

IN THE ARBITRATION UNDER CHAPTER ELEVEN OF THE  
NORTH AMERICAN FREE TRADE AGREEMENT AND THE  
UNCITRAL ARBITRATION RULES

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In the matter of Arbitration between:      :
:
INTERNATIONAL THUNDERBIRD GAMING CORPORATION, :
:
    Claimant/Investor,                      :
:
    and                                       :
:
THE UNITED MEXICAN STATES,                  :
:
    Respondent/Party.                       :
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Volume III

Wednesday, April 28, 2004

The World Bank  
1818 H Street, N.W.  
The "MC" Building  
Conference Room C1-108  
Washington, D.C.

The hearing in the above-entitled matter  
reconvened on, pursuant to notice, at 9:15 a.m.  
before:

ALBERT JAN VAN DEN BERG, President of the  
Tribunal

THOMAS WALDE, Arbitrator

AGUSTIN PORTAL-ARIOSA, Arbitrator

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## P R O C E E D I N G S

1  
2 PRESIDENT VAN DEN BERG: I open the  
3 hearing in the UNCITRAL arbitration in the NAFTA in  
4 Thunderbird versus Mexico, day three, 28 April,  
5 2004.

6 I would like first to catch up with the  
7 administrative matters. We received this morning  
8 the list of dramatis personae. The Tribunal  
9 understands that it has been agreed between both  
10 sides?

11 MR. CROSBY: That's correct.

12 MR. PEREZCANO: Yes, Mr. President.

13 PRESIDENT VAN DEN BERG: Then there are  
14 still two things outstanding; that's the chronology  
15 and--are the parties making progress? Mr. Crosby?

16 MR. CROSBY: Your turn.

17 MR. PEREZCANO: No, Mr. President, we have  
18 had no time to concentrate on chronology, to focus  
19 on chronology yet.

20 PRESIDENT VAN DEN BERG: And for the  
21 claimant, the corporate structure charts?

1 MR. CROSBY: We haven't made a hard copy.  
2 My apologies.

3 PRESIDENT VAN DEN BERG: Okay, thank you.  
4 And the last point, Mr. Perezcano, the tentative  
5 list of issues. You were saying yesterday that you  
6 were reviewing it, and you might have comments.  
7 Yesterday, we heard from the claimant that they had  
8 no comments with the tentative list of issues. Do  
9 you have comments on your side?

10 MR. PEREZCANO: Yes, we do have the  
11 comments. Mr. Chairman, we have them here on a  
12 photocopy, and we can distribute them.

13 PRESIDENT VAN DEN BERG: You can  
14 distribute it?

15 MR. PEREZCANO: Yes, we have copies for  
16 the Tribunal and for the other party.

17 PRESIDENT VAN DEN BERG: Then I suggest we  
18 go off the record again and wait until the key is  
19 found to the room.

20 (Off the record.)

21 PRESIDENT VAN DEN BERG: All right.

1 Mr. Crosby, your side ready?

2 MR. CROSBY: Yes.

3 MR. PEREZCANO: We're ready.

4 MR. CROSBY: Thank you for the additional

5 time. I think Mr. Atallah that lost the keys.

6 He's lost five hotel cards in the last two days.

7 MR. ATALLAH: I apologize.

8 MR. CROSBY: You know it's sufficient time

9 also to prepare for the cross-examination?

10 MR. CROSBY: Yes.

11 PRESIDENT VAN DEN BERG: Okay, thank you.

12 For the record, we have received the comments from

13 Mexico on the tentative list of issues. The

14 comments as far as I can see are welcome comments.

15 Typically, if you have a first draft, then you get

16 some further comments on it, but you will also

17 like, of course, to have the claimant the

18 possibility to comment on the comments of Mexico.

19 And I'm mindful about the time frame in

20 the sense that if you have your closing statements

21 tomorrow, perhaps you would like to address a

1 number of issues, but then in the second version.

2 So, if we do it in this way, if you could look over

3 lunch, Mr. Crosby, with your team, and Mr. Weiler,

4 and, Mr. Atallah, the comments, and let me have

5 your comments on the comments, if I may call it

6 that way, so we could finalize it still this

7 afternoon so that you have a revised list,

8 tentative list of issues at the end of the day for

9 all practical purposes.

10 Is that agreeable, that procedure?

11 MR. WEILER: We're actually ready to make

12 our comments now on the comments, if you would

13 like.

14 PRESIDENT VAN DEN BERG: Can you already

15 make now the comments on the comments?

16 MR. WEILER: Yes.

17 PRESIDENT VAN DEN BERG: I suggest first

18 we do the examination of Mr. Gomez, and then

19 thereafter we can spend 10 minutes--how much time

20 do you need for your comments?

21 MR. WEILER: Three.

1           PRESIDENT VAN DEN BERG: Three. Okay.  
2 That goes even quicker.  
3           We will do it before the next witness  
4 comes for examination because then Sara will then  
5 incorporate this into the new version. Thank you.  
6           Mr. Gomez, welcome, you are a witness  
7 called by the claimant in this arbitration. Could  
8 you please state your full name for the record.  
9           CARLOS GOMEZ ESTEVA, CLAIMANT WITNESS, SWORN  
10          THE WITNESS: Carlos Gabriel Gomez Esteva.  
11          PRESIDENT VAN DEN BERG: Would you please  
12 state your place and date of birth.  
13          PRESIDENT VAN DEN BERG: What is the date  
14 of birth, Mr. Gomez?  
15          THE WITNESS: 18 April 1959.  
16          PRESIDENT VAN DEN BERG: And the place?  
17          THE WITNESS: Mexico, D.F.  
18          PRESIDENT VAN DEN BERG: And you are a  
19 national of which country?  
20          THE WITNESS: I'm a Mexican citizen.  
21          PRESIDENT VAN DEN BERG: Thank you.

1           Mr. Gomez, are you familiar with the  
2 manner in which the examination of witnesses  
3 proceeds in this case?  
4           THE WITNESS: Yes, I know.  
5          PRESIDENT VAN DEN BERG: I don't need to  
6 explain it to you?  
7           THE WITNESS: That's right.  
8          PRESIDENT VAN DEN BERG: I see that you  
9 testified with the assistance of interpreters. If  
10 any question is unclear because of language or for  
11 any other reason, please do seek a clarification of  
12 the question.  
13          THE WITNESS: Right.  
14          PRESIDENT VAN DEN BERG: If you don't do  
15 so, the Tribunal assumes that you fully understood  
16 the question and that your answer responds to the  
17 question.  
18          THE WITNESS: That's right.  
19          PRESIDENT VAN DEN BERG: Now, you will  
20 appreciate that appearing as a witness, be it  
21 before the court or an Arbitral Tribunal is very

1 serious business.

2 THE WITNESS: I understand that.

3 PRESIDENT VAN DEN BERG: And you  
4 understand the Tribunal make requires to you make a  
5 declaration, the text of which is in front of you.

6 THE WITNESS: I solemnly declare on my  
7 honor and conscience that I will speak the truth,  
8 all the truth, and nothing but the truth.

9 PRESIDENT VAN DEN BERG: Thank you.

10 Mr. Gomez, could you please go to your  
11 witness statement. I see that in front of you.

12 THE WITNESS: Yes.

13 PRESIDENT VAN DEN BERG: Your witness  
14 statement is dated the 13th of August, 2003.

15 If you go to page eight. Could you please  
16 confirm for the record that that is your signature?

17 THE WITNESS: It is.

18 PRESIDENT VAN DEN BERG: Thank you.

19 Mr. Crosby, proceed with the direct  
20 examination.

21 DIRECT EXAMINATION

1 BY MR. CROSBY:

2 Q. Mr. Gomez, what is your profession?

3 A. I'm a lawyer, and I'm a graduate of the  
4 University of Nawalk.

5 Q. And isn't it correct you have been  
6 assisting Thunderbird in connection with this case  
7 and its activities in Mexico over the last year or  
8 two?

9 A. That's correct. I apologize. I cannot  
10 hear the translation. I'm asking--that's right.

11 Q. Did you have occasion to visit certain  
12 skill-machine facilities in the last two weeks?

13 A. That's right.

14 Q. What I'd like to do is put before you  
15 pages 38 through 44 of the statement of rejoinder,  
16 which sets forth a list of facilities which are  
17 either closed or--we'll use it to guide your  
18 testimony.

19 PRESIDENT VAN DEN BERG: Please proceed.

20 BY MR. CROSBY:

21 Q. Mr. Gomez, would you please refer to page

1 41 of the actual page 41 of the document that's in  
2 front of you.

3 Do you have that in front of you?

4 A. Yes, I have it in front of me.

5 Q. The first item, facility referenced on  
6 that document is Club 21.

7 Do you see that?

8 A. Yes, I do.

9 Q. And have you had occasion to visit that  
10 facility recently?

11 A. Yes. It so happens that it's near the  
12 place where I live, and it's an establishment that  
13 I frequently see. It's open, and last week on  
14 Thursday it continued being open, and it was in  
15 operation.

16 Q. Did you visit the facility last week?

17 A. Yes.

18 Q. Did you witness the types of machines in  
19 operation at that facility last week?

20 A. That's right.

21 Q. And what types of machines were in

1 operation?

2 A. I don't recall the brand, but at the  
3 entrance you get to see a statement that says  
4 machines of skill, Club 21, gaming center, and  
5 there are some 50, 5-0, machines in this location.  
6 And there are people are playing. I saw people  
7 playing.

8 Q. Did the machines in this facility accept  
9 dollar bills?

10 A. Yes, that's right.

11 Q. Did the machines in this facility dispense  
12 tickets which could be redeemed for dollars?

13 A. Yes.

14 Q. Do you have understanding of what the  
15 legal basis under which this facility is open?

16 A. I understand, based on newspapers, that  
17 the owner of this business is a company called  
18 Cesta Punta Deportes, and its representative or  
19 owner is Mr. Guardia, and the newspapers of large  
20 circulation within Mexico have had stories about  
21 the presentation of an amparo during the proceeding

1 in the defense of and the request for an amparo for  
2 the Reynosa facility. The District Court in  
3 Reynosa requested a copy of the amparo, and we know  
4 that he has an amparo.

5 Q. To your knowledge, how long has this  
6 facility been open and operating with skill  
7 machines?

8 A. 1997.

9 Q. To your knowledge, has the operation of  
10 skill machines in this facility been uninterrupted  
11 since 1997?

12 A. There was a closing. I don't recall the  
13 exact date, and as a result of that closing, an  
14 amparo was obtained, and they continue operating.

15 Q. Do you have any knowledge as to how long  
16 the facility was closed as a result of that legal  
17 proceeding?

18 A. Approximately some 15 days. I don't know  
19 exactly the time or the number of days, but it was  
20 roughly two weeks.

21 Q. Mr. Gomez, I'd refer you then next to the

1 item on this list which is facility entitled  
2 Reflejos in Matamoros Tamalipas, excuse the  
3 pronunciation.

4 Do you see that?

5 A. Yes, I do.

6 Q. Have you had occasion to visit that  
7 facility recently?

8 A. Yes. Last week I visited this  
9 establishment, and it was open.

10 Q. And did you go inside and visit the  
11 facility?

12 A. I did.

13 Q. Were you able to witness the types of  
14 machines being operated in that facility?

15 A. Yes. There were Bestco brand machines,  
16 and there were some 30.

17 Q. Were those machines accepting dollar  
18 bills?

19 A. That's right, and they issued or gave the  
20 player a ticket with points.

21 Q. And what was the player able to do with



1 that ticket?

2 A. The player could redeem it for dollars or  
3 for some awards.

4 Q. Do you have any knowledge as to how long  
5 this facility has been open and operating with  
6 skill machines?

7 A. I don't know exactly for how long, but I  
8 know it's been roughly three years.

9 Q. Please go down to the next item, which is  
10 Cesta Punta Deportes, S.A., in Ciudad Juarez; do  
11 you see that?

12 A. Yes, I do.

13 Q. Have you had occasion to determine whether  
14 this facility is open in recent weeks?

15 A. It's open and it's operating.

16 Q. Do you have an understanding of how many  
17 machines are operating in that facility?

18 A. There are two facilities in Ciudad Juarez.  
19 One is Club 21, and the other one is inside the  
20 race course. All told, there must be some  
21 hundred--170 machines, one, seven, zero.

1 Q. Do you have an understanding of what types  
2 of machines are being operated in those two  
3 facilities in Ciudad Juarez?

4 A. In all of the facilities I visited, at the  
5 entrance there is a sign that says these machines  
6 are machines of skill. Now, those are placed  
7 slightly differently. They may be part of the  
8 rules of games for adults, but the common  
9 denominator has been that they're described as  
10 machines of skill, and there are also signs on the  
11 machines themselves with the indication that these  
12 are machines of skill.

13 Q. Were dollar bills used in the play of the  
14 machines at this facility?

15 A. Yes. In all cases, and in all of the  
16 facilities I visited, with the exception of  
17 Monterey, which is a different situation, in all of  
18 them, you can insert dollar bills. In the case of  
19 Mexico City, people will use pesos, and they will  
20 buy dollars at the cage or they can get dollars  
21 from a hostess, male or female, for the players.

1 Q. Is it your understanding that the  
2 facility, item three here, Cesta Punta Deportes in  
3 Ciudad Juarez, is that another Guardia facility?

4 A. Yes.

5 Q. Do you have an understanding of what the  
6 legal basis or the legal status of that facility  
7 with respect to its continuing to be open and  
8 operating?

9 A. Yes, it's open, and I know that they have  
10 an amparo.

11 Q. By the way, Mr. Gomez, what is the legal  
12 tender or the legal currency in Mexico?

13 A. The legal tender in Mexico, according to  
14 our monetary law, is the peso. Any foreign  
15 currency, pursuant to Article 8, is a parameter  
16 simply for any transaction within Mexico. The only  
17 legal tender, however, in Mexico is the peso.

18 Q. Under Mexican law, how are U.S. dollars  
19 treated?

20 A. They're treated as a foreign currency.  
21 Article 8 of the monetary law indicates very

1 clearly that any transaction in Mexico of a  
2 commercial nature must be carried out in pesos, and  
3 knowledge can be used as a parameter. If the  
4 transaction is in dollars, then it's used as a  
5 parameter. And the exchange rate is used so that  
6 the transaction is completed in pesos.

7 Q. Are U.S. dollars acknowledged as legal  
8 currency under Mexican law?

9 A. No.

10 Q. Do you have an understanding of how they  
11 are treated, the currency itself, how it is treated  
12 under Mexican law?

13 A. Could you repeat that question?

14 Q. Do you have an understanding of how  
15 Mexican currency or--excuse me. Do you have an  
16 understanding of how U.S. currency is treated under  
17 Mexican law, if it is not legal currency?

18 A. Well, it is recognized as a means of  
19 exchange.

20 Q. I would like to take you back to the list,  
21 and specifically number four, which is the Reflejos

1 facility in Reynosa.

2 A. Okay.

3 Q. Have you had an occasion to visit that  
4 facility recently?

5 A. Yes, I have. Last week, on Tuesday, I was  
6 there.

7 Q. And what did you observe?

8 A. There were machines of skill. The  
9 Reflejos operation takes place in malls, commercial  
10 malls, and in these malls they occupy medium-sized  
11 store areas where there is room for between 30 and  
12 maximum 50 machines of this type. These were  
13 Bestco machines that accepted dollars, and just as  
14 in the other establishments, the player gets a  
15 ticket with the number of points that he can redeem  
16 for dollars or awards.

17 Q. And finally, the last item, which is the  
18 top item on page 42 of the pages you have in front  
19 of you, the Reflejos in Rio Bravo, did you have  
20 occasion to visit that facility recently?

21 A. Yes. It's open. As of Wednesday of last

1 week, it was open. That was the last day when I  
2 saw this facility, and I found that this facility  
3 has some 37 machines in operation, similar to the  
4 other ones I've described.

5 Q. Did those machines accept dollar bills?

6 A. Yes, that's right.

7 Q. And did they pay out tickets?

8 A. Yes.

9 Q. And what did the patrons do with those  
10 tickets?

11 A. They could redeem them for dollars or for  
12 awards.

13 Q. I would like you to take a look back on  
14 that page 40 of that item that you have, or those  
15 group of pages that you have in front of you, and  
16 it's the last item in the chart, which is  
17 Bellavista Centro de Entretenimiento.

18 Do you see that?

19 A. Yes.

20 Q. Have you had occasion to visit the  
21 facility at that location recently?

1 A. Yes. It's located--it's open, rather. I  
2 saw a room with some 450 machines. It was  
3 completely full. I was there on Thursday of last  
4 week. There is an adjoining room that has some  
5 additional 100 machines, and it's in operation, and  
6 it was chock-full. There were some 500 players.

7 Q. And what was the specific name of that  
8 business?

9 A. Bellavista Centro de Entretenimiento.

10 Q. Can you identify the types of machines in  
11 that facility.

12 A. Yes. At the entrance by the door there is  
13 a metal detector, and across the metal detector  
14 there is a notice that says machines of skill,  
15 rules of the game, and a little later there are  
16 some windows where the player can purchase a card  
17 that has a chip. The card with the chip has a logo  
18 of Bellavista Centro Entretenimiento, and then they  
19 give out a ticket with a certain value, certain  
20 denomination, and in the back you see that it's  
21 been registered with the Secretariat of Finance,

1 and in the front of the ticket, it shows the points  
2 that one is purchasing.

3 They introduce this card in the machines  
4 that are also called machines of skill, and these  
5 are Aristocrat machines. That is the brand, and it  
6 says built in Australia. The points that you can  
7 earn or lose are recorded on the card's chip, and  
8 then the card is submitted to a cashier, who is  
9 outside the facility and in a separate place, and  
10 you can get prizes such as trips, travel. In fact,  
11 there are advertisements about travel possibilities  
12 or you can be paid back in cash. In this case,  
13 you're not paid in dollars, you're paid in pesos.

14 MR. CROSBY: Thank you, Mr. Gomez. No  
15 further questions.

16 PRESIDENT VAN DEN BERG: Thank you,  
17 Mr. Gomez.

18 PRESIDENT VAN DEN BERG: Mr. Perezcano,  
19 who on your side is conducting the  
20 cross-examination?

21 MR. PEREZCANO: I will do that, sir.

1 I understand from information from  
2 Gobernacion that during the last few days actions  
3 have been taken with regard to some of these  
4 establishments, and I need a few minutes to see if  
5 I can double-check the current status before  
6 starting my cross.

7 PRESIDENT VAN DEN BERG: In particular,  
8 the Tribunal is interested in Bellavista.

9 MR. PEREZCANO: Well, I need a recess,  
10 then.

11 PRESIDENT VAN DEN BERG: Just so you  
12 understand, but in order to give you some guidance,  
13 if you were to focus on one of them, but especially  
14 Bellavista because that is on the list which says  
15 definitely closed, whereas the others we have  
16 reviewed on the list are appeals pending.

17 MR. PEREZCANO: Okay, fine.

18 PRESIDENT VAN DEN BERG: 10 minutes  
19 recess.

20 MR. PEREZCANO: Yes. If I need more time,  
21 I will let you know.

1 PRESIDENT VAN DEN BERG: Sure. But  
2 otherwise we will reverse--we will continue with, I  
3 think, the next witness, and you will have  
4 testimony until you have found it to be or until a  
5 reasonable time you have found the information and  
6 got the information about this, so we can then  
7 continue later today.

8 MR. PEREZCANO: That's correct.

9 PRESIDENT VAN DEN BERG: I don't want to  
10 have too much downtime.

11 MR. CROSBY: Mr. President, I do  
12 understand the Tribunal has considerable leeway in  
13 taking evidence, but I just point out that this is  
14 going to be surprise new evidence to us, nothing we  
15 have ever seen before.

16 PRESIDENT VAN DEN BERG: Mr. Crosby, you  
17 also came with new points in your direct because  
18 there was a whole field trip of Mr. Gomez.

19 MR. CROSBY: I understand.

20 PRESIDENT VAN DEN BERG: I let you go, I  
21 gave you leeway, and so I think they have earned

1 it, and I will give them a chance to find out what  
2 their field trips yielded.

3 MR. CROSBY: I understand, Mr. President.

4 PRESIDENT VAN DEN BERG: Mr. Gomez, you  
5 are under testimony, which means that you may not  
6 discuss this case with anybody.

7 (Brief recess.)

8 PRESIDENT VAN DEN BERG: Mr. Perezcano,  
9 your side ready?

10 MR. PEREZCANO: Yes, Mr. President.

11 PRESIDENT VAN DEN BERG: Okay, then we  
12 could go on record again. Mr. Perezcano, have you  
13 talked to the Gobernacion or the other people for  
14 obtaining the information you needed?

15 MR. PEREZCANO: We are still verifying it.  
16 As Mexico is an hour behind us, I don't yet have  
17 that information. Following your suggestion, I  
18 would propose that we move on to the next witness,  
19 and that we come back to the cross-examination of  
20 Mr. Gomez later on.

21 PRESIDENT VAN DEN BERG: That's fine.

1 Mr. Crosby, that's also fine?

2 MR. CROSBY: That's acceptable.

3 PRESIDENT VAN DEN BERG: Mr. Gomez, you  
4 are under testimony. So I suggest outside, it's  
5 very nice weather. Maybe you would like to take a  
6 nice walk.

7 (Witness temporarily steps down.)

8 PRESIDENT VAN DEN BERG: All right, so we  
9 then call I think Professor Rose is the first  
10 witness you would like to call?

11 MR. PEREZCANO: Yes. We intended to call  
12 Mr. Alcantara, but he is trying to contact his  
13 colleagues at La Gobernacion, so we would like to  
14 call Professor Rose, and I failed to introduce him  
15 to the Tribunal this morning, for which I  
16 apologize, but he is here with us.

17 PRESIDENT VAN DEN BERG: Good morning,  
18 Professor Rose. Give me 30 seconds because I have  
19 now to reorganize.

20 MR. CROSBY: Mr. President, and with due  
21 whereupon to Professor Rose, I just would like to

1 reiterate the objection that we made before the  
2 start of these proceedings with respect to direct  
3 examination of Professor Rose. Again, I know the  
4 Tribunal has leeway in accepting evidence. It may  
5 have questions of its own, but we don't believe  
6 that Professor Rose's testimony is offered in true  
7 rebuttal, and will be, in essence, new evidence.

8           PRESIDENT VAN DEN BERG: The Tribunal has  
9 ruled on that matter, as you are aware.

10           MR. CROSBY: I am. Thank you,  
11 Mr. President.

12           PRESIDENT VAN DEN BERG: We are mindful of  
13 your objection.

14           I. NELSON ROSE, CLAIMANT'S WITNESS, AFFIRMED

15           PRESIDENT VAN DEN BERG: Professor Rose,  
16 you are a expert witness called by the respondent  
17 in this case. Could you please state your full  
18 name for the record.

19           THE WITNESS: It's first initial I. Nelson  
20 Rose.

21           PRESIDENT VAN DEN BERG: And the place and

1 date of birth.

2           THE WITNESS: Los Angeles, California,  
3 May 23, 1950.

4           PRESIDENT VAN DEN BERG: Your nationality?

5           THE WITNESS: American.

6           PRESIDENT VAN DEN BERG: I think you are  
7 now familiar with the procedure because you have  
8 seen it this morning.

9           THE WITNESS: Yes.

10           PRESIDENT VAN DEN BERG: So, I don't need  
11 to explain it to you.

12           THE WITNESS: Yes.

13           PRESIDENT VAN DEN BERG: Although we do  
14 not expect for you a break in between.

15           If there is any problem with the question  
16 that is being put to you, please do seek a  
17 clarification. Barring that, the Tribunal assumes  
18 that you fully understood the question, and that  
19 your answer corresponds to the question.

20           THE WITNESS: I understand.

21           PRESIDENT VAN DEN BERG: You also

1 appreciate that testifying as an expert witness is  
2 very serious business before a court or an  
3 Arbitrable Tribunal, and in that connection we  
4 except you to make a declaration. I think the text  
5 is in front of you. If you read Rule 35, paragraph  
6 three. That's for the experts.

7 THE WITNESS: I solemnly declare upon my  
8 honor and conscience that my statement will be in  
9 accordance with my sincere belief.

10 PRESIDENT VAN DEN BERG: Thank you.

11 Professor Rose, could you please go to the  
12 last page of your declaration, which is page 23.  
13 Your declaration is dated the 24th of March, 2004.  
14 Can you confirm for the record that that is,  
15 indeed, your signature?

16 THE WITNESS: Yes, it is.

17 PRESIDENT VAN DEN BERG: Thank you.

18 Mr. Becker, please proceed with the direct  
19 examination.

20 MR. BECKER: Thank you, Mr. President.

21 DIRECT EXAMINATION

1 BY MR. BECKER:

2 Q. Professor Rose, I'm just going to ask you  
3 a few questions based on your written witness  
4 statement. First, I'm going to ask you to tell us  
5 your views or explain to us the status of video  
6 poker games under U.S. law.

7 A. Well, first, when you talk about U.S. law,  
8 you have to understand that every state is free to  
9 decide for itself, and there is the federal law.  
10 There is also Indian law, which is basically  
11 federal, but we look to the states to figure out  
12 what games they can play. In general--well,  
13 specifically, video poker is always a form of  
14 gambling. The question would be whether it's a  
15 specific form of gambling, and whether it's legal  
16 depends on the law of the individual jurisdiction.

17 Q. What about video games with spinning reels  
18 when the player interacts with the machine by  
19 pressing buttons to stop the reels or pressing the  
20 touch screen to stop individual reels?

21 A. We are talking about skill-stop games?



1 Q. Yes.

2 A. Skill-stop games are gambling games.

3 Again, they would be always considered gambling  
4 since gambling can be made legal by state law or  
5 otherwise, they're occasionally allowed.

6 I don't think that they are considered any  
7 other special form of gambling other than a slot  
8 machine. For example, they're not operated as a  
9 lottery. Well, I take that back. In Rhode Island  
10 they are considered a lottery, and they're run by  
11 the state lottery.

12 Q. On page 22 of your statement, you refer to  
13 Class III games under the Indian Gaming Regulatory  
14 Act.

15 A. Yes.

16 Q. Would you explain what it means to be a  
17 Class III game.

18 A. Yes. The history of--the quick summary of  
19 the history of Indian gambling was that there was a  
20 case that went up to the United States Supreme  
21 Court, the Cabazon case, where the Court ruled

1 that--it was actually under a federal statute,  
2 under Public Law 280 that, Congress enacted a  
3 statement that said you would look to the states  
4 where the tribe is located to decide whether  
5 gambling is legal, and if the gambling is legal,  
6 then the tribes can self-regulate.

7 The Congress reacted by passing the Indian  
8 Gaming Regulatory Act, and it divided all gambling  
9 into three classes. The first class is amateur  
10 games or home social games played for small stakes,  
11 and nobody cares about that.

12 Class II is specifically Bingo, broadly  
13 defined, and games where players play against each  
14 other.

15 Class III is the residual gambling class  
16 which has all other forms of gambling, which I  
17 usually characterize as the more dangerous forms of  
18 gambling. Specifically mentioned are slot  
19 machines, banking card games like Blackjack where  
20 you play against the house, lotteries, parimutuel  
21 betting on sports or races, and of course all

1 casino games.

2           And for both Class II and Class III, you  
3 do the same as what the Cabazon case said. You  
4 look to the state. If the state, anyone in the  
5 state is permitted to have that form of gambling,  
6 then the tribes can have it, and they self-regulate  
7 to some extent. If no one in the state can have  
8 it, then they are not permitted to have it.

9           The difference between Class II and Class  
10 III is with a Class III game you must have a  
11 compact with a state. It's similar in the way to a  
12 treaty, that the state must enter into an agreement  
13 with the tribe to allow that specific form of  
14 gambling which includes specifically how it will be  
15 regulated. So, all Class III gambling is illegal.  
16 In fact, it's clearly a major federal felony, even  
17 on Indian land, unless it's conducted with a  
18 compact.

19       Q.   And, Professor Rose, when a state allows  
20 gambling, can anyone just open up a storefront and  
21 put in a gambling game?

1       A.   In fact, actually gambling is illegal in  
2 every state, including, for example, especially in  
3 Nevada, because--unless you have a license.

4           So, unless it is allowed somewhere and it  
5 specifically says anybody can do it, you can't do  
6 it. The closest in that area would be in some  
7 states charity gambling which will sometimes say if  
8 you're a registered charity, you can operate.

9           Also there are a few exceptions for low  
10 stakes games. Texas actually has a law that says  
11 if the prize is under \$500, it's no longer  
12 gambling. We simply define it as not being  
13 gambling, it's amusement only, and often there are  
14 exceptions for home games where no one makes a  
15 profit other than what they win in the game.

16       MR. BECKER: Mr. President, firstly,  
17 Professor Rose couldn't be here yesterday, and  
18 unfortunately Mr. McDonald couldn't be here today  
19 with the demonstration machine. We have asked  
20 Professor Rose to review the transcript from  
21 yesterday when the demonstration was presented, and

1 I would like to ask leave from the Tribunal to ask  
2 Mr. Rose to comment on the machine he saw--that was  
3 described in the transcript as being demonstrated.

4 PRESIDENT VAN DEN BERG: Mr. Crosby?

5 MR. CROSBY: No objection.

6 PRESIDENT VAN DEN BERG: Please proceed.

7 BY MR. BECKER:

8 Q. Professor Rose, based on the description  
9 you saw in the transcript of yesterday's  
10 demonstration, would you please comment on what you  
11 saw there as the nature of the game presented.

12 A. Well, of course, there is no way to know  
13 what the payout percentage is unless you look at  
14 the par sheet, unless you actually know what the  
15 programming says, but it appears to be your  
16 typical--well, this is the one with the carts.  
17 It's basically--it's a video poker machine. It's a  
18 variation on what's called the dwarf family,  
19 because it was a subterfuge that was created about  
20 20 years ago that used little--used pictures of  
21 dwarfs. This were four colors, there were 13 sizes

1 in the family, from the tallest to the little, and  
2 you basically form poker hands using the dwarf to  
3 organize it.

4 Q. Professor Rose, is there skill involved in  
5 playing poker or video poker?

6 A. Sure.

7 Q. But yet the game is still regulated as  
8 gambling?

9 A. Oh, yes, because to be--gambling means  
10 that it is predominantly chance. Probably the  
11 easiest way to understand that is that if chance  
12 determines the outcome at any point, then it's  
13 gambling. So skill has to determine the outcome at  
14 every point in the game.

15 But, once something is predominantly  
16 chance and is gambling, it can be legalized. I  
17 mean, that obviously legalizes video poker. In  
18 fact, by my count I think we are up to about 27  
19 states, including Indian tribes that specifically  
20 have passed legislation or have compacts that allow  
21 slot machines, true slot machines, including video

1 poker.

2 Just because it's predominantly chance,  
3 doesn't mean it's illegal. It's clearly gambling.  
4 The other question is whether it is--you might get  
5 into a question of whether it's a hundred percent  
6 chance. In a few jurisdictions that makes a  
7 difference whether it falls under another set  
8 of laws, such as the antilottery laws. So, a video  
9 poker machine is clearly predominantly chance, and  
10 it's gambling if you're in a jurisdiction like  
11 Missouri was before it amended its constitution,  
12 they would say it's gambling, but it's not a  
13 lottery.

14 Q. Professor Rose, you have seen photographs  
15 of the machines that were at the EDM facilities in  
16 Mexico.

17 A. Yes.

18 Q. And you reviewed the operating manuals for  
19 the Bestco, Summit, Thunderbird, and SCI manuals,  
20 according to your declaration. Could you give us  
21 your view on the nature of the machines that are

1 depicted in those photographs?

2 A. Well, they're typical slot machines from  
3 what I can tell. They've got computerized random  
4 number generators. When you're dealing with reels  
5 or what purport to be reels on a video screen, they  
6 would have not just a random number generator, but  
7 the typical payout system for any slot machine.  
8 You put in money, the computer determines whether  
9 you win or lose, and then you get paid if you win.

10 Q. And that's notwithstanding that you might  
11 push buttons to stop the reels?

12 A. Well, with skill-stops, it is at least  
13 theoretically possible that you could make it so  
14 slow that anybody can win.

15 One easy test on whether a game is skill  
16 or chance is whether it offers a big prize. If it  
17 offers a very big prize, then the first skillful  
18 player who comes along is going to win. And that  
19 means the very first player who comes along. So if  
20 a game is truly a game of skill and skillful  
21 players can win, they are going to be lining up at

1 the door as soon as the place opens to come on in  
2 and play the game.

3 Q. Meaning that they would bankrupt the  
4 house?

5 A. Oh, clearly, it would bankrupt the house.  
6 That's why most skill games are players playing  
7 against other players where the house takes a  
8 percentage or some other fee and doesn't care who  
9 wins. When you're the house and you're playing  
10 against the players, you play every single hand and  
11 you care very much who wins or loses.

12 MR. BECKER: Thank you, Mr. President. I  
13 have no more questions.

14 PRESIDENT VAN DEN BERG: Mr. Crosby,  
15 please, for the cross-examination.

16 CROSS-EXAMINATION

17 BY MR. CROSBY:

18 Q. Professor Rose, looking at your  
19 declaration filed in this case, is it your opinion  
20 and general position that the introduction of a  
21 skill-stop feature into a gaming device does not

1 make it a lawful gaming device?

2 A. Whether something is lawful or not depends  
3 on the law of the jurisdiction, so there is no way  
4 to know unless you know the law of the  
5 jurisdiction.

6 I will say that simply putting on  
7 skill-stops, if it still is predominantly chance  
8 then it's still going to be gambling, and  
9 therefore, it would fall under the antigambling  
10 statutes.

11 Q. In your declaration filed in support of  
12 this case, is there any discussion of the notion of  
13 predominance of chance or predominance of skill?

14 A. I don't know. I can't remember. I  
15 believe I did talk about the elements of gambling,  
16 including chance.

17 Q. Isn't it your position that the  
18 introduction of a skill-stop feature into a gaming  
19 device doesn't make it a lawful gaming device  
20 because you are betting against the house, because  
21 betting against the house or betting against the

1 machine is an integral part of the activity?

2 A. I don't think so, really. I mean, there's  
3 a lot of ways to see whether something is a slot  
4 machine, for example. Whether it pays off in  
5 credits and there is a knockoff switch which means  
6 that they could be redeemed for cash or prizes. I  
7 mean, there is all sorts of characteristics, but  
8 the important characteristic is whether or not it's  
9 predominantly chance or predominantly skill.

10 Q. Well, again, I would like you to take a  
11 look at your declaration and see if you address  
12 that issue of predominance of chance or  
13 predominance of skill in the operation of what is  
14 purported or deemed to be a skill machine.

15 PRESIDENT VAN DEN BERG: Paragraph eight  
16 of the statement. Here you see in line four,  
17 predominantly of skill.

18 THE WITNESS: And paragraph nine.

19 BY MR. CROSBY:

20 Q. Am I correct those deal with the  
21 application of U.S. law? Correct?

1 A. Well, it's actually international, but  
2 predominantly U.S., yes.

3 Q. But you have no knowledge or expertise in  
4 Mexican law; correct?

5 A. I'm not an expert in Mexican law.

6 Q. Have you undertaken any analysis to  
7 determine the treatment by the Mexican Government  
8 and Mexican law, if any, of what may be deemed  
9 skill machines?

10 A. Not directly, no.

11 Q. I would like to ask you some questions  
12 about a comment you made in the end of your  
13 declaration, which is the last paragraph, where you  
14 state, "In a sense, in this sense, Thunderbird's  
15 conduct fits a pattern of practice seen in the  
16 United States. Aggressive gaming device operators  
17 will test the parameters of the applicable law with  
18 a purported skill game or other subterfuge, and  
19 operate as long as they can until the enforcement  
20 authorities catch up to the fact that the devices  
21 are actually slot machines."

1 And that's your statement under oath?  
2 A. Absolutely.  
3 Q. Have you ever met Thunderbird's CEO?  
4 A. I don't think so. I do a tremendous  
5 amount of public speaking and appear at gambling  
6 conferences and meet thousands of people, so it's  
7 possible, but I don't remember.  
8 Q. So, that's a "no;" correct?  
9 A. That's an "I don't know."  
10 Q. Have you ever met Thunderbird's General  
11 Counsel?  
12 A. I--probably not. I don't know.  
13 Q. Have you ever met any of Thunderbird's  
14 officers or directors?  
15 A. Not that I remember.  
16 Q. Do you have any personal knowledge of  
17 their business practices?  
18 A. Yes, actually.  
19 Q. In what respect?  
20 A. I was involved with the 29 Palms band of  
21 Mission Indians in California, and, in fact, had to

1 dissociate myself when they brought in slot  
2 machines because it's a major federal felony, and I  
3 couldn't be involved with that. And Thunderbird,  
4 in fact, supplied slot machines to that tribe.  
5 Q. Isn't it correct that you were identified  
6 as an expert witness in a case on behalf of the 29  
7 Palms band of Indians?  
8 A. Yes, I was.  
9 Q. And that was after there was an  
10 introduction of those machines into their--into  
11 their reservation; isn't that correct?  
12 A. I believe that was just within the last  
13 two years with a dispute with Thunderbird, I guess,  
14 over payment. I was never contacted or did  
15 anything in the case.  
16 Q. And isn't it correct in that case that my  
17 client was suing to recover lease revenue for the  
18 machines that had been provided to the tribe, and  
19 they were pursuing that case after the compact had  
20 been executed and signed in California? Isn't that  
21 correct?

1 A. It's possible.

2 Q. And isn't it correct that in that case you  
3 were relying upon your illegality conclusions and  
4 opinions to allow the tribe to avoid paying lease  
5 revenue; isn't that correct?

6 A. No.

7 Q. Isn't it correct in that case that the  
8 tribe was asserting that the machines that they had  
9 operated prior to the compact were illegal, so  
10 therefore they didn't have to pay the lease  
11 revenue?

12 A. I believe that was their position.

13 Q. And weren't you hired upon to opine on the  
14 legality or illegality of those games?

15 A. Right, that the--that the Thunderbird  
16 games were illegal.

17 Q. So, when you were hired as an expert, you  
18 felt it appropriate to be involved with that tribe  
19 again; isn't that correct?

20 A. Certainly.

21 Q. Have you undertaken any--other than that,

1 other than your involvement with 29 Palms before  
2 and after the compact, do you have any personal  
3 knowledge of Thunderbird's business practices?

4 A. Not personal knowledge, no.

5 Q. Have you ever undertaken a study or  
6 analysis of its business strategies?

7 A. No. I mean, I looked at it, and being in  
8 the industry I know of it, but not a study of it.

9 Q. Do you have any personal knowledge of the  
10 decision-making process Thunderbird undertook in  
11 entering and withdrawing from the California tribal  
12 market?

13 A. Not except for what I've read from this  
14 case.

15 Q. Do you have any knowledge of its contacts  
16 with its clients, the Indian tribes, with whom it  
17 did business in California?

18 A. Again, nothing outside of this case, and  
19 the 29 Palms case.

20 Q. Do you have any personal knowledge to the  
21 decision-making processes Thunderbird undertook in



1 choosing to do business in Mexico?

2 A. No.

3 Q. Were you aware that Thunderbird approached  
4 the Mexican Government and sought prior approval of  
5 its skill machine operations?

6 A. I saw that in one of the papers.

7 Q. Isn't that kind of in opposition to the  
8 notion that you have described in your final  
9 paragraph as to Thunderbird's conduct?

10 A. Oh, not at all.

11 Q. A company that undertakes this type of  
12 action would be customarily in the position of  
13 seeking a government's prior approval?

14 A. Oh, certainly.

15 Q. Why would that be indicative of this type  
16 of conduct?

17 A. We do exactly what the company did in this  
18 case. You give a vague description, get a general  
19 opinion that says, yes, it's legal. Then you put  
20 them in when they try to close you down. You waive  
21 the opinion. You say get a preliminary injunction,

1 stay in business for as long as can you, sometimes  
2 years, taking the money. Then, if they close you  
3 down, maybe you try to vary the machine a little  
4 bit or something else to continue operating.

5 Q. Do you have any knowledge or understanding  
6 as to what the government officials who issued that  
7 August 15th letter knew about the operation of  
8 skill machines?

9 A. I have seen the submission, I believe.

10 Q. I'd like you to answer my question. Do  
11 you have any knowledge of what the SEGOB officials  
12 who issued that letter knew about the operation of  
13 skill machines?

14 A. Only from what I have seen in the papers  
15 in this case.

16 Q. From what counsel told you or from what  
17 you read in the papers; correct?

18 A. From the papers, right.

19 Q. Do you have any personal knowledge of what  
20 the SEGOB officials knew when they issued that  
21 letter?

1 A. Only from the papers that were filed in  
2 the case.

3 Q. How can you opine that they gave approval  
4 based upon a lack of understanding of what my  
5 client intended to do in Mexico?

6 A. I saw the letter, which was a vague  
7 description of a game that said, basically we are  
8 going to offer a game of skill, so, of course, the  
9 government official then says, games of skill are  
10 legal, and I actually saw the letter. I'm aware  
11 that they didn't actually show them the machines.  
12 They didn't actually demonstrate how it would be  
13 paid, how it would be played. I believe, in fact,  
14 there was not even a reference to that it would pay  
15 out with a ticket that could be redeemed for cash  
16 or prizes. Which it clearly would be illegal.

17 Q. You haven't answered my question.  
18 Do you have any personal knowledge of what  
19 the SEGOB officials knew as to the operation of  
20 skill machines when they issued the August 15th  
21 letter?

1 A. The only--my only knowledge of this case  
2 comes from the papers that were filed in this case.

3 Q. You spoke about the photographs that you  
4 saw the machines that were operated at the EDM  
5 entities. Is there any doubt--could there be any  
6 doubt in anybody's mind that the EDM machines  
7 pictured in the photos were not banking games?

8 A. They certainly might not be banking games.

9 Q. Well, did you recognize them as banking  
10 games?

11 A. Well, yes, they appeared to be banking  
12 games, but since we don't know whether, they're,  
13 for example, linked and they're playing against  
14 each other. They would be a nonbanking.

15 Q. That would be a parimutuel arrangement;  
16 right?

17 PRESIDENT VAN DEN BERG: Mr. Crosby,  
18 simply for the benefit of the Tribunal we don't  
19 like to interject normally, but the term banking  
20 game in the gambling industry is perhaps a term of  
21 art, and the Tribunal would like to have a

1 definition. So if Professor Rose could give  
2 definition of a banking game, that would be  
3 helpful.

4 THE WITNESS: A banking game means that  
5 you play against the house or one player  
6 continuously. So, all Nevada casino games other  
7 than poker are banking games, and the typical--the  
8 easiest way to tell the difference between a  
9 banking game and a nonbanking game is the  
10 difference between Blackjack and poker. When you  
11 walk up to a table, a Blackjack table, there is the  
12 house, and the house doesn't actually make a bet.  
13 It fades your bet. It matches your bet. You make  
14 a bet of let's say \$20, and the house says okay,  
15 you are faded. I will also bet \$20.

16 The house has a relatively infinite amount  
17 of money. And when you win, you win from the  
18 house, you don't win from other players. If you  
19 walk up to a poker table, even if there is a  
20 professional dealer who facilitates the game, the  
21 house dealer will say I can't play against you. We

1 have to wait until someone else sits down, and then  
2 you can play poker. So, that's a nonbanking game.

3 PRESIDENT VAN DEN BERG: Then simply to  
4 apply this distinction, if you have a video poker  
5 game, under what does that fall?

6 THE WITNESS: It is conceivable to have a  
7 video poker game that is a nonbanking game, which  
8 would mean they're linked machines, and the players  
9 are playing against each other, and the house only  
10 takes some fee, you know, like a quarter, 25 cents  
11 per hand to allow the game to continue. If the  
12 player wins, they win from other players. If the  
13 player loses, the money goes to other players, not  
14 the house. That is at least theoretically  
15 possible. But video poker, just like other form of  
16 slot machine, you're actually playing against the  
17 house. There is actually a banking game because  
18 you can--can you walk into a casino with a video  
19 poker machine and make a bet, and there may be no  
20 other player in the casino, but there is always the  
21 house ready there to fade your bet.

1 PRESIDENT VAN DEN BERG: I apologize for  
2 interrupting.

3 BY MR. CROSBY:

4 Q. Mr. Rose, I guess the purpose of my  
5 question is to try to get out--looking at the EDM  
6 machines in the photographs, would any reasonable  
7 person presume that that is not a banking machine?

8 A. I think everybody would say that that is a  
9 banking machine. That would be the assumption.

10 Q. Would it also be correct that any  
11 reasonable person looking at the machine would know  
12 that in operating that machine, you're not playing  
13 against other players?

14 A. Yes, again, I think that unless--when you  
15 come to a video poker machine or a slot machine,  
16 unless it specifically somehow says that you're  
17 actually playing against other players, and usually  
18 it means you have to wait until there is other  
19 players who are playing on their machines,  
20 everybody knows you're playing against the house.  
21 It's a banking game.

1 Q. So, based upon your review of the pictures  
2 of the EDM games, would it be fair to say that it  
3 was open and obvious that these were banking games  
4 and that you weren't playing against other players?

5 A. I think that's what they were, and I think  
6 that is obvious.

7 Q. And it is correct you've never played one  
8 of those games, one of the EDM games; correct?  
9 That specific EDM games.

10 A. Not that I know of. I don't know for  
11 sure. I've certainly been in a lot of gambling  
12 establishments around the world.

13 Q. That's fair. But you have not seen one  
14 personally, the ones that are at issue in this  
15 case?

16 A. Again, I don't know.

17 Q. Did counsel for Mexico offer you the  
18 opportunity to view one of those games?

19 A. We actually did try to see if that was  
20 possible, but it just never happened.

21 Q. And how long ago did you make that effort

1 to try to determine whether that was possible?

2 A. It would have been within the last few  
3 weeks.

4 Q. And to your understanding, why wasn't that  
5 possible?

6 A. I don't know. I think it was more just  
7 the logistics of getting a machine and being able  
8 to go somewhere and try it.

9 Q. Did counsel for Mexico indicate that they  
10 had it in their ability to provide a machine for  
11 your review, if you could work out the logistics?

12 A. I don't think we ever really got to that  
13 stage.

14 Q. But you did discuss it?

15 A. Yes, just in general, and whether it was  
16 possible.

17 MR. CROSBY: No further questions.

18 PRESIDENT VAN DEN BERG: Mr. Becker, any  
19 redirect?

20 MR. MOWATT: Could we have a minute?

21 PRESIDENT VAN DEN BERG: Sure.

1 (Off the record.)

2 MR. BECKER: Mr. President, we have no  
3 more questions.

4 PRESIDENT VAN DEN BERG: Thank you.

5 Professor Rose, then, Professor Walde  
6 would like to ask you some questions.

7 QUESTIONS FROM THE TRIBUNAL

8 ARBITRATOR WALDE: Professor Rose, it's  
9 quoted here that you are unaware of any  
10 jurisdiction in which they have been found not to  
11 be gambling machines. Now, as you know, I'm trying  
12 to learn more about gambling law.

13 Can I ask you, as I understand it, the  
14 test in the United States, the various 180 or so  
15 United States jurisdictions mentioned earlier is  
16 that first you define if something is under the  
17 concept gambling or gaming, and then the second so  
18 to say test is, you say is it allowed, because  
19 there can be gambling that is allowed or it is not  
20 allowed? I'm trying to get the conceptual things  
21 right.

1 And then the third step of the test is has  
2 there been a license or not?

3 THE WITNESS: First, may I ask you which  
4 page you were on?

5 ARBITRATOR WALDE: I'm looking at the  
6 rejoinder I must say where you are quoted. I can  
7 quote this again to you.

8 THE WITNESS: I didn't get--

9 ARBITRATOR WALDE: It's R-088. It's  
10 paragraph 71 of the rejoinder.

11 THE WITNESS: Only because I don't know  
12 which machines we are talking about. Oh, thank  
13 you.

14 (Document handed to the witness.)

15 ARBITRATOR WALDE: 1720, Exhibit R-110.

16 Conceptual test, which I think is a three  
17 level.

18 THE WITNESS: I would say that's actually  
19 very accurate. It's not quite as nice and neat in  
20 the real world. As you know, people will often  
21 open up, and then decide whether it's legal once or

1 fight that it's legal once they are challenged.

2 ARBITRATOR WALDE: We as when lawyers, do  
3 we look at it the right way?

4 THE WITNESS: The only way I would expand  
5 on it is first there is the difference between  
6 whether it is a game of skill or a game of chance,  
7 so if it's predominantly skill, it's not gambling,  
8 and then none of the antigambling laws would apply.  
9 More and more states are actually putting  
10 restrictions on games of skill, with--often with  
11 low limits, so that they're trying to regulate  
12 games of skill to make sure that they're  
13 not--they're not really gambling or just to try to  
14 keep them as low limits for--to keep them under  
15 control. If it is predominantly chance, then it is  
16 gambling.

17 Then the question becomes what form of  
18 gambling is it, and the reason that's important is  
19 because the United States has gone through these  
20 waves of legalization and criminalization, and the  
21 laws are still on the books. So, almost every

1 state in its constitution outlines lotteries  
2 because there were great lottery scandals in the  
3 1830s and '40s.

4           Now, 150 years, 160, 170 years later we  
5 don't know exactly what that means, what is a  
6 lottery and what is not. So, the fight will come.  
7 Where I was involved in the fight in Mississippi,  
8 where they were trying to legalize the--the  
9 legislature wanted to legalize Bingo, and the  
10 Attorney General said the constitution prohibits  
11 lotteries. Bingo is a lottery, so it goes up to  
12 the state supreme court on whether Bingo is a  
13 lottery or not. In that particular case, they  
14 agreed with me that it wasn't a lottery.

15           It's still gambling. So, since it is  
16 gambling, the legislature can legalize it. They're  
17 not barred by the constitutional prohibition on  
18 lotteries in that state. So we need to know if  
19 it's predominantly chance, and then what  
20 classification it's going to be. When we know what  
21 the classification is, we then know whether it's

1 legal or not, whether the legislature or somewhere  
2 else. Indian tribes through compacts have  
3 legalized that form of gambling, and then obviously  
4 you have to fall under the statute, which almost  
5 always means having a license.

6           ARBITRATOR WALDE: Now, it's very  
7 interesting, and given that we are Professors we  
8 like to discuss historical parallels, but it looks  
9 to be a little bit like similar to the treatment of  
10 liquor in the United States where there is also  
11 with the famous liquor license. I remember in  
12 dinner in Connecticut where you had to show with  
13 the license buy the bottle of wine, and bring it.  
14 I'm not sure that still in Connecticut still  
15 applies.

16           But it really leads what I'm trying to ask  
17 is, is there in some states, is the license utterly  
18 in the utter discretion of the government, or is  
19 there a regulated process, transparent objective,  
20 where you actually are entitled, if you fulfill the  
21 qualifications of the kind, which I assume no

1 association with organized claim and prostitution.

2 Is there actually an entitlement to get a license?

3 THE WITNESS: First let me say I would

4 actually really love to talk to you about this.

5 ARBITRATOR WALDE: Don't, because they

6 will throw us out.

7 THE WITNESS: Right. Just let me say,

8 that in fact the last prohibition, the prohibition

9 on alcohol coincided with the prohibition on

10 gambling, and the legalization is following.

11 The question is--it's clear, you're never

12 entitled to a license. That's the one thing that

13 every government tries to make it extremely clear

14 that having a license/permit is--we may permit to

15 you have it, but you do not have--there were big

16 fights on whether you have a property right.

17 Certainly, you do not have any rights if you don't

18 have a license.

19 If you have a license and they want to

20 take it away, then you've got a valuable property

21 right, and you're entitled to due process, but they

1 still have the discretion to take it away.

2 ARBITRATOR WALDE: But what I'm trying to

3 find out, it cannot really be that just the friends

4 of the cronies of the Mayor and the powerful people

5 in Alabama or Mississippi.

6 THE WITNESS: Right.

7 ARBITRATOR WALDE: Just the friends of the

8 Governor we get and pay money to the local

9 congressman to get a license. Isn't there a kind

10 of at least discriminative process where I can say

11 he's got a license, I come from outside

12 Mississippi, I should also get a license. I'm as

13 clean and pure as Mr. Atallah is?

14 THE WITNESS: Well, actually, this is a

15 continuing source of problems. There's fights. I

16 was hired by the Federal Government of the United

17 States in their prosecution of Governor Edwin

18 Edwards in Mississippi because he was selling

19 licenses.

20 ARBITRATOR WALDE: I didn't know anything

21 about Mississippi. I'm just speculating from the



1 Loewen case. I had no preparation for this.

2 THE WITNESS: The Governor is not supposed  
3 to give licenses to his friends. He's now in  
4 prison.

5 But it's been fairly universally held. In  
6 fact, there are some cases coming out of the high  
7 court of Europe now that also would say if you can  
8 come in and meet the qualifications, then you  
9 can--then we are not discriminating against people  
10 on the basis of nationality. There actually  
11 are--there are split decisions, an interesting two  
12 cases coming out of South Dakota which dealt with  
13 whether or not they could. In one case they said  
14 they could actually exclude people who were not  
15 from South Dakota because they want to make sure  
16 they can do the background checks and make sure  
17 there is control.

18 I mean, gambling is the most morally  
19 suspect of morally suspect industries, and has this  
20 terrible history of being infiltrated by organized  
21 crime. It's the only cash business which has no

1 paper records, unlike even loan sharks who have to  
2 keep paper records. It's the only business where  
3 the business, the house, plays against its own  
4 customers and has to beat them in games of chance.

5 Now, there is always that incentive,  
6 perhaps, to make the games of chance not games of  
7 chance but rig them in favor of the house. So,  
8 there is this tremendous regulation--

9 ARBITRATOR WALDE: But does it actually  
10 mean that in the United States legal system  
11 gambling is so to say an industry which is not  
12 protected fully by the Fifth and 14th Amendment?  
13 Is it something are you suggesting it should have a  
14 lesser protection of laws than, let me say,  
15 marketing soft drinks to adolescents or alcohol or  
16 video games?

17 THE WITNESS: Yes, I have actually written  
18 articles on that. Under the police power, which is  
19 the power of the state to protect the health,  
20 safety, and welfare of its citizens, you do not  
21 have all constitutional rights. The police power

1 includes, for example, if there is--you can take  
2 life without due process. If there is someone who  
3 is on the top of a tower with a rifle who is  
4 shooting people, you don't have a trial or a  
5 hearing, you can take life.

6 But let me continue that. Gambling has  
7 always fallen under the police power, and there are  
8 cases that say, for example, there was a lawyer in  
9 New Jersey who was not allowed to be involved in  
10 political campaigns because she was a key employee  
11 of a casino, and they said, you don't have to be  
12 part of this industry. If you join this industry,  
13 you lose your free speech, to some extent. You  
14 lose your right to be involved in politics.

15 ARBITRATOR WALDE: Is that a majority view  
16 or is it particular view, kind of view would be  
17 associated with the school? Is it the U.S. Supreme  
18 Court who thinks this kind of property is not fully  
19 protected by the 14th Amendment?

20 THE WITNESS: I don't--now, understand, I  
21 mean, you do have property rights, but I don't know

1 any court anywhere who has said differently. The  
2 Nevada Supreme Court has gone so far as to say you  
3 don't have any federal civil rights. They actually  
4 held that Nevada could discriminate on the basis of  
5 race, because this is a matter left solely to the  
6 state legislature. New Jersey looked at that and  
7 said, no, that's going too far. You can't do that.

8 ARBITRATOR WALDE: So there is a  
9 diversity?

10 THE WITNESS: Well, no, not really. It  
11 was the New Jersey courts--not just one, but New  
12 Jersey Courts that said, if you're involved in this  
13 industry, you can't be involved in politics, and in  
14 the United States that is more important than the  
15 First Amendment because we had a revolution for  
16 that.

17 ARBITRATOR WALDE: You're saying here in  
18 what I quote from the rejoinder, he asked that it  
19 is typical of these types of companies to operate  
20 in jurisdictions--I wanted to look the sentence  
21 for, Mr. Rose also highlights in some jurisdictions

1 the degree of skill is totally irrelevant if the  
2 potential payouts are greater than the de minimis  
3 level.

4           You were, however, saying that in Texas,  
5 up to \$500 payout that is not gambling?

6           THE WITNESS: No, if it's under \$5. And  
7 actually they simply did that by statute. They  
8 simply said gambling is the typical definition, a  
9 game of chance with consideration and pays a  
10 valuable prize, and then it went on and said,  
11 however, if the wholesale value of the prize is  
12 less than \$5, it is not gambling. So, these are  
13 more amusement halls.

14           ARBITRATOR WALDE: Turning to Mexico now,  
15 we know that you're not an expert on Mexico law.  
16 That's clear. But when you look at Mexico from  
17 your own perspective, does it not appear that  
18 Mexican law is what I would call less developed in  
19 terms of the regulatory intensity and specificity  
20 than the United States?

21           THE WITNESS: I don't think so. I have

1 actually been working with Calliente race and  
2 sports book for probably 20 years, and in fact, was  
3 involved when they thought they were going to be  
4 bringing in some devices that would allow you to be  
5 betting on a device at a race track, for example,  
6 and there is certainly the question of bringing  
7 casinos to Mexico has been a very hot topic in the  
8 industry for decades. There is a, from what I can  
9 tell, a well regulated state lottery. It's  
10 actually very typical jurisdiction.

11           ARBITRATOR WALDE: But in the United  
12 States, what I understand, and you correct me if  
13 I'm wrong, you actually get their specifications,  
14 180, and don't quibble about the numbers. You have  
15 to think about the Indian tribes. You got the 180  
16 jurisdictional rules on the types of machine, and  
17 they are, as I understand them, are then by the  
18 technicians translated into two or three page  
19 technical specifications, which tell you how the  
20 trips, the programs are set up; is that right,  
21 roughly? Can you actually in the United States as

1 a games producer, pull technical specifications and  
2 with reasonable certainty comply with these rules  
3 with these 180 jurisdictions?

4 THE WITNESS: If you are in a jurisdiction  
5 that has set up a licensing system, then they have  
6 to give you warning of what you require, and more  
7 and more now, I think they almost all universally  
8 require a laboratory to make sure, for example, you  
9 don't get electrocuted when you play it. We always  
10 focus on the fact that it really works the way it  
11 is supposed to work, that the random number  
12 generator is random enough, but those are  
13 jurisdictions that have set up licensing systems.

14 Many of the tribes, when they first, when  
15 they didn't have compacts they were clearly just  
16 illegal, but people were supplying them. When they  
17 did have compacts, some of the early compacts don't  
18 have sufficient regulatory controls, and it's up to  
19 each tribe to decide.

20 ARBITRATOR WALDE: So, if you were to  
21 provide kind of legislative advice for the Mexican

1 regulatory system, would you not suggest that they  
2 should specify what means chance and luck in the  
3 way it's done in the United States? So people  
4 could actually know what is allowed and what is not  
5 allowed?

6 THE WITNESS: I think the way--what Mexico  
7 has done is what most other jurisdictions--maybe  
8 all other jurisdictions have done, before they get  
9 into the legalization question. In other words, if  
10 you look at the statutes of every state, with a few  
11 exceptions they'll simply say gambling is, and the  
12 case law, gambling is a game which is predominantly  
13 chance, and that has consideration of prize, and  
14 that's all it will tell you.

15 Then the fights--the fight on whether it's  
16 a game of skill or not is going to be normally  
17 actually--they're probably mostly decided in courts  
18 rather than by statute, because when you're dealing  
19 with the statutes or the laws, you're dealing with  
20 machines that everybody agrees is gambling. The  
21 only question, does it meet this locale's

1 definition.

2 So, I don't know of any jurisdiction that  
3 regulates--that would even purport to regulate  
4 skill machines. I don't know of any in the world.

5 PRESIDENT VAN DEN BERG: Mr. Rose, I have  
6 a few questions.

7 Could you please be shown the--no, let's  
8 preface the question first.

9 Do you read Spanish?

10 THE WITNESS: No.

11 PRESIDENT VAN DEN BERG: We could help  
12 you. Can Exhibit R-004 be shown to Professor Rose,  
13 which is the law of 1947. And we could do it two  
14 ways. Mr. Crosby, if you prefer, either  
15 Mr. Perezcano helps with the translation or  
16 interpreters help with the translation.

17 MR. CROSBY: I trust Mr. Perezcano.

18 PRESIDENT VAN DEN BERG: It goes quickly  
19 this way if Mr. Perezcano does it.

20 MR. CROSBY: I have no objection to  
21 Mr. Perezcano giving the translation.

1 PRESIDENT VAN DEN BERG: All right.

2 Professor Rose, to be clear, I'm not asking you an  
3 opinion on Mexican law. What I do ask you is an  
4 opinion based on experience of studying various  
5 laws, particularly in the United States, around the  
6 world, on gambling.

7 THE WITNESS: Yes.

8 PRESIDENT VAN DEN BERG: How you compare  
9 this law with the laws with which you are familiar.  
10 Mr. Perezcano, may I ask you to translate  
11 Article one.

12 MR. PEREZCANO: Yes, sir.

13 In international territory, all games of  
14 chance and games involving betting are prohibited  
15 under the terms of this law.

16 THE WITNESS: Yes.

17 PRESIDENT VAN DEN BERG: A provision like  
18 this, is that usual for you?

19 THE WITNESS: It's extremely common. I  
20 mean, that's it. When a jurisdiction decides to  
21 outlaw gambling, they're going to write something

1 like this. If there is something else that  
2 triggered it like the great lottery scandals in the  
3 1830s and '40s, then they will use the word lottery  
4 rather than gambling. But this would be typical.  
5 Sometimes they would use the word instead of  
6 betting, they might say gambling or wagering.

7           PRESIDENT VAN DEN BERG: But you have  
8 added the word "predominantly."

9           THE WITNESS: That actually--

10          PRESIDENT VAN DEN BERG: Do you find that  
11 in statutes?

12          THE WITNESS: In modern statutes, they're  
13 beginning to add that, but even there, almost  
14 never. It's language like this, and the  
15 "predominantly" will come in by the court  
16 decisions. In other words, as opposed to, say, a  
17 hundred percent chance.

18          PRESIDENT VAN DEN BERG: Because, if you  
19 read this text, we are not trying an exercise in  
20 construing Mexican statute here, but if you would  
21 read it, at first blush it says, well, anything

1 which is chance is excluded; is that correct?

2           THE WITNESS: Well, I mean, it looks to me  
3 like it's the typical statute that says games of  
4 chance, and then they want to make sure we get  
5 everything else like betting on sports events, and  
6 so then you call that wagering or bets, so that you  
7 can cover other games, other forms of gambling that  
8 are clearly predominantly chance but aren't games  
9 of chance.

10          PRESIDENT VAN DEN BERG: Okay. Article 2  
11 we can skip, I think, because that is some domestic  
12 games, if I may use that expression, unless the  
13 parties say they do not.

14          Then you have Roman numeral II, Los  
15 Sorteros, which I understand to be the lottery,  
16 raffles, and then you have Article 3. Perhaps you  
17 could translate that.

18          MR. PEREZCANO: Yes, sir.

19          Article 3, The Federal executive, through  
20 the Secretaria de Gobernacion is in charge of  
21 regulation authorizing control and overseeing the

1 games when they involve bets of any type as well as  
2 lotteries, with the exception of the national  
3 lottery, that will be regulated in accordance with  
4 its own law.

5 THE WITNESS: Yes.

6 PRESIDENT VAN DEN BERG: Isn't that a  
7 common provision you find elsewhere which provides  
8 for a regulatory agency?

9 THE WITNESS: As long as you have  
10 something that permits them to have some form of  
11 gambling. In other words, if it's completely  
12 prohibited, then obviously you don't have the  
13 regulatory agency, although I've actually seen some  
14 statutes that do that, and I can't quite figure out  
15 what they're supposed to be doing.

16 But if you allow some forms like somebody  
17 had mentioned raffles. Raffles are permitted, then  
18 the government very well may want to have some way  
19 to regulate raffles to make sure they're honest or  
20 they're only run by charities, so some governmental  
21 body is given that power.

1 PRESIDENT VAN DEN BERG: But is it not  
2 also true to supervise, actually to control, they  
3 use control--what is the exact word, to be  
4 vigilant? Enforcement, actually, monitor--that  
5 there is no game of chance or bets being practiced.

6 THE WITNESS: It's usually up to the law  
7 enforcement authorities, like the Attorney General  
8 would be the main prosecutor would make sure that  
9 nothing illegal is happening. There are, there is  
10 a number of situations where it's somebody else.  
11 So, for example, I am right now working with the  
12 Michigan state lottery, which, in Michigan, is  
13 given the power to prosecute all illegal gambling.  
14 It's a little strange, but that's their system.  
15 Instead of going to the Attorney General, it's done  
16 by actually the lottery that was given that power.

17 But, if you don't have a specific  
18 reference to who enforces the law, then it just  
19 comes under this general criminal enforcement  
20 provisions.

21 PRESIDENT VAN DEN BERG: And the final

1 provision I would like to know your experience, is  
2 Article four. Mr. Perezcano, would you please  
3 proceed with the translation.

4 MR. PEREZCANO: Article 4, No house or  
5 open or closed location may be established where  
6 games involving gambling or lotteries of any type  
7 are practiced without permission of the Secretaria  
8 de Gobernacion. The Secretaria de Gobernacion  
9 shall in every case establish the requirements or  
10 conditions that shall be complied with.

11 THE WITNESS: The first part of it is  
12 extremely common, which is no house. I think these  
13 date back really from around the turn of the 20th  
14 century, when they were looking at ways to close  
15 down illegal gambling establishments, so they went  
16 after the landlord would say it's not mine. I'm  
17 not operating the game, and so they extended the  
18 antigambling laws to include the landlord.

19 Also, it gave them the right to get  
20 injunctions to close them down, so you could go  
21 after the place.

1 So, it's extremely common to see  
2 establishments, houses. They actually use the word  
3 house or building.

4 The second part, again, which says, unless  
5 permitted by some federal official means that, of  
6 course, that has to be some form of gambling that  
7 is permitted, and that would be--that, of course,  
8 is common in every licensing jurisdiction. Every  
9 jurisdiction that licenses actually will license, I  
10 would say, virtually everyone. I mean, there is  
11 always possibly exceptions. They will license  
12 individuals, but then they actually license the  
13 location. They want to know where the casino or  
14 the card club or the Bingo hall was going to be, so  
15 they do, in fact, have provisions like that.

16 PRESIDENT VAN DEN BERG: Reading this law,  
17 to your knowledge, could it be that this law has  
18 been, like you see there's many laws in other  
19 country, they look to each other. They say, well,  
20 how can you set up such a gambling law.

21 THE WITNESS: Sure.



1           PRESIDENT VAN DEN BERG: Could this have  
2 been borrowed from the United States in what they  
3 call the reception?

4           THE WITNESS: It's possible, but usually  
5 when they borrow, they borrow identical language,  
6 particularly with gambling, since a lot of the  
7 prohibitions--well, this is 1947, but even in 1947,  
8 the prohibitions listed long lists of games that  
9 were prohibited. It was just a historic hangover  
10 from the late Middle Ages, really.

11           So, I can't say that I ever saw one that  
12 was close enough word for word to say I know where  
13 that came from, you know, like there are a lot of  
14 statutes you could do that in gambling.

15           On the other hand, the general language is  
16 the same that everybody uses, so undoubtedly they  
17 looked at other statutes of other jurisdictions and  
18 said here is the kind of thing we want.

19           PRESIDENT VAN DEN BERG: Thank you. You  
20 can close this one.

21           I have a further question about the

1 application of the word "predominance." Where do  
2 you draw the line?

3           THE WITNESS: There are a lot of cases and  
4 a lot of operators who have fought that fight.  
5 There is--I actually, in fact, I wrote a book in  
6 1986 called "Gambling and the Law," and I have a  
7 chapter devoted to the three elements of chance,  
8 consideration, and prize, and I looked at the  
9 various tests that people, the courts developed.  
10 It was actually in relation to live poker, not  
11 video poker, and what factors courts have looked  
12 at.

13           Certainly, a jurisdiction can decide for  
14 itself. When California decided that the game of  
15 bridge was predominantly--the card game of bridge  
16 was predominantly skill, the main thing they looked  
17 at is how many books had been written on the  
18 subject, which is an unusual test.

19           The--England decided a game--there was a  
20 game that truly was a game of skill, if you could  
21 decode, if you spend the time and look at all the

1 rules, but it was put in seaside resorts where  
2 there was no time, that under normal playing  
3 conditions people couldn't exercise the skill, and  
4 in that case they decided, even though the machine  
5 inherently might be a game of skill, in the way it  
6 was played, it's not.

7 I've heard common they'll say that the  
8 average person under average normal conditions  
9 should be able to win--not every time or you're not  
10 having a game.

11 The way I do it is that, what is a game of  
12 chance, there is a spectrum. With roulette, which  
13 everybody agrees is the game that is pure chance,  
14 on one end of the spectrum and chess, which  
15 everybody agrees is pure skill on the other.

16 And yet with roulette there are  
17 individuals, particularly if they have a clock and  
18 a computer, that can beat that game. And if skill  
19 is the only factor in chess, then the same people  
20 should win every time at the world championship  
21 levels, but that doesn't happen because maybe he's

1 got a headache or something happened.

2 So, the question is where on the line do  
3 you draw the spectrum--on the spectrum, where do  
4 you draw the line. Also, whether or not it's not  
5 repetitive. So, a novice can beat a professional  
6 at the game of bridge or poker if all they played  
7 was one hand. But, if they have to play a lot of  
8 hands, then they'll say okay, the professional with  
9 experience will win much more than the amateur.

10 Historically, and even until today, the  
11 line is drawn fairly hard in terms of you have to  
12 have a lot of skill. For example, there are no  
13 appellate court case that is say that poker is a  
14 game of skill, partly because they're afraid, if  
15 they say poker is a game of skill, people will  
16 start opening poker rooms everywhere.

17 So, the line has already been when  
18 challenged, it's tough to prove a gambling game is  
19 a game of skill because it's no longer gambling.

20 PRESIDENT VAN DEN BERG: You also  
21 testified earlier that bringing casinos bringing

1 casinos to Mexico has been hotly debated for  
2 decades. Remember that?

3 THE WITNESS: Yes.

4 PRESIDENT VAN DEN BERG: Could you please  
5 expound on that.

6 THE WITNESS: Well, it's been discussed in  
7 the gaming industry because Mexico is one of the  
8 few countries, large countries, that doesn't have  
9 casino gambling now. This explosion of legal  
10 gambling hasn't been just in the United States.  
11 It's everywhere in the world, so every province of  
12 Canada now has legalized--they have the right to  
13 have casinos. By my count, we are up to 27 states  
14 in the United States. Just about every country in  
15 Europe now has--certainly has some form of  
16 gambling, but usually casinos, and Mexico doesn't,  
17 so it's a wonderful market that's sitting there.

18 There was a great movement right before  
19 President Fox was elected, and then some sort of  
20 scandal or political issue hit, and the government  
21 had to back away and said all right, we are not

1 going to look at this. There has been a lot of  
2 talk of putting them near the resorts on the  
3 Yucatan Peninsula. In fact, one of the most  
4 interesting developments is an Indian tribe in New  
5 York has already said that they want to build, they  
6 will fund the casino in Mexico near the resorts  
7 once it's legalized. This is very unusual to have  
8 an Indian tribe then running a casino in Mexico.  
9 There was a big conference in Mexico on this,  
10 and--I talked to people who said the problem was  
11 the only people who showed up were people who  
12 wanted to operate casinos. Nobody from Mexico, no  
13 Mexican Government officials showed up, which means  
14 it's not going to happen, at least not soon.

15 So, it's a hot topic because it's such a  
16 potentially nice market if it opens up.

17 PRESIDENT VAN DEN BERG: In these  
18 discussions, what other questions raised?

19 THE WITNESS: In the gaming industry, is  
20 whether it's going to happen and who is going to  
21 get the licenses. There's two ways to give

1 licenses. One is to let it open to everyone, which  
2 is very rare, but it does happen. The other is no,  
3 we are going to have the typical--in fact, is like  
4 Australia, where you have one per state.

5 Now, in Queensland, there's two. Well,  
6 each of those licenses is worth a tremendous  
7 amount, hundreds of millions of dollars, billions  
8 of dollars. So, is there going to be a limited  
9 number of licenses and who will get them, and/or  
10 open free-for-all, but, of course, the major  
11 question is when will the government actually  
12 change the law so that casino gambling will be  
13 allowed.

14 PRESIDENT VAN DEN BERG: I understood also  
15 you have reviewed the transcript of yesterday.

16 THE WITNESS: Yes.

17 PRESIDENT VAN DEN BERG: And you heard  
18 probably also the question of the Tribunal about  
19 the possibilities of adjusting the payout rate.

20 THE WITNESS: Yes.

21 PRESIDENT VAN DEN BERG: Do you remember

1 that?

2 Are you familiar with the aspects of  
3 machines?

4 THE WITNESS: Sure.

5 PRESIDENT VAN DEN BERG: And these  
6 machines, to your knowledge, because you compared  
7 them. Because I know them from 20 years ago, they  
8 are the dwarf machines.

9 THE WITNESS: The dwarf families.

10 PRESIDENT VAN DEN BERG: The dwarf family.  
11 To your knowledge, are these type of machines  
12 adjustable for payout?

13 THE WITNESS: Oh, sure, they're video  
14 poker machine, so--you don't even have to adjust  
15 the machine too much. You can adjust the payout.  
16 If it pays--I will give you the best example. In  
17 Las Vegas, the average video poker machine pays on  
18 a pair of jacks or better. When Resorts  
19 International opened the one and only casino that  
20 was legal on the entire East Coast of the United  
21 States, they put all their video poker machines

1 that you had to have at least two pair or better to  
2 win because they got a monopoly market.

3           So, clearly you can change the payout  
4 schedule without really doing much with the chip.

5           PRESIDENT VAN DEN BERG: Then yesterday  
6 there was also a discussion about the software  
7 about infinite and finite numbers.

8           THE WITNESS: Yes. First, if we are  
9 dealing with--one thing that I think has to be  
10 clarified, if it's a three-reel machine, the old  
11 machines were mechanical, which means they  
12 literally had three reels that went around, and  
13 each reel would have 20 stops, 20 positions which  
14 had symbols. Let's say 20 to make it easy.  
15 Probably was closer to like 26, but 20 is an easy  
16 number to use. So, if there's 20 possible  
17 positions that could show up in the first reel and  
18 20 that can show up on the second, and 20 on the  
19 third, that means there's 8,000 positions. 20  
20 times 20; is that right? 8,000. So, your maximum  
21 prize can't be more than 8,000 to one. Your

1 chances are one out of 8,000 of winning, so you  
2 couldn't offer on a 25-cent machine a \$50,000  
3 prize. You would go broke.

4           What the industry came up with is what are  
5 now first called electromechanical machines, and  
6 now are true 100 percent electronic video machines.  
7 And particularly the electro mechanical, but  
8 they're certainly the same as going on with the  
9 video. It looks like there are, say, 20 stops,  
10 but, in fact, they're called virtual reels, so that  
11 the first reel, which looks like it's got 20  
12 symbols, most of which are losers, of course, are  
13 blank, for example, but, in fact, that reel could  
14 have a hundred or a thousand stops on it.

15           And the winning symbol, the jackpot symbol  
16 could be one of a thousand. The computer thinks  
17 there's a thousand. So, it's one of a thousand.  
18 The blank right next to it could be 300 of a  
19 thousand, so that it's going to show up blank 300  
20 times as often, but the winning symbol will be  
21 right next to it, and oh, look how close I was.

1           Therefore, you could have a payout that is  
2 no longer the odds are one in 8,000. You could  
3 have the odds of one in 10 million, and therefore  
4 you could offer very large jackpots. And you can  
5 simply change the control--change the computer chip  
6 any way you want that's legal to change what the  
7 payout percentages will be.

8           PRESIDENT VAN DEN BERG: You said, when I  
9 saw the machines, I was nearly convinced that they  
10 were slot machines.

11          THE WITNESS: And as I said--

12          PRESIDENT VAN DEN BERG: Why is that that  
13 you came to that conclusion, because of the  
14 features of the machine? And you haven't looked  
15 into the machines because you think to get to the  
16 conclusion, you have to open up the machine to see  
17 what's in it?

18          THE WITNESS: Actually, today, it doesn't  
19 help much to open up the machine because what you  
20 find inside is a computer board and computer chips,  
21 so physically looking at it doesn't give you very

1 much information, unless it's one of the old style  
2 reels, three mechanical reels.

3           I obviously have not played the machine  
4 myself or seen it, but--and you can't tell what the  
5 percentage is by the payout amount. That was  
6 testified to yesterday, and I want to make it clear  
7 that simply because it pays on a pair of tens or  
8 more or pair of 10 dwarfs or mind cards, whatever  
9 they are or more doesn't tell you anything because  
10 you don't know how often they're programmed to come  
11 up. We don't know if this is a design to accurately  
12 simulate a deck of cards or what.

13          But the, machines in every feature that  
14 they have look identical to the slot machines that  
15 you find in casinos. But, unless you played them,  
16 you don't know what they are.

17          PRESIDENT VAN DEN BERG: But can you  
18 analyze, for example, these payout rates by  
19 installing the software?

20          THE WITNESS: You would have to actually  
21 run hundreds of thousands or millions of games to

1 know exactly what the payout rate is. Nevada has  
2 ruled that these virtual reels are not inherently  
3 deceptive because if a player can play long enough  
4 to figure out what the real--what the true odds  
5 are--there's beginning to be a little bit of  
6 controversy about this because most people think  
7 that their odds are not as great as they really  
8 are, but you can't really tell what a mechanical  
9 game, particularly an electronic game, payout is  
10 without watching it for--physically watching it for  
11 days, or they now have labs that simply run  
12 millions of games in hours.

13 PRESIDENT VAN DEN BERG: Labs that have  
14 specialized equipment to run these chips?

15 THE WITNESS: Yes, one of their prime  
16 purposes is to analyze the chips to make sure that  
17 they do what they're purported to do.

18 ARBITRATOR WALDE: Gambling laboratories?

19 THE WITNESS: Gambling laboratories.

20 So, for example, it's rare, but they catch  
21 mistakes sometimes where if it's a video poker

1 machine, there was a fun case, fun for the people  
2 who were outside where somebody got an ace of  
3 spades, king of spades, queen of spades, jack of  
4 aces, ace of spades. That is not supposed to  
5 happen. And of course, the player says it's a  
6 royal flush, pay me the big jackpot, and the casino  
7 says it's nothing.

8 There was a major case that got a lot of  
9 publicity in Nevada when they call them route  
10 operators, people who put slot machines in bars and  
11 they had rigged the machines so you could not win  
12 the royal flush, you would not get the jackpot.  
13 That obviously led to major criminal prosecutions.

14 PRESIDENT VAN DEN BERG: Okay. Could you  
15 please the respondents show to Professor Rose  
16 Exhibit C-69-A. That's the report. It's the  
17 Netcomm report, yes.

18 If you turn to the first page, it's a  
19 report of Netcomm of 3 July 2001.

20 First of all, Professor Rose, do you know  
21 Netcomm as a laboratory on gaming?

1 THE WITNESS: No, I don't, but I actually  
2 don't--again it's in Spanish. I don't see the name  
3 of the company.

4 PRESIDENT VAN DEN BERG: It's on the first  
5 page. I will show you what I have is the first  
6 page because it says "peritaca," which means  
7 expert. You have that in front of you?

8 THE WITNESS: No, I do not have that one.

9 MR. CROSBY: Mr. President, I note that  
10 they're showing him the document that was in  
11 evidence with Mr. Atallah's testimony that has  
12 writing on it as well. It's a draft.

13 PRESIDENT VAN DEN BERG: I would like to  
14 have a clean copy.

15 THE WITNESS: Thank you. This is not the  
16 same document. That copy didn't have a heading.  
17 This one does have the name of the company on the  
18 top. I have not heard of Netcomm before.

19 PRESIDENT VAN DEN BERG: Now, if you go  
20 over, you have the statement, please, if  
21 Mr. Perezcano can again be of help in the

1 interpretation. First describe the proceedings,  
2 how they went about the expertise. This was an  
3 examination at the request of the district  
4 attorney, if I may call it for short, in Mexico,  
5 about the machines in question, the EDM machines.

6 THE WITNESS: Right.

7 PRESIDENT VAN DEN BERG: So, then what  
8 happened was that Netcomm was commissioned by the  
9 DA to determine whether or not this was--these were  
10 machines for skill and dexterity is what they're  
11 being asked. So then they say look at what we do.  
12 We have looked at them, and then if you flip over a  
13 number of pages, because I cut at the last page,  
14 but simply if you flip it to where you see things  
15 which you may be familiar to you, then you get a  
16 number of invoices, certificate of conformity, and  
17 if we turn to perhaps page 14, there you see the  
18 buttons.

19 THE WITNESS: Yes.

20 PRESIDENT VAN DEN BERG: And farada is  
21 simply for you. That means stop; I hope I'm



1 correct, Mr. Perezcano?

2 MR. PEREZCANO: Yes, sir.

3 PRESIDENT VAN DEN BERG: Then you go on,  
4 then they say--now it comes at page 15, we have  
5 looked into what's in it, in the machine, and then  
6 you go on a number of other pages. And when we go  
7 at page 20, there, Mr. Perezcano, may I kindly ask  
8 you to translate K at the bottom of the page.

9 MR. PEREZCANO: Yes, sir. These machines  
10 have the following electronic hardware. A case, a  
11 monitor, glass, encasement of the buttons, the  
12 logic board, cables, printer, the power, the  
13 electrical power, and several components. The user  
14 intervenes in the action of the machine by using  
15 buttons which are placed in a panel in the machine.  
16 Pressing the button sends signals to the logic  
17 board, which is in a total neutral or dataset that  
18 is inactive until the user initiates the process  
19 and sends the signals to the logic board. The user  
20 presses the first button, and it ceases to be  
21 inactive. The user has three--between three and

1 five buttons, depending on the game, to communicate  
2 with the machine through the logic board, and this  
3 communication shall be determined in the results of  
4 the game.

5 The functionality of the game depends on  
6 the orders of the user because the logic board is  
7 the slave, between quotes, of the user. When the  
8 user presses a button to print a ticket that  
9 indicates a prize or the incentive, the interaction  
10 of the user and the machine ends.

11 PRESIDENT VAN DEN BERG: Could you then  
12 proceed with, unless I would like to leave it to  
13 the interpreters to go this way. And the small,  
14 second one.

15 MR. PEREZCANO: Therefore, all the games  
16 that are described here involve the  
17 ability--involve ability and dexterity because the  
18 components of the logic board do not contain  
19 circuits that randomly control the results of the  
20 game.

21 PRESIDENT VAN DEN BERG: Professor Rose,

1 first of all, you are familiar with, I assume, this  
2 number of expert reports on skill machines.

3 THE WITNESS: Sure.

4 PRESIDENT VAN DEN BERG: Is this an expert  
5 report with which you are familiar, this type of  
6 expert report?

7 THE WITNESS: I have seen expert reports,  
8 I have written expert reports, but basically you do  
9 want to go through the characteristics and then  
10 make your conclusions. I certainly disagree with  
11 this one.

12 PRESIDENT VAN DEN BERG: Could you explain  
13 why you disagree with this one.

14 THE WITNESS: I actually find it's  
15 humorous in terms of saying there is dexterity.  
16 That means every slot machine has dexterity because  
17 you have to find out where you put the coin, and  
18 most don't have handles anymore, where you press  
19 the button to start it. So, I don't understand the  
20 dexterity argument.

21 But, choosing the cards which ones--this

1 has to be a video poker-like machine because it  
2 says that the buttons activate the card which means  
3 you're going to replace it as opposed to a  
4 skill-stop. This is not a skill-stop. That's why  
5 there is no dexterity even possible.

6 If it's a typical video poker, yes, you do  
7 have to decide which cards to hold and which ones  
8 to throw, and I do believe that does clearly  
9 require some skill because a person would do better  
10 knowing the rules and, of course, the probability  
11 then playing blindfolded, but that doesn't make it  
12 predominantly skilled or a game of skill.

13 PRESIDENT VAN DEN BERG: But look to the,  
14 may I invite you to, again perhaps, Mr. Perezcano,  
15 the conclusion, because the components of the logic  
16 board, press the button, and the logic board does  
17 not contain circuits which control randomly the  
18 results of the game. Mr. Perezcano, I hope I  
19 translated it correctly?

20 MR. PEREZCANO: Perfectly well.

21 PRESIDENT VAN DEN BERG: The skill

1 machines because the circuits do not control--there  
2 are no circuits which control randomly the results  
3 of the game.

4 THE WITNESS: I think what they're trying  
5 to do is distinguish this from those three-reel  
6 electromagnetic or truly video slot machines where  
7 the computer, in fact, does determine the outcome,  
8 whether you win or lose. Here, it is the random  
9 number generator that is going to decide what  
10 replacement cards you get when you play. In other  
11 words, if you are dealt a pair of aces and then  
12 three small cards, garbage cards, you throw the  
13 three small cards, and the computer isn't  
14 programmed to say in advance, aha, if you--we are  
15 going to show this guy a pair of aces. He will  
16 throw three cards, and then we will replace them  
17 with, say, a pair of kings and a small card, so he  
18 has two pairs, but it is the computer that  
19 determines what those replacement cards are. And  
20 so you can, with a very high degree of certainty,  
21 set the probability to pay out.

1 Certainly, skillful players will do  
2 better. Somebody who has a pair of aces and throws  
3 them and holds the three little cards is going to  
4 end up with a bad hand. Can't get a good hand, so  
5 there is skill involved.

6 But, if this is a game of skill, then  
7 video poker is legal everywhere in the world, and  
8 nobody is going to go down that world.

9 PRESIDENT VAN DEN BERG: One last question  
10 I have, and Professor Walde has follow-up questions  
11 to me, and the parties will have follow-up  
12 questions. There is one last question which is  
13 also, because you mentioned the New England case  
14 with the seaside, and that was in context of the--

15 THE WITNESS: That wasn't me.

16 ARBITRATOR WALDE: Was it U.K. or England?

17 THE WITNESS: It was U.K.

18 PRESIDENT VAN DEN BERG: But the matter  
19 was this. You say, look, to determine whether it's  
20 predominantly skill or chance, that depends on the  
21 time which is allowed to a player, a patron as they

1 call them here, to acquire the skill, and in view  
2 of the circumstances, because you have these  
3 tourist busloads, the Frito box guys and girls, and  
4 they only come and they have no time to learn the  
5 skill.

6           Yesterday, we also heard testimony you can  
7 acquire this, but it does not depend on actually  
8 how much games you have to play in order to acquire  
9 it, if you acquire it at all, because it also  
10 depends on what type of IQ you have.

11           THE WITNESS: Yes, a good question. The  
12 U.K. case is from somewhere in the 1930s, and it's  
13 unique because it was one game--it's the only one I  
14 know of where the court actually said this is a  
15 game of skill if you have the time to sit and play  
16 it, and then they held that, no, because you have  
17 to look at the average player under average  
18 conditions.

19           Again, Blackjack has a lot of skill.  
20 There are players, and I have worked with  
21 professional card counters who make a living

1 playing Blackjack. But there again, there is no  
2 appellate court, there is no jurisdiction that says  
3 Blackjack is a game of skill, and therefore we  
4 can--anyone can start opening up a Blackjack tables  
5 on the street.

6           One of the characteristics on whether a  
7 game has skill is whether there is a learning  
8 curve, whether the more you play it the better you  
9 do, and a learning curve should be fairly steep at  
10 the beginning and then level off because at some  
11 point you become a professional, and each play then  
12 is only incrementally a tiny bit more knowledge.  
13 Another would be that professional player who has  
14 been playing will do better than the amateur who  
15 just began.

16           So, in fact, this is interesting, this is  
17 actually showing up in the statistics that are  
18 coming out, when a jurisdiction legalizes, like  
19 when an Indian casino opens up and they are playing  
20 Blackjack, what's called the hold, how much the  
21 casino makes from its Blackjack table tends to be

1 very high at the beginning, even with the same  
2 number of players making the same bets, over time  
3 it gets better and better, because people realize,  
4 gee, I guess I don't take a card when I have a pair  
5 of 10s. So, there is a learning curve.

6           Some of the newest true slot machines that  
7 clearly are chance are getting so complicated.  
8 This really came out of Aristocrat in Australia,  
9 although I know there is a monopoly game in the  
10 airport in London, and I didn't have the time to  
11 figure out how you win at that game, even though  
12 it's pure chance. So, the more you play those  
13 games, the better you're going to do.

14           PRESIDENT VAN DEN BERG: Thank you.

15           ARBITRATOR WALDE: I would like actually  
16 to follow up on something I seem to have hit  
17 inadvertently because I'm not a gambling lawyer but  
18 an investment lawyer. I know Mississippi by Loewen  
19 and not by its gambling experiences.

20           Bit if I'm just summarizing what you told  
21 us. It's very clear that in a restrictive

1 environment, any license alteration has a huge  
2 financial value. That is what you were just--

3           THE WITNESS: If there is a limited  
4 number.

5           ARBITRATOR WALDE: If everybody, if every  
6 corner, clearly--I think of the U.K., you will tell  
7 me better, but I'll even send Aunt Rith if there is  
8 a big arcade right here, but doesn't seem to be--

9           THE WITNESS: Well, in fact, because of  
10 the Budd report that came out in England, now  
11 American companies are joining up with English  
12 companies because it looks like they're going to be  
13 issuing licenses. The latest talk was a very  
14 limited number for London, and those are not going  
15 to be the current law which says 10 slot machines,  
16 but we are talking fall casinos.

17           ARBITRATOR WALDE: What I'm trying is that  
18 the License clearly has a--what I'm saying does not  
19 justify the license but even as you're pointing  
20 out, a toleration must have a huge value and it's  
21 very important to get it.

1 THE WITNESS: I'm sorry, I missed that  
2 word.

3 ARBITRATOR WALDE: It is very valuable to  
4 get a license or a de facto license by toleration.

5 THE WITNESS: Oh, toleration, yes.

6 ARBITRATOR WALDE: Now, if I look at the  
7 Mississippi experiences, which first time I've  
8 heard about, but I assume is that the  
9 government--the governor or whoever it was in  
10 power--

11 THE WITNESS: Let me say that was  
12 Louisiana.

13 ARBITRATOR WALDE: Sorry, Louisiana.  
14 Okay. Louisiana. So, they gave licenses basically  
15 to people who were politically connected.

16 THE WITNESS: They actually were taking  
17 bribes.

18 ARBITRATOR WALDE: So, they were taking  
19 bribes which means from the fact there is  
20 toleration or license, you could come up with a  
21 prima facie idea that there might be political

1 protection?

2 THE WITNESS: Well, there is the first  
3 question on whether you are going to have a limited  
4 number of licenses or an unlimited. Nevada is the  
5 best example of an unlimited number. You still  
6 need to have a lot of money to get into that  
7 market. They just fairly recently have said in Las  
8 Vegas, in Clark County, you have to have at least a  
9 hundred room hotel, so obviously now you even need  
10 more money. In Louisiana, the number was, I  
11 believe, 10. There were going to be 10 licenses  
12 for the entire--yes, 10 licenses for the entire  
13 state, and there were a lot of problems. The  
14 regulatory system, the regulators were paid a very  
15 small amount, 10 or \$20,000 a year, which was done  
16 apparently on purpose, so that they would bend to  
17 the Governor's will.

18 ARBITRATOR WALDE: So, your story from  
19 Louisiana, not Mississippi.

20 THE WITNESS: Right, Louisiana.

21 ARBITRATOR WALDE: Does suggest that if

1 you can kind of can actually operate in an  
2 otherwise illegal environment, if you tolerate it,  
3 that you do have to have political protection, and  
4 if it doesn't work, you are not getting political  
5 protection. You're not powerful enough.

6 THE WITNESS: I actually think what  
7 happens, of course, of course there is a small  
8 number that get preliminary injunctions, temporary  
9 injunctions, so they're now technically legal until  
10 they--you know, it may take years before the trial  
11 for the permanent injunction, in which case they  
12 may get closed down there.

13 I was involved in a case where a guy put  
14 machines that were clearly slot machines on Indian  
15 land in the state of Washington. They were ruled  
16 to be illegal, and yet the trial court said you can  
17 continue to operate them while it up going up on  
18 appeal, which is fairly unique. So that's one way  
19 it's tolerated. That's a small number.

20 ARBITRATOR WALDE: But does this  
21 toleration suggest that there is strong support for

1 the tolerated party by the powers, which might be  
2 the Governor, the politicians, the courts?

3 THE WITNESS: I would say no because,  
4 first of all, in Louisiana, those were licenses.  
5 They bought the licenses. Those were bribes not to  
6 stay open but to literally get a license.

7 Historically, organized crime has used--I  
8 don't know if it's political influence so much as  
9 bribing the cop on the beat, and bribe the police  
10 and the people, the officers slightly above him.  
11 Because the one thing that's unique about illegal  
12 gambling is that it is very public. You have to be  
13 open to the public, which means the police are  
14 going to see you.

15 And if you're going to stay open, and it's  
16 illegal, you either have to try to work things out,  
17 like only pay off people, let's say you set up  
18 video poker machines, true video poker machines, no  
19 dispute and no dispute they're illegal, or at least  
20 they're probably illegal, but you only pay people  
21 when there is no law enforcement official around.

1 And then an undercover cop comes in.

2           That does happen--not as much  
3 certainly--it didn't happen very much, and it  
4 doesn't happen very much because it's easy for a  
5 reporter or the federal official or the higher  
6 police official to come in.

7           The other tolerated is often tolerated  
8 because gambling is such a low priority that they  
9 have done some interesting studies where people  
10 will--the police and public don't really want the  
11 antigambling laws actively enforced, and they're  
12 very difficult to enforce because oftentimes you  
13 need wire taps and stuff like that.

14           So, if you look at what's going on with  
15 the Internet right now, there are more than a  
16 hundred sites that you can bet on the Internet, and  
17 let's make--give you an example. You can make  
18 sports bets with unlicensed operators in other  
19 countries. This is clearly illegal under U.S.  
20 federal law. It's tolerated because it would  
21 really take a tremendous effort to close them down,

1 and they've made a few show arrests, but not very  
2 many.

3           ARBITRATOR WALDE: There was a story in  
4 Theodore Roosevelt's biography about liquor  
5 licensing in New York, where the toleration was a  
6 big issue you might look at. But if you see in a  
7 state like Louisiana, you see there is a person who  
8 has good connections to the governor and his  
9 operations go on, he gets through the courts, and  
10 he just goes on, but then there are people from  
11 outs of state who come in, and they get clamped  
12 down and thrown out, would you not kind of suggest  
13 that perhaps the strong man in Mississippi is kind  
14 of with his--you are trusting middle level cops  
15 which you say are often hired, would you not  
16 suggest that he is in collusion with the state  
17 machinery to get rid of its competitors?

18           If you think you come from New York, look,  
19 I used to live in New York, I came once to the  
20 South and someone said to me, are you one of these  
21 jaded New Yorkers, even though I don't sound like a



1 New Yorker. Would you not suspect that this was--I  
2 was--I got a trip deal in a hotel and somebody said  
3 it's only jaded New Yorkers who get this. You  
4 understand my question?

5 THE WITNESS: I understand the question,  
6 and it turns out that it's rare. It's very rare  
7 for toleration to be tolerated because of graft or  
8 we would call it venality.

9 ARBITRATOR WALDE: But if it is tolerated.

10 THE WITNESS: If it's tolerated, it's  
11 almost never geographic. So, like in Louisiana in  
12 the 1940s, the Governor back then made a deal with  
13 the New York, New Jersey mob to come in. It  
14 wasn't--whoever has the money. We are not talking  
15 political influence. We are talking money.

16 ARBITRATOR WALDE: But if you see among  
17 gambling competitors one so to say is consistently  
18 seems to be making money and the other ones are  
19 kind of being ruthlessly closed down by middle  
20 level police cops, what would you suggest could be  
21 is the normal reason? We don't know the evidence,

1 we don't know the details, but what do you think is  
2 likely to have happened, under the table?

3 THE WITNESS: Well, first of all--right.  
4 I don't--it is--it's so rare that it's hard to say,  
5 but it's not--again, it's not normally politics.  
6 In the gambling industry it doesn't matter,  
7 conservative, liberal, Democrat, Republican,  
8 they've all come out now in favor of legal gambling  
9 with some significant exceptions because it's  
10 money. We are dealing with so much untraceable  
11 cash that it has to be regulated, but if there are  
12 bribes, it's bribes, it's money. It's not  
13 politics.

14 The other thing that happens is if it's  
15 tolerated because it's questionable, then the other  
16 questionable operators will be left alone also. If  
17 somebody, if one operator, and I have been involved  
18 in cases like this where an operator comes up with  
19 a new game, and the Attorney General, whoever, says  
20 we are going to close you down, they go run to  
21 court to get a preliminary injunction, so they can

1 stay open. Every other club. All their  
2 competitors immediately go to court and say you  
3 can't discriminate.

4 ARBITRATOR WALDE: But if you find a  
5 situation where one operator is tolerated and the  
6 others are really clamped down, are you then  
7 suggesting from the logic that the ones are paying  
8 bribes and other ones are not?

9 THE WITNESS: There is the possibility of  
10 bribes. There's a very good possibility of bribes.

11 ARBITRATOR WALDE: But I have got this  
12 competitive. The one closed down and the other one  
13 doesn't.

14 THE WITNESS: Right, that's what I'm  
15 saying. If they have closed one down and don't  
16 close down a competitor who is very public, then  
17 there is the possibility, very strong possibility  
18 of bribes. There is also a very strong possibility  
19 that it's just one more gambling operation that  
20 they don't care about because they don't care about  
21 gambling operations.

1 ARBITRATOR WALDE: Structures in  
2 Mississippi and Louisiana, is there an idea that  
3 they get bribes. I read John Gresham. My  
4 knowledge is based on life in New York far away and  
5 John Gresham.

6 THE WITNESS: There have been. The thing  
7 about Edwin Edwards, and I do want to make sure  
8 it's Louisiana because I may have slandered  
9 Mississippi, that he was--he is the only government  
10 official that I know of who has ever been indicted,  
11 let alone convicted for taking bribes. There have  
12 been a few incidents of--there are also some  
13 incidents. It's an enormous industry. It's much  
14 bigger, for example, in dollar volume than the  
15 movie industry. It's bigger than everything else,  
16 in fact, in terms of dollar volume, every other  
17 part of the entertainment industry, and it's so  
18 universal. There certainly have been incidents of  
19 government officials being accused, but they're  
20 even accused of taking bribes to give a license to  
21 a supplier, not an operator, you know, because you

1 often you may have only with a--well, suppliers  
2 have to be licensed, so maybe only one license will  
3 be given to the supplier.

4           Again, it's money. It's not politics, if  
5 it happens.

6           PRESIDENT VAN DEN BERG: Time for the  
7 follow-up questions. Mr. Becker, you have  
8 follow-up questions?

9           You are under testimony. You cannot  
10 discuss the case.

11           (Brief recess.)

12           PRESIDENT VAN DEN BERG: Mr. Crosby, your  
13 side ready? Although I see Mr. Weiler is--

14           MR. CROSBY: We could proceed.

15           PRESIDENT VAN DEN BERG: You ready?

16           MR. PEREZCANO: Yes, sir, I'm ready.

17 We're ready.

18           MR. BECKER: Thank you, Mr. President.

19           REDIRECT EXAMINATION

20           BY MR. BECKER:

21           Q. Professor Rose, in the translations of

1 sections of portions of the Netcomm report you  
2 heard shortly before the break, did you hear any  
3 mention of Netcomm having examined sourcecode  
4 contained in the machines?

5           A. I don't believe that was mentioned.

6           Q. All right. Could one tell much about how  
7 a machine like this would operate simply by looking  
8 at the chips on the circuit board?

9           A. You mean physically looking at it?

10           Q. Physically examining it.

11           A. You don't know anything. It could be--I  
12 mean, the description would fit a laptop computer.

13           Q. And is it common when a new type of  
14 machine is introduced in a jurisdiction that the  
15 courts may have differing views on the same  
16 machine, at least at the beginning?

17           A. Oh, certainly. I mean, you've got--you've  
18 always got that jurisdictional problem which, and  
19 the best example is 40 years ago the only  
20 jurisdiction within the continental United States  
21 that has casinos was Nevada. Even today, right

1 across the border is Utah, and Utah is one of the  
2 two states now which has no form of commercial  
3 gambling, and it shares a common border with  
4 Nevada, so, you've always got the jurisdictional  
5 problem.

6           You've even got the problem of individual  
7 judges, although what will happen in the United  
8 States is if a judge in a county will rule that,  
9 say, grant a preliminary injunction, then the other  
10 potential operators will, of course, try to get  
11 other--and will be able to get other judges in that  
12 county, but they may go to another county and  
13 get--find out that they're closed down.

14           MR. BECKER: Thank you. I have no more  
15 questions.

16           PRESIDENT VAN DEN BERG: Thank you,  
17 Mr. Becker.

18           Mr. Crosby, please.

19           REXCROSS-EXAMINATION

20           BY MR. CROSBY:

21           Q. Professor Rose, you mentioned that you

1 were involved in a horse betting facility in  
2 Caliente? I'm sure I got that wrong.

3           A. I was working with a U.S. lawyer on  
4 Caliente sports and race books, and I have done,  
5 you know, various projects with them.

6           Q. Was that a gambling facility?

7           A. Yes.

8           Q. How was that facility allowed to operate  
9 in Mexico, to your understanding?

10          A. They have licenses.

11          Q. So, though it's a gambling or betting  
12 facility, the government would have the discretion  
13 to issue it a permit or license if it chose to do  
14 so.

15          A. Well, of course, obviously you need the  
16 constitution to allow it, and the statutes to allow  
17 it, and then whatever regulations are in place, and  
18 then they get their license.

19          Q. Is that your understanding of how that  
20 particular facility was allowed to operate, because  
21 it had secured a license from the government?

1 A. I believe so.

2 Q. Though it was gambling?

3 A. Right. It's clearly gambling. They also  
4 have a--they have a regular race book, race track,  
5 but they also have--do sports betting, and this is  
6 pursuant--I believe it's is pursuant to license.  
7 It's certainly legal.

8 MR. CROSBY: Thank you very much. It was  
9 very interesting.

10 PRESIDENT VAN DEN BERG: Thank you for  
11 your testimony. You are excused.

12 Before going for the lunch break, I think  
13 try to wrap up the list of issues. I understand  
14 Mr. Weiler needed only three minutes. Now he needs  
15 four minutes.

16 MR. WEILER: With the Tribunal's  
17 indulgence, I'll just refer to the points in  
18 Mexico's commentary and make my comments at that  
19 point in time.

20 With regard to point one, I think the  
21 claimants submits that the wording of question 5.2

1 is clear, and we do not think that the Tribunal  
2 intended to ask whether or not that particular law  
3 formed part of Chapter 11.

4 With regard to point two, we leave it in  
5 the discretion of the Tribunal to say what it  
6 meant.

7 We have no problem with Mexico's point  
8 three with regard to question 6.3(b).

9 We have no concern or issue with regard to  
10 Mexico's point four.

11 We disagree with the need for a change  
12 recommended in Mexico's point five.

13 Once again, with regard to point six and  
14 point seven, we think that it's fairly clear what  
15 the Tribunal meant, and we think that the question  
16 should stand as formulated by the Tribunal.

17 And finally, we have no qualms with regard  
18 to Mexico's point eight and the suggestion that it  
19 has made with regard to question 11.4(a). Thank  
20 you.

21 PRESIDENT VAN DEN BERG: If I understand

1 you correctly, the only two outstanding points are  
2 one and five?

3 THE WITNESS: With regard to five--

4 PRESIDENT VAN DEN BERG: Six and seven you  
5 say actually it doesn't matter but we think the  
6 Tribunal is clear. If the Tribunal in its own view  
7 would not have been clear because it's been flagged  
8 down by the respondent, then we are allowed to  
9 amend it?

10 MR. WEILER: That is correct, with regard  
11 to points one, six, and seven. With regard to five  
12 we disagree.

13 PRESIDENT VAN DEN BERG: So, there is only  
14 one point left?

15 MR. WEILER: Correct.

16 PRESIDENT VAN DEN BERG: Let's concentrate  
17 on point five for the time being. Issue (a)(2).

18 Would it be helpful to resolve this  
19 question if we add "as it is contended by  
20 respondent," because apparently respondent  
21 perceived this as an issue.

1 MR. WEILER: That would be fine.

2 PRESIDENT VAN DEN BERG: That's acceptable  
3 to the respondent?

4 MR. PEREZCANO: Yes, sir.

5 PRESIDENT VAN DEN BERG: Then where you  
6 leave it to the Tribunal whether we have been clear  
7 or not, we have to go over this one ourselves, you  
8 understand that a little bit of soul searching, if  
9 we call it that way. We will let you know right  
10 after the lunch break.

11 MR. WEILER: Fine.

12 PRESIDENT VAN DEN BERG: All right. Let's  
13 see how much time do we need for the lunch break?  
14 I suggest that we resume at quarter past one. Is  
15 that okay for both sides?

16 MR. CROSBY: That's fine with us.

17 MR. PEREZCANO: 1:30, please?

18 PRESIDENT VAN DEN BERG: Okay. 1:30. And  
19 then we will resume with Mr. Gomez, provided you  
20 have got your connection up and running with  
21 Mexico. Thank you.

1 MR. PEREZCANO: Thank you.  
2 (Whereupon, at 12:27 p.m., the hearing  
3 was adjourned until 1:30 p.m., the same day.)  
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1 AFTERNOON SESSION  
2 PRESIDENT VAN DEN BERG: Mr. Crosby, your  
3 side ready?  
4 MR. CROSBY: Yes.  
5 PRESIDENT VAN DEN BERG: Mr. Perezcano?  
6 MR. PEREZCANO: Yes, sir.  
7 PRESIDENT VAN DEN BERG: You are ready as  
8 well.  
9 Then we can continue the cross-examination  
10 of Mr. Gomez. I understand from Mr. Perezcano that  
11 you obtained the information to the extent  
12 necessary for the continuation of the  
13 cross-examination of Mr. Gomez.  
14 MR. PEREZCANO: Yes, sir.  
15 PRESIDENT VAN DEN BERG: Please proceed.  
16 MR. PEREZCANO: We would like to change  
17 and move to the other chair so I can see the  
18 witness better.  
19 Thank you, Mr. President.  
20 CROSS-EXAMINATION  
21 BY MR. PEREZCANO:

1 Q. Mr. Gomez, I would like to ask you some  
2 questions. We will be speaking in Spanish, you and  
3 I. The interpreters will be following what we have  
4 to say. We will have to speak a little more slowly  
5 to give them a chance to keep up with us.

6 Do you have the document that was shown to  
7 you this morning by Mr. Crosby with the table of  
8 the reply?

9 A. Yes, I have it in my hands.

10 PRESIDENT VAN DEN BERG: It's the  
11 rejoinder. In the interpretation it was reply.

12 BY MR. PEREZCANO:

13 Q. I will be referring initially to page 41.  
14 Please turn to page 41.

15 A. I have it in front of me.

16 Q. Mr. Gomez, in your written testimony, and  
17 also in your testimony this morning, you referred  
18 to Mr. Guardia's facilities; is that right?

19 A. Yes, that's right.

20 Q. In the table in front of you, could you  
21 identify which those are.

1 A. Yes. Club 21, which appears at the top,  
2 Centro Comercial Interlomas, and also Cesta Punta  
3 Deportes in the city of Chihuahua--rather Ciudad  
4 Juarez in Chihuahua.

5 Q. Mr. Gomez, have you advised Mr. Guardia?

6 A. No, I don't know him. I have never had  
7 any contact with him.

8 Q. Do you know whether Mr. Guardia operates  
9 with some license from Gobernacion?

10 A. No, I don't know that. I don't know  
11 whether he has a license from Gobernacion. What I  
12 do know is what I have learned from the media,  
13 where I read a statement by Mr. Guardia, and, of  
14 course, through the amparo judgment that was  
15 requested in the case of Reynosa by EDM to the  
16 District Court covering the State of Mexico, where  
17 there was a copy of Mr. Guardia's amparo to operate  
18 Club 21.

19 Q. So, you know the files or the record of  
20 the Club 21 amparo proceeding?

21 A. I know about the amparo with the



1 provisional suspension.

2 Q. So, you have not gotten the amparo. What  
3 you got was a provisional suspension as part of the  
4 amparo judgment; is that right?

5 A. Yes, that's right.

6 Q. Otherwise, you're familiar through this,  
7 through the media, you said the media and the  
8 newspapers?

9 A. Yes, that's true.

10 Q. I'm going to show you, Mr. Gomez--

11 MR. PEREZCANO: I'm told that we cannot  
12 make a copy because there are no more copies.

13 PRESIDENT VAN DEN BERG: I have it on my  
14 screen.

15 MR. PEREZCANO: It's document C-97 of  
16 claimant.

17 BY MR. PEREZCANO:

18 Q. I'm going to lend you my copy, Mr. Gomez.

19 (Document handed to the witness.)

20 PRESIDENT VAN DEN BERG: I have it on my  
21 screen.

1 BY MR. PEREZCANO:

2 Q. Are you familiar with that exhibit,  
3 Mr. Gomez?

4 A. This exhibit, I did not know.

5 Q. Can you identify what it is?

6 A. It says: "I will open my casino with or  
7 without law," controversial businessmen, Jose  
8 Guardia, Lord of Casinos agrees to talk about  
9 everything with Millennia.

10 Q. Would Millennia be one of the newspapers  
11 that you were referring to through which you found  
12 out about how Mr. Guardia operates?

13 A. No. I was referring directly to an  
14 article that appeared in the Universal newspaper.

15 Q. Millennia is not something that you would  
16 have read?

17 A. Millennia I will read occasionally, but I  
18 have not seen this article before.

19 Q. But that statement, "I will open my casino  
20 with or without the law," Millennia does attribute  
21 to Mr. Guardia? That's true?

1 A. Yes.

2 Q. And that's the same Guardia we are talking  
3 about?

4 A. Well, the picture is dark, and I would not  
5 be able to recognize him from what I saw in the  
6 Universal newspaper.

7 Q. Jose Maria Guardia is--well, his name is  
8 also Jose Maria Guardia, and the Club 21 person is  
9 also named Jose Maria Guardia, so we are going to  
10 assume that we're talking about the same  
11 individual; right?

12 A. Yes.

13 Q. Do you know of any other cases, court  
14 cases, involving Mr. Guardia or his various  
15 companies with Gobernacion because of the operation  
16 of his various establishments or facilities?

17 A. No, I don't know anything about that.

18 Q. You don't know that he's got a case that  
19 is ongoing having to do with the closing of the  
20 Juarez race course?

21 A. I don't know anything about that.

1 Q. In the case of Ciudad Juarez, did you know  
2 that Gobernacion closed that establishment, that  
3 facility?

4 A. In Ciudad Juarez, I was there last week,  
5 in Club 21 downtown, and it's open.

6 Q. Do you know whether Gobernacion closed  
7 that facility?

8 A. I understand that there was a closing  
9 several years ago of Club 21, the section with the  
10 machines at the race course.

11 Q. In Ciudad Juarez?

12 A. Yes, in Ciudad Juarez.

13 Q. Is that the same place as Cesta Punta  
14 Deportes in Ciudad Juarez?

15 A. It's the same place.

16 Q. Did you know that in that case Mr. Guardia  
17 or his company initiated an amparo judgment against  
18 the actions of Gobernacion?

19 A. I didn't know that. The only thing I know  
20 is that the place is open.

21 Q. So, you also did not know whether or not

1 there was a provisional or definitive final  
2 suspension?

3 A. In the case of Juarez, I'm not aware of  
4 whatever process was followed by the gentleman.

5 Q. If a facility that has been closed and  
6 does not have protection through an amparo  
7 judgment, if it were operating, would, in your  
8 opinion, that be a serious violation of the law?

9 A. Yes, I agree with that.

10 Q. In the case of the Reflejos facility, I'm  
11 not going to ask you to identify them because  
12 they're all called Reflejos, and I believe that's  
13 clear from the table that it's the other three.  
14 There is also mention on page 42. But do you know  
15 the legal reason--sorry, the legal grounds on which  
16 these facilities that you testified are this  
17 morning operate?

18 A. Well, the legal ground is that they handle  
19 this as a place where there are machines of skill,  
20 and I believe there is--I know about an amparo  
21 judgment in the case of one establishment or

1 facility in Matamoros.

2 Q. Do you know whether in the other two cases  
3 they have permission from Gobernacion?

4 A. I don't know that.

5 Q. Do you know whether they have amparo  
6 judgments that are ongoing?

7 A. I don't know that.

8 Q. Mr. Gomez, do you know about actions taken  
9 by the office of the PRG with regard to Reflejos in  
10 Tamalipas last Friday, Friday of last week?

11 A. No, I wasn't there.

12 Q. Well, we can ask Mr. Alcantara about that.  
13 In your written testimony--well, this  
14 morning, Mr. Crosby asked you a number of questions  
15 about the operation of the machines, and about the  
16 fact that they will take dollar notes, they issue a  
17 ticket that can be redeemed for dollars; isn't that  
18 true?

19 A. Yes, that is true.

20 Q. In your written testimony you refer to a  
21 customer that you had or have, Amazing World. Do

1 you remember that?

2 A. Yes. A client--

3 MR. CROSBY: I would object. This is  
4 beyond the scope of the direct testimony. He  
5 testified as a percipient witness on what he saw  
6 this morning. That was all.

7 PRESIDENT VAN DEN BERG: He can also be  
8 examined on his written testimony, because there is  
9 no exception in that respect. He's being  
10 cross-examined on what is in his witness statement.

11 MR. CROSBY: I guess I misunderstood. I  
12 don't think he was on a witness notification list.  
13 He was not somebody that Mexico sought to  
14 cross-examine in this case. Maybe I just read the  
15 rules wrong, but it's the deference of the  
16 Tribunal.

17 PRESIDENT VAN DEN BERG: There is a  
18 limitation for those who have not been notified.  
19 Yes, that--I missed that one.

20 It's correct. You can cross-examine him  
21 on matters that have arisen in the direct

1 examination, but on the witness statement if you  
2 have specific questions, you have to seek leave  
3 from the Tribunal.

4 MR. PEREZCANO: Mr. Gomez, first of all,  
5 testified this morning about the operational  
6 methods, the payment of awards, if I may use those  
7 terms in the case of these machines. That same  
8 topic is referred to in his written testimony and  
9 in one of the documents attached with Amazing World  
10 so, despite the objection, I think it is something  
11 that is pertinent having to do with the issues on  
12 which he testified this morning.

13 PRESIDENT VAN DEN BERG: You may proceed.

14 MR. PEREZCANO: Thank you, Mr. President.

15 BY MR. PEREZCANO:

16 Q. In your testimony, you indicate that  
17 Amazing World was a customer of Mr. Girault.

18 A. Let me clarify that he was my customer.  
19 In my testimony, it appears that it was  
20 Mr. Girault's customer, but it was my customer, and  
21 there's a mistake of translation there.

1 Q. Well, thank you very much for that  
2 clarification.

3 It also states that on 9 October you  
4 submitted an application to Gobernacion asking for  
5 an opinion; isn't that true?

6 A. Yes, that's true.

7 Q. You did not attach the application to your  
8 testimony, but you attached the response from  
9 Gobernacion dated 14 December 2000; isn't that  
10 true?

11 A. Yes, that's true.

12 Q. I'm going to ask--well, this document is  
13 under Tab 2. It's the additional--it's Exhibit  
14 C--in a minute, I will give you the correct  
15 reference. C-93. Exhibit C-93 of claimant.

16 Do you have it in front of you?

17 A. Yes, I have it in front of me.

18 Q. Can you identify the document?

19 A. Yes, of course.

20 Q. Could you tell me what the document is?

21 A. Well, it's a reply to a request that is

1 dated 14 December. Rather, this reply was to a  
2 request I submitted in October.

3 Q. And this is--has to do with Amazing World.  
4 In the first paragraph, Gobernacion indicates that  
5 you stated that you wanted to operate a slot  
6 machines; is that right?

7 A. The first paragraph of this document?

8 Q. Sixth line towards the middle of the  
9 paragraph.

10 A. Yes.

11 Q. In the second paragraph, the Secretaria of  
12 Gobernacion indicates that you in your application  
13 explain that rewards would be toys, radios,  
14 electronic games, whose value would not exceed a  
15 thousand pesos; is that right?

16 A. Yes.

17 Q. You are clearly identified the kinds of  
18 awards that you were considering in this business;  
19 is that not true?

20 A. Yes, it's true.

21 MR. PEREZCANO: Thank you, Mr. President.

1 I have no further questions.

2 PRESIDENT VAN DEN BERG: Thank you.

3 Mr. Crosby, do you have any redirect?

4 MR. CROSBY: One minute to think here.

5 PRESIDENT VAN DEN BERG: Sure.

6 (Pause.)

7 MR. CROSBY: No redirect.

8 PRESIDENT VAN DEN BERG: Mr. Walde has a  
9 question, Mr. Gomez.

10 QUESTIONS BY THE TRIBUNAL

11 THE WITNESS: Okay.

12 ARBITRATOR WALDE: I understand you are a  
13 lawyer.

14 THE WITNESS: Yes, that's right.

15 ARBITRATOR WALDE: I understand from this  
16 letter of 14 December 2000, which I think we just  
17 received, that you also have a background in the  
18 entertainment industry.

19 THE WITNESS: Yes, I've worked as an  
20 outside advisor for Cinemax, the chain, for the TGI  
21 Friday restaurant chain, and in this case for the

1 Amazing World franchise, which is devoted solely to  
2 games for children and teenagers.

3 ARBITRATOR WALDE: It has do with this  
4 Girault, Amazing World?

5 THE WITNESS: No, that was a translation  
6 mistake. I was hired as an outside consultant by  
7 that franchise that was about to get installed?  
8 Mexico. And it didn't get installed called Amazing  
9 World.

10 ARBITRATOR WALDE: So, you are experienced  
11 actually in these entertainment licensing questions  
12 in Mexico?

13 THE WITNESS: My experience is not just at  
14 the federal level. It's at the local level in  
15 terms of permits and authorizations such as land  
16 use, environmental impact, and local operating  
17 licenses.

18 ARBITRATOR WALDE: Do you find it  
19 difficult or do you find the fact that in that  
20 particular part of the entertainment industry there  
21 is competition between various Mexican companies?

1 You find that this makes relations with the  
2 government more difficult?

3 THE WITNESS: As regards companies'  
4 relations in Mexico, there are some that have more  
5 power than others and have more relations, and this  
6 might make the road easier for those who have more  
7 relations and power.

8 ARBITRATOR WALDE: Would you advise one of  
9 your clients to open one of these--I would be very  
10 careful--video game machines with the terminology  
11 here in a place where Mr. Guardia also has  
12 operations or would you advise him rather to go  
13 somewhere else?

14 THE WITNESS: Based on what I know from  
15 the media and friends who are lawyers, wouldn't be  
16 permitted to put a business like his right next to  
17 or across from his because of his excess power.

18 ARBITRATOR WALDE: Do you find that he has  
19 influence over the government, organization  
20 regulating the industry?

21 THE WITNESS: In past administrations,

1 yes. It is known, it is said that Mr. Guardia had  
2 considerable relations with the Federal Government  
3 through a former Minister of Interior or  
4 Gobernacion who has died. It is said, but I have  
5 no personal knowledge of this, that he was a front  
6 man for Mr. Fernandez Gutierrez Barrios. This term  
7 "presta nombres" means that he acts in his name  
8 without the person with power appearing.

9 PRESIDENT VAN DEN BERG: Mr. Gomez, can I  
10 suggest that you limit your testimony to what you  
11 actually factually know rather than what others  
12 said and what you may be thinking that is  
13 happening. So, if you know Mr. Guardia, as a  
14 matter of fact, has certain influence, please do  
15 state so. Otherwise, we have to disregard the  
16 evidence.

17 THE WITNESS: Then the evidence is  
18 disregarded.

19 ARBITRATOR PORTAL-ARIOSA: I have just one  
20 question.

21 THE WITNESS: Yes.

1 ARBITRATOR PORTAL-ARIOSIA: Is it possible  
2 to legally obtain a permit to operate machines of  
3 skill which grants among the prizes--which includes  
4 foreign currency among the prizes awarded to the  
5 players under the laws enforced in Mexico?

6 THE WITNESS: If it is a skill machine,  
7 then it requires no more than a local level permit.  
8 There are many places with video games where all  
9 that is needed is a land use permit and local  
10 authorizations. At the federal level no permit  
11 whatsoever is needed by dint of there being skill  
12 machines. The way they charge is like a vending  
13 machine which can receive coins, dollars, cards,  
14 and which offer entertainment.

15 ARBITRATOR PORTAL-ARIOSIA: And in terms of  
16 the prizes that are awarded as a result of  
17 operating the machine, with respect to the prizes  
18 awarded that can be regulated by Gobernacion and in  
19 many cases it is not regulated by Gobernacion.  
20 Since there is nothing that prohibits an activity,  
21 to cite an example, sports activity awarding of

1 prize.

2 Skill games, I can cite another example,  
3 children who go to centers of entertainment such as  
4 Dave and Buster, play with the machines and receive  
5 key chains, pens, and this is not regulated. There  
6 are even tournaments.

7 ARBITRATOR PORTAL-ARIOSIA: In your  
8 opinion, would you categorize foreign currency as  
9 one of those prizes?

10 THE WITNESS: Yes, because Article 8 of  
11 the monetary law considers as the only currency  
12 that is legal tender Mexican currency.

13 ARBITRATOR PORTAL-ARIOSIA: You mentioned  
14 that you were in various border cities. Do you  
15 know if in practice dollars are used for carrying  
16 out commercial operations? In other words, is the  
17 dollar received as currency that would release one  
18 of obligations in the border area?

19 THE WITNESS: There is such use and custom  
20 in the border area, but not--it is not legally  
21 regulated.



1 ARBITRATOR PORTAL-ARIOSA: Thank you very  
2 much.

3 ARBITRATOR WALDE: Could you just repeat  
4 what you said. Is the use of dollars in the border  
5 area is just not regulated, or is it not allowed?  
6 Is it not regular?

7 THE WITNESS: It is not regulated, and it  
8 is a use and custom because of the proximity to the  
9 border with the United States.

10 PRESIDENT VAN DEN BERG: Mr. Gomez, to  
11 follow up the question by Mr. Portal, can you help  
12 me because I do not master the Spanish language,  
13 but if you write a letter to the Gobernacion in  
14 which you say redeemable for a prize, that includes  
15 this dollar sign, is that commonly understood by  
16 somebody who receives a letter? You use premio  
17 that it includes dollar.

18 THE WITNESS: As the dollar is not legal  
19 tender within the monetary system of the Republic  
20 of Mexico, it is considered to be a commodity whose  
21 value is regulated. Its value is regulated through

1 the Banco de Mexico.

2 Nonetheless, if for every operation it  
3 must be translated into pesos, and the value of the  
4 dollar is 11-some pesos at this time.

5 PRESIDENT VAN DEN BERG: I understand your  
6 answer as a lawyer, but now answer as a recipient  
7 of a letter, and now place yourself in the  
8 Gobernacion, and you receive this letter, and you  
9 see the word premio. Would you think that it would  
10 include dollars?

11 THE WITNESS: There are prizes in many  
12 forms, as I say, ranging from a key chain or an  
13 apple or it could be a dollar, considering that as  
14 a commodity.

15 PRESIDENT VAN DEN BERG: I'm looking first  
16 to your side for the flow of questions.  
17 Mr. Crosby?

18 MR. CROSBY: No, no redirect.

19 PRESIDENT VAN DEN BERG: Mr. Perezcano?

20 MR. PEREZCANO: One question,  
21 Mr. President.

## 1 FURTHER CROSS-EXAMINATION

2 BY MR. PEREZCANO:

3 Q. Mr. Gomez, once again looking at the 14  
4 October 2000 official letter from Gobernacion,  
5 Annex C or Exhibit C-93, do you have it? This is  
6 at Tab 2. The official letter from Gobernacion  
7 dated 14 December 2000? Do you have it in front of  
8 you?

9 A. Yes.

10 Q. When you clarified to Gobernacion that the  
11 prizes would be toys, radios, whose value would not  
12 exceed \$2,000, were you including in your opinion  
13 prizes in cash up to ten dollars for this  
14 establishment?

15 A. Well, I would just like to clarify that I  
16 just mentioned you just said \$1,000, but it's not a  
17 thousand dollars, but a thousand pesos.

18 Q. Well, I was saying \$10, equivalency of  
19 about 10 to one, to put it in round numbers.

20 When you stated this to Gobernacion, in  
21 your opinion, would the prizes also consist in cash

1 prizes of up to \$10?

2 A. In this case, Amazing World gives only  
3 toys as prizes.

4 Q. And you were not intending to seek an  
5 opinion regarding cash prizes in dollars?

6 A. In this case, no.

7 MR. PEREZCANO: I have no further  
8 questions, Mr. President.

9 PRESIDENT VAN DEN BERG: Thank you.

10 Thank you Mr. Gomez, for your testimony.

11 You are now excused as a witness.

12 THE WITNESS: Thank you, Mr. President.

13 (Witness steps down.)

14 PRESIDENT VAN DEN BERG: Before going for  
15 a short break, I suggest that we finalize the  
16 tentative list of issue questions. If you give me  
17 one second. Perhaps we can give you the revision  
18 number three, and I may give sufficient copies.

19 I have three more copies in quantities of  
20 the parties. How do I do this?

21 If we go to the comments by Mexico, and we

1 compare it with what you have here, item one on  
2 Mexico's notes, and that concerns issue 5.2 that  
3 has, indeed, been clarified, and please read 5.2.  
4 I'm aware as a lawyer, you have to be very careful  
5 if you use the words "thereof" or similar words  
6 because that can refer to a number of things, so  
7 indeed we have clarified; yes.

8           So then we're at point two. This concerns  
9 six, too. There we have clarified the dates. So,  
10 now, in 6, if so, what--was the opinion relevant  
11 for the dispute, and then we have three  
12 dates--three periods, actually: A, before 15  
13 August, and then the period between 15 August and  
14 10 October 2001, and then after 10 October 2001.

15           Then item three, that goes to 63 B. That  
16 was, indeed, a shortcut in drafting. If I may  
17 characterize it that way, and indeed it should read  
18 as it reads now, 63 B. Is there a uniqueness for  
19 Mexico as contended by claimant, and if so, is it  
20 subject to relevant for determination?

21           Then 481, item four of the notes, and then

1 it's eight, one. Here again this is clarified 8,  
2 1, the introductory section, which of the following  
3 test by the disputing parties, this test is to be  
4 applied by 1102 NAFTA, and then it goes on  
5 specifically.

6           Then we have five, item five, as with  
7 those already also agreed by the claimant. This is  
8 taken over as a new B under 82. There is the  
9 addition as contended by claimant.

10           Then we have item six. The Tribunal  
11 considers that this is rather argument. If you  
12 look to 10(1)(a), what we have done is we have  
13 clarified the reference where the language can be  
14 found because we have exactly taken language as put  
15 forth by the claimant, and that we have formulated  
16 as an issue. Whether it's correct or not is  
17 something for argument, so what I would see here in  
18 six is really advanced pleading, if I may say so,  
19 or a small one.

20           We then have seven. This again the  
21 Tribunal considers to be argument because this is

1 not--we have to stay in what the claimant tells us,  
2 and that is the parties and what the defendant, of  
3 course, has put forward as a defense. The issue  
4 simply because as it is raised here by the claimant  
5 in this case, so seven is because of this argument.

6 Eight was--should be inserted.

7 11(4)(a), the rephrasing except that we  
8 have and as contended and quantified. Because  
9 there are two things. There's not only contention,  
10 but we have also quantification of these scenarios  
11 in the report of Mr. Rittvo.

12 So, with that--I see Mr. Weiler has a hand  
13 in the air.

14 MR. WEILER: Just a quick question of  
15 clarification. With regard to the list of issues,  
16 perhaps the Tribunal would like to discuss now how  
17 you foresee the parties making use of this list of  
18 issues going forward with regard to the closings  
19 and the posthearing briefs.

20 PRESIDENT VAN DEN BERG: Exactly. And as  
21 indicated also in the order, especially in the

1 posthearing briefs that you summarize your position  
2 on each of these issues, and with references to  
3 both your pleadings, to the documents the parties  
4 have submitted or at least your documents would be  
5 complete if you refer to both sides, to the  
6 witness, paragraphs the relevant portions in the  
7 witness statement, and to the record.

8 And then, of course, you can make,  
9 especially with respect to the testimony we have  
10 seen here at the hearing and the questions raised  
11 by the parties--sorry, by the Arbitral Tribunal,  
12 that you could also address them in the posthearing  
13 brief, but the idea is to have a structured list of  
14 issues.

15 Now it may be an issue has to be edited,  
16 then of course we will notify you, but do please  
17 stay in this structure, if possible. But on the  
18 other hand the Tribunal would also like to  
19 emphasize that the parties are obviously free to  
20 plead their case as they wish, but it would be very  
21 helpful to the Tribunal in any way where you have a

1 section where you summarized this case in  
2 accordance with the list of issues because that  
3 will help, be very helpful for the deliberations  
4 and for drafting the award.

5 MR. WEILER: Thank you. And one follow-up  
6 question.

7 (Pause.)

8 PRESIDENT VAN DEN BERG: Okay, yes,  
9 please.

10 MR. WEILER: In terms of guiding  
11 principles for drafting, would brevity or detail or  
12 thoroughness be the guiding principle that the  
13 Tribunal would be interested in?

14 PRESIDENT VAN DEN BERG: Reasonable  
15 detail.

16 MR. CROSBY: After all, we're all lawyers.

17 PRESIDENT VAN DEN BERG: It's more  
18 difficult to draft short memo than the long ones.  
19 I do know that.

20 Any further question on the list of issues  
21 at this point in time?

1 MR. PEREZCANO: No, for our part.

2 PRESIDENT VAN DEN BERG: I suggest we  
3 break for 10 minutes, and then we'll continue with  
4 Mr. Alcantara.

5 (Brief recess.)

6 ALBERTO ALCANTARA, CLAIMANT'S WITNESS, AFFIRMED

7 PRESIDENT VAN DEN BERG: You are going to  
8 speak English, of course?

9 THE WITNESS: I'm Spanish, of course.

10 PRESIDENT VAN DEN BERG: I'm going to  
11 speak English.

12 Mr. Alcantara, you are a witness called by  
13 the respondent in this case. Could you please  
14 state your full name for the record.

15 THE WITNESS: Alberto Alcantara Martinez.

16 PRESIDENT VAN DEN BERG: What is the place  
17 and date of birth?

18 THE WITNESS: I was born in the City of  
19 Mexico on March 21st, 1973.

20 PRESIDENT VAN DEN BERG: Are you familiar  
21 with the manner in which witnesses are examined in

1 this case?

2 THE WITNESS: Not completely familiar with  
3 it, but I have seen part of this proceedings and  
4 how they develop.

5 PRESIDENT VAN DEN BERG: First, you will  
6 be asked questions in what is called direct  
7 examination by counsel to the respondent, who has  
8 called you as a witness. Then you will be asked  
9 questions by counsel for the claimant, and that is  
10 called cross-examination. Finally, you will be  
11 asked again questions by counsel for respondent in  
12 relation to matters that have arisen out of the  
13 cross-examination.

14 THE WITNESS: Yes, sir.

15 PRESIDENT VAN DEN BERG: That will be  
16 complemented by questions by the Tribunal.

17 THE WITNESS: I agree, okay.

18 PRESIDENT VAN DEN BERG: You testify in  
19 the Spanish language, your mother tongue, with the  
20 help of an interpreter. In that connection, I  
21 would like to invite you, if you give an answer,

1 wait three or four seconds to get the  
2 interpretation can finish, and the Court Reporter  
3 can catch up with you.

4 THE WITNESS: Yes, sir.

5 PRESIDENT VAN DEN BERG: Counsel, they are  
6 already aware of the rule. Whether they can apply  
7 this, that's another question.

8 THE WITNESS: Yes, sir.

9 PRESIDENT VAN DEN BERG: If any question  
10 is unclear either because of language or for other  
11 reasons, please do seek a clarification of the  
12 question.

13 THE WITNESS: Yes, sir.

14 PRESIDENT VAN DEN BERG: If you don't do  
15 so, I will tell you the Tribunal assumes that you  
16 have fully understood the question.

17 THE WITNESS: I agree.

18 PRESIDENT VAN DEN BERG: And that your  
19 answer corresponds to the question.

20 THE WITNESS: I agree.

21 PRESIDENT VAN DEN BERG: Now,

1 Mr. Alcantara you will understand that appearing as  
2 a witness before a court or an Arbitral Tribunal is  
3 a very serious matter.

4 THE WITNESS: I understand so, sir.

5 PRESIDENT VAN DEN BERG: In that context  
6 the Tribunal requests you to give a statement,  
7 which I assume is in the Spanish language in front  
8 of you on your desk.

9 THE WITNESS: Yes, sir. I do. Would you  
10 want me to read it?

11 PRESIDENT VAN DEN BERG: Yes, sir.

12 THE WITNESS: I solemnly declare upon my  
13 honor and conscience that I will speak the truth,  
14 the whole truth, and nothing but the truth.

15 PRESIDENT VAN DEN BERG: Thank you.

16 Mr. Alcantara, could you please take your  
17 first witness statement which is in R-53, and I  
18 assume it's in front of you.

19 THE WITNESS: Yes, sir, yes, sir.

20 PRESIDENT VAN DEN BERG: It looks like  
21 have you more than I do.

1 THE WITNESS: I don't think so. It's a  
2 number of copies of my own statement. It's just  
3 this document, this one.

4 PRESIDENT VAN DEN BERG: Would you please  
5 go to page seven of your first statement, which is  
6 dated 18 December 2003. Could you please confirm  
7 for the record that that is, indeed, your  
8 signature.

9 THE WITNESS: Yes, this is my signature.

10 PRESIDENT VAN DEN BERG: Thank you. Could  
11 you then go to your second witness statement, which  
12 is in R-0125, and go to page five, and that second  
13 witness statement is dated 25 March 2004. Could  
14 you please again confirm for the record that that  
15 is, indeed, your signature.

16 THE WITNESS: It is, indeed, my signature.

17 PRESIDENT VAN DEN BERG: Thank you.

18 Mr. Perezcano, or somebody else on your  
19 team is doing the direct examination?

20 MR. PEREZCANO: It's going to be me,  
21 Mr. President.

1 PRESIDENT VAN DEN BERG: Okay. Please  
2 proceed.

3 MR. PEREZCANO: Thank you, Mr. President.

4 DIRECT EXAMINATION

5 BY MR. PEREZCANO:

6 Q. What Mr. Alcantara, what is your  
7 profession?

8 A. I'm a lawyer.

9 Q. What is your current employment?

10 A. I'm a public servant. I work at  
11 Gobernacion. I'm the General Director, the  
12 Assistant General Director of Constitutional  
13 Proceedings.

14 Q. Could you describe briefly the nature of  
15 your functions at Gobernacion?

16 A. The functions I discharge that have been  
17 entrusted to me stem from the interior or internal  
18 relations of the Secretaria. It has to do with the  
19 amparo proceedings that are instituted against  
20 authorities from the Gobernacion.

21 Q. All kinds of amparo proceedings? That is

1 to say, amparo proceedings for all kinds of actions  
2 performed by the Secretariat of Gobernacion or any  
3 specific amparo proceedings?

4 A. Could you state that--well, amparo  
5 proceedings, it's a technical term. We will call  
6 them indirect amparo proceedings. These are amparo  
7 proceedings instituted against acts or actions  
8 performed by Gobernacion.

9 Q. But every single matter of Gobernacion, or  
10 one specific aspect?

11 A. In every aspect.

12 Q. Do you have knowledge of the fact that  
13 this case, in part, is about skill machines?

14 A. I do.

15 Q. Do you know of the closings performed by  
16 Gobernacion and the litigations that were brought  
17 about under amparo proceedings in that regard?

18 A. Yes, I do know about that.

19 Q. Mr. Alcantara, this phenomenon of skill  
20 machines, when did it start, when did it become a  
21 problem, or when were trials being brought, and



1 when did Gobernacion start closing facilities? I  
2 would just like to have some idea of a time line  
3 when all this started. Is this as recent as  
4 something that--

5 PRESIDENT VAN DEN BERG: Mr. Perezcano,  
6 can you ask one question at a time because I count  
7 at least four in one. So, if you take it in turns.

8 MR. PEREZCANO: Understood and noted.

9 PRESIDENT VAN DEN BERG: You have  
10 compounded questions, but I don't know how it is  
11 compounded compounded. No disrespect meant.

12 MR. PEREZCANO: I understand,  
13 Mr. President.

14 BY MR. PEREZCANO:

15 Q. When does this skill phenomenon arise for  
16 skill machines?

17 A. It is relatively recent. There was a  
18 first event, isolated event around 1998-1999, when  
19 we found a first--the first facility that operated  
20 these kinds of games. Then from 2000 onwards, we  
21 saw a number of litigations take place.

1 Q. And what has been the manner of operation,  
2 or rather how did these facilities come about? How  
3 are they start? How do they operate, and then how  
4 does the Gobernacion take action in this regard?

5 A. Let me answer your question as follows.  
6 As I said, this is a recent phenomenon.  
7 Gobernacion had had no notice, previous notice,  
8 that facilities of this nature were operating up  
9 until the time they started functioning.

10 It is very important to have notice of the  
11 operation of these kinds of places, once  
12 Gobernacion finds out that these facilities are  
13 operating, visits are conducted to look at the  
14 kinds of games that are being operated.

15 Now, if some of those games are prohibited  
16 under the law of gaming and sweepstakes, then that  
17 facility is immediately closed.

18 Q. How does Gobernacion find out that there  
19 is a facility?

20 A. Let me answer you in the following manner:  
21 Gobernacion is an agency of the Federal Government

1 of Mexico. However, the scope of its jurisdiction  
2 extends to the whole Republic of Mexico. It would  
3 be very difficult, if not impossible, to be able to  
4 be present in every single city in every single  
5 state of the republic going after operators of  
6 illegal games. Oftentimes, the decisions of the  
7 Gobernacion are based on reports put forth by  
8 citizens, and also by the authorities of a city or  
9 place or sometimes when inspectors from Gobernacion  
10 go to a given place and look at whether some  
11 illegal practice is being conducted.

12 Q. Has Gobernacion given any license for the  
13 operation of these kinds of facilities?

14 A. None.

15 Q. Gobernacion has somehow approved or  
16 authorized the operation of these kinds of  
17 facilities?

18 A. Never.

19 Q. I'm going to ask you to take a look at a  
20 document. This is a copy of the rejoinder  
21 presented by Mr. Crosby and was presented to

1 Mr. Gomez this morning, and I'm showing  
2 Mr. Alcantara the pages of the Spanish version of  
3 this document, and we have copies here for the  
4 Tribunal and for the other party.

5 Do you have the document, Mr. Alcantara?

6 A. Yes, thank you.

7 Q. These are pages from the rejoinder,  
8 respondent's rejoinder in this case. This is a  
9 chart that shows the current litigation actions.  
10 It identifies the companies that are contained in  
11 this chart?

12 A. Yes, that is correct.

13 Q. Could you describe the status of each of  
14 these actions, the current status of the most  
15 recent status of these actions in connection with  
16 each one of these facilities?

17 A. Yes, of course. If the Tribunal allows me  
18 to do so, I would like to add something. I've been  
19 looking at these facilities because amparo  
20 proceedings are assessed by me. They include Club  
21 21 as the first one here as a facility operated in

1 the State of Mexico very close to the City of  
2 Mexico. This was one of the facilities operated by  
3 Jose Maria Guardia. Slot machines were installed  
4 in Club 21, and these are prohibited by the law.  
5 In this case specifically in connection with this  
6 facility in the State of Mexico, in the Interlomas  
7 Commercial Center, Mr. Guardia was able to operate  
8 these--this facility in connection with a legal  
9 concept under amparo called the suspension of  
10 claimed actions. This means that the courts stop  
11 the action being challenged in this case, the  
12 closing, and allows the negotiation to continue.

13 In connection with this specifically,  
14 Mr. Guardia obtained a favorable judgment of  
15 amparo. We know of these judgments. These  
16 judgments are passed in these cases because what  
17 happened here is that they were procedural  
18 violations, but not substantial or merit violations  
19 in the act familiar performed by the authority.

20 In this amparo proceeding, there was no  
21 pronouncement by any authority that qualifies these

1 machines as legal or the ones that were being  
2 operated here or the ones that he, in fact,  
3 operates right now.

4 The second one here it says, Reflejos  
5 Plaza Fiesta Matamoros Tamalipas. Last week  
6 Gobernacion received notice by the district judge  
7 hearing the amparo proceeding, and the judgment was  
8 favorable to Reflejos. This also was a  
9 procedural-based amparo or an amparo on possible  
10 procedural violations. These are procedural  
11 violations and not substantial violations or  
12 substance violations.

13 Reflejos has operated during the period of  
14 time that without the consent of the Gobernacion.  
15 However, just like Club 21, it was able to operate  
16 momentarily because of this suspension proceeding  
17 that was instituted against it. In the case of  
18 Cesta Punta Deportes, Juarez, Chihuahua, if I would  
19 be allowed a further clarification, this is another  
20 place run by Mr. Guardia, it is at a different  
21 location and in a different city from the so-called

1 Club 21.

2           The case of Cesta Punta Ciudad Juarez,  
3 Mr. Guardia so far has not obtained a favorable  
4 decision of the court, and therefore he is not in a  
5 position to operate any of the machines installed  
6 there.

7           I should also clarify that not only can he  
8 not operate the machines, but there was a final  
9 revocation of his permission to operate the horse  
10 and dog racing grounds in Ciudad Juarez.

11           That means that as far as Gobernacion is  
12 concerned, Mr. Guardia is no longer the holder of  
13 permission in the area of games and lotteries.

14           PRESIDENT VAN DEN BERG: If I understand  
15 you correctly, Mr. Alcantara, that in Chihuahua,  
16 the facility, as far as concerns alleged slot  
17 machines is now closed down?

18           THE WITNESS: Not that it's closed right  
19 now. It's been closed for a while, ever since it  
20 was closed last year. And when Mr. Guardia got  
21 decisions against everything that he tried to

1 obtain, and that facility has been closed, or  
2 should at least be closed, because there is nothing  
3 that would allow him legally to operate that place.

4           PRESIDENT VAN DEN BERG: I understand your  
5 position that legally he is not allowed to do it,  
6 but is it still open?

7           THE WITNESS: The information that  
8 Gobernacion has is that it is not open.

9           PRESIDENT VAN DEN BERG: Club 21, that is  
10 still open?

11           THE WITNESS: That's true.

12           PRESIDENT VAN DEN BERG: And that's  
13 because they have an amparo which allows it  
14 actually to do it?

15           THE WITNESS: That's correct.

16           PRESIDENT VAN DEN BERG: Pending  
17 proceedings on the merits?

18           THE WITNESS: That's correct.

19           PRESIDENT VAN DEN BERG: You earlier  
20 mentioned about what they called juicio para  
21 efectos you said; is that correct?

1 THE WITNESS: That's correct.

2 PRESIDENT VAN DEN BERG: Because that did  
3 not come through the translation for understandable  
4 reasons. Could you please explain what is juicio  
5 para efectos. And that was in connection with  
6 Club 21.

7 THE WITNESS: I will try to be as  
8 untechnical as possible, and if it becomes too  
9 technical, please let me know.

10 PRESIDENT VAN DEN BERG: Try me with all  
11 the technical ones.

12 THE WITNESS: Thank you. A judgment of  
13 amparo can be issued in one of two ways. It's  
14 normally known as amparo para efectos or a  
15 substantive sentence. When it's a sentence para  
16 efectos or substantive sentence, the only thing  
17 that's looked at is the legality of the act that is  
18 being claimed. When it's a sentence as to the  
19 merits, what is looked at is the constitutionality  
20 of the act that is being claimed.

21 In the first case, when you look at the

1 legality, you ascertain that the act includes a  
2 correct citation of the articles of the law that  
3 applies, that the citizen is told why action is  
4 being taken in a certain way. It is also necessary  
5 to keep with the necessary formalities of any  
6 proceeding.

7 In the case of a sentence on merits, that  
8 means that the Tribunal looks at the entire set of  
9 actions of the officials. It checks whether it has  
10 the jurisdiction to carry out this act, where the  
11 act does not go counter to the constitutional  
12 texts, whether the act reflects what is really  
13 being faced, and also whether the act is  
14 unconstitutional or not.

15 In this specific instance, fortunately for  
16 Gobernacion, no matters of merits were looked at.  
17 But only matters of form.

18 If an amparo para efectos or substance has  
19 been obtained as I have said before, then the  
20 Tribunal has not determined whether Mr. Guardia's  
21 machines are not those machines that are forbidden

1 by law. Mr. Jose Maria Guardia today has no  
2 judicial decision in that regard. What he has  
3 obtained, in fact, are amparos para efectos for  
4 violations of form and not the merits.

5 PRESIDENT VAN DEN BERG: We have to ask  
6 Mr. de la Sterna, I think, about this whole matter.  
7 Thank you for summarizing the situation on the  
8 amparo.

9 Mr. Perezcano, please proceed.

10 MR. PEREZCANO: Thank you very much,  
11 Mr. President.

12 BY MR. PEREZCANO:

13 Q. Maybe I have a supplementary question from  
14 that asked by the President for greater clarity.  
15 What is the consequence with regard to the action  
16 or subsequent actions by Gobernacion of an amparo  
17 para efectos?

18 A. Thank you very much. In the case of  
19 amparo para efectos, the authorities retain the  
20 possibility of issuing or looking at the new act  
21 but making up for the irregularities that might

1 have been mentioned by the Tribunal. In the case  
2 of an amparo de fundo "romeds," that possibility  
3 would not exist.

4 Q. Thank you. Mr. Alcantara, would you  
5 kindly continue referring to the situation of the  
6 other facilities. We were talking about Cesta  
7 Punta Deportes Ciudad Juarez. We had stayed there.

8 A. Well, let me finish with Cesta Punta  
9 Deportes. The machines are not only not working,  
10 but they also had their license definitively  
11 revoked to run the horse racing course. Subject to  
12 the court case is the revocation of the license  
13 issued to Cesta Punta Deportes.

14 The next facility called Reflejos in  
15 Reynosa Tamalipas did obtain an amparo para  
16 efectos. The effect was that the authority should  
17 stay the closing because of some deficiencies that  
18 were found in that specific instance. Reflejos in  
19 Rio Bravo Tamalipas, despite the amparo para  
20 efectos it has, the information that Gobernacion  
21 has obtained shows that since last week this

1 facility has been closed on the voluntary basis  
2 that they decided to stop operating.

3           As to Reflejos of Rio Bravo Tamalipas, in  
4 this case, the amparo has not yet been resolved.  
5 It's been not been resolved in a final manner.  
6 They were able to get a suspension. As I've  
7 explained before, they can operate on a provisional  
8 basis until the final judgment is issued.

9           Despite that, based on information  
10 obtained by Gobernacion through Friday of last  
11 week, that facility was closed and had been closed  
12 on a voluntary basis.

13           If you will allow me, Mr. President, to  
14 add to the question asked by Mr. Perezcano, I would  
15 like to stress that in these cases of Reflejos,  
16 there have been criminal accusations against people  
17 running these establishments, with the strong, firm  
18 intention from a criminal point of view that there  
19 be cases against behavior in violation of the law  
20 of games and lotteries.

21           Q. Mr. Alcantara, this morning, Mr. Gomez

1 stated that he had visited to the Juarez and the  
2 Cesta Punta Deportes facility some days ago last  
3 week, and he observed that the place was in  
4 operation. What would be the consequence of that?

5           A. If you allow me to start with a comment,  
6 it is a very serious matter for a facility that has  
7 not only machines that have been closed down, that  
8 has not obtained an amparo allowing it to operate,  
9 but that also has had its license revoked to  
10 operate the horse racing facility that it still be  
11 operating.

12           In principle, I would say that it's very  
13 important for Gobernacion to take note of what you  
14 have quoted as having been said by a witness this  
15 morning. That comment I will forward to the  
16 officials of Gobernacion in Mexico City. If Cesta  
17 Punto Deportes is operating today or operated last  
18 week, it did so in the violation of the federal law  
19 of games and lotteries, violating or breaching the  
20 closing seals that had been put in place, and the  
21 fact that they might have broken these seals is

1 considered by Mexican legislation as an offense.

2           If what Mr. Gomez said has actually  
3 happened, undoubtedly we would be facing the  
4 commission of a felony on the part of those who  
5 broke the seals and those who operated in the  
6 Ciudad Juarez racing course. Those would be  
7 reported to the Gobernacion authorities in Mexico  
8 City for them to take whatever actions are  
9 applicable.

10       Q. With regard to a comment that was made  
11 just a few minutes ago by you, on actions, actions,  
12 I don't remember how many, of a criminal nature or  
13 criminal complaints that have been submitted, have  
14 the officials taken any measures?

15       A. Of course. I would like to add to my  
16 reply with the following information. The federal  
17 law on games and loys does not only instruct  
18 Gobernacion to close down illegal gambling, but it  
19 also indicates very clearly that the behavior  
20 against what is provided for in the law should be  
21 viewed as an offense.

1           So, to describe it in some way, it's not  
2 up to a decision on the part of the authorities to  
3 act or not to act in a criminal case, but there is  
4 an obligation by law to do so, and in the case of  
5 Reflejos that I was talking about, the office of  
6 the Attorney General of the Republic Procuria was  
7 in charge of preparing files in criminal  
8 activities, has ensured over 118 slot machines  
9 because the procuria, through its experts,  
10 determined that those machines were forbidden  
11 according to the federal law on gaming and  
12 lotteries.

13       Q. There are three Reflejos establishments.  
14 Could you tell me which of those, or would it be  
15 all of them? I'm talking about the table that you  
16 have in front of you. There are three Reflejos  
17 facilities. Could you tell us which one you're  
18 talking about.

19       A. If I'm not mistaken, it's Reflejos in  
20 Morelos and Americo Villareal and Reynosa  
21 Tamalipas.



1 Q. Mr. Alcantara, I'm going to give you an  
2 additional table, a page that was missing from the  
3 document that we distributed a little while ago,  
4 pages 37 and 38 of the rejoinder. We are going to  
5 refer to the last facility.

6 I'm going to refer to the last facility if  
7 the table on page 38. Could you tell us about the  
8 current status of that place.

9 A. Yes, of course. There is a facility  
10 called Bellavista Centro de Entretenimiento. As  
11 far as I know, that place used to operate inside a  
12 hotel in the State of Nuevo Leon in northern  
13 Mexico. In this place, there were games forbidden  
14 by law detected, and Gobernacion immediately closed  
15 down the place. Those who were operating this  
16 facility presented an amparo judgment, and they  
17 give up on it a little while after they filed it.  
18 When I say gave up on it, I'm saying that they  
19 stopped trying for that judgment to continue. They  
20 decided that a judge should not solve this case or  
21 decide this case, and by giving up on the case, the

1 closing became firm, and the facility was closed.

2 Q. Mr. Alcantara, the Secretariat of the  
3 economy, as a result of this procedure, informed  
4 Gobernacion that because of pleadings presented in  
5 this case we found out that apparently this  
6 facility had been operating. Could you tell us a  
7 bit about that situation.

8 A. When the Secretariat of Gobernacion found  
9 out what the Secretariat of the Economy had advised  
10 it, it immediately called on an inspector to go to  
11 this facility. Some photographs were taken, which,  
12 unfortunately, were not taken close enough to be  
13 able to detect the exact situation, which this is  
14 how it was found, but undoubtedly, when I looked at  
15 those photographs, I realized that the closing  
16 seals are still in place, the ones that Gobernacion  
17 put in place.

18 When we received that information from the  
19 inspector appointed by Gobernacion itself, and in  
20 order to have greater clarity about the exact  
21 status of this facility, we asked for more

1 information, and we are awaiting additional  
2 information right now.

3 Q. A few moments ago we asked Gobernacion and  
4 Mexico for those photographs. They were sent to  
5 us. Mr. President, I would like to show them.  
6 Obviously, these are new photographs.

7 PRESIDENT VAN DEN BERG: Have they been  
8 shown?

9 MR. PEREZCANO: No, no, I'm sorry, we just  
10 got them a few moments ago.

11 PRESIDENT VAN DEN BERG: Would you please  
12 first show them to Mr. Crosby.

13 MR. CROSBY: May I inquire of the witness  
14 one question?

15 PRESIDENT VAN DEN BERG: The question is  
16 allowed.

17 BY MR. CROSBY:

18 Q. Mr. Alcantara, when were these photographs  
19 taken?

20 A. These photographs were taken in February  
21 of this year.

1 MR. CROSBY: No objection.

2 PRESIDENT VAN DEN BERG: Mr. Perezcano,  
3 please proceed. I will admit them into the record.

4 BY MR. PEREZCANO:

5 Q. Mr. Alcantara, do you have the  
6 photographs?

7 A. Yes, sir.

8 Q. Are those the pictures you were referring  
9 to?

10 A. Yes, sir.

11 Q. Could you describe us what you can see in  
12 them?

13 A. I will repeat that although the  
14 photographs don't have the resolution that I would  
15 like to have to have total certainty as to what I  
16 would be saying, what I can see is that on the  
17 glass doors at the back of these photographs, you  
18 see--you still see the closing seals that  
19 Gobernacion places in every case when it detects  
20 games that are forbidden by law.

21 Q. Thank you very much, Mr. Alcantara. One

1 additional question.

2           Could you describe for us the background,  
3 if I may use that term, of Mr. Guardia? I mean,  
4 Mr. Guardia's various activities, and establishment  
5 and relations with Gobernacion since the very  
6 beginning until the present?

7           A. Of course. Jose Maria Guardia appeared at  
8 Gobernacion as the legal representative of a  
9 company called Cesta Punta Deportes. That company,  
10 in 1992, obtained a license to operate the horse  
11 and dog racing course in Chihuahua and several  
12 sports books in various places in Mexico. Although  
13 he was the holder of a license, Mr. Guardia's  
14 behavior has been characterized by continuous  
15 violations of the federal law of gaming and  
16 lotteries, and let me simply list some examples of  
17 what I'm saying.

18           He had a partner with whom he ran a number  
19 of facilities in Monterey, Nuevo Leon. Having what  
20 we assume were some personal problems with that  
21 partner, they broke that partnership up, and each

1 one of them individually established a facility, a  
2 business in the City of Monterey, but at different  
3 venues, different locations, and the sport book was  
4 run separately and individually with the same  
5 satellite signal and under the same license issued  
6 by Gobernacion.

7           Even though there was a single license,  
8 but they still had two different facilities in  
9 operation. That led one to closing the facilities  
10 in Monterey.

11           The nature of a race course is to provide  
12 or show horse racing mainly. I don't recall the  
13 exact date now, but since 1996, there has not been  
14 a single horse race in the Juarez horse racing  
15 facility. And the reason that was given was that  
16 there was some sort of a disease that horses were  
17 having in that area. That probably has not yet  
18 been eradicated because the horse racing course is  
19 still closed.

20           Despite the nonoperation of the course,  
21 they installed inside that course and in the

1 Interlomas facility of the State of Mexico the  
2 machines that had been closed.

3           At the beginning of my statement I  
4 referred to an earlier case of 1998, and that was  
5 the establishment of Jose Maria Guardia in  
6 Chihuahua. That was the first site where the  
7 Gobernacion detected the operation of these type of  
8 machine, and that was the first final closing that  
9 happened with this type of machines. When that  
10 closing down took place and Mr. Guardia tried to  
11 get an amparo, and he lost that case, many years  
12 later he requested Gobernacion to be allowed to  
13 move these machines out of Mexico.

14           He was fined because of his violation to  
15 the federal law on gambling and lotteries that he  
16 had committed, and when he paid the fine, he  
17 obviously recognized the violation of which he was  
18 accused. The reason why the license was revoked  
19 only last year for the operation of all of his  
20 establishments or facilities was that not only were  
21 there no horse races being held, there was use of a

1 satellite signal by two facilities, although there  
2 was only a license issued for one facility.

3           There were slot machines in placed in two  
4 different establishments knowing that these were  
5 forbidden. Last year in Juarez a race course he  
6 established a Bingo without permission from  
7 Gobernacion.

8           All of these activities are nothing but  
9 systematic violations of the law, and without  
10 exception, each one of these events, when they were  
11 presented, were stopped by Gobernacion.

12           That, Mr. Perezcano, is roughly the story  
13 of Cesta Punta Deportes as a licensee.

14           Q. So, has Gobernacion in any way tolerated  
15 the activities of Mr. Guardia?

16           A. I believe that tolerating Mr. Guardia's  
17 activities would be to tolerate illegal activities  
18 and Gobernacion, far from tolerating these  
19 activities, has fought against them.

20           Q. And how come he is continuing to operate?

21           A. He's been able to continue operating, and

1 once again I would like to stress this, because not  
2 everything that he had is still in operation. The  
3 little that he's still operating through today he  
4 has done because of suspensions of amparo that he's  
5 obtained, amparos para efectos which I explained a  
6 moment ago which has been granted to him.

7 Mr. Guardia does not operate because of any license  
8 issued by Gobernacion.

9 Q. Thank you, Mr. Alcantara?

10 MR. PEREZCANO: I have no further  
11 questions, Mr. President.

12 PRESIDENT VAN DEN BERG: Mr. Alcantara,  
13 one simple question because in your overview of the  
14 relationship between the Gobernacion and  
15 Mr. Guardia, you mentioned also satellite signals.  
16 What have they to do with it, or was it in the  
17 question of the translation?

18 THE WITNESS: No, sir. Let me explain  
19 what I was trying to say. The operation of a sport  
20 book in Mexico reflects sporting events. That's  
21 what I'm referring to.

1 PRESIDENT VAN DEN BERG: Now you need  
2 satellite, the hookup?

3 THE WITNESS: That's right.

4 PRESIDENT VAN DEN BERG: Thank you.

5 Mr. Crosby, please proceed with your  
6 cross-examination.

7 CROSS-EXAMINATION

8 BY MR. CROSBY:

9 Q. Mr. Alcantara, when did Club 21 first  
10 open? And when I mean open, I mean physically  
11 open. People could come in and play.

12 A. I wouldn't be able to tell you the exact  
13 date because I don't know. Nonetheless, the  
14 illegal activities were detected in the year 2000.

15 Q. When did you come into your position in  
16 government?

17 A. I have been working for Gobernacion for 13  
18 years. The post that I hold today I entered into  
19 in the past year, but as Director of Amparo, five  
20 years, since approximately 1997.

21 Q. So, the first that Gobernacion became

1 aware of Club 21 was in year 2000; correct?

2 A. You're making reference to Club 21 in  
3 Interlomas in the State of Mexico?

4 Q. Yes.

5 A. Very well. Not necessarily at Interlomas.  
6 I should note that there is also a sport book  
7 operating, even though the machines were not noted  
8 until 2000.

9 Q. And am I correct that Club 21 is still  
10 operating skill machines today?

11 A. Club 21 has never operated skill machines.  
12 Club 21 has operated illegal machines and, in  
13 effect, it continues operating illegal machines to  
14 this day.

15 Q. That's a fair point. Are illegal slot  
16 machines being operated in Club 21 today?

17 A. Yes.

18 Q. From year 2000 to today, has the operation  
19 of slot machines at Club 21 been uninterrupted?

20 A. No, sir.

21 Q. For what period of time was the operation

1 of slot machines at shrub 21 interrupted?

2 A. I should say that the machines ceased  
3 operating for a short period, perhaps six months as  
4 of the shutdown by Gobernacion, and until such  
5 time, the suspension of the amparo is granted to  
6 it.

7 Q. And during what year did that six months  
8 of inactivity occur?

9 A. Without being able to say for sure, but  
10 perhaps 2000, 2001.

11 Q. I will ask you very simply, what is the  
12 status of legal proceedings with respect to Club 21  
13 today?

14 A. I reiterate the Club 21, the business that  
15 operates in the State of Mexico is operating under  
16 a suspension of amparo that was granted to it and  
17 an amparo of effect, which was granted to it.

18 Q. Has there been any subsequent action taken  
19 by the government after the issuance of that  
20 suspension and that amparo?

21 A. That amparo was issued about one month and

1 a half ago, in late February, perhaps. I don't  
2 have the exact date. Nonetheless, yes, in effect,  
3 Gobernacion has taken note of the actions that the  
4 judge, when ruling, noted. And as I explained in  
5 response to one of the questions from  
6 Mr. Perezcano, an amparo para efectos, for effect,  
7 does not keep the authority from acting once again.  
8 Indeed, the authority must set very clearly the  
9 manner in which it will do so, but to combat  
10 illegal gaming.

11 Q. How soon will that action be taken?

12 A. Were it to depend on myself, believe me,  
13 it would be right away. The Secretaria de  
14 Gobernacion, through the authority on gaming and  
15 lotteries must review, as I explained a few moments  
16 ago, the criminal acts, the criminal matters that  
17 might come about so as to implement an effective  
18 action.

19 Q. I will ask you respectfully again. How  
20 soon will that happen?

21 A. As soon as those actions and strategies

1 allow.

2 Q. Are those actions and strategies under  
3 active discussion today?

4 A. Of course.

5 Q. What is your involvement in the discussion  
6 of those actions and strategies?

7 A. None.

8 Q. And whose decision is it to take action  
9 against Club 21 in Mexico City?

10 A. The government unit of Gobernacion.

11 Q. When was the last time you received any  
12 information from that, the Secretary of Gobernacion  
13 that there was intended action to be taken against  
14 Club 21 in Mexico City?

15 A. I traveled to Washington last Saturday,  
16 and I had an opportunity to discuss these issues  
17 with those authorities on Thursday, Thursday of  
18 last week.

19 Q. These have been open and operating for at  
20 least two years, based upon your testimony,  
21 uninterrupted; correct?

1 A. Yes.

2 Q. I would like you to take a look at the  
3 document that you had in front of you, which is the  
4 graphic setting forth the various entities that  
5 have been under discussion today, and take a look  
6 at the graphic that refers to that portion of the  
7 graphic that refers to Club 21.

8 Is there any appeal pending with respect  
9 to the Club 21 facility?

10 A. Are you referring to page 40?

11 Q. I'm referring to page 41, and over on the  
12 column called or column marked current status.  
13 Perhaps I could put in front of you one that I'm  
14 referring to. It would make it easier.

15 A. Thank you.

16 Q. Which would be the one you and I are  
17 sharing would be page 41, and up to Club 21 and  
18 over to the right column where it says "Current  
19 Status," and at the bottom it says, the appeal is  
20 pending, and then it references a footnote at the  
21 bottom.

1 Is there an appeal pending with respect to  
2 the closure or any legal proceedings concerning  
3 Club 21?

4 A. Yes. In this case, Gobernacion fought the  
5 judge's decision to grant an amparo para efectos.  
6 That is the ruling that we are awaiting. And of  
7 course, that would be what would allow the  
8 Secretariat to set the strategies to which I was  
9 referring.

10 Q. Are any of the documents which--are any  
11 documents showing--strike that.

12 Are there any documents memorializing that  
13 appeal in the record before this Tribunal?

14 A. I did not attach any to my testimony. I  
15 don't know if the respondent might have inserted it  
16 in the record at some point.

17 Q. Well, I would refer you back to the  
18 statement, the appeal is pending.

19 Do you see that?

20 A. Yes.

21 Q. That refers to footnote 132.



1 Do you see that?

2 A. Yes, I do.

3 Q. And that footnote refers to section--first  
4 it refers to section Roman numeral III.A.1.a, which  
5 is on page 42 behind--the next page over.

6 Do you see that?

7 A. Yes, sir.

8 Q. Then, if you look at paragraph 107, the  
9 footnote there refers to you the discussion of Club  
10 21 in the statement of defense.

11 Do you see that?

12 A. Yes, I do.

13 Q. I will put before you--and I would refer  
14 you to page 49.

15 MR. CROSBY: And the bundle of documents I  
16 have just given the witness is pages--bundled  
17 together pages 45 to 50 of the statement of  
18 defense.

19 BY MR. CROSBY:

20 Q. And there's a long discussion of the legal  
21 proceedings concerning Club 21, and it comes down

1 to paragraph 176.

2 Do you see that?

3 A. Yes, I do.

4 Q. And that paragraph 176 says: "CPD once  
5 again appealed the judgment. The case is still  
6 going on, and suspension of the act of closure  
7 continues in effect."

8 Do you see that?

9 A. Yes, I do.

10 Q. Is there any reference to evidence there?

11 A. Allow me to reiterate.

12 Q. I ask that you answer my question first.  
13 Is there any reference to evidence there?

14 A. Despite the fact that the paragraph is  
15 written in the English language, I understand that  
16 clear reference is being made to an appeal.

17 Q. We should get the Spanish version in front  
18 of you. My apologies to you and counsel.

19 A. Thank you, Mr. Crosby.

20 Q. Paragraph 176, "CPD once again appealed  
21 the judgment. The case is still going on, and the

1 suspension of the act of closure continues in  
2 effect."

3 Do you see that?

4 A. Yes, sir.

5 Q. Is there any reference to evidence for  
6 that paragraph?

7 A. Yes, sir.

8 Q. Where is the reference to evidence?

9 A. Physically, perhaps it's not there.

10 Nonetheless, this refers to what I already  
11 explained.

12 Q. Are you aware of any documentary evidence  
13 in the record that supports the notion that there  
14 is an appeal pending with respect to Club 21?

15 A. No, sir.

16 Q. I would like you to take a look again at  
17 the chart, and again on the document the pages we  
18 have, I would ask you to look at page 41, and the  
19 third item down, which is the Guardia CPD, I will  
20 call it, at Ciudad Juarez.

21 Do you see that?

1 A. Yes, I do.

2 Q. Is there an appeal pending in that matter?

3 A. No longer.

4 Q. So, the reference here in current status  
5 is not correct. There is no longer an appeal  
6 pending; correct?

7 A. That is so, sir. The one that was pending  
8 was resolved favorably to--for Gobernacion.

9 Q. And it's your testimony here today that  
10 the facility at Ciudad Juarez is open and operating  
11 without any legal authority?

12 A. No, sir, because I don't have any personal  
13 knowledge of it. I didn't know of the facts until  
14 Mr. Perezcano expounded on them here. The  
15 Secretaria de Gobernacion understands that it must  
16 be closed.

17 Q. Mr. Guardia has been a problem for the  
18 Mexican Government with respect to the operation of  
19 slot machines; correct?

20 A. Yes, like all of those who have sought to  
21 operate.

1 Q. Are Mr. Guardia's facilities, whether  
2 opened or closed, subject to regular inspections?

3 A. Yes, that is so.

4 Q. When was the last inspection performed at  
5 the facility at Ciudad Juarez?

6 A. Last year, which is when the operation of  
7 Bingo without the permission of the Secretariat was  
8 detected.

9 Q. When last year?

10 A. In August of last year.

11 Q. Has there been an inspection performed  
12 between then and now?

13 A. As I noted, there is no longer any  
14 permission from Gobernacion. Therefore,  
15 Gobernacion has not carried out an inspection  
16 because it is not a formal concessionaire or  
17 licensee.

18 Q. I would like you to take a look at page  
19 42, which is the next one over and have you look at  
20 Reflejos in Rio Bravo.

21 Do you see that?

1 A. Yes, sir.

2 Q. And in that--how long is Reflejos at Rio  
3 Bravo been open?

4 A. Reflejos in Rio Bravo is a facility that  
5 was just detected last year, perhaps at the  
6 beginning of last year by Gobernacion, and so it  
7 was immediately shut down, as in all cases. When  
8 it filed an amparo, it was able to continue  
9 operating.

10 Q. Are there any legal proceedings still  
11 pending with respect to the Reflejos facility in  
12 Rio Bravo?

13 A. That is so. In this case, the judge has  
14 yet to hand down a ruling.

15 Q. Now, in the fourth box over, again it says  
16 ruling pending.

17 Do you see that?

18 A. Yes.

19 Q. Are you aware of any documentary evidence  
20 in the record to establish the present status of  
21 that proceeding?

1 A. No, sir.

2 Q. I would like you to flip back, sorry for  
3 the jumping around, to the Reflejos in Matamoros.

4 A. Yes.

5 Q. Is that Reflejos open today?

6 A. As I noted, based on the visits that were  
7 made last week, all of the Reflejos facilities have  
8 been shut down.

9 Q. Are there any legal proceedings pending  
10 with respect to--is it your testimony that all of  
11 the Reflejos facilities--is it your testimony now  
12 that all of the Reflejos facilities have been  
13 closed?

14 A. The information that was provided to  
15 Gobernacion is not that all of them have been shut  
16 down, but that all of them were closed. They were  
17 closed by the company itself.

18 Q. Those were voluntary closures; correct?

19 A. Yes.

20 Q. Those were not closures required by the  
21 government?

1 A. Yes. That is the case.

2 Q. I would like ask you about the Bellavista  
3 Centro de Entretenimiento, which is on page 40.

4 Now, as I understand it, a facility of the  
5 same name was closed in March of 2003; correct?

6 A. Yes.

7 Q. How many slot machines were operating in  
8 that facility in March of 2003?

9 A. I don't know.

10 Q. Well, there are, according to Mr. Gomez,  
11 there are 500 machines operating in that facility  
12 today. Does that refresh your recollection of what  
13 was operating at that facility a year ago?

14 A. No.

15 Q. When the facility was closed in March of  
16 2003, what happened to the machines that were  
17 located there?

18 A. They were kept inside the facility closed  
19 as well.

20 Q. And these photographs you took in--did you  
21 take these paragraphs, the ones that have been

1 offered into evidence today?

2 A. No, sir.

3 Q. So, assuming that Mr. Gomez is correct  
4 that there are 500 machines operating at this  
5 facility today, is it reasonable to conclude  
6 they're the same machines that were there a year  
7 ago?

8 A. I don't see why there would be any reason  
9 to so conclude. If there were the same ones that  
10 were operating at Bellavista, then they would be  
11 committing an offense. As I was saying, removing  
12 the closing seals that are imposed by the authority  
13 is punishable under Mexican law.

14 Q. If a domestic skill machine or slot  
15 machine operator was importing 500 machines from  
16 United States or Australia, possibly, would the  
17 government become aware of that importation of  
18 those machines into the country?

19 A. Possibly.

20 Q. What would be the procedure that would be  
21 used for the importation of those machines into the

1 country?

2 A. I don't know, because import procedures  
3 are not under the authority of Gobernacion.

4 Q. I'm going to set before you what has been  
5 in and out of evidence--you know, I have another  
6 question.

7 You testified when you were speaking  
8 generally about Guardia that there had been fines,  
9 there had been lawsuits, there had been a variety  
10 of actions taken against Mr. Guardia over the  
11 course of that history; do you remember that?

12 A. Yes, sir.

13 Q. Is there any documentary evidence of those  
14 fines in the record before this Tribunal?

15 A. I don't know.

16 Q. Is there any documentary evidence of those  
17 pieces of litigation in the evidence before this  
18 Tribunal?

19 A. Yes, sir.

20 Q. What evidence is before the Tribunal with  
21 respect to the litigations concerning Guardia?

1 A. The documents that come directly from the  
2 judges who have taken cognizance of the cases that  
3 Guardia brought before them.

4 Q. Those would be--I'm going to set before  
5 you what has been put into the record as or it's  
6 marked in the record as C-97, and this is the  
7 Milenio Article that Mr. Perezcano inquired about  
8 of Mr. Gomez this morning. And I highlighted a  
9 portion of that on page three. If you can flip  
10 over to page 3, it's actually page 11 of the  
11 article, but it's page 3 of the exhibit. I think  
12 you have gone too far. One back. I've highlighted  
13 a portion of that that starts at a Rita de Cassia.

14 Do you see that? Do you see that  
15 reference?

16 A. Yes.

17 Q. Can you read that paragraph into the  
18 record.

19 A. Rita de Cassia is owed, among other  
20 favors, the favorable ruling of the Supreme Court  
21 of Justice that allows her to operate without any

1 problems, the skill machines that are bound at her  
2 centers.

3 Q. Do you know what favorable judgment of the  
4 Supreme Court of Justice he is referring to in this  
5 document?

6 A. No, sir.

7 Q. Are you aware there may be a difference in  
8 translation here, but my translation refers to it  
9 as nationwide betting centers. Do you have any  
10 knowledge of what he is referring to?

11 A. Allow me to explain the entirety of the  
12 paragraph in order to formulate my answer.

13 Santa Rita de Cassia is a saint. I don't  
14 believe that she went before the court to secure a  
15 favorable ruling on behalf of Mr. Guardia.

16 Second, the Supreme Court of Justice in  
17 Mexico has not taken cognizance of a single matter  
18 in which Mr. Guardia has intervened.

19 Third, Mr. Guardia does not operate skill  
20 machines, but rather, games of chance and games of  
21 betting.

1 And finally, the only games of betting  
2 that exist in the national center are or were the  
3 Juarez race track and this Club 21.

4 Q. That's a fine answer, but isn't reality  
5 that he is and I may not be using the appropriate  
6 language, but he is thanking his patron saint or  
7 his religious figure for the fact that he has a  
8 favorable court ruling and he has nationwide  
9 betting centers. Isn't that what he's doing in  
10 this paragraph?

11 A. Yes. Nonetheless, there is not a single  
12 favorable ruling handed down by the court for  
13 Mr. Guardia.

14 Q. I understand. My question was, are you  
15 aware of what he's referring to when he speaks to  
16 his nationwide betting centers?

17 A. No.

18 Q. Mr. Guardia has been rather vocal about  
19 his ability to proceed with the operation of slot  
20 machines in Mexico; isn't that right?

21 A. From what I can tell from this document

1 that you provided me, that is the case, indeed.

2 Q. Isn't it correct that there are numerous  
3 articles referring to Mr. Guardia in his operations  
4 in Mexico, both negative and positive?

5 A. Yes.

6 Q. If he is so visible in his operation of  
7 skill machines, why is he still open?

8 A. He no longer has permission to operate at  
9 the race track. The only thing that is open is  
10 Club 21, Interlomas, Huixquilucan, in the State of  
11 State of Mexico, and it is pursuant to the  
12 suspension of the amparo that was granted to him.

13 Q. Let's move on to something else here.

14 MR. CROSBY: And I will be fairly brief,  
15 Mr. President. If the witness can be given the  
16 Luis de Velasco binder if you have that still.

17 BY MR. CROSBY:

18 Q. While they're looking for that, let me ask  
19 you another question that was prompted by your  
20 direct testimony. You stated that the first  
21 facility of the skill machine phenomenon was in

1 1998. Who ran that facility?

2 A. Cesta Punta Deportes.

3 Q. That's the Ciudad Juarez facility; is that  
4 correct?

5 A. Yes, that's correct.

6 Q. Then you stated that the litigations began  
7 in 2000 to 2001; is that correct?

8 A. That is correct.

9 Q. When did the first litigation begin during  
10 that period of 2000 to 2001?

11 A. In 2000.

12 Q. And which one--which action was that?

13 A. It was an amparo proceeding.

14 Q. Against which entity?

15 A. Well, it's an entity against the  
16 Gobernacion, who was at Cesta Punta Deportes  
17 precisely.

18 Q. Other than Guardia?

19 A. Yes.

20 Q. Other than Guardia, were there any closure  
21 orders or litigations began by Gobernacion against

1 slot machine facilities prior to 2001?

2 A. Could you please repeat the question,  
3 please.

4 Q. Other than any actions against CPD and  
5 Guardia, were there any actions taken against slot  
6 machine facilities prior to 2001?

7 A. Before 2001, only Guardia, and then as  
8 from 2000 onwards, against each and every single  
9 person that tried to operate these kind of machines  
10 in the territory of Mexico.

11 Q. Isn't it correct that the first closure  
12 order that was issued in 2001 was issued against  
13 the facility operated by my clients at Nuevo  
14 Laredo?

15 A. I would like to specify something. I  
16 think we are getting lost a little bit with the  
17 translation. Cesta Punta Deportes was detected in  
18 1998, and that was the first closing that happened.  
19 From 1998 to 2000, there were no other  
20 establishments detected. Up until the time when,  
21 amongst others, Entertainmens de Mexico was



1 detected, Magno Paradoro was detected, and then  
2 Operacion Distribucion Total after that, and  
3 others, other facilities that had been detected in  
4 the same manner.

5 Q. My question was: Beginning in 2001, isn't  
6 it correct that the first closure order was issued  
7 against my client at Nuevo Laredo?

8 A. That is correct.

9 Q. And isn't it correct that that closure  
10 order was the inspection and that closure order  
11 were issued personally by Guadalupe Vargas?

12 A. No, sir.

13 Q. Didn't he sign the closure order? I could  
14 show it to you if you want me to.

15 A. Let me explain. Maybe he signed the  
16 certificate of visit of the closing. Now, the  
17 closing order, actually a different authority  
18 passed that order.

19 Q. That's a fair point. So, the distinction  
20 you're making is that Mr. Guadalupe Vargas acted as  
21 the inspector for the closure of my client's

1 facility at Nuevo Laredo; correct?

2 A. That is correct.

3 Q. Are you aware of Mr. Guadalupe Vargas  
4 acting as an inspector for the closure of any  
5 facility other than my client's?

6 A. Yes, sir.

7 Q. Which facilities?

8 A. He visited Cesta Punta Deportes,  
9 Interlomas, and Club 21. That's what I remember,  
10 but perhaps he was involved in others.

11 Q. Well, I will represent to you that I've  
12 looked at the closure orders that are included in  
13 the record in this case, and there are all  
14 inspectors, and none of them are Guadalupe Vargas  
15 other than Nuevo Laredo. Is that a fair  
16 representation of what is in the record in this  
17 case?

18 A. No, no, sir.

19 Q. Well, the record will speak for itself.

20 MR. CROSBY: No further questions.

21 I'm sorry my cross was rather lengthy.

1 PRESIDENT VAN DEN BERG: Mr. Perezcano,  
2 you would like to proceed with the redirect?

3 MR. PEREZCANO: Yes, Mr. President, just a  
4 brief question.

5 REDIRECT EXAMINATION

6 BY MR. PEREZCANO:

7 Q. Mr. Alcantara, apparently there is a  
8 certain--there was a little bit of confusion  
9 because of the similarity amongst the terms, and  
10 this is not basis of the interpreters, but when you  
11 talked about the closing of Reflejos and the--or  
12 rather the shutdown of Reflejos and the closing of  
13 Reflejos, can you clarify that. There is a  
14 difference; right?

15 A. Yes, thank you very much for your  
16 question, Mr. Perezcano. I think we have to be  
17 very specific in our answers.

18 The facilities, the Reflejos facilities  
19 were shut down by Gobernacion, and the  
20 representatives of Reflejos started their own  
21 amparo proceedings. However, of course, there were

1 suspensions under the amparo proceedings that  
2 allowed them to operate. Then, of their own  
3 accord, and this was certified by the Gobernacion,  
4 they decided to close down their facilities.

5 So, let me summarize this. Perhaps if  
6 with the suspensions they were able to operate,  
7 they themselves decided to close down.

8 Q. How and when did this--was this noticed by  
9 Gobernacion?

10 A. Well, this was not noticed by Gobernacion  
11 directly. As I said, the practice of illegal games  
12 is an offense. Offenses have to be made known to  
13 the procuria, the Attorney General's Office,  
14 through a specific report. When the procuria went  
15 to see this, the PGR went to see this, went there,  
16 the facilities were already closed, and there was  
17 no order issued by the authorities ordering that  
18 closure, and we had knowledge of this Friday last  
19 week.

20 MR. PEREZCANO: I perhaps would like to  
21 make a few comments in connection with the

1 interpretation. Could I do that, sir?

2 PRESIDENT VAN DEN BERG: If it concerns  
3 limitation with the testimony we just heard?

4 MR. PEREZCANO: Yes.

5 PRESIDENT VAN DEN BERG: Please make the  
6 comments.

7 MR. PEREZCANO: Yes, of course, we can do  
8 that. I'm going to refer to the transcript. When  
9 the answer, in his answer, Mr. Alcantara says  
10 offenses, a better translation will be crimes.

11 ARBITRATOR WALDE: Criminal offenses?

12 MR. PEREZCANO: Exactly. Where it says  
13 here a specific report, in the specific report, and  
14 he said the "nuncia penal," and he would say it was  
15 filing of a criminal action--he should say criminal  
16 action.

17 These were the two clarifications that I  
18 wanted to do with the interpretation of this  
19 section, sir. Thank you.

20 PRESIDENT VAN DEN BERG: And this  
21 completes your redirect examination?

1 MR. PEREZCANO: Yes, Mr. President. Thank  
2 you.

3 PRESIDENT VAN DEN BERG: We don't need any  
4 more the book of Mr. Velasco.

5 MR. PEREZCANO: No.

6 QUESTIONS BY THE TRIBUNAL

7 ARBITRATOR WALDE: Mr. Alcantara, how high  
8 was the monetary fine imposed against Mr. Guardia?  
9 Do you remember this? How much money did he have  
10 to pay, or did he have to go to jail over that?

11 THE WITNESS: No, he did not have to go to  
12 jail. He did not have to go to jail. The amount  
13 of money is not set by Gobernacion.

14 ARBITRATOR WALDE: Have you any idea what  
15 it might have been, could have been, or should have  
16 been?

17 THE WITNESS: No, sir.

18 ARBITRATOR WALDE: I must pay you a  
19 compliment for such a brilliant young lawyer who  
20 moved up highly in the Mexican administration very  
21 fast. It must be very frustrating to see, you want

1 to go ahead and then see that they had these  
2 bureaucratic obstacles or legal form obstacles.

3           Is it normal that in the amparo efectos,  
4 which I would translate as a tradition of you for  
5 procedure of laws, is it normal that so often the  
6 judges throw it back for you for a procedural flow?  
7 You are using a standard form.

8           THE WITNESS: Yes, thank you, thank you  
9 for your kind comments. I wanted to make two  
10 clarifications here. The legal concept, amparo,  
11 started or rather appeared in Mexican law in the  
12 past few--in the latter part of the 19th century.  
13 The current amparo law dates back to the 1930's.  
14 Perhaps one may think that this is a legal concept  
15 that is not in line with the current situation or  
16 the current realities. However, it protects human  
17 rights. The human rights of any person within the  
18 Mexican territory. So, what you point out happens,  
19 I think, on a number of occasions.

20           Now, if a person feels that his or her  
21 human rights have been violated, this is a

1 mechanism he could use or resort to to defend  
2 himself against acts by the authorities.

3           Now, if your question has to do to with  
4 the fact that there is a certain format, like you  
5 said, yes, there is a format. There are rules that  
6 are preestablished and that show you the way.

7           ARBITRATOR WALDE: But what I'm trying to  
8 get, is it normal in the procedural to find so many  
9 successful amparos for procedural reasons, amparos  
10 efectos, as you find in the cases against  
11 Mr. Guardia, or has he been particularly successful  
12 with his amparos efectos, in your judgment?

13           THE WITNESS: Thank you again. Let me  
14 disagree with you because there have been more  
15 rulings against Guardia than in favor of him.  
16 Those that have been successful are only the ones  
17 related to Club 21 in Interlomas. When he brought  
18 amparo proceedings in Monterey into that Juarez, he  
19 lost those amparo proceedings. So, I wanted to  
20 point out this. Not all of them have been  
21 successful for him. So, this amparo efecto may be

1 common if the authority makes mistakes when issuing  
2 its acts.

3           ARBITRATOR WALDE: But you find that you  
4 have been or your colleagues, your assistants have  
5 been done their best in preparing the orders  
6 against Mr. Guardia. You don't feel frustrated  
7 with these success of some of the amparos he has  
8 brought against your decisions?

9           THE WITNESS: Yes, yes, of course I do.  
10 Especially if we take into account that the acts  
11 issued against Mr. Guardia have been exactly the  
12 same kind of acts that were issued in all the other  
13 cases.

14           So, if most of the times we have gotten  
15 rulings in favor of Gobernacion, it is frustrating  
16 that in a few cases, in a minimal number of cases,  
17 very few, indeed, we obtained rulings that are not  
18 in line with the interests of Gobernacion.

19           ARBITRATOR WALDE: Do you think in your  
20 professional and experienced judgment that this is  
21 because he just employs very smart lawyers, or does

1 he have other influences?

2           THE WITNESS: Maybe it is a strategy, a  
3 lawyer strategy, a lawyer-related strategy.

4           ARBITRATOR WALDE: You have mentioned also  
5 that the Procuria General has been using experts to  
6 define the nature of the machines. What experts  
7 have they been using in the case, as you remember?

8           THE WITNESS: Well, that has happened  
9 recently, specifically in the past few months.  
10 These are reports that report to PGR, and they work  
11 for PGR, and they are tasked with fighting crime,  
12 so they need to be certain that the criminal  
13 actions that they have knowledge of are that:  
14 Criminal in nature.

15           ARBITRATOR WALDE: Do you know the names  
16 of the companies which were used for the expertise?

17           THE WITNESS: No, sir.

18           ARBITRATOR WALDE: My last question is, if  
19 you compare the way the closure was carried out  
20 against the claimant and the way the closures are  
21 carried out--and I mean the closures against

1 Guardia, have they been carried out in the same  
2 way, with the same intensity, with the same amount  
3 of security guards, rapid decision making, sudden  
4 closure? You see no difference in terms of the  
5 manner they were carried out?

6 THE WITNESS: Absolutely no difference in  
7 the case of Guardia or in the case of any other  
8 company.

9 ARBITRATOR WALDE: Thank you very much.

10 PRESIDENT VAN DEN BERG: Mr. Alcantara,  
11 have you been involved in the opinion that has been  
12 issued by the Gobernacion on the 15th of August  
13 2000?

14 THE WITNESS: Yes, sir.

15 PRESIDENT VAN DEN BERG: And have you also  
16 been involved in the discussions with the  
17 representatives of EDM and Thunderbird, in  
18 July 2000?

19 THE WITNESS: Yes, sir.

20 PRESIDENT VAN DEN BERG: Okay. Perhaps  
21 could we have a look to Claimant's Exhibit C-17 and

1 C-18. I would like to review with you the  
2 solitud and the ruling. Do you have that in  
3 front of you?

4 THE WITNESS: Yes, thank you.

5 PRESIDENT VAN DEN BERG: Before we  
6 actually go to this letter, when was the first time  
7 that you met representatives of EDM and/or  
8 Thunderbird?

9 THE WITNESS: Months before the  
10 administrative procedure meeting was held in July.  
11 Perhaps I met with them in February or March that  
12 year, that same year.

13 PRESIDENT VAN DEN BERG: What do you  
14 recall of that meeting?

15 THE WITNESS: A number of people were  
16 present there. They said that they were  
17 representatives of Entertainmens de Mexico, and I  
18 remember Luis Ruiz de Velasco was present as its  
19 legal representative. They represented before the  
20 authorities of Gobernacion that a facility that  
21 they operated in Tamalipas had been closed. So,

1 this was very difficult for them. They said that  
2 they had not had the opportunity to defend  
3 themselves vis-a-vis the act carried out by the  
4 authority.

5           PRESIDENT VAN DEN BERG: I might be  
6 confused because you are now discussing March 2001.  
7 We are talking about the first contacts you had  
8 with them, and it was prior to the letter of 3  
9 August 2000, Exhibit C-17 we are looking at. So  
10 perhaps my question, I apologize for the confusion  
11 that may have arisen.

12           Prior to this letter of 3 August 2000, you  
13 testified earlier you had a meeting with them in  
14 July of 2000; is that correct?

15           THE WITNESS: No, no, no, no. I'm sorry.  
16 Thank you for your clarification. It's important  
17 to specify this. It was in 2001. It was in 2001.

18           PRESIDENT VAN DEN BERG: That was the  
19 first time you met them?

20           THE WITNESS: In 2001, yes.

21           PRESIDENT VAN DEN BERG: Okay. So, but

1 you were involved in the drafting of the opinion or  
2 letter of Gobernacion of 15 August, 2000, a number  
3 of months earlier.

4           THE WITNESS: No, sir.

5           PRESIDENT VAN DEN BERG: So, you were not  
6 involved at all in the solicitud and in the opinion  
7 letter of August 2000.

8           THE WITNESS: No, I did not participate in  
9 it in any way.

10           PRESIDENT VAN DEN BERG: One question  
11 simply also for me as foreign language, if you look  
12 through the August 3rd letter, C-17, and if you go  
13 to the second page, penultimate paragraph, and it's  
14 the penultimate line of the penultimate paragraph.  
15 You see where the line of the penultimate paragraph  
16 that starts with the "determinados puntos"?

17           THE WITNESS: Yes, sir.

18           PRESIDENT VAN DEN BERG: And then there  
19 are a number of words (speaking in Spanish) premio.

20           Do you see that?

21           THE WITNESS: Yes.

1           PRESIDENT VAN DEN BERG: You, as an  
2 official of Gobernacion, do you understand that the  
3 words unpremio to include dollars, U.S. dollars I'm  
4 talking about?

5           THE WITNESS: I do.

6           PRESIDENT VAN DEN BERG: Thank you.

7           If you go to the opinion letter of 15  
8 August 2000.

9           THE WITNESS: Yes.

10          PRESIDENT VAN DEN BERG: The letter is to  
11 the effect that the Gobernacion says, amongst a  
12 number of things, to Thunderbird or to--excuse me,  
13 I should be more precise. To EDM, that the  
14 machines do not what they represent that those  
15 machines do not fall under the law of 1947, and  
16 that therefore the Gobernacion has no jurisdiction  
17 over them.

18          THE WITNESS: Perhaps that was the  
19 interpretation, but you said these machines. Are  
20 you referring to the machines that you were  
21 referring to on C-17?

1           PRESIDENT VAN DEN BERG: In C-17, you have  
2 the solicitud.

3           THE WITNESS: Yes.

4           PRESIDENT VAN DEN BERG: Reference is made  
5 to certain machines. That is the letter of 3  
6 August.

7           15 August, 2000, Gobernacion writes back,  
8 says, look, these machines do not fall under our  
9 jurisdiction. Is that the reading of that letter?

10          THE WITNESS: The letter of August 2000,  
11 in the first paragraph of the second page, has this  
12 phrase. If the machines and the word if, which is  
13 if in English, as I understand, is a condition,  
14 imposes a condition, and at the same time it allows  
15 it--allows us to think that if we are not talking  
16 about those machines, then the Gobernacion would  
17 have jurisdiction.

18          PRESIDENT VAN DEN BERG: Okay. And if you  
19 continue in the same paragraph, you see the  
20 language, (speaking in Spanish).

21          Now, my question concerns exactly that



1 point. I'm sure with your law of 1947. You are  
2 familiar with the law of 1947?

3 THE WITNESS: Yes, sir.

4 PRESIDENT VAN DEN BERG: It's your daily  
5 bread and butter, so we don't.

6 Where in that law do you find the word  
7 preparando in connection with the (speaking in  
8 Spanish)? Because Article 1 of that law  
9 particularly because it prohibits (speaking in  
10 Spanish) categorically?

11 THE WITNESS: Articles 1 and 2, 2/1 of the  
12 law are very categorical, and they leave no room  
13 for interpretation, including, and this  
14 unfortunately for Gobernacion, both Articles have  
15 been construed by the Supreme Court of Mexico. The  
16 Supreme Court has determined that both Articles  
17 contain an express prohibition, a very strong  
18 prohibition for games of chance and bets to take  
19 place in Mexico, and this is in Articles 2 of the  
20 law that I'm commenting on.

21 PRESIDENT VAN DEN BERG: Which Supreme

1 Court decision are you referring to? Which year  
2 was the Supreme Court decision?

3 THE WITNESS: Well, there have been a  
4 number of decisions by the Supreme Court, five  
5 actually, one in 1998, and the four other ones in  
6 the year 2000 to the present date.

7 MR. PEREZCANO: Mr. President, I'm sorry,  
8 I have to say something. Raise one point in  
9 connection with the interpretation, and he said  
10 fortunately, and this was interpreted as  
11 unfortunately, which is the contrary in connection  
12 with their rulings.

13 PRESIDENT VAN DEN BERG: That was  
14 unfortunate. That will reflected on the  
15 transcript.

16 Can we go back.

17 In these Supreme Court decisions, has the  
18 Supreme Court construed Articles 1 and following of  
19 the law of 1947 in the manner as stated here where  
20 you see the word preparando?

21 THE WITNESS: No, sir. The court has

1 agreed with what you are stating. The Articles are  
2 very clear and very specific.

3           PRESIDENT VAN DEN BERG: How is it  
4 possible that the preparando appears in this letter  
5 of the Gobernacion?

6           THE WITNESS: I don't know.

7           PRESIDENT VAN DEN BERG: It would not be  
8 that the Gobernacion is more generous than the  
9 Supreme Court of Mexico?

10          THE WITNESS: No, I did not talk about  
11 this dependence in itself because we have acted in  
12 all cases in the same manner. We shouldn't think  
13 that we are more generous in one case than in other  
14 cases, although the word here preponderant here  
15 generates a certain level of uncertainty in  
16 connection with the term used by the authority at  
17 that time.

18          PRESIDENT VAN DEN BERG: Now, what EDM was  
19 looking for was for what may be called a negative  
20 clearance by the Gobernacion.

21          THE WITNESS: Could you explain "negative

1 clearance," Mr. President.

2           PRESIDENT VAN DEN BERG: To the effect  
3 that the machines they propose to operate in Mexico  
4 would not fall under the law of 1947, and they  
5 sought a confirmation from the Gobernacion to that  
6 effect.

7           THE WITNESS: That is correct.

8           PRESIDENT VAN DEN BERG: Now, if they had  
9 chosen a different route, and if they had said,  
10 look, here are our machines, and we would like to  
11 have a license from you to operate them, would the  
12 Gobernacion have a possibility to issue a license  
13 in the case it had concluded, that is, were not  
14 skill machines but, indeed, some form of slot  
15 machines? So, there are two elements to my  
16 hypothesis, and I must also say now I have to  
17 rebuke myself because I have a compounded question,  
18 which is that there are two hypotheses. One is the  
19 machines that are presented are slot machines or  
20 perhaps we could use the term glorified slot  
21 machines, sophisticated slot machines, whatever,

1 and they have come to the Gobernacion and say look,  
2 here we have these machines, and we would like to  
3 have a license to operate them in that facility.

4           Could such a license have been granted by  
5 the Gobernacion, and if so, under what  
6 circumstances?

7           THE WITNESS: No, if those two elements  
8 that the law prohibits, which is chance and  
9 betting, Gobernacion could not have granted a  
10 license. That would be my answer, Mr. President.

11           PRESIDENT VAN DEN BERG: Okay. I have one  
12 follow-up question on what Professor Walde has  
13 asked, concerning the amparo proceedings.

14           THE WITNESS: Yes.

15           PRESIDENT VAN DEN BERG: Why was it that  
16 the amparos were lost by the EDM Companies in  
17 connection with their facilities whilst in others,  
18 I think there were two or even three proceedings  
19 going on--well, there were two--whilst in the  
20 other--with respect to the other facilities, the  
21 results were varying, some you win, some you lose?

1 Can you explain that, what was the reason why it  
2 was for EDM immediately closed?

3           THE WITNESS: Entertainments de Mexico gave  
4 up on a couple of these amparo judgments. In other  
5 words, they themselves decided not to continue with  
6 the proceeding. They lost another one because they  
7 had tried another legal defense means and the law  
8 forbids that at the same time there be two  
9 proceedings on the same situation, and that is why  
10 they lost. I'm sure that if they had continued  
11 with their amparos of which they themselves gave  
12 up, then, and I'm assuming, they might have placed  
13 themselves on the same scenario as those who didn't  
14 give up and continued with their proceedings.

15           ARBITRATOR WALDE: My first question is  
16 really just a repeat clarification of what I think  
17 you have said, but I want to be sure.

18           You, yourself, do not decide on when to  
19 initiate legal actions, but as the legal advisor,  
20 you get marching orders from above the (speaking in  
21 Spanish), and then you act?

1 THE WITNESS: That's right, and I act if I  
2 may--thank you. Let me explain the situation as  
3 follows. As Assistant Director-General of the  
4 Constitutional Procedures of the Secretaria of  
5 Gobernacion, what I must do from a legal standpoint  
6 is to defend its acts. That's my daily work.

7 ARBITRATOR WALDE: But you don't decide  
8 yourself when to take an enforcement action, but as  
9 a proper lawyer you follow the instructions of your  
10 client, which is the "unidad de cobiano."

11 THE WITNESS: That's right, I follow  
12 instructions. I don't decide things on my own.

13 ARBITRATOR WALDE: One question I'm having  
14 gets more into your assessment of Mexican law.

15 What is the legal effect--Chairman says I  
16 should not discuss legal issues with you, so I will  
17 not. What I wanted to say is, yes, I can frame it  
18 in a factual way. Let me just be sure that I do.

19 Was the August 15 letter, was this taken  
20 into account in the subsequent legal assessment by  
21 the Secretaria de Gobernacion?

1 THE WITNESS: Mr. Chairman, Mr. President,  
2 yes. Yes, it was taken into consideration. In  
3 fact, in the administrative resolution that was  
4 issued subsequently where the Director-General for  
5 government orders the closing of the Entertainmens  
6 de Mexico facilities, there is a detailed reference  
7 to the letter, and in that resolution the  
8 Director-General of the government reaches a  
9 conclusion in a very clear way that that letter is  
10 not a permission whatsoever to install the machines  
11 that had been operated in the country.

12 ARBITRATOR WALDE: And there was not an  
13 opinion that the letter might have constituted an  
14 assurance on interpretation. It is sometimes  
15 called the comfort letter. This is not a concept  
16 you have discussed in your deliberations.

17 THE WITNESS: To answer your question, let  
18 me go back to something mentioned by the President  
19 a few minutes ago.

20 Despite the fact that this letter uses the  
21 word preponderant, I would rather stress that at

1 the beginning of the paragraph, it says if the  
2 machines, and to me that "if" condition is a very  
3 clear one. It's a condition and requires that the  
4 machines would fall within what's being indicated.  
5 At the same time by using "if," the word "if,"  
6 there is a possibility that if it's not that, then  
7 there would be a legal prohibition, and that's why  
8 in my opinion, this letter is not a permission of  
9 any kind, not even to have people expect it to be a  
10 permission of any kind.

11 ARBITRATOR PORTAL-ARIOSA: When it comes  
12 to facts, I would like someone to give  
13 Mr. Alcantara, the letter that we received from the  
14 Government of Mexico dated December 14, 2000,  
15 having to do with the application, C-93.

16 And also, the letter of August 15.

17 Do you have both?

18 THE WITNESS: I have the December letter  
19 only, and the August 15, yes, I've got that here.

20 ARBITRATOR PORTAL-ARIOSA: I would like  
21 you to go to the very last page, and can you tell

1 me who signed the December letter.

2 THE WITNESS: The December 14 letter of  
3 2000 was signed by the person who was Director for  
4 Games and Lotteries, Sandoval.

5 ARBITRATOR PORTAL-ARIOSA: Could you then  
6 go to the last page of the letter of August 15.

7 THE WITNESS: In the case of the August 15  
8 letter of the year 2000, while in the final text  
9 reference is made to the Director-General of  
10 Government, Mr. Selgeros Aceves, I assume because  
11 of the similarity of the signatures and based on  
12 authority given by the rules of procedure of the  
13 Secretaria that that document could have been  
14 signed as well by Rafael Sandoval.

15 ARBITRATOR PORTAL-ARIOSA: With the name  
16 of his boss?

17 THE WITNESS: The copy I have is somewhat  
18 hard to read, but on the right-hand of that  
19 signature there is a stamp, and it says absent  
20 Mr. Aceves, Director-General for Government, and  
21 pursuant to an Article, and I can't quite read

1 which one of the rules of procedure of the  
2 Secretariat of Gobernacion, it is signed by Rafael  
3 Sandoval.

4 While it's illegible, just because of the  
5 functions of Gobernacion, I know that there is a  
6 possibility because that's authorized by the rules  
7 of procedure that a letter be signed this way.

8 ARBITRATOR PORTAL-ARIOSA: So, this would  
9 be a document issued with the full authority under  
10 the applicable laws of Mexico?

11 THE WITNESS: Yes, issued with full  
12 authority.

13 ARBITRATOR PORTAL-ARIOSA: And it's valid  
14 in all of its terms?

15 THE WITNESS: The fact that it was signed  
16 by an authorized individual to sign it does not  
17 automatically validate it in and of itself.

18 ARBITRATOR PORTAL-ARIOSA: Thank you.

19 PRESIDENT VAN DEN BERG: Mr. Perezcano,  
20 have you no more questions?

21 MR. PEREZCANO: Thank you very much,

1 Mr. President.

2 FURTHER REDIRECT EXAMINATION

3 BY MR. PEREZCANO:

4 Q. Mr. Alcantara, it seems to me that there  
5 was some confusion maybe due to the interpretation  
6 as to a question asked by the President with regard  
7 to the application of August 3 of the year 2000.

8 I'm talking about the original application from EDM  
9 to Gobernacion. Do you have that?

10 A. Yes, I have it.

11 Q. I would like you to--well, to be even  
12 clearer, the President asked you--let me  
13 double-check the transcription, Mr. President, for  
14 a second.

15 PRESIDENT VAN DEN BERG: I think that what  
16 you want to redirect him is on the question of  
17 premio.

18 MR. PEREZCANO: Yes.

19 PRESIDENT VAN DEN BERG: And what I asked  
20 him is whether in the penultimate paragraph in the  
21 penultimate line, (speaking in Spanish), that it

1 would be understood by the Gobernacion as including  
2 dollars, United States dollars, and the answer was  
3 yes.

4 MR. PEREZCANO: That was my question. I  
5 just wanted to make sure that the answer given by  
6 Mr. Alcantara.

7 THE WITNESS: Yes, that's it. They can be  
8 dollars.

9 MR. PEREZCANO: I have no further  
10 questions.

11 PRESIDENT VAN DEN BERG: Please proceed,  
12 Mr. Crosby, with the follow-up questions, if you  
13 have any.

14 RE-CROSS-EXAMINATION

15 BY MR. CROSBY:

16 Q. Mr. Alcantara, are sports books operations  
17 ongoing in Mexico? Are there sports book  
18 operations?

19 A. Yes, there are.

20 Q. Under what authority are those  
21 operations--strike that.

1 Under what authority are sports book  
2 facilities in operation?

3 A. With under permissions issued by  
4 Gobernacion.

5 Q. Is sports book considered betting?

6 A. Not that it's betting only. There are  
7 bets.

8 Mr. Crosby, if you allow me, I would like  
9 to explain Mexican legislation, Article 2,  
10 paragraph one of the Federal law on Gaming and  
11 Lotteries authorizes, among others, races with  
12 animals and sporting events in general. The events  
13 that are transmitted through sports book are horse  
14 races, dog races, and sporting events that are held  
15 outside of Mexico, and I therefore believe that  
16 they fall among those that are allowed by the  
17 national law on gambling and lotteries.

18 Q. Thank you and I don't presume to know  
19 Mexican law, so don't take affront to my questions.

20 What about Bingo operations? Are there  
21 Bingo operations in Mexico?

1 A. Not with that nomenclature. There are  
2 games that are similar to Bingo that take place.

3 Q. Do they involve betting?

4 A. No, because under Mexican law, that is  
5 viewed as a numbers raffle, and it's a legally  
6 different figure under Mexican law.

7 Q. What authority does the Secretary de  
8 Gobernacion, and excuse my language, have under  
9 Article 3 of the federal law of games and raffles?

10 A. Gobernacion may authorize, supervise,  
11 regulate, and generally control all those  
12 activities that the law refers to, in other words,  
13 laws on gambling and lotteries.

14 Q. So if there is an activity that would be  
15 deemed betting and otherwise illegal under  
16 Article 1 or Article 2, Article 3 would allow the  
17 Secretaria de Gobernacion to regulate, authorize,  
18 control, or oversee games which otherwise would be  
19 illegal betting; is that correct?

20 A. I think that would be contradictory. The  
21 authority could only authorize whatever Articles 1

1 and 2 allow.

2 Q. Well, Article 1 allows--let me ask it just  
3 straight out and let you answer it: Is the  
4 definition, the English definition that I'm working  
5 with, of Article 3, allows the Secretaria de  
6 Gobernacion to regulate, authorize, control,  
7 oversee games when they involve betting of any  
8 kind; correct?

9 A. That's right.

10 Q. Does that allow the Secretary to authorize  
11 games that involve betting?

12 A. That's right.

13 Q. He could grant a license to a game that  
14 involves betting under Article 3; correct?

15 A. That's correct.

16 MR. CROSBY: No further questions.

17 PRESIDENT VAN DEN BERG: Thank you.

18 Mr. Alcantara, thank you for your  
19 testimony. You are excused as a witness.

20 THE WITNESS: Mr. President, if you will  
21 allow me, I would like to clarify something on the



1 question that Mr. Perezcano wanted to ask, having  
2 to do with translation. May I be authorized by to  
3 you do this?

4 PRESIDENT VAN DEN BERG: Yes.

5 THE WITNESS: Thank you very much.

6 PRESIDENT VAN DEN BERG: Please proceed.

7 THE WITNESS: Your question was whether an  
8 award would include or cover dollars. Now, I  
9 should explain this in a very specific way. By  
10 award we understand any material good. However,  
11 when, in the case of the slot machines, when I  
12 invest a certain amount, in order to grow that  
13 amount, the award then really becomes a bet because  
14 I run the risk of losing it and losing my initial  
15 investment.

16 Fortunately for Gobernacion, the federal  
17 law on gaming and lotteries talks about bets of any  
18 kind. Gobernacion has never maintained, nor does  
19 the law state that this refers exclusively to  
20 monetary bets with money that circulates in Mexico.  
21 When it talks about bets of any type as losses,

1 people can bet their house and it would still be a  
2 bet that's forbidden by law. Somebody might bet  
3 dollars, and one could say that there is an  
4 exchange of merchandise only, but the law has no  
5 limitations in this regard. And when the bet of  
6 any kind takes place, this law allows to risk to  
7 what is being bet to see it to grow, for it to  
8 multiply or to lose it completely, then we are  
9 talking about the prohibitions that appear in the  
10 law. Thank you.

11 PRESIDENT VAN DEN BERG: The question came  
12 up in connection with the word premio. And in  
13 relation to a payout would be in money or something  
14 else. And then it arose, the question, whether  
15 payout in pesos is payout in money, is payout in  
16 dollars, these machines apparently can pay out in  
17 dollars or via ticket, you can get dollars. That  
18 would not be payout in money, but it would pay out  
19 in something else. And there arose the question  
20 about a premio would be understood as only  
21 referred--as also having the possibility of

1 including payout in dollars being money, and that  
2 was the question, whether the Gobernacion  
3 understood it in that--could have understood it in  
4 that way, or would have only be understood in  
5 pesos.

6 THE WITNESS: Okay. Thank you very much.

7 PRESIDENT VAN DEN BERG: Unless you have  
8 anything further to observe in that respect, but  
9 you explained that premio for you would include  
10 also dollars?

11 THE WITNESS: In order to obtain dollars,  
12 it would be necessary to invest pesos. In other  
13 words, if these facilities operate in Mexican  
14 territory, in order to obtain dollars, they've got  
15 to be traded for pesos. They're not buying dollars  
16 strictly speaking, but there's rather a transaction  
17 that takes place from pesos to dollars, which are  
18 legal tender, at least in the United States.

19 I insist that the law talks about gambling  
20 of any kind, bets of any kind. To bet, it doesn't  
21 have to be simply Mexican pesos. It could be

1 anything else that entails the risks that I  
2 referred to a while ago.

3 PRESIDENT VAN DEN BERG: Again, follow-up  
4 questions obviously. Mr. Perezcano, do you have a  
5 further question on the question of premio,  
6 dollars, and pesos?

7 MR. PEREZCANO: No, sir.

8 PRESIDENT VAN DEN BERG: Mr. Crosby?

9 MR. CROSBY: No further questions. Thank  
10 you, Mr. Alcantara.

11 THE WITNESS: Thank you, Mr. Crosby.

12 PRESIDENT VAN DEN BERG: Thank you for  
13 your testimony. You are finished as a witness.

14 (Witness steps down.)

15 PRESIDENT VAN DEN BERG: For planning  
16 purposes, do you wish to conclude also the  
17 testimony of Mr. Martinez today? I will have to  
18 look to the Court Reporter and to the interpreters,  
19 whether they are available, but that depends  
20 obviously in the first place whether the parties  
21 want it, and how long the cross will last,

1 estimated time.

2 MR. CROSBY: I believe my cross won't be  
3 any more than 30 minutes. In fact--well, that's  
4 fine.

5 PRESIDENT VAN DEN BERG: You are even more  
6 accommodated.

7 MR. MOWATT: I don't intend any direct  
8 evidence other than to introduce himself.

9 PRESIDENT VAN DEN BERG: Then I suggest we  
10 have first recovery time. 10 minutes.

11 (Brief recess.)

12 LUIS MARTINEZ, RESPONDENT'S WITNESS, AFFIRMED

13 PRESIDENT VAN DEN BERG: Before we proceed  
14 with the examination, the Tribunal would like to  
15 ask the respondent two pieces of information. One  
16 is, during the cross-examination of Mr. Crosby, the  
17 claimant challenged the existence of the appeal  
18 proceedings on two scores. One was the paragraph  
19 176 in the statement of defense where appeal was  
20 referred to. Perhaps Mr. Crosby could help me also  
21 with the other one with reference, but there was a

1 second one which you also said at least you  
2 challenged that there was an appeal pending.

3 MR. CROSBY: They were both of the--they  
4 were both the CPD entities. One reference was 176,  
5 and I don't believe that there was a paragraph  
6 reference on the second one. I think that my  
7 inquiry was on the chart on page 41, and then I  
8 asked him about the reference to appeal remains  
9 pending. So, I don't think there was another  
10 paragraph referenced to the second one. I may be  
11 wrong, but I don't think so.

12 PRESIDENT VAN DEN BERG: My question to  
13 the respondent is, where can we find evidence or  
14 information for that matter that the appeals are  
15 pending in these two cases?

16 MR. PEREZCANO: I would have to look at  
17 the pleadings that we presented, Mr. President. We  
18 can look at it now or at them now or for later on,  
19 and indicate that to you.

20 PRESIDENT VAN DEN BERG: No, I suggest you  
21 look over it tonight and if you could give us the

1 information tomorrow, it would be fine.

2           The second point is that, Mr. Alcantara  
3 said not less than five Supreme Court judgments,  
4 one if I remember well of 1998, and four others as  
5 of 2000. It would be helpful if we had copy of the  
6 Supreme Court judgments. To my knowledge, they're  
7 not in the record.

8           MR. PEREZCANO: It seems to me that  
9 they're not in the record individually, though some  
10 documents may refer to them, but we can provide  
11 them to you, yes.

12           PRESIDENT VAN DEN BERG: Are you not  
13 referring to the document with the wonderful  
14 interview where a saint is involved with decisions  
15 of the Supreme Court. I think we need some better  
16 indications of Supreme Court decisions, so if they  
17 could be obtained and timely shared with the  
18 claimant, it would be appreciated.

19           MR. PEREZCANO: Of course.

20           MR. MOWATT: There is one further  
21 housekeeping matter that would be timely with your

1 recent request. We were informed today, but I  
2 don't think it's on the record, that the CFO of the  
3 claimant, Mr. Copeland, has not been called to  
4 testify, and he's apparently returned home. You  
5 will recall during my cross-examination yesterday,  
6 or actually Monday, of Mr. Mitchell, I asked how  
7 the cost of the \$300,000 fee paid to Apse and  
8 Arroyo was booked by the company, and how it was  
9 expressed in the accounts of Mexican entities  
10 within the proceeding. And his answer was to defer  
11 the question to Mr. Copeland, who, of course, isn't  
12 here.

13           I'm wondering if the Tribunal can at least  
14 take into consideration the request of the  
15 respondent to indicate in the record where the  
16 300,000 fee is recorded as a cost or, if not, how  
17 it's otherwise recorded in the books.

18           MR. CROSBY: We don't have a problem with  
19 that. We could do that. We have to speak with  
20 Mr. Copeland, but I'm not sure we could do it right  
21 now.

1           PRESIDENT VAN DEN BERG: I understand  
2 that, but also, if you can address that tomorrow?  
3           MR. CROSBY: I believe so, yes.  
4           If I'm not mistaken, it's in--and I could  
5 be wrong. If I'm not mistaken--  
6           PRESIDENT VAN DEN BERG: I would suggest  
7 you do not speculate on this point in time. Check  
8 it at your leisure tonight.  
9           Mr. Martinez, welcome. You are our last  
10 witness, an expert witness called by the  
11 respondent. Can you state your full name for the  
12 record.  
13           THE WITNESS: Thank you my name is Luis  
14 Antonio Martinez Rivas.  
15           PRESIDENT VAN DEN BERG: What was your  
16 date and place of birth.  
17           THE WITNESS: I was born in Mexico City  
18 January 20, 1962.  
19           PRESIDENT VAN DEN BERG: Your nationality  
20 is Mexican?  
21           THE WITNESS: Mexican.

1           PRESIDENT VAN DEN BERG: By now you should  
2 be familiar with the proceeding.  
3           THE WITNESS: Yes.  
4           PRESIDENT VAN DEN BERG: That's a fair  
5 assumption, so I don't need to explain to you.  
6           THE WITNESS: Yes, that's so.  
7           PRESIDENT VAN DEN BERG: You understood  
8 that if there are language problems or questions  
9 regarding the questions put to you that you are  
10 expected to seek a clarification.  
11           THE WITNESS: Yes.  
12           PRESIDENT VAN DEN BERG: If you do answer  
13 the question, the Tribunal assumes you fully  
14 understood the question and fully responded to the  
15 question.  
16           THE WITNESS: Understood.  
17           PRESIDENT VAN DEN BERG: We request all  
18 the witnesses to make a declaration, in your case  
19 as an expert witness, and I assume that the text is  
20 in front of you.  
21           THE WITNESS: Yes.

1           PRESIDENT VAN DEN BERG: Could you please  
2 give the declaration.

3           THE WITNESS: I declare solemnly on my  
4 honor and conscience that what I state shall be in  
5 agreement with what I sincerely believe.

6           PRESIDENT VAN DEN BERG: You are aware  
7 that testifying as a witness, expert witness, or  
8 fact witness, before a tribunal or court is a very  
9 serious matter?

10          THE WITNESS: Yes.

11          PRESIDENT VAN DEN BERG: Thank you.

12          Finally, you have issued two reports. One  
13 is in--I'm trying to find the date of your first  
14 report, Mr. Martinez.

15          THE WITNESS: If you will, Mr. President,  
16 the report was submitted with a cover page, cover  
17 letter dated 15 December 2003.

18          PRESIDENT VAN DEN BERG: I'm looking for  
19 your signature.

20          THE WITNESS: In my answer--

21          PRESIDENT VAN DEN BERG: In your first

1 report, is there a signature?

2           THE WITNESS: In the report itself, no.  
3 Just on the cover letter.

4           PRESIDENT VAN DEN BERG: This is, indeed,  
5 your report which consists of 59 pages.

6           THE WITNESS: Yes, I can confirm that this  
7 is my report along with the 59 pages of the main  
8 body. There are annexes.

9           PRESIDENT VAN DEN BERG: And the cover  
10 letter is dated 15 December 2003.

11          THE WITNESS: Yes.

12          PRESIDENT VAN DEN BERG: Then you have the  
13 report cover letter of 29 March 2004, and here at  
14 page eight this does bear a signature.

15          THE WITNESS: Yes, that is correct, it is  
16 my signature.

17          PRESIDENT VAN DEN BERG: Thank you.

18                           DIRECT EXAMINATION

19           BY MR. MOWATT:

20           Q. Mr. Martinez, could you give the Tribunal  
21 a brief summary of your experience conducting

1 business valuations in Mexico.

2 A. My professional history, well, I have  
3 worked 19 years initially in the banking system, in  
4 Mexican banks and foreign banks, and in the course  
5 of those 19 years in the last five or six years in  
6 investment banking. Beginning in the year 2000, I  
7 set up my own office offering financial consulting  
8 services and business development services.

9 Q. Thank you.

10 You were present yesterday when Mr. Rittvo  
11 testified, and he was asked three questions, and  
12 with leave of the Tribunal, I would like him to  
13 respond to one of the three, very simply.

14 The third question put to Mr. Rittvo was  
15 whether he agreed with your views as to the  
16 suitability of the discounted cash flow methodology  
17 or model in this case, and I'm just wondering, with  
18 leave of the Tribunal, whether anything he said  
19 causes you to change your mind as to the opinions  
20 you have given in this case.

21 A. No, in no respect would I change my

1 opinion in terms of the valuation that I prepared.

2 MR. MOWATT: No further questions.

3 PRESIDENT VAN DEN BERG: Mr. Crosby,  
4 please proceed with the cross-examination.

5 CROSS-EXAMINATION

6 BY MR. CROSBY:

7 Q. Mr. Martinez, you have before you your  
8 first report prepared in this matter. Just to  
9 clarify something, am I correct that you have not  
10 provided a witness statement under oath in this  
11 matter?

12 A. Could you be more specific, please?

13 Q. Well, the witnesses in this case have been  
14 providing witness statements under oath in addition  
15 to the reports that they have provided. At least  
16 the experts have. I just want to confirm that  
17 there has been no witness statement under oath  
18 provided by you in connection with these  
19 proceedings.

20 PRESIDENT VAN DEN BERG: Other than the  
21 declaration which has just been given by

1 Mr. Martinez is also with respect for his witness  
2 statements?

3 MR. CROSBY: Mr. President, I don't  
4 question his testimony. I don't question his  
5 report. I would just like to look at the merits.  
6 I was just unclear.

7 PRESIDENT VAN DEN BERG: Thank you.

8 BY MR. CROSBY:

9 Q. I would like you to look at page 22 of  
10 your report.

11 ARBITRATOR WALDE: Just bear in mind in  
12 Spanish the pagination may be different.

13 MR. CROSBY: Those are in Spanish?

14 PRESIDENT VAN DEN BERG: We received what  
15 were the Spanish versions. That's why I said I  
16 already have it, but you gave it to me.

17 MR. CROSBY: We made a Spanish version for  
18 the witness and reran off copies.

19 PRESIDENT VAN DEN BERG: You have an  
20 English version?

21 MR. CROSBY: We do.

1 ARBITRATOR WALDE: Only problem is the  
2 pages may be different. It may be more difficult  
3 to find the corresponding section.

4 MR. CROSBY: I don't believe it is. I  
5 think the pagination is correct.

6 BY MR. CROSBY:

7 Q. Under Section 5 which states valuation--

8 A. The page 22 that I have, Mr. Crosby, with  
9 all through respect, is chapter four, Applicable  
10 Valuation Methodologies.

11 Q. If you could take a look at Section 5,  
12 which starts with valuation.

13 PRESIDENT VAN DEN BERG: Before you  
14 proceed, please, you apparently have an English  
15 translation.

16 MR. CROSBY: I do.

17 PRESIDENT VAN DEN BERG: It's prepared  
18 apparently in-house.

19 THE WITNESS: I do.

20 PRESIDENT VAN DEN BERG: Since you are  
21 working on the English version as well, could I



1 have a copy of the English version with a copy to  
2 the other side, so that--

3 MR. CROSBY: I can.

4 PRESIDENT VAN DEN BERG: So that we are  
5 literally on the same page.

6 MR. CROSBY: I'm very sorry for this  
7 messup. The version I have has all my questions on  
8 it.

9 PRESIDENT VAN DEN BERG: But you don't  
10 have a clean version?

11 MR. CROSBY: I think the rest are on the  
12 computer.

13 If we could take five minutes, we may have  
14 another version in the other room and run off  
15 copies quickly.

16 PRESIDENT VAN DEN BERG: That would be  
17 helpful.

18 MR. CROSBY: My apologies. I messed up.

19 PRESIDENT VAN DEN BERG: That could  
20 happen.

21 The rest of the persons remain in the room

1 because I know the extracurricular activities of  
2 this group.

3 (Off the record.)

4 PRESIDENT VAN DEN BERG: We will go back  
5 on the record.

6 Mr. Crosby, could you tell us where we  
7 are, and we will find it in the Spanish text.

8 MR. CROSBY: Thank you, Mr. President.

9 BY MR. CROSBY:

10 Q. Mr. Martinez, can you look at Section 5,  
11 entitled "Valuation." On the English version it's  
12 at page 22.

13 A. Yes.

14 ARBITRATOR WALDE: Spanish 25.

15 BY MR. CROSBY:

16 Q. And I will read into the record the  
17 English what you stated here. (Reading):

18 In our opinion, the application of  
19 this methodology is inappropriate in this  
20 case, given the lack of information  
21 available to us. The fact that we are

1 dealing with newly established companies  
2 and that the company has been closed down.  
3 In addition, the companies--EDM-Matamoros,  
4 Reynosa, and ITGC itself--were technically  
5 bankrupt as of December 2001. All of this  
6 makes a precise estimate of the company's  
7 future funds flows difficult to achieve.  
8 Nevertheless, this methodology is used as  
9 it was--as it was the one used by TIG.

10 It's worth pointing out that the use  
11 of this methodology is only appropriate in  
12 cases where sufficient information exists  
13 to make reliable estimates of the  
14 company's future funds flows. In simple  
15 terms, the quality of the results will  
16 depend on the quality of those estimates.

17 Is that a correct translation?

18 A. That's correct.

19 Q. Can I take that statement to mean that  
20 your opinions stated in this report based upon a  
21 discounted cash flow are not reliable?

1 A. That's correct.

2 Q. And your opinions in this document for the  
3 valuation of the EDM entities based upon a  
4 discounted cash flow are not reliable?

5 A. That is correct.

6 Q. If you go down the page to the paragraph  
7 just above 4.1, on English page 23--

8 PRESIDENT VAN DEN BERG: 41 or 51?

9 MR. CROSBY: 5.1, English page 23.

10 BY MR. CROSBY:

11 Q. You stated, and I will paraphrase to make  
12 it kind of short. You stated you developed a  
13 series of assumptions on the cost of sales and  
14 operating expenses.

15 How did you develop those assumptions?

16 A. To carry out a valuation analysis in this  
17 case, because of the lack of information and  
18 because of the difference that existed between the  
19 audited financial statements and those presented by  
20 the administration, it was necessary to resort to  
21 scenarios that were comparable. In this regard,

1 what we did was to carry out a financial analysis,  
2 so we looked at the financial ratios of each  
3 company, including Thunderbird itself, and ITGC,  
4 and on the basis of that to develop a comparative  
5 model--

6 THE INTERPRETER: The interpreter asks for  
7 a clarification. Did you say novation group?

8 BY MR. CROSBY: I-N-N-O-V-A-T-I-O-N.

9 BY MR. CROSBY:

10 Q. Do you have any specialized knowledge in  
11 the field of gaming businesses?

12 A. No.

13 Q. Do you have any specialized knowledge in  
14 businesses in the general area of entertainment?

15 A. Could you define entertainment.

16 Q. Let's just narrow it to keep it to gaming  
17 or gambling entities.

18 A. No.

19 Q. Have you ever performed a valuation on a  
20 gaming entity?

21 A. No.

1 Q. Do you believe that specialized knowledge  
2 in the area of gaming and the valuation of gaming  
3 facilities was necessary for your opinions in this  
4 report?

5 A. No.

6 Q. Why not?

7 A. When you carry out an analysis of any  
8 business, generally you take into account different  
9 elements. People and the companies that make up  
10 that business and the track record, the operational  
11 track record thereof, and information on the  
12 industry. So, the financial market allows for a  
13 lot of information that you can have access to.  
14 And to be more precise, you need a number of  
15 elements. You do not have to be an expert in one  
16 industry in order to know on the basis of financial  
17 statements what is the value of the company.

18 Q. Mr. Martinez, what industry information  
19 did you seek out and rely upon in developing your  
20 opinions in this report?

21 A. In order to carry out this report, we

1 researched a number of different sources of  
2 information. The main ones that we used to carry  
3 out a comparator of apples with apples, if I may  
4 call it that, Mr. President, is to turn to  
5 financial information of audited reports and final  
6 reports of ITGC and Thunderbird.

7 Q. Why did you consider it appropriate--if  
8 I'm understanding you correct, why did you consider  
9 it appropriate to compare the EDMs to International  
10 Thunderbird Gaming Corporation?

11 A. I considered it right because it was the  
12 same industry. In the Mexican market, we did not  
13 find information. There is no public information  
14 on those types of businesses, on that type of  
15 industry. Nor is there private information  
16 available, and therefore the closest comparable  
17 information that could give us a better idea of the  
18 assumptions to be used was information from  
19 Thunderbird.

20 Q. And what research and analysis did you do  
21 under the operation of Thunderbird to ensure that

1 the comparison would be appropriate?

2 A. Over the years that I've devoted in my  
3 profession to banking and investment banking and  
4 credit analysis, what I did was a financial  
5 analysis of the results of the last five years that  
6 were unaudited from Thunderbird to get the  
7 financial results and their operating trends in  
8 order to be able to compare that with the EDM  
9 Companies.

10 Q. How did the respective size and diversity  
11 of Thunderbird as compared to the EDM entities  
12 compare into your comparison of the two?

13 A. Could you be a little bit more specific in  
14 your question.

15 Q. Well, Thunderbird is a large entity which  
16 controls many subsidiaries and other controlled  
17 entities. It also runs five, six, seven different  
18 gaming facilities in Latin America.

19 Did you consider that size and diversity  
20 of the business in your comparison of the financial  
21 information for Thunderbird with that of EDM?

1 A. From my standpoint and opinion, there is  
2 no disadvantage in trying to compare the EDM  
3 companies with Thunderbird, because if I were to  
4 compare or look at other companies in the  
5 entertainment or the gaming industry, the companies  
6 would be even much, much larger.

7 So, the idea basically here was to compare  
8 what was closest to the EDM operations based on the  
9 fact that Thunderbird is the main shareholder and  
10 operator of the EDM Companies, leads us to assume  
11 that the operation would be very similar, very  
12 close, and therefore comparable to it.

13 Q. Am I correct that in undertaking your  
14 analysis, you relied solely upon the audited  
15 financials of the three EDM entities?

16 A. No, that's not right. What we did was we  
17 looked at the financial statements based on which  
18 we determined that they were valid because they  
19 were the most reliable ones and were signed by an  
20 auditing firm like KPMG. We review the financial  
21 statements provided by the company and Thunderbird

1 financials over the last five years, and our  
2 valuation was based on all of that.

3 Q. In the pro formas which we will talk about  
4 here in a minute, the pro formas projecting future  
5 revenues and future costs, you used 2001 as a  
6 starting point; correct?

7 A. That's right.

8 Q. And did the numbers that you used as the  
9 starting point for those pro formas, were those the  
10 numbers that you obtained from the audited  
11 financials?

12 A. Yes, that's right.

13 Q. In the briefing back and forth in some  
14 declaration, there has been pointed out a  
15 discrepancy between the audited financials and what  
16 we would term the actual financials principally for  
17 Matamoros.

18 Did you undertake any analysis to  
19 determine the source of that discrepancy?

20 A. Yes, we carried out a number of analyses  
21 in order to try to understand why there was such a

1 discrepancy that was so large between financial  
2 statements prepared by management and those  
3 prepared by the auditors, and we simply did not  
4 manage to come up with a definition in that regard.

5           So, in order to keep our analysis and  
6 valuation study consistent, we decided to retain  
7 the audited financial statements by KPMG.

8           Q. There was a witness statement provided by  
9 Booker Copeland in the statement of reply where, as  
10 I recall, he attempted to explain that discrepancy  
11 between the audited financials and the actual  
12 financials, as we would term "actual financials"  
13 for Matamoros.

14           Did his explanation--did you find his  
15 explanation helpful in determining the source of  
16 the discrepancy?

17           A. No, not at all.

18           Q. I would like you to take a look at Table  
19 13.

20           A. Page 27?

21           Q. Correct.

1           And this is the pro forma of your  
2 projected revenues and costs and margins for the  
3 EDM-Matamoros facility; correct?

4           A. That's right.

5           Q. This pro forma really sets forth in a  
6 chart or graphic style the nature and extent of  
7 your opinions as to the projected revenues and  
8 projected costs to run the business for  
9 EDM-Matamoros; correct?

10           A. Correct.

11           Q. And you projected that out over 10 years;  
12 is that correct?

13           A. That's right.

14           Q. What was your methodology, or more simply,  
15 how did you go about projecting future revenue  
16 growth?

17           A. What we used here in our assumptions was  
18 mainly the information provided by Thunderbird,  
19 which involved the number of machines it would have  
20 at the end of that period. I'm talking about 2001  
21 and then 2002. And we then compared the financial

1 reasons, the total costs over sales and  
2 expenditures over sales through December 2001,  
3 based on the audited financial statements of the  
4 EDM Companies, as well as the comparator with  
5 Thunderbird in order to define what would be  
6 roughly the behavior or performance in each one of  
7 these financial items, margins, and profits.

8         Based on that, we also estimated this in a  
9 very conservative way. Then we looked at  
10 substantial improvements in operational margins and  
11 profits, so that the business over 10 years would  
12 be offering positive results. However, as can you  
13 see, the companies provided very tight margins,  
14 even negative ones, and therefore the valuation of  
15 the company is a negative one.

16         Q. In respect, that was kind of a broad  
17 answer to what I intended to be a rather specific  
18 question, and that is: How did you go about  
19 projecting only the net annual sales growth over  
20 the term of the pro forma?

21         A. Okay. What we used were the number of

1 operating days by each one of the companies, and we  
2 annualized that. We annualized that number in  
3 order to project it over 364 days over the  
4 remaining years through year 10.

5         Q. And what accounted for the revenue growth  
6 over the period of the pro forma? What was the  
7 factor that caused the revenue to grow over the  
8 period of the pro forma?

9         A. What caused the growth were two things.  
10 One was inflation, which is a factor involved.  
11 Number two is the number of machines. And those  
12 are the two sole factors.

13         Q. And if I was to ask you the same questions  
14 about your pro formas for Reynosa and Nuevo Laredo,  
15 would your answers be the same?

16         A. Exactly.

17         Q. Now, again for EDM-Matamoros and the pro  
18 forma in Table 13, how did you go about projecting  
19 future cost of sale?

20         A. As I explained before, the cost of sales  
21 or the financial item of the percentage of cost of

1 sales over sales was forecast over the next or over  
2 the following 10 years, taking into account an  
3 improvement because another EDM company--or simply  
4 because operational costs in a business, as you  
5 learn, those costs decline.

6 Q. So, the decline in the cost of sales in  
7 this pro forma are based upon a comparison with one  
8 of the other EDMs?

9 A. That's one part of it. The more specific  
10 other part is that when you carry out the valuation  
11 study--and the intention here was to compare this  
12 study with The Innovation Group, we improved or we  
13 conservatively estimated that cost of sales would  
14 decline so that the gross margin would improve.

15 Q. I would point out that The Innovation  
16 Group has dramatically lower costs of sale and  
17 administration expenses over the period of their  
18 10-year pro forma. You would agree with that;  
19 right?

20 A. I wouldn't quite agree with the way they  
21 did it because they predefined a margin for the

1 entire period in carrying out a project and not  
2 simply evaluating a single operating business.

3 Q. And again, same question. How did you  
4 about projecting the future growth of the operating  
5 expenses column in the EDM-Matamoros pro forma?

6 A. In the case of Matamoros, Matamoros, in  
7 the comparative study of the various financial  
8 items, provided us with this very same financial  
9 ratio of operating costs over net sales, which was  
10 the lowest one, and that's why over the 10 years we  
11 kept the 45.03 percent number.

12 Q. What Mr. Copeland tried to point out in  
13 his declaration--and whether he did or didn't is  
14 probably subject to interpretation--is that this  
15 was, in essence, the first full year of operation  
16 for Matamoros, and there were nonrecurring expenses  
17 which were capitalized in that year, and he pointed  
18 out that the presence of those nonrecurring  
19 expenses in 2001 skewed the rest of your analysis.

20 What would be your response to that criticism?

21 A. The information we obtained does not



1 specifically indicate the nonrecurrent  
2 expenditures, and the outdated KPMG statements also  
3 omit any reference or breakdown on nonrecurring  
4 expenses. Consequently, I don't agree with the  
5 comment of Mr. Copeland.

6 Q. Wouldn't it be reasonable to assume that  
7 in a start-up business like EDM-Matamoros or, for  
8 example, any business, there would be expenses to  
9 create and get the business up and running which  
10 you would not have to be paying during the future  
11 operation of the business?

12 A. That's right.

13 Q. And did you factor that reasonable  
14 assumption into your valuation of the EDM  
15 facilities?

16 A. Yes.

17 Q. In what respect?

18 A. Yes, we considered it so much so the  
19 comparator of the financial items in the case of  
20 Thunderbird, as I indicated in my report, lead us  
21 to--indicating that the expenditures and the

1 operation is much higher and, therefore, the  
2 capital and the operating capital of the EDM  
3 Companies was already being eroded from the first  
4 month on.

5 Q. I would like you to take a look at--were  
6 you finished with your answer?

7 A. Yes.

8 Q. I would like you to take a look at  
9 paragraph Roman 5.4, which is entitled "EDM  
10 Projects in Mexico." That's page 37.

11 Am I correct that you did not do an  
12 analysis of EDM, of the three additional EDMs? Is  
13 that correct?

14 A. That's correct.

15 Q. That's because you didn't feel you had  
16 sufficient information to do that analysis?

17 A. For two reasons, if you allow me,  
18 Mr. President. That's one of them because there  
19 was no information, but also because a valuation  
20 study was based on what is established and pursuant  
21 to Article 1102(2) of the NAFTA treatment, and I

1 would like to read it. (Reading) The indemnity  
2 will be equivalent to the fair market value of the  
3 expropriated investment immediately before the  
4 expropriatory measure has been carried out (date of  
5 expropriation) and will not reflect any change in  
6 the value due to the intention to expropriate was  
7 known before the date of expropriation. The  
8 valuation criteria will include the current value,  
9 the value of the asset (including the physical  
10 value declared of tangible goods) and other  
11 criteria that will be appropriate in determining  
12 the fair market value, end of quote.

13 Q. Did you make a distinction in that  
14 valuation with valuations that you may have  
15 proceeded with under Article 1102 and 1105 of the  
16 NAFTA?

17 A. Well, this is the first valuation I  
18 carried out under that Article.

19 Q. So the answer would be no?

20 A. It would be no.

21 Q. Okay.

1 MR. CROSBY: I have no further questions.

2 PRESIDENT VAN DEN BERG: Thank you.

3 MR. MOWATT: I have no redirect.

4 I have a note on translation. About line

5 251, I believe the witness said audited financial

6 statements of the International Thunderbird

7 companies, and it's been recorded as "unaudited."

8 I think my friends will agree there are only

9 audited statements available, so it couldn't be the

10 unaudited one.

11 MR. CROSBY: I would agree.

12 PRESIDENT VAN DEN BERG: Thank you, so

13 noted.

14 MR. MOWATT: I have no further questions.

15 PRESIDENT VAN DEN BERG: Professor Walde

16 has questions.

17 QUESTIONS FROM THE TRIBUNAL

18 ARBITRATOR WALDE: If I understand you

19 properly, you are applying a generic model to the

20 valuation of such projects, which means a model

21 which might be used throughout several industries.

1 THE WITNESS: No, that's not the case.

2 ARBITRATOR WALDE: You explain to reflect  
3 the specifics of the gaming industry, but your  
4 benchmark--there was no benchmark in Mexico, so you  
5 took your benchmark from what you found in terms of  
6 corporate information of Thunderbird.

7 THE WITNESS: That's right.

8 ARBITRATOR WALDE: Would it not be--I  
9 mean, the right way to use not a company with  
10 several different operations but a comparable  
11 facility as a comparator, as a benchmark?

12 THE WITNESS: That were also in Mexico?

13 ARBITRATOR WALDE: That you find it.

14 THE WITNESS: That's right.

15 ARBITRATOR WALDE: So, what did you take  
16 as a benchmark for seeing how the curves and  
17 expenses and income, how they typically develop?  
18 Which one did you use as a model?

19 THE WITNESS: The valuation model on  
20 discounted flows is a methodology that has changes,  
21 depending on the evaluator and on elements that one

1 wants to bring in.

2 Numerically, the process, as such, is the  
3 same. To value an industry or a company in an  
4 industry relative to another one, the same tools  
5 are used. Normally--and I personally in each  
6 valuation that I carry out, we carry out in every  
7 study, we start from scratch, and we use the same  
8 tools. I don't start with a model, prefabricated  
9 model, to carry out the valuation. We start out  
10 from scratch.

11 To go back to your question, the way to  
12 compare EDM Companies at the time led us to  
13 conclude--and this was our view--that the closest  
14 comparator would be Thunderbird because they are  
15 the same people who are operating EDM and who had  
16 invested in EDM, so that if you knew the business  
17 well as far as we were concerned, there would be  
18 advantages at having knowledge or getting the track  
19 record of the management of Thunderbird relative to  
20 EDM, and that's why we use that as a comparator.

21 ARBITRATOR WALDE: You are familiar with

1 the valuation in petroleum? The way it's done is  
2 evidently there are certain generic terms, when  
3 it's money, calculation, net present value, this is  
4 everywhere the same, but one would not value a  
5 particular oil field, which I compare here, to a  
6 gaming facility to an oil company or a company  
7 which has a number of different operations. One  
8 always would compare a particular project, an oil  
9 field, with other oil fields of the same nature,  
10 and one would see how in petroleum much more than  
11 here you may start with hundred million or  
12 500 million-dollar investment in year one and then  
13 operating costs would go the next five years to \$25  
14 million. So, you would have very, very specific,  
15 industry-specific cost and income curve.

16 But, have you done--you have compared, as  
17 I see it, one particular gaming operation with the  
18 overall financial situation of Thunderbird, and you  
19 have not looked at a similar operation.

20 Correct me if I'm doing compound  
21 questions.

1 PRESIDENT VAN DEN BERG: I think they're  
2 clear, but I would stop here and ask Mr. Martinez  
3 to answer before you go on.

4 ARBITRATOR WALDE: I want to give you  
5 lectures. That's what I'm worried about. As  
6 Professor, I'm accused of giving lectures.

7 THE WITNESS: Thank you very much. In  
8 this case, the important thing was to compare the  
9 EDM Companies established in Mexico with comparable  
10 companies in Mexico. Our first analysis is that  
11 there were no comparable companies in Mexico.  
12 Number one.

13 Number two, if I used a comparator in the  
14 United States or Panama or Guatemala, the  
15 jurisdiction is different, the applicable laws are  
16 different, and probably the accounting  
17 methodologies are different, and for that reason  
18 our conclusion in our study was to use Thunderbird  
19 as a comparator. I hope to have answered your  
20 question.

21 ARBITRATOR WALDE: But again, I speak from

1 our particular experience. I look at an oil field,  
2 and I see the huge investment in year one when  
3 followed by a decline to five to ten percent in  
4 investment in the next five years. I'm quite sure  
5 gaming is different and not as capital-intensive.

6 But would you not think that in the  
7 expenditures in cash flow in year one is not a  
8 proper basis for the operating costs? Again, I  
9 must say I use petroleum where you have capital  
10 investment and later you got operating costs, which  
11 often will be only five percent of the year one of  
12 the development phase.

13 THE WITNESS: Very respectfully, sir, what  
14 you're indicating is perfectly right. However, in  
15 this case our valuation also involved management  
16 analysis, shareholder analysis, director analysis,  
17 entrepreneurial ability.

18 And when we looked at Thunderbird as such  
19 in the last five years, we clearly identified from  
20 a financial standpoint that things weren't going  
21 well, that the company was not in good shape, and

1 for that reason we could not assume that the EDM  
2 Companies in Mexico would be an extraordinary  
3 success if the track record of the investor company  
4 and these three companies did not back that  
5 information, did not provide that kind of support,  
6 and for that reason we did not use another  
7 comparator.

8 ARBITRATOR WALDE: If you were to buy oil  
9 fields from Shell, everybody in the industry would  
10 look at the particular oil field or particular  
11 operation, and the management ability of Shell  
12 would not have no bearing on the particular oil  
13 field except if you think it's a bad management,  
14 you would actually increase the value of the oil  
15 field because you think with better management you  
16 can increase the cash flow. If, on the other hand,  
17 I would buy, let's not call it Shell, but smaller  
18 oil company, then I might look at the various  
19 assets and I would look at the superseding,  
20 superadjacent management structure.

21 So, what I'm talking here about is not the

1 gaming industry. Is the gaming industry so  
2 different from the international oil industry that  
3 here you don't look at the particular asset, but  
4 you look at, given your experience in gaming, which  
5 is not mine, but you don't look at the particular  
6 facility, but you sort of say throw it together  
7 with the whole corporate mechanism.

8 THE WITNESS: That's right.

9 PRESIDENT VAN DEN BERG: Mr. Mowatt, do  
10 you have follow-up questions?

11 MR. MOWATT: I do not.

12 PRESIDENT VAN DEN BERG: Thank you.

13 Mr. Crosby?

14 MR. CROSBY: One question.

15 FURTHER CROSS-EXAMINATION

16 BY MR. CROSBY:

17 Q. Mr. Martinez, isn't it correct that all  
18 three of the EDM entities in the months prior to  
19 their closures were generating monthly positive  
20 cash flow?

21 A. If I use the financial statements provided

1 by management, and if that were the case, but in  
2 some cases there were no positive cash flows. If I  
3 use the KPMG financial statements, unfortunately,  
4 the picture was taken December 31, 2001, and they  
5 do not provide that information.

6 Q. But I am correct if you look at what we  
7 are calling the actual financials, am I correct  
8 that in the few months prior to the closures for  
9 each entity, they were at positive cash flow?

10 A. The answer would be yes in some cases.  
11 However, the discrepancies that exist between the  
12 information and those monthly financial statements  
13 provided by the EDM Companies or Thunderbird and  
14 the audited financial statements, they don't match,  
15 and our decision was to only look at the valid KPMG  
16 financial statements.

17 Q. Isn't it correct--

18 PRESIDENT VAN DEN BERG: Mr. Crosby, are  
19 you within the realm of what Professor Walde asked,  
20 because your follow-up questions are--the rules of  
21 the game were that they should be related to the

1 questions asked by the Tribunal, unless you would  
2 like to ask further questions, in which case you  
3 should seek leave, and then obviously we have to go  
4 an extra round. But by all means, if you want to  
5 do that, we'll give you leave to do that.

6 MR. CROSBY: I think I made my point, and  
7 we will stop now.

8 PRESIDENT VAN DEN BERG: You may go on, if  
9 you wish.

10 MR. CROSBY: We are fine.

11 PRESIDENT VAN DEN BERG: Now you have gone  
12 out of scope, I have to ask now again the  
13 respondent whether they have questions arising  
14 out--it becomes an infinite member.

15 MR. MOWATT: You're will be pleased to  
16 know, Mr. President, I still have no further  
17 questions.

18 PRESIDENT VAN DEN BERG: Thank you,  
19 Mr. Martinez, for this testimony. I apologize for  
20 the somewhat dynamic circumstances in the  
21 beginning, but you are now excused as a witness.

1 THE WITNESS: Thank you, Mr. President.

2 Thank you.

3 (Witness steps down.)

4 PRESIDENT VAN DEN BERG: I think we start  
5 tomorrow, then, as we discussed, at 1:00 for  
6 closing statements, and there are still things to  
7 do on the to-do list from the Tribunal, but perhaps  
8 we can address that tomorrow at 1:00. I mean the  
9 outstanding matters to be dealt with as requested  
10 by the Tribunal.

11 Is there any other point that the parties  
12 wish to raise at this point in time, Mr. Crosby, as  
13 far as administrative or procedural nature?

14 MR. CROSBY: No, Mr. President.

15 MR. PEREZCANO: No, sir.

16 PRESIDENT VAN DEN BERG: We will adjourn  
17 and see you tomorrow at one.

18 (Whereupon, at 6:31 p.m., the hearing was  
19 adjourned until 1:00 p.m. the following day.)

20

21

1 CERTIFICATE OF REPORTER

2

3 I, David A. Kasdan, RDR-CRR, Court

4 Reporter, do hereby testify that the foregoing

5 proceedings were stenographically recorded by me

6 and thereafter reduced to typewritten form by

7 computer-assisted transcription under my direction

8 and supervision; and that the foregoing transcript

9 is a true record and accurate record of the

10 proceedings.

11 I further certify that I am neither

12 counsel for, related to, nor employed by any of the

13 parties to this action in this proceeding, nor

14 financially or otherwise interested in the outcome

15 of this litigation.

16

17 DAVID A. KASDAN, RDR-CRR

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