

CIRCUIT COURT OF JEFFERSON COUNTY, MISSISSIPPI

ROSALYN SIMON, BY AND THROUGH
LORAIN SIMON, HER NATURAL MOTHER
ADULT NEXT FRIEND, AND GUARDIAN
AD LITEM, ET AL,
Plaintiffs,

VERSUS NO. 2007-110

TEXACO, INC., ET AL.,
Defendants.

VOLUME XIV
ROUGH DRAFT

TRANSCRIPT OF THE PROCEEDINGS HAD AND DONE
IN THE TRIAL OF THE ABOVE STYLED AND
NUMBERED CAUSE, BEFORE THE HONORABLE LAMAR
PICKARD, CIRCUIT JUDGE, ON THE 6TH DAY OF
APRIL, 2010.

APPEARANCES:

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MIKE ALLRED, ESQUIRE
ED FLECHAS, ESQUIRE
JASON MARSH, ESQUIRE
RICH FREESE, ESQUIRE
PRESENT AND REPRESENTING THE PLAINTIFF

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PRESENT AND REPRESENTING THE
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1 (Jury In.)

2 THE COURT:

3 Are we ready?

4 MR. FREESE:

5 Yes, Your Honor.

6 THE COURT:

7 Proceed, counsel.

8 MR. FREESE:

9 May it please the Court.

10 CROSS-EXAMINATION.

11 BY MR. FREESE:

12 Q. Hello, Mr. Connor. How are you
13 doing?

14 A. Okay.

15 Q. My name is Richard Freese and I
16 represent the plaintiffs in this case.

17 A. Good to meet you, Mr. Freese.

18 Q. Good to meet you, too, sir. I'm
19 going to ask you several questions this
20 afternoon. I want to start by seeing if we
21 can agree on some things first. And the
22 first thing I want to ask you if we can
23 agree on is, you want this Jury to believe
24 your opinions, do you not?

25 A. I think it's important for the Jury

1 to believe the truth, and I believe my
2 opinions are consistent with the truth, and
3 therefore, I believe that would be correct.

4 Q. So, therefore, you want -- and you
5 want them to rely on the reliability and
6 credibility of your opinions, correct?

7 A. Well, that's a -- that's a very
8 similar question, and I think that the -- my
9 understanding, Mr. Freese, the Jury is the
10 decision-makers. They have a lot of
11 information to remember and a lot of facts
12 and theories and statements to remember,
13 both testimony and scientific facts, and my
14 role is to provide them, to the best of my
15 ability, the facts and my interpretation of
16 those facts, and I've done that faithfully,
17 the best I can, so that they can make a fair
18 decision. But it's their decision.

19 Q. So the answer to my question, sir,
20 is you would like them to believe that what
21 you've told them today is reliable and
22 credible?

23 A. What I've told them today is
24 reliable and credible and it's their
25 decision to make that, and I hope that I

1 didn't mislead them in any way.

2 Q. And can we also have an agreement
3 that just the opposite is true, if this Jury
4 finds that anything you said is unreliable
5 or incredible or simply utter nonsense, can
6 we agree that you do not want them to rely
7 on that?

8 A. If -- okay. Your question to me is
9 that if I have told them some utter
10 nonsense --

11 Q. Yes. Let's break it down. If I can
12 prove to this Jury that one or more of your
13 opinions are utter nonsense, can we agree
14 that you do not want them to have to rely on
15 that?

16 A. If you are going -- you are going to
17 prove to the Jury that I have spoken utter
18 nonsense?

19 Q. Yes. Can we agree that you don't
20 want them to rely on that?

21 A. Well, that's a conditional -- I
22 haven't spoken any utter nonsense. I'm just
23 relating what the data said. I don't want
24 the Jury to believe any utter nonsense
25 uttered by anyone.

1 Q. And if the Jury thinks that some of
2 your opinions are unreliable, can we agree
3 that they should not rely on those opinions?

4 A. Well, I think the Jury has got to
5 make their own decision on that.

6 THE COURT:

7 Move on.

8 MR. FREESE:

9 Q. Let's start with your work for
10 Chevron, Mr. Connor. Now, you and I can
11 both agree that you are a very easy person
12 to find on the internet, are you not?

13 A. Well, I've never looked for myself
14 on the internet.

15 Q. Well, I have. And when I looked --
16 when I put John A. Connor in and Chevron and
17 Texaco, I find you all over the internet,
18 didn't I?

19 A. You didn't find the Terminator?

20 Q. Sir?

21 A. The Terminator didn't come up?
22 That's usually what I hear comes up with my
23 name.

24 Q. No, sir. If I put John A. Connor in
25 with Chevron/Texaco, I'm going to find you

1 all over the internet, aren't I?

2 A. Well, I don't know about that. I
3 would be impressed.

4 Q. You would be impressed?

5 A. Uh-huh.

6 Q. Well, let me see if I can impress
7 you. Now, when did you first start doing
8 work for Chevron or Texaco, Mr. Connor?

9 A. Well, I've been in the environmental
10 engineering business for 30 years, and I've
11 worked for a lot of different companies. I
12 can't remember a first job that I did for
13 Chevron. I can't recall, Mr. Freese.

14 Q. Can you tell me the decade that you
15 first started doing work for Chevron or
16 Texaco?

17 A. I started in -- I started working on
18 July 2nd, 1980, at 2:00 p.m. That's right.

19 Q. Can I put that for Chevron?

20 A. No. That's when I started working.
21 I'm trying to answer your question, Mr.
22 Freese. When I first -- and so I've been
23 working ever since then, like most people
24 have to. And I don't know when that first
25 job was for Chevron.

1 Q. So you can't tell me, within a
2 decade, when you first started working for
3 this company?

4 A. Oh, this company? I'm working --
5 oh, you are talking about Chevron?

6 Q. Yes, sir. What decade did you start
7 working for Chevron/Texaco?

8 A. Okay. Well, Chevron/Texaco didn't
9 -- that name only existed after the year
10 2000.

11 Q. I'm sorry, Mr. Connor. Maybe I'm
12 not asking my question very clearly.

13 THE COURT:

14 Hold on. Ladies and gentlemen, if
15 you will step back in the Jury room for a
16 minute

17 (Jury out.)

18 THE COURT:

19 I want the record to reflect the
20 Jury has been excluded from the courtroom.

21 Mr. Connor, I'm not trying to tell
22 you how to testify. Don't misunderstand me.
23 I'm not trying to do that, but this is going
24 to take a long, long time. If you will
25 answer his question, then if you need to

1 explain that answer, I'll let you do that.

2 Okay?

3 THE WITNESS:

4 Okay.

5 THE COURT:

6 But just listen carefully to his
7 question and try not to talk at the same
8 time. When he's talking, you listen. When
9 he's talking, you listen. And listen to his
10 question, and if you feel like the questions
11 he asks you is unfair or you need to explain
12 or anything of that nature, I'll give you
13 that opportunity to say that. But, you
14 know, wait until you answer, and if your
15 answer needs an explanation, I'll let you.

16 THE WITNESS:

17 Your Honor -- Mr. Freese, I'm not
18 trying to talk with you, that question, I
19 don't know -- those companies have been
20 around a long time and I don't know when my
21 first project was. If he has a question
22 about a specific project or something, I can
23 answer it.

24 THE COURT:

25 Well, "I don't know" is a perfectly

1 good answer. There's nothing wrong with an
2 "I don't know" answer.

3 THE WITNESS:

4 I guess I gave that, but I guess I
5 wasn't clear.

6 THE COURT:

7 Again, I'm not fussing with you or
8 anything like that. Please don't think that
9 I am. But, I mean, a question like what
10 decade did you start working for Chevron,
11 that's fairly -- and if you don't know, tell
12 him.

13 THE WITNESS:

14 Yeah. I can't remember if I worked
15 for them in the '80s or '90s.

16 THE COURT:

17 Look, that's fine. There's a lot of
18 things I don't remember about it. So, I
19 mean, that's fine. There's nothing wrong
20 with that.

21 THE WITNESS:

22 Okay. I understand, sir.

23 THE COURT:

24 You don't have to answer everything,
25 if you don't know.

1 THE WITNESS:

2 I'll do the best I can.

3 THE COURT:

4 Bring the Jury back in.

5 (Jury In.)

6 MR. FREESE:

7 Q. So, Mr. Connor, what decade did you
8 begin to work for either Texaco or Chevron?

9 A. I don't recall specifically the
10 first project I would have had for either of
11 those companies. I started working in the
12 1980s, and I'd have to think about that, Mr.
13 Freese, to try to remember the first project
14 I did for those companies. I'm not sure
15 that I did a project for them in the '80s.
16 It's possible.

17 Q. So somewhere in the last 10 or 20
18 years, you've had an active relationship
19 working for Chevron or Texaco?

20 A. I've definitely done projects for
21 them in the last 10 or 20 years, yes, sir.

22 Q. And let's talk about some of those
23 projects. What was the first project that
24 you did for either Texaco or Chevron?

25 A. The first project I can remember

1 were projects in the state of New Jersey for
2 Bob Dedoes who ran their -- he was the
3 remediation manager up there, and we worked
4 on a number of underground storage tank
5 cleanups in that state and some of the
6 neighboring states. And that would have
7 been -- it was in the early '90s.

8 Q. And did that involve testifying,
9 sir?

10 A. No. It was -- it involved
11 developing some of the cleanup standards,
12 helping them with some of their remediation.
13 When you put in these pumping systems,
14 there's problems with them, and that's what
15 I do, and some of their treatment system
16 designs for the cleanups out there.

17 Q. And how long did that project last?

18 A. There were a series of projects we
19 did for Bob Dedoes that went over a few
20 years.

21 Q. And, in your best judgment, how long
22 were you paid by Texaco or Chevron for that
23 project?

24 A. Gosh, I don't know. They were kind
25 of small projects because they were normally

1 -- they were jobs that Texaco was already
2 doing and they were having problems getting
3 the cleanup done. The system didn't work
4 properly or something, and I would consult
5 on how to fine-tune it, make it better, or
6 help them do the risk assessments on those
7 sites. I imagine all those projects,
8 together, could have been \$100,000.

9 Q. All right. Now, were you with your
10 GSI Company at that time?

11 A. Yes. I started GSI in 1986.

12 Q. So you were working at GSI, the
13 company you own now, and owned then, I
14 suppose, right, when you did this New Jersey
15 job?

16 A. Yes.

17 Q. All right. What was the next job
18 that you did for either Texaco or Chevron?

19 A. You know, Mr. Freese, I might not
20 remember all these projects. I'm going to
21 try to. Is it okay if I take some time to
22 think about it?

23 Q. Sir, you take as much time as it
24 takes for you to be honest with me about how
25 many projects you've done with Texaco or

1 Chevron.

2 A. Well, I'm definitely going to be
3 honest with you, whether I take a lot of
4 time or not. But let me think. So I worked
5 for Bob. I'm trying to think of the '90s.
6 That was a long time ago. I've done
7 literally thousands of projects.

8 Q. You've done thousands of projects
9 for Texaco?

10 A. No, thousands of projects for a lot
11 of people. So I'm just trying to remember.
12 The next project that I can remember --
13 there may have been some other small
14 remediation jobs. Oh, yes, I remember now.
15 Yeah, I remember. 1995. 1995.

16 Q. And where was that project?

17 A. That was all across the United
18 States.

19 Q. I'll put USA here.

20 A. USA.

21 Q. How long did that job last, sir?

22 A. From 1995 until 1998, I served as
23 the trainer, the certified U.S. EPA trainer
24 for risk-based corrective action for a group
25 called Partners in Rebecca Implementation,

1 PIRI, and Chevron was a part of that
2 partnership. It was a partnership between
3 U.S. Environmental Protection Agency and
4 some of the oil companies who contributed
5 money. They put money in a fund that paid
6 me to go to -- I went to about 15 different
7 states with funding from them that was
8 managed by ASTM to help the states -- work
9 directly for the states, really, to develop
10 their cleanup standards and their
11 procedures. Like Mississippi was one of
12 those states. My partner did Mississippi.
13 I did a bunch of other states.

14 And when you are working with them,
15 it was funded by Chevron and other parties--
16 MR. FREESE:

17 Your Honor, I don't mean to
18 interrupt the witness, but this is way
19 beyond the scope of my question. I simply
20 asked when and where. I didn't ask you what
21 you were doing.

22 Q. Mr. Connor, my question was simply,
23 you were doing a project that involved
24 Chevron and Texaco from 1995 to '98; is that
25 right?

1 A. Yes. I did that training from 1995
2 to 1998 in about 15 different states.

3 Q. And you were paid for that, were you
4 not?

5 A. Yes. The fund money was sent by Mr.
6 Tom Murphy to ASTM.

7 Q. And how much were you paid for that?

8 A. Gosh, let's see. I did 15 times --
9 I'd guess each time was somewhere \$10,000 or
10 \$15,000, maybe. Some of the states, it was
11 more than that, \$20,000.

12 Q. So is \$150,000 to \$200,000 a good
13 range?

14 A. Yes. That's good. But that wasn't
15 always Chevron, sir. That was the pooled
16 money that EPA administered. And 50 percent
17 of the money was EPA money. They matched
18 it.

19 Q. This is work where Chevron takes a
20 workload?

21 A. That's right.

22 Q. What was the next project you worked
23 for Texaco or Chevron?

24 A. I did some projects -- oh, yes.

25 Okay. I remember. I did a project for an

1 organization called the Petroleum
2 Environmental Research Forum, PERF.

3 Q. Is this a Texaco/Chevron project?

4 A. Yes. They funded it. Petroleum
5 Environmental Research Forum is a consortium
6 of oil companies that pool money to do
7 environmental research on particular
8 problems, how to investigate sites better,
9 clean them up better, and that's what I did
10 for them. I don't remember the nature of
11 the project. I think I did a couple of
12 projects on either coming up with new models
13 or new --

14 Q. I'm not asking what you did right
15 now. Okay? I'm trying to get the date, who
16 you were working for and how much you were
17 paid. And I'll -- we'll get into all what
18 you did later. Okay? On this -- what did
19 you call it, PERF?

20 A. PERF is the Petroleum and
21 Environmental Research Forum.

22 Q. And when was that?

23 A. It was in the late '90s.

24 Q. And how much did you get paid for
25 that project by Chevron and Texaco?

1 A. It was more than one project.

2 Q. So cumulatively, how much were you
3 paid?

4 A. They weren't very big projects,
5 altogether, they were in the \$50,000 to
6 \$100,000 range. For me and my staff, is
7 that what we're talking about?

8 Q. Yes.

9 A. Yes.

10 Q. And I assume you are giving me, this
11 isn't just John Connor, it's what John
12 Connor's company got paid?

13 A. I'm one of the owners of the
14 company. The company got paid out of that.
15 We all take our salaries out of that.
16 That's how we keep the lights on.

17 Q. What was the next project, sir?

18 A. Oh, there's a series of projects for
19 the American Petroleum Institute, API, it's
20 called. And those were research projects on
21 -- there's a --

22 THE COURT:

23 Just listen to the question. I
24 believe he said, what was the next project?

25 MR. FREESE:

1 I need the name of the project.

2 You've told me that. Thank you.

3 Q. And when was it?

4 A. Okay. The name of the project,
5 there's more than one. Do you want me to
6 list all of them?

7 Q. No. I just want -- if they were
8 cumulative, I'm happy with the American
9 Petroleum Institute. Just give me the
10 period of time you were doing these API
11 projects.

12 A. Okay. I'm going to tell you the
13 ones -- there were some done in the '90s,
14 where I developed software models for site
15 cleanup. And I think there were two of them
16 for \$50,000, something like that.

17 Q. Again, that's \$100,000?

18 A. Again, that's not all Chevron, sir.
19 I don't know how many members API has but I
20 know they're on that committee.

21 Q. All right. When was the next
22 project that you had for Chevron or Texaco?

23 A. There's another project after 2000
24 for API that was -- I wrote a guidance
25 document on how to clean up saltwater

1 spills.

2 Q. Don't need to know what you did.

3 Just need to know who it was, when it was
4 and how much you were paid.

5 A. It was for API. It was after 2000.

6 I don't know when it exactly started. And
7 it was -- that cleanup guide, I think the
8 budget on that was about \$50,000.

9 Q. \$50,000. All right. When was the
10 next project you worked for Texaco or
11 Chevron on, sir?

12 A. In 2003/2004, I was involved in the
13 project in Ecuador. Now, technically, I
14 worked for the judge in the court case. I
15 speak Spanish, and so I was hired as the
16 expert by that court. Chevron gives the
17 money for that project.

18 Q. I was going to ask you that. The
19 work you did in Ecuador -- we're going to
20 talk a little more about that. The work you
21 did in Ecuador for Texaco and Chevron, that
22 lasted from '03 to '04?

23 A. No. It started then. And I was
24 appointed by the judge in August of '04
25 until 2008.

1 Q. So that's a five-year project,
2 correct?

3 A. Judge Napea was his name.

4 Q. And let's not talk about the judge
5 for a second. It was Texaco/Chevron that
6 was paying you to go to Ecuador and do all
7 this work; is that right?

8 A. Well, that was one of the
9 conditions. When I got appointed by the
10 judge -- you don't want to be the guy that
11 gets paid by a judge in Ecuador, let me tell
12 you. The way the process works down there,
13 Mr. Freese, the judge appoints you. You are
14 a special assistant to the judge but you got
15 paid by the parties. All the experts got
16 paid by those parties.

17 Q. I understand, and thank you for
18 that. But my question is, all the work you
19 did in Ecuador was paid for by Texaco and
20 Chevron?

21 A. No. It was -- the money came from
22 Chevron.

23 Q. Good enough. I'll take either one,
24 sir. Now, over that five-year period. How
25 much money did Chevron pay you to go down to

1 Ecuador and assist them in that matter?

2 A. That was a major undertaking.

3 Q. I understand that.

4 A. Pardon?

5 Q. I understand it's major. Just tell
6 me how much you were paid.

7 A. We had a lot of folks down there,
8 and it was -- including the laboratory work,
9 it was on the order of a million dollars a
10 year. That's a major, major project.

11 Q. So between 2003 and 2008, your firm,
12 along with your associates, were paid about
13 \$8 million; does that sound about right?

14 A. No. It wasn't that --

15 Q. Or \$5 million?

16 A. Yes. It could be -- now, Mr.
17 Freese, that money, a lot of that money --
18 we paid for the laboratory down there, so
19 the laboratory was a lot of that money.

20 Q. I understand, sir. My question is
21 very simple. How much was GSI and John
22 Connor paid for the work by Chevron in
23 Ecuador between 2003 and 2008? That's all I
24 want to know. Just give me the dollar
25 amount.

1 A. Well, to answer that, you would
2 probably have to cut it by about 30 percent
3 for the laboratory costs.

4 Q. Just give me a number, sir.

5 A. What do you have there?

6 Q. I have nothing right now.

7 A. I thought you wrote something down.

8 Q. I did, but you corrected me, so I
9 stopped.

10 A. It's -- I don't know the exact
11 number, but it could be on the order of \$3
12 to \$5 million.

13 Q. Is that with or without the
14 discount?

15 A. Well, that's what I -- that's why I
16 said three to five. I'm not sure.

17 Q. So in that five-year period, you
18 were paid between \$3 to \$5 million for your
19 work in Ecuador. Now, that is a lawsuit in
20 Ecuador, is it not?

21 A. There is a lawsuit in Ecuador. Not
22 all that work is directly related to that
23 lawsuit.

24 Q. But what you were hired to do was
25 work that was involved in -- that allowed

1 Chevron and Texaco to develop testimony to
2 defend themselves in an environmental
3 lawsuit in Ecuador; is that correct?

4 A. The testimony that I produced was
5 provided to the judge in a lawsuit, yes.

6 Q. That's all I ask, sir. And what
7 that lawsuit is, is Texaco and Chevron being
8 sued for --

9 MR. SCOTT:

10 Objection. Your Honor, may we
11 approach the bench?

12 (A sidebar conference was held outside
13 the hearing of the Jury.)

14 MR. SCOTT:

15 They have been trying to get into
16 Ecuador.

17 THE COURT:

18 He's trying to stay away from it.
19 I've cautioned the witness. He has.
20 Everybody else. That's what he wants to
21 talk about.

22 MR. SCOTT:

23 This is baiting, Your Honor.

24 THE COURT:

25 Sir, I respectfully disagree with

1 you. He has -- and not only have the courts
2 cautioned the witness, counsel has cautioned
3 the witness. I don't want to get into that.
4 He wants to talk about it so counsel is
5 talking with him about it.

6 Now, I will instruct you to stay
7 away from that. That's not relevant in this
8 case. But if he wants to talk about it and
9 he brings it up again, I'm going to let him
10 talk all he wants to about it. It's your
11 witness.

12 MR. SCOTT:

13 I understand, Your Honor. And I
14 just don't want him to be asked questions
15 that require those answers. But I think the
16 Court's ruling is clear, so as long as the
17 witness does not walk into it and start
18 talking about it, the lawyers will be
19 prohibited from asking questions that lead
20 to those kind of answers.

21 THE COURT:

22 I think I've already ruled that
23 that's irrelevant in this case and I'll
24 stick by that ruling. But if the witness
25 wants to talk about it. It's only fair,

1 counsel, to give the person that's
2 questioning this witness a right to explain
3 what he's talking about.

4 MR. SCOTT:

5 Yes, sir. As long as he's giving
6 yes or no answers and not opening that up, I
7 understand we're done.

8 THE COURT:

9 And I really do. I sustained your
10 objection. But I can't help if he goes into
11 it.

12 MR. SCOTT:

13 I understand. Thank you.

14 (Sidebar conference concluded.)

15 MR. FREESE:

16 Q. Now, Mr. Connor, let's move on past
17 Ecuador. And your work there is completed,
18 as of 2008; is that correct?

19 A. No. Well, my appointment with the
20 judge ended in 2008.

21 Q. Okay. So are you still, as we sit
22 here today, on the payroll of Texaco/Chevron
23 in this Ecuador matter?

24 A. I'm a contractor. I'm not on the
25 payroll. But I -- I'm still involved in

1 that matter, yes.

2 Q. So the \$3 to \$5 million figure, that
3 was just for the period through 2008?

4 A. Yes. That's right.

5 Q. So now tell the ladies and gentlemen
6 of the Jury, from 2008 to 2010, how much
7 money you've been paid by Texaco/Chevron for
8 the work you are doing for them in Ecuador.

9 A. It's spelled with a C.

10 Q. I guess your English major is coming
11 out. I apologize. I do know Quito is the
12 capital, though.

13 A. That's where the Q is coming from.

14 Q. So why don't you tell me how much
15 you've been paid by Texaco and Chevron in
16 the last two years, sir, on just Ecuador.

17 A. Probably -- it's less intense than
18 it was, so it's -- I don't know. It could
19 be in the range of \$500,000 to \$1 million.
20 We're not doing all the field work anymore.
21 We finished that.

22 Q. \$500,000 to \$1 million.

23 A. We work for it, I tell you that.

24 Q. I didn't say you didn't, sir. You
25 are obviously expensive. Now, what is your

1 hourly rate for the work that you do for
2 Texaco/Chevron in Ecuador?

3 A. The hourly rate for the company is
4 \$35 at the low end, to the high end, my
5 rate.

6 Q. What is that?

7 A. It's \$350 per hour. That's not what
8 I get paid. That's what the company
9 charges.

10 Q. I understand that, sir.

11 A. I wish it was different.

12 Q. So I guess to get up to a million
13 dollars, you've got to have a lot of hours
14 to get a million dollars.

15 A. A lot of work.

16 MR. SCOTT:

17 Objection.

18 MR. FREESE:

19 I withdraw that, Your Honor.

20 Q. After Ecuador, what is the next
21 project that you worked for for Texaco and
22 Chevron?

23 A. Let me think. Oh, we did another
24 job for API on a soil vapor model and
25 Chevron contributed to that.

1 Q. And when was that?

2 A. We started that before 2008, during
3 that other project.

4 Q. 2008?

5 A. I think we started before 2008. I'm
6 not quite sure. But we developed that.

7 It's a soil vapor model. We developed it --

8 Q. I just need to know a date, sir.

9 A. Before 2008, I think. And they
10 contributed to that.

11 Q. How much were you paid for that?

12 A. I'm trying to remember the budget on
13 that. Those projects are almost always
14 \$50,000.

15 Q. 50?

16 A. I think it might be a little higher
17 than that in that case because models --

18 Q. I just need a number, sir.

19 A. Just put 50.

20 Q. 50. Is that an accurate number?

21 A. It's definitely not over 100. But,
22 again, it's not all Chevron, sir. It's the
23 committee, you know. API has a scientific
24 board, but they're one of the 12 members or
25 something like that.

1 Q. What's the next project that you
2 worked for with Chevron and Texaco, sir?

3 A. I'm trying to think about that. I'm
4 trying to remember the different projects
5 we've done that they might have contributed
6 to. Oh, there's a project called the MTBE
7 mass flux tool kit --

8 Q. When did you do it and how much were
9 you paid?

10 A. -- a stocking stuffer. That's a
11 project that was done for API, and they were
12 a contributor to it, and it was around -- it
13 was around \$50,000 to \$100,000. It's a tool
14 to help you manage your cleanups at MTBE
15 sites.

16 Q. When was the next project for Texaco
17 and Chevron?

18 A. There's a project I'm working on
19 right now in Montana, and it's a lawsuit
20 that deals with how much it's going to cost
21 to clean up the groundwater on a ranch.

22 Q. Somebody is suing Chevron and Texaco
23 in Montana in a lawsuit, and you have been
24 hired by Chevron/Texaco to consult with them
25 in that case?

1 A. That's right.

2 Q. Are you expected to testify in that
3 case like you are here?

4 A. Yes.

5 Q. You are being designated an expert
6 witness?

7 A. I'm a -- I think I've been
8 designated an expert witness in that case.

9 Q. How much are you paid in that case,
10 sir?

11 A. I don't know. It's over \$100,000.

12 Q. All right. Can you tell me, is it
13 less than \$200,000?

14 A. I don't know.

15 Q. Could it be more than \$200,000?

16 A. It could be more than \$200,000
17 because we had to go out and do a bunch of
18 field work.

19 Q. Could it be more than \$300,000?

20 A. Let me think about that. We had to
21 go out and do a bunch of soil samples on the
22 site. We had a crew of guys out there for a
23 couple of weeks. So it could -- it could be
24 -- it could be over \$300,000.

25 Q. Could it be over \$400,000?

1 A. I don't think so.

2 Q. So between three and four hundred
3 thousand, would that be a good number?

4 A. I think that's a fair number.

5 Q. What's your next project that you
6 worked for Chevron and Texaco on?

7 A. I've been doing one other project
8 for those guys. Oh, there was -- let's see.
9 Is that Chevron? Yes. There was a lawsuit
10 in New York City about MTBE contamination,
11 and I was designated an expert in that
12 lawsuit to testify, to evaluate what it
13 would cost to clean it up.

14 Q. Again, a case where Chevron and
15 Texaco were sued in New York City for MTBE
16 contamination?

17 A. I don't think it was Texaco.

18 Q. Chevron?

19 A. They were one of the parties named
20 in the suit, yes.

21 Q. They were paying your bill?

22 A. No. I think the law firm paid the
23 bill.

24 Q. Where does the law firm get the
25 money to pay your bill, sir?

1 A. Good question.

2 Q. Well, I don't want to quibble you
3 about that. The law firm representing
4 Chevron is paying your bill?

5 A. Yes. It's a reasonable assumption
6 they're getting their money from Chevron.

7 Q. How much were you paid in that
8 matter, sir?

9 A. That was a short-term job. I think
10 it was -- I would guess it was on the order
11 of \$200,000 over the course of a couple of
12 years.

13 Q. Okay. \$200,000. What is the next
14 project you've been working on for Texaco or
15 Chevron?

16 A. I wonder if that's it. I am trying
17 to remember. There's another case in
18 California that has to do with MTBE that I
19 might be designated on, but I don't know
20 that for sure.

21 Q. Okay. That's a lawsuit. And you
22 are being employed by either Chevron or
23 Chevron's lawyers in that case?

24 A. That's right.

25 Q. And how much have you been paid in

1 that case?

2 A. Not much because I haven't been
3 designated.

4 Q. Just tell me an amount, sir.

5 A. It would be probably less than
6 \$100,000.

7 Q. I'll put less than \$100,000.

8 A. Yes.

9 Q. All right. What's the next project?

10 A. I guess I don't remember any more,
11 Mr. Freese.

12 Q. All right. Let me see if I can help
13 you.

14 A. Okay.

15 Q. How about the State of New Mexico
16 versus General Electric Company, did you
17 ever work in that case?

18 A. Yes. I forgot. Okay. If I had my
19 resume with me, I could remember this
20 better. But I did work on that case, yes.

21 Q. So that's a case where the State of
22 New Mexico was suing Chevron; is that
23 correct?

24 A. Well, it was a -- it was a lawsuit
25 between the State of New Mexico against

1 General Electric and a bunch of other
2 parties.

3 Q. Including Chevron?

4 A. Including Chevron, yes.

5 Q. So that needs to be on this list,
6 does it not?

7 A. Right. And there may be some
8 others. I think you have a list of projects
9 and stuff I've done. I don't have that with
10 me, but there may be some other things on
11 there.

12 Q. Sir, if your lawyer has a list that
13 would help you, that's fine. But I know
14 about this one. So how much were you paid
15 by Chevron in the New Mexico lawsuit?

16 A. I don't remember. That was nineteen
17 -- that was over ten years ago.

18 Q. So that was in the 2000s?

19 A. Yes. I think that -- I can't
20 remember if that case was 1998 or 1999 or
21 2000.

22 Q. Well, I've got a reported decision
23 with your name in it in 2004. Does that
24 help refresh your recollection of when it
25 was?

1 A. I think that decision came out way
2 later because my recollection is that we
3 were working on that way earlier. And that
4 was just a huge amount of data. It was the
5 biggest database I ever worked on. And it
6 took a lot of time. I think that job, over
7 the course of a year, was on the order of
8 \$400,000, \$500,000.

9 Q. All right. \$500,000, New Mexico.
10 And am I correct that in that case, the
11 State of New Mexico moved to exclude your
12 opinions because they were based on improper
13 calculations done by other experts and
14 improper hypotheticals that you relied on?

15 A. Not that I recall. I mean, if they
16 did so move, that was certainly rejected by
17 the court and my opinions were presented in
18 court. Things like that happen, people say
19 stuff that's not true.

20 Q. Well, what I'm reading says that you
21 were relying on a Dr. Williams' opinions,
22 and Dr. Williams was accused of poor
23 calibration of some calculations.

24 Is that the same --

25 MR. SCOTT:

1 Your Honor, may we approach the
2 bench?

3 (A sidebar conference was held outside the
4 hearing of the Jury.)

5 MR. SCOTT:

6 I object. This is improper
7 cross-examination. Somebody alleged an
8 opinion and a court excluded them
9 (inaudible) allegations. And Mr. Connor has
10 already said he gave his opinion, so this is
11 allegations somebody made. It's nothing
12 different than us saying we move to exclude
13 all their experts in this case. I can't say
14 that.

15 MR. FREESE:

16 Your Honor, this is a case -- I gave
17 him plenty opportunity, and this is the
18 second largest one that he did work on and
19 he just seemed to forget about it. So I was
20 trying to see if I could refresh his
21 recollection about it.

22 MR. SCOTT:

23 I don't know. We may have the list.

24 (Sidebar conference concluded.)

25 MR. FREESE:

1 Q. Mr. Connor, do you have a list of
2 all your work for Texaco or Chevron?

3 A. I don't think I have a specific list
4 of that, no.

5 Q. Okay. So we've got 13 separate
6 matters, here. I'll total them up later.
7 But we're going to be -- we're going to be
8 in the \$7, \$8 million range in total in fees
9 that you've been paid by Chevron or Texaco
10 or some combination thereof over the last, I
11 don't know, ever how long you've been doing
12 what you do?

13 A. Is that a question?

14 Q. Yes. That's a question. Does
15 \$8 million sound -- I can total it, but if
16 you can wrap it up for me, that would be
17 great.

18 A. I just want to remind you, Mr.
19 Freese, as we talked about earlier, a lot of
20 those projects, Chevron was just a
21 contributor to a fund to either do the U.S.
22 EPA training or to develop the scientific
23 tools, so a lot of those are maybe just a
24 1/12th contribution from Chevron.

25 Q. Now, am I correct, sir, that in the

1 New Mexico lawsuit, you testified that
2 Chevron/Texaco had done nothing wrong or
3 they weren't liable for any damages? Did
4 you do that?

5 A. No. I don't believe you have that
6 correct.

7 Q. Okay. So you gave an opinion in New
8 Mexico that Chevron/Texaco was liable for
9 something?

10 A. Well, in that matter, there was --
11 there were two tank farms, and underneath
12 those tank farms, there was gasoline, and
13 they were responsible for the remediation of
14 that gasoline.

15 But the matter of the lawsuit dealt
16 with a different chemical, a totally
17 different chemical that didn't come from
18 gasoline that had spread far and wide across
19 that valley floor, and that wasn't their
20 chemical and that was the nature of the
21 analysis.

22 So, no, they had their own problem,
23 and they were taking care of it, and there
24 were other peoples problems, and GE was
25 taking care of that. That was GE's problem.

1 Q. Listen to my question, sir. Did you
2 or did you not testify in that case or give
3 an opinion that Chevron/Texaco had no
4 liability for anything they did in the State
5 of New Mexico?

6 A. No. I certainly didn't give an
7 opinion like that. I mean, they --

8 Q. Did you say they did anything wrong?

9 A. Did they do anything wrong?

10 Q. Yes.

11 A. Well, if you have a spill of a
12 chemical, it's something you are responsible
13 to clean up --

14 THE COURT:

15 Hold on a second. I'm going to
16 instruct you to answer his question, then
17 I'll let you explain. Did you testify that
18 -- who was it?

19 MR. FREESE:

20 Q. Did you testify that Chevron/Texaco
21 did nothing wrong or was not liable for
22 anything they did in New Mexico?

23 A. No. I didn't testify that they
24 weren't liable for their own problems.

25 THE COURT:

1 Now, if you wish to explain, you can
2 go ahead and explain.

3 A. And that is because there was a
4 certain problem that was clearly their
5 problem, and they were dealing with that,
6 but there was another problem that
7 overlapped the same area, but it wasn't
8 their problem because it was a different
9 chemical and it wasn't theirs, so they
10 didn't have a responsibility for that much
11 larger problem. They had their own problem,
12 and they were dealing with it, but they
13 didn't have a liability, responsibility for
14 the other chemicals that were not their
15 chemicals.

16 Q. And you so testified?

17 A. Yes. I believe so.

18 Q. So as related to the other chemical,
19 your opinion was, Chevron/Texaco was
20 responsible for nothing, for that other
21 chemical you just told me about?

22 A. They were not responsible for the
23 things they didn't do. They were
24 responsible for the things that they did do.

25 Q. And did you testify in the one that

1 they were responsible for?

2 A. There wasn't a lawsuit over that.
3 They were managing that problem, and my
4 testimony was that they were managing their
5 own problem, as they should be.

6 Q. The California lawsuit, did you ever
7 give an opinion that Chevron did anything
8 wrong?

9 A. I'm not -- what do you mean by "did
10 anything wrong," when you say that?

11 Q. Well, you know what a lawsuit is.
12 That's why we're here. You are seeking
13 damages against somebody. You understand
14 that's why we're here.

15 A. Yes. But I guess my confusion, Mr.
16 Freese, when you say they did something
17 wrong, you could -- you could have a damage
18 without doing something wrong.

19 Q. Sir, I don't want to quibble with
20 you, sir. Let me withdraw the question.
21 Did you testify in any way that was adverse
22 to the position that Chevron/Texaco took in
23 the California lawsuit?

24 A. Well, the California lawsuit hasn't
25 happened yet. That was the one I told you

1 that just started. So, no, I haven't
2 testified about that.

3 Q. Did you testify in the New Mexico
4 lawsuit in any way that was adverse to
5 Chevron or Texaco?

6 A. In any way that was -- what do you
7 mean by that? Do you mean that --

8 Q. You are an English major, sir. You
9 don't know what "adverse" means?

10 A. Yes. I guess I'm confused by that.
11 You know, I'm not funning with you or
12 anything. It's just that I testified about
13 the facts, as I saw them, and in that case,
14 I don't know if they considered it adverse
15 that I said that their stuff was their stuff
16 and they had to clean it up and that other
17 stuff wasn't. So in that sense, I guess by
18 saying that -- you could interpret it as
19 being adverse to them.

20 But I think that, you know, these
21 companies take responsibility when they need
22 to. And I felt that they needed to do that,
23 and they did it. But stuff that wasn't
24 theirs, I was in agreement with their
25 opinion it wasn't theirs. That was my

1 opinion.

2 Q. Let me ask you this, sir: Have you
3 ever taken an oath in your life, either
4 coming to a deposition or a court of law,
5 and said that Texaco/Chevron has ever hurt a
6 single American for exposure to any of their
7 products? Have you ever done that before?

8 A. I don't believe, in any of the cases
9 I've been on, in none of the cases I worked
10 for them were there any injuries of
11 individuals that were the responsibility of
12 Chevron or Texaco.

13 Q. Well, that's what lawsuits are
14 about. So is the answer, sir, that you have
15 never once in your life given an opinion
16 under oath that a single project of Texaco
17 or Chevron has ever injured a single
18 American?

19 A. In the cases that I worked on, they
20 weren't about injuries to individuals, and
21 so, no, it wasn't a matter -- I didn't give
22 testimony about injuries to individuals.

23 And, again, my area of expertise is
24 soil and groundwater and cleanup. It's not
25 personal injury. It's not -- the medical

1 stuff is another issue. I just testify
2 about the fact that water runs downhill.
3 Stuff happens to people and it's -- it can
4 be terribly sad things that happen to
5 people, but my role in those things is to
6 look at the numbers and say what the science
7 says and where the groundwater goes.

8 Q. And so you have never -- you've
9 never given an opinion saying that anything
10 they've ever done has ever hurt anybody?

11 A. I don't testify on the medical
12 issues, Mr. Freese. I testify on the
13 groundwater and the soil.

14 Q. You are testifying in this case that
15 my clients weren't exposed to anything that
16 could hurt them. You are testifying about
17 that, aren't you?

18 A. I haven't -- well, to clarify for
19 you, I haven't testified about human health
20 exposures in this case. I've testified
21 about whether or not there were any vapors
22 coming off, what vapors were measured at the
23 site, and I haven't -- my testimony hasn't
24 included the actual inhalation intakes or
25 dose responses in this case.

1 Q. So this Jury can understand and you
2 are clear, none of your opinions -- they
3 should take none of your opinions as
4 supporting any position that any of my
5 clients were exposed to dangerous chemicals
6 and vapors that were caused by gasoline
7 contamination? That's not what you are
8 doing here?

9 A. I don't -- I don't -- what I
10 presented you earlier, Mr. Freese, is the
11 data from the site, and we showed what the
12 measurements were in the building, and they
13 were -- there were some low levels of
14 gasoline vapors detected in lower floors in
15 September and October of 2000. There were
16 vapors in there. But whether or not your
17 clients were exposed to those vapors or if
18 those were harmful levels, that hasn't been
19 a purview of my discussion. I've just
20 simply presented the facts on that.

21 Q. Thank you, sir. I want the Jury to
22 be clear on that. You are not trying to
23 imply that nobody was hurt because of
24 anything you said. They were or weren't?

25 A. My testimony doesn't deal with --

1 doesn't deal with the medical issues.

2 Q. Now, the Simon case, that's what
3 we're here about. How many hours have you
4 worked on the Simon case, sir?

5 A. Me, individually, or the company?

6 Q. No. Let's start with GSI and then
7 we'll get to you individually.

8 A. It's -- I don't know the number of
9 hours. It -- we had to review a lot of
10 data. There were a lot of PPM reports. We
11 reviewed the Mitchell model, which is very
12 time-consuming. I reviewed the Benni
13 report.

14 Q. Sir, if you will follow the judge's
15 instructions. Answer my question and then
16 you can explain. The question is simply
17 this, sir, and think about it if you need
18 to. How many hours did you and your company
19 put into working on this case before you
20 came here and started testifying?

21 A. Gosh, I don't know. We ended up
22 working this weekend because we just got all
23 the new stuff that Mr. Benni presented last
24 week. That was a bunch.

25 Q. I just need an hour, sir.

1 A. It's -- you know, I don't know. I
2 don't know, Mr. Freese.

3 Q. Can you tell me, within a thousand
4 hours, how many hours you've worked?

5 A. I could tell you more easily the
6 number of dollars that were billed than the
7 hours. I don't think like that.

8 Q. How many dollars have you spent?

9 A. I think it's -- I imagine it's over
10 \$300,000 because the amount of work that was
11 involved was tremendous.

12 Q. Just in this case alone, \$300,000
13 plus; is that correct?

14 A. That's my guesstimate.

15 Q. All right. Now, and I'm going to go
16 through each one of them, but you have
17 worked for other oil companies also in
18 addition to Chevron and Texaco, have you
19 not?

20 A. Yes.

21 Q. And you do the same sorts of work
22 for them that you do for Chevron/Texaco; is
23 that right?

24 A. Well, most of our work deals with
25 environmental investigation and cleanup, and

1 so we do the same sort of work for all our
2 clients.

3 Q. All right. And over the same period
4 of time, from the 1980s forward, can you
5 give the ladies and gentlemen of the Jury an
6 estimate of how much you have billed big oil
7 in this country for the work that you've
8 done as a consulting expert?

9 A. What was your question, again?

10 Q. Yes, sir. We've calculated all the
11 amounts that you've been paid by
12 Texaco/Chevron. I'm now trying to find out
13 -- let's put it this way. Do you work for
14 Exxon?

15 A. More in the past, not so much now.

16 Q. How much have you billed Exxon over
17 your career, sir?

18 A. I don't know.

19 Q. Do you know, within a million
20 dollars, how much you've billed them?

21 A. No. Probably not.

22 Q. Is it more than a million dollars?

23 A. Over 30 years?

24 Q. Yes, sir.

25 A. It would only be -- that would only

1 -- \$3,000 a year, is that what it is? Not
2 much. Yes, it probably is.

3 Q. Over \$2 million?

4 A. It doesn't take much, you know, a
5 dollar a day.

6 Q. Have you billed them over \$2
7 million?

8 A. I don't know.

9 Q. So between \$1 and \$2 million?

10 A. I don't know.

11 Q. You know it's over a million?

12 A. Well, just -- it just wouldn't take
13 much, over three years, you know, for the
14 company. We're talking about the whole
15 company, 50 people.

16 Q. I understand. Now, am I correct,
17 sir, that the opinions that you've given in
18 this case -- and we're going to go over some
19 of it in a little more detail, but in your
20 report, you gave five -- generally five
21 separate opinions. Do you recall that?

22 A. Let me grab that report. I think I
23 have it here.

24 Q. I'll just hand you my copy, sir.

25 I'm just going to ask you one quick question

1 about it.

2 A. Okay. Sorry.

3 Q. This is a copy of your report, is it
4 not?

5 A. Yes. I believe it is.

6 Q. And I'm just asking you, you've
7 given five separate opinions that you came
8 to court and you testified about this
9 morning, did you not?

10 THE COURT:

11 Let's take a short recess.

12 (Jury out.)

13 (Off the record.)

14 (Jury In.)

15 THE COURT:

16 You may proceed.

17 MR. FREESE:

18 Q. Mr. Connor, have you ever, in your
19 life, refused to testify for Chevron/Texaco?

20 A. I don't believe so.

21 Q. And, in fact, you stand ready,
22 willing and able, whenever they call, to
23 answer them in a case where they get sued
24 over environmental contamination, don't you?

25 A. No. I wouldn't say that.

1 Q. You wouldn't? Okay. You have a web
2 site, do you not, sir? You have a web site?

3 A. Yes, I do.

4 Q. There it is. Is that your web site,
5 sir?

6 A. Yes, it is.

7 Q. This is how you describe you and
8 your company to the world, is it not? In
9 big bold letters, "We Answer to Them." Is
10 that your web site?

11 A. That is our web site.

12 Q. Who is the first company on the list
13 that you said you answer to, sir?

14 A. Well, it -- if you look above, sir,
15 it says, we do research organizations,
16 industrial and commercial companies,
17 research and development, regulatory policy
18 and we answer to all those folks.

19 Q. I understand. Who is the first
20 industrial company you answer to, sir?

21 A. The first company listed on that
22 list is Chevron.

23 Q. And then you've got Exxonmobil,
24 another oil company, correct?

25 A. Yes. They're an oil company.

1 Q. Monsanto, a chemical company?

2 A. Yes. They're a chemical company.

3 Q. Halliburton?

4 A. They do oil fields. These are all
5 people who have environmental problems.

6 Q. Schlumberger?

7 A. Schlumberger, we worked in Saudi
8 Arabia and elsewhere for them.

9 Q. Occidental petroleum?

10 A. Yes. We worked for them.

11 Q. BASF Chemical Company?

12 A. Yes. We've done cleanups of their
13 environmental problems.

14 Q. And you and your company answer to
15 all of them, don't you?

16 A. Well, we do work for all those
17 folks.

18 Q. These aren't my words. These are
19 your words, are they not, sir? This is how
20 you hold yourself out to the world?

21 A. Well, that's a commercial phrase
22 used on our web site. It's not -- those
23 aren't my words.

24 Q. So it's not -- you don't -- are you
25 disavowing those words, sir, on your web

1 site?

2 A. No. Those are on our web site.

3 Q. And you stand by it, don't you?

4 A. Well, we also -- yeah. But you
5 didn't show the whole list. Did you cut
6 that off? You know, we work for a lot of
7 other folks.

8 Q. No, sir, I haven't.

9 A. We work for our clients when we work
10 for them.

11 Q. I understand. You answer to them.

12 A. We provide the services -- if they
13 have a cleanup problem, we work on that
14 cleanup problem.

15 Q. Do you have a problem with just
16 agreeing with me that you answer to them?

17 A. Well, I -- I think it's -- in the
18 context of a lawsuit, it sounds improper,
19 so --

20 Q. I didn't write it, sir.

21 A. But the work we do for them when we
22 work on the lawsuits, it's not improper. We
23 look at the facts. No matter who they are,
24 we present the facts as they are.

25 Q. And you work for law firms, too,

1 don't you?

2 A. We do work for law firms.

3 Q. Let's highlight that column there,
4 the bottom corner. We've got the same
5 companies again. Once again, you are
6 saying, we answer to them. Let's look at
7 the law firms. Bracewell & Giulliani, are
8 they in Houston?

9 A. Yes. They have a Houston office.

10 Q. Do they represent oil companies?

11 A. I don't know. I don't know if I've
12 ever worked for them with an oil company.

13 Q. Baker & Botts. They're a couple
14 thousand lawyer law firm in Houston?

15 A. They're in Houston. I don't know
16 how big they are.

17 Q. They represent oil companies, don't
18 they?

19 A. Yes.

20 Q. They represent Chevron, don't they?

21 A. I don't think so.

22 Q. King & Spalding, you know they
23 represent them because that's the firm that
24 hired you in New Mexico, isn't it?

25 A. They -- yes. I worked for them.

1 Q. You do work for King & Spalding and
2 King & Spalding represents Chevron and
3 Texaco, does it not?

4 A. I've worked for King & Spalding when
5 they've represented Chevron, yes.

6 Q. Winston & Strawn, a big Chicago law
7 firm?

8 A. I've worked for them.

9 Q. For oil companies?

10 A. No.

11 Q. And you answer to all these law
12 firms, just like you say on your web site,
13 don't you?

14 A. When we're working for a client, we
15 provide the work necessary to do the proper
16 work, you know, proper assessment of the
17 data and we provide that service. But it's
18 consistent with the facts as they are.

19 Q. Sir, I'm just saying, you answer to
20 these law firms and these companies that
21 you've got listed on your web site. That's
22 all I'm asking.

23 A. When we are working for our clients,
24 we work for our clients.

25 Q. Am I correct, sir, that you were

1 never hired by the MDEQ in this case?

2 A. No. I was not hired by MDEQ in this
3 case.

4 Q. And you criticized other opinions by
5 other experts in this case that were hired
6 by the MDEQ, did you not?

7 A. I've pointed out when those facts
8 were wrong, data was falsified and the
9 conclusions were wrong, and I believe those
10 persons that did that work had previously,
11 before creating those false models, worked
12 for MDEQ.

13 Q. Do you know when the work was done?

14 A. There's a report that was issued
15 October 2009, and then it was worked up
16 later.

17 Q. You've never been hired by any
18 agency of the state of Mississippi to work
19 on this matter, have you?

20 A. To work on this matter?

21 Q. Yes, sir.

22 A. No.

23 Q. You've never been hired by any
24 contractor that was hired by any state
25 agency to work on this matter, have you?

1 A. No. I entered the case after that
2 had been done.

3 Q. The first knowledge you've ever had
4 of this case is when your client,
5 Chevron/Texaco, came calling?

6 A. No. I believe I got a call from --
7 I believe it might have been Mr. Scott.

8 Q. I'm sorry. So Mr. Scott, Chevron's
9 lawyer, called you, and that's the first
10 time you ever heard about this case?

11 A. Yes. I don't know how else I would
12 have heard about it.

13 Q. Did you go down to Fayette?

14 A. Yes.

15 Q. All right. How many times did you
16 go down there?

17 A. Some of my colleagues went there in
18 July last year, and I went there in October.

19 Q. October of '09?

20 A. Yes.

21 Q. All right. Did you talk to any of
22 the people that live in the town?

23 A. I guess so.

24 Q. You guess so?

25 A. Well, you know, I bought a Coke and

1 stuff like that.

2 Q. That had some relevance to this
3 case. Let me be more specific. Did you
4 ever interview anybody with MDEQ?

5 A. I have asked people at MDEQ over the
6 years on different projects in Mississippi
7 about different issues, you know, other
8 projects we've done here.

9 Q. Listen to my question, Mr. Connor.
10 Did you ever talk to anybody at MDEQ about
11 this case?

12 A. About this case? No. I didn't
13 specifically speak to people about this
14 case. I did talk to people at MDEQ to
15 clarify what the tank cleanup standards
16 were, in general, but I didn't ask them
17 specifically with regard to this case.

18 Q. And you didn't talk to Albert
19 Johnson; is that right?

20 A. Did I speak with Albert Johnson, is
21 your question?

22 Q. Yes, sir.

23 A. No, I did not.

24 Q. You gave an opinion about him this
25 morning, didn't you?

1 A. I reported the information that's in
2 the small business database, the Albert
3 Johnson -- the A.J.'s is owned by Albert
4 Johnson, so I'm just relating the
5 information to that database that said the
6 Carquest is A.J.'s and it's owned by Albert
7 Johnson.

8 Q. And you didn't talk to Mr. Johnson,
9 did you?

10 A. No.

11 Q. And you didn't talk to Mr. Coffee
12 either? Do you know who Mr. Coffee is?

13 A. No, I don't.

14 Q. Now, how many tons of contaminated
15 soil were removed from this site, sir?

16 A. Can you repeat the question? I'm
17 sorry.

18 Q. How many tons of contaminated soil
19 were removed from this site, sir?

20 A. According to the PPM report, there
21 were on the order of -- when they removed
22 the tanks, they dug up about -- was it 390,
23 385 tons, which would be about 250 cubic
24 yards of dirt were hauled off to a
25 non-hazardous landfill.

1 Q. How many pounds of soil is that,
2 sir?

3 A. You want the tons in pounds?

4 Q. You are the expert. I mean, can
5 you --

6 A. Well, I mean -- yeah. It's 2000
7 pounds per ton, and so -- let's call it 400.
8 Let's round up.

9 Q. Does that make 800,000 pounds?

10 A. Well, now, I'm the expert. I think
11 you are right. You are right, sir.

12 Q. 800,000 pounds?

13 A. Yeah.

14 Q. And what was it contaminated with,
15 sir?

16 A. Well, it -- there isn't any record
17 on what was in that soil. It went to a
18 municipal landfill, non-hazardous. But what
19 we suspect is it had some amount of gasoline
20 in it.

21 Q. Leaking gasoline?

22 A. Not much. It wouldn't have much
23 because it wouldn't go -- it couldn't go to
24 a municipal landfill if it had a lot.
25 There's a regulation on that.

1 Q. They didn't excavate and haul off
2 any sewage-contaminated soil, did they?

3 A. Not to my knowledge.

4 Q. And, in fact, there's no record that
5 any sewage was remediated anywhere, is
6 there?

7 A. No. The work that PPM did had to do
8 with the gasoline tanks. They weren't --
9 they weren't hired to do any remedy on the
10 sewage system.

11 Q. Now, you had an opinion this morning
12 about the other sources of gasoline because
13 you were certain that there was some other
14 gas tanks right across the street, three gas
15 tanks that were removed that contributed to
16 the contamination that you've seen from the
17 PPM records; is that right?

18 A. Well, you made a number of
19 statements there.

20 Q. Well, let me break it down.

21 A. Okay.

22 Q. You did testify this morning, to a
23 professional degree of certainty, that there
24 were three tanks removed from the A.J.'s
25 property right across the street from the

1 library, did you not?

2 A. What I said was, that the MDEQ
3 underground storage tank database shows that
4 there were three tanks registered to A.J.'s,
5 and that the small business database
6 identifies A.J.'s as the same location as
7 Carquest, and that -- so that's the
8 information. And that was consistent with
9 another note in a PPM report that said that
10 neighbors said there were tanks -- had been
11 tanks over there.

12 Q. And listen to my question, sir. You
13 testified this morning to a professional
14 degree of certainty that there were three
15 tanks removed from that lot right across the
16 street where A.J.'s Auto Parts is, correct?

17 A. What I told you was that -- I'm just
18 relating the facts as they're presented in
19 the MDEQ database and as I read them.

20 Q. No. Sir, you took those facts and
21 then you formed an opinion, that that's
22 where all this -- that's where all this
23 extra gasoline was coming from, was those
24 three gas tanks that were across the street,
25 did you not?

1 A. I think that -- I think it's a
2 supporting element of the opinion.

3 Q. That was your opinion. I am stating
4 that correctly, am I not?

5 A. My opinion is that for all the
6 reasons -- I don't need to repeat all that
7 stuff, the chemistry and everything else.
8 The gasoline looks like it came from the
9 1980s, is another one of the elements. It's
10 based on multiple issues, but one of the
11 elements was consistent with what PPM had
12 said, the records I looked at indicated that
13 there had been tanks over there that had
14 been removed.

15 Q. Trust me. We're going to get to
16 that. But the first basis was there were
17 three tanks removed from that lot. That was
18 your opinion this morning, to a reasonable
19 degree of professional certainty, correct?

20 A. It's my understanding, based on the
21 facts that I've reviewed.

22 Q. All right. Now, sir, I'm going to
23 give you a chance, right now, just to
24 withdraw the opinion, say you are sorry,
25 that you were wrong. Would you like to go

1 ahead and do that?

2 MR. SCOTT:

3 Objection, Your Honor. May we
4 approach the bench?

5 (Sidebar conference held outside the
6 hearing of the jury.)

7 MR. SCOTT:

8 This is not appropriate
9 cross-examination, I'll give you a chance to
10 withdraw your opinion and say you were
11 wrong.

12 THE COURT:

13 Rephrase your question, counselor.
14 (Sidebar conference concluded.)

15 MR. FREESE:

16 Q. Mr. Connor, I'm about to prove there
17 were no tanks on that lot ever. Now, do you
18 want to stand by your opinion or would you
19 like me to go ahead and prove it to you?

20 MR. SCOTT:

21 I ask for a side bar.

22 THE COURT:

23 I'll overrule.

24 A. If you have additional information,
25 I'll be glad to show it to you. It's not a

1 real important element of my opinions. It's
2 not even an opinion. It's more of an I
3 presented this information that I understood
4 and this is one of the facts that I
5 considered in developing my opinion.

6 Q. So you were just guessing?

7 A. No. No. I can show you the
8 documents that show --

9 Q. I'm going to show you some
10 documents, sir.

11 THE COURT:

12 Hold on, Mr. Freese. You are not
13 letting him answer the question.

14 MR. FREESE:

15 Go ahead, Mr. Connor.

16 A. Well, I can show you the documents
17 that were the basis of the opinion. I cited
18 those in my report.

19 Q. I've seen them.

20 A. And I explained.

21 Q. All right. So that was -- that was
22 one of the bases of your opinion of where
23 this extra gasoline came from, was the
24 existence of those three tanks, correct?

25 A. It was one of the facts I considered

1 in the opinion. The gasoline can't all be
2 from before 1980 because of its chemistry,
3 and it came from somewhere, some of it. And
4 if there had been -- you know, so one of the
5 other elements I saw was I looked at that
6 and I understood there were three tanks on
7 that property, and that could be, or it
8 could be from someplace else. I don't know.
9 But I -- it's -- the -- but that's one of
10 the facts that I understood, was that there
11 had been three tanks over there that were
12 moved in 1988.

13 Q. Just so we're clear, did you tell
14 the Jury this morning that it could have
15 been somewhere else or did you tell them
16 that it was on the data on the auto parts
17 lot? Which one did you tell them this
18 morning?

19 A. What I said was, my understanding,
20 from that evidence, is that there had been
21 three tanks over there. And that is my
22 understanding.

23 Q. Over there, you mean right across
24 the street?

25 A. I mean at Carquest, yes.

1 Q. This is a document, sir, from Hill
2 City Oil Company. It's got a facility
3 number. And you see where it says, A.J.'s
4 Main Street, Fayette, Mississippi, tanks
5 removed, 10/88. Do you see that?

6 A. Yes, sir.

7 Q. Have you seen this document before?

8 A. Let me see. Let me see.

9 Q. Just look at the one I'm showing
10 you, sir, just this one page. We'll get to
11 the other ones.

12 A. I can't identify it without
13 seeing --

14 Q. The other ones are not related to
15 it.

16 A. I can't tell if I've seen that.

17 Q. Well, it's got a Bates stamp number
18 of D166. So it's obviously a document that
19 was in your lawyer's possession, and I was
20 wondering if they ever showed you that.

21 A. Well, I can't -- well, this used to
22 be part of a larger document. You can
23 usually tell a book by its cover, but if you
24 tear a few pages out of it, you --

25 Q. So you don't know if you've seen it

1 or not?

2 A. No. I don't recall seeing this
3 piece.

4 Q. Does it appear to describe the very
5 tanks that you told the Jury about this
6 morning, A.J.'s on Main Street, three tanks
7 taken out in 1988? Is all that information
8 on that document that I've just given you?

9 A. Well, it's all handwritten on here,
10 so I don't know who wrote this.

11 Q. Sir, I'm simply asking you, is that
12 consistent with what you told us this
13 morning, what you are looking at right now?

14 A. The MDEQ database says there were
15 three tanks removed from A.J.'s in 1988.

16 Q. That's exactly what that document
17 says, doesn't it?

18 A. With somebody's handwriting on here,
19 yes, somebody wrote that on here.

20 Q. That's all I'm asking.

21 A. Okay.

22 MR. FREESE:

23 Would you put the map up, please?

24 Q. Mr. Connor, did you know there were
25 two A.J.'s in Fayette, Mississippi?

1 A. I knew that A.J.'s, there were --
2 A.J. owned some different facilities, but
3 when I looked at the addresses that are in
4 those databases, it indicated it was this
5 Carquest, to my understanding.

6 Q. Well, that's what I'm trying to find
7 out. Now, the A.J.'s that you talked about
8 this morning, is that that little bubble A?
9 That's right across the street from the
10 library, correct?

11 A. It -- well, it's a little bit off.
12 There you go. I think that's where it is.
13 It's just south of Spring Street on Main
14 Street. That's where A.J.'s is.

15 Q. That's where you told the Jury, to a
16 reasonable degree of professional certainty,
17 that those underground storage tanks were
18 removed in 1988, did you not?

19 A. That's what -- that was my
20 understanding, yes.

21 Q. Now, look up about a mile from that,
22 and you see where it says, old A.J.'s gas?
23 You didn't know there was a gas station up
24 there called A.J.'s, did you?

25 A. Well, I knew that there were a

1 number of A.J. businesses in town, but I --

2 Q. Sir, listen to my question. Did you
3 or did you not know that there was an A.J.'s
4 gas station on Main Street in Fayette at the
5 cross road of Mead Street?

6 A. I can't recall specifically. I'd
7 have to look back at the MDEQ documents.

8 Q. So if Mr. Johnson, for example, who
9 owned that property and also owned the
10 Carquest comes in here tomorrow and says
11 that the only tanks he ever had removed in
12 1988 were those ones up on Main Street and
13 Mead, a mile from the library, would you
14 tell the Jury whether or not they should
15 rely on your opinion any more about these
16 three tanks that you claimed to a
17 professional degree of certainty were right
18 across the street from the library?

19 A. Well, I -- I would believe that
20 Albert Johnson, if he said that, he would
21 know what he was talking about.

22 Q. If he said that, then this Jury can
23 totally disregard your testimony about that,
24 correct?

25 A. I think of that that -- if they --

1 if that fact is not correct, that fact is
2 not correct.

3 Q. Well, if it's not correct, you don't
4 want the Jury relying on it, do you? Or do
5 you?

6 A. No. If it's not correct, they
7 shouldn't rely on it.

8 Q. You were hesitating. If it's not
9 correct, you don't want them relying on it.
10 Now, have you ever seen this affidavit from
11 Mr. Johnson where he describes the fact that
12 there was never --

13 MR. SCOTT:

14 Objection. May we approach the
15 bench?

16 (A sidebar conference was held outside the
17 hearing of the Jury.)

18 MR. SCOTT:

19 This is hearsay.

20 THE COURT:

21 What is the document?

22 MR. SCOTT:

23 It's hearsay, somebody who is not in
24 this case.

25 THE COURT:

1 I'll sustain your objection.

2 MR. FREESE:

3 Your Honor, this is impeachment. He
4 invited me to show him whatever I had that
5 would prove to him that those tanks were
6 never at that location.

7 THE COURT:

8 I am not going to let you put it in
9 evidence. He can still look at it. As we
10 said earlier, an expert witness can base his
11 opinions on things that are not necessarily
12 admissible.

13 MR. SCOTT:

14 Yes. Of course.

15 (Sidebar conference concluded.)

16 MR. FREESE:

17 Q. Mr. Connor, I'm going to show you an
18 affidavit from Albert Johnson. The first
19 question is, have you ever seen that
20 affidavit before?

21 A. I don't think so. I don't think so.
22 But it does seem -- it does seem familiar.

23 Q. Okay. It does seem familiar?

24 A. Yes. I'm not sure. But I -- okay.

25 Q. You may or may not see it. Now

1 having seen this, does it refresh your
2 recollection of where those three tanks that
3 were removed in 1988 were from?

4 A. That doesn't say where they were
5 from, does it, sir? Let me see that. No.
6 He never says where the tanks are from. He
7 says that there --

8 THE COURT:

9 Hold on one second.

10 MR. FREESE:

11 Let me just ask you the question,
12 Mr. Connor.

13 Q. You never called Mr. Johnson. You
14 tracked it through the internet. You
15 tracked his properties. But you never once
16 tried to contact him to verify the opinion
17 that you were willing to walk in this
18 courtroom and swear under oath had occurred.
19 You didn't do that, did you?

20 A. No. As I said, I checked the MDEQ
21 database and the small business database,
22 and those were just the facts that I
23 relayed. I didn't speak to Mr. Johnson.

24 Q. And if you had called Mr. Johnson,
25 you would have known that your opinion about

1 those tanks being right across the street
2 was utter nonsense, wouldn't you?

3 A. If I had called Mr. Johnson? I
4 don't know what he would have said.

5 Q. Well, if Mr. Johnson -- if you had
6 called Mr. Johnson and he had told you
7 what's in this affidavit --

8 MR. SCOTT:

9 Objection, Your Honor.

10 THE COURT:

11 Sustained.

12 MR. FREESE:

13 Q. Do you still want to maintain that
14 opinion?

15 MR. SCOTT:

16 Objection.

17 MR. FREESE:

18 I just want to know if he still
19 stands by the opinion.

20 THE COURT:

21 Overruled.

22 MR. FREESE:

23 Q. Do you still want to stand by that
24 opinion, Mr. Connor?

25 A. Mr. Freese, if the fact is not a

1 fact, it's not a fact, it's not a fact, and
2 so if the information I looked at indicated
3 that there had been tanks across the street,
4 if there weren't tanks across the street,
5 there weren't tanks across the street.

6 Q. And now the facts that you thought
7 were facts three hours ago are not facts?

8 A. Well, you indicated as such. I
9 haven't verified any of that stuff.

10 Q. Well, I've shown you an affidavit by
11 the man who owns the property. I've showed
12 you a map where the other A.J.'s was. Not
13 good enough for you yet?

14 MR. SCOTT:

15 Objection. Side bar.
16 Argumentative.

17 THE COURT:

18 Sustained.

19 MR. FREESE:

20 Q. Mr. Connor, what else do I need to
21 do today to convince you to withdraw that
22 opinion?

23 A. Well, normally, when I'm given
24 information of that nature, I verify it
25 myself. I do research on it. I check to

1 see if it's reliable. If somebody gives me
2 a Google map, I'm a professional engineer, I
3 need to check those facts and I would check
4 those facts.

5 So, no, I wouldn't, based on
6 somebody showing me something necessarily
7 say, yes, that immediately changed the
8 opinion. But a fact is a fact, if it's not,
9 it's not. If there aren't tanks over there,
10 then there aren't tanks -- then there
11 weren't tanks over there.

12 Q. And if there are no tanks over
13 there, then your opinion of that other
14 source that you were telling us about this
15 morning -- remember that? That part of that
16 opinion is just -- can go out the window
17 because it has no support in fact.

18 A. No. That's not correct.

19 Q. As it relates to -- what your
20 opinion about those tanks being on that
21 property.

22 A. Well, you asked me about the other
23 source, and the other source is based on
24 chemical information --

25 Q. I'm going to get to that.

1 A. -- all these other types of
2 information.

3 Q. I'm going to get to that.

4 A. And that indicated that the gasoline
5 could not have come solely from those tanks
6 on the -- from the old Joe Brown Service
7 Station.

8 Q. Yes, sir.

9 A. And then on the data, it looked like
10 there had been tanks across the street, so
11 that was one possibility.

12 Q. And one of the bases was this MTBE
13 contamination. You remember telling us
14 about that?

15 A. Yes, I do.

16 Q. And to a reasonable degree of
17 professional certainty, you told the Jury
18 this MTBE cannot be from the Brown Service
19 Station, it's got to be from the A.J.
20 service station because they didn't start
21 putting MTBE in gasoline until the late
22 '70s, early '80s. Didn't you testify to
23 that?

24 A. No. I did not say what you just
25 said.

1 Q. What did you say? I'm sorry, sir.

2 A. Well, I think if I understand your
3 question, Mr. Freese, you said that I said
4 it must be from A.J.'s service station.

5 Q. Let me withdraw the question and
6 start again. Did you give the Jury a single
7 other source for that MTBE contamination
8 other than the tanks that you supposed were
9 on the A.J.'s lot? Did you have any other
10 source?

11 A. Yes.

12 Q. What?

13 A. Do you remember the slide that
14 showed the information from PPM where the
15 neighbors said there were tanks on a couple
16 of different properties? So there were
17 other storage tanks around there. I had
18 concluded that one of those other properties
19 would be the Carquest property, but there
20 were some other properties. So there's a
21 number of other locations. There are a lot
22 of other tanks out there.

23 Q. Now, let's be careful here, Mr.
24 Connor. Did you tell the Jury, did you
25 identify, by property, any other source for

1 that MTBE other than A.J.'s gas station
2 right across the street from the library?
3 Did you tell them a single piece of property
4 that you could specifically identify as
5 being a source for MTBE, yes or no?

6 A. No. But I would have to explain, as
7 I just did. There are two -- as PPM says in
8 their records, the neighbors -- PPM
9 suspected other sources. The neighbors told
10 them there were other tanks, and I
11 identified that and I shared that
12 information with the Jury this morning.

13 Q. And did the MDEQ find any other
14 source of tanks?

15 A. They didn't look for other sources
16 of tanks.

17 Q. You know they didn't look for
18 another source?

19 A. They never -- PPM never did the work
20 that was recommended in the last three or
21 four reports to look -- to drill across --
22 they wanted to drill more wells across the
23 street to find out where this stuff was
24 coming from, and they didn't do that work,
25 Mr. Freese.

1 Q. Do you have personal knowledge of
2 what, if any, work MDEQ did to identify
3 other sources of that MTBE contamination,
4 personal knowledge?

5 A. In all the documents that I
6 reviewed, there were no -- there's no
7 evidence of any additional wells that were
8 drilled across the street to figure out
9 where this stuff might have been coming
10 from.

11 Q. And you claimed this morning, you
12 are an expert in underground storage tanks,
13 aren't you?

14 A. I mean --

15 Q. Didn't you tell us that this
16 morning?

17 A. I'm an expert in remediation
18 problems for soil and groundwater, including
19 underground storage tanks.

20 Q. Now, if you can identify someone's
21 tank who is leaking, the state is supposed
22 to go after them and make them clean it up
23 and pay for it, aren't they?

24 A. Well, that's a complicated question.
25 The state has a fund that pays for orphaned

1 sites, and in Mississippi and other states,
2 there's limited funds for these orphaned
3 sites. And I'll tell you, Mr. Freese,
4 sometimes they'd rather not know.

5 Q. The MDEQ would rather not know?

6 A. They can't afford it. So there are
7 a lot of states when it's the state paying,
8 they don't really want to add their site to
9 the list. They can't -- that's the way it
10 is. So if there's somebody -- but the
11 regulations, if there is somebody who owns
12 the property and is responsible for it, the
13 regulations -- under those regulations, the
14 state will require them to clean it up.

15 Q. That's all I asked you, sir. And
16 how many people has the State of Mississippi
17 made a demand on for the gasoline
18 contamination at 218 Main Street, Fayette,
19 Mississippi?

20 A. I don't believe they -- to my
21 knowledge, they haven't made a demand. They
22 paid it out of the trust fund.

23 Q. Would you put up the October 9th
24 letter from State of Mississippi to
25 Texaco/Chevron? Dave Gardner. Highlight

1 that. Let me show you this, sir. You can
2 look on your screen. It's just as easy.

3 A. Can I have the document? If you are
4 going to ask me about both pages, I'd like
5 to see it, sir. I read it.

6 Q. Have you seen it before?

7 A. I don't believe I've seen it.

8 Q. Does it appear to be a demand letter
9 from the State of Mississippi to
10 Chevron/Texaco to pay \$600,000 as being the
11 responsible party for causing the
12 contamination leak at 218 Main Street in
13 Fayette, Mississippi?

14 A. Could you hand that back to me, sir?

15 Q. Yes, sir.

16 A. I know you highlighted certain parts
17 of it. You left a lot out.

18 Q. There's nothing left out, sir. You
19 had the entire letter in your hand.

20 A. Okay. Well, now, I do. But, yes,
21 this letter is addressed to Chevron and says
22 in it that the understanding of the
23 department is that they have expended
24 federal funds, and that their understanding
25 is that Sinclair Oil and Texaco formerly

1 owned an underground storage tank system
2 here and had involvement in that system, and
3 by and such, by federal law, because it's
4 the LUST trust fund, out of D.C., they're
5 required to issue this demand letter.

6 Q. I didn't say they weren't. But they
7 were issuing a demand?

8 A. Can I keep this, sir, since you are
9 asking me about a document?

10 Q. If it makes you feel better, you can
11 hold it all day long. It is a letter from
12 the State of Mississippi demanding that
13 Chevron/Texaco pay \$600,000 to clean up the
14 site that the state incurred because of this
15 gasoline contamination. That's all I'm
16 asking you.

17 A. Well, to answer you straight, it
18 says that the State has expended a certain
19 amount of money. It doesn't say how much
20 they're going to demand from Chevron/Texaco.

21 Q. \$584,305.83?

22 A. Well, Mr. Freese, when these letters
23 come out and they have multiple parties and
24 a whole chain of title, that's not -- this
25 says that they've spent that money but

1 they're not demanding that money from
2 Chevron. Okay?

3 Q. Can I --

4 A. Are you going to ask me more about
5 it?

6 Q. No.

7 A. You are finished with it? I'll give
8 it back to you.

9 Q. If I need you to look at it again,
10 I'll give it back to you, I promise.

11 A. Okay. Thank you.

12 Q. Let's go to the second page.

13 A. Could I have it back?

14 Q. It's on your screen, sir.

15 A. No. But you've cut out a lot of it.
16 I really --

17 Q. I don't know why you say it's cut
18 out. This is the entire letter.

19 A. Can you hand it to me, sir?

20 Q. Answer my question first. You just
21 denied that there was a demand made by the
22 State of Mississippi to Chevron/Texaco to
23 pay \$600,000, did you not? You just did it
24 30 seconds ago.

25 A. No. I didn't say that, if you

1 understood what I was saying.

2 Q. I must not have, sir, because I
3 thought that you were saying they were
4 required to send it out but it's really not
5 a demand.

6 A. No. They haven't -- in this letter,
7 they haven't said how much money they are
8 going to demand from Chevron for that. They
9 said that there is more than one party
10 involved. They don't, in this letter, say
11 how much they are going to ask.

12 Q. Highlight the first sentence. "This
13 letter is our official notice for demand of
14 reimbursement for Texaco, Inc."

15 Now, Mr. Connor, can we or can we
16 not agree that the State is demanding
17 \$583,000 and change from Texaco?

18 A. Mr. Freese, I'm not trying to
19 quibble with you. It's just when they say
20 they are giving you a notice for a demand,
21 it's saying they are going to ask you for
22 some money but they haven't told them how
23 much they are going to ask for at this point
24 in time.

25 Q. Sir, it looks like they're asking

1 for money, doesn't it?

2 A. They're asking for money, it's just
3 the amount of money isn't clear.

4 Q. Now, did you see what Chevron said
5 in response?

6 A. I don't believe so.

7 Q. All right. Well, let me show you
8 this. Would you pull up the Chevron letter?
9 And that's the full copy, Mr. Connor. Take
10 a moment and look at that.

11 A. Thank you. Okay. I read it, sir.
12 Can I please keep it while you talk to me
13 about it?

14 Q. Just look on the screen. I need to
15 have it because I don't have a copy.

16 MR. SCOTT:

17 Your Honor, may I provide a copy,
18 since it seems to be a big issue?

19 THE COURT:

20 Yes, please.

21 MR. FREESE:

22 Q. I really just want to ask you one
23 question. That is, at the bottom of the
24 first page -- now, this is Chevron's
25 response to the letter I just showed you,

1 right?

2 A. Yes.

3 Q. All right. And the -- it looks like
4 Chevron's refusing to pay the money,
5 correct?

6 A. What they say in the letter is that
7 they don't believe that they -- that the
8 demand letter is correct. They didn't own
9 or operate that system they -- it says
10 they're going to search for more
11 information. They'd like to understand how
12 the money was spent, but it doesn't -- I
13 don't believe this says they're not going to
14 pay.

15 Q. Well, let's look at the very bottom
16 of the first page. It says, at this time, I
17 have no documents indicating that -- and
18 then it goes to the next page -- that Texaco
19 had any involvement in the facility's
20 distribution of petroleum products, so any
21 information that you have is helpful.

22 Chevron is saying they never even
23 sold any gasoline in this county, according
24 to this letter.

25 A. That's not really what they mean by

1 that, to my reading, Mr. Freese. What
2 they're saying -- you left out the paragraph
3 above. The Jury can't see it. He explains
4 pretty clearly what he means by that.
5 There's a specific -- he cites a certain
6 language in the Mississippi Administrative
7 Code and lays it all out, what he means by
8 that. What he's saying is, he wasn't
9 responsible for the daily operation of that
10 system. He didn't own that system.

11 But he's saying quite clearly, if
12 you've got information that's different from
13 that, you let us know and we'll definitely
14 consider that. And he ends the letter with
15 the same note.

16 Q. And I simply am pointing out, Texaco
17 had -- there's no document indicating Texaco
18 had any involvement in the facility's
19 distribution of petroleum products. Isn't
20 that what it says?

21 A. That's what it says, yes.

22 Q. I'm done. Thank you.

23 A. You are not going to ask me anything
24 more about this letter?

25 Q. No. Now, we were talking earlier

1 this morning about the property with the
2 beehive sewer. Do you remember that?

3 A. Yes.

4 Q. And you were testifying that that
5 beehive sewer is built up to prevent sewage
6 from overflowing and coming down the hill
7 because that's what you thought had
8 happened, right?

9 A. Now, you asked me a number of things
10 there, right?

11 Q. Well, let me break it down for you.
12 I want to keep it simple. We did talk about
13 the beehive sewer cap, correct?

14 A. Yes, we did.

15 Q. And you told the Jury that in the
16 sewer system in Fayette, sanitary sewage and
17 storm sewage run together in the same pipes,
18 correct?

19 A. My understanding is that's the case.
20 Now --

21 Q. That's all I'm asking. You've
22 agreed with me.

23 A. What?

24 Q. That's all I'm asking. You said the
25 two run together, they carry sewage and

1 storm. That's your opinion?

2 A. That's my understanding.

3 Q. And you said they built that ant
4 hill sewer up because in heavy -- in periods
5 of heavy rain, you don't want that sewage
6 and storm water backing up and flowing down
7 the hill and flooding buildings, correct?
8 That's why you said it was built.

9 A. Well, it's built to stop the
10 overflows from the pipe.

11 Q. Correct.

12 A. In a heavy storm, you can get -- the
13 manhole will get blown off.

14 Q. And what I'm trying to find out,
15 because you cited a bunch of people saying
16 they had sewage smells and odors and raw --
17 you remember all that testimony you gave us
18 this morning?

19 A. Yes.

20 Q. Were you trying to imply to the Jury
21 that storm and sewage water would -- in
22 heavy rains would come up out of that sewer
23 pipe and come down the ant hill, down the
24 hill, across the street and run into the
25 library building and flood the building? Is

1 that what you were telling us this morning?

2 A. Not exactly.

3 Q. Okay. What part did I get wrong?

4 A. Well, the flooding of the building
5 would happen with or without the sewer pipe.
6 It's due to the storm water coming off the
7 parking lot and the street and everything.

8 Q. Well, then, let me stop then. Did
9 you try to imply or did you state that, in
10 your opinion, storm water came up out of --
11 storm water and sewer came up out of that
12 beehive after periods of heavy rain and
13 washed down across the road? Did you or did
14 you not do that?

15 A. It's my opinion that -- I don't know
16 when the beehive was put up, but before the
17 beehive was put up, you could definitely
18 have storm water coming out of there and
19 sewage with it.

20 So -- and so my depiction of that
21 doesn't show the beehive being built up.
22 That's a remedy that's installed later and
23 so -- but you could have -- if that -- from
24 that location, before you put that fix in
25 there, you can have -- you can have water

1 definitely coming out of that.

2 Q. Sir, I just want to make sure I
3 understand what you said this morning. Is
4 it your opinion, yes or no, that over some
5 period of time, sewage and storm water
6 overflowed that beehive drain and came down
7 across the road and, in part, flooded the
8 building? Is that part of your opinion or
9 not?

10 A. Well, I think you misunderstood that
11 part of the opinion.

12 THE COURT:

13 Hold on a second. Answer his
14 question yes or no or I don't know, and then
15 you may explain your answer.

16 A. No, it's not.

17 MR. FREESE:

18 Q. I just want to make sure --

19 THE COURT:

20 If you need to explain now, you are
21 welcome to.

22 A. You want me to explain that?

23 MR. FREESE:

24 Q. No. If you are telling me that was
25 not part of your opinion this morning,

1 that's fine, because you had a prominent
2 picture of that beehive and you talked about
3 water coming up and draining down and I just
4 want to make sure I'm clear.

5 You are saying that was not part of
6 your opinion, you did not mean to lead the
7 Jury to believe that there was any sewage or
8 storm water overflowing that beehive and
9 coming across the road? That was not part
10 of your opinion?

11 A. You've got that wrong.

12 Q. Sir, if I'm wrong, that's fine.
13 I'll move on. I just want to make sure that
14 you were not telling this Jury that you have
15 any evidence --

16 THE COURT:

17 Let's move on anyway, counselor.
18 That question has been asked and answered.
19 Let's move on.

20 MR. FREESE:

21 Q. Now, with respect to the dating of
22 the release, you have put the release of the
23 gasoline at no earlier than the early '90s
24 or 1995. In fact, I think you said '95 or
25 later this morning, didn't you?

1 A. That's right.

2 Q. Does that date have any
3 significance, under the LUST law, about who
4 has to pay for contamination if it's, say,
5 in 1995 as opposed to if the leak started in
6 the 1970s? Does it make any difference in
7 the LUST law?

8 A. I don't know.

9 Q. I thought you were an expert in
10 that.

11 A. I'm not an expert in law. I'm an
12 expert in the cleanups of those problems.

13 Q. What about the regulations? Did the
14 regulations for the underground storage
15 tanks tell us who has to pay for the cleanup
16 if the release starts at a certain date?

17 A. I think those regulations are
18 different in different states. I don't know
19 what they are in Mississippi.

20 Q. Well, isn't it true, sir, that if
21 the release started years earlier, as we
22 say, in the '70s, and it's determined that
23 Texaco would be responsible for that
24 cleanup, but if the release, as you say,
25 didn't happen until the '90s, then the trust

1 fund would pay for the cleanup?

2 A. Not to my knowledge. I don't know
3 anything about that sort of liability in
4 Mississippi or the trust fund.

5 Q. Would Texaco be liable either way?

6 A. I don't know. It depends on who --
7 it's a legal question that I don't know the
8 answer to.

9 MR. SCOTT:

10 Objection.

11 THE COURT:

12 Sustained. Move to the next
13 question, counselor. He doesn't know.

14 MR. FREESE:

15 Q. Do you know who owned that tank,
16 sir?

17 A. Well, the only information I have --

18 THE COURT:

19 Sir, answer the question and then
20 I'll let you explain.

21 A. I think so.

22 MR. FREESE:

23 Q. Well, if you know -- if you have an
24 opinion, to a reasonable degree of
25 professional certainty, tell me. If you

1 don't, just tell me, sir.

2 A. All I know is what's in the PPM
3 records and the other MDEQ records that
4 indicate it was owned by Joe Brown's Service
5 Station.

6 Q. You know the MDEQ takes the position
7 that Texaco owned that tank?

8 A. Based on --

9 MR. SCOTT:

10 I object to any position the MDEQ
11 takes.

12 THE COURT:

13 Approach the bench, counselor.

14 (A sidebar conference was held outside the
15 hearing of the Jury.)

16 THE COURT:

17 He just said he relied on the MDEQ
18 report to form his opinions so I guess I'll
19 overrule your objection.

20 (Sidebar conference concluded.)

21 MR. FREESE:

22 Q. Mr. Connor, I'd like to put up
23 Number 2, Mr. Connor's slide Number 2. Now,
24 can you highlight that picture to the left
25 there, please? Now, this is a picture that

1 you relied on in your analysis to place
2 those pumps; is that correct?

3 A. It's one of the things I relied
4 upon.

5 Q. Where did you get this picture from?

6 A. I don't recall where we got it.

7 Q. Well, you prepared these slides, did
8 you not?

9 A. Yes.

10 Q. And you, John Connor, "Joe Brown
11 Service Station, since 1952." Do you see
12 that?

13 A. Yes.

14 Q. Where did you get that information
15 from, Mr. Connor?

16 A. There's an advertisement in a
17 newspaper, an old newspaper clipping that
18 says "Joe Brown Service Station," quote,
19 "since 1952."

20 Q. Did it have that picture attached to
21 it?

22 A. That picture is from a different
23 place. I don't offhand recall the source of
24 that picture.

25 Q. All right. And the reason I'm

1 asking you, you are -- I'm sorry. Were you
2 finished?

3 A. Yes. I'm finished.

4 Q. Why are you putting information in
5 your report if you don't know what it is or
6 where it came from?

7 A. Oh, I'm just -- you know, my staff
8 used this photo, put it on there. I just
9 can't recall. I know that it came in
10 through Mr. Scott's office, and it's a
11 historical photo. We had some uncertainty
12 about the date. I know if I asked Bob or
13 Travis, they would tell me exactly where we
14 got it.

15 Q. If you asked the lawyers, they could
16 tell you?

17 A. No. Bob or Travis are my
18 colleagues.

19 Q. Not Mr. Scott?

20 A. No.

21 Q. Did you use this photo to place
22 those pumps?

23 A. In part, yes.

24 Q. And are you telling the Jury that
25 this was the location of the pumps at the

1 time that the service station was closed?

2 A. This diagram, in conjunction with
3 the information that's in the PPM reports
4 when they dug up the tanks and piping, were
5 information I relied upon to locate those
6 pumps, and I indicated on those diagrams
7 where those pumps were.

8 Q. Now, let's go to the next -- not the
9 next slide, but the next picture, the color
10 picture. Blow up the middle picture. Did
11 you then use that picture to create this --
12 I don't mean -- I'm calling it a cartoon. I
13 don't know what else to call it. An
14 illustration?

15 A. Yes. This is not a scale -- it's
16 not a scale illustration. It's an
17 illustration of general indication.

18 Q. Does this put the southernmost pump
19 south of the building?

20 A. This is not a -- this is not
21 intended to be exact as to where those pumps
22 are.

23 Q. I understand, sir. You say it's not
24 intended to be exact, but you were showing
25 this to the Jury this morning.

1 A. It's not intended to be shown --
2 they're intended to be shown to be close to
3 the tanks, themselves. But you can line up
4 where they are in that other picture, if you
5 count those squares on the top, and that's
6 what it's based on.

7 Q. That's what I'm asking you. Did you
8 do that?

9 A. That was the intention.

10 Q. So you did use that earlier photo to
11 line these pumps up?

12 A. The way they're shown on here is not
13 exactly in line. It's not to scale. And
14 the tanks aren't exactly to scale either.

15 Q. All right.

16 A. That's not a scale drawing.

17 Q. So this was not intended to be an
18 accurate portrayal of where the pumps or the
19 tanks were?

20 A. Well, this particular illustration
21 is not. There -- when you look at the plan
22 view, it shows exactly where the tanks were.

23 Q. Because --

24 A. Off the PPM because that's a scale
25 drawing.

1 Q. Because if someone criticized
2 another expert in this case for getting the
3 pumps in the wrong spot, you are admitting
4 your pumps are not in the right spot,
5 correct?

6 A. These are -- this drawing doesn't
7 show exactly where -- the pumps are down --
8 the pumps line up with -- can I stand up?

9 Q. Sure.

10 A. Where the pumps line up is right
11 about here. They line up -- they should
12 be --

13 Q. I'm going to get you a pointer, Mr.
14 Connor.

15 A. They line up right about here and
16 they're spaced out. You can see it on that
17 photo. If you look on the plan view, that's
18 where they are.

19 Q. Just so we're clear, if somebody was
20 criticized for getting the pumps too far
21 north, you will agree with me that you got
22 the pumps too far south, according to this
23 picture?

24 A. Okay. Well, I've always understood
25 -- I know the pumps are. I know where

1 they're located.

2 Q. Let's put up Plaintiff's Exhibit 16.

3 A. I was never confused about that.

4 Q. Now, have you ever seen this picture
5 before?

6 A. Yes.

7 Q. And who gave you this picture?

8 A. I saw this picture in one of the
9 file documents.

10 Q. And I will represent to you, sir,
11 that this picture of the station came out of
12 the local Fayette newspaper in 1976. Is
13 that consistent with your recollection?

14 A. I don't remember the date of it. I
15 think it was about -- it was a story about a
16 tornado, right?

17 Q. Fayette Chronicle, Thursday, April
18 -- it looks like April 1st, 1976. Can you
19 see that same picture in there?

20 A. April 1st, is that a 6?

21 Q. Look on the screen, sir. Does that
22 help you?

23 A. That looks like a 6, yes, 1976.

24 Q. Okay. Can you and I both agree, Mr.
25 Connor, that the -- take the picture down.

1 I want to use this picture here. Can we
2 agree that this picture shows the pumps in a
3 much different position than where you had
4 them? The pumps are much farther north than
5 where you have them, are they not?

6 A. No. They're in the same place.

7 Q. Can you put up both pictures, side
8 by side?

9 A. Can you put up -- you are going to
10 put up the old photo?

11 Q. Now, it's your testimony, sir, that
12 those pumps are in the same place?

13 A. Yes, they are. You want me to show
14 you?

15 Q. Well, I'm trying to figure out if
16 you drew them south of the building when on
17 the one that you used that the pumps are
18 right in front of -- to the end of those
19 little things up on top and they're all the
20 way down to the north end of the building in
21 the other picture.

22 A. No, they're not. They're not at the
23 north end of the building, Mr. Freese. You
24 want me to show you how you can orient these
25 two photos?

1 Q. Sure, if you can.

2 A. Hey, can I use your pointer?

3 Q. Sure.

4 A. Okay. Here, the lady -- it looks
5 like a lady, yes, somebody wearing the robe.
6 Here's the pump. And you see these
7 advertisements, whatever they are up there,
8 here's the pump, and you count these guys,
9 1, 2, 3, 4, 5, 6, there's the first pump,
10 and it's right by this window. There's
11 another window there. And so there's the
12 pump. Now, here, we're looking at a big
13 skewed angle so everything looks skewed out
14 of place, but if you look where that window
15 is, where is it, 1, 2, 3, 4, 5, 6, there's
16 that window and there's those pumps right in
17 front of it. They're in the same place.
18 You know how it is, you move your head
19 around something and it can look weird.
20 It's just a question of the angle. They're
21 definitely in the same place.

22 Q. Well, let's put his cartoon back up
23 now.

24 A. Are you through with this?

25 Q. Yes, sir. Now, is that -- is that

1 consistent with either photo, sir?

2 A. No. On this diagram, the whole
3 thing should be shifted a little bit farther
4 north, as it's shown on other diagrams.
5 It's not to scale. The tanks in the -- the
6 tanks and the dispensers should be moved up
7 and they should line up with that window
8 right there. They're a little bit off.

9 Q. So your cartoon doesn't match either
10 of the known photographs of the station,
11 correct?

12 A. Well, the two photographs are the
13 same, and that cartoon is off a little bit.
14 They're too far south.

15 Q. All right.

16 A. Oh, there you go, you see that other
17 picture that you had just a minute? That
18 showed where they are. That's the exact
19 location. Want to show that?

20 Q. I don't know what you are talking
21 about, sir.

22 A. On that same diagram, the scale
23 drawing I mentioned and that shows where
24 they are, the one on the far right. There
25 you go. That's where the tanks are. That's

1 the scale drawing.

2 Q. Well, so both your cartoons don't
3 even match up, do they?

4 A. No. The cartoon cartoon is not
5 accurate. The scale drawing is accurate.
6 You see there's only a scale on that guy.
7 That's exactly where they were.

8 Q. Okay. Now --

9 A. They were measured.

10 Q. This opinion that the leaks occurred
11 in 1995 or later is -- we've talked about
12 A.J.'s gas station, correct? That was one
13 of the bases for that?

14 A. No. The A.J.'s had nothing to do
15 with the date of the release.

16 Q. Oh, I thought you told us that's how
17 the MTBE got there, because that was later
18 gas.

19 A. No. A.J.'s had nothing to do with
20 the date. The release was dated based on
21 the fact -- on other facts, not on age, not
22 on present --

23 Q. Maybe I misunderstood your
24 testimony. I thought you said A.J.'s had
25 newer tanks, with newer gasoline, and they

1 must have been leaking, and that's how the
2 MTBE got there. You did say that, didn't
3 you?

4 A. Well, that relates to contributing
5 sources. That doesn't relate to when the
6 release happened.

7 Q. Okay. Now, how old were these
8 tanks, Mr. Connor?

9 A. If I recall correctly, I think those
10 tanks, they had been installed in 1972.

11 Q. 1972?

12 A. Yes. That's what I recall. I may
13 be wrong about that.

14 Q. And would you tell me what authority
15 you have that these tanks were installed in
16 1972?

17 A. I could be wrong about that. I
18 don't recall exactly.

19 Q. I think you are wrong by two
20 decades, sir. Didn't you testify that they
21 were installed in 1952?

22 A. Joe Brown's Service Station started
23 in 1952. I misspoke. It's -- so that --
24 those tanks would have been installed, I
25 guess -- I don't know that I ever testified

1 as to when the tanks were installed. I
2 testified that the service station was in
3 there. I don't know exact date. I miss --

4 Q. Can we agree you can't have a
5 service station without tanks?

6 A. They're pretty useful.

7 Q. So if you testified this morning
8 that Joe Brown Service Station was there
9 from 1952 until, I don't know what was on
10 your chart -- let's put it up -- let's put
11 up Mr. Connor's first chart, Slide Number 1.

12 A. I was thinking '72.

13 Q. Now, can we agree, sir, there's no
14 evidence they were installed in 1972?

15 A. You know, I just -- I apologize for
16 that, Mr. Freese. I don't know --

17 Q. You don't owe me an apology, sir. I
18 just want to get you to admit, there's no
19 evidence they were installed in 1972?

20 A. Get me to admit? No. They were
21 installed sometime in the early '50s. 1952
22 is when -- my understanding is, as I said
23 earlier today, it was in operation from 1952
24 to 1972.

25 Q. So they were at least installed by

1 1952, according to you, sir?

2 A. Yes.

3 Q. Now, what were these tanks made out
4 of?

5 A. My recollection is they were steel
6 tanks.

7 Q. Steel tanks. What do we know about
8 steel tanks, sir? That's a bad question.
9 Let me ask you a better question. Do steel
10 tanks leak?

11 A. Some do.

12 Q. What percentage of steel tanks leak,
13 sir?

14 A. I don't know. Some leak and some
15 don't.

16 Q. Do you remember this book here by
17 Mr. Morrison, "Environmental Forensics,
18 Containment-Specific Guide"?

19 A. Yes.

20 Q. In fact, you've cited it not only in
21 your reports in this case but in your
22 testimony here this morning, have you not?

23 A. Yes, I have.

24 Q. And what -- the section on
25 automotive gas says -- and I'm just going to

1 read it and you tell me if I'm reading it
2 right. I'm going to show you, this is
3 Chapter 18, Automotive Gasoline.

4 A. That's Scott Stout's chapter.

5 Q. Yes, sir. The one that you cite in
6 your report. And he says on Page 516,
7 quote, "Steel underground storage tanks were
8 the common form of gasoline storage at
9 retail sites for decades. These suffered
10 from corrosion problems due to water that
11 accumulated in tank pits or within the
12 tanks, themselves, which over time, corroded
13 the tank wall, leading to pinhole leaks.
14 The survey conducted in the late 1980s
15 revealed that most, 72 percent of the more
16 than 24,000 steel tanks that failed, did so
17 after 10 or 20 years of service."

18 Did I read that correctly, sir?

19 A. Let me just read. Of the tanks that
20 leaked -- of the tanks that leaked, most of
21 those did it after 10 or 20 years. Okay.

22 Q. It says 72 percent of the tanks did
23 so after 10 or 20 years, correct?

24 A. Right. Just to clarify, Mr. Freese,
25 it's not saying that 72 percent of the tanks

1 leaked. It's saying that of the ones that
2 leaked, 72 percent of those didn't leak
3 until after 10 to 20 years.

4 Q. 72 percent of the 24,000 that leaked
5 did so after 10 or 20 years. That's what it
6 says.

7 A. What it says, of the ones -- they
8 don't all leak. Of the ones that leaked,
9 most of those did not leak for 10 or 20
10 years. 72 percent didn't leak for the first
11 10 or 20 years. That's what it says.

12 Q. 72 percent of 24,000 tanks leaked?

13 A. No. No. You've got -- well, what
14 do you -- 24,000 tanks leaked.

15 Q. Yes. And 72 percent of them.

16 A. 72 percent of those ones that leaked
17 didn't leak until after 10 or 20 years.

18 Q. Exactly.

19 A. So it took a long time. Most of the
20 tanks didn't leak in the first 20 years.

21 Q. And we know this tank leaked, do we
22 not?

23 A. This tank leaked because they found
24 some pinholes and they found there was some
25 gasoline, not much, but there was some

1 gasoline in the soils underneath there.

2 And, also, it's my assumption that probably
3 -- most of the gasoline found in the ground
4 came from those tanks.

5 Q. Sir, my question was simply, did
6 this gas tank leak. That's all I asked you.
7 Did it leak?

8 A. I believe the tank leaked, yes.

9 Q. And it's your opinion to this Jury
10 that that tank, before it started leaking,
11 it was darn near 50 years old before it
12 started leaking. That's what you want the
13 Jury to believe in this case?

14 A. Let me see.

15 Q. 1952 to nineteen -- you said no
16 earlier than 1995, I think was your
17 testimony.

18 A. That's right. And that's consistent
19 with what Scott Stout said because most
20 tanks will not leak in the first 20 years.
21 72 percent of tanks don't leak until after
22 20 years. That could be 50 years. That's
23 exactly what Scott's saying. He and Greg
24 wrote that article.

25 Q. It says 10 to 20 years, sir.

1 THE COURT:

2 Hold on.

3 A. That's right. That's what it says.

4 MR. FREESE:

5 Q. So this tank, before it started
6 leaking, was almost 50 years old?

7 A. That's right. I mean before there
8 was a big leak from it, it was almost 50
9 years old. More than 50, I think, right?
10 '52 to '95? No. That's wrong. '52 to '95
11 is 43 years.

12 Q. 43 years. Almost half a century
13 before it started leaking, in your opinion?

14 A. 43 years.

15 Q. Now, leaks can be small over time,
16 can they not? They don't have to be, you
17 know, thousands of gallons rushing out at
18 one time. You can lose a little bit all the
19 time, can't you?

20 A. Leaks can occur in that manner.

21 Q. And when you try to date gasoline,
22 if you have a tank that you keep -- that's
23 leaking and you keep filling up with new
24 gasoline all the time, are you going -- is
25 the gas that leaked out earlier, when you do

1 your dating that you are talking about, does
2 it date earlier than new releases?

3 For example, Mr. Connor, if that
4 tank started leaking in the '60s or '70s and
5 continued leaking until the time they
6 removed it from the ground in 2000, would
7 the gas that had leaked out 10 or 20 or 30
8 years earlier appear chemically older than
9 the gas that leaked out in the last year or
10 two before it was taken out of service?

11 A. It would appear chemically older
12 because it would be chemically older, but it
13 wouldn't be near the tanks. You see, the
14 method that we use, we look near the tank so
15 we have the most recent leaks.

16 The stuff that leaked out 30 years
17 ago would have moved somewhere between 300
18 and 1000 feet downstream, so you don't use
19 the downstream stuff. That's the old
20 gasoline. That's why, when I did the
21 calculation, according to the method
22 developed by Isaac Kaplan and others, you
23 have to look near the source to correct that
24 problem.

25 Q. So what you are saying is, you can't

1 tell when it started leaking by getting the
2 age of the gas because it may be leaking so
3 long, you don't even have that gas to test
4 anymore?

5 A. No. You are wrong about that.

6 Q. Well, did you not just say you can't
7 get that gas because it's leaked out and
8 gone away and we can't test it anymore?

9 A. No. I didn't say that.

10 Q. I'm sorry. You are saying that it
11 leaked out and washed away and that's why
12 you don't test that far away gas?

13 A. No. If you want to get the age of
14 the release, the age of the gasoline that's
15 there right now, so the age of the gasoline
16 that's right out of the building, it's right
17 near the tank, so it hasn't moved, so it
18 just got there. And that's so that you
19 don't have that issue of a long-time
20 release. That's how you remedy that
21 problem.

22 Also by using -- this is pretty
23 nerdy, but adding the benzene and toluene
24 corrects for a lot of the modifications that
25 occur in gasoline composition over time, so

1 it corrects for that problem. Those issues
2 are discussed at length in the supporting
3 papers.

4 Q. You never personally inspected those
5 tanks, did you?

6 A. No. I didn't see the tanks.

7 Q. Now, this morning, Mr. Connor, you
8 had made some comments about -- I think one
9 of the bases for your testing the age of the
10 gasoline was that there was additives in
11 leaded gasoline that weren't in more recent
12 gasoline unleaded with MTBE. You did
13 testify about that, didn't you?

14 A. I testified about the evidence, yes.

15 Q. And you testified that one of the
16 bases that looked like this was a newer
17 release was because of the concentrations of
18 -- what was that additive that you said was
19 in leaded gasoline?

20 A. There's two different lead
21 scavengers. 1,2-dichloroethane and ethylene
22 dibromide.

23 Q. How many lab results did you look at
24 that showed you the additives from lead
25 gasoline?

1 A. PPM didn't do a lot. They did
2 analysis early on in their investigation. I
3 believe it was Method 8260, and they didn't
4 detect either of those compounds, and
5 they're included in that scan.

6 Q. I understand. So what you are
7 telling the Jury is that they -- one of the
8 reasons you don't think this was the old
9 gas, the old leaded gas was because they
10 didn't find any of this dichloroethane, is
11 that what it was?

12 A. No. It's dichloroethane.

13 Q. Dichloroethane, and because they
14 tested and they didn't find it, right?

15 A. Now, just to be clear on your first
16 question, I did not say that that gasoline
17 is not -- that there wasn't a release from
18 that tank. I believe that there was release
19 from that tank. What I'm saying, sir, is
20 that the gasoline doesn't look like leaded
21 gasoline because it doesn't contain those
22 things. So I want to make sure my testimony
23 is clear on that.

24 Q. Did you testify that one of the
25 reasons that you thought it wasn't leaded

1 gasoline is because there was non-detect for
2 this additive you told us about? You said
3 that, didn't you?

4 A. No. I said that the reason that
5 there is addition of other -- of another
6 source is because we don't see the leaded
7 gasoline signature and we do see the
8 unleaded gasoline signature, but I'm not
9 saying that that tank didn't leak and put
10 gasoline into the ground. So I think --

11 Q. I'm not suggesting that you are,
12 sir. I just asked you whether or not that
13 was part of your opinion that this was a new
14 leak instead of an old leak because of the
15 additives that were tested.

16 A. No. That's not part of my opinion
17 on the timing at all. I said that's a part
18 of my opinion on who -- were there other
19 contributing sources. It doesn't have
20 anything to do -- I didn't rely on that for
21 timing.

22 Q. Tell the Jury when the test was
23 performed that tested for these additives in
24 the lead or the leaded gasoline.

25 A. I would have to go back and look

1 through the reports from PPM. There is a
2 report they analyzed for those additives.

3 Q. In fact, Mr. Connor, it was five
4 years after the tanks were removed and the
5 remediation was done, was there not?

6 A. According to this table that you've
7 given me, it was measured -- it was analyzed
8 on June 9th, 2006.

9 Q. Six years after the tanks were
10 removed and after the 400 tons of
11 contaminated soil were removed. That's the
12 first time it was ever tested for these
13 lead-based additives? Is that correct, sir?

14 A. I don't recall if it's the first
15 time or not, sir. I would have to go back
16 and look at the data. But on this table
17 that you've given me, that's the first time
18 it's analyzed.

19 Q. And you're the expert. Do you have
20 another document that shows differently from
21 what I just showed you?

22 A. I don't recall. I would have to
23 look at the data base.

24 Q. So right now the only evidence you
25 can point to is that table that shows when

1 those additives were tested six years after
2 remediation?

3 A. No. The remediation went into 2004,
4 and this is June 2006. It's two years after
5 they stopped pumping. But the life span of
6 1,2-DCA and EDB is really long. They last
7 way longer than six years. They don't break
8 down as easily as the other things do.

9 Q. When were the 400 tons of soil
10 removed by, sir?

11 A. The 400 tons of soil were -- well,
12 it's -- it was 390 or something, 385,
13 something like that. They were dug up in
14 July 2000, right out of the tank.

15 Q. So the tanks and the 400 tons of
16 material were moved for six years before
17 this test was ever conducted?

18 A. They were done in 2000 and this test
19 is in 2006. Those chemicals last tens and
20 tens of years. They don't go away. That's
21 why they're good indicators.

22 Q. Well, sir, it's the first time they
23 were tested for and the first time they were
24 detected, correct?

25 THE COURT:

1 Counsel, move on.

2 MR. FREESE:

3 Q. Now, sir, the air quality tests that
4 you relied on were done in October of 2000,
5 correct?

6 A. They were done in September and
7 October of 2000, and there were several
8 other episodes after that where they found
9 nothing in the building. But the ones that
10 I showed you this morning -- I relied on all
11 of those, but the ones I showed you this
12 morning were the only time they detected
13 anything, and they were in September and
14 October of 2000.

15 Q. After the tanks were removed and
16 after the soil had been removed?

17 A. Yes. The tanks and the soil were
18 removed in July.

19 Q. And you agree with me the occupants
20 of the building experienced increased odors
21 and accompanying symptoms following removal
22 of the tanks particularly in but not
23 exclusive to the basement level? You agree
24 with that?

25 A. I'm not sure what you are reading --

1 Q. I'm just asking if you agree with
2 that or not, sir.

3 A. No. I don't know about the
4 symptoms. I know that they continued to
5 note occasional odors in the basement from
6 gasoline after that, which would make sense.

7 Q. Interviews of the occupants revealed
8 that odors were also noticeable and
9 irritating at the front of the library, in
10 the back quarter office of the library and
11 the inside stairwell, correct?

12 A. I don't know what you are reading
13 from.

14 Q. Not what I'm reading. Is that a
15 correct statement or not?

16 A. I can't tell you offhand whether or
17 not they had irritating symptoms. I know
18 that there were, from my recollection in
19 looking at the depositions, that people did
20 occasionally smell gasoline in there. And
21 they -- I think Mr. Dyess testified in his
22 deposition that at times, they would go
23 there and they couldn't smell anything, and
24 other times, they did.

25 Q. In addition, interviews of the

1 occupants revealed that in their opinion,
2 odors and the accompanying symptoms appear
3 to be strongest after rain events and on
4 Monday mornings after the building had been
5 closed up and the ventilation system had
6 been turned off or reduced all weekend.

7 Correct?

8 A. And my understanding is that that's
9 correct, that they did smell stronger odors
10 on Monday after the air had stood without
11 circulation over the weekend. You notice
12 that with your own house, that things get
13 musty. That's what they noticed. My
14 understanding is they did smell stronger
15 odors when they came in on Monday.

16 Q. And one of the bases of your opinion
17 this morning was that nobody smelled
18 gasoline before 1999?

19 A. That's correct.

20 Q. And you gave us the cites of those
21 depositions in your slides, didn't you?

22 A. I went through all the depositions.
23 There's one slide that summarizes the
24 testimony.

25 THE COURT:

1 Sir, answer that question.

2 A. I believe I did.

3 THE COURT:

4 If you need to explain, I'll allow
5 you to do so.

6 THE WITNESS:

7 Okay. Sorry.

8 MR. FREESE:

9 Q. And did you know that Ms. Doss, the
10 woman that cleaned the building, she
11 reported gasoline smells in the early to mid
12 1980s?

13 A. I don't believe that's true.

14 Q. So if she sat right where you are
15 sitting a couple of days ago and said that,
16 are you saying that she was lying?

17 MR. SCOTT:

18 Object, Your Honor.

19 THE COURT:

20 Sustained.

21 MR. FREESE:

22 Q. You don't know what Ms. Doss
23 testified to, do you?

24 A. No. I'm answering your question
25 based on what I do know. I went through all

1 the evidence. No one said gasoline. They
2 may have said gas, but that's like natural
3 gas, so make sure you draw that distinction,
4 sir.

5 Q. What you did is, you picked all the
6 dates they were closer to your idea of when
7 the leaks started, and those are the ones
8 you used, not the earlier ones?

9 A. No. That's not true. I used all
10 the data. I used all the data points. I
11 used them exactly as they were.

12 Q. Were you ever shown Ms. Doss's
13 deposition?

14 A. Her deposition? Yes. I read that.

15 Q. Well, how come you didn't put her
16 deposition in your report?

17 MR. SCOTT:

18 Objection. May we approach the
19 bench?

20 (A sidebar conference was held outside the
21 hearing of the Jury.)

22 MR. SCOTT:

23 It was on his slide this morning. I
24 know for a fact it was.

25 THE COURT:

1 You will get a chance with redirect.

2 MR. SCOTT:

3 Okay.

4 (Sidebar conference concluded.)

5 MR. FREESE:

6 Q. Mr. Connor, if Ms. Doss or other
7 witnesses testified that they smelled gas in
8 that building in the early '80s or 1985,
9 that puts into question your opinion about
10 when you first started smelling gas, doesn't
11 it?

12 A. Well, I'll have to ask you what do
13 you mean by "gas."

14 Q. Well, when someone says they smelled
15 gas -- I mean, it's the same question you
16 put up.

17 A. No. Gas, people say they smell gas,
18 they usually mean natural gas. They say
19 smelled gasoline, that's a different thing.

20 Q. Well, you didn't ask Ms. Doss that,
21 did you?

22 A. Well, I never spoke to Ms. Doss.

23 Q. So you don't know what she meant?

24 A. No. I think you can understand what
25 she meant within the context of her