

Monday, 5 December 2011

(10.00 am)

MRS JUSTICE GLOSTER: Yes, Mr Gillis.

PROFESSOR ROBERT SERVICE (continued)

Cross-examination by MR GILLIS (continued)

MR GILLIS: Good morning, Professor Service.

A. Good morning.

Q. On Friday, we were looking at disputed statements 3 to 6 which we have in bundle G(B)6 at tab 1, if that could be provided to Professor Service at page 16

G(B)6/1.01/16. As you may recall, I was taking you through six of the loans-for-shares transactions, do you recall that?

A. I do, yes.

Q. We'd looked at four of them, Norilsk Nickel, Sidanko, NLMK and Yukos.

A. Yes.

Q. And you had been explaining to my Lady the basis of your reluctance as a historian to express a concluded view given what you perceived to be the quality of the information available, and the fact that further information may subsequently become available that might impact the issue. Do you recall that?

A. I do recall that. That's a very fair summary.

Q. Now, the two other loans-for-shares transactions I was

wanting to consider with you were Surgutneftegas and Lukoil.

In order to see if we can cut this short, and to avoid the need to look at the further documentation we have in the additional bundles, I was wanting to see if we could agree the following propositions. If I could start with Surgutneftegas, which is the subject of disputed statements 5 and 6. Can I suggest to you two propositions and let me give you both of them first of all before you comment on them, to see if we can agree them.

The first is this: in relation to Surgutneftegas, will you agree with me that the information currently available indicates that Mr Vladimir Bogdanov and his partners took control of a stake of a little over 40 per cent of Surgutneftegas in the loans-for-shares auctions and ended up purchasing that stake following the state's default. That's the first proposition that I'm putting to you by reference to the currently available information.

The second proposition that I --

A. Could I just have a go at that one because that was a huge sentence.

MRS JUSTICE GLOSTER: Well, look at it on the screen.

MR GILLIS: I agree. If you look at it on the screen.

I would like also to put the second proposition to you as well.

A. Okay, I'm very sorry.

Q. No, not at all.

The second proposition which I was going to suggest to you is this, that as an expert in the area, would you also agree that there are no sources known to you indicating that Surgutneftegas was acquired by anyone other than Mr Bogdanov and his partners? So I'm only asking you to comment by reference to the currently available information. Do you see?

So those are the two propositions that I was wanting to put to you.

MRS JUSTICE GLOSTER: I think you should scroll back actually because it's difficult to follow otherwise.

A. Well, is that the end of your question?

MRS JUSTICE GLOSTER: Do you want to scroll back, Professor, and have a look at the first two questions. If you want assistance with that, please ask for it.

It starts at line 1 on [draft] page 2 really.

A. I think if I master this technology at this point...

Right, I've looked at proposition 1 and I can't see any objection in the light of the available evidence to proposition one.

MRS JUSTICE GLOSTER: So you accept that the information

currently available indicates that Bogdanov and his partners took control of a stake of a little over 40 per cent?

A. That -- as far as I'm aware, that's correct, yes.

MRS JUSTICE GLOSTER: Okay. Can you scroll down to the second one then, please.

A. And the second proposition seems to be correct too.

What I've been trying to say, though, is that what appears to have been the case is not necessarily what is provably historical reality. It's also true that since the beginning of the millennium we know now much more about the diversity of the whole commercial history of the 1990s than we knew at the time.

I'm not a business expert, I'm not a legal expert. I'm constantly saying that, in order to understand this period of history in the 1990s, we have to take a very broad view and we have to maintain philosophical scepticism.

MRS JUSTICE GLOSTER: Yes, Professor, what I don't know the answer to and I wonder whether you can help me on this is the following: if any of these companies were raising capital from the western markets, you'd have thought they would have had some sort of offering memorandum or circular or IPO document of some sort that would indicate some of these matters which one would have

expected would have been signed off by their auditors or corporate finance advisers or something of that sort, and I was just wondering (a) whether you knew whether any of that sort of information was available, and (b) whether you'd had a look at it?

- A. I'm afraid I don't know any of that information and therefore I haven't had a look at it.

MRS JUSTICE GLOSTER: Right, okay. Thank you.

MR GILLIS: Professor Service, could I then ask you the same in relation to Lukoil, which is the final company that I was going to ask you to look at, and this is looking at Lukoil and Mr Alekperov, so again can I put the two propositions to you and see if you are content with those.

The first is this, that in relation to Lukoil, would you agree with me that the information currently available indicates that Mr Alekperov took control of a 5 per cent stake in a loans-for-shares auction and ended up purchasing that stake following the state's default. So that's the first proposition.

Then the second proposition is, as an expert in the area, would you also agree with me that there are no sources known to you indicating that the stake in Lukoil was acquired by anyone other than Mr Alekperov?

- A. Well, I give exactly the same answer as before. I have

no reason to doubt the veracity of what counsel has just mentioned, but I'm open to the possibility that we can be surprised, because we have been surprised about a lot in Russian history. And I made that point I think sufficiently clear on Friday that, in comparison with the Gorbachev period which is much more open to public scrutiny, we know so little in reality about the political and commercial history of the Yeltsin years and even less about those of the Putin years.

MRS JUSTICE GLOSTER: Yes.

MR GILLIS: Thank you. So Professor Service, would you agree with me then that in respect of the six loans-for-shares transactions we've looked at, the government defaulted on the debt in each case?

A. Yes, indeed, yes. I think that's the conventional wisdom.

Q. And in each of the six cases that we've looked at, would you agree with me that on the basis of the currently available information, the winner of the original loans-for-shares auction became the owner of the pledged stock?

A. That is also my understanding.

Q. Thank you. Could I now just move on to the characteristics of the buyers, and this is looking -- I'm going to stick with the same six transactions, so

that will take us to look at Mr Potanin,  
Mr Khodorkovsky, Mr Alekperov and Mr Bogdanov.

Can I start with Mr Potanin: would you accept that  
in 1995 Mr Potanin was a politically connected  
individual?

A. Well, there we are. This is a moot point. What earth  
is a politically connected individual? I think it  
really depends on what counsel is implying here, and  
this was one of my problems when going through the  
disputed statements, that they could possibly be seen to  
be very loaded.

I don't personally know what a politically connected  
businessman is. Does it mean that if they go to the  
Reform Club and they sit with an MP that they're  
politically connected? In the English language, yes,  
possibly, but it's a very vestigial connection. If  
something more than that is being implied, then I would  
like the term to be unscrambled. Because I'm testifying  
as a historian, not as a commercial operator.

Q. I understand that. If we can look at the facts then.  
Is this correct, that in the 1980s Mr Potanin worked in  
the government Ministry of Foreign Trade?

A. Correct.

Q. And is it correct that by 1995 Mr Potanin had close  
links with President Yeltsin's administration?

A. That's also correct.

Q. Particularly with Anatoly Chubais, the head of the State Property Committee?

A. With Chubais.

Q. Chubais.

A. Yes.

Q. And that Mr Potanin was in a position to propose the loans-for-shares scheme to Mr Chubais?

A. He would have -- I can agree with all of that, but my comment would be that the assumption is that proposals always come from the businessman, and I would challenge that. The evidence for that is not conclusive. And my general understanding of the politics of the 1990s is that the strategy of the government, not just in politics but also in economics, was set by the politicians. And until the evidence becomes absolutely conclusive in the opposite direction I would be very, very wary of assuming that men like Potanin were the instigators of the big strategic bail-out deal that happened in 1995 to 1996, and that's why I think we have to be a little bit fussy about terms like politically connectedness.

Q. I'm not asking about whether all proposals came from businessmen, but just concentrating on the loans-for-shares proposal, would you accept that

Mr Potanin was instrumental in proposing the loans-for-shares scheme to Chubais?

A. "Instrumental" is another rather awkward word to deal with. Was he involved in the discussions that led to the loans-for-shares deal? Yes, he certainly was. He was one of the instruments. But who was handling those instruments? That's another question. Who was in charge of the process? That's another question, a much more fundamental question.

Q. Could I ask you to look at the additional bundle at tab 15 --

MRS JUSTICE GLOSTER: Mr Gillis, I don't want to stop your questioning, but at the end of the day I've got to decide what Mr Berezovsky's role was, haven't I, and I can only get limited assistance from the extent to which these other businessmen were or were not involved in their particular --

MR GILLIS: I would accept that, my Lady, but at the same time --

MRS JUSTICE GLOSTER: Again I do not want to stop you because I can see you might wish to draw a parallel, but the extent to which I'm going to go into the detail of all this on the documents --

MR GILLIS: Well, maybe I'll just try and take it a little bit more quickly. The concern was that it was being

suggested that Mr Potanin was an industrialist. Maybe I can just concentrate on the facts then.

Would you agree that from August 1996 to March 1997 Mr Potanin was the First Deputy Prime Minister of the Russian Federation?

A. Yes, you're obviously completely correct about that.

Q. So --

A. And his political connectedness then was very substantial.

Q. And so would you accept this, that Mr Potanin was involved in politics as well as business? He was not just an industrialist?

A. We're talking about what period now?

Q. The period 1995 through to 1997.

A. Because in your previous -- in the previous comment, I heard 1996-7 I thought.

Q. Well, take it from 1995 through to March 1997.

A. My view is that Potanin became politically involved over those years, 1995 to 1997. My comment again would be that wariness has to be applied to any possible assumption that here we have an instigator in Potanin. My view is -- my tentative view on the politics of the 1990s was that the politicians were in charge, and that insofar as the businessmen became politicians they did so at the invitation of the politicians who had

a strategic view of their own.

Q. Professor Service, could I just ask you to look at G(B)4/1 at tab 15 G(B)4/1.15/1. This is your book, "Russia: Experiment with a People", is that correct?

A. Yes.

Q. If we can go to page 144 in the bottom right-hand corner, that's the page numbering in the bundle G(B)4/1.15/144. Going to the page numbering in the book, at page 145, which we have at the top right-hand corner, can you come down to the bottom paragraph on page 145 in the book, can we pick up about four or five lines from the bottom:

"In deepest secrecy, the businessman ... Chubais brought together a group of businessmen who became known as the 'oligarchs'. They included [Mr] Abramovich ...Aven ... Berezovsky ... Fridman ... Gusinsky ... Khodorkovsky and ... Potanin. Although the legal spending limit for [the] Presidential candidates was \$3 million, Yeltsin's campaign team probably had as much as \$500 million at their disposal. Yeltsin could offer financial inducements to politicians and administrators who could influence the results of the election in his favour."

Then you go on to say:

"But there was a price to pay. As part of the deal,

the 'oligarchs' were given temporary ownership of the controlling [shareholders]..."

So that's going into the loans for shares.

So would you accept that that is, at least at that stage, your description of what was happening, that in return for the influence that they were able to bear, they obtained interests under the loans-for-shares stake.

A. Yes, I do. If I were writing this book today I might not simply call Anatoly Chubais a businessman, because he started out as a new politician in 1991 to 1992 who turned himself, to everyone's astonishment at the time, into a businessman. But at the time he was bringing these people together; he straddled both worlds, more than any other single individual in Russia at the time I think.

Q. Can I then just move on to Mr Khodorkovsky, just to establish his political background, if I can use a more neutral phrase.

Is this correct, that by 1995 Mr Khodorkovsky already had taken a political job as a deputy minister to the Minister of Fuel and Energy in the Gaidar government?

A. Yes, I can't confirm that absolutely from memory but I'm assuming that you have done your homework.

Q. Well, you had better check that I have done, and it's not a memory test on your part.

A. No.

Q. If you could look at the additional bundle at tab 16. If you can turn to page 299. The sidelined passage there which goes over the page:

"... Khodorkovsky became an adviser to Vladimir Lopukhin, Gaidar's minister of fuel and energy. The Gaidar cabinet was in office for less than a year, and the carving up of the oil industry had just begun, amid much uncertainty. When Khodorkovsky took the job with Lopukhin, he did not want to leave Menatep Bank, so Lopukhin created an informal position, with the rank of deputy minister, putting Khodorkovsky in charge of the energy ministry's 'investment fund'."

So is that correct?

A. Thank you for drawing that to my attention. I think Hoffman is entirely reliable on this sort of thing.

Q. So Mr Khodorkovsky himself was involved in politics as well as business, he was not just an industrialist?

A. He was not just an industrialist, no. He was involved in politics, that's not the same as running the political show.

Q. No, I accept that, but he was in a position possibly to at least seek to influence the politicians?

- A. I agree with that entirely. I think we're actually becoming closer and closer on this. These businessmen in this period, some of these businessmen, did become politically active, institutionally involved, which is -- perhaps you don't agree with this, or perhaps counsel doesn't agree with this -- that's not quite the same as, it's not at all the same as running the whole political system.
- Q. I think I've already shown you the passage in your book, "Russia: Experiment with a People", which also explains that Khodorkovsky was in the same grouping, if I can put it in that way, as Potanin?
- A. He was in a grouping of businessmen, that's not to imply that he was permanently or fundamentally tied to a set of relationships with the others in the group, and, in fact, everything I've heard since I wrote my book about the very richest of businessmen in the late 1990s suggests that the rivalries among them were very, very intense indeed.
- Q. Can I come on to Mr Alekperov and, is this correct, that Mr Alekperov spent the 1980s working in the Siberian oilfields which became part of Lukoil?
- A. Correct.
- Q. Then from 1987 to 1990 he was the general director of Kogalymneftegas, one of the production units that became

part of Lukoil?

A. Correct.

Q. Would you agree that that was a role that would now normally be described as being a red director?

A. It would indeed, yes. Yes.

Q. And that was an important and powerful position within the Soviet system?

A. It was an important position within the Soviet system. It was one of very limited power. I wouldn't say that that indicated someone who was very high up in the system.

Q. Mr Abramovich, in his evidence, said that a red director would have very great power and influence in their region and not just within the company. For my Lady's note, that's Day 16, page 151, at line 19.

Is that something you would agree with or not?

A. Well, I'm not here to agree or disagree with Mr Abramovich, I don't know in what context he said that this was a powerful position. It's certainly true that red directors, where the enterprise was the single big economic activity in a particular region, a director in that kind of situation, perhaps in a far-flung area of the Soviet Union, would be a person who had considerable influence within that region, that's certainly true. I'm loathe to go any further than that.

Q. Then in 1990, Mr Alekperov was appointed to the government as first deputy minister for the oil and gas industry, is that correct?

A. That's correct, yes.

Q. And would you agree that he lobbied for the creation of Lukoil while in his position as deputy minister for oil and gas?

A. That also appears to be correct.

Q. And that he retained his position as deputy minister until 1993 when he left to take full-time control of Lukoil, is that correct?

A. I believe that's correct.

Q. So would you agree that Mr Alekperov had a political position in that relevant time?

A. I would indeed agree.

Q. And that Mr Alekperov was himself involved in politics as well as business. Again, he was not just an industrialist I would suggest to you?

A. That's a very fair point.

Q. And would you agree that Mr Alekperov's political position assisted him to create and take control of Lukoil?

A. I believe that to be the case.

Q. And then if I could turn to Mr Bogdanov, and this is in relation to Surgutneftegas, is it correct that

Mr Bogdanov became the general director of Surgutneftegas in 1984 while it was still a state-owned production association?

A. That's correct.

Q. And Surgutneftegas was then created as a vertically integrated oil company in 1992, is that correct?

A. I believe that's correct.

Q. And Mr Bogdanov was then appointed both as the chairman of the company's board of directors and the president of the company?

A. Correct.

Q. And so, again, would it be correct to describe Mr Bogdanov as being a red director?

A. Yes. I mean, this isn't a -- the term "red director" came into being in the 1930s when Stalin conducted his industrialisation campaign, and it referred to people who were politically reliable insofar as the Stalin administration was concerned. It's a rather sloppy term when it goes through the years. All it really means by the middle of the 1990s is someone who had a job running an enterprise at the end of the Soviet Union and survived into the new business environment with a similar post in private industry. I'm not sure it gets you very far as a term beyond that.

Q. It connotes a person of power and influence, I would

suggest, not just within the company but also within a region?

A. I'm afraid I don't agree with that at all. That's an extraordinary definition of red director.

Q. Is it correct that Surgut is a very remote Siberian region?

A. That's certainly correct, but "red director" does not imply someone who had a huge regional influence. It certainly does not imply that. This is just a technical point, you're simply wrong about that.

Q. Would you agree it in relation to Mr Bogdanov and his position within Surgut?

A. You can -- one can call Mr Bogdanov a red director if one wants to draw attention to his appointment career before 1992. That's really all that the term is indicating to you, to one.

Q. Forget about the term "red director", and just concentrating on Mr Bogdanov and his position within Surgutneftegas and Surgut itself, a remote Siberian region, would you accept that he was a person of great power and influence?

A. I think that within his enterprise and within his region he exercised as much power as anyone. I'd be hesitant to go beyond that point.

Q. Is this correct: the Surgutneftegas management, led by

Mr Bogdanov, I would suggest to you were able to use their control of their company and their influence to exclude other bidders in the loans-for-shares transaction?

A. That appears to be the case. I'm quite comfortable with what has just been said.

Q. And if I could just ask you to go to tab 16 in the additional bundle, so tab 16. If I could take you to page 318. This is from Hoffman's book, "The Oligarch", which I think is an author you cite in your report, is that correct?

A. I do cite Hoffman in my report, yes. Certainly I do, yes.

Q. And could I just ask you to look at the second full paragraph which starts:

"On the same day as the Yukos auction ..."

A. This is page 3?

Q. 318.

A. Thanks.

Q. So:

"On the same day as the Yukos auction, Potanin snapped up another oil company, Sidanco, winning 51% of the shares for the 130 million. The two [other] oil generals, Alexperov and Bogdanov, also won loans-for-shares auctions for pieces of their companies,

Lukoil and Surgutneftegaz respectfully. The Surgut auction was an especially graphic example of how the Chubais ideals of openness and competition were ignored in practice. Outsiders were warned in advance by the Surgut management not to make a bid, and the airport in Surgut was closed that day, so other bidders could not fly in to buy part of the company. They did not."

In the context of Surgut, would you agree with that?

A. Most of my information about that auction comes from Hoffman, so I think he did a thorough job there.

Q. Thank you for that.

Would you agree, I'm just sort of trying to summarise, and I can see that summarising is not something you like to do because it possibly takes you to a level of generalisation that you're not entirely comfortable with, but is this correct, that on the basis of the information currently available, for the loans-for-shares packages in Yukos, Norilsk Nickel, Sidanko and NLMK, they were acquired by Khodorkovsky and Potanin, both of whom had held political positions and, I would suggest to you, had political connections and influence?

A. Firstly, I love to summarise. I think a historian who doesn't make connections and seek out patterns, even on a tentative basis, is not worth his salt.

My objections to what counsel has been saying over the past few days is that I don't like his summaries, I don't like his starting points, including his linguistic and terminological starting points because they reflect a misunderstanding of what was going on in Russia in the 1990s.

But on the specifics of what he has just said, I've got no objection at all.

MRS JUSTICE GLOSTER: Right.

A. But I think it is my job here to be picky, because what is implied in the language and the terminology affects the chronology and also the contents of the relationship between politics and business, and that's too big an objection for me to overlook what I think.

MR GILLIS: Then in respect of the loans-for-shares packets in respect of Lukoil and Surgutneftegas, what I would suggest to you is that those shares were acquired by persons who could be described as red directors, and I understand your concern about that phrase, but they were acquired by persons who had influence within the company and also within the local region. Would you agree with that?

A. I think possibly counsel has got his questions written down already, and although I have cauterised his use of the term "oligarch" I have yet to succeed with the term

"red director".

But leaving that aside, I think that the substantive empirical analysis that he has offered is unobjectionable.

MRS JUSTICE GLOSTER: Right. Subject to the caveats you have presented earlier?

A. Yes.

MR GILLIS: Thank you.

Could I -- no, I'll move on from that.

Could I then move on to the question of political influence. Professor Service, I think we can see from your report that you were asked to look at the question of political influence in two aspects, and I think we can see this at paragraph 4(d) of your first report which we have at page [2] G(B)3/1.1/2.

You were asked to consider the question of political influence, first, as regards Mr Berezovsky's political influence in the 1990s and then, secondly, Mr Abramovich's political influence in the 2000s, can you see that?

A. Yes, I can, thank you.

Q. I think you expressed a difference of opinion with Professor Fortescue in respect of both of those areas?

A. That's correct.

Q. Now, Professor Service, I'm not going to ask you about

Mr Berezovsky's political influence because Mr Abramovich and his legal team have accepted in this action that Mr Berezovsky did have political influence, and that he was able to use that influence to get the Russian Government to create Sibneft and sell the rights to manage Sibneft.

For my Lady's note, that's Day 2 at page 7.

So the only point that I want to ask you about is Mr Abramovich's perceived and actual political influence in the 1990s. Do you understand?

A. Yes, I do.

Q. So could I ask you to take out the joint memorandum which we have at bundle G(B)6, at page 14 G(B)6/1.01/14. Could I ask you to read that section G to the bottom of the page, so that's statements 47 and 48. (Pause)

A. I've done it, thank you.

Q. Thank you. So can we leave aside terminological disputes about the definition of "oligarch"?

A. Yes, we've put that behind us.

Q. We've not put it behind us, we understand your position in relation to it.

A. I'm sorry that counsel hasn't put it behind him, but if that's his --

Q. No, Professor Service, if you prefer to view it as

putting it behind us I'm happy to put it in that way.

A. Excellent.

Q. As I understand what you're saying here, you accept that there were widespread press reports, both that certain oligarchs held a favoured position with the Putin administration and that Mr Abramovich was one of those oligarchs. But you say that those reports' existence does not mean that it was necessarily true?

A. Well, that's correct, yes. That's my opinion, yes.

Q. What I'd like to consider with you is the middle ground between those two positions, as it were. And the question is whether a reasonable person who was aware of the circumstances and the press reporting at the time could conclude that Mr Abramovich did hold a position of favour and influence within the Kremlin. Would you accept that that was a view that a reasonable person could come to?

A. A reasonable person might want to say "A lot of what I read in the press is complete bunkum, it may or may not be true".

What is very clear is that Mr Abramovich was a successful businessman in the 2000s, that he was not in disfavour with the Putin administration, that he worked in political posts in Chukotka. But whether special favour was shown to him by the Putin

administration doesn't come from Putin himself, doesn't come from Abramovich himself, it comes from press reports. And Russian press reports are subject to the limited reliability that we went through on Friday.

Q. Professor Service, I'm not trying to suggest that a reasonable person couldn't come to the opposite view, I'm just asking you whether a reasonable person, seeing these press reports, could come to the view that Mr Abramovich did hold a position of favour and influence in the Kremlin, as you seem to suggest, or accept, was being widely reported in the newspapers?

A. My experience of Soviet citizens, and since the fall of the Soviet Union, Russian citizens, is that those who are reasonable and astute maintain a very, very high degree of scepticism about what they read in the newspapers. That is the way that they were acculturated in the Soviet times and it has not left them. That's one of the reasons, for example, why there are so many Russian jokes, "anekdoti". That's why the politicians are continually ridiculed in contemporary Russia. Russians on the whole have been given little reason to trust their politicians.

So my general feeling is that a reasonable person would take everything he read in the newspapers with a pinch of salt. Perhaps I'm meeting the wrong sort of

Russian from the point of view of it's perfectly possible that I've not met Russians who are more gullible than the people I meet in connection with my work. That's certainly a possibility to which I'm open. But my general feeling is that Russians have a huge amount of scepticism about what comes over to them in the public media.

Q. Well, Professor Service, I'll try to take it shortly and I'll just take you to one example(?).

Do you say a reasonable person reading these reports could not believe that Mr Abramovich had influence?

A. I believe that press reports have an influence on the way that reasonable people would think about politics, it would lead them to consider that it was quite a possibility that Mr Abramovich was in favour, but not to assume some kind of stronger influence on Mr Abramovich's part as to suggest, for example, that he was some kind of instigator of public policy, and that's what I'm edgy about. That's why I'm reluctant to swallow a general statement of this kind without these sort of reservations, these sorts of reservation.

Q. Would you accept that the Russian people were also very sceptical about the nature of the relationship that existed between the oligarchs and the politicians?

A. I think I would put it more robustly than that. I think

that up to the year 2000 most Russians hated the big businessmen who were generally referred to as the oligarchs, and that this explains the ease with which Vladimir Putin managed public opinion after the year 2000 when he got rid of Berezovsky, Gusinsky and then Khodorkovsky.

Q. Can I just take you to one example and just ask you about this. One of the authors you cite in your report and your published works is Anders Aslund, is that correct?

A. That's correct.

Q. He was formally a professor at the Stockholm School of Economics, and economics adviser to the Russian and Ukrainian Governments.

A. That's correct, yes.

Q. And in March 2001, Professor Aslund told the Washington Post that he believed that Mr Abramovich exercised a controlling influence over parts of the Russian Government, were you aware of that?

A. I'm aware of that article, yes, and I noted when reading it that it's likely to be one of those articles where you're halfway through a tutorial or a class and a journalist rings you up and says that he has a work panic on and could you give him a quick quote on some such subject or other, and you agree to do it at the end

of a class or the tutorial, and you help them out, and then the thing appears in the press next day and you have no control over the contents of that quotation, and no means of come-back.

I would prefer to judge what Anders Aslund has to say through his books rather than through a quotation by a journalist who is panicking to hit a deadline.

Q. Professor Service, I put to you that quite a lot of that is speculation on your part.

For my Lady's note, the article is B(B)1.02 at page 72 B(B)1.02/72.

Professor Service, I would suggest to you that that's not the type of comment that Professor Aslund is going to make lightly, and that if it was his view in 2001 that Mr Abramovich held a position of influence over the Russian Government, that was a view that could be well held by other persons reading the widespread press reports that you have referred to?

A. Well, I don't resile from what I've just said. I know the article to which reference is being made. Aslund is an extraordinarily prolific writer on the Soviet and post-Soviet Russian economy. If we want to know what he thinks or thought about the relationship between business and politics in the period since the fall of the Soviet Union, the best thing to do is consult his

books and articles written in his own hand.

- Q. Professor Service, could I ask you to look at Professor Fortescue's report, which we have at G(B)1/1, at paragraphs 97 and 98, which is at page 28 G(B)1/1.01/28.
- A. Sorry, I'm not -- I'm to look at 98, am I?
- Q. If you could look at 98, that's an article in 2002. Can you see that?
- A. I can.
- Q. By those authors. Again, they are expressing the opinion that Roman Abramovich is in a position of some influence with the Kremlin. Is that fair?
- A. Yes, that's what they're saying, yes. And I'm not saying that Abramovich isn't influential in discussions in the Kremlin, I'm just worried about the implications of the scale of that influence. Of course Russian politicians talk to the big businessmen of today.
- Q. Professor Service, what I would suggest to you is the fact that well-known academics with expertise in the area could reach the conclusions that we've seen them expressing about Mr Abramovich's influence meant that it was a view that could reasonably be reached by others reading those press articles?
- A. Well, I don't find Richard Sakwa's comments are quite as categorical about the push given by Mr Abramovich to

Mr Putin as counsel is implying, and I'm not convinced that this is an accurate picture of Russian politics in the year 2000 to 2001, not provably anyway.

Q. Could I move on to "State Action to Attack Private Business Interests", and could I ask you to take out the joint memorandum which we have at bundle G(B)6. Could I ask you to turn to page 24 G(B)6/1.01/24, which is topic 4. This is dealing with "State Action to Attack Private Business..."

Can you see that?

A. Yes.

Q. Could I ask you to read statement 57 and the response in paragraph 52. (Pause)

A. I see, yes.

Q. All right. Now, again, we've put the issue about the definition of "oligarchs" behind us.

A. Yes.

Q. What I understand you to be saying is that you agree with subparagraphs 1, 2 and 3, essentially that raiding and actual or de facto confiscation of private businesses through improper measures by Russian State agencies did occur, I think you're accepting that?

A. Yes, I am. Yes.

Q. So for convenience we'll just refer to that as raiding, but you do not agree with points 4 and 5 because you do

not accept that the available evidence proves that confiscation of private companies frequently occurred at the prompting of oligarchs?

A. As far as I know, no one has done a survey of business confiscations, I don't know of any academic article to that effect, and that's why I disliked the rather sweeping generalisation and the word "often".

Q. What I would like to do is just sort of clarify the scope of the disagreement. I raise the point because statement 4 does not suggest that this conduct frequently occurred at the prompting of oligarchs. It says that it:

"... often occurred at the prompting of or in collusion with businessmen, including prominent oligarchs ..."

So if you consider the position with respect to businessmen generally, including but not limited to oligarchs, and also with respect to the conduct being either prompted by or in collusion with businessmen, is the statement one that you're prepared to agree with?

A. If --

Q. Leave aside the question of "often" or "frequently", just for the moment.

A. Ah, right. So did this behaviour occur in the 1990s, that big business --

- Q. I think we're looking at the period from 2000 onwards.
- A. From 2000, of course, yes.
- Q. Including the period 2001 to 2004.
- A. Yes. Did this kind of behaviour occur from 2001 through to 2004? Yes, it did. I think we can agree on that.
- Q. Thank you. So is your objection really in relation to the suggestion that it happened often at their instigation?
- A. My guess is that it happened often, but I'm asked to testify here on the basis of what I can demonstrate. And "often" is a loaded word that I would row back from. And that's one of the reasons I -- at least the main reason why I pulled back from sub-point 4.
- Q. I think you are saying there that you guess it happened often, but would you accept that it was sometimes prompted by or in collusion with businessmen -- I'm just trying to see, because it may well be for the court's purposes, Professor Service, that it doesn't actually matter whether it often happened or whether it sometimes happened, so it may be that we can just move on from this dispute.
- A. I may even have used the word "sometimes" myself so I'm entirely happy about that reformulation.
- Q. Thank you.

Could I then move on to the question of oral

agreements, which I think is the last topic that I want to address with you. This is the use of undocumented commercial arrangements in Russia during this period.

A. Ah, right, yes.

Q. Just to remind you, could I ask you to take out the joint memorandum and turn to page 18 G(B)6/1.01/18. Could I ask you to look at section C which starts at the bottom of page 18, do you have that?

A. Yes.

Q. If I could ask you to read statements 16 to 18 and then your comment at paragraph 40. (Pause)

A. Yes, I've caught up, yes.

Q. Thank you. So in summary, I think what is being suggested here is that it was common for Russian parties to enter into oral and informal ownership agreements in Russia in the 1990s, and Professor Fortescue indicates that he agrees with that.

I think we can see at paragraph 40 what you say is that you disagree with these statements for the reasons stated in your first report. Can you see that?

A. Yes.

Q. Now, what I'd like to do is just look at your first report about this topic, because what I want to suggest to you is that it's not easy to divine from what your report says why you reject the statements we've just

been looking at. So could I ask you to look at your first report, which we have at bundle G(B)3, and I think this section starts on page 15 G(B)3/1.1/15. At paragraph 34, you start by saying:

"The picture drawn by Professor Fortescue ..."

And I think we can see from the title heading that this section is actually referring to paragraphs 242 to 310 in Professor Fortescue's report where he is dealing with business practice in Russia in the early 1990s and early 2000s. I don't think I need to ask you to turn that up.

What you say is:

"The picture drawn by Professor Fortescue of Russian business practice in the 1990s is broadly in line with [the] scholarly work on the subject..."

Then you explain what you intend to add. So you say there's a:

"... need for an explicit historical understanding of this phenomenon and deal with the weaknesses and limitations of the views which he expresses."

I would suggest to you that there, there's no suggestion that you agree with Professor Fortescue's general conclusion?

- A. I think that Professor Fortescue pulled out the side of business practice that was informal, and that's what

I intended to express concurrence with. I don't have any doubt that a lot of what went on was oral and undocumented.

Where his report, though, is less than helpful is its lack of attentiveness to documented written material. Some of that material relates to share ownership documents, some of it relates to what I am hoping in the years ahead we will find out about political and commercial practices in the diaries, the notes, the minutes of meetings that must have been kept in the 1990s and 2000s, but the evidence of which, as yet, has not come to light. And if you will recall, I mentioned that the immediate preceding period of Soviet history, 1985 to 1991, is now replete with such additional evidence.

I cannot believe -- it just contravenes all of the bounds of common sense to assume that nothing was written down, everything was done on a handshake, that when Mr Potanin or Berezovsky or Abramovich met each other, they consigned everything to the recesses of their brain and relied entirely on memory. For me, that conflicts with common sense. It also conflicts with --

MRS JUSTICE GLOSTER: I think that's a matter for me, isn't it, at the end of the day.

A. I'm sorry, I'm trespassing again.

MRS JUSTICE GLOSTER: All I'm interested in is your experience and knowledge of historical position.

A. Well, then I'm sorry about that, my Lady. I've trespassed again.

MRS JUSTICE GLOSTER: It doesn't matter, but let's have your evidence on the...

MR GILLIS: Professor Service, what I was going to ask you to do, in paragraph 34 you seem to have expressed broad agreement with the view that Professor Fortescue has expressed.

A. As one side of the coin.

Q. Well let's just go through it. And then what I would suggest to you is that in paragraphs 35 and 37, you essentially endorse the account that Professor Fortescue is giving about the chaotic business environment which he says encouraged the adoption of informal and oral arrangements?

A. That's correct.

Q. And is this correct: you would not dispute that there was a strong incentive for Russian businessmen to disguise the beneficial ownership of their assets; would you agree with that?

A. I also agree with that in general terms. Without -- well, I mustn't trespass again.

Q. And then in paragraph 37 you say in the last sentence

G(B)3/1.1/16:

"To be a businessman was not an easy option -- and the new businessmen of Russia, distrustful of official authority but hopeful of making a profit, often operated with highly informal methods and -- let it be said -- sometimes with scant respect for the law."

Do you see that?

A. I can, yes.

Q. So again, I suggest there that you are really saying two things. You're saying firstly that businessmen often operated with highly informal methods, and second that you're saying they sometimes operated with scant respect for the law?

A. I do indeed say that, but I then go on to say that this extraordinary, extreme informality was counterparted by an appreciated need for some kind of documentation in other areas of commercial practice.

Q. Then, Professor Fortescue (sic), at paragraph 38, in the first two sentences, you say that:

"Among the informalities identified by commentators was a sketchy attitude to drawing up and signing explicit and binding contracts. Professor Fortescue's report clearly explains the prevalence of this --"

Sorry, Professor Service, the first two sentences of paragraph 38 say:

"Among the informalities identified by commentators was a sketchy attitude to drawing up and signing explicit and binding contracts. Professor Fortescue's report clearly explains the prevalence of this contractual 'innocence'."

A. Yes, I think that Professor Fortescue, in dealing with that side of the coin, does a very clear job.

Q. Thank you.

Then I think it's at the top of the next page where you start to add the reservations G(B)3/1.1/17, we can see at the top of page 17 you then go on to say:

"Nevertheless sketchiness is not the same as ... complete absence of documentation. Mr Shvidler's Fifth... Statement draws attention to documents involved in the registration and transfer of shares..."

Then in the middle of that paragraph, you go on to say:

"There were -- and are -- things that remain unrecorded. But there was an obvious risk in doing business exclusively on the basis of a handshake, and everyone knew that certain procedures such as the formal registration of shareholdings would need to have taken place if ever the question of judicial enforcement ... [arose]."

Do you see that?

A. Yes.

Q. Then I think at the end of that paragraph, you then say you offer those comments as a caveat on the general points about sketchiness made by Professor Fortescue?

A. Yes, I'm -- I thought Mr Shvidler's evidence was really quite plausible on this, and of course when I had -- when we had the joint meeting in San Francisco, this was something that Professor Bean was particularly revealing about and confirmed what Mr Shvidler had emphasised.

Q. Mr Shvidler, I think, was indicating that documentation would be created through the process of share registration. Is that correct?

A. That's correct, yes.

Q. Can I now ask you just to look at Professor Fortescue's second report.

A. Yes.

Q. Which we have at G(B)1/1. Can I ask you to go to page 158 at paragraphs 45 and 46 G(B)1/1.02/158.

Could I ask you to read paragraphs 45 and 46.

(Pause)

A. Yes.

Q. And Professor Service, what I was going to suggest to you is that your analysis in your first report, which we've just looked through, I would suggest is very much in line with what Professor Fortescue is saying here.

You say that transactions would tend to create some paper trail, for instance in relation to registration of shares, but at the same time there may be oral or informal arrangements between the parties as well, and that the documentary record of a transaction could be sketchy; would you agree with that?

- A. I would add the other side of the coin, that we do not have the right to assume that the paper trail ends at the point where share ownership records are made. I hesitate to go any further than that because I'm aware that this is not my business here. But I think I am allowed to say that if the years 1985 to 1991 have yielded up records we previously didn't know existed, the likelihood is that the same will happen to subsequent years of Russian political and business history.

- Q. Can I just try some propositions on you and see whether you would agree with this.

First, would you accept that one of the consequences of the high risk business environment which you identify existed in Russia, and I think maybe you had the result that often people sought to do business within groups of people who they knew and trusted?

- A. Yes, absolutely agree. Whether they trusted them I'm not sure but -- fully trusted them, especially in

business, I'm not so sure about that now. Probably I'm less sure about that than when I wrote the "Russia: Experiment" book, because I've done further work on the big businessmen but not published it, and I'm pretty sure that their mutual rivalries and enmities were very extreme in the 1990s.

Q. Secondly, I think you accept in the joint memorandum that the Russian court system could be inefficient and ineffective, I think we see that from paragraph 38 of the joint memorandum; would you agree with that G(B)6/1.01/18?

A. I can't see how anyone would disagree with that statement.

Q. And, Professor Service, what I would suggest to you is that it flows that when contracts were made between individuals who knew and trusted each other, and who expected to be able to resolve issues by negotiation, there was a lower incentive formally to document contracts; would you agree with that?

MRS JUSTICE GLOSTER: Again, to what extent is that directed to his historical knowledge or expertise? It sounds to me like a kind of logical proposition.

MR GILLIS: My Lady, I think maybe it is more of a logical proposition, but I wished to see whether Professor Service, on the basis of his experience, was

willing to agree to it.

- A. I'm not sure if I would agree to it. The fact that you trust someone doesn't mean to say that you don't write something down.

In a country whose history is riddled with episodes where people paid a very, very heavy price for doing what they did, thinking that they were in line with the current administration's desires, and then those desires changed, there is a tradition of -- a long tradition, going back before the end of the Communist period, for people to get others to sign their records so that they can cover their backs for any future unpleasant contingencies.

So to that extent, I'd be reluctant to subscribe to the general proposition that counsel has just expressed.

- Q. Even between people who trust each other, is that what you're saying?
- A. I think that the rumbustious, dangerous business history of Russia after 1991 induced businessmen in particular to hedge their bets about what degree of trust they could have in any other individual. It was worse than the Wild West in as much as very quickly in the second half of the 19th century the judges and the sheriffs in the newly claimed parts of the USA came to impose a degree of order that has really yet to be imposed on

post-Communist Russia even to this day.

- Q. Professor Service, I think you accept, do you, that in the Russia of the 1990s, many Russian businessmen took steps to hide their assets; do you agree with that?
- A. Well now, if we're moving on from that then, yes, I think it's very clear that they -- that businessmen did have an incentive to try to hide their assets.
- Q. Professor Service, what I would put to you is that where there was a perceived need to conceal ownership of assets, one method that could be used, and was used, between people who trusted each other was an oral agreement whereby one would hold assets on behalf of the other. Would you agree with that?
- A. The evidence for that proposition is not as conclusive as counsel suggests.
- Q. Maybe not as conclusive, but would you accept that there is evidence that indicates that that was an arrangement that people entered into?
- A. I think there is no substantial evidence to that effect, and I think that here we do have to look at the dangers of not recording in some sort of way what was going on in the 1990s, and in similar periods of uncertainty in the history of modern Russia the same phenomenon is observable.

So I'm afraid I don't accept that proposition, I

don't think the evidence for it is substantial.

Q. You may say it's not substantial, but are you willing to accept that there is evidence that indicates these types of oral arrangements were used?

A. Well, the proposition that there were oral arrangements is a strong one. It's robust, it's believable.

What isn't believable, to my mind, is that individuals who were staking hundreds of thousands of rubles, I'm not talking about billions of rubles even, would be prepared to consign their framework of arrangements to some sort of mental recess of memory and totally to a depository of assumed mutual trust.

This is not a -- this is not, to my mind, convincing in the light of the history of the country that we're talking about, or indeed the history of any country that I know anything about.

Q. Professor Service, what I would suggest to you is that it makes sense, if you have a relationship of trust and a desire to conceal ownership of assets?

MRS JUSTICE GLOSTER: Again, that's a proposition of logic rather than a proposition based on his historical expertise or experience.

MR GILLIS: Maybe then I can just ask you to look at one article, just to get your comments on it.

A. Could I just intervene, am I allowed to intervene?

MRS JUSTICE GLOSTER: Yes, please do.

A. I've never lived in a country where there is so much pressure on one to get documentation for the contingency that an undesirable contingency, an undesirable occurrence might arise from an agreement or an incident that one is involved in. So that big Russian businessmen didn't cease to be Russians when they became rich, and the framework of understandings, both politically and economically but fundamentally culturally too, didn't change when they became rich.

MR GILLIS: Well, can I just ask you to be handed G(B)2/4 at tab 141 G(B)2/4.141/167, this is an article from Vedomosti. Could I ask you, if you can just look at the beginning of the article. And if I could explain to you, it's an article dealing with the dissolution of the partnership between Potanin and Mr Prokhorov, two of the most prominent Russian oligarchs, in 2007.

Would you agree that the assets in which they were partners included Norilsk Nickel, which was one of the most valuable companies in Russia?

A. Yes, I would agree with that, yes.

Q. If you can then turn to page 169 G(B)2/4.141/169, and if you could read the third and fourth paragraphs, which is the paragraph that starts:

"For a long time ..."

(Pause)

What I would suggest to you, Professor Service, is that from these paragraphs you can see that Mr Prokhorov was complaining that some business assets to which he was entitled had been transferred to a third party company and were not held by the main KM investment vehicle.

And Andrey Klishas, who was the president of Norilsk Nickel, gave an explanation for how those assets were held. And one can see in that second paragraph that you have read, he is saying:

"'In parallel to KM Invest' there existed a group of companies created by ... Barbasheva. The shares of the companies mentioned were not registered in the names of Prokhorov and the Potanin: there was an oral undertaking between them and Lena's staff... the nominee shareholders of these companies."

What I would suggest to you is that that is just an example of how, even in 2007, people who could be described as oligarchs were using oral agreements in relation to holding of assets?

- A. I agree with the one side of the coin that counsel has exhibited to us, but I would go on to say that, one, Vedomosti is not a newspaper of record. There are all of the weaknesses and vulnerabilities of reports by

journalists that we talked about on Friday. And, two, it doesn't flow from those two paragraphs that an oral understanding was unaccompanied on both sides by some kind of consignment, literary consignment of the understanding, so that they would not have to rely only on memory. The likelihood is, therefore, that the journalist simply took at face value -- the journalists, I think, actually -- took at face value what was being said to them.

Journalists have a very hard time in extracting the truth from devious and purposive businessmen and their representatives.

Q. Professor Service, what I'd suggest to you is it's perfectly clear that it's being said it was an oral undertaking. If it was a documented undertaking that issue simply wouldn't arise, would it?

A. I'm afraid I haven't been clear enough and I apologise for that.

I could well believe that this oral undertaking did happen at the time as an oral undertaking. I could -- I think I'd have to be -- physical violence would have to be applied to me to believe automatically that that was the end of the matter and that neither side in this very, very complex business relationship didn't write something down about what they had agreed.

Q. Professor Service, what I would suggest to you is that your first report is acknowledging that in many respects that is how business was being done in this informal atmosphere where documentation was sketchy. So I would suggest to you that, in the light of what you've said in your first report, it should come as no surprise to you to see that actually here we have an example of oligarchs doing business on the basis of an oral understanding only.

A. I think, if I were writing that first report again, I would have clarified my exposition in the way that I've tried to do in the last five or ten minutes.

I do not think and did not think, but obviously didn't make it sufficiently clear, that oral understandings, a quick handshake in a shady bar in a French or Russian hotel, was all that happened when these vast sums of money were at stake between men who never really trusted each other. I find that deeply implausible.

MR GILLIS: My Lady, I have no further questions.

MRS JUSTICE GLOSTER: Thank you very much. Mr Adkin?

MR ADKIN: My Lady, I have no questions.

MRS JUSTICE GLOSTER: Yes, Ms Davies.

Re-examination by MS DAVIES

MS DAVIES: Professor Service, just one matter for which

you'll need the joint memorandum in bundle G(B)6, tab 1, and the transcript from Friday. The transcript from Friday is just being given to you, Day 37, at pages 166 to 167.

While you're waiting for that, if you want to turn in the joint memo to pages 15 and 16 G(B)6/1.01/15. Now, if you could look at the transcript at pages 166 to 167, and just to remind you, Professor Service, you were being asked some questions about the statements in the joint memorandum relating to the loans-for-shares scheme, and in particular you can see at page 166 my learned friend Mr Gillis was putting to you the question of whether:

"... the disputed statements here, at statement 2, [are] a summary description of the loans-for-shares scheme [that] is... not open to any serious political debate?"

A. Yes.

Q. Now, if you'd like to look in the joint memo at statement 2 on page 15, just to remind yourself of that, you see statement 2 has five subparagraphs, 1, 2, 3, 4 and 5 G(B)6/1.01/15?

A. Yes.

Q. And remind yourself of the contents of all of those.

(Pause)

Then if you could look in the transcript at page 167, at line 10, do you see an answer from yourself:

"I think that, as it stands, question 2, as long as it's not connected up to -- sorry, statement 2, as long as it's not connected up to statement 3, isn't implausible."

Do you see that answer, page 167, line 10?

A. Is it actually 166, line 10?

Q. Page 167, line 10:

"I think that, as it stands..."

A. Right, I see.

Q. Sorry, the numbering is a bit confusing.

A. Yes, I see, yes.

Q. You see the answer:

"... as it stands, question 2, as long as it's not connected up to -- sorry, statement 2, as long as it's not connected up to statement 3, isn't implausible."

I wonder if you could just clarify for us what you meant by statement 2 and statement 3 in that answer?

A. The connections between statements 2 and 3, I think I gave a rather fuzzy answer on Friday there.

Q. Well, when you were referring to statement 2 in that answer, can you clarify whether you were referring to the whole of statement 2, including all of its

subparagraphs 1 to 5 on page 15, or whether you were referring to something else?

A. I think we're talking about the sub-numbering, aren't we, here? Sub-statements 2 and 3, as I recall.

MS DAVIES: Thank you very much, Professor Service. I have no further questions.

MRS JUSTICE GLOSTER: Right.

Thank you very much indeed, Professor Service, for coming along to give your evidence and assisting the court. You may be released now.

THE WITNESS: Thank you.

(The witness withdrew)

MRS JUSTICE GLOSTER: Very well. I'll take the break now for ten minutes, and then we're having Professor Bean, is that right, Mr Adkin?

MR ADKIN: My Lady, yes.

MRS JUSTICE GLOSTER: Very well. Ten minutes.

(11.38 am)

(A short break)

(11.50 am)

MR ADKIN: My Lady, I call Professor Bean.

MRS JUSTICE GLOSTER: Just before Professor Bean is sworn, are we likely to finish this witness before the luncheon adjournment?

MR ADKIN: Mr Gillis?

MR GILLIS: I think not. I may need to run over by 20 minutes, but I'll try not to.

MRS JUSTICE GLOSTER: It doesn't matter, I just need to know for my own arrangements. Very well, thank you.

PROFESSOR BRUCE BEAN (sworn)

MRS JUSTICE GLOSTER: Please sit down.

Examination-in-chief by MR ADKIN

MR ADKIN: Professor Bean, can you confirm, please, that you have no electronic equipment or mobile phones on you?

A. I have none.

Q. Thank you.

Could you please be given bundle G(B)5/1, and you should find at the front of that bundle a document G(B)5/1.00/1. Is that your first and only report in these proceedings?

A. Yes, it is.

Q. Now, I understand that you have a very small correction that you want to make to paragraph 11 which is at page 5 G(B)5/1.00/5.

A. Yes.

Q. Could you tell us what that is, please?

A. Yes, the third sentence says:

"In June 1998 I left Coudert Brothers [and joined] Clifford Chance as [a] partner ..."

I left on a Friday, which was May 29th, and June 1st

was Monday when I joined Clifford.

Q. Thank you.

Subject to that correction, does this report represent your true opinion?

A. Yes, it does.

Q. And is this the evidence you wish to give on the matters in which you've been instructed in these proceedings?

A. Yes, it is.

Q. Could you please be given bundle G(B)6/1, there is I think only one tab in this bundle. This is the joint memorandum G(B)6/1.01/1.

A. Yes.

Q. So far as this document contains opinions which are attributed to you, do they represent your true opinion?

A. Yes, they do.

MR ADKIN: Thank you, Professor Bean, if you would just wait there.

Cross-examination by MR GILLIS

MR GILLIS: Professor Bean, can we just start with your career before you moved to Moscow in 1995.

A. All right.

Q. You started your legal career in 1973 as an associate lawyer in New York, first with Simpson Thatcher, and then Patterson Belknap Webb & Tyler, is that correct?

A. Yes, but I would say that my career began the year prior

when I clerked for a judge on the second circuit, but yes.

Q. Thank you. And then for five years, from 1980 to 1985, you went in-house as a lawyer at the oil company Atlantic Richfield?

A. Yes, I did.

Q. Then from 1985 to 1992, you were general counsel in an American financial services and insurance group, AmBase, is that correct?

A. AmBase was the name we ended up with, yes.

Q. Then from 1992 until 1994, you worked as an investment banker in the US?

A. Yes, that's correct.

Q. And then moving on to the position in Moscow, you lived and worked in Moscow from March 1995 until July 2003, is that correct?

A. Yes, that's correct.

Q. And just briefly, from March 1995 until June 1998, you worked for the US law firm Coudert Brothers, rising to become the managing partner of their Moscow office?

A. Yes, with the correction that I actually ended at the end of May, but -- that's the correction I just made.

Q. End of May.

Then from May 1998 you moved to Clifford Chance where you were the head of corporate and foreign direct

investment until June 2002 before returning to the US  
in July 2003, is that correct?

A. Yes, that last year I was of counsel.

Q. Of counsel.

A. But I was in Moscow at that time.

Q. Just to be clear --

MRS JUSTICE GLOSTER: What's the difference between being  
a partner and of counsel?

A. Well, a partner was paid. And of counsel, I was there  
if they needed me, and if they had needed me I was paid.

MRS JUSTICE GLOSTER: Yes, I see.

A. It's an American concept that I brought to Russia  
actually.

MRS JUSTICE GLOSTER: Right. So you had another job  
from June 2002?

A. No, I did not.

MR GILLIS: Just to be clear, at the time you were admitted  
to practise law before the Bars of the State of New York  
and California, is that correct?

A. Yes, that's correct.

Q. So you were qualified to practise American law, not  
English or Russian law, including at the time you were  
working for Coudert and Clifford Chance in Moscow?

A. That is correct.

Q. It's also right, is it, that in Moscow you practised as

a transaction lawyer, not as a litigator?

A. That's certainly correct.

Q. Thank you.

Now, in your report at paragraph 12 G(B)5/1.100/5, you say that while you were in Russia, you acted for:

"... a large number of very substantial business clients and in a number of ... significant business transactions."

I think that's paragraph 12.

A. Yes, I see that.

Q. Professor Bean, you give a list of your clients and contacts in Russia in appendix 2 of your report, and could I just ask you to turn to page 43 G(B)5/1.00/43?

A. Yes.

Q. There you list your past clients.

A. Well, I guess the ones I could recall, yes. It would not be an exclusive list, it would not be an all-inclusive list.

Q. Am I right in understanding that this is a list of the clients and contacts from your time in Russia?

A. Yes, but at both firms.

Q. In both firms.

A. Yes.

Q. I think that you've listed 29 past clients, and if you'll take that from me?

- A. I will.
- Q. Of those 29 past clients I think -- and again if you'll take this from me -- that 19 are US or UK companies, like BP, Texaco and Proctor & Gamble, and there's one Italian company, Fiat, and another is a Japanese company, Toyota, is that right?
- A. Well, at the ultimate parent level where that name comes from, yes.
- Q. And then there are I think a few UK or US/Russian joint ventures, such as Polar Lights and the Sakhalin Island projects.
- A. Well, again, Sakhalin and all of those -- all of those entities that actually operated in Russia operated through local joint stock companies or some legal entity, juridical entity.
- Q. But Polar Lights, that's a Conoco/Rosneft joint venture, is that correct?
- A. It was Conoco at the time, now I think it's Conoco/Rosneft.
- Q. And the Sakhalin Island project, that was Shell and Gazprom?
- A. It is now Shell and Gazprom, it was originally Mitsui and Marathon and two others. Shell and Gazprom both came in much later.
- Q. Then I think there are five Russian companies, that's

Group Menatep, Gazprom, Inkombank, Renaissance Capital and Red October Chocolate Factory, is that right?

A. Those are Russian ownership, I suppose, yes -- well, they're certainly Russian companies, yes.

Q. Without getting bogged down in the exact percentages, is it right that your practice in Russia predominantly involved acting for very large non-Russian companies considering or making investments in Russia?

A. Early on, yes, before the financial crisis in 1998, that was certainly true. Afterwards, we did a great deal more of the Group Menatep, for instance, and some of the others were Russian companies going offshore, that is to say -- "offshore" is a strange term -- outside Russia. And again, I didn't actually list all of the companies, I listed the ones I could think of at the time.

Q. Thank you.

I think then, just to bring the position up to date, Professor Bean, you're now a professor at Michigan State University?

A. Law School, yes.

Q. I think we can see that from paragraph 8 G(B)5/1.00/5.

A. Mm-hm.

MRS JUSTICE GLOSTER: Was Brunswick Capital a Russian-based company?

A. Well, again, my Lady, they were all Russian based in

that they were Russian legal entities. I think Brunswick was actually a foreign capital that had come in and adopted that name, although, in the early '90s, any western name was good for PR, so even if it had been all Russian -- but I'm sure that that company -- I'm 84 per cent sure that that company was foreign based.

MRS JUSTICE GLOSTER: Foreign capital?

A. Yes, my Lady.

MRS JUSTICE GLOSTER: And Renaissance was foreign capital or Russian capital?

A. Renaissance was principally funded, I believe, by Mr Potanin eventually, but it began as a foreign funded operation, yes, my Lady.

MR GILLIS: So Professor Bean, can I start just by trying to establish what I hope will be common ground between us by reference to your report and the joint memorandum.

The first point, on which I don't think there's any real dispute, relates to the high level of risk which businesses faced in operating in Russia in the 1990s.

A. Risk, what -- I mean --

Q. Well, could I ask you to look at paragraph 50 of your report. We have that at page 19 G(B)5/1.00/19.

A. Yes, I have it.

Q. In paragraph 50 there, you are saying that:

"... by the mid-1990s ... [there was an] uncertain

... legal environment, overly aggressive tax inspectors, outmoded tax regimes based upon turnover, unhelpful, obstructionist governmental agencies and bureaucrats, potentially unreliable courts which could be exploited by aggressive competitors, and political uncertainty..."

Do you see that?

A. Yes.

Q. As I understand it, you accept that there was a high risk business environment in Russia in the mid-1990s, is that correct?

A. Well, if all these conditions mean high risk, yes.

I mean, it was possible to make money but it would have been much easier to do it in London.

Q. But what I think you're saying is that businessmen dealt with those difficulties not through the use of informal oral agreements but by moving ownership and transaction arrangements offshore; is that a fair summary of your position?

A. Well, I mean, you couldn't deal with -- I did say that and I do agree with that, but, I mean, that wouldn't have resolved any issues with unhelpful obstructionist government agencies or bureaucrats, for instance. But, as to ownership and major transactions, yes, you would want to be offshore and choose foreign law.

Q. So there's that high risk environment which you've

identified.

The second aspect, which I think may be common ground, I think that you accept that one of the ways in which Russian businessmen responded to the risks which you have identified was by hiding their assets, their agreements and the beneficial ownership of Russian companies. Is that correct?

A. Well, I did say that. I mean, I'm not -- does this still relate to paragraph 50?

Q. No.

A. Okay.

Q. Maybe I could ask you to look at paragraph 39 of the joint memorandum which we have at bundle 6, page 18 G(B)6/1.01/18.

A. Yes.

Yes, I see that.

Q. So is that common ground also, I mean there you are saying that you accept there was:

"... a widespread perception that government agencies and officials might act improperly in a way which threatened businesses and that many businessmen took steps to hide assets and transactions ..."

A. Yes, that's exactly what I said. I stand by that statement.

Again, that doesn't solve all your problems, but it

solves problems relating to ownership. And certainly, if you're offshore, the law is more reliable and you can avoid taxes.

Q. But can we agree that throughout the 1990s and the early 2000s there were strong incentives for Russian businessmen to conceal beneficial ownership of assets and many of them took steps to do so?

A. There were certainly incentives and many did, that's correct.

Q. Thank you. Then I think the third area of common ground is this: I think you accept that Russian businessmen made oral arrangements in the late 1980s and very early 1990s, that's before the dissolution of the Soviet Union, is that correct?

A. Well, I think we need to elaborate on that. Oral arrangements, of course there were many, many oral arrangements, and the rules did change, I mean the rules of conduct did change for Russian -- for people operating in Russia, whether they were Russians or foreigners, after that early period.

Q. Can we see what you say at paragraph 50 of your report and that's at page 19 G(B)5/1.00/19.

A. Yes, I have it.

Q. The third sentence there -- maybe I should start with the second sentence:

"Arrangements intended to be legally enforceable were not expressed only as oral agreements. There may earlier have been instances of informal oral arrangements, particularly under the uncertain conditions of the first Gorbachev [era], but by the mid-1990s, it is my view that the uncertain Russian legal environment ..."

And then you go on to say: had led to ownership of Russian businesses being moved offshore.

Do you see that?

A. I do see that.

Q. Am I right to say that the view you're expressing there is that before ownership of Russian businesses were taken offshore, the uncertain conditions may have led to informal oral arrangements?

A. Well, again, "informal oral arrangements" could relate to many, many things, only one of which would be whether the entity was offshore, or whether an agreement for a particular transaction was to be governed by foreign law.

We can't just talk about business, we have to talk about the ownership, we have to talk about taxes, transfer pricing. I mean it's all different. But, yes, it is certainly true that from the 1980s, the late 1980s, Russian businessmen and people operating in

Russia knew that it made sense to be in part offshore. For instance, Cyprus had a 4.25 per cent tax rate which was wonderful, and that also helped.

Q. But particularly in relation to the tax aspects, one can see that moving offshore would be particularly advantageous.

In terms of dealing with questions of ownership and seeking to conceal ownership, would you accept that that is something that could be done through the use of oral agreements?

A. Not in my experience.

Q. All right. Well, we'll come to your experience.

A. Okay.

Q. The fourth point that I was wanting to see if it was common ground is: would you accept that one of the consequences of the high risk environment was a tendency to do business, if possible, with close and trusted friends?

A. Well, I mean, business is done with people you think you can make money with, that's how you pick your business partners in a transaction.

I noted Professor Service's comments. It seems to me, on trusted friends, my understanding is that the real circle of trust were the people that, in the Soviet era, you sat at the kitchen table and complained with,

and that would have been a very, very small group. It would be highly coincidental if that particular group could later do you some good in business.

Q. But would it not be natural, in the high risk environment that you've identified, to seek to do business with people who you felt you could trust?

A. I guess that's always the case, yes. That's true in Delaware and New York as well.

Q. Thank you.

Can I just now identify something which I'm not going to be suggesting to you before we get to the main issues. First, I'm not going to be suggesting to you that it was the practice for Russian parties entering into arrangements with foreign investors to make those agreements orally. So I think we would accept that where one is talking about companies like BP or Texaco or Proctor & Gamble, there arrangements were not being entered into orally; do you follow?

A. Yes.

Q. The second point is that I was not going to suggest to you that significant corporate acquisitions generated no paperwork at all. I think we can agree that it was unavoidable that ownership of shares in Russia, Russian companies, would generate paperwork --

A. Well --

Q. If I can just finish.

A. Please.

Q. -- at least in respect of the actual share register.

A. Well, curiously enough, share registration in Russia is not reflected on a piece of paper, it's electronic, but yes, there would always be that and you could have a print-out of your interest from the share register reduced to a piece of paper. Yes, you could.

Q. Exactly so. The issue I would suggest to you is whether other aspects relating to beneficial ownership might remain undocumented, so that I suggest is the issue. Do you understand?

A. I understand your suggestion, yes.

Q. Thirdly, I'm not going to suggest to you that in the mid-1990s Russian businessmen never made use of offshore jurisdictions, either for making contracts between themselves or for ownership of their business assets; do you follow?

A. Yes.

Q. On the other side of the fence, can I try and identify the scope of your evidence. Firstly, I assume you would accept, would you, that it remained possible in the mid-1990s to use undisclosed oral nominee arrangements as a way of holding assets in Russia and disguising their beneficial ownership. Would you accept that?

A. I'm not sure I understand that. We're talking now about ownership of a juridical entity which has been created in Russia?

Q. Yes.

A. Okay, and by definition the ultimate -- the ownership of 100 per cent of the entity must be recorded on the share register. So that's recorded, and we're going to agree that that's the equivalent of paper?

Q. Yes.

A. Yes, okay. Given that it's registered in the name -- I mean, the typical example would be it's registered in the name of a Cyprus company, which has a legal name, or it's registered in the name of a Gibraltar, BVI or Isle of Man or one of these other tax-favourable jurisdictions, and that would be clearly recorded as a piece of paper, or from the share register.

Having done that, you don't know who it is that owns those offshore entities. That's correct. You have to go offshore to look at the share register there.

Q. Is that your answer?

A. Yes. What did I leave out?

Q. The answer to the question.

I was just asking whether you accepted that undisclosed oral nominee arrangements could be used as a method for holding assets in Russia and disguising

their beneficial ownership?

A. I mean, is anything possible? Yes. I guess I'm not sure what piece of it you're getting to but maybe you'll make that clear.

Q. I'm just wanting to get your evidence as to whether or not you are excluding the possibility that oral nominee arrangements, if I can put it in that way, could be used in the mid-1990s in Russia as a means for disguising beneficial ownership?

MRS JUSTICE GLOSTER: Are you putting "could" in the sense of legally as a matter of Russian law, or are you saying, Mr Gillis, they were used?

MR GILLIS: Well, I would put it in the sense of "could legally" and move on to "were being used"?

MRS JUSTICE GLOSTER: Let's take it in stages.

The first question is: do you accept, Professor Bean, that they could be used as a matter of Russian law?

A. Yes, my Lady. If we had Cyprus companies showing 100 per cent ownership of a Russian joint stock company, any arrangement could be made among Russians, if that's the limit, among Russians as to the ownership of that Cyprus entity.

MRS JUSTICE GLOSTER: Does Cyprus have bearer shares, for example?

A. I believe they did, but I can't give evidence on that.  
I think they did at the time.

MRS JUSTICE GLOSTER: Right. But a Panamanian company,  
you're accepting, for example, that an oral agreement  
might be made in relation to the bearer shares of  
a Panamanian company as between Russians?

A. Yes.

MRS JUSTICE GLOSTER: Could have been?

A. Could have been, yes.

MR GILLIS: Professor Bean, I would suggest to you not  
merely "could have been", but such arrangements were  
made between Russian businessmen; would you accept that?

A. For certain I was only there eight years and I only saw  
what I saw. I never saw that.

Could it have happened? Yes, it could happen.

Q. Professor Bean, I'll come in a moment to your  
experience. But what I would suggest to you is that  
where there was a relationship of trust between  
businessmen, and there was a perceived need to conceal  
the beneficial ownership of one of them in the assets  
that were jointly made, they may well choose to do that  
by way of an oral agreement, particularly in  
circumstances where they were not being advised by the  
likes of Coudert Brothers or Clifford Chance; would you  
agree with that?

A. Is it possible? I suppose it's possible.

Q. Thank you. What I would like to put to you, Professor Bean, is that neither the sources you cite in your report, nor your own experience at Coudert Brothers and Clifford Chance, provides a sound foundation for contending that Russian businessmen who trusted each other and who wished to conceal beneficial ownership of assets would necessarily have used offshore arrangements as opposed to oral agreements, would you agree?

A. Well, again, we're -- when I say offshore arrangements, at the first instance, that's the ownership of the Russian legal entity, and that was very easy to put offshore. My experience at Coudert and at Clifford as a lawyer, certainly nobody ever came and said, "We've got this secret agreement offshore, how does it work?" That never happened in eight years.

Furthermore, I never heard of that happening, you know, whether in the informal conversations that we had at the International Lawyers' Group or with the American Chamber of Commerce or just -- I mean, unfortunately lawyers tend to talk to lawyers and have their friends as lawyers and I never came across that.

Q. But would you accept that if Russian businessmen had entered into informal oral arrangements, in order to conceal beneficial ownership, that is not something that

they are likely to be disclosing to other persons?

A. I can tell you that they did not disclose that to me, that part, I can certainly agree.

Q. Can I look at what seem to be the sources that you rely upon in your report as being the basis of the views that you have expressed. I think one source that you rely upon is a quotation from David Hoffman's book "The Oligarch" which we see at page 49 of your report.

That's at paragraph 49 --

A. Paragraph 49 or page 49?

Q. Paragraph 49, page 18 G(B)5/1.00/18.

A. That I can handle.

Q. There you refer to the resentment of the -- I think in paragraph 49 you say, the resentment of the oligarchs' wealth:

"... did not of itself lead to 'informal ownership' but contributed to the widely observed [phenomena] of [ownership offshore] ..."

Then we can see that in footnote 21 you refer to a statement in Hoffman's book at page 447 in which he's talking about the offshore network operated by Mr Khodorkovsky, do you see that?

A. I see it, yes.

Q. And it says in the footnote:

"Khodorkovsky's far-reaching offshore network was

typical for Russian big business. All the other oligarchs -- indeed, thousands of Russian businessmen -- did the same thing, although many on a scale less grand. Every month, by very rough calculations, up to \$2 billion slipped out of Russia in wire transfers, phoney import-export documents, oil shipments and other means..."

Do you see that?

A. I do, yes.

Q. Now, what I would put to you is that, while this citation from Hoffman shows that Russian businessmen were using offshore companies, and I would suggest often for transfer pricing, and we don't dispute that --

A. Mm-hm.

Q. -- it does not, I would suggest, touch upon the question of whether Russian businessmen were also making oral agreements between themselves. Would you accept that?

A. Oral agreements between themselves, of course. That's how you get any deal started.

Are you meaning oral agreements between themselves or among themselves with respect to the ownership of offshore entities?

Q. Indeed.

A. Okay. Well, does this footnote go either way? I don't know. I happen to know a great deal about

Khodorkovsky's offshore networks since I've written a chapter in a book on it, and what this says -- what Hoffman says here is that thousands of Russian businessmen did the same thing, that is to say they had their ownership offshore. That was for many purposes, including taxes, including obfuscating ownership if they wanted to do that, including choice of foreign law as an option for dispute resolution, all of those things would make sense and were presumably part of the mix.

But you would want to be offshore -- I mean, almost everybody wanted to be offshore just because they were the people that knew very well that you could manipulate the judicial system.

- Q. I understand the desire to be offshore. What I'm asking you is that Hoffman is not saying anything about the use of oral arrangements between businessmen, Russian businessmen, to disguise beneficial ownership of shares. And I would suggest to you that that's something that could even be imposed on top of an offshore structure.
- A. Hoffman does not say that. I suppose you could impose that, sure, yes.
- Q. Professor Bean, could I now just turn to your experience in Moscow working for Coudert and Clifford Chance. Can I put to you that what you have done is essentially to extrapolate from your experience dealing with your

clients at those firms, and I don't dispute that experience, to conclude that Russian businessmen were not in the practice of using undocumented oral agreements for, amongst other things, concealing beneficial ownership.

Would you accept that is the basis of the opinion you are expressing before the court?

A. Certainly my opinion is based on my experience, yes, and while there were millions of Russian businessmen trying to do transactions, the major transactions, the large transactions were the ones that we were involved in. So I would want to draw the line somewhere.

The little shop owners never came to lawyers, for sure, and my exposure within the firms and within the lawyer groups that I participated in, there was no -- I mean, they were people that could afford our outrageous hourly rates, they were not little people.

Q. Exactly.

Professor Bean, what I was going to suggest to you is we've already seen that the majority of the clients you were working for in Moscow were not Russian individuals or companies, they were international companies, that's correct, isn't it?

A. Again, with the same qualification as before, that is to say if the majority were -- the source of funds and

business idea came from offshore, but again, everybody dealt with Russian legal entities.

Q. What I would suggest to you is that it wouldn't be appropriate to extrapolate from your dealings with international companies, such as BP or Texaco, to reach conclusions as to the practice of Russian businessmen, would you agree?

A. Perhaps not. But the Khodorkovsky experience I had, which was fairly extensive, over three and a half years, four years, that that is certainly typical -- I'm assuming that it's typical of how major oligarchs, to use a forbidden word, operated.

Q. That would give you one insight. The Khodorkovsky work was from what date?

A. Basically after the crash, so it would have been from some time in late '98, probably.

MRS JUSTICE GLOSTER: Did you do any joint venture deals, or that kind of deal, as between Russian businessmen?

A. My Lady, the first thing we learned was don't do a joint venture. That was what we learned. Were there transactions where the foreign party would own part of a legal entity and the Russians would own part of a legal entity? Yes. Our advice was always: you need the majority. But the typical joint venture going into foreign jurisdiction, that was never successful in my

experience.

MRS JUSTICE GLOSTER: I'm not sure you're quite answering my question. My question was: did you ever advise on deals where, whether it was a joint venture or a majority acquisition or whatever, the client on your side and the client on the other side were both Russian businessmen?

A. Oh, yes. Oh, yes. They were both Russian individuals, but they'd almost always have some offshore entity through which we operated, and through which they operated, for tax reasons, ownership reasons, et cetera.

MRS JUSTICE GLOSTER: What I'm interested in is whether your experience related to situations where, irrespective of the interposition of offshore entities, the ultimate beneficial owners on both sides of the deal were Russians as opposed to simply Texaco or BP or something?

A. Oh, yes, I would say especially dealing with the Yukos shareholders at the end. Yes, most of those transactions were done with Russian parties on both sides. Most. Some of them --

MRS JUSTICE GLOSTER: What was your involvement in the Khodorkovsky transaction? Who were you advising there?

A. We were advising -- the way the Khodorkovsky -- the Yukos shares were held, 80 to 70 per cent, depending on what number you like, were held offshore through exotic trusts which are actually referred to in one of the

footnotes. So they were already offshore, they had enough money, they could afford us, and they wanted to make sure that those transactions were done properly. If they were done properly with another Russian entity, almost invariably that entity also would have a Cyprus or a Gibraltar entity. But the ultimate beneficiaries of the transactions were Russian individuals or citizens.

MRS JUSTICE GLOSTER: On both sides?

A. Yes.

MRS JUSTICE GLOSTER: Yes, I see. Thank you.

MR GILLIS: Can I just look at the Russian clients that you were working for, that you've identified.

A. The ones that I've identified, yes.

Q. That you've identified. We've seen from the CV that that was Group Menatep?

A. Yes.

Q. Gazprom, Inkombank, Renaissance Capital and the Red October Chocolate Factory. Is that correct? Those are the Russian ones you've identified I think?

A. Well actually -- okay. Again, not to be picky, the Saint Springs investment, which is seven up from the bottom, that was an investment by the US Government fund in a completely Russian transaction that was owned by and created by an American businessman.

I'm not sure how that responds to your question. It was all Russian.

Q. It was all Russian?

A. Yes.

Q. But given that it was an investment by a US government fund, inevitably, that's going to be fully documented. I wouldn't suggest otherwise.

A. Good point, yes.

Q. Going back to the five companies we've identified, would you agree that we can exclude Gazprom from that list in the sense that it was a state-owned company which would not be involved in an attempt to disguise beneficial ownership from the Russian authorities?

A. Oh, I think that's completely wrong, with respect.

Q. Is it?

A. Yes, it was controlled -- by the time Mr Putin came to power, more than 50 per cent of Gazprom was held outside the government, in private hands. There were enormous numbers of good and not so good transactions involving Gazprom where people tried to buy shares before it was completely legal to buy shares in Gazprom. So by definition, almost all of the Gazprom transactions were trying to disguise ownership. This particular transaction was -- and I'm trying to think -- it almost had to be -- I don't recall the law controlling it but

most loan transactions at this time were done under New York law. Whether Gusinsky borrowed from Gazprom under that, I'm not sure. I just don't recall.

Q. I was just going to ask you in relation to Gazprom at page 43 of your CV G(B)5/1.00/43. We can see that, in relation to Gazprom, what you refer to is in connection with the divestiture of Mr Gusinsky's interest in NTV?

A. Yes.

Q. Is that the only transaction you were involved in dealing with for Gazprom?

A. Me personally, probably, yes. That's the only one I recall and it was a major transaction and I wanted to disclose the Gusinsky connection just because of what we're dealing with. There may have been other Gazprom transactions that were done in the office that I had some connection with. It would have been at Clifford, not at Coudert.

Q. What I would suggest to you, Professor Bean, is that in terms of the Russian companies that you are -- or the Russian clients that you were dealing with of Menatep, Inkombank, Renaissance Capital, Red October Chocolate Factory and even if you want to include Gazprom in relation to the Gusinsky transaction, what I would suggest to you is that's a fairly small sample size from which you seek to draw conclusions as to what Russian

businessmen did or did not do?

- A. That's -- yes, that's -- it's certainly as small as one person can do working 16 hours a day for eight years, yes.
- Q. I think you understand the point that I'm making. I'm not suggesting you didn't work hard; what I'm suggesting to you is that by far the majority of the work that you were doing was on behalf of international companies investing into Russia, rather than dealing with Russian companies.
- A. Investing -- well now, I mean, when you add "investing into Russia", I mean, almost everything that we did for, let's see, certainly for Group Menatep was probably going the other way. But I take your point, that is to say you didn't come to Clifford Chance unless you needed high quality transactional advice that you could pay for.
- Q. Absolutely. Would you accept that even in respect of the Russian companies, and you've talked about Yukos, your contact with them was as a result of the fact that they had instructed Coudert or Clifford Chance and they wanted the expertise that international firms like that could provide?

I would suggest to you that that very fact alone probably indicates that they were wanting transactions

which were documented in a formalised western way, possibly even extending to the use of offshore jurisdictions. Would you agree with that?

A. I would agree that they certainly wanted documentation, yes, and that almost everything involved something cross-border because that's how you did business so, yes, I would agree with that.

Q. What I would suggest to you is that your perception of what was normal Russian business practice may have been affected by the type of institution you were working for, which would have attracted clients that were seeking the specialisation that your firms provided, namely western documented transactions and offshore jurisdictions?

A. Yes. I mean, clearly that's part of it but, again, there weren't that many oligarchs or, you know, these super wealthy well-connected folks so, yes, but -- and I had a unique kind of relationship with one of them.

Q. But putting it round the other way, would you accept that a party who wished to acquire an interest in a business without documenting that interest would be highly unlikely to approach Coudert Brothers or Clifford Chance for their advice on that transaction?

A. At least highly unlikely, yes.

Q. So Professor Bean, what I put to you is that, attempting

to determine what was or was not happening in Russian business circles through the prism of what you were experiencing at Coudert and Clifford Chance might leave you with a distorted and wrong perception. Would you agree with that?

A. I would not agree that my perception is distorted or wrong. My perception is based on my experience which involved the clients and conversations with other lawyers, but it's -- as I said, it certainly didn't relate to the kiosks on the street or, you know, transactions in Khabarovsk. That, we did not deal with, that's for sure.

Q. Would you accept that it may have given you a partial perception of the type of transactions and clients that were approaching?

A. It gave me a good view of the major -- the big deals. The little deals, the other deals, that's right. I would agree.

Q. What I would suggest to you is not just the little deals but the deals that were being done by people who were not seeking to do it in the Coudert Brothers or Clifford Chance way, and that was something that you would not be seeing, is that correct?

A. It is certainly true that I did not see the things that didn't come to Clifford or Coudert, yes, that's

absolutely correct.

Q. Professor Bean, I want to move on but what I want to suggest to you is that, contrary to the impression that you may have received while in Moscow working at Coudert and Clifford Chance, there is evidence that Russian businessmen did make oral agreements between themselves, particularly where there was a close and trusting relationship between them, including for the purposes of concealing beneficial ownership.

A. I mean, you have my evidence and my view based on my experience. Obviously I never saw everything, that's correct.

Q. Can I just ask you about a few of these occasions. Professor Bean, I think you indicate that one of your four Russian private companies which you had as a client and from which you draw your conclusions was Group Menatep and the controlling shareholder of Yukos, is that correct?

A. Yes, but I mean, there weren't just four. There may only be four or five on this list, but yes -- but that's correct. And those were the -- you know, that was the major oligarch-related transaction, yes.

Q. There I think you indicate that you interreacted (sic) closely with Mr Khodorkovsky's associate Platon Lebedev?

A. Yes, that's correct.

Q. Did you also have any dealings with Mr Nevzlin, who was at various times the president of Group Menatep and the vice president of Yukos?

A. Never. We were limited at Coudert to representing the Yukos shareholders, and despite my what I thought was fantastic experience in oil and gas, we never got any business from the oil operating company. That was another firm and they were religious about keeping those separate. So I never met Mr Nevzlin, no.

Q. Are you aware that Mr Nevzlin has given evidence in this action?

A. I think I did see a reference in the transcript, there was some video thing, yes, I think that's right.

Q. Could I ask that you be provided with bundle D1 at tab 4.

A. I have witness statement of Nevzlin, yes.

Q. Could you turn to paragraph 52, which is on page 71 D1/04/71.

A. Yes, page 71 or page 13. Okay, I have it.

Q. If you could read paragraph 52. (Pause)

A. Yes, I read that.

Q. Can you see there, Mr Nevzlin is saying that the relationship, and that's between Mr Berezovsky and Mr Patarkatsishvili, was very close, with each trusting the other one 100 per cent. Can you see that?

A. Yes. Yes I do.

Q. Then going on to paragraph 53, if you could read that.

(Pause)

A. Yes, I've read that.

Q. So there Mr Nevzlin is indicating that he would not be surprised if Mr Berezovsky's dealings with Mr Patarkatsishvili were not in writing.

Now, Professor Bean, I'm not wanting you to comment on the question of whether Mr Berezovsky or Mr Patarkatsishvili frequently did deals without anything in writing, that's obviously not for you. But what I would suggest to you is this: there is a significant difference between deals between different corporate groups, such as you typically would have been dealing with while at Coudert and Clifford Chance, and the types of dealings which were made between individuals with a close and trusting relationship of the nature referred to here. Would you agree with that?

A. Well, a comparable relationship existed between Mr Khodorkovsky and Mr Lebedev, whom I saw very regularly, and they had buried off in Gibraltar a very clearly documented relationship where I think Lebedev had 7 per cent of Yukos tracing down through all the corporate structures.

So nobody was closer than Lebedev and Khodorkovsky,

maybe witnessed by the fact that they both stayed in jail together and neither one has tried to get out based on the other -- on testimony against the other, but I have no basis for commenting on the relationship between these two gentlemen.

Q. But Khodorkovsky was using Clifford Chance and Coudert and, in consequence, I would suggest to you highly likely that they would end up with those formalised off-shore arrangements?

A. To be clear, Clifford or Coudert had absolutely nothing to do with establishing those arrangements. I think they were done by Stephen Curtis, or somebody like that, for certain.

So we had nothing to do with it, and indeed, as I reported somewhere in my report, when the disclosure was made in connection with the proposed public offering of Yukos to be listed on the New York Stock Exchange, which I did work on for more than a year, and I had told Lebedev that the ultimate ownership of Yukos has to be disclosed completely or the SEC won't even read the first page. There's a footnote or a reference to the Moscow Times article --

Q. We've seen that.

A. That was news to me; how they held it offshore was news to everybody. But it was there, and it was there for --

I have no idea how long it was there.

So it was there, and we didn't do it, and these two guys couldn't be closer.

Q. And they chose to do it in a particular way, through Clifford Chance and Coudert --

A. Excuse me --

Q. Or Stephen Curtis.

A. Yes, or some of those guys, yes.

Q. All I wish to ask you is that, seeing the description of the relationship that existed between Mr Patarkatsishvili and Mr Berezovsky, I don't think that your evidence is seeking to go so far as to exclude the possibility of oral agreements being made between them in the mid-1990s or even 2000?

A. I never met either of them so -- and I don't know them, and I didn't know much about them, frankly. So you're correct.

Q. Could I now just ask you to look at one point that arises on the evidence contained within the reports themselves. This is the Potanin interview which you refer to at paragraph 62.

A. My paragraph 62?

Q. Your paragraph 62, which we have at page 22

G(B)5/1.00/22.

A. Real page 22.

Ah, yes, I remember this comment from Fortescue.

Q. Yes. So here you're referring to the contents of a 2010 interview with Mr Potanin, and maybe just so that we can understand the point you're addressing, maybe we should look at the relevant quote which we have at paragraph 278 of Mr Fortescue's first report which is at G(B)1, tab 1 at page 76 G(B)1/1.01/76.

A. 278, at page --

Q. It's paragraph 278 on page 76.

A. Yes.

Q. You see there that what Potanin says is that:

"Remember the 1990s, which from today's perspective looks like a time for Rome antics. Then we did deals, buying assets worth tens of millions of dollars, serious stuff. Sometimes our partners would carry out an operation and register the documents in their name, and then give us our agreed share."

Do you see that?

A. I do.

Q. Then Mr Potanin goes on to talk about two particular deals, and we can see that's OLBI and Mikrodin, where he goes on to say that the interests in those companies were held on behalf of his two business partners under oral agreements. Do you see that?

A. I do, yes.

Q. And Professor Fortescue has expressed the view that this interview with Mr Potanin, one of the most prominent 1990s oligarchs, is evidence that there was a practice then to enter into oral agreements with partners in major business ventures; that's the thrust of --

A. That's the thrust of Fortescue yes.

Q. I think your response to this, and if we can go back to paragraph 62 of your report G(B)5/1.00/22, is to say that this doesn't tell us that it was the practice of Russian businessmen to enter into oral agreements in the mid-1990s because the deals which Mr Potanin is referring to you say were done prior to the dissolution of the USSR. Is that correct?

A. I did say that, yes.

Q. Professor Bean, what I'm going to suggest to you is that this attempt to distinguish, if I can put it in that way, what Mr Potanin is saying is not properly founded, and the first reason is just to go back to look at what Mr Potanin is actually saying, and that one can see from paragraph 278 G(B)1/1.01/1. And I suggest to you, as one can see, he's saying:

"Remember the 1990s, which from today's perspective looks like a time for romantics."

Then he goes on to continue, to say what we've already looked at.

Professor Bean, I would suggest to you that regardless of the specific deals Mr Potanin goes on to refer to, it's quite clear that Mr Potanin is talking about the 1990s generally, and that his observations about how business was being done were not limited to the period before 1991. Would you like to comment on that?

- A. Yes, I would. OLBI and Mikrodin were both created in about 1987/88 and they were fully merged into Potanin's empire by 1995. So whatever is true about, whatever it means, "the 1990s", the Soviet Union disintegrated on December 25, 1991, certainly this should not refer to the entire ten-year span. I didn't get there until just about the time that the merger into his Interros, or whatever piece of his empire they put him in, occurred.

I guess if I were rewriting this now, I might focus a little more on when Mikrodin was created, for instance, and when the merger took place. But I don't think you can conclude from this that he was saying, you know, that the end of 1999 is the same as the beginning of 1990.

- Q. But are you accepting it up to 1995?

- A. I am accepting that that's when the transaction took place. It was before -- well, almost all of that '90s was before I got there, and, you know, Mr Potanin was

saying whatever he was saying. If we really wanted to know I suppose we would ask Potanin.

Q. Well, we'll come to look at OLBI and Mikrodin, but what I would suggest to you is that it's quite clear that, contrary to what you suggest in your report, Mr Potanin is not referring to the period during the Soviet Union, he is talking about the 1990s, and making it quite clear that during that period they were doing transactions on the basis of oral agreements.

A. Well, three years of the 1990s were under the Soviet Union, and two years afterwards were under Russia and then the merger, so, I mean, you're welcome to read Mr Potanin's statement as referring to 1999. I know that OLBI and Mikrodin were created long before.

Q. I think the Soviet Union was 1991, wasn't it, the end of the Soviet Union?

A. Okay, I'm sorry, 20 per cent.

Q. But let's leave that aside.

Can we then just look at what you suggest about the transactions themselves, and in paragraph 62, subparagraph 1, as we've seen, you're saying that the transactions that are referred to predate the end of the Soviet Union, and you give a citation to support that G(B)5/1.00/22.

A. Yes.

Q. That, I think, we have at tab 27 to your report?

A. Yes.

Q. This is a citation to an article from the website  
"Kompromat RU".

A. Not one I particularly rely on.

Q. I was going to suggest, it's not a particularly  
reputable source, is it?

A. I agree completely.

Q. It doesn't mean that the information it gives is  
necessarily wrong.

The passage I was wanting to refer to in -- well,  
maybe you could just remind yourself of the article if  
you feel the need to, but the passage that I wanted to  
look at in particular was on the second page under  
"Dossier".

A. Mm-hm.

Q. The first point that I was wanting to make to you about  
the --

MRS JUSTICE GLOSTER: Could you give me a reference, please?

MR GILLIS: I'm sorry, it's G(B)5/1.27, page 211

G(B)5/1.27/211.

MRS JUSTICE GLOSTER: Thank you.

MR GILLIS: The first point that I was wanting to ask you  
about in relation to this source, this document makes no  
reference at all to the second company that Mr Potanin

refers to, OLBI, that's correct, isn't it?

A. That seems to be correct, yes.

Q. So in terms of relying upon this as a source for showing that Mr Potanin was referring to transactions in the Soviet period, it doesn't actually support that proposition, does it?

A. One way or the other, no, it doesn't, that's right.

Q. In relation to OLBI?

A. Yes.

Q. The second point I wanted to ask you about is in relation to Mikrodin, and on the first page, the third full paragraph, do you see that refers to the foundation of Mikrodin being in 1989?

A. Yes, okay.

Q. But more significantly, when we go over on to the second page, under the heading "Dossier", it refers to a series of business ventures of Mikrodin up to 1997, do you see that?

A. I see '92, I see '95, but I'll accept -- I mean, it clearly goes beyond --

Q. I think the reference to:

"... two years later the plant lost ..."

Do you see that? It's talking up to 1997.

A. Ah, yes, okay, I'm sorry. It's at the very end of that paragraph.

Q. Yes.

A. Yes, I see that.

Q. So what I would suggest to you is that there's nothing in this document which, contrary to your suggestion, dates the agreement that Mr Potanin is referring to as being in the Soviet era, would you agree with that?

A. Well, I guess my point in dredging up this document was that it clearly started in the Soviet era, that Mikrodin was operating in the Soviet era. There's nothing in here that explains that Mikrodin and Potanin were at the same time investing in ZIL, but -- I mean, yes.

Is this a great source? No. Could I have found a better one? Maybe. Not in the time I had, but yes.

Q. I'm not complaining about the quality of the source. What I am doing is just looking at your attempt to suggest that when Mr Potanin is referring to the 1990s, in actual fact he's mistaken in that, and he's referring to Soviet deals.

What I would suggest to you is that there is nothing here that indicates that the agreement that Potanin is talking about is a Soviet deal but could be a deal done any time between 1990 and 1997.

A. Actually earlier than 1990, but -- and I'm not sure about the 1997, because I know the merger occurred in I think September of '95, but, I mean, except the fact

that in 1990 we were still in Soviet time.

I agree, this does not completely support what I said, and I apologise for that if that's a problem. But I guess it doesn't say that the practice that Potanin is referring to continued throughout the '90s, and it may have. It may have. But this doesn't say it and I never saw it.

Q. Thank you. Well, we've seen what Mr Potanin said himself --

A. This is true.

Q. -- when he was describing it as being how they were doing business in the 1990s.

A. In a journalistic report, yes.

Q. Could I move on, and what I'd like very quickly to consider is some of the evidence in the action, and try to understand, in the light of that evidence, the consequence it may have on the views you've expressed.

MRS JUSTICE GLOSTER: Right, I think well do that at 2 o'clock.

MR GILLIS: I'm obliged.

MRS JUSTICE GLOSTER: Very well.

You mustn't talk to anybody about your evidence --

THE WITNESS: I understand, my Lady.

MRS JUSTICE GLOSTER: -- or communicate with anybody about it over the break.

Very well, 2 o'clock.

(12.59 pm)

(The short adjournment)

(2.00 pm)

MRS JUSTICE GLOSTER: Yes, Mr Gillis.

MR GILLIS: Professor Bean, could I please ask that you be provided with bundle E4, open at tab 1. This is a witness statement served on behalf of Mr Abramovich, given by Mr Bulygin, a former senior Rusal executive and an associate of Mr Deripaska.

One of the things which Mr Bulygin gives evidence about is the making of the merger agreement in 2000 which led to the creation of Rusal. In that context, could I ask you to look at paragraph 10 which we have on page 4 E4/01/4. You will see there that he's talking about negotiations between Mr Deripaska and Mr Abramovich which he says took place in Moscow at the end of February or in early March 2000. That's at paragraph 10, do you see that?

A. Yes.

Q. Then going over to paragraph 11, page 5 E4/01/5, what Mr Bulygin says is this:

"The discussions concluded by around 4.00am or 5.00am. Mr Abramovich then proposed that we should all travel to his home in Sareevo Village to celebrate the

merger. I very much had the impression that, so far as Mr Abramovich was concerned, the deal had now been reached and there was no need to document our agreement straightaway. He seemed to think that a handshake was enough."

Do you see that?

A. Yes.

Q. So his evidence was that Mr Abramovich appeared to consider that an oral agreement was binding, although I should make clear that they did proceed to document it subsequently. All right?

A. Yes.

Q. Now, Professor Bean, what I would suggest to you is this, that unless Mr Bulygin's evidence is wrong it would tend to suggest, contrary to the impression that you may have received at Coudert and Clifford Chance, that Russian businesspeople, even in 2000, did regard oral agreements as binding. Would you agree?

A. No. I mean, yes, we have the two principals, these are the principal principals, and they are negotiating a transaction and they come to agreement on the principal terms and they have a handshake. That deal is done, and that must happen in Texas and New York and probably in England.

But then the ministerial work, which isn't going to

be done in a couple of hours but more likely a couple of weeks, the lawyers will document the transaction.

That's absolutely typical. I've been in both kinds of meetings, and it doesn't surprise me at all. I'm not sure what Bulygin was saying. For sure, the principal thought the deal was done because they had an agreement on the important terms. I don't know that -- I mean, if I had been there, I would have said, "Well, okay, that's the principal terms, now we're going to document it." But of course it doesn't say that there.

Q. What I suggest to you it's indicating is that, so far as they were concerned, once the oral agreement had been concluded the agreement was binding?

MRS JUSTICE GLOSTER: Mr Gillis, again, I think this is asking the witness to comment on a factual situation. You've put the point to him, he's answered it. At the end of the day these are all matters for me to decide.

MR GILLIS: I'll move on.

Can I then just take you to another piece of Mr Abramovich's evidence, just to see how this fits with your view.

Professor Bean, it was Mr Abramovich's oral evidence that in 2003 he made an oral agreement with Mr Deripaska regarding the terms on which he would sell the half of Rusal that he controlled, and that he considered himself

bound by that, notwithstanding the fact that it was not reflected in the contractual documentation.

A. It wasn't ever reflected, or it wasn't -- I mean, when they had the meeting, obviously, it wasn't.

Q. I'll show you what Mr Abramovich indicated. And his position seemed to be that he was bound by an oral agreement even though it was contrary to what was subsequently documented.

But, my Lady, this is --

MRS JUSTICE GLOSTER: Well, again, with the greatest of respect to Professor Bean, I'm not going to be assisted by his comments on a particular factual situation. You put to him that there may be circumstances in which people agree oral agreements, and I'm sure he'd accept that. But with the greatest of respect to him, his views on whether or not there was a deal and, if so, whether it was subject to contract, a current agreement subject to a condition subsequent that had to be completed, is not going to help me on the aspects of the matter I don't think.

MR GILLIS: I'll move on then.

One final point then, Professor Bean. In your evidence you assert, and I think maybe we can see this most clearly at paragraph 50 of your report, this is at page 19.

A. Yes, I have it G(B)5/1.00/19.

Q. There in the second sentence you say:

"Arrangements intended to be legally enforceable were not expressed only as oral agreements."

Do you see that?

A. Second sentence? Oh, yes, I'm sorry, I was on the third sentence. Yes, I see that.

Q. And you make the same point at various other places in your report where you say oral agreements were not intended to be legally binding. Do you recall that?

A. I do.

Q. Professor Bean, would you not accept that that is far too dogmatic a statement?

A. I would not accept that, no. I mean, these were exactly the people that knew the Russian court system better than I, better than you. They were the people that knew that especially early, and regrettably still today, it is possible to influence the judiciary. So if you really wanted something enforced, legally enforced, as I think that's the phrase here, you would document it.

And pursuant to what I've said before, in my experience you would document it and you would do everything you could to make sure that the dispute resolution clause was for offshore resolution, whether it was arbitration or courts.

- Q. What I had understood you to be suggesting by this statement is that oral agreements were not intended to be legally binding in the sense that there was no intention to create legal relations. Is that not the point you're seeking to make?
- A. I'm not sure I follow the question, because when two principals are there and they make a deal, they think they're bound, they think the deal has been completed, we've got the price, we've got the terms and we know the asset that's to be exchanged or whatever. Then the lawyers document it, and if they can document it, there's no problem. If there's an issue that the lawyers can't agree on, you go back to the principals. The principals have always assumed that the deal was the deal, and if the darn lawyers can't make it work then we'll think about it again. But --
- Q. Professor Bean, I'm sure that's the experience that you have from Coudert and Clifford Chance where these transactions were all heavily documented. I'm just looking at the question of if there was an oral agreement made between the parties, and you seem to be saying in paragraph 50 that the mere fact that it was an oral agreement as opposed to a documented agreement of itself indicated that it was not intended to be legally enforceable. Now, if that's not the point you're making

then I don't need to pursue the point.

A. All right, legally enforceable to me meant that you might have to go to court. That's what I'm trying to say there. If it's "I'll meet you tomorrow morning and we'll, you know, have breakfast together", that's an oral agreement and it's not intended to be legally enforceable. That's what I was trying to say here, perhaps I should have been more elaborate.

Q. Well, Professor Bean, what I would suggest to you is that the question of whether the parties to an oral agreement intended to be legally binding is going to be dependent upon the specific facts of the case, would you agree with that?

A. For sure, absolutely, yes.

Q. Might I just have a moment. (Pause)

So, as I understand it, you're not suggesting that the mere fact that the agreement is an oral agreement necessarily means that it was not intended to be legally binding?

A. Too many negatives in that.

Q. I think you're probably right.

You're not suggesting that simply because it is an oral agreement, that indicates that it is not intended to be legally binding?

A. Well, you can't have a documented legally binding

agreement before you have an oral agreement. I mean, that's just not how it works.

Q. If you could just stick with an oral agreement.

A. Okay, we have an oral agreement, "I'll see you for breakfast tomorrow".

Q. No. Take it in the context of a commercial arrangement, and an oral agreement has been made in relation to a commercial arrangement. You are not suggesting the mere fact that it is only oral, and has not been documented, necessarily means that it was not intended to be legally binding?

A. You still have three "nots" here.

MRS JUSTICE GLOSTER: Never mind, just answer the question, please.

A. I guess the answer is yes, that's correct.

MR GILLIS: Thank you.

My Lady, I have no further questions.

MRS JUSTICE GLOSTER: Yes, thank you.

Ms Davies?

MS DAVIES: I have no questions for this witness, my Lady.

MRS JUSTICE GLOSTER: Mr Adkin.

Re-examination by MR ADKIN

MR ADKIN: Just one piece of re-examination, my Lady.

Could you please go to [draft] page 84 of the transcript, you may need to be helped to get back there.

If you could be taken, please, to [draft] page 84,  
line 22.

A. Yes.

Q. If you wouldn't mind reading from there to [draft]  
page 85, line 5. (Pause)

A. Okay, I think I've read it all.

Q. Thank you. Could you please take your report and turn  
to page 22. For the transcript, that's G(B)5/1.00/22.

A. Yes, I have that.

Q. The footnote at the bottom of the page, footnote 24, is  
that the footnote that you were referring to?

A. Yes, that is the footnote that I was referring to.

MR ADKIN: Thank you very much, Professor Bean.

My Lady, I have no further questions.

MRS JUSTICE GLOSTER: Thank you very much indeed,  
Professor Bean, for coming to give your evidence and  
assisting the court.

(The witness withdrew)

MR GILLIS: My Lady, I think that is the evidence completed.

MRS JUSTICE GLOSTER: Thank you very much.

Housekeeping

MR GILLIS: I think we now adjourn until two weeks today for  
Mr Sumption's oral closing.

MRS JUSTICE GLOSTER: Right. So that's December 19, Monday.

MR GILLIS: I think that's correct.

MRS JUSTICE GLOSTER: At what time do you want to start then?

MS DAVIES: My Lady, I'm sure Mr Sumption would start at whatever time my Ladyship wishes. I understand he doesn't anticipate being more than two days, in fact he anticipates being less than two days, so there's no pressure on time.

MRS JUSTICE GLOSTER: Shall we start at 10.30 then?

Does that suit you?

MR GILLIS: I'm obliged.

MRS JUSTICE GLOSTER: You won't be able to get access to the room on Wednesday of this week, or you may not be able to get access to the room on Wednesday of this week, so if you forget anything today when your clerks clear away you will need to come and get it tomorrow. I mean, you'll be allowed back in on Thursday, but I anticipate there may be a difficulty on Wednesday --

MR GILLIS: My Lady, if we could just clarify.

MS DAVIES: Yes, my Lady, we had understood we didn't need to clear the court.

MRS JUSTICE GLOSTER: No, you don't need to clear it.

I would be grateful if you could tidy it up because this is one of the rooms into which her Majesty is actually coming to see the courtroom. So if it looks -- I would like to have everything here because it looks a bit more

real world, but I think if you could just sort of tidy it up a tiny bit.

MS DAVIES: We will certainly tidy around us.

MRS JUSTICE GLOSTER: No, the only point I was making was not a tidy away point, it's just that you might have a problem getting in here on the Wednesday.

MR GILLIS: Can we ask, do all of the desks need to be cleared?

MRS JUSTICE GLOSTER: No.

MR GILLIS: In other words, is the court being used?

MRS JUSTICE GLOSTER: No, the court is not being used. It's just because they have to have the detectives, or whatever, in here on Wednesday morning but the court -- oh, right, you mean is the court being used in the next two weeks?

MR GILLIS: Yes.

MS DAVIES: Our understanding, the enquiries we've made of the Commercial Court, is that it's not and we can leave the computers and the files. There may be a different issue --

MRS JUSTICE GLOSTER: That's certainly my understanding but I'll go and check and get my clerk to confirm the position to you one way or the other. That's certainly my understanding.

MS DAVIES: There may be an issue about the first week

of January, and we're still trying to ascertain that, because obviously it would be more convenient if at all possible to leave all the technology rather than having to clear it between 21 December and 17 January.

MRS JUSTICE GLOSTER: Yes, I can see that.

MS DAVIES: But we're seeking to ascertain that position.

MRS JUSTICE GLOSTER: Yes. Are we going to need a big court for January?

MR GILLIS: I suspect there will be quite a lot of press interest.

MRS JUSTICE GLOSTER: Yes, I expect there will be. Let me check that.

Certainly I would be very reluctant if you were required to clear away between now and --

MS DAVIES: Certainly we have been told -- we have been asked to tidy, and we understood that, but we have been told we can leave certainly the computer and the files, and we were hoping to negotiate the same position for January because --

MRS JUSTICE GLOSTER: Particularly because we're going to need to have the simultaneous translation booth, so I can't see that there's going to be any realistic prospect of us having -- but I suppose it may be possible that in January they want to -- no, because they're not going to use it the week before.

MS DAVIES: There's about four court days in between,  
because my Lady --

MRS JUSTICE GLOSTER: Yes, I'm on compensatory leave.

MS DAVIES: But literally the process of rewiring the  
courtroom and everything itself is obviously  
time-consuming, so if at all possible --

MRS JUSTICE GLOSTER: I'm sure we won't have to, but I'll  
get my clerk to email you with confirmation that you  
don't have to -- well, hopefully that you don't have to  
move.

MR GILLIS: I'm obliged.

My Lady, one would have thought that as long as the  
desks have been cleared of papers, even if the courtroom  
is being used, the screens, the computers can stay.

MRS JUSTICE GLOSTER: Well, I can't imagine they'll want to  
use it for four days because it's booked to us.

Very well, so 10.30 on Monday, the 19th.

Remind me, what is the date by which I ordered  
submissions to be filed?

MS DAVIES: My Lady, our submissions are due to be filed  
this Friday at 4.30, and my learned friends' the  
following Friday, the 16th, again at 4.30.

Is there a particular means by which my Lady would  
prefer us to file them?

MRS JUSTICE GLOSTER: No, just electronically and, if

they're going to be lengthy, which I anticipate they will be, perhaps I could have hard copies as well.

MS DAVIES: Of course.

MR GILLIS: My Lady, I think the Chancery defendants' submissions are this Friday as well.

MR MALEK: No.

MRS JUSTICE GLOSTER: No, they're the same as yours.

Very well. I'll adjourn the case then until 10.30 on Monday, the 19th.

(2.20 pm)

(The hearing adjourned until  
Monday, 19 December 2011 at 10.30 am)

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