

REPORT OF INVESTIGATION

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I. Summary

We have obtained approximately six hours of recorded conversations and 25 pages of printouts of on-line chats between **Diego Borja**, a former Chevron contractor who conducted the secret videotaping of a judge overseeing the environmental lawsuit in Lago Agrio (*Aguinda v. ChevronTexaco*), and a 32-year-old Ecuadoran, **Santiago Escobar**.

All of the recordings and chats are in Spanish. They have been transcribed and translated by a U.S. Federal Court Certified interpreter. I have made available to the plaintiffs the entire transcript of the audiotapes and the online chats, as well as all of the relevant court documents.

The recordings and transcriptions have multiple indicia of authenticity. There are no signs of editing or tampering. Borja's voice and mannerisms are similar to those exhibited by him in the videos taken in Ecuador and released by Chevron via YouTube on August 31, 2009. Further, we have corroborated a number of facts asserted by Borja in the recorded conversations, which had been unknown to us. For example, Borja stated on the recordings that his signatures could be found in the *Aguinda* court file in Lago Agrio dating back to 2004, despite Chevron's assertion that he only worked for the company recently. When we reviewed the court file in its entirety, we found numerous examples of Borja's signature dating back to that year. We were able to match his signature with the signature that appears on the (December 7, 2009) declaration Borja filed regarding the videos.

Further evidence of the authenticity of these conversations is found in Borja's reference to the telephone line of his wife, whom he identified as Sara Portilla. We searched for listed telephone accounts in the name of Sara Portilla in the San Francisco Bay Area and found only one active, listed account in that name. The account was listed at an address in San Ramon, CA (the same city in which Chevron's headquarters are located). The telephone number associated with this address matches the number Borja provided to Escobar in a chat session on October 7, 2009.

Escobar now lives in Canada. He recorded the conversations while talking with Borja via Skype, during the months of August 2009 through October 2009. The chatting sessions were conducted via MSN and were automatically saved by the MSN program.

Borja generally spoke freely in the conversations and appeared not to suspect he was being recorded.

The recorded conversations contain a number of admissions regarding acts of wrongdoing by Borja and Chevron. The recordings squarely undermine the notion that Borja made the videos for reasons of civic duty, as Chevron had asserted in its press release of August 31, 2009. They also raise serious doubts as to Borja's credibility.

The recordings contain the following salient points, most of which were not disclosed by Chevron when it released the videos:

In the first recorded conversation, Borja told Escobar, chuckling, “Crime does pay.” (Transcript 1, October 1, 2009 p. 6)

II. What Borja Says

Borja’s Relationship With Chevron

Borja stated that his wife, Sara Portilla, worked for Chevron (as a contractor) for four years and that the plaintiffs are unaware of this. He said that she worked in the same office as Borja in the Borja-Paez building in Quito, where Chevron’s legal team has been located. Borja’s uncle owns the building and has worked for Chevron for over 30 years. (Transcript 11, October 1, 2009 pp. 7-8)

We also discovered chain of custody documents filed in the Lago Agrio court that show Borja and Portilla as representatives of Severn Trent Labs, a US laboratory that Chevron described as an “independent” lab to test its contamination samples. The chain of custody documents showed how the samples moved from the contamination site to the testing lab.

Borja said he has worked for Chevron for years. At one point, he said for the past five years (since 2004). Another time, he said he had worked for Chevron, in some capacity, since age 24 (approximately nine years). Borja told Escobar that his signatures could be found on documents in the court file in Lago Agrio dating back to the beginning of his work for Chevron. He said the plaintiffs were unaware of this. He also said that when Chevron said he only worked on the last eight inspections, he knew that was not true. (Transcript 11, October 1, 2009 p. 6-8; Transcript 4, October 1, 2009 p. 13)

From the very outset of his relationship with the oil company, Borja said he has taken directions from Chevron personnel in the United States and in Miami’s Latin American Operations office. A Chevron manager (name not mentioned) from the Miami office hired him. He said he has worked as a direct contractor of Chevron (USA). Chevron paid him through his company, Interintelg, S.A. Borja never mentioned his bosses’ names, referring to them as *mis jefes*. (Transcript 6, October 1, 2009 pp. 7-8; Transcript 2, October 1, 2009, pp. 2-3;)

Borja said he formed four companies for Chevron in order to make the work he did appear to be independent of Chevron. He implies that Chevron controls these companies. (Transcript 4, October 1, 2009 pp. 12-13; Transcript 6, October 1, 2009 p. 9)

Sounding angry, Borja said Chevron could not force him to testify. “I told them, ...if I feel that I’m being tricked, you’ll eat shit.” ...they’re (Chevron executives) right here, 40 minutes from me... from where I live. Just 45 minutes away is the office of the [Unintelligible], so I just show up, ring the bell and everyone knows who I am. I sit down and tell them,

‘Let’s see, this is the way it is.’ And the joke is over, dude, you get it?... I’ll shit on them in a second [Unintelligible]. I mean, what they... what I’m trying to explain to them is that I also have... I don’t know how much to say, but I have only so much patience, you get it? (**Transcript 5, October 1, 2009** pp. 4-5, 11)

Borja described Chevron as a sophisticated operation with “smart people” who “have all the tools in the world to go after everyone, you get it? Because these guys, once the trial is over, they’ll go after everyone who was saying things about it, you get it?” (**Transcript 24, October 15, 2009** pp. 4-5; **Transcript 25, October 18, 2009** pp. 1-10)

Incriminating Evidence

When discussing the trajectory of the lawsuit, post-judgment, in the U.S., Borja said that if the U.S. judge (who allowed the case to be moved from a U.S. court to Ecuador in 2002) found out what really happened in Ecuador, Chevron would have no case in the United States. In a possible reference to the Foreign Corrupt Practices Act, Borja said: “...if the judge here finds out that the company did cooked things, he’ll say, ‘Tomorrow we better close them down,’ you get it?” (**Transcript 6, October 1, 2009** pp. 10-11)

Borja said he has evidence that the laboratory used by Chevron to test for contamination was not independent. “Chevron always stayed, supposedly, independent, and sent the analysis to have them analyzed... But I know that’s not true ... I have proof that they [laboratories] were more than connected, they belonged to them.” He stated that, beginning in 2004, he was the person who signed the contract to rent the house where Chevron’s (“independent”) lab tested contamination samples. (**Transcript 6, October 1, 2009** pp. 6-8; **Transcript 11, October 1, 2009**, p. 6)

Escobar also told me that Borja said he and wife stored testing samples in their refrigerator in their Quito office before mailing them to STL. (Test America, Inc., purchased STL in 2007.) Escobar stated that as a contractor for Chevron, Borja often worked at the contamination sites and collected evidence, yet he and Portilla also signed chain of custody documents with the court as STL representatives. Portilla signed them as an STL Project Manger and used the email address, sportilla@stl-inc.com. See Borja’s and Portilla’s signature on STL documents. ([Download PDF](#))

Borja reported that he and his U.S.-based boss from Chevron, the (unnamed) man who hired him, gained entry into a laboratory used by the plaintiffs in Ecuador. They used false names to get in. They were ultimately thrown out, but Borja said the plaintiffs never knew that it was he who had entered the laboratory. His objective was to spy on the analyses the plaintiffs were doing (presumably on soil samples). (**Transcript 11, October 1, 2009** pp. 10-12)

Borja said that if Chevron tricked him and “if something bad happened to me...and they don’t give my wife what they have to...what it supposedly should be....There’s a document for that, where I ... immediately go to the other side....I have correspondence that talks

about things you can't even imagine, dude....I can't talk about them here, dude, because I'm afraid, but they're things that can make the Amazons win this just like that (snapping his fingers)." (**Transcript 4, October 1, 2009** pp. 3, 7-9)

Borja stated that when he came to the U.S. in June 2009 he not only shared the videos with Chevron officials at San Ramon he also "sent them messages about everything else I had also, you get it? Like, 'See, you can trust me because of this, this, this, this... You know why my company was created?'" He reminded them why his company, Interintel, S.A., was formed (at Chevron's request). Borja stated that he has all sorts of evidence showing "who he really was" when he worked for Chevron in Ecuador. (**Transcript 4, October 1, 2009** pp.12-13; **Transcript 6, October 1, 2009** pp. 8-10)

"Bribery" Videotapes & Payment For Them

Bragging that with the videotapes he had "tipped" the balance in Chevron's favor, Borja said he had done in "...three days? two days?" what Chevron had been unable to do in a year by getting the judge dismissed, even though, as Borja acknowledged in another conversation, "there was no bribe....there was never a bribe." (**Transcript 5, October 1, 2009** pp. 1-2; **Transcript 19, October 1, 2009** p. 11)

Borja said he could tip the balance in the other direction and, for that reason, some "people in the company were opposed to using the videos...it's too much power for one individual, you get it?" Borja implied Chevron worried about the Foreign Corrupt Practices Act. "In other words, imagine if there's a bill that prohibits corruption for U.S. companies in other countries, right? If an act of corruption can be proven against a U.S. company or that, no [Unintelligible], they shut down the company here." (**Transcript 5, October 1, 2009** pp.1-2)

When he first spoke with Chevron about the videos, Borja said he expected to be covered in terms of security and economically – "in everything" after handing over the videos. He told them, "Obviously, I'm not going to ask for anything now, because it would ruin everything." Chevron told him not to worry, but it is "totally understood." (**Transcript 21, October 7, 2009** p. 11)

According to Borja, Chevron told him "We can't give you money because...it would compromise the evidence.... What we can do is (make you) our business partner." Borja continued, "Now, that little word means a lot of things, right?" When Escobar then said, "the objective is to become their partner. I mean, once you're a partner of the guys, you've got it made," Borja replied, "That's right you dog. So, I... I've seen how things work here now. I mean, it's a brass ring this big, brother." (**Transcript 2, October 1, 2009** p. 6)

While Borja said, at one point, that he did not inform Chevron about the videotapes until June, Borja also referred several times to another version of his story that has Chevron instructing him to make the videotapes. Borja said: ".....the videos are proof that

something happened, but you don't know how it happened.” (**Transcript 4, October 1, 2009** p. 6) Later, Borja said that if he admitted “yes, they ordered me” to produce the videotapes, he could still apply for political asylum. (**Transcript 24, October 15, 2009** p. 19) Earlier, he wrote in an online chat: “Imagine I disappear and say that everything is planned by the company.” When Escobar replied that that Borja could say he was pressured, and Chevron promised a “castle in the sky,” Borja responded: “They’ll shit themselves, because the corruption law would apply in that case, and they’d close down their operations in the U.S.” (9/15 online chat) Later Borja and Escobar discussed what would happen if Borja changed his story: “They offered to pay me... all the orders came from there; I simply wanted to help and yes I went to...I mean, you know, that’s very easy, dude. So then everything would get screwed up.” (**Transcript 8, October 1, 2009** p. 13)

Borja said he is receiving a monthly stipend from Chevron. He claimed to have been making \$10,000 per month while living in Ecuador, and said that Chevron is paying him an amount that allows him to live at the same level in the United States. He said the company is renting him a fully-furnished \$6,000 per month house, in Berkeley (he lies about the location – it’s actually in San Ramon). He said all of his expenses are paid, and he has a Saturn SUV to drive. He also said he has security guards watching him. He said his house is located in a gated community and borders a golf course. He has a swimming pool. (**Transcript 3, October 1, 2009** pp. 12-15)

Borja described a trip he took to the U.S. in April 2009 for the sole purpose of having the entry stamp in his passport. He explained that he needed the entry stamp as insurance against Chevron’s betraying him. If Chevron turned on him, he explained, he would use the entry stamp to bolster his assertion that he came to the U.S. in April and met with Chevron to plan the videos. Borja agreed when Escobar called it his “ace up (his) sleeve.” (**Transcript 6, October 1, 2009** pp. 4-5)

Despite the repeated conversations about Chevron paying him money in exchange for the videotapes, Borja said he made the videotapes for “power,” and the “art of doing it” -- not for money. (**Transcript 12, October 1, 2009** pp. 2-3; **Transcript 2, October 1, 2009** p. 7)

Going To The “Other Side”

Escobar pretended to have contacts in the Ecuadoran government, with the plaintiffs, and with an international human rights group who would be interested in purchasing incriminating information that Borja had about Chevron. Borja immediately indicated interest in this idea. (**Transcript 10, October 1, 2009** pp.1-18)

After attending a meeting with Chevron officials in San Ramon, Borja issued veiled threats to Escobar, indicating that Chevron is capable of anything. Borja said they must call off their plans to receive payment from the “other side” for information. “...I thought they (Chevron officials) were kind of stupid, nice guys, forget it, dude!...they have pictures,

names....Don't tell him anything, dude; you're going to get yourself into problems...it's too well organized and they've been doing this for years and it's not recent, you get it?...It's better we abort...we abort the mission.” (Transcript 25, October 18, 2009 pp. 1-4)

Borja's Notarized Documents

Borja said he has a notarized document that contains a version of past events that would help the plaintiffs. “...I mean what I have is conclusive evidence, photos of how they managed things internally.” He has this information saved on his iPhone. Some of the information is in the form of incriminating emails. Borja said his wife knows about everything he has stored on his iPhone. (Transcript 4, October 1, 2009 pp. 3-9)

Two weeks later, Borja said, referring to the incriminating document, “it's not the moment to bring that out yet, because everything is still amicable.” (Transcript 24, October 15, 2009 16 p. 35)

Borja also said he has a notarized document of his current story about the videotapes, which helps Chevron. He said he could change the story in order to defend his interests. He said he is not wedded to one side or another, but he is primarily interested in a lucrative financial settlement with Chevron. (Transcript 4, October 1, 2009 p. 7; Transcript 8, October 1, 2009 pp. 10-13)

At one point, Borja said he refused to sign what he called an “affidavit” for Chevron to give to the media, but he relented when he said his lawyer told him “it has no validity in terms of sworn testimony...so then I don't lose what they call leverage, leverage for negotiating....This (the affidavit) is just for the show, the media show.” (Transcript 24, October 15, 2009 pp. 32-33)

Borja later reminded Escobar that soon he would have to “give a ... deposition...At the moment I do that, I can't go back, you understand me?” (Transcript 21, October 7, 2009 p. 7)

Wayne Hansen

Borja described Wayne Hansen as crazy, repeatedly calling him “really crazy,” and “legally, in his mind he's disabled” Borja stated that he essentially wrote out a script, which Hansen read in the meetings that were videotaped. (Transcript 2, October 1, 2009 pp. 5, 10-13; Transcript 12, October 1, 2009 p. 1)

Borja and Escobar discussed news reports about Hansen's criminal record. Borja wrote in an online chat: “We knew that from the get go...Collateral damage....He's disreputable. That leaves me as the only source of reliable information” (9/15 online chat)

Borja said Hansen “went totally mad,” “lost control” and was “hysterical” because Chevron

refused to pay him and doesn't "even pay attention to him at all, dude." Borja said Hansen threatened to "open my mouth so their stock drops I don't know how many points" if he didn't get paid "in a week." (**Transcript 2, October 1, 2009** p. 11; **Transcript 3, October 1, 2009** p. 6)

Miscellaneous Findings

Contrary to what Chevron said, Borja indicated he did not fear returning to Ecuador. He is only considering filing for political asylum because it would benefit him more than other possibilities. (**Transcript 20, October 5, 2009** pp. 7-8; **Transcript 5, October 1, 2009** pp. 7-11; **Transcript 3, October 1, 2009** pp. 8-9)

Chevron, Borja said, is planning another release of information damaging to the plaintiffs, but he did not describe the information or the timing of the release. (**Transcript 26, October 31, 2009** pp. 31-33)

At one point, Borja said he was bored and planned to attack the environmental group Amazon Watch by creating "a story on the Internet" about the "gringos...so they don't know what the hell's going on....I have something written up already." (**Transcript 2, October 1, 2009** pp. 8-9)

Borja indicated that prior to moving into his house in San Ramon, he was reachable at telephone number 925-277-9292, Room 422. Our investigation revealed that this telephone number corresponds to a Residence Inn in San Ramon, CA. (9/15 online chat)

Borja also used derogatory language to describe indigenous people in Ecuador. Escobar asked Borja what he was doing and Borja said, "I'm watching Tele Vistazo There, there is, a bunch of filthy Indians striking against the president." He used the term "longo," a Spanish racial slur. (**Transcript 20, October 5, 2009** p. 1)

III. How We Came into Possession of the Recordings and Chat Printouts

We initially learned of the existence of these tapes in November 2009 through Luiz Yanza, coordinator for the *Frente de Defensa de la Amazonia*. Yanza reported that he was first contacted about the recordings on November 17, 2009. On November 18, 2009, Yanza met with Escobar in Quito and Escobar played for him some excerpts from the recordings. The following day, November 19, 2009, Yanza and *Frente* lawyer Juan Pablo Saenz listened to some additional excerpts.

On November 23, 2009, I met with Escobar and his legal representative, Juan Montaña, in Quito. Pablo Fajardo, Yanza, and Escobar's older brother attended the first meeting with Escobar and Montaña. The primary purpose of the first meeting was to set the ground rules for the exchange of information and to discuss Escobar's safety concerns.

On November 23, 2009, I met alone with Escobar and Montaña at the home of Escobar's parents. While there, we listened to and discussed the first two hours of recorded conversations between Escobar and Borja. At the close of that meeting, Escobar copied the two hours of recordings onto a flash drive. I then copied those audio files onto the hard drive of my laptop computer.

On December 2, 2009, I met with Escobar and his wife at their apartment in Toronto. We reviewed the remaining recordings and read printouts of the on-line chats that were interspersed throughout the time period that the recordings were made. At the close of the interview, I copied the remaining recordings and chat documents from a flash drive provided to me by Escobar.

Neither I nor anyone else to my knowledge gave Escobar, or promised Escobar, any item of value in return for providing the recordings to us. Neither I nor anyone else to my knowledge asked Escobar to contact Borja. Escobar said that no one in the Ecuadoran government asked him to contact Borja and that he initiated the contact on his own.

IV. The Source: Santiago Escobar

Escobar lives in Canada with his wife, who recently accepted a job there, managing Latin American sales for a German refrigerator company. They moved from Ecuador in July 2009. Escobar recorded the conversations during the months of August 2009 through October 2009. Escobar saw Borja at a disco in Quito in June 2009, and Borja told him about the videotapes. Escobar later contacted Borja by telephone on August 24th, or one week before the release of the videotapes by Chevron.

Escobar is a young Ecuadoran man interested in politics. He stated that his actions in this matter are essentially rooted in patriotism. He said he became "indignant" when he learned about Borja's role in the videos released by Chevron. He believes that Borja and Chevron have harmed both his country's people as well as its environment.

Escobar said he has known Borja as an acquaintance for approximately 15 years. They were part of the same, extended social group.

Escobar completed two years of law school in Ecuador. He also completed approximately 18 months of college study in England.

Escobar is currently unemployed. He and his wife live in an apartment in a middle-class suburb just south of Toronto.

It should be noted that for a time, Escobar was active in the Alianza Pais political party (the governing party in Ecuador). He said he ultimately left the party and was never a registered member.

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