPSIs because of addenda at high prices, but this was part of the investigation.

It was circulated both in print and on the internet at the time I gave my Second Statement, and I tried to access the link of that news item, and in the search it appears, but it no longer appears in the newspaper. Why, I don't know.

Q. The exhibit that you attached to your Second Witness Statement is a copy of the caption for the article but doesn't have the content of the article itself; right?

A. That is right, 100 percent right.

Q. So, the investigators spent three days searching through MINSA's files based on something that they read in a newspaper article?

A. I asked the prosecutorial staff that question when they were in my office investigating, and that's
what they answered. They said the investigation had begun because of the publication in an article, in a print newspaper, that made reference to three MINSA CAPSIs.

Q. Okay. You were involved in the Tender of Omega's MINSA's--MINSA Projects, weren't you?

A. That is right, two groups.

Q. There was no corruption in the Tender of Omega's MINSA CAPSI Projects; right?

A. No, everything happened in keeping with the transparent process.

Q. And nothing came of the investigation that you were describing to Mr. López on March 10, 2016; right?

A. Could you please repeat the question? I'm not sure exactly how the translation concluded.

PRESIDENT SHORE: Could you give something more specific than "nothing came of." That might be helpful.

BY MR. DALY:

Q. As far as you know, the investigators--there were no formal charges that are made against Omega
based on the three days of investigations that you
described to Mr. López on March 10, 2016; right?
   A. I don't know how that ended up. I don't know
whether it continues or does not continue.
   Q. Okay. Let's move to another, to further down
in the same exhibit to a text message chain that you
had on December 15, 2016. This is going to be at the
end of the exhibit. On the last page in the Spanish
version, it's on Page 14.
   A. Okay. I'm there.
       (Interpretation interruption.)
   Q. Okay. At 9:58:34 on this day, Mr. López
says: "They manufactured a case against OR and PF."
       Do you see that?
   A. I do see it.
   Q. "OR" is Oscar Rivera and "PF" is Pancho
Feliú; right?
   A. That is correct, sir.
   Q. And then at 9:58:49, you respond "that is
true."
       Do you see that?
   A. Yes, I do see it.
Q. So, you are confirming that the Government had manufactured charges against Omega; right?

A. Can I explain my answer? As I explained, sir, my knowledge of the case—well, the first time I came to learn of it was when personnel from Omega told me about it, Pancho Feliú first and Mr. Frankie López thereafter.

They indicated to me on the basis of that process, their version, as a friend, they told me what was happening, their frustration and what they were feeling. The other way I found out about that case, is due to what was indicated in the newspapers, they said it was a case against Mr. Moncada Luna, and among the persons who were called to testify was Mr. Oscar Rivera. Oscar Rivera and Pancho Feliú.

All of the information about the Omega personnel in this case, given my message in—exchange with Frankie López about what they thought about the case was from what they told me.

I repeat, outside of that, I have no way, and no documentation, nor have I witnessed, nor have I been anywhere such that I could say that that is the
way things are. My answer is within a conversation with someone who is a friend of mine, where we both had many frustrations with the Ministry of Health, personal ones, myself, and then with matters with the contracts.

Given my answer, based on what they said initially, they are fabricating a process, they are fabricating a process against me, they are fabricating a proceeding against me. They can say it 1,000 times. I have no way to confirm it nor to say it's true. I went to such and such place. I saw a document. I have no way to verify it other than the information that they gave me, my conversation as a friend at that time was based on that.

Q. But you did confirm it in this text message response to him; right?
A. That is correct, confirmed based on the information they gave me. It's not confirmed based on my convictions or my investigation.

Q. I understand. At 9:58:57, you also said "and that was worth nothing;" correct?
A. That is correct, sir.
Q. You did not comment on this aspect of the text messages in your Second Witness Statement, did you?

A. Regarding the comment that said "and that is worth nothing." Is that what you're referring to?

Q. Regarding this text message, regarding this text message chain on December 15, 2016. You did not address it in your Second Witness Statement; correct?

A. If you allow me to review it just to corroborate, and not say something about which I'm not 100 percent sure. Can I take a look at my Second Witness Statement?

PRESIDENT SHORE: We can check whether he said it in his Second Witness Statement or not.

Move on, Mr. Daly.

MR. DALY: Okay. Members of the Tribunal, this might be a good time to take a quick break, actually.

(Interruption.)

PRESIDENT SHORE: Sure. Since it is 4:09, and we had a slight break earlier, why don't we take 10 minutes instead of 15, and reconvene at 4:19.
No conversation with anyone about the case during the break.


(Brief recess.)

PRESIDENT SHORE: Back on the record.

Mr. Daly.

MR. DALY: Thank you, Mr. President.

The Claimants have no further questions for Mr. Barsallo.

PRESIDENT SHORE: Thank you, Mr. Daly.

Mr. Ryan.

MR. RYAN: We would be delighted to hear from you first, the Tribunal, if you are offering.

PRESIDENT SHORE: Ah, I almost forgot.

Professor Naón. Professor Douglas.

I thought that I had been pronouncing your name correctly, Mr. Barsallo, but maybe I haven't. I apologize.

I just have a couple of questions.

QUESTIONS FROM THE TRIBUNAL

PRESIDENT SHORE: When you were in the
Government, did you consider yourself to be a highly placed individual?

THE WITNESS: No, I did not consider that.

PRESIDENT SHORE: What did you consider the level of your knowledge of the workings of the Varela Administration to be after President Varela took office?

THE WITNESS: Given my position and the knowledge of the information that I handled, I was a person of trust, in terms of, well, what's here in my mind and in terms of the way I dealt with projects. From the Martinelli Administration, as the years went by, I was the only person left managing these Projects, the only person until the end of that Administration and until the new Administration came in to office and sent me on vacation.

PRESIDENT SHORE: Mr. Daly, any questions--sorry, Mr. Ryan, over to you.

MR. RYAN: Mr. President, we have no questions.

PRESIDENT SHORE: Mr. Daly, anything further?

MR. DALY: No, Mr. President.
PRESIDENT SHORE: Mr. Barsallo, your testimony has concluded. We thank you very much for your appearance today, and you are dismissed from the proceedings.

THE WITNESS: Thank you very much, Mr. President, the other arbitrators, and all those present.

(Witness steps down.)

PRESIDENT SHORE: So, if I'm right by memory, it is Ms. Buendia who would be up next; is that right?

MR. RYAN: That's correct, sir.

PRESIDENT SHORE: And the question is, since we appear to be on schedule--and she's the only witness for tomorrow; is that correct?

MR. RYAN: That is correct, sir.

MS. GORSLINE: Yes.

PRESIDENT SHORE: And we're at 4:22 today. Is she around?

MR. WEISBURG: No.

PRESIDENT SHORE: Well, that might solve the question that I wanted to ask, whether we should try to get some of her testimony today, but it doesn't
appear that we should.

Do you think that we'll be on track--this is really a question on your side, Ms. Gorsline--to conclude with Ms. Buendia in the course of tomorrow?

MS. GORSLINE: Yes, certainly, Mr. President.

PRESIDENT SHORE: And I don't think--I'm going to look to Professor Naón and Professor Douglas. I don't think we see a real advantage in trying to move up the Expert testimony to Thursday afternoon, given the--I won't say "guarantee" that counsel have given us about a Friday conclusion at a proper time but the strong indication that we've had from you.

So, on that basis, the only question would be resolved when we see how we go tomorrow morning about when we conclude, whether, for example, there's a need to hold Ms. Buendia and all of us over lunch or whether you can conclude by 12:30, 12:45, whether we adjourn and it gives you a chance to prepare further for the Expert testimony.

Ms. Gorsline, does that sound like a reasonable plan to you?

MS. GORSLINE: Yes, Mr. President.
PRESIDENT SHORE: Mr. Weisburg? Mr. Ryan?

MR. RYAN: Yes, sir.

MR. WEISBURG: Yes, that's fine.

PRESIDENT SHORE: It's a good thing he didn't disagree with you, Mr. Ryan.

MR. RYAN: It wouldn't be the first time, sir.

PRESIDENT SHORE: In that event, I want to thank everyone for a very efficient day of examinations and, of course, thank the Witnesses, even though they are no longer here.

Let's reconvene then with Ms. Buendia-- probably mispronouncing that as well, so be it--ready to go at 9:00.

Any procedural issue, Ms. Gorsline, to raise at this time?

MS. GORSLINE: No, sir, none for Claimants.

MR. WEISBURG: No, sir, and we'll be ready promptly at 9:00.

PRESIDENT SHORE: All right. Very well.

Thank you very much.

MS. GORSLINE: Thank you, sir.
MR. RYAN: Thank you, sir.

(Whereupon, at 4:24 p.m., the Hearing was adjourned until 9:00 a.m. the following day.)
CERTIFICATE OF REPORTER

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

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

[Signature]

Dawn K. Larson