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1 IN THE MATTER OF AN ARBITRATION
2 BETWEEN
3 LANCE ARMSTRONG and §
4 TAILWIND SPORTS, INC. §
5 §
6 Claimants, § ARBITRATION BEFORE THE
7 § HONORABLE RICHARD
8 VS. § FAULKNER, RICHARD
9 § CHERNICK AND TED LYON
10 SCA PROMOTIONS, INC. and §
11 HAMMAN INSURANCE SERVICES, §
12 INC. §
13 Respondents. §
14
15 ARBITRATION
16 TRANSCRIPT OF PROCEEDINGS
17 JANUARY 20TH, 2006
18 VOLUME 13
19 CONFIDENTIAL
20
21 On 13th day of January, 2006, at 9:10
22 a.m., the arbitration in the above proceedings came on
23 before Arbitrators Richard Faulkner, Richard Chernick
24 and Ted Lyon, at the offices of Richard Faulkner,
25 12655 North Central Expressway, Suite 810, in the City
of Dallas, County of Dallas, State of Texas.

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Mr. John Bandy
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Mr. Lawrence Temple

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<p style="text-align: right;">Page 2751</p> <p style="text-align: center;">PROCEEDINGS</p> <p>ARBITRATOR FAULKNER: Doctor, you're still under oath from earlier so let's go ahead and resume cross examination.</p> <p>MR. LEVINSTEIN: Thank you.</p> <p style="text-align: center;">CROSS EXAMINATION</p> <p>BY MR. LEVINSTEIN:</p> <p>Q. Good morning.</p> <p>A. Good morning.</p> <p>Q. I don't know what day it is anymore, so... you testified previously that in April, when you were contacted by SCA Promotions, April of 2005, you had not yet formed an opinion about whether Lance Armstrong had used performance enhancing drugs; is that correct?</p> <p>A. No, I think I said that I hadn't been satisfied with any of the explanations that I had heard and so I would put myself in the camp of the doubters.</p> <p>Q. And by August of 2005, though, before you had ever seen the l'Equipe article or heard about any testing of 1999 Tour de France samples, you had formed an opinion, correct?</p> <p>A. Before August 2005? I guess I would say that it was becoming -- it was becoming clearer to me in</p>	<p style="text-align: right;">Page 2753</p> <p>1 actually with line 20. Had you formed an opinion at that point on that subject on what -- on whether Lance Armstrong had used performance enhancing drugs.</p> <p>2 Yes, I had formed an opinion on that</p> <p>3 topic.</p> <p>4 Before the l'Equipe article?</p> <p>5 Yes</p> <p>6 And what was that opinion?</p> <p>7 That he had used drugs at some point.</p> <p>8 Do you recall that testimony?</p> <p>9 A. I recall the testimony, yes.</p> <p>10 Q. And is that accurate testimony?</p> <p>11 A. Yes, I mean, I haven't qualified what an opinion was, but, yes.</p> <p>12 Q. Okay. And part of that opinion was based on conversations with people?</p> <p>13 A. Yes.</p> <p>14 Q. And what were those conversations?</p> <p>15 A. Things like people who had witnessed Armstrong getting to the top of a mountain stage and essentially looking like he had really just been for a walk in the park. People who had been experienced in the sport over a number of years saying, look what I'm seeing now, I find it hard to comprehend how it could happen, that sort of thing.</p>
<p style="text-align: right;">Page 2752</p> <p>1 exchanging some information with SCA and sort of the -- the things that started to become apparent. I mean, the LA Confidential book, things started to become more crystallized in my mind.</p> <p>2 Q. Well, before you received the l'Equipe article, had you formed an opinion at that point on whether Lance Armstrong had used performance enhancing drugs?</p> <p>3 A. Well, I certainly had an opinion, but how clear that was in my mind, I wouldn't be able to</p> <p>4 recollect. It's -- it's been something that's become more apparent over time. I couldn't say to give an exact distinction.</p> <p>5 MR. LEVINSTEIN: Could you put up Dr. Ashenden's testimony, please. Page 130, please.</p> <p>6 ARBITRATOR CHERNICK: I missed the -- the date of the deposition was sometime in December?</p> <p>7 MR. LEVINSTEIN: December 22 in Washington; I think it was the 23rd in Australia where he was sitting.</p> <p>8 THE WITNESS: Page?</p> <p>9 MR. LEVINSTEIN: Page 130 at the bottom of the page if we could, line 20.</p> <p>10 THE WITNESS: Okay.</p> <p>11 Q. (BY MR. LEVINSTEIN) Why don't we start with</p>	<p style="text-align: right;">Page 2754</p> <p>1 Q. And were these coaches?</p> <p>2 A. Coaches, sports scientists, you know, those sort of people. I mean, there's been that many comments over that long a period that I wouldn't like to try and classify who said what when, but that's the impression that I formed over a number of years.</p> <p>3 Q. So were a lot of those conversations even before April 2005?</p> <p>4 A. Yes.</p> <p>5 Q. And were some of those conversations with athletes?</p> <p>6 A. Quite possibly they could have been.</p> <p>7 Q. And do you have any recollection of any of the specific people that you talked to?</p> <p>8 A. Do I have any recollection of any of the specific people? Yes.</p> <p>9 Q. At your deposition you couldn't recall any names at all?</p> <p>10 A. You're asking if I have any recollection. Yeah, I have some recollection, but as far as names and this go, I explained to you in my deposition there were some people who had spoken to me and said, I don't want to be named. There are other people who would have been a casual conversation who would work in different sports for many years. So, yes, there's</p>

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1 a recollection, but it's not specific to the point
 2 where I wrote down on day X person Y said Z.
 3 Q. And because these were people who were
 4 experienced in cycling, you just took their opinions
 5 as fact?
 6 A. Not just cycling. I mean, people who are
 7 associated with endurance sports. There's -- there's
 8 signs, for example -- I'll just use an example to try
 9 and illustrate. A coach who's experienced for years
 10 and years what it takes to get an athlete to a certain
 11 level of performance knows what that athlete has to
 12 do, and knows the sort of things that you expect to
 13 see early in their career and a gradual -- I emphasize
 14 a gradual improvement over time. A coach's eye is
 15 trained to recognize expected progress and expected
 16 performances, and when a trained eye says to me, you
 17 know, I really can't understand what's going on here,
 18 there's no explanation of it, I take that on-board, so
 19 that's the nature of those conversations.
 20 Q. So you consider yourself a sports scientist?
 21 A. Yes.
 22 Q. So is it fair to say that a lot of what you
 23 do as a sports scientist is you listen to a coach, you
 24 rely on his wisdom, and you give up trying to quantify
 25 it?

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1 A. No, I wouldn't say a lot. Part of what you
 2 take on-board is that.
 3 Q. Okay.
 4 A. I should say that it's a -- it is a point
 5 of -- it's a point of -- that interface between the
 6 coach and the scientist. Often you'll find a coach
 7 who thinks they're a scientist and they know better
 8 and you find a scientist who thinks they're a coach
 9 and that they know better. So often there's a
 10 chemistry that just doesn't work, because you have to
 11 be able to meet at some point and say, look, you're
 12 the coach, I'm going to take that on-board, and
 13 they've got to say, well, we're scientists, I'm going
 14 to take that on-board. Sometimes that doesn't happen,
 15 sometimes it does.
 16 Q. Would you go to the top of page 134?
 17 Actually the bottom of 133 and 134.
 18 Well, was part of what these people
 19 talked to you about was Lance's approach to racing the
 20 Tour de France and the way that he attacked the
 21 mountain stages?
 22 A. Yes, that was the -- I mean, the -- I keep
 23 getting in trouble with my pronunciation. I said
 24 gist-- that's the gist of it.
 25 Q. That's the gist of it?

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1 A. Okay, yes.
 2 Q. Okay. So what you're saying is you talked to
 3 these people, they expressed their opinion that he
 4 couldn't do this unless he was using performance
 5 enhancing drug, or it didn't make sense and you
 6 decided they were right?
 7 A. No, I took on board what they said.
 8 Q. Okay. But you testified yesterday that when
 9 coaches told you that their athletes wanted to use
 10 hypoxic tents because it improved performance, you let
 11 them do it, but you didn't credit at all their view?
 12 A. Yes, that's what I was saying. There's a
 13 point where you have to give some leeway to the other
 14 person. Now, we took a stance at the Institute of
 15 Sport that within reason we would allow the coach to
 16 use the house when at times we didn't think it was
 17 appropriate, but there was a to and a fro. And other
 18 times I think it's fair to say that we said to the
 19 coach, no, that is just not going to be appropriate.
 20 For example, I remember we had -- I was
 21 responsible for the Australian volley ball team, both
 22 the men and the womens, and their coach was not
 23 experienced with sports science at all, and he
 24 realized that part of my research had been with the
 25 altitude house and so he said, hey, I want to put our

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1 guys in the altitude house. Well, there's no way
 2 going to altitude is going to help a volley baller's
 3 performance and so at that point I said to him, no.
 4 You're not going to use the house. There's no tenable
 5 reason why you should blah, blah.
 6 Now, he didn't particularly like it. I
 7 think he wanted this idea of my athletes are doing
 8 everything they possibly can to prepare, but at that
 9 point it was -- it wasn't even close to being tenable,
 10 so you draw a line.
 11 Q. But a lot of the people you talked to were
 12 people who were involved in the Tour de France?
 13 A. No, I wouldn't say a lot of the people, no.
 14 Q. Let me change subjects, then. With respect
 15 to Dr. Coyle's article --
 16 A. Yes.
 17 Q. -- you called his research assistants to get
 18 information from them?
 19 A. No, that's not strictly accurate. Directly
 20 or indirectly contact was made with students, past
 21 students.
 22 Q. By whom?
 23 A. In some cases, by me; in other cases, by
 24 other people who knew them.
 25 ARBITRATOR CHERNICK: Could we pause for

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1 a moment, please, off the record.
2 (Recess 9:21 a.m. to 9:22 a.m.)
3 ARBITRATOR CHERNICK: What the panel is
4 talking about is the area Mr. Levinstein is going to
5 go into was the subject of a Motion in Limine, and in
6 response to that motion Mr. Tillotson said he would
7 not present evidence on that subject because of the
8 witness's unwillingness to identify specific people
9 and it seems to me at least -- I'm not speaking for
10 the panel, but if you're going to go into that area,
11 you are going to open it up and --
12 MR. LEVINSTEIN: I wasn't aware of that.
13 ARBITRATOR FAULKNER: You might want to
14 chat with your co-counsel and get an outline on that.
15 MR. LEVINSTEIN: That's fine. I didn't
16 know that.
17 Q. (BY MR. LEVINSTEIN) Then back to these -- do
18 you recall that during your --
19 MS. BLUE: Wait.
20 MR. LEVINSTEIN: No, no, no, go ahead.
21 ARBITRATOR LYON: I was just going to
22 tell you to admonish your co-counsel there to be a
23 little more alert.
24 MR. LEVINSTEIN: I've learned better than
25 to admonish Mr. Herman. That's not a good approach.

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1 ARBITRATOR CHERNICK: That's what
2 Mr. Breen is here for; that's Breen's role.
3 MR. HERMAN: That would make it 100
4 percent. I've been admonished by everyone in the room
5 now.
6 ARBITRATOR FAULKNER: Please proceed.
7 Q. (BY MR. LEVINSTEIN) Do you recall that
8 during your deposition I asked you if you would
9 identify the people involved in sports science and
10 coaches and athletes who had told you that Lance
11 Armstrong couldn't have done what he achieved in the
12 Tour de France without using performance enhancing
13 drugs?
14 A. I've got some recollection of it.
15 Whereabouts -- whereabouts is that?
16 Q. Let's see. Why don't you go the page 136,
17 please.
18 A. Yes.
19 Q. Actually maybe it starts before that. I'm --
20 could we go back to the bottom of 134, I apologize,
21 line 20. It says, so it's not from cyclists who were
22 in races against him.
23 Answer: No, it's not.
24 There is line 22 on page 134, I
25 apologize.

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1 It says, it's not from cyclists who were
2 in races against him.
3 No, it's not. Well, see I don't know
4 which races he competed against cyclists, but I
5 have -- I've spoken with cyclists who have expressed
6 that same opinion. Whether they've competed in a race
7 against him or not, I wouldn't like to say.
8 Do you have in mind specific people or
9 you just can't remember.
10 See, this is a problem I'm running into,
11 part of my work is to find out what athletes are
12 doing. Now, to do that, I can't place a billboard on
13 the side of the road and say, leave your name and
14 number, I'll call you. I need to speak to people,
15 obtain their confidence, and to do that, they need to
16 know that I'm not later on down the track going to
17 name them. Well, if you say, if you can't name the
18 person, I can't use that evidence, so be it. But if
19 you're asking me how I formed my opinion, I'm telling
20 you. Now, if you're asking for names, I have to say,
21 well, I can't give you those names.
22 And then I asked: Well, you told me
23 before you don't remember the names, but that's not
24 true. If you know the names but you won't tell me,
25 that's okay, but I want a truthful answer. You said

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1 you couldn't remember any of them. Now all of a
2 sudden you know who they are and you don't want to
3 tell me who they are, so which is it?
4 I've spoken to people over years and
5 years and years. Now I can't remember all of their
6 names.
7 But you can remember some of their names
8 and they're people upon whom you've placed great
9 reliance because they're involved in high level
10 cycling, correct?
11 No, not any one single person. I base it
12 on what a whole lot of people will say.
13 Then tell me the people you remember.
14 How do I know you haven't just made up that these
15 people have said this.
16 Then there was some discussion, and then
17 I asked: Who have you talked to that you base this
18 idea that his behavior is inconsistent with someone
19 who is a fair competitor.
20 Numerous people.
21 Do you remember their names, any of them?
22 I remember some names.
23 And you won't tell me who they are?
24 For the reasons I've just explained.
25 Okay. So you refuse to give me the names

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1 of any of the coaches or cyclists who have said that
 2 they think Lance is cheating, upon whose opinion you
 3 in part based your conclusions, correct?
 4 Answer: Yes.
 5 Is that an accurate reflection of what
 6 you said during your deposition?
 7 A. You're very good. You would make a fine
 8 story reader.
 9 Q. I try. I practice with three kids.
 10 And in part your opinion here about
 11 Lance's inability to achieve these outcomes without
 12 using performance enhancing drugs is still based on
 13 those conversations over the years, correct?
 14 A. Yes.
 15 Q. Just to review from your direct testimony, if
 16 you could sort of give me before the l'Equipe article,
 17 what specific things besides these conversations that
 18 you relied upon to form the opinion that Lance had
 19 used performance enhancing drugs? It's not a memory
 20 test. I'm going to name some of them. I would just
 21 like you to tell me things I might have forgotten.
 22 I think in your direct you said
 23 admissions of the athlete, so I think you're talking
 24 about the conversations that some people have
 25 testified happen and some have testified didn't happen

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1 in a hospital room watching a Dallas Cowboys game?
 2 A. Correct.
 3 Q. So that's part of what you rely on, correct?
 4 A. Before the date of August 2005?
 5 Q. Did you know about that before the l'Equipe
 6 article?
 7 A. Yes, that's what I'm trying to clarify;
 8 that's what you're asking me, before l'Equipe?
 9 Q. Yes.
 10 A. Yes.
 11 Q. And that was part of the basis for your
 12 opinion before the l'Equipe article?
 13 A. Yes.
 14 Q. And the fact that the 13 urine samples that
 15 he gave in 2000 that were analyzed by Mr. Pepin and
 16 Mr. Audran were too clear?
 17 A. I think doctors, not misters, yes.
 18 Q. I apologize. I don't know that.
 19 But part of it was they said it was too
 20 clear?
 21 A. Yes.
 22 Q. And part of it was the testimony that there
 23 were strange changes in his blood; that's words from
 24 your direct, I believe?
 25 A. Yes.

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1 Q. And that's based on those few data points we
 2 talked about, the ones from the l'Equipe article, and
 3 then --
 4 A. The blood collected at three different times,
 5 yes.
 6 Q. In 1997 in December and the two in '98?
 7 A. Yes.
 8 Q. And then there were people who had told you
 9 that he couldn't have done this?
 10 A. Yes.
 11 Q. Anything else that you knew of before 2005,
 12 August of 2005?
 13 A. Nothing that springs to my mind here today.
 14 That seems to broadly encapsulate what I had formed my
 15 opinion on.
 16 Q. As an expert psychologist --
 17 A. Psychologist?
 18 Q. Physiologist, excuse me.
 19 As an expert physiologist, you're telling
 20 us that those items together you believe are
 21 sufficient as a scientist and an expert witness to
 22 come and tell us you could draw a reasonable
 23 conclusion that Lance Armstrong had used performance
 24 enhancing drugs?
 25 A. Yeah, that was what I used to form my

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1 opinion.
 2 Q. Okay. At that time had you formed an opinion
 3 beyond a reasonable doubt?
 4 A. I don't think I would use those words, no.
 5 Q. And during your deposition I asked you about
 6 communications between you and the SCA lawyers.
 7 A. Yep.
 8 Q. And do you recall that you said there were
 9 progress reports and/or e-mails back and forth that
 10 talked about where you were in your thinking and
 11 what -- excuse me, what information you needed, things
 12 like that. Do you recall that?
 13 A. There was obviously e-mail exchanges, but I
 14 think we covered this issue of did I send them a
 15 report, and I pretty much covered that in the
 16 deposition, I think.
 17 Q. No, you didn't send them a report, but you
 18 did exchange documents with them along the way?
 19 A. Well, do you call e-mails documents? If
 20 you're saying an e-mail is a document, then, yes, I
 21 did.
 22 Q. Yeah. I'm sorry. Documents is a word
 23 that's...
 24 MR. LEVINSTEIN: If you go to page 16 of
 25 Dr. Ashenden's deposition, please, line 12. Page 16,

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1 line 12, sorry. It says, okay, has there been
 2 correspondence between you and SCA other than the
 3 retainer letter?
 4 Yes.
 5 And your sending your bills? What else
 6 besides the retainer letter and your sending them your
 7 bills?
 8 Answer: What other correspondence have
 9 we had?
 10 Question: Yes.
 11 Answer: Well, I've endeavored to brief
 12 them from time to time on what I've been doing and the
 13 areas I've been working on. They've communicated to
 14 me various times how things are looking. And
 15 generally I've just tried to explain where I'm going
 16 and what I'm trying to do, but it's mostly -- it's all
 17 sort of generated information. I kept everything --
 18 you know, the format that eventually I realized that I
 19 would be sending to SCA, for example, but it's never
 20 got to that point up until now.
 21 But you sent them progress reports and
 22 analyses along the way.
 23 Well, I wouldn't call them reports or
 24 analyses. They're in the form of e-mails.
 25 Okay, but you still have those documents?

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1 I imagine I would, yes.
 2 And you have their responses to those
 3 documents?
 4 I should have, yes.
 5 And we asked that they be produced and
 6 Mr. Tillotson acknowledged the request.
 7 Have you produced those documents?
 8 A. I haven't produced anything to you. I've
 9 left that in the hands of the lawyers, so they would
 10 be able to answer that question.
 11 MR. LEVINSTEIN: For the record, we have
 12 never received any documents supplemental since his
 13 deposition.
 14 MR. TOWNS: Well, for the record, that's
 15 not true. I delivered a whole packet of information
 16 when we retendered Mr. Ashenden on the 6th, I believe
 17 it was.
 18 MR. BREEN: No e-mails or progress
 19 reports.
 20 MR. TOWNS: That wasn't the statement.
 21 MR. LEVINSTEIN: I received no
 22 communications between Dr. Ashenden and SCA
 23 Promotions.
 24 THE WITNESS: I think that my
 25 understanding of what I needed to produce was anything

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1 that -- I don't know what the words were -- would form
 2 the basis -- help me form the basis of my opinion on
 3 this matter.
 4 Now, an e-mail from me to Chris saying
 5 can you call me at da-da, da-da, da-da didn't help me
 6 form an opinion, so I didn't think that that sort of
 7 material was required to be requested, so these
 8 e-mails as I -- I tried to convey to you in the
 9 deposition were mostly of a general sort of nature.
 10 It wasn't as if I sat down and put together a 3,000
 11 word e-mail and sent that off. So I think that might
 12 be the reason why these -- there's this confusion.
 13 Q. (BY MR. LEVINSTEIN) I'll be quick with this,
 14 but let me show you what's been marked as Claimants'
 15 Exhibit 146 and let me represent that it's a notice of
 16 intent to take your deposition and with it is a
 17 request for production of documents.
 18 Did you ever see this before today?
 19 A. No.
 20 Q. No one ever gave this to you?
 21 A. No, I have not seen this before today.
 22 Q. Okay. Just for the record, if you would turn
 23 to page 3, it requests any and all -- request 2, any
 24 and all documents in your custody or control
 25 concerning this lawsuit. Request 3, any and all of

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1 your records, e-mails, personal notes, calendars,
 2 diaries, phone logs and any other type of document
 3 concerning any fact or opinion in relation to this
 4 lawsuit. Page 4, item 11, all correspondence with any
 5 person concerning this lawsuit. The beginning and end
 6 of request 12 is any and all documents...it goes on to
 7 reflecting or documenting any correspondence,
 8 communication or contact between you and any person
 9 concerning this lawsuit. Page 5, item 26, please
 10 produce all notes, records, e-mails, correspondence
 11 and/or recordings that relate to any contact you've
 12 had with any person from or affiliated with SCA
 13 Promotions, Inc., including but not limited to Robert
 14 Hamman, John Bandy and/or Chris Compton. Okay.
 15 And for the record request 30.a, please
 16 produce all documents that discuss or relate problems
 17 with or disagreements about the laboratory
 18 methodologies or any IOC approved or WADA approved
 19 laboratory. So that's just for the record that's
 20 what's contained in the deposition notice.
 21 A. Okay. Was this sent to me?
 22 Q. Absolutely.
 23 A. Where was it sent to?
 24 Q. To the counsel tendering you as an expert
 25 witness.

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1 A. So you're not suggesting it was sent to me.
 2 Q. I don't know. We are not generally supposed
 3 to communicate directly with you.
 4 A. I thought you were inferring that you had
 5 sent this to me.
 6 Q. I don't have any firsthand knowledge on that
 7 subject.
 8 Can we go back to the international
 9 standard for laboratories document?
 10 A. Yes.
 11 Q. And I won't spend too much time on this, but
 12 I just want to continue where we sort of had left off,
 13 which was on page 17 in the middle of the page there's
 14 a discussion about handling of samples, section 5.2.2,
 15 and it says, the laboratory shall add laboratory
 16 internal chain of custody procedures to maintain
 17 control of an accountability for samples and receipts
 18 for final disposition of the samples. The procedures
 19 must incorporate the concepts presented in the WADA
 20 technical document for laboratory internal chain of
 21 custody (Annex C).
 22 Are you aware that there are internal
 23 chain of custody requirements in the WADA code?
 24 A. I can see where you just read out, yes.
 25 Q. And with respect to the chart, let's read the

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1 four-page document that came from the French
 2 laboratory that summarizes the results concerning the
 3 1999 Tour de France. You know, the document, the
 4 document about the '99 samples.
 5 A. The document.
 6 Q. I'm sorry, Respondents' 44, the l'Equipe --
 7 I'm sorry, the diaphragm that was in the l'Equipe
 8 article.
 9 A. Yes.
 10 Q. The one we looked at with all the samples.
 11 A. I've got 44 here. I can see what you're
 12 talking about.
 13 Q. In that document it's talking about the
 14 results of a research study; it presents the result.
 15 A. Yes.
 16 Q. Did the laboratory maintain internal chain of
 17 custody on all the urine samples involved in that
 18 study?
 19 A. I don't know.
 20 Q. I won't belabor it, but if you turn to
 21 page 18, there's more discussion about the fact that
 22 how important chain of custody is, if you'll look at
 23 section 5.2.3, again, about the laboratory maintaining
 24 internal chain of custody procedures. Do you
 25 understand why internal chain of custody is important?

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1 A. Yes, I'm not an expert on laboratory
 2 standards, but, yes, I have a general understanding,
 3 yeah.
 4 Q. And what's the purpose of it?
 5 A. Essentially you've got a situation where a
 6 blind sample that's identified with only a number
 7 comes into a laboratory and they analyze that sample
 8 and then they send the results back to the Federation
 9 or the governing body, whoever requested it.
 10 Now, there needs to be some way to track
 11 what that number corresponds to and so the internal
 12 chain of custody is primarily to make sure that they
 13 don't bring a sample in, not realize who it is and
 14 essentially lose the results. It's to make sure that
 15 they -- they essentially don't attribute one sample to
 16 someone else.
 17 Q. Well, how many -- how long does it take to do
 18 an EPO test on a single urine sample?
 19 A. Well, it depends on how many people are doing
 20 it, 24, 72 hours, thereabouts, in that window.
 21 Q. Aren't you aware that it's impossible to do
 22 an EPO test under the protocol in 24 hours?
 23 A. Now you're talking -- to analyze a sample for
 24 EPO?
 25 Q. Yes.

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1 A. How much EPO is in it, it could take 24
 2 hours, but to do the complete protocol would take 72
 3 hours; that's what I said.
 4 Q. So to do an EPO test, meaning the EPO test,
 5 to test whether there's EPO in your urine takes three
 6 days?
 7 A. It could.
 8 Q. Can it be done in less time?
 9 A. I think it can, yes.
 10 Q. You're not aware that given the steps and how
 11 long it takes that it requires three full days to do
 12 the EPO test?
 13 A. I said it could.
 14 Q. How many different procedures take place in
 15 three days in an EPO test?
 16 A. I couldn't tell you that.
 17 Q. Is it a whole lot of steps?
 18 A. How many is a whole lot?
 19 Q. Well, do you first have to do a whole bunch
 20 of steps in order to get --
 21 A. Can you be a little bit more precise? It's a
 22 very time consuming procedure, okay. It's very
 23 complicated to the point where even a laboratory who
 24 are trained in the method sometimes get it wrong.
 25 It's not something that I can convey to this panel

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1 very easily. I mean, if this is a memory test, okay,
 2 I flunk. If you put the methodology in front of me, I
 3 could explain it to you.
 4 Q. And you saw the testimony -- I'm sorry. You
 5 saw the pages from l'Equipe where with Mr. Audran,
 6 sorry, Dr. Audran just -- whatever title you like.
 7 A. Professor Audran.
 8 Q. I don't know him, so I'm sorry. Professor
 9 Audran discusses how labs can mess up the EPO test?
 10 A. Yes.
 11 Q. And do you understand it's really important
 12 when you have lots of samples moving around the
 13 laboratory that they not get contaminated or -- things
 14 in one sample not end up in another sample?
 15 A. Well, I think that's a truism, yes, of
 16 course.
 17 Q. And it's important in EPO tests that after
 18 you do certain steps, things have to be put in the
 19 refrigerator and other steps have to be performed at
 20 specific temperature?
 21 A. Yes.
 22 Q. And do you understand that the whole internal
 23 chain of custody is an important safeguard to protect
 24 the athlete who's going to be accused of doing
 25 something wrong?

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1 A. It's certainly a safeguard, sure.
 2 Q. Would you look at page 19 at the bottom,
 3 please?
 4 A. Okay.
 5 Q. It talks about urine confirmation testing. I
 6 think we established yesterday that the tests we are
 7 referring to that are summarized in the l'Equipe
 8 document is simply a screening test, correct?
 9 A. No, I don't think we established that at all.
 10 Q. Well, was it your understanding that multiple
 11 samples were all tested on the same gel?
 12 A. No. That's not what I said.
 13 Q. You don't know whether they were or were not,
 14 correct?
 15 A. That's right.
 16 Q. But the serie number in the left column
 17 suggests perhaps that, for example, the first four --
 18 MR. LEVINSTEIN: Can we pull up that
 19 document, please?
 20 ARBITRATOR CHERNICK: 144?
 21 MR. LEVINSTEIN: 44.
 22 ARBITRATOR CHERNICK: Excuse me, 44.
 23 Q. (BY MR. LEVINSTEIN) If we could look at the
 24 top, you see 0507 and there are four samples?
 25 A. Yes, I see what you've highlighted, yes.

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1 MR. LEVINSTEIN: She highlighted, but,
 2 yes.
 3 Q. (BY MR. LEVINSTEIN) Doesn't that suggest to
 4 you that those four samples are on all on the same
 5 gel?
 6 A. You asked me that yesterday. That's your
 7 assertion. I said I have never really understood what
 8 that column means, so I can't tell you yes or no.
 9 Q. So you can't even tell me whether each those
 10 samples was on its own gel or was on a gel with
 11 multiple samples?
 12 A. As I've already explained, I can't.
 13 Q. And you can't tell me if there were other
 14 additional samples beyond those four on a gel with
 15 them?
 16 A. No, I can't.
 17 Q. But you do tell us that in your experience
 18 there's often multiple samples on a single gel?
 19 A. Yes.
 20 Q. Would it be reasonable that in testing these
 21 91 samples, every one of these tests was a whole test
 22 run on an entire gel for each one of those samples?
 23 A. I don't know. I haven't seen the protocol.
 24 Q. Well, let's look at the bottom of page 19.
 25 It's discussing confirmation -- it's discussing

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1 confirmation procedures.
 2 A. Yeah.
 3 Q. And the idea is after a screening test if you
 4 have a suspicion that a sample might be positive, you
 5 need to do a confirmation procedure?
 6 A. Yeah.
 7 Q. Okay. And it says, all confirmation
 8 procedures must be documented and meet applicable
 9 uncertainty requirements. The objective of
 10 confirmation procedure is to ensure the identification
 11 and/or quantification and to exclude any technical
 12 deficiency in the screening procedure. Since the
 13 objective of the confirmation assay is to accumulate
 14 additional information regarding adverse findings a
 15 confirmation procedure should have greater
 16 selectivity/discrimination than a screening procedure.
 17 Do you see that?
 18 A. Yes.
 19 Q. Okay. Do you understand that in the
 20 confirmation procedure you're required to have the
 21 subject sample and control samples and nothing else on
 22 the gel?
 23 A. In order to impose a doping sanction under
 24 the A and B analysis, yes, that's correct.
 25 Q. In order to be sure that it has EPO to a

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1 level of satisfaction that you can represent to a
 2 tribunal that you could draw a conclusion that a
 3 person used performance enhancing drugs?
 4 A. No, I don't accept that.
 5 Q. Okay.
 6 A. I can elaborate if you like, but, no, that's
 7 not -- I don't accept that.
 8 Q. So then why are they doing this careful
 9 confirmation procedure?
 10 A. Because that is what is set out in the code.
 11 To impose the sanction on an A and a B sample, that's
 12 what they do, but now you're asking me a different
 13 question, well, that means in order to be comfortable,
 14 they have to do it, and that's what I'm saying, no,
 15 that's not --
 16 Q. Doesn't the WADA code say, if there's any
 17 departure from these standards, the burden shifts to
 18 the lab to prove the test is right?
 19 A. That's what the code says, yes.
 20 Q. Would you look at page 21? First, you
 21 testified that it was your -- it's going to be a
 22 reference to page 21.
 23 You testified, I believe, that you think
 24 that an A sample being confirmed is enough to say that
 25 an athlete used performance enhancing drugs, correct?

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1 A. I think you will find -- in fact, I'm
 2 certain, because I know in the past athletes have been
 3 sanctioned only on their A sample.
 4 Q. Well, are you familiar with the Tyler
 5 Hamilton case at the Olympics?
 6 A. Oh, yeah. Yeah, I remember that.
 7 Q. And do you recall that there was no B sample
 8 to test and, therefore, they had to throw out the
 9 results?
 10 A. I'm familiar with that, yes.
 11 Q. And --
 12 A. It caused me some anguish.
 13 Q. Well, if you'll look at the bottom of page
 14 21, are you aware that the current rule -- the bottom
 15 of the page -- if the B sample confirmation does not
 16 provide analytical findings that confirm the A sample
 17 result, the sample shall be considered negative. Do
 18 you see that?
 19 A. I see that.
 20 Q. Were you not aware that the current rules are
 21 without a B, it's absolute there can be no positive
 22 finding?
 23 A. No, because I just explained to you, there
 24 have been cases where athletes have been imposed a
 25 sanction based only on the A results.

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1 Q. Do you understand that was in the past and
 2 long before the issuance of this -- these new rules?
 3 A. No. I mean, the last case I'm aware of was
 4 in probably December 2005.
 5 Q. Are you talking about Tim Montgomery?
 6 A. No.
 7 Q. Okay. What case are you referring to in
 8 which an athlete was sanctioned by a tribunal based
 9 only on an A test?
 10 A. His name is -- oh, it's an Australian kayaker
 11 who was disqualified for -- it was some type of a
 12 steroid, December of 2005. CAS heard the case last
 13 year.
 14 ARBITRATOR LYON: Are you talking about a
 15 kayak, like paddling or is that something else?
 16 MR. TILLOTSON: The sport?
 17 THE WITNESS: Yes, yes.
 18 Q. (BY MR. LEVINSTEIN) Are you saying it was
 19 CAS panel that said even though the B didn't confirm
 20 the A, that he was still going to be sanctioned?
 21 A. No. He was found guilty only on his A
 22 result.
 23 Q. And he challenged that; did the B not confirm
 24 the A?
 25 A. No, he chose not to even look at the B

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1 sample.
 2 Q. In other words, he waived his right to have
 3 the B sample tested?
 4 A. Yes.
 5 Q. Do you know of any case in which the athlete
 6 required the B to be tested, and he has a right to be
 7 there, and the B did not confirm the A?
 8 A. Yes.
 9 Q. And they still sanctioned the athlete?
 10 A. Okay. Under that strict scenario, no, none
 11 that I'm aware of.
 12 Q. That's not allowed under the code, and it has
 13 never been allowed under the code.
 14 A. I don't think it's been tested yet.
 15 Q. But the code says that they won't even bring
 16 a case because the answer is it's negative if that
 17 happens.
 18 A. Well, the code is the code, and what I see --
 19 what I say here today is not going to change that, but
 20 what I'm saying is that it's up to the panel to
 21 interpret the code and the code says really any
 22 reliable evidence can be used to impose a sanction.
 23 Now, if the panel is satisfied that, say,
 24 these results are reliable, they can be used to impose
 25 a sanction; that is what the code says.

<p style="text-align: right;">Page 2783</p> <p>1 MR. HERMAN: Excuse me, but I just want 2 to make sure, when you say panel, you're talking about 3 the CAS panel, the CAS, the Court of Arbitration of 4 Sport; you're not talking about this panel? 5 THE WITNESS: I don't know if the panel 6 can take into account the WADA code or not, so I 7 couldn't comment. If you're allowed to take into 8 account the code, perhaps I could. 9 MR. HERMAN: All I was trying to make 10 clear for the court reporter is that in your answer 11 you were referring to the CAS panel in your answer to 12 Mr. Levinstein. 13 THE WITNESS: Oh, yes, yes. 14 MR. HERMAN: That's all I was trying to 15 do. 16 Q. (BY MR. LEVINSTEIN) And is it your -- do you 17 understand that the reason any reliable evidence can 18 be introduced is to permit -- for example, where an 19 athlete has admitted it or there are checks signed and 20 other evidence that showed the athlete was buying 21 performance enhancing drugs, that kind of evidence? 22 A. That's not an exclusive list; that would be 23 some examples, but it says if you can -- can we bring 24 up the code? 25 Q. It's okay.</p>	<p style="text-align: right;">Page 2785</p> <p>1 provision that says, any reliable evidence can be 2 considered? 3 A. Well, I would argue that this section 4 underneath, the section I've referred to -- the 5 section I'm referring to is the WADA code itself which 6 is absolutely clear, any reliable evidence. This is 7 underneath that. 8 Q. Well, would you turn to page 22, results 9 management. It says, a minimum of two certifying 10 scientists must independently review all adverse 11 analytical findings before a report is issued. The 12 review process shall be documented. 13 A. Yes. 14 Q. With respect to the 91 samples in Exhibit 15 44 -- 16 A. Yes. 17 Q. -- the one that's in the l'Equipe article -- 18 A. Yes. 19 Q. -- did two certifying scientists 20 independently review all of the information related to 21 that document before that document was issued? 22 A. I don't know. 23 Q. And there's information here about what the 24 review should consider. And then if you'll look at 25 5.2.6.1 at the bottom of page 22.</p>
<p style="text-align: right;">Page 2784</p> <p>1 A. I can refer you to the section, if you would 2 like. 3 Q. But you think -- 4 A. Would you like me to refer you to the 5 section? 6 Q. Feel free. I know exactly what section 7 you're talking about. 8 A. Okay. 9 Q. But it's your understanding that despite the 10 fact that the code specifically says about doping 11 control tests that if the B doesn't confirm the A, 12 it's negative, nevertheless this provision that says 13 or other evidence, reliable evidence, can be 14 considered would allow you, even when the B says 15 there's nothing in there, to rely solely on the A and 16 declare a positive. 17 Is that too confusing? Do you want me to 18 try again? 19 A. Yeah, please. 20 Q. We see the specific provision on page 21 that 21 says, if the B doesn't confirm the A -- 22 A. Yes. 23 Q. -- the sample is negative? 24 A. Yes, I see that. 25 Q. Okay. And you referenced this other</p>	<p style="text-align: right;">Page 2786</p> <p>1 A. 5.2.6.1, yes. 2 Q. It says, the laboratory must have documented 3 procedures to ensure that it maintains a coordinated 4 record related to each sample analyzed. In the case 5 of an adverse analytical finding, the record must 6 include the data necessary to support the conclusions 7 reported as set forth in the technical document, 8 laboratory documentation packages. 9 In general, the record should be such 10 that in the absence of these analysts, another 11 competent analyst could evaluate what tests had been 12 performed and interpret the data. 13 Do you see that? 14 A. Uh-huh. 15 Q. Have you ever seen anything related to any of 16 those 91 tests by which you could evaluate what tests 17 has been performed and interpret the data? 18 A. Have I seen anything? No. 19 Q. And, in fact, you're not qualified to 20 interpret electropherograms and make determinations on 21 whether EPO tests are positive, are you? 22 A. No. 23 Q. If you see the last line on page 22, it says 24 each step of testing shall be traceable to the staff 25 member who performed that step. I don't mean to</p>

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1 belabor it, but you have no idea if there's any
 2 documents showing the steps of testing and which staff
 3 member did it, correct?
 4 A. That's correct.
 5 Q. If you'll look at page 24, please. The
 6 middle of the page, it says, athlete confidentiality
 7 is a key concern for all laboratories engaged in
 8 doping control cases. Confidentiality requires extra
 9 safeguards given the sensitive nature of these tests.
 10 Are you aware that that's a requirement?
 11 A. A requirement to comply with the standard for
 12 labs under the WADA code since they sanction under A
 13 and B, yes, I am.
 14 Q. Are you aware that that athlete
 15 confidentiality requirement applies to anyone dealing
 16 with doping control samples that come from athletes?
 17 A. I wasn't aware of that, no.
 18 Q. Well, if an athlete gives a doping control
 19 sample and you take it and use it for research, do you
 20 think that because you used it to do research, you're
 21 now allowed to publicize who the athlete was and what
 22 you found in his urine?
 23 A. Oh, is the lab allowed to?
 24 Q. Yes.
 25 A. No, they're not.

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1 Q. Do you think this confidentiality requirement
 2 applies with anything they do with those urine samples
 3 that were taken during competition?
 4 A. I think that you would find that there would
 5 be a -- a slightly different scenario. My
 6 understanding is that the lab communicated the results
 7 to WADA, and I think that that would have a -- that
 8 would not be seen to be publicizing the results. I
 9 mean, an exchange of information between WADA and one
 10 of their laboratories, I think, would probably be
 11 an -- it would sit outside of what this is trying to
 12 get to. But, again, I'm not an expert on lab
 13 standards. That's my opinion.
 14 Q. What about giving the report to l'Equipe;
 15 would that be different?
 16 A. Giving that report to l'Equipe?
 17 Q. Yes.
 18 A. I don't think a laboratory would do that.
 19 Q. And just to emphasize how important
 20 confidentiality is, if you'll look at the bottom of
 21 page 24, it even says, unencrypted e-mail is not
 22 authorized for any reporting or discussion of adverse
 23 analytical findings if the athlete could be identified
 24 or if any information regarding the identity of the
 25 athletes is included. Do you see that?

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1 A. Yes.
 2 Q. Just as a lead-in, if you'll go all the way
 3 to page 46, it says at the bottom, 7.1, in support of
 4 any adverse analytical finding, the laboratory is
 5 required to provide the laboratory documentation
 6 package described in detail in the technical documents
 7 in laboratory documentation packages. Do you see
 8 that?
 9 A. Yes.
 10 Q. And you haven't received any laboratory
 11 documentation package concerning any of those 91
 12 samples, correct?
 13 A. Have I received anything? No.
 14 Q. Do you see page 54, please, the laboratory
 15 code of ethics?
 16 A. Yes.
 17 Q. Are you aware that there have been quotes
 18 from the lab director about this project in the media?
 19 A. In the meeting?
 20 Q. Media.
 21 A. Oh. My -- my impression is that he's chosen
 22 not to make public comments, though he may have, but I
 23 can't recollect seeing them.
 24 Q. You weren't aware that there are articles in
 25 which he is quoted as saying that our work was 100

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1 percent correct and everything we do is right?
 2 A. Actually now you jog my memory. I've got a
 3 recollection of that, but I'm not clear when or where
 4 that was.
 5 Q. If you'll look at the top of page 54, this
 6 laboratory code of ethics, you see where it says,
 7 heads of laboratories, their delegates and laboratory
 8 staff shall not discuss or comment to the media on
 9 individual results prior to the completion of any
 10 adjudication without consent of the organization that
 11 supplied the sample to the laboratory and the
 12 organization that is asserting the adverse analytical
 13 finding or adjudication. Do you see that?
 14 A. I see that. Can I comment on it?
 15 Q. Sure.
 16 A. I think if you look at the second line on
 17 individual results and I think that my recollection of
 18 what you just mentioned was that Jacques Ceaurriz
 19 commented on the results in general rather than a
 20 comment on the individual result.
 21 Again, I can't recollect the quote you
 22 are talking about, but that's my memory of the gist of
 23 it.
 24 Q. So because he said that all 91 results are
 25 correct, he wasn't commenting on any individual

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1 result, in your mind?
 2 A. No. I mean, if -- I call an individual
 3 result one result attributed to one person. If he
 4 comments on a group of -- he said there's 91 results
 5 and he says those results are valid, that to me is not
 6 referring to an individual result. I would draw a
 7 distinction.
 8 Q. But when he was commenting, the whole focus
 9 on the l'Equipe article was the fact that allegedly
 10 there were six results concerning Lance Armstrong,
 11 correct?
 12 A. Well, if you could show me that article, I
 13 could comment on it.
 14 Q. We will get to that in a different way. The
 15 next document I would like to turn to is this document
 16 that Mr. Herman waved around earlier in this
 17 proceeding.
 18 ARBITRATOR LYON: Are you through with
 19 anti-doping code?
 20 MR. LEVINSTEIN: I am. You might want to
 21 keep it handy, because there's one page that
 22 corresponds.
 23 MR. HERMAN: I object to the
 24 characterization of me waving it around, but I
 25 exhibited it.

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1 ARBITRATOR FAULKNER: I don't know that
 2 you can object to your co-counsel's description of
 3 you, although I think several of us have had
 4 co-counsel that we would have liked to have objected
 5 to things they've said or done.
 6 MR. HERMAN: Mr. Levinstein does not fall
 7 in that category.
 8 ARBITRATOR CHERNICK: This is 147,
 9 Claimants' 147.
 10 Q. (BY MR. LEVINSTEIN) Let me represent that
 11 this is a redacted document which some identifying
 12 information that's connected to an athlete has been
 13 blacked out, but it is from the UCLA lab. Are you
 14 familiar with the UCLA lab?
 15 A. I've never been there, but I know -- you're
 16 talking about Don Catlin's lab?
 17 Q. Yes.
 18 A. Yes.
 19 Q. And I'll just represent this is a
 20 documentation package for a positive EPO test.
 21 A. Yeah. Can I look through it?
 22 Q. Please, feel free. You can look through any
 23 document I give you.
 24 A. Is there a particular part you want to draw
 25 my attention to?

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1 Q. Before I ask you, I will do that, but
 2 offhand --
 3 A. All right.
 4 Q. Well, first, in general, do you understand
 5 that this package contains a tremendous amount of
 6 chain of custody information?
 7 A. No, I would have to look through it.
 8 Q. And if you want to look specifically at pages
 9 10, 11, 12, 13, 14, 15, 16, 17, 18 -- as well as, I
 10 guess, pages 6 through 9.
 11 A. Now, that's a description method. Do you
 12 want me to focus on this chain of custody?
 13 Q. First, do you see --
 14 MR. TILLOTSON: Before we ask him
 15 questions, can you just identify where this came from
 16 and who did the blacking out and -- this wasn't
 17 produced to us previously, and it's not on the exhibit
 18 list. I'm not objecting to your using it on that
 19 basis, but if you can tell us where it came from so we
 20 have some sense of --
 21 MR. LEVINSTEIN: Where it came from.
 22 MR. TILLOTSON: Some athletes results.
 23 I'm wondering how it was obtained and whether or not
 24 there's -- you blacked it out or someone else blacked
 25 it out.

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1 MR. LEVINSTEIN: I blacked out the
 2 athlete's identification information. It's from
 3 another case that I have some involvement in in which
 4 there's a positive EPO test.
 5 Any other question?
 6 MR. TILLOTSON: Well, I guess to the
 7 extent that who it is and whether there's a challenge
 8 to it and all that is relevant. We may have to
 9 explore that, but if the purpose of the cross
 10 examination is to identify the various things done in
 11 connection with testing as a demonstrative or
 12 illustrative aid, I guess I don't object to it.
 13 MR. LEVINSTEIN: I just want to show what
 14 one of these looks like.
 15 MR. TILLOTSON: Without this witness
 16 knowing who it is or where this file came from and
 17 what else it might need --
 18 MR. LEVINSTEIN: I'm not going to ask him
 19 to draw any conclusions about anything substantive. I
 20 want to ask just about what information is given when
 21 there is an attempt to have -- impose an adverse
 22 finding.
 23 MR. TILLOTSON: Okay.
 24 MR. LEVINSTEIN: Just for the panel who
 25 may not know what an EPO test looks like because

<p style="text-align: right;">Page 2795</p> <p>1 there's nothing that's been presented yet that 2 actually shows that. 3 Q. (BY MR. LEVINSTEIN) If you would turn to 4 page 24, please, of 33. And, for the record, the 5 document has pages 1 through 33 and then it has 6 another set of documents that are seven pages, but if 7 you turn to page 24, please. 8 A. Yes. 9 Q. And this is what we are talking about in 10 terms of an electropherogram? 11 A. Uh-huh, yes. 12 Q. And looking on page 4, the left column where 13 it says, rHuEPO/NESP. 14 A. Uh-huh. 15 Q. The rHuEPO, the first recombinant EPO? 16 A. Yes. 17 Q. And the NESP refers to a drug called 18 darbepoetin? 19 A. Yes. 20 Q. And it's a long lasting EPO drug? 21 A. Yes. 22 Q. And the bottom four bands on that 23 electropherogram show where recombinant EPO showed up 24 on the electropherogram? 25 A. Recombinant EPO or NESP?</p>	<p style="text-align: right;">Page 2797</p> <p>1 test. So I'm relying on those experts and what they 2 have represented to me. I'm not going to go and 3 second-guess them and say, I want to see your results 4 because I don't think you did that test properly. 5 No one in world would doubt the French 6 laboratory as the most accomplished in this 7 methodology. I'm relying on their expert advice that 8 they gave to me. 9 Q. You want us to rely on what you tell us they 10 told you? 11 A. Well, at the moment, it's a subject of a WADA 12 and, I think, a UCI investigation, and in time I'm 13 sure they will be able to present their case. I can't 14 present it on their behalf at this point in time. So 15 the questions you're asking me, eventually I hope they 16 will be able to answer for themselves, but at the 17 moment they're precluded from doing that. At least in 18 the year. 19 Q. But you are presenting the case on their 20 behalf as an expert, aren't you? 21 A. No, I am interpreting the results that they 22 have generated. 23 Q. Fine. Would you turn to page 32, please? 24 Okay, never mind. I'm not going to ask you about 25 electropherograms, I guess.</p>
<p style="text-align: right;">Page 2796</p> <p>1 Q. NESP up at the top. 2 A. Because he does it the other way around, 3 doesn't he? Yes. 4 Q. The questions from the panel yesterday about 5 which was on the top and the bottom, in this 6 depiction, as we do it in the United States, the NESP 7 or the darbepoetin is on the top? 8 A. Yes. 9 Q. And then the negative QC, that indicates that 10 they have a quality control -- some sort of urine of 11 someone who they believe was negative for EPO, 12 correct? 13 A. Okay. 14 Q. Have you seen these kind of documents before? 15 A. No, I've never been required to interpret a 16 result for a drug sanction, so this is the first time 17 I have seen documents of this nature. 18 Q. Okay. You're coming here to testify that a 19 summary of results about this kind of testing is 20 accurate and you've never even seen the underlying 21 data from which those kind of reports are generated? 22 A. As I said in my deposition, I'm here and I'm 23 going to interpret the results. The results have 24 already been generated by an expert, and they're 25 completely familiar with that. They developed the</p>	<p style="text-align: right;">Page 2798</p> <p>1 A. I've never made a watch. I don't know how a 2 watch works, but I can read the time. Is that an 3 analogy that conveys to you -- 4 Q. Do you believe you could come here to testify 5 about the accuracy of the time because the guy who 6 made the watch told you he did a great job? 7 A. If he had made 100 watches in the past and he 8 made the watch and he gave me this watch and said, 9 look at that watch, it tells the time accurately, then 10 I would say, okay, sure, I'll come here and tell you 11 the time from that watch. 12 Q. Are you aware that there have been a number 13 of published articles detailing problems with the 14 Lausanne -- I'm sorry with the French lab's EPO test? 15 A. I'm aware of one published article. I'm 16 aware of several out of New Zealand, what I would call 17 the lay press, yes. 18 MR. LEVINSTEIN: I just want to really 19 put these into -- in front of him and see if he's 20 aware of the articles. I'm not going to go through in 21 detail at all the articles, but I would like to put on 22 the record the articles that have criticized the test. 23 I want to do that in an efficient way. There's four 24 of them. I can pass them out and just ask him to 25 identify them if he's aware --</p>

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1 ARBITRATOR FAULKNER: Has Mr. Tillotson
 2 seen any of these yet?
 3 MR. TILLOTSON: I haven't, and I would
 4 object to just simply introducing articles that
 5 criticize some test.
 6 MR. LEVINSTEIN: I'll go quickly through
 7 the questions.
 8 ARBITRATOR CHERNICK: The only relevant
 9 document there would be an article that he had
 10 actually seen and whether it bears on his opinion of
 11 the lab's reliability.
 12 MR. TILLOTSON: I have no problem with
 13 that.
 14 Q. (BY MR. LEVINSTEIN) Are you aware that the
 15 WADA chartered two gentlemen, Dr. Peltre and
 16 Dr. Thormann, to study the EPO test and evaluate it?
 17 A. Yes, there was several years ago.
 18 Q. And it was published around March of 2003?
 19 A. When you say, published, obviously WADA
 20 published it.
 21 Q. Are you aware that it was published on the
 22 WADA web site?
 23 A. If that's what you call published, I would
 24 say it was put on their web site.
 25 Q. And you're aware that it criticized the EPO

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1 test and identified problems with it?
 2 A. No, I think a balanced reading of that would
 3 show you that there was a lot of praise for the test
 4 and they also outlined areas where they thought it
 5 could be made even better.
 6 Q. Are you familiar with the Khan article in
 7 Clinica Chimica Acta discussing deficiencies in the
 8 EPO test that was published in 2005?
 9 A. Can you just show me the -- yes, I think I
 10 have seen that article.
 11 Q. I asked you about it in your deposition and
 12 you said you have.
 13 A. Yes.
 14 Q. And you are familiar with various articles in
 15 the lay press that discuss pitfalls and problems in
 16 the test?
 17 A. Well, I can't tell you that I've seen all of
 18 those that you appear to have there, but I've seen
 19 some articles, yes.
 20 Q. And you understand that a lot of those
 21 articles surfaced in 2005 after a number of athletes
 22 in the course of their hearings were exonerated based
 23 on the fact that the EPO test had generated false
 24 positives?
 25 A. No. They were exonerated on several

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1 different -- several different bases, but basically
 2 the laboratory that misinterpreted the results rather
 3 than the EPO test that created a false positive. It's
 4 two different issues there.
 5 Q. Well, the laboratory had applied the EPO test
 6 as they did it and they said this athlete was guilty,
 7 the lab did?
 8 A. Yes, not because of the test but because of
 9 their interpretation of the electropherogram that you
 10 just saw.
 11 Q. And they presented documentation packages
 12 like the one we have seen and attempted to sanction
 13 the athlete?
 14 A. Well, I'm assuming they presented those
 15 documents.
 16 Q. And then in the hearing, the athlete proved
 17 the lab was wrong and the lab results didn't prove he
 18 was guilty, correct?
 19 A. I've -- I haven't seen those court hearings,
 20 but my understanding is that the panel recognized that
 21 the laboratory had mistakenly interpreted the results
 22 and declared a positive when they should not have
 23 declared a positive. Other experts looked at the same
 24 electropherograms and said, no, he shouldn't have been
 25 declared positive. That's what I mean, the results

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1 are there. One person says that's positive, but a
 2 more experienced person said, no, that actually
 3 shouldn't have been declared positive.
 4 Q. So now it's required that for any laboratory
 5 to declare an EPO test positive, they have to send the
 6 whole package of documents to another WADA approved
 7 lab and that lab has to agree with the finding before
 8 any positive can be declared, correct?
 9 A. Yes, that's one of the things after my
 10 deposition -- and I realized this was something you
 11 focused on -- I checked that with Jacques de Ceaurriz,
 12 and the -- from 2006 onwards, that is the official
 13 position.
 14 Earlier than that it has been, I think
 15 his words were it had sort of been in place but it
 16 hadn't been official, so there's been a transition
 17 period, if you like, yes.
 18 Q. So in 2005 they were told to do it, but it
 19 wasn't written formally as a mandatory requirement?
 20 A. That's the general sense they gave me, yes.
 21 Q. So just to review, to have a positive test
 22 you first have to do a screening, a screening test?
 23 A. Are we talking about under the WADA code with
 24 an A and B sample?
 25 Q. Under the WADA with an A and B sample, you

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1 first have to do a screening test?
 2 A. Yes.
 3 Q. And if that looks suspicious, then you have
 4 to do a stability test?
 5 A. Yes.
 6 Q. And you have to do an A confirmation test?
 7 A. Yes.
 8 Q. And if the A confirmation and the screening
 9 both show the presence of the recombinant EPO and the
 10 stability test says there's not a problem with
 11 stability, then you have an A finding?
 12 A. Yes.
 13 Q. And then you have to contact the athlete and
 14 let him and his representatives come and watch the
 15 three-day EPO test of the B sample?
 16 A. Yes, you offer that opportunity, yes.
 17 Q. You have to offer that opportunity?
 18 A. They don't have to take it, but you offer it,
 19 yes.
 20 Q. And then after you've analyzed all that
 21 information on all of those tests, two independent
 22 people within the lab have to certify that the results
 23 are accurate?
 24 A. Yes, that's my understanding, yes.
 25 Q. And then you have to take the whole package

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1 and send it to another whole WADA lab and they have to
 2 review it and make sure they agree before you can say
 3 the athlete is positive?
 4 A. Yes, that's my understanding from 2006
 5 onward, that's the requirement.
 6 Q. Okay. And that's a requirement of the
 7 standards for laboratories?
 8 A. As I understand it, yes.
 9 Q. And the International Standard for
 10 Laboratories is incorporated by reference to be part
 11 of the WADA code?
 12 A. Yes.
 13 MR. LEVINSTEIN: Can we pass that one
 14 out? We can also put this one on the screen, but...
 15 Q. (BY MR. LEVINSTEIN) Do you know what the
 16 Association of Summer Olympic International
 17 Federations is? Have you heard of that group?
 18 A. No.
 19 Q. Let me just represent that ASOIF stands for
 20 the Association of Summer Olympic International
 21 Federations. Have you seen this letter before?
 22 A. No.
 23 ARBITRATOR CHERNICK: It's Claimants'
 24 148.
 25 MR. LEVINSTEIN: I apologize, Exhibit

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1 148 for Claimants.
 2 MR. TILLOTSON: I would object to it. If
 3 he hasn't seen it, this is between two people and it's
 4 clearly hearsay. If he doesn't know -- I don't see
 5 how --
 6 MR. LEVINSTEIN: Clearly hearsay?
 7 Compared to the '99 chart that came from a newspaper?
 8 MR. TILLOTSON: I object to your --
 9 ARBITRATOR CHERNICK: Why don't you
 10 object --
 11 MR. TILLOTSON: Yes, I object on the
 12 basis of no foundation, no authentication. It's
 13 hearsay. I don't know what it is. I don't know where
 14 you got it.
 15 ARBITRATOR FAULKNER: What, if any,
 16 foundation do you have?
 17 MR. LEVINSTEIN: That's a good question.
 18 ARBITRATOR FAULKNER: No, I would like an
 19 answer. I know it's a good question.
 20 MR. TILLOTSON: I appreciate your candor.
 21 MR. LEVINSTEIN: Well, he has had
 22 discussions with the French laboratory, so I'm really
 23 offering it for the purpose of he's made reference to
 24 those investigations that are going on. This is a
 25 part of the reason for the investigations that are

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1 going on in the French laboratory. I asked him in his
 2 deposition was he aware of issues that had been raised
 3 by the French lab's conduct, and I just want to ask
 4 him if he was aware that the French lab was operating
 5 under circumstances in which their statements about
 6 whether everything they had done was accurate may have
 7 had -- may have been reasons for making those
 8 representations.
 9 ARBITRATOR FAULKNER: How does this
 10 document advance the panel's understanding in regard
 11 to how to evaluate this witness's testimony?
 12 MR. LEVINSTEIN: Well, he wants us to
 13 rely on hearsay statements from the laboratory, and if
 14 you'll look at the last sentence of the document, it
 15 talks about the fact that these organizations are
 16 calling for the French laboratory's accreditation to
 17 be suspended because of their conduct in handling the
 18 tests that he's testifying about. And so when the
 19 French lab is telling you we are under investigation,
 20 but all the results are accurate, I think this casts
 21 some light on the circumstances under which the French
 22 lab is operating and may raise questions about whether
 23 he believes it's still fair to credit the French lab.
 24 ARBITRATOR FAULKNER: Why don't you just
 25 ask him if he believes it's still fair to credit the

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1 French labs with the statement attributed them?
2 Q. (BY MR. LEVINSTEIN) Let me just ask, are you
3 aware that there have been many criticisms leveled
4 against the French lab?
5 A. So am I reading this document or not?
6 ARBITRATOR FAULKNER: Not at this point.
7 Q. (BY MR. LEVINSTEIN) Are you aware that there
8 have been many criticisms levied against the French
9 laboratory for how these results have ended up in
10 l'Equipe and in the media?
11 A. I would characterize it as there have been
12 many uninformed criticism, yeah.
13 Q. Okay. So you're aware that there have been
14 criticisms levied at the laboratory?
15 A. Uninformed criticisms. If they're not valid
16 criticisms in my mind, they're uninformed. I would
17 draw a distinction there. Anyone can have an opinion.
18 I won't use the rest of that phrase but, yes.
19 Q. Are you aware that the laboratory is
20 defending itself against people who are calling for
21 the lab's WADA accreditation to be suspended because
22 of its conduct with respect to these tests?
23 A. You asked me in my deposition am I aware
24 that -- I think you said they are threatened with
25 their -- what did you say -- something like they're

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1 going to be decommissioned or something. I wasn't
2 aware of it then. I'm still not aware of it now. So
3 I'm not aware of what do you call them, criticisms,
4 claims, whatever it is.
5 Q. Well, after your deposition you called the
6 lab and you asked them questions?
7 A. Yes, about the test itself.
8 Q. Okay.
9 A. The methodology, not the test results
10 themselves.
11 Q. You didn't ask them any questions about the
12 test results?
13 A. No. As I pointed out, they said that they're
14 under -- the subject -- well, this is probably a neat
15 way to encapsulate it, the laboratory did the research
16 and the WADA and the UCI are conducting
17 investigations. On the one hand, the WADA seems to be
18 looking at it from the perspective we need to
19 understand what's going on here. The UCI's
20 investigation seems limited to we just want to know
21 how this information got out, because it's hurting
22 cycling.
23 I don't think there's anyone questioning
24 the methodology itself. It's more the circumstances
25 as to how this information got out.

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1 Q. Okay.
2 A. I'm sorry, I should complete that -- and,
3 therefore, Jacques de Ceaurriz told me that I can't
4 talk about this because it's a subject of those
5 investigations.
6 Q. Okay. You are aware that the French lab sent
7 this report to WADA?
8 A. That's my understanding, yes.
9 Q. And were you aware that the French lab
10 imposed conditions when it sent the data to WADA?
11 A. I've only had represented to me. I don't
12 know that.
13 ARBITRATOR CHERNICK: This is
14 Claimants' 149.
15 Q. (BY MR. LEVINSTEIN) Have you had discussions
16 with WADA about --
17 A. Can I just read this?
18 Q. Sure.
19 ARBITRATOR FAULKNER: Has this been
20 provided to Mr. Tillotson before?
21 MR. TOWNS: No. I mean, this is a --
22 this is an e-mail between Mr. Stapleton and
23 Mr. Armstrong, and I was under the impression
24 yesterday or from testimony from Mr. Stapleton, that
25 they didn't have any e-mails, because the server had

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1 crashed.
2 MR. BREEN: No, no, that's not what he
3 said.
4 MR. TILLOTSON: No e-mails from
5 Mr. Stapleton were produced, and then Lisa Shiels'
6 e-mail showed up, and it was represented to us that it
7 was found in a file folder, and that there was a
8 reason for why they didn't have certain e-mails that
9 we had located from other people, and I asked -- I
10 said, fine. I just want to make sure that there
11 weren't any e-mails out there that we had asked for
12 that were fairly encompassed by our request that we
13 didn't have and then they keep showing up.
14 MR. LEVINSTEIN: This is an e-mail from
15 my file.
16 MR. HERMAN: Well, I think
17 Mr. Stapleton's testimony related to prior to
18 December 31, 2004; isn't that right?
19 MR. STAPLETON: Yes.
20 MR. TILLOTSON: I'm not trying to be
21 difficult. I would request an opportunity for us to
22 have the witness look at this document and see what it
23 is. It hasn't been produced --
24 ARBITRATOR LYON: Is this a good time to
25 take a break?

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1 MR. HERMAN: Let's take a break.
 2 ARBITRATOR FAULKNER: This is a great
 3 time to take a break, gentlemen.
 4 (Recess 10:27 a.m. to 10:54 a.m.)
 5 ARBITRATOR FAULKNER: Before we get
 6 going, have y'all had a chance to chat about any of
 7 the documents so we know what, if anything, we have to
 8 rule on?
 9 MR. TILLOTSON: The -- yes, the current
 10 exhibit that's in front of the witness we have no
 11 objection to. It's a study.
 12 ARBITRATOR FAULKNER: That's number 149?
 13 MR. TILLOTSON: Right.
 14 ARBITRATOR FAULKNER: Did y'all reach any
 15 agreement on 148, the ASOIF?
 16 MR. TILLOTSON: We still object to that.
 17 I think I know Surge Bubka.
 18 MR. HERMAN: You know that being an old
 19 pole vaulter yourself.
 20 MR. TILLOTSON: I knew a Bubka at one
 21 time.
 22 ARBITRATOR FAULKNER: Okay. Let's
 23 proceed.
 24 Q. (BY MR. LEVINSTEIN) Have you had
 25 conversations with people at WADA about the fact that

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1 you were going to come here and testify?
 2 A. No. I sent an e-mail to Olivier Rabin in
 3 which I thought it was appropriate for me to inform
 4 him that the basis of my request was related to the
 5 fact that I expected that I would be an expert.
 6 Q. But you also talked to various people from
 7 WADA, at other times beside the e-mail. I think
 8 that's what you said yesterday.
 9 A. I've talked to them at various times about
 10 other stuff, but not about this case, no.
 11 Q. Okay.
 12 A. Well, talking to is not when David Howman
 13 sends me an e-mail.
 14 Q. I understand. I thought you said yesterday
 15 that you've had various other conversations about this
 16 case and you can't remember if they told you the
 17 purpose of the study in those conversations or -- I
 18 thought there were other discussions about this case
 19 with WADA. I think that's what you said yesterday,
 20 but if I'm wrong, correct me.
 21 A. What I was trying to do is be careful and say
 22 it could have been one of those conversations. I
 23 didn't recollect who and when told me.
 24 Q. So you don't know if you've had other
 25 conversations with WADA about this case?

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1 A. I don't recollect any, no.
 2 Q. Were you -- let me represent this document,
 3 Claimants' 149, is a series of --
 4 A. I'm sorry, let me clarify it a little bit. I
 5 can tell you categorically that since the l'Equipe
 6 article was published, I've not had any conversations
 7 with anyone at WADA about this case apart from the
 8 e-mail I sent to Olivier Rabin.
 9 Q. So, going back to yesterday there's no way
 10 anyone at WADA told you what the purpose of the
 11 research was, because that wasn't in either of those
 12 e-mails?
 13 A. No. I said from the date of the publication
 14 of the article.
 15 Q. And you wouldn't have had any discussions
 16 about the l'Equipe research before the publication of
 17 the article, because you didn't know anything about it
 18 before that?
 19 A. I -- I think there was -- was rumors that it
 20 was around.
 21 Q. Claimants' 149 is an e-mail chain and
 22 attached to it is a one-page memo that was sent from
 23 Richard Pound to Lance Armstrong responding to
 24 questions that had been asked by Lance of Mr. Pound.
 25 I'll represent that.

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1 A. So who's asking the questions and who's
 2 answering?
 3 Q. If you read the first page, it says, Lance,
 4 I've attached a memo with the answers to the best of
 5 my present knowledge and belief to the questions you
 6 asked, RWP. Do you see that?
 7 A. So Lance Armstrong asked the questions and
 8 Dick Pound responded.
 9 Q. Do you understand that RWP is Mr. Pounds'
 10 initials?
 11 A. I didn't know that his middle initial was W.
 12 So Lance Armstrong is asking and Dick
 13 Pound is responding; is that right?
 14 Q. Yes. There's the sentence from the --
 15 A. Okay.
 16 Q. Going to the last page, did you see the last
 17 line of paragraph 1 where it says, this information is
 18 confidential and does not have any connection to any
 19 individual.
 20 A. I see that sentence, yes.
 21 Q. So based on WADA taking the position that
 22 this research study is confidential and doesn't have
 23 any connection to any individual, does that change
 24 your view about whether we should attempt to draw any
 25 conclusions about individuals based on that summary

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1 you have?
2 A. Can you just repeat that question?
3 Q. Well, this is WADA, right, WADA governs the
4 lab? It's a WADA accredited lab?
5 A. It's a WADA accredited lab, yes.
6 Q. And with respect to doping control, the
7 ultimate authority is WADA?
8 A. You could characterize it as that, yeah.
9 Q. Okay. And WADA is answering Mr. Armstrong's
10 question about what's supposed to happen with the
11 research of the French laboratory?
12 A. Lance Armstrong is asking, what role did WADA
13 have in the research project, and Dick Pound is
14 responding it's research.
15 THE REPORTER: You have to talk louder
16 and slower.
17 THE WITNESS: It's not important. I'm
18 just reading.
19 ARBITRATOR CHERNICK: Then don't read it
20 out loud.
21 ARBITRATOR FAULKNER: Please don't read
22 it out loud if that's the case.
23 A. Yes, okay, when I read that, my understanding
24 is that Dick Pound is saying it was the lab's own
25 research, and actually incidentally, I want to correct

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1 something in my deposition where I said that -- one of
2 your questions is, did WADA fund this research, and I
3 said, yes, in my deposition. I had received that
4 e-mail from David Howman before that deposition where
5 he pointed out that WADA hadn't funded it and it was
6 my error in my deposition. When you asked me did WADA
7 fund it, I said, yes, because after receiving that
8 e-mail I was under the impression that they had, so I
9 want to put that on the record.
10 So Dick Pound is saying and they send us
11 the results and the results weren't identified, and
12 not connected back to any individual, yes.
13 Q. (BY MR. LEVINSTEIN) Okay. And if you look
14 at the second paragraph --
15 A. Yes.
16 Q. -- the second sentence, it says, in July 2005
17 WADA was informed by the French government that the
18 laboratory had this information available and wished
19 to share the data with WADA under certain conditions,
20 including that WADA would not use the data for any
21 sanction purpose. Do you see that?
22 A. Yes, I do.
23 Q. Were you aware that the laboratory had
24 specified that data could not be used for any sanction
25 purpose?

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1 A. No, as I've explained, I've not been privy to
2 these conversations, but I look at that and say, well,
3 clearly the French government put in a request or they
4 stipulated that under certain conditions they wanted
5 to make it available to WADA.
6 Now, then there's an exchange of
7 information, correspondence, I don't know under what
8 exact circumstances the information was finally given
9 to WADA, but clearly at some point the French
10 government said, we need to have some circumstances,
11 they discussed it, they came up with whatever
12 arrangement they did, I don't know what they are, then
13 the information was forwarded.
14 Q. In your conversations with the French lab did
15 they tell you, if you're using this data, you ought to
16 know it can't be used for any sanction purpose?
17 A. No, because we haven't discussed this in
18 detail. I mean that would come under the umbrella of
19 this is under investigation, so I can't talk to you in
20 detail about it, so, no.
21 When I read this, to me, Lance Armstrong
22 is acknowledging, okay, the test is positive. He
23 says, when the results were positive, how did this
24 data get out. So to me, Lance Armstrong is not
25 questioning the validity of the results; he's

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1 acknowledging that he had a positive.
2 Q. For the record, this is Dick Pound's
3 characterization of what questions Lance Armstrong
4 asked. These were never submitted in writing.
5 A. My recollection you told me this was Lance
6 Armstrong asking the questions.
7 Q. No, that's what Dick Pound's e-mail says.
8 A. No, you told me these are Lance Armstrong's
9 questions. That's how I responded based on that they
10 are his questions.
11 Q. Okay. Well, can we put up the page from the
12 WADA code, please, that you were given. You expressed
13 some question about whether the WADA code allows there
14 to be an adverse finding when the B sample doesn't
15 confirm the A sample. Do you recall that discussion a
16 little bit ago?
17 A. Yes, but I was -- as I remember, I pulled you
18 up on several points, so I don't want to be
19 characterized as saying --
20 Q. There was something in the International
21 Standard for Laboratories, do you remember that, about
22 that if the B sample says it doesn't confirm the A
23 sample, the sample is negative. Do you recall that
24 from the International Standard for Labs?
25 A. Okay, yes.

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1 Q. Do you remember saying, that's under the WADA
 2 code and the WADA code is the most important part?
 3 A. I can't -- yeah, I'll accept what you're
 4 saying.
 5 Q. So we wanted to bring you the WADA code in
 6 case you wanted to know what was in that code about
 7 this subject. If you'll look at the last provision on
 8 this page, section 7.3.5.7, this is from the WADA
 9 code. If the B sample analysis does not confirm the A
 10 sample analysis --
 11 A. Yes.
 12 Q. -- the -- in brackets N-A-D-O, that's a
 13 doping organization somewhere in there. I forget what
 14 the N-A stands for. The NADO shall notify the athlete
 15 that the sample has been declared negative and no
 16 further action will occur.
 17 A. Yes.
 18 Q. Does that now confirm to you that under WADA
 19 code anytime the B sample does not confirm the A, the
 20 athlete has to be told the sample is negative and no
 21 further action will occur?
 22 A. Yeah, sure, under the circumstances you're
 23 representing that, yes, I agree.
 24 Q. I want to ask you a question about EPO and
 25 how it's used.

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1 A. Are we finished with this letter?
 2 Q. Yes.
 3 The idea of taking EPO is to increase
 4 one's hemoglobin in one's blood?
 5 A. Yes.
 6 Q. In order to be able to have more oxygen when
 7 we are involved in competition?
 8 A. Yes.
 9 Q. And the way that EPO works is we take
 10 recombinant EPO and it's a hormone and it sends a
 11 message to the bone marrow to produce more red blood
 12 cells?
 13 A. Yes.
 14 Q. If I am a cyclist and I'm going to compete in
 15 the Tour de France and I have recombinant EPO and I
 16 want to do well in the Tour de France, when do I need to
 17 start taking EPO?
 18 A. When you want to probably depends how much of
 19 a benefit you want to get and when you want that
 20 benefit to kick in, but at least a week, probably a
 21 couple of weeks beforehand.
 22 Q. Well, if I want to have the benefit when the
 23 Tour starts --
 24 A. Yes.
 25 Q. -- don't I need to be three or four weeks in

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1 advance if I start taking EPO to get the maximum
 2 benefit?
 3 A. No, not necessarily.
 4 Q. That's not your understanding?
 5 A. No.
 6 Q. Well, how long after I take -- let's say I
 7 start two weeks -- did you say one week before or two
 8 weeks? What was your testimony?
 9 A. It can be anything -- it's not a -- it's not
 10 a set rule. I mean, it's a continuum, so I mean, the
 11 benefit that you're getting from your first EPO
 12 injection really doesn't kick in until day three or
 13 four after. Then it's a matter of you need to keep
 14 your bone marrow producing more cells and the longer
 15 that you have that duration, the more benefit you're
 16 going to get at a particular point in time.
 17 Now, you can also alter that scenario by
 18 using higher dosages of EPO. If you gave a massive
 19 dose of EPO, then you get a release of reticulocytes
 20 virtually immediately. That sort of dosage is way off
 21 the scale, so... I can't really answer your question
 22 in a way that you're asking, because there's too many
 23 variables that you need to take into account.
 24 Q. So you don't agree that if I want to get the
 25 benefits of EPO, I ought to start taking it three to

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1 five weeks prior to the competition at which I want to
 2 have my red blood cell count up?
 3 A. Look, you could, but there are also other
 4 ways to do it. That's what I'm trying to convey.
 5 Q. Okay. There's a certain amount of benefit
 6 one can get from taking EPO, correct?
 7 A. Based on the dosage that you use, yes.
 8 Q. And it's your testimony that if I took EPO
 9 today, three days from now I would have a significant
 10 benefit in my ability to process oxygen?
 11 A. No. What I said is -- can I put something on
 12 here, too?
 13 ARBITRATOR FAULKNER: On the chart?
 14 THE WITNESS: Yes.
 15 ARBITRATOR FAULKNER: Certainly. Why
 16 don't you go ahead and flip it to a new page and I
 17 think there are some markers beneath it.
 18 THE WITNESS: I don't want to seem like a
 19 school teacher, but --
 20 ARBITRATOR CHERNICK: Keep your voice up,
 21 please.
 22 ARBITRATOR FAULKNER: Please speak louder
 23 so the court reporter can get your comments down,
 24 please.
 25 A. I said I don't really want to feel like a

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1 school teacher, but if you think of reticulocytes
 2 would be red -- young red blood cells. The red cell
 3 when it's released from the bone marrow has certain
 4 markers that we can take fairly easily nowadays to
 5 show that it's really only just come out of the bone
 6 marrow within the last two, three or four days and
 7 then gradually over time those markers go away and the
 8 reticulocyte transitions into what we call a mature
 9 red blood cell and then it remains in the circulation
 10 for two, three months, and then the cell itself dies.
 11 That's why it's got to be a continual process. You've
 12 always got to be making new red cells to replace the
 13 ones that die that have been around for a couple of
 14 months.
 15 Now, generally speaking, the amount of
 16 these reticulocytes that you find in your circulation
 17 would be equivalent to about 1.3 percent of all the
 18 cells in -- I'll keep it simple, 1 percent. One
 19 percent of all the red cells in your body have just
 20 been released from your bone marrow in the last couple
 21 of days. What happens when you take EPO is that the
 22 number of these reticulocytes increases.
 23 Now, if you take an injection here, if
 24 you use a massive dose of EPO, then there's like a --
 25 a stress reaction where your bone marrow just throws

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1 out really, really immature reticulocytes before they
 2 would have been released anyway. It's kind of like a
 3 production line. If there is a massive dose of EPO,
 4 they just get shunted out, but the normal sort of EPO
 5 injections you take, it takes three or four days
 6 before the stimulus that you gain from the injection
 7 starts resulting in more reticulocytes coming out of
 8 the bone marrow. So three or four days later the
 9 number of reticulocytes in your blood increases and --
 10 I mean, it depends on the dosage that you use, but you
 11 might get two to three percent of all of your blood
 12 cells showing up as reticulocytes, which reflects the
 13 fact your bone marrow is pumping out a lot more young
 14 red blood cells than it normally would.
 15 Now, that level will stay there for as
 16 long as you keep giving injections. You need to give
 17 injections probably every second day or third day
 18 thereabouts.
 19 The blue -- I want to keep it simple and
 20 call it hematocrit. Hematocrit is the percentage of
 21 red cells in your blood compared to the volume of your
 22 blood. Now, obviously for the first few days that
 23 you're using EPO, the reticulocytes haven't left the
 24 bone marrow, so your hematocrit won't have changed.
 25 Then on day three or four you find the

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1 hematocrit level will start here at 43 percent,
 2 that's -- that's the hematocrit level, I believe,
 3 Armstrong's natural values, it would stay the same and
 4 then gradually over time you find that hematocrit
 5 level starts to rise and it will continue to rise as
 6 long as you've got more reticulocytes being produced
 7 than what have been destroyed at the other end.
 8 Now, where you choose to stop your
 9 hematocrit depends on how long you want to continue
 10 injecting EPO. Now, in the early -- you know, the
 11 early times when EPO first came onto the cycling
 12 scene, you had cyclists keeping injecting until the
 13 hematocrit got to like 60 percent, and this is the
 14 scenario where you've got a dozen cyclists dying in
 15 the middle of the night because when your blood is 60
 16 percent red cells, when the body is not accustomed to
 17 that, in the middle of the night the body pulls down a
 18 little bit and the heart can't pump, it's cast around
 19 and you die.
 20 Now, over time the cyclists realized that
 21 that's not a good way to win races if they're dead so
 22 they bring it down and they start using a shorter
 23 period of EPO injections so they might stop at a point
 24 where the hematocrit got to, say, 50 percent, and at
 25 this point when your hematocrit is 50 percent, you can

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1 back off your EPO dosages so that instead of having
 2 two to three percent reticulocytes, you can bring it
 3 back down -- and this is the study I was talking about
 4 that you decrease the amount of EPO that you give
 5 yourself so you come back to the point where you're
 6 still only producing enough reticulocytes to replace
 7 what's died so you are at a new steady point where
 8 your hematocrit will stay at whatever level you've
 9 chosen to keep.
 10 So the question you're asking is
 11 difficult to answer because you need to tell me what
 12 dosages, how frequently and for how long they were
 13 using it before I can tell you, well, when are you
 14 going to get to a point that you're happy with. Does
 15 that --
 16 Q. Okay. But if you're relying on the science
 17 and the best evidence from the scientific literature,
 18 if you want to get the benefits of EPO, you would have
 19 to take it several weeks before, right?
 20 A. I'm not convinced cyclists use their medical
 21 literature strictly speaking, and the reason that
 22 I say that is because you see cyclists dying, and
 23 they're clearly not using an approach that would be
 24 contained in medical literature.
 25 ARBITRATOR CHERNICK: Doctor, you're not

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1 answering his question. Listen to the question. It's
 2 really specific, and I think we are getting off into
 3 areas that aren't germane.
 4 ARBITRATOR FAULKNER: Thanks.
 5 Q. (BY MR. LEVINSTEIN) Based upon what the
 6 science shows about when you get the benefits of EPO
 7 if you are a cyclist and you wanted the benefits of
 8 EPO, you would have to start taking EPO several weeks
 9 before the event?
 10 A. Yes. It could be less, but several weeks
 11 thereabouts, yes.
 12 Q. Okay. And once you get your blood cell count
 13 up to a certain level, it lasts for several weeks?
 14 A. Yes.
 15 Q. And, therefore, if you wanted to do well in
 16 the Tour de France, you would, based on science, take
 17 EPO several weeks before the Tour de France, get your
 18 level up and once you get to the beginning of the
 19 event, you don't have to take EPO anymore because your
 20 blood cell count would stay up?
 21 A. No, no, I disagree with that, because the
 22 critical parts of the Tour are the mountains which
 23 typically are toward the middle of the event, so you
 24 don't really need to have your -- you don't have to
 25 have your peak values on the first stage. The really

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1 critical parts are the mountain stages, and so you
 2 would want to coincide your EPO regimen with that
 3 particular point.
 4 Now, an athlete could always choose,
 5 well, I'm going to just blitz the whole thing and be
 6 at my peak on day one all the way through to the
 7 mountains. He could choose that as well.
 8 Q. But when you take EPO on a given day, it
 9 doesn't help you that day?
 10 A. Well, I said if you took a massive dose, it
 11 would to a very small amount, but for all intents and
 12 purposes for this discussion, you wouldn't take EPO on
 13 one day and expect to do a hell of a lot better.
 14 Q. But if I had taken it for a while whether I
 15 take it today or not will not affect my performance
 16 today?
 17 A. No, but will it affect your performance four
 18 or five, six, seven, eight days later.
 19 Q. Two weeks later, right?
 20 A. Well, no, see that's not accurate. The -- we
 21 have characterized this drop in hematocrit and we have
 22 presented mean values, but some people's values drop
 23 much quicker than others, so it's an individual thing.
 24 Generally speaking, after a couple of
 25 weeks your values are back to base line, but in the

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1 interim you've only got a slow decline, so on day --
 2 say you stop injections on day zero. On day 7 you're
 3 still going to have a performance advantage, day 14
 4 you will have a smaller performance advantage, day 21
 5 you might still have an advantage but it would be --
 6 typically it would be negligible.
 7 Q. Well, given that, if the mountain stages are
 8 the key stages --
 9 A. And the time trials, yes.
 10 Q. -- once you've gotten to the last mountain
 11 stage, it doesn't make sense to take EPO on the day of
 12 the last mountain stage, does it?
 13 A. Well, in my mind it doesn't make sense to
 14 take EPO from the start.
 15 Q. But if you want to get a performance
 16 advantage, it doesn't make sense to take EPO during
 17 the last mountain stage of the Tour de France, does
 18 it?
 19 A. Well, I would argue that to the -- you're
 20 asking me to predict the psychology of an athlete. It
 21 doesn't make sense if you read the literature, but
 22 that's not what an athlete is basing their
 23 administration protocols on.
 24 Q. But you testified when you went through your
 25 little chart that you would expect --

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1 A. It's a big chart.
 2 Q. Not that chart.
 3 You would expect -- the stage-by-stage
 4 blitz that you -- would expect to see a cyclist taking
 5 EPO by injection on the day of the last mountain
 6 races? Is that what you would expect to see by a
 7 cyclist who wanted a performance advantage?
 8 A. Now you've confused me.
 9 Q. Well, do you have that document with your
 10 chart that goes stage by stage?
 11 A. Yes.
 12 Q. And in it it shows --
 13 ARBITRATOR CHERNICK: Could we have an
 14 exhibit reference, please?
 15 MS. EVORA: Respondents' 76.
 16 MR. TILLOTSON: 76.
 17 Q. (BY MR. LEVINSTEIN) Okay. Real quick, if
 18 you'll look at stages 12 and 14.
 19 A. Uh-huh.
 20 Q. Are these the last big mountain races,
 21 stages?
 22 A. I wouldn't like to say. I --
 23 Q. You don't know?
 24 A. I don't know for sure.
 25 Q. Okay. But taking EPO at stage 12 or stage 14

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1 of the race with only 7 stages to go isn't going to
 2 give you any advantage in terms of blood count, is it?
 3 EPO you took at stage 12 or stage 14 wouldn't help you
 4 in the Tour de France; it wouldn't kick in until after
 5 the Tour de France is over?
 6 A. No, that's not correct.
 7 Q. Okay. But --
 8 A. I can elaborate if you would like, but it's
 9 not correct.
 10 Q. Well, let me just ask it this way, taking EPO
 11 in the last mountain stage doesn't make sense from a
 12 scientific perspective because the benefit from it
 13 isn't going to happen for a long time, correct?
 14 A. That's not correct.
 15 MR. LEVINSTEIN: Put up page 121 of his
 16 deposition.
 17 A. Page 121?
 18 Q. (BY MR. LEVINSTEIN) Yes. My question to
 19 you, so it doesn't make a whole lot of sense taking
 20 EPO on the last mountain stage if that's the last
 21 stage when you think you need help, right, because the
 22 benefit from that isn't going to happen for a long
 23 time?
 24 Well, from a scientist's perspective, the
 25 scientist reading the textbook would say, no, there's

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1 no reason. Is that correct?
 2 A. That's in my deposition, but here I'm talking
 3 about -- your question was if you want to benefit on
 4 the last mountain stage, does it make sense to have an
 5 EPO injection on that day. Now, that's different than
 6 the question you asked me before is, well, when you've
 7 still got another -- what I can see -- six or seven
 8 days to go, taking an injection on day -- stage 13,
 9 14, when you've still got another week to continue,
 10 that does make sense.
 11 Q. Wasn't it your testimony it takes several
 12 days to get the benefit of an EPO injection?
 13 A. I said it takes several days for it to kick
 14 in, and at that point you need to maintain it. As
 15 soon as you stop, that's going to start coming down.
 16 Now, the point at which you say now it's
 17 a significant drop is a -- it's a subjective call. It
 18 will gradually decrease over time from the point that
 19 you stop taking the EPO.
 20 Q. Okay. I'm going to change subjects here. We
 21 are getting close.
 22 MR. LEVINSTEIN: Could we put up
 23 Dr. Nichols' affidavit.
 24 Q. (BY MR. LEVINSTEIN) Are you familiar with
 25 Dr. Craig Nichols, who he is?

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1 A. From the -- the mentions that I've heard
 2 associated with him, yes.
 3 Q. Who is Dr. Craig Nichols?
 4 A. I think he was the chemotherapist in charge
 5 of Mr. Armstrong's treatment at Indiana.
 6 Q. Okay.
 7 A. I think he was a chemotherapist.
 8 Q. Have you seen his affidavit?
 9 A. I think it was included in the medical
 10 records, yes.
 11 Q. It was the first pages of the medical record,
 12 yes.
 13 A. Yes.
 14 MR. LEVINSTEIN: Could we show paragraphs
 15 9 and 10, please?
 16 THE WITNESS: Do I have that here?
 17 MR. TILLOTSON: I don't think we do.
 18 MR. BREEN: Here's a copy.
 19 MR. LEVINSTEIN: I don't have a paper
 20 copy because it was in --
 21 MR. BREEN: I've got one here.
 22 THE WITNESS: Thank you.
 23 A. 9 and 10?
 24 Q. (BY MR. LEVINSTEIN) Yes. Now, it says,
 25 paragraph 9, following successful treatment of his

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1 cancer in 1996, I continued checks of Lance
 2 Armstrong's blood levels on a regular basis from
 3 January 1997 to October 2001. Initially he had
 4 regular evaluations every several months for the first
 5 year, every four months in the second year and twice
 6 yearly to 2001. Do you see that?
 7 A. Yes, I see that.
 8 Q. And he then says that he confirmed during
 9 that monitoring period he saw nothing irregular in
 10 Lance Armstrong's hemoglobin or hematocrit level.
 11 Lance Armstrong's blood levels remained consistent and
 12 did not fluctuate outside the normal range. I
 13 confirmed at the checkups and also upon reviewing the
 14 material in the file there's nothing irregular with
 15 Lance Armstrong's red blood cell levels throughout.
 16 I'm a blood specialist and very familiar with the use
 17 and effects of EPO. Had Lance Armstrong been using
 18 EPO to enhance his cycling performance, I would have
 19 likely identified differences in his blood levels.
 20 After all, I treated him and administered EPO during
 21 his treatment years when he was not cycling between
 22 October 1996 and January 1997 and was very familiar
 23 with his blood level.
 24 Do you believe that testimony to be
 25 truthful and accurate?

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1 A. Frankly, no. There's something inconsistent
 2 here, because we asked for all the blood results, and
 3 the results that we got are inconsistent with his
 4 testimony. Now, either he didn't produce the results
 5 to us or he didn't do these tests.
 6 Q. So because you haven't seen the backup data,
 7 you can't credit what he says?
 8 A. No. You asked me, do I think this is
 9 truthful. I'm saying either it's not truthful or he
 10 didn't produce these records.
 11 Q. Okay. Well, let's assume it's truthful and
 12 he didn't produce the records. Well, strike it the
 13 other way. Are you concluding it's not truthful
 14 simply because you didn't get the records?
 15 A. Your question was, do I believe it's
 16 truthful, and I pointed out, no. Now, I don't know
 17 which is true. It could be that this is false. So do
 18 I accept that it is true? No, because I have
 19 reservations.
 20 Q. And you have reservations because you haven't
 21 seen the backup data?
 22 A. Well, I know that he's a doctor and he was
 23 served -- someone was served a subpoena to produce the
 24 records. He says here they exist. He didn't produce
 25 them, so one or the other is wrong. Which one is

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1 wrong, I can't tell you, so I can't say this is
 2 truthful.
 3 Q. But because you haven't seen the documents,
 4 you can't rely on what he says?
 5 A. Because the documents weren't produced.
 6 Q. Okay.
 7 A. I can't rely on what he says because either
 8 he deliberately didn't produce the records or he
 9 didn't do them. I can't tell you which one of those
 10 is correct.
 11 Q. So what you're saying is when he says --
 12 A. I mean, he says, regular evaluations every
 13 several months in the first year, every four months in
 14 the second year and twice a year in 2001. That data
 15 has not been produced to the best of my knowledge.
 16 Now, that's exactly the kind of data that we have
 17 requested all along because that would help me form an
 18 opinion. Now, it's never been produced.
 19 Q. So you believe that he's not telling the
 20 truth when he said he had regular evaluations every
 21 several months for the first year, every four months
 22 in the second year and twice yearly in 2001?
 23 A. You asked me, do I accept this as truthful,
 24 and I said, no, because I have reservations.
 25 Q. Well --

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1 A. And I pointed out what those reservations are
 2 based on.
 3 Q. But the French lab gave you a summary of test
 4 results in the '99 samples. You've seen none of the
 5 underlying data, none of it's been given to you and
 6 yet you have no reservations about their results; is
 7 that correct?
 8 A. I didn't request the underlying data, and
 9 they didn't say, yes, here it is, and then I found out
 10 it's missing. That would be a different case.
 11 Q. But it's your view that Dr. Nichols is not
 12 being truthful when he says that based on his
 13 examination of Lance Armstrong's blood results that he
 14 didn't -- he didn't use EPO?
 15 A. I'm sorry, can you rephrase that?
 16 MR. LEVINSTEIN: I'll leave it. I'm
 17 being told to move on.
 18 ARBITRATOR CHERNICK: Good advice.
 19 ARBITRATOR FAULKNER: Worth taking.
 20 Q. (BY MR. LEVINSTEIN) The Tyler Hamilton case
 21 has been mentioned in this proceeding, and that's the
 22 only other doping case in which you have been a
 23 witness?
 24 A. Yes.
 25 Q. The only case in which whether an athlete

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1 used performance enhancing drugs was at issue -- this
 2 is not a doping case, so let me just -- I wanted to
 3 rephrase my question.
 4 The only other case besides this one in
 5 which you've testified about whether an athlete may
 6 have used performance enhancing drugs, correct?
 7 A. Yes. The only other case I have testified at
 8 is the Hamilton case.
 9 Q. The only case of any kind you've ever
 10 testified at is the Hamilton case?
 11 A. Yes.
 12 Q. And you were a witness basically for the
 13 prosecution, for the people saying that Tyler Hamilton
 14 was guilty?
 15 A. No. They could never really characterize
 16 what I was, because Hamilton's side wanted to call me
 17 but they didn't want to call me their witness so they
 18 called me as an adverse witness or something.
 19 Q. But the test at issue in that case is this
 20 homologous blood transfusion test?
 21 A. Yes, that was the basis of the case, yes.
 22 Q. And the claim was that when Tyler Hamilton's
 23 blood was tested, there were two different sets of red
 24 blood cells in his veins and arteries, in his body?
 25 A. Yes.

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1 Q. However you want to say it.
 2 So the claim that -- was that this test
 3 showed that he had gotten a transfusion with someone
 4 else's blood?
 5 A. That's what the panel found, yes.
 6 Q. But you didn't testify in the first case when
 7 the panel found by two to one he was guilty; you were
 8 a witness in this second case, correct?
 9 A. The CAS case?
 10 Q. Yes.
 11 A. Yes.
 12 Q. And you were part of the group that developed
 13 the test?
 14 A. Yes, I coordinated that research.
 15 Q. And you promoted that test as a test that you
 16 think should be used?
 17 A. Well, I gave the test to the authorities,
 18 and, sure, I felt that it should be used.
 19 Q. And you told the media on a number of
 20 occasions that the test doesn't yield false positives,
 21 correct?
 22 A. Correct.
 23 Q. You were regularly the main person who they
 24 would interview to ask, is this test accurate, and you
 25 said, this test is accurate; if it says they're

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1 positive, there can be no doubt about it; it's
 2 reliable; you're positive, correct?
 3 A. The situation was that the specialists in the
 4 hospital were reluctant to get into the public eye.
 5 For personal reasons they -- that's not their -- their
 6 deal.
 7 Now, as a project coordinator I was happy
 8 to take that point position if you like, and so most
 9 of the media questions were directed to me and I
 10 answered them, yes.
 11 Q. And you said the test was reliable and
 12 doesn't yield false positives?
 13 A. When it's correctly applied, yes.
 14 Q. And you testified in the Tyler Hamilton case
 15 and you told them that the test doesn't yield false
 16 positives, correct?
 17 A. When it's correctly applied, yes.
 18 Q. And there was a question on your direct about
 19 the tests and whether you're -- people are actually
 20 doing blood transfusions or that this is going on --
 21 let me strike that and start again.
 22 There was a question during your direct
 23 about whether you believed that people were enhancing
 24 their performance by taking other people's blood and
 25 transfusing it into them. Do you remember that?

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1 A. Sir, what are you asking?
 2 Q. There was a question about whether you think
 3 that this is a practice that's going on, that people
 4 are getting blood transfusions to enhance their
 5 performance. Do you recall that?
 6 A. You mean athletes?
 7 Q. Yes.
 8 A. Do I suspect athletes of using transfusions?
 9 Q. Yes.
 10 A. Yes.
 11 Q. And your answer was, in fact, that the proof
 12 was in the pudding, I think that's your words, the
 13 proof is in the pudding that because you caught Tyler
 14 Hamilton, that shows this is going on, correct?
 15 A. Well, are you saying I've said that in an
 16 article?
 17 Q. No, you said that in your testimony on
 18 direct.
 19 A. Okay. Well, I accept that.
 20 Q. And in Tyler Hamilton the tested issue was in
 21 September 2004, the lab in Lausanne had reported a
 22 positive test, correct?
 23 A. Correct.
 24 Q. And you testified in September 2005 in that
 25 case?

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1 A. Yeah, I've got a feeling that you know my
 2 testimony intimately.
 3 Q. Okay. And before your testimony you were
 4 asked to produce all documents that related to the
 5 test, weren't you?
 6 A. Say that again.
 7 Q. Before you testified there was a request that
 8 you produce all documents that were relevant to your
 9 testimony about the Lausanne test?
 10 ARBITRATOR FAULKNER: Before you answer,
 11 Counselor, what is the relevance of any of this?
 12 MR. LEVINSTEIN: One second.
 13 ARBITRATOR FAULKNER: Is that a promise?
 14 MR. LEVINSTEIN: It is.
 15 ARBITRATOR FAULKNER: On the record.
 16 MR. LEVINSTEIN: It is.
 17 ARBITRATOR FAULKNER: Good. Please
 18 proceed with your question.
 19 Q. (BY MR. LEVINSTEIN) Go ahead.
 20 A. What was the question?
 21 Q. In connection with your testimony you were
 22 asked to produce all documents that were relevant to
 23 assessing whether the test performed by the Lausanne
 24 lab was, in fact, a correct test that showed whether
 25 Tyler Hamilton had two sets of blood cells.

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1 A. I -- my recollection was I -- I could have
2 been, but I honestly don't think that I was, because
3 it was very confusing. Hamilton's lawyers were
4 saying, we want the panel to call Ashenden, and USADA
5 was saying, you know, it's your witness, you call him.
6 I can't remember any point where we had to do that,
7 but it may well have been. I'm, frankly, getting a
8 little confused between this case and the Hamilton
9 case, so...

10 MR. LEVINSTEIN: Could we put this
11 document up and pass it out if people want a hard
12 copy?

13 ARBITRATOR FAULKNER: Let me return to
14 the question, what is the relevance of the Tyler
15 Hamilton case that is not the case before us?

16 MR. LEVINSTEIN: He's testified about the
17 Tyler Hamilton case and his -- vague view is the fact
18 that Tyler Hamilton, who was formerly on Lance
19 Armstrong's team, that he had used blood transfusions
20 is somehow relevant in this case. They've mentioned
21 that several times, I believe. There's been reference
22 to the fact that Tyler Hamilton was found guilty, and
23 there was testimony to the fact that this gentleman
24 served as an expert witness in that case, is my
25 understanding.

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1 MR. TOWNS: I think -- may I respond just
2 to clarify. I think that the point at which we
3 brought up the Tyler Hamilton issue is when we were
4 establishing the background of this witness and his
5 experience in blood doping and the fact that a test
6 that he coordinated had, in fact, been used in a
7 publicized case.

8 Now, the other issues -- I think we now
9 are starting to understand the genesis of having a
10 lawyer come in just for the purpose of this witness,
11 and in the Tyler Hamilton background there obviously
12 is a convex here, so I would like for the panel to
13 consider that in terms of the relevancy of this.

14 MR. BREEN: I can speak to that, that's
15 not it at all. That goes to the credibility of this
16 witness who's purported to be an expert and that gave
17 incredible testimony before, just like he's doing now.
18 That's what Mr. Levinstein is doing. He can probably
19 do it in two or three questions, I bet, Mr. Chairman,
20 to show he has bias and prejudice.

21 MR. TILLOTSON: I object. If they're
22 going to attempt to impeach a witness with testimony
23 in another proceeding that somehow that testimony
24 lacked credibility, therefore, something he says in
25 this testimony lacks credibility, I think out of

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1 fundamental fairness to both sides, show us what the
2 testimony is, so that he can be properly impeached
3 with respect to that testimony and not do it in a
4 roundabout way and sort of summarily try Mr.
5 Hamilton's case.

6 ARBITRATOR LYON: This is an e-mail from
7 Mr. Ashenden?

8 MR. BREEN: It is. I'm sure he can do it
9 in just a couple of questions and then shut it down.
10 (Discussion off the record among the
11 arbitrators.)

12 ARBITRATOR FAULKNER: Counselor, we are
13 going to direct you to move to a different topic.

14 MR. LEVINSTEIN: Okay.

15 Q. (BY MR. LEVINSTEIN) During your direct you
16 testified that you're critical of Dr. Coyle's article
17 because he accepted Lance Armstrong's weight based on
18 what he had been told by Lance Armstrong.

19 A. Yes.

20 Q. And you said that's not scientific.

21 A. Yes.

22 Q. Now, but you're aware that Dr. Coyle's
23 article was published in a peer reviewed journal?

24 A. Yes.

25 Q. Highly respected journal?

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1 A. Yes.

2 Q. But you didn't believe it was scientific to
3 rely on information he had been given by someone that
4 he hadn't actually weighed Lance Armstrong?

5 A. It's not just my belief, that is a
6 fundamental scientific principle.

7 Q. And so -- sort of covering two topics in a
8 row, so I will move around a little bit. And you
9 testified in your view, subject to the 2000 samples
10 that because they were too clear, you believe Lance
11 Armstrong was engaged in urine manipulation?

12 A. No. Two independent experts have reached a
13 conclusion that these samples were unusually clear. I
14 interpreted those experts' opinions -- and my opinion
15 is that that is consistent with urine manipulation.

16 Q. Are you aware that protocols for -- has there
17 been any testimony in this case about how you give a
18 urine sample?

19 A. Is that a question?

20 Q. I wasn't here so I don't know if they talked
21 about how you do that. Okay.

22 Are you aware that the protocols require
23 that when you're giving a urine sample, you be
24 observed that your clothing be brought below your knee
25 and that your clothing be brought above your chest and

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1 that your sleeves, if you have any long sleeves, be
 2 rolled up?
 3 A. Yes.
 4 Q. And that's the requirement for a Tour de
 5 France or any out-of-competition testing by USADA or
 6 anybody else within the Olympic world, that's how you
 7 conduct the testing, correct?
 8 A. That's what the doping control officers are
 9 supposed to do, yes.
 10 Q. And Lance Armstrong was tested 13 times
 11 during the 2000 Tour de France?
 12 A. Is that what you represent? I'll accept
 13 that.
 14 Q. I think you said there were 15 samples
 15 according to l'Equipe and 13 were his.
 16 A. Okay, I'll accept that.
 17 Q. And you showed us some devices that you can
 18 hide urine in other parts of your body and use a
 19 tube -- instead of using your own body to pee in the
 20 cup, you can use a tube to pee in the cup?
 21 A. Yes.
 22 Q. And that's what you're talking about when you
 23 talk about urine manipulation, right?
 24 A. Yes.
 25 Q. And it's your view that despite the controls

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1 and the rules about how you give a urine sample, that
 2 you think it's likely that during the 13 times when
 3 Lance Armstrong gave a urine sample during the 2000
 4 Tour de France he used a tube to fill the cup instead
 5 of his own urine?
 6 A. I'm saying it's possible based on, first of
 7 all, the fact that it's known to have happened as late
 8 as 2004 at the International Olympic Games -- at the
 9 Olympic games where the best drug controls in the
 10 world are being put in charge of supervising it, and
 11 the fact that the WADA independent observers' report
 12 from the 2003 Tour de France noted that there was no
 13 supervision of cyclists for the time that they
 14 finished the race until they provided the doping
 15 control.
 16 Now, that gives an opportunity to use the
 17 methods that we put up there, and it's been shown
 18 that -- can I get -- and it's been shown that an
 19 Olympic gold medalist has successfully substituted
 20 urine, so, yes, it is possible.
 21 Q. Based solely on the fact that these two guys
 22 reported they thought the urine was clear and reported
 23 they were all negative, those samples, you've come to
 24 the conclusion that it's likely that that's what he
 25 was doing in 2000?

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1 A. No. I've said that it's consistent with
 2 urine manipulation.
 3 Q. Now, with respect to the summary chart from
 4 '99 samples --
 5 A. Sir, what are we talking about now?
 6 Q. We are talking about the document in which
 7 there are 91 samples reported supposedly from the '99
 8 Tour de France, Exhibit 44, the summary document.
 9 MR. TILLOTSON: Respondents' 44.
 10 THE WITNESS: Okay.
 11 Q. (BY MR. LEVINSTEIN) And this is information
 12 about testing done during research, right?
 13 A. Yes.
 14 Q. And if the testing had been done in
 15 accordance with the WADA code, there would be
 16 documents in connection with each one of those 91
 17 tests confirming the internal chain of custody, the
 18 screening tests, with its results and the narrative
 19 and the electropherogram; the confirmation A test,
 20 with the results, the electropherogram; stability
 21 tests, with the results and the electropherogram; the
 22 B confirmation, with results and electropherogram.
 23 All of that packet like we saw from
 24 Dr. Catlin there should be -- if they were going to
 25 comply with the WADA code for every one of those 91

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1 tests there should be an entire packet that looks like
 2 that, correct?
 3 A. No, there shouldn't be.
 4 Q. For every one that they want to contend is a
 5 positive -- for the 12 that they say are positive
 6 there should be those materials if this was for the
 7 purposes of the WADA code?
 8 A. Well, but it's not, so it's a moot point.
 9 ARBITRATOR LYON: Please stop right
 10 there. I want to ask a question.
 11 How much longer do you have?
 12 MR. LEVINSTEIN: Under ten minutes.
 13 ARBITRATOR LYON: Are those real minutes
 14 or are those Herman minutes?
 15 MR. LEVINSTEIN: I've never used Herman
 16 minutes.
 17 ARBITRATOR FAULKNER: Are those ten
 18 minutes going to be addressing new topics or things we
 19 have already heard?
 20 MR. LEVINSTEIN: Huh?
 21 ARBITRATOR FAULKNER: Are those ten
 22 minutes to be addressing new topics or things we have
 23 already heard.
 24 MR. LEVINSTEIN: New topics, I believe.
 25 ARBITRATOR FAULKNER: Okay.

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1 MR. LEVINSTEIN: Or putting old topics
 2 together, I think. It includes --
 3 ARBITRATOR FAULKNER: By the way, what
 4 time is lunch scheduled for so we know?
 5 MR. TILLOTSON: I was told by my
 6 secretary that Specialty was sent to pick it up at
 7 11:20.
 8 ARBITRATOR FAULKNER: So that we have our
 9 times today, we do have other witnesses we are
 10 anticipating today; is that correct? Is Mr. Bandy
 11 testifying?
 12 MR. TILLOTSON: Well, they've asked to
 13 call him as a rebuttal witness.
 14 MR. HERMAN: We have got --
 15 MR. TILLOTSON: There are some other
 16 matters.
 17 ARBITRATOR CHERNICK: We have some time
 18 constraints here.
 19 MR. HERMAN: Exactly. So, yes, if we
 20 can --
 21 MR. LEVINSTEIN: Never mind. I'll pass
 22 the witness.
 23 ARBITRATOR FAULKNER: Thank you very
 24 much. Any redirect?
 25 MR. TOWNS: Yes.

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1 ARBITRATOR FAULKNER: Is that a yes to
 2 her or to us?
 3 MR. TOWNS: Why don't we do this, why
 4 don't we break, find out where lunch is, and I'll put
 5 together a very expeditious redirect.
 6 ARBITRATOR FAULKNER: Okay. We're off
 7 the record.
 8 (Recess 11:45 a.m. to 12:51 p.m.)
 9 ARBITRATOR FAULKNER: Okay, Mr. Towns.
 10 ARBITRATOR CHERNICK: I think we probably
 11 need Mr. Levinstein, don't we?
 12 MR. HERMAN: No, go ahead.
 13 ARBITRATOR FAULKNER: Okay. Please
 14 proceed.
 15 ARBITRATOR CHERNICK: Is it something
 16 that we said?
 17 MR. HERMAN: You never write, you never
 18 call.
 19 ARBITRATOR FAULKNER: We are on a tight
 20 schedule.
 21 MR. TOWNS: No, I understand. Tim, do
 22 you know about these documents that we have been
 23 discussing with Sean with regard to Dr. Ashenden?
 24 MR. HERMAN: Pardon me?
 25 MR. TOWNS: Sean Breen and I had talked

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1 about document stipulation for Dr. Ashenden. Do you
 2 know about that or do you want me to hold off?
 3 MR. HERMAN: Hold off on that, if you
 4 can, and --
 5 MR. TOWNS: Sure. That's fine.
 6 RE-DIRECT EXAMINATION
 7 BY MR. TOWNS:
 8 Q. Dr. Ashenden, let me first ask you, there was
 9 some discussion about the -- the l'Equipe article and
 10 the lab that ran the results and I think we heard
 11 quite a bit about that actually, but I wanted to ask
 12 you, have you been, in the course of this litigation,
 13 provided any documents that would assist you in
 14 reaching a conclusion that the chain of custody was
 15 handled properly?
 16 A. Yes.
 17 Q. Okay. I want to show you what's been marked
 18 as Respondents' Exhibit 109. Would you describe for
 19 the panel what Respondents' 109 is?
 20 A. It's letter by the director of the lab,
 21 Jacques de Cearriuz to Montbrial.
 22 MR. BREEN: We will object on the basis
 23 of hearsay, Your Honor. I don't know if he's going to
 24 go through it right now, but on the basis of the
 25 objections that were raised to a couple of letters

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1 that we were going to try to get in, this is pure
 2 hearsay. It's not from Mr. Ashenden. It's apparently
 3 to Mr. Montbrial.
 4 MS. BLUE: Who represents SCA.
 5 MR. HERMAN: Who represents SCA.
 6 ARBITRATOR FAULKNER: We recall the name.
 7 MR. BREEN: Thibeault, I think he's
 8 referred to.
 9 ARBITRATOR FAULKNER: Please respond.
 10 MR. TOWNS: If I may, Your Honor, as an
 11 expert, he's able to testify on the documents that
 12 he's reviewed in reaching in his opinion, and if he's
 13 relied upon it, it would be up to the panel to afford
 14 the weight to that evidence, but as an admissibility
 15 matter, it simply is something he's reviewed.
 16 ARBITRATOR CHERNICK: You're not offering
 17 it in evidence, you're simply offering it as a basis
 18 for his opinion?
 19 MR. TOWNS: I will be offering the
 20 document into evidence as one of the foundational
 21 documents that he relied upon.
 22 ARBITRATOR CHERNICK: But the underlying
 23 document doesn't need to come into evidence for him to
 24 say, this is something that I relied on, and we can
 25 read it for that purpose.

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1 MR. TOWNS: No, that's absolutely
2 correct.
3 ARBITRATOR CHERNICK: Why don't we defer
4 the dispute about admissibility and let him testify.
5 ARBITRATOR FAULKNER: Let him testify and
6 then we will decide what we will do with it, if
7 anything.
8 Q. (BY MR. TOWNS) I'm sorry, Dr. Ashenden,
9 would you again tell us briefly who is this letter
10 from and what's the conclusion that's reached?
11 A. The letter is from the director of the lab,
12 Jacques Cearriuz, outlining the chain of custody of
13 the samples at the LNDD laboratory, outlining the
14 security procedures that exist within the laboratory,
15 and pointing out that the samples in question there
16 are in some cases the remnants of the blood that were
17 to be examined.
18 Q. And I want to direct you next to Respondents'
19 Exhibit 44 which we have all seen plenty of times.
20 That's the actual results that were published in
21 l'Equipe out of the lab, and are those, in fact, the
22 results that you used in reaching your opinions that
23 you reach in Exhibit 76?
24 A. In Exhibit 76?
25 Q. Let me ask that over. You used the values

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1 and the results that are demonstrated in Respondents'
2 44 in making your chart in Respondents' 76; is that
3 correct?
4 A. Yes, dovetailed the results from here. The
5 reproductions were better than this, and dovetailed
6 them, yes.
7 Q. Now, one of the points that came up under
8 cross-examination was that it would make no sense to
9 begin an EPO regimen on the first day of the Tour de
10 France at the prologue. Do you recall that line of
11 questioning?
12 A. Yes.
13 Q. Do you agree with that?
14 A. I think it would be unusual to start the
15 first injection on the first day of the race, yes.
16 Q. How would you then reconcile the results that
17 you -- that you show in Respondent's 76 with a doping
18 program that Mr. Armstrong may have been using in
19 1999?
20 A. Well, typically the -- the purative time that
21 you take EPO is depending on what sort of dosages you
22 use or things like that, but typically it goes over a
23 couple of weeks. All that I've been presented with
24 heré is a new note from the prologue to the last time
25 the sample was collected which shows that during that

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1 period he was using EPO. I haven't been given any
2 data, and I don't think there's any doubt about it to
3 show one way or another whether he was using in the
4 days that -- leading up to that. I conclude that that
5 would happen, but an EPO program would typically last
6 several weeks and would have begun before the race
7 starts.
8 Q. And in examining the EPO results in the 1999
9 l'Equipe reported findings, was it a combination of
10 Respondents' 44 and Respondents' 109 that led you to
11 those conclusions, among other things?
12 A. Yes, among other thing, yes.
13 Q. Okay.
14 MR. TOWNS: Sean, do you --
15 MR. BREEN: Yes, sir I'm listening.
16 MR. TOWNS: The documents that we talked
17 about, can I read through those and see if there's
18 anything left that I need to do with Mr. Ashenden --
19 or Dr. Ashenden on documents? Do you have that list
20 with you?
21 MR. BREEN: I don't have the list, but
22 the only document I had a problem with was the
23 objections we previously raised regarding the
24 so-called test results, et cetera. So if you're
25 just -- the articles -- I have no objections to you

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1 tendering to the panel the articles that you have
2 listed in there, and I believe the last thing was some
3 kind of UCI letter.
4 MR. TOWNS: Right.
5 MR. BREEN: And with the same
6 understanding that it wasn't a letter to this witness,
7 I understand it's being used because he's an expert as
8 something that he looked at and I anticipate the panel
9 would have the same view to it. With that said, go
10 for it. We will streamline it.
11 MR. TOWNS: We offer to admit
12 Respondents' 36, Respondents' 37, Respondents' 42,
13 Respondents' 58 through 74, which is a series of
14 articles, Respondents' 76 and Respondents' 78.
15 ARBITRATOR FAULKNER: Okay, subject to
16 Mr. Breen's comments, they'll be admitted.
17 Q. (BY MR. TOWNS) Now, Dr. Ashenden, please
18 look at what's been marked as Respondents' 79 in
19 front of you there.
20 A. Yes.
21 Q. Can you describe to the panel what that is?
22 A. That is a letter by the UCI's head of
23 antidoping, Leon Schattenberg. I obtained that from
24 UCI's web site, and it had been a letter that he had
25 sent to all riders in the sense of being made a public

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1 document where he was -- it's essentially addressing
 2 some doping issues with the cyclists.
 3 Q. And what is it about Respondents' 79 that was
 4 helpful to you in reaching your conclusions in this
 5 case?
 6 A. Well, what -- what drew my attention was
 7 the -- going on the second page where this is the head
 8 of the antidoping program and he's acknowledging that
 9 athletes have been able, currently are able and will
 10 be in the future able to use doping products that they
 11 aren't able to detect. I found this to be a
 12 significant view for the head of the antidoping
 13 program to state publicly.
 14 Q. Could you point to the panel which sections
 15 of this page that you're specifically talking about?
 16 A. If you go to the fifth paragraph that starts
 17 some other.
 18 ARBITRATOR LYON: Who's Leon
 19 Schattenberg?
 20 THE WITNESS: He's the head of the UCI's
 21 antidoping program.
 22 Q. (BY MR. TOWNS) Is that the section you're
 23 referring to?
 24 A. Yes.
 25 MR. TOWNS: If you could highlight the

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1 three paragraphs.
 2 A. Yes. So he's acknowledging that some
 3 products such as EPO growth hormone can't be detected.
 4 He acknowledges that they're bound to be followed by
 5 other new and undetectable products. He states in the
 6 sentence which he highlights that doping checks will
 7 always be a step behind reality. And I found that to
 8 be a fairly compelling acknowledgment that what I've
 9 been saying for years and years is that the doping
 10 programs we have in place need to be improved because
 11 athletes are able to get away without being caught.
 12 Q. (BY MR. TOWNS) And this was put out by the
 13 head of antidoping for UCI; is that right?
 14 A. Yes.
 15 Q. And it's in the public domain as a public
 16 document?
 17 A. I got it from the UCI web site.
 18 MR. BREEN: When was that, by the way?
 19 MR. TOWNS: Does it show a publication
 20 date on it?
 21 MR. BREEN: I mean, when did you get it?
 22 THE WITNESS: I don't recollect.
 23 MR. BREEN: Okay.
 24 MR. TOWNS: We would offer to the panel
 25 Respondents' Exhibit 79, which is this document.

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1 MR. BREEN: Subject to my previous
 2 objections, Your Honor.
 3 ARBITRATOR FAULKNER: Those are noted.
 4 It will be admitted.
 5 ARBITRATOR LYON: This letter is 1998;
 6 that's what it says.
 7 MR. TOWNS: And finally, we would offer
 8 to the panel Respondents' Exhibit 44, which is the
 9 much talked about l'Equipe results that Mr. -- that
 10 Dr. Ashenden relied upon in reaching his conclusions.
 11 MR. BREEN: The summary sheet. I won't
 12 repeat all our objections to those, Mr. Chairman, but
 13 as we --
 14 ARBITRATOR FAULKNER: We are familiar
 15 with them.
 16 ARBITRATOR LYON: I have a couple of
 17 questions about the summary sheet before we go. Where
 18 did it come from, the summary sheet?
 19 MR. TILLOTSON: In terms of where we got
 20 it?
 21 ARBITRATOR LYON: Yes.
 22 MR. TILLOTSON: It was provided to our
 23 French counsel who obtained it from the reporter from
 24 l'Equipe.
 25 ARBITRATOR LYON: And you --

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1 MR. TILLOTSON: Where he got it from is
 2 the source of the investigation. I mean, that has not
 3 been revealed to anyone.
 4 ARBITRATOR LYON: Where the reporter got
 5 it from?
 6 MR. TILLOTSON: Right. Someone obviously
 7 leaked it or gave it; the reporter was able to obtain
 8 it. Whether it was leaked to him or leaked to someone
 9 and the reporter got it, I don't know, because all we
 10 had was the newspaper article and we made inquiries
 11 and our French counsel was able to obtain it.
 12 ARBITRATOR LYON: You testified earlier
 13 that you had seen a color coded version of that?
 14 THE WITNESS: Yes.
 15 ARBITRATOR LYON: Is that true? I mean,
 16 I'm not doubting your -- do you have color coded copy?
 17 MR. TILLOTSON: Yes. When he said that,
 18 it reminded me that there is a version that's in
 19 color, and I can provide that. I just didn't think
 20 about it.
 21 ARBITRATOR LYON: Where is it?
 22 MR. TILLOTSON: In possession of the
 23 documents that we were provided.
 24 ARBITRATOR FAULKNER: In the possession
 25 of who? Who has it?

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1 MR. TILLOTSON: I've got it. The version
2 I got was colored. It was not a black-and-white
3 version. When I sent it to you, I think I sent it by
4 e-mail so the e-mail would be in color, but when it
5 was produced and made part of the exhibits, it was
6 simply colored in back and white.
7 ARBITRATOR FAULKNER: You mean copied in
8 black and white?
9 MR. TILLOTSON: I mean copied in black
10 and white. And I had forgotten it was colored until
11 he testified.
12 ARBITRATOR LYON: Where is the colored
13 copy right now, today?
14 MR. TILLOTSON: Physically?
15 ARBITRATOR LYON: Yes.
16 MR. TILLOTSON: It might be in all of the
17 boxes with the exhibits.
18 ARBITRATOR FAULKNER: Could y'all get us
19 a colored copy, please?
20 MR. TILLOTSON: Yes. I had forgotten --
21 until he brought that up, I had forgotten that it was
22 colored, but, yes, we will provide a colored copy.
23 ARBITRATOR FAULKNER: Okay.
24 We are going to admit it, but we want a
25 color copy provided to each of the members of the

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1 panel, and to opposing counsel so they can see it as
2 well, because quite frankly, guys, the black and white
3 copies are not good.
4 MR. TILLOTSON: I apologize, Your Honor,
5 you mentioned -- did we send it by e-mail or do you
6 want us to provide a hard copy?
7 ARBITRATOR FAULKNER: Why don't you make
8 a copy that you know we all can see and read and then
9 you can mail it to everybody. The record is going to
10 be open for a little while.
11 Mr. Towns, anything else?
12 MR. TOWNS: No.
13 MR. BREEN: Do you mind if I do a couple
14 of quick questions on cross examination, just a couple
15 quick ones.
16 RE-CROSS EXAMINATION
17 BY MR. BREEN:
18 Q. Mr. Ashenden, let me ask you something, do
19 they have income taxes in Australia?
20 A. Yes.
21 Q. And I take it there are ways people cheat on
22 their income taxes in Australia?
23 A. Yeah, I've heard that, yes.
24 Q. All right. Does that mean that people are
25 cheating on their income taxes in Australia because

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1 they can?
2 I mean, isn't that what you're testifying
3 to in this case, is that there's ways to beat drug
4 tests, so, therefore, part of your opinion is that
5 because there's a way to do it, Mr. Armstrong can do
6 it, right?
7 A. No, no, I don't think that's an accurate
8 representation.
9 Q. Were you here when Dr. Coyle was talking
10 about the exchange he had with Andrew N. Jones, the
11 professor of applied physiology about Paula Radcliffe?
12 A. I don't recall that, no.
13 Q. Do you recall that he talked --
14 MR. BREEN: Can we put up -- I'm going to
15 offer this because Dr. Coyle did testify about it.
16 ARBITRATOR FAULKNER: What is it?
17 MR. BREEN: It's a letter that Dr. Coyle
18 testified about.
19 ARBITRATOR FAULKNER: Is it identified as
20 anything?
21 MR. BREEN: If it's not, it's about to
22 be.
23 ARBITRATOR FAULKNER: Okay.
24 MR. BREEN: It will be our next exhibit.
25 It's 150.

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1 ARBITRATOR FAULKNER: Would you please
2 give it to the witness?
3 MR. BREEN: Sure, it's right up on the
4 screen, but I'll be happy to.
5 THE WITNESS: Thank you.
6 MR. BREEN: You're welcome.
7 Q. (BY MR. BREEN) Do you also recognize that as
8 a letter from Dr. Coyle's file that was produced in
9 this case?
10 A. No, I've never seen this.
11 Q. Well, you attended Dr. Coyle's deposition in
12 Austin, in my office, didn't you?
13 A. Yes.
14 Q. And were you there when he talked about in
15 his deposition the fact that he had had this exchange
16 with Dr. Jones regarding the striking similarities
17 between his study of Mr. Armstrong and Dr. Jones'
18 study of Paula Radcliffe?
19 A. Yes, I remember that.
20 Q. Do you remember that now?
21 A. Yes.
22 Q. So when you testified on direct with Cody
23 that you had never seen anything like Ed Coyle's
24 study, actually you weren't remembering the fact that
25 Dr. Coyle had talked specifically about this, both in

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1 his deposition and here in front of the panel, right?
 2 A. No, that's not accurate.
 3 Q. You were remembering that, but you just
 4 discounted it?
 5 A. I think I pointed out that this is about a
 6 runner, we are talking about a cyclist and you can't
 7 compare the two when you're talking about increases in
 8 efficiency, because a runner depends upon elastic
 9 energy and energy stored in the muscles, which is
 10 simply not an issue in cyclists. So, no, they're not
 11 directly comparable.
 12 Q. So Dr. Jones is wrong when he writes Dr.
 13 Coyle and says, the data I presented in Loughborough
 14 showed a continuation of this same trend. What you're
 15 saying is that Dr. Jones is just comparing apples to
 16 oranges and he's wrong, he shouldn't show that it's
 17 the same trend; is that right?
 18 A. Given this is the first time I've seen this,
 19 can I read, please?
 20 Q. You've had -- Dr. Ashenden, it's been in the
 21 possession of the lawyers --
 22 MR. TOWNS: Well, that's --
 23 ARBITRATOR FAULKNER: Please, just let
 24 him read it, and then you can question further.
 25 MR. BREEN: Sure.

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1 ARBITRATOR FAULKNER: Please read it.
 2 THE WITNESS: So can you ask the question
 3 again, please?
 4 ARBITRATOR FAULKNER: Okay.
 5 MR. BREEN: Sure.
 6 Q. (BY MR. BREEN) Do you think that Dr. Jones
 7 is just mistaken and comparing apples to oranges when,
 8 for instance, in the last sentence he says the
 9 similarities in the physiological factors linked to
 10 continued improvements in performance in Armstrong and
 11 Radcliffe are striking? You just disagree with
 12 Dr. Jones on that?
 13 A. I don't think -- based on this letter, I
 14 don't think he's clarified his comments at all, so I
 15 mean, I would struggle to make any comparisons one way
 16 or another. You're asking me what he was thinking
 17 when he wrote it.
 18 Q. No, not at all. I'm asking you if you are
 19 asserting to this panel that Dr. Jones is comparing
 20 apples to oranges and he's just in error when he makes
 21 a comparison saying that the physiological factors
 22 linked to continued improvements as striking?
 23 A. If he had mentioned efficiency, for example,
 24 I think it would be, okay, well, he really is talking
 25 about that, but he makes no mention of efficiency

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1 here. Physiological factors could be a range of
 2 things, so I don't think that's definitive, but I will
 3 repeat my stance that I don't believe improvements in
 4 efficiency in runners, which I acknowledge have been
 5 documented, are comparable with improvements in
 6 efficiencies in cyclists, because they are two
 7 different things.
 8 Q. Okay. And if Dr. Jones thinks otherwise, you
 9 would just disagree with him? I'm not saying he does,
 10 but if he did think otherwise, that there was a basis
 11 to compare the two, you would disagree with Dr. Jones?
 12 A. I would like to sit down and talk to him
 13 about it. I would disagree with him if that was his
 14 stance.
 15 Q. Fair enough. Now, when you were hired in
 16 this case, did you know that SCA had already denied
 17 this claim?
 18 A. No.
 19 Q. Now, it's fair to say that you testified that
 20 when you were hired in this case, you already had a
 21 predisposition, you already had a mental outlook, you
 22 already had an opinion that Mr. Armstrong was a
 23 cheater, right?
 24 MR. TILLOTSON: Well, I object. This has
 25 been covered and asked and answered and this is

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1 re-cross.
 2 MR. BREEN: I promise you I have one or
 3 two more questions. I know the panel is --
 4 ARBITRATOR FAULKNER: Argument in
 5 questions isn't particularly helpful, y'all. We
 6 understand where you're coming from, so if you can
 7 focus your questions narrowly for this witness, you're
 8 going to have an opportunity to argue anything y'all
 9 want to.
 10 MR. BREEN: Mr. Faulkner, not a problem,
 11 just a couple of questions.
 12 Q. (BY MR. BREEN) Is that fair that by that
 13 time you were hired you had that outlook?
 14 ARBITRATOR CHERNICK: Could you reask the
 15 question. You really had three different things in
 16 there that weren't necessarily the same --
 17 MR. BREEN: Sure. No problem at all, Mr.
 18 Chernick.
 19 Q. (BY MR. BREEN) When you were hired in this
 20 case, you were of the opinion and the belief that Mr.
 21 Armstrong had used performance enhancing drugs?
 22 A. No. I think I pretty carefully pointed out
 23 that based on what I had seen at that point in time,
 24 the explanations that I had seen didn't account for
 25 that improvement. And I think I categorized it as I

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1 would have belonged to the group of doubters.
2 Q. You would have belonged to the group of
3 doubters?
4 A. Yes.
5 Q. And that was after SCA had already denied
6 this claim?
7 A. Well, I don't know about the denial of the
8 claim, sir.
9 Q. Fair enough, Dr. Ashenden. That's all I
10 have.
11 ARBITRATOR FAULKNER: Thank you very
12 much.
13 Anything else?
14 MR. TOWNS: No.
15 ARBITRATOR CHERNICK: Thank you.
16 ARBITRATOR FAULKNER: Nothing else, okay,
17 Mr. Chernick?
18 Senator?
19 ARBITRATOR LYON: No questions of this
20 witness.
21 ARBITRATOR FAULKNER: No question, thank
22 you. You may step down, sir.
23 Did y'all have another witness or
24 anything else --
25 ARBITRATOR CHERNICK: Subject to all of

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1 the things that Mr. Tillotson has mentioned --
2 ARBITRATOR FAULKNER: Right.
3 MR. TILLOTSON: Can I say what the rest
4 of my case is?
5 ARBITRATOR FAULKNER: Please recite that.
6 MR. TILLOTSON: We would offer and will
7 offer the deposition testimony of Kelly Price,
8 excerpts of Kelly Price and excerpts from Mark Gorksi.
9 We will tender those to Mr. Herman. He can then add
10 any additional things he wants to do and then we can
11 tender that to the panel prior to our next
12 reconvening, if that's okay.
13 ARBITRATOR FAULKNER: Okay.
14 MR. TILLOTSON: I will attempt but have
15 not been able to reach a stipulation with Mr. Herman
16 regarding the Stephanie McIlvain, Greg LeMond tape and
17 I have not had a chance to study in depth the letter
18 from the lawyer. If we reach a stipulation, I'll
19 present that to the panel for next time we reconvene.
20 If not, we may have to take up the issue of the
21 admissibility of the tape.
22 And then subject to the deposition
23 testimony we may offer from Frank Andreu and Emma
24 O'Reilly, those are the only live witnesses that we
25 would have -- the only live witnesses we have left at

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1 this time.
2 ARBITRATOR CHERNICK: Can I ask that if
3 you do not reach agreement with respect to the
4 admissibility of the McIlvain/LeMond tape, that you
5 focus in whatever briefing you intend to provide to
6 the panel by February 8th what your arguments might be
7 with respect to the admissibility in this proceeding
8 of that tape.
9 MR. HERMAN: Okay.
10 MR. BREEN: Sure.
11 MR. TILLOTSON: Sure.
12 ARBITRATOR FAULKNER: Anything else,
13 Mr. Tillotson?
14 MR. TILLOTSON: Subject to the some
15 cleanup to ensure that certain documents -- we have
16 prepared a chart of all the documents in regard to
17 what we have moved to admit and what have been
18 admitted. Subject to that, which I don't think we
19 need to go through at this time, I'll try to work with
20 Mr. Herman on that, that would be the conclusion of
21 our case in chief.
22 ARBITRATOR FAULKNER: Mr. Herman?
23 MR. HERMAN: I think -- I was going to
24 call Mr. Bandy, but I think Mr. Tillotson and I have
25 reached an agreement, and let me recite this, because

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1 we don't have it in writing but please correct me
2 if -- I don't mean to represent that this necessarily
3 is our agreement. Feel free to interrupt me at any
4 time.
5 We are offering -- instead of calling
6 Mr. Bandy, we are offering certain of Mr. Bandy's
7 deposition exhibits -- deposition pages or testimony
8 which I will -- I'm having extracted now, prepared in
9 writing and give to everybody.
10 I think that we agreed that Mr. Bandy was
11 the author of Claimants' Exhibit 71, which is the
12 Memorandum of September 20, 2004 and it had not been
13 produced to us at the time of Mr. Bandy's deposition.
14 But in any event, he prepared it at or near
15 September 20, and it -- his effort was to accurately
16 reflect the conversation that Bandy and Hamman had
17 with Mr. Walsh and the LeMonds.
18 The rules and regulations of the UCI and
19 the Tour de France have been asserted by SCA to be
20 part of this contract somehow. So I am marking and
21 tendering the regulations of the race and prize money
22 of the Tour de France; part 12, Discipline and
23 Procedures of UCI, and part 14, which is the full
24 chapter on antidoping rules of the UCI. And I think
25 Mr. Tillotson has agreed to the admission of those

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1 documents.
 2 ARBITRATOR CHERNICK: And those would be
 3 152, 153 and 154 respectively.
 4 MR. HERMAN: I think so.
 5 ARBITRATOR FAULKNER: Would you go ahead
 6 and write that on there.
 7 Jeff, I saw your head shake. Was that a
 8 yes, you're agreeing?
 9 MR. TILLOTSON: I have no objection to
 10 the admission --
 11 ARBITRATOR CHERNICK: Jeff, wait just a
 12 second. 151 was the letter that was handed to Dr.
 13 Ashenden.
 14 MS. EVORA: I have the e-mail from
 15 Ashenden in the Hamilton case. Did we disallow that?
 16 ARBITRATOR CHERNICK: I don't think it
 17 has ever -- I don't think it came back.
 18 What did you have that as?
 19 MS. EVORA: 151. The e-mail that
 20 Mr. Levinstein tried to use regarding the Hamilton
 21 case.
 22 ARBITRATOR CHERNICK: So 152 would then
 23 be the Coyle Jones letter.
 24 MS. EVORA: That's what I have as 152,
 25 yes.

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1 ARBITRATOR CHERNICK: So these are 153,
 2 154 and 155.
 3 MR. HERMAN: Okay.
 4 ARBITRATOR CHERNICK: Yes, it was shown
 5 but it wasn't identified as included in the exhibit
 6 numbers. That's fine.
 7 So 150 is the Nichols affidavit, 151 is
 8 the e-mail, 152 is the Coyle Jones letter, and 153,
 9 154 and 155 are the Tour de France and UCI documents.
 10 MR. HERMAN: Here's the other one.
 11 ARBITRATOR FAULKNER: Okay, I've got it.
 12 MR. HERMAN: Chapter 14 is 153,
 13 Chapter 12 is 154.
 14 Okay. I think we have agreed on the
 15 admission of -- I don't really want to introduce the
 16 entire document, but, Mr. Tillotson, have we agreed on
 17 the reliability of these statistics or not?
 18 MR. TILLOTSON: I'll allow you to
 19 introduce it into evidence without objection. I'm not
 20 going to stipulate as to its reliability.
 21 MR. HERMAN: Once it's in evidence, what
 22 do I care?
 23 ARBITRATOR FAULKNER: That's candid.
 24 What's the number?
 25 MR. TILLOTSON: That would be apparently

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1 obvious to me since two weeks ago.
 2 That you would actually admit that in
 3 that tone of voice.
 4 ARBITRATOR FAULKNER: What is that?
 5 MR. HERMAN: The Tour de France
 6 statistics.
 7 ARBITRATOR FAULKNER: What number is
 8 that?
 9 ARBITRATOR CHERNICK: 156.
 10 MR. HERMAN: And then I'm offering 157,
 11 which is an extract of the information on 156, which I
 12 understand that Mr. Tillotson did not agree to, but I
 13 have shown him the accuracy of the numbers as
 14 reflected on the Torelli information, and I might also
 15 state that this Torelli information agrees with the
 16 information produced by SCA about what the times were
 17 and who the winners were, but in the SCA document that
 18 the actual total kilometers weren't shown, so this is
 19 just an arithmetic exercise.
 20 So I'm offering 157, which contains the
 21 1981, 1991, 2001, 2004 average speeds of the Tour de
 22 France in kilometers per hour, the difference between
 23 the preceding entry, and the total overall percentage
 24 increase over the period of the 24 years.
 25 ARBITRATOR CHERNICK: Can we go off the

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1 record for just a second?
 2 (Discussion held off the record)
 3 ARBITRATOR CHERNICK: Back on the record.
 4 So 156 is the statistics from the web
 5 site -- from the web site and 157 is the extracts?
 6 MR. HERMAN: That's exactly right, yes.
 7 I don't have multiple copies of this, but if you'll
 8 allow me to withdraw it, I'll make sure everybody gets
 9 copies.
 10 MR. BREEN: Actually Ms. Ross will make
 11 sure.
 12 MR. HERMAN: Finally, with the emphasis
 13 on the finally, I think Mr. Tillotson has already
 14 agreed that this particular exhibit should be marked
 15 Respondents' 25-A, if I'm not mistaken.
 16 MR. TILLOTSON: Correct. Correct.
 17 MR. HERMAN: Okay. So with apologies to
 18 Mr. Tillotson for putting my nose in his case, I want
 19 to make sure that the panel receives a copy of
 20 Respondents' 25-A, which is Mr. Bandy's translation,
 21 which is 27 pages in length, which was produced to us
 22 by SCA and -- versus the 200-some-odd pages of
 23 Exhibit 25.
 24 ARBITRATOR CHERNICK: Do you only have
 25 one of these?

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1 MR. HERMAN: I only have one of those so
2 with your permission I'll withdraw that and have --
3 MR. TILLOTSON: We'll have Mr. Bandy
4 confirm it.
5 ARBITRATOR FAULKNER: Yes, just confirm
6 it and then I'll give it back you and you can submit
7 it when you send copies to all of us.
8 MR. TILLOTSON: Assuming that's it, I
9 have no objection.
10 MR. HERMAN: I don't know if this falls
11 under housekeeping or not, but I think it does. We
12 have the affidavits that the admissibility of which I
13 think we have agreed to, Doctors Nichols and Einhorn,
14 as well as Messrs. Zorzoli, Tygert, Varin,
15 Dr. Schattenberg and Dr. Catlin, which have been
16 previously provided to the panel, but we will bind
17 these and get the --
18 ARBITRATOR LYON: Are those all of
19 Armstrong physicians?
20 MR. HERMAN: Yes, the Nichols and Einhorn
21 are his treating physicians. Einhorn's affidavit is
22 simply a business records affidavit referring to the
23 medical records. Dr. Nichols is the stipulation --
24 ARBITRATOR LYON: Who are those other
25 doctors?

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1 MR. HERMAN: These are all from the UCI
2 or the U.S. antidoping agency confirming Mr.
3 Armstrong's performance on the tests that have been
4 given over the years.
5 ARBITRATOR FAULKNER: Mr. Tillotson,
6 y'all don't have any objection to those?
7 MR. TILLOTSON: Just one second.
8 MR. HERMAN: He said he didn't the other
9 day.
10 ARBITRATOR FAULKNER: I want to make
11 sure.
12 MR. TILLOTSON: These are the affidavits
13 from UCI officials.
14 MR. HERMAN: Yes.
15 MR. TILLOTSON: That were previously
16 submitted in pleadings at some point?
17 MR. BREEN: Correct.
18 MR. TILLOTSON: We have no objections to
19 the admissibility of those in evidence.
20 ARBITRATOR FAULKNER: Okay.
21 MR. HERMAN: If I might, just for the
22 record, if we could mark this batch of affidavits as
23 Exhibit 158, so we don't have to separately mark each
24 one.
25 And I think finally --

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1 MR. TILLOTSON: Part 2.
2 MR. HERMAN: We're dealing with the
3 medical records. I believe that they've been provided
4 to SCA and we will -- we are prepared to leave them at
5 a convenient place, either with the chairman or
6 otherwise.
7 ARBITRATOR FAULKNER: I've already given
8 them back to Mr. Breen.
9 MR. HERMAN: Okay, but we do want to
10 introduce -- I think there are four pages of -- out of
11 the medical record which directly address the only
12 issue for which they were provided, which is to rebut
13 this alleged incident in the Indiana hospital, so the
14 notes from October 27 and 28 are included as pages 139
15 and 140. And then the medical history taken on
16 October 23 is also included as the last two pages.
17 ARBITRATOR FAULKNER: Okay.
18 MR. HERMAN: So we offer those.
19 ARBITRATOR FAULKNER: Do you have any
20 objection?
21 MR. TILLOTSON: I guess I -- in
22 principle, I don't if the medical records have been
23 proven up as -- through an affidavit. I guess I don't
24 have any problem with an excerpt so long as I can see
25 it, but also that we have access to those records in

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1 case we want to offer anything else specifically to
2 the panel.
3 MR. HERMAN: Absolutely. We will leave
4 those at a mutually --
5 MR. TILLOTSON: Both of the records the
6 panel would consider as part of the record even though
7 it's not retaining them, then I suppose I don't have
8 an objection to some excerpt.
9 ARBITRATOR FAULKNER: Does that mean you
10 want to give me back the records to be locked up?
11 MR. BREEN: Why don't I visit with Mr.
12 Tillotson and see if --
13 ARBITRATOR FAULKNER: And then just let
14 me know.
15 MR. TILLOTSON: I'm prepared to let them
16 retain them and then I can work something out with
17 them.
18 ARBITRATOR FAULKNER: That's fine.
19 Actually that's preferable.
20 MR. HERMAN: Then we will reserve, if the
21 panel please, Exhibit 160 for the Anderson pleading
22 orders that we have repeatedly promised that we were
23 going to give you and we have not given you.
24 ARBITRATOR LYON: Let me ask you about
25 that. Again, I asked you the same question. I mean,

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1 if there's no dispute, if everything was dismissed but
 2 the one defamation claim; isn't that right?
 3 MR. BREEN: That's right.
 4 ARBITRATOR LYON: So two defamation
 5 claims are dismissed, why do we need the documents?
 6 MR. HERMAN: Well, I don't know that you
 7 do, but I thought the chairman asked for them.
 8 ARBITRATOR FAULKNER: I believe we did.
 9 Just give them to us all. We will know what to do
 10 with them.
 11 ARBITRATOR CHERNICK: Can I just --
 12 MR. HERMAN: I don't know how to take
 13 that.
 14 ARBITRATOR CHERNICK: Can I just step
 15 back, 159 is the medical record excerpts?
 16 MR. HERMAN: It is.
 17 ARBITRATOR FAULKNER: Yes.
 18 ARBITRATOR CHERNICK: All right, thank
 19 you.
 20 ARBITRATOR FAULKNER: Anything else
 21 Mr. Herman, and then back to you, Jeff.
 22 MR. HERMAN: Oh, yeah. To the extent,
 23 Your Honor, Mr. Breen points out that it has been a
 24 little haphazard, as Mr. Tillotson indicated earlier,
 25 the exhibits, the nonbound exhibits which have been

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1 tendered and marked, I guess all of the exhibits
 2 between 111 and 160, other than the ones we just
 3 talked about, we want to make sure that they are
 4 offered, if we have neglected to do prior to this
 5 time, and we will get copies of those in bound form to
 6 the panel as well, and to Mr. Tillotson.
 7 ARBITRATOR FAULKNER: Is that agreed, Mr.
 8 Tillotson?
 9 MR. TILLOTSON: Yes, if the panel will
 10 give us the liberty of trying to work that out, and if
 11 there's any problem, it could be brought up later.
 12 ARBITRATOR FAULKNER: Good.
 13 MR. HERMAN: And I guess finally, the
 14 exhibits -- I think that we agreed that our Exhibit 1
 15 through 110 were admitted.
 16 MR. BREEN: We can do this, too, Jeff, if
 17 you want. He said we can work together to see. Why
 18 don't we just work together and if there's problem on
 19 any specific exhibit, we will let the panel know.
 20 MR. TILLOTSON: Sure.
 21 MR. HERMAN: I do have copies of the --
 22 ARBITRATOR CHERNICK: 153, 154 and 155.
 23 MR. HERMAN: -- 153, 154, and 155, so
 24 with the panel's permission, let me -- this is 153,
 25 Madam Reporter.

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1 ARBITRATOR FAULKNER: Jeff, do you have a
 2 copy of this?
 3 MR. TILLOTSON: I do.
 4 MR. HERMAN: That's -- chapter 14 is 153.
 5 154 is chapter 12. 155 are the Tour de France rules.
 6 ARBITRATOR FAULKNER: Thank you.
 7 MR. HERMAN: I think --
 8 ARBITRATOR CHERNICK: Did you pass out
 9 156?
 10 MR. HERMAN: No, I withdrew that because
 11 I need to make copies. It's the chart.
 12 ARBITRATOR CHERNICK: The web page, the
 13 statistics.
 14 MR. HERMAN: Right.
 15 157, you should have copies.
 16 ARBITRATOR CHERNICK: Got it.
 17 MR. HERMAN: 158, those are the
 18 affidavits, right, and 159 are the medical record
 19 excerpts.
 20 Members of the panel, if you wouldn't
 21 mind passing one of those down to Mr. Tillotson.
 22 ARBITRATOR FAULKNER: Sure.
 23 MR. HERMAN: And 160 was the Anderson
 24 stuff, wasn't it?
 25 Okay, I think that's it.

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1 ARBITRATOR FAULKNER: Anything else?
 2 MR. HERMAN: That's it.
 3 ARBITRATOR FAULKNER: Mr. Tillotson.
 4 MR. TILLOTSON: The only issue I had is
 5 this is Respondents' 25-A, which is the excerpts from
 6 Mr. Bandy, and I would just point -- since Mr. Bandy
 7 is not going to testify about it, I just would point
 8 out there is a key at the top as to what's
 9 translations, what's summaries and what are quotes.
 10 ARBITRATOR FAULKNER: Okay.
 11 MR. TILLOTSON: So that's what it is. He
 12 might summarize a chapter in his own words as opposed
 13 to being a literal translation and other parts are
 14 literal translations and other parts he's quoting
 15 directly from the book.
 16 ARBITRATOR FAULKNER: And he says at top
 17 what those are?
 18 MR. TILLOTSON: And the top contains the
 19 key and he also points that out. I think it's self
 20 evident.
 21 MR. HERMAN: There's one other issue,
 22 with respect to the Tour de France rules and UCI
 23 rules, I think Mr. Tillotson and I stipulated, rather
 24 than have Mr. Bandy testify about it, that the UCI and
 25 their stewards determine who the winners are of the

<p style="text-align: right;">Page 2887</p> <p>1 Tour de France, that there are provisions for 2 disqualifications, et cetera. 3 Within the Chapter 14 of the UCI code, it 4 is -- it requires an A and B sample that tracks the 5 WADA code and so forth. No disciplinary action taken 6 otherwise. It provides for any third party to bring 7 to the attention of the UCI or a national federation 8 any alleged violation and that only the UCI can 9 disqualify or strip someone of the title, and the 10 statute of limitations on that is eight years, and I 11 think, you know, rather than -- rather than point you 12 to the specific provision, I think we agreed that 13 that's a fair summary of those provisions. 14 MR. TILLOTSON: Well, the rules are the 15 rules, whatever they say. 16 MR. HERMAN: Right. I agree. 17 MR. TILLOTSON: We obviously disagree in 18 terms of some way in which the rules might be 19 interpreted, but the rules are the rules. 20 ARBITRATOR FAULKNER: And you all will 21 continue to chat on a number of other items and you'll 22 eventually report back to us, correct? 23 MR. TILLOTSON: Correct. 24 MR. HERMAN: Correct. 25 MR. TILLOTSON: The only thing I would</p>	<p style="text-align: right;">Page 2889</p> <p>1 that. That's not something that we need to address 2 right now. 3 ARBITRATOR FAULKNER: I didn't want 4 anyone to forget any issues that I knew I had a note 5 on somewhere. 6 Senator, did you have something? 7 ARBITRATOR LYON: Yes. 8 ARBITRATOR FAULKNER: Okay. 9 ARBITRATOR LYON: Yes. Before we convene 10 again I would like briefs from both parties on this -- 11 the issue of if this panel finds that SCA operated in 12 bad faith, finds liability and this panel finds that 13 SCA handled the claim in bad faith pursuant to the 14 insurance code, is the 18 percent interest mandatory, 15 number one; number two, are the attorneys' fees 16 mandatory; number 3, are the treble damages mandatory. 17 MR. HERMAN: All right. 18 MS. BLUE: Did you say when you wanted 19 them by? 20 ARBITRATOR LYON: I want it before the 21 Friday of the week of February 6th. 22 ARBITRATOR CHERNICK: Let me just -- let 23 me put a slight refinement on what the Senator just 24 said. In view of the fact that here -- the 25 determination that SCA was, in fact, operating as an</p>
<p style="text-align: right;">Page 2888</p> <p>1 add with respect to the rules is we also offer rules. 2 My understanding is that the UCI rules have undergone 3 some changes as of August 2004, so to the extent the 4 UCI rules are applicable to this proceeding and the 5 changes might bear upon some issue, I believe we made 6 the ones prior to that time -- those were our exhibits 7 used, so I don't have any problem with all of the UCI 8 rules for the applicable period being made a part of 9 the record, and the parties can argue from them as 10 they see fit. 11 MR. HERMAN: That would be fine. 12 ARBITRATOR FAULKNER: Anything else? 13 MR. TILLOTSON: That's it. 14 ARBITRATOR FAULKNER: Anything else, Mr. 15 Herman? 16 MR. HERMAN: No, not at this time. 17 ARBITRATOR FAULKNER: You guys actually 18 managed to make it with 25 minutes to spare. 19 MR. HERMAN: Once I got control. 20 ARBITRATOR FAULKNER: One item you guys 21 have not raised, nobody has talked about for a 22 while -- that was, Mr. Herman, you raised an issue 23 relating to value of SCA. Have y'all worked out any 24 arrangement or stipulation? 25 MR. HERMAN: No, but we will work on</p>	<p style="text-align: right;">Page 2890</p> <p>1 insurance company was made after the fact in the sense 2 that they did not know and arguably could not 3 reasonably have known that they were going to be 4 required to meet those obligations defined by the 5 insurance code and the insurance unfair claims 6 practices provisions of that code, does that fact bear 7 upon the determination of bad faith under the 8 insurance code. 9 MR. BREEN: That was kind of a loaded 10 one, Mr. Chernick. I mean, are you asking us to 11 assume these facts? 12 ARBITRATOR CHERNICK: I'm saying that if 13 that were to be the case. 14 MR. BREEN: Okay. 15 ARBITRATOR CHERNICK: I'm not asking you 16 to assume that, but if that were to be the case. In 17 other words, there's obviously -- this is a somewhat 18 unique circumstance where a party acting in what it 19 believed -- or testified it believed was a business 20 contract relationship is found, after the fact, to 21 have been, in fact, an insurance company, does that 22 have any bearing at all on how you would go about 23 determining bad faith, reasonableness of conduct, 24 et cetera. 25 MR. BREEN: I understand there are cases</p>

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1 on it in Texas, too.
 2 ARBITRATOR LYON: That's what I thought.
 3 We had a talk about this earlier.
 4 And the next thing I need is a box.
 5 MR. HERMAN: A box.
 6 ARBITRATOR LYON: Do you all have an
 7 empty box?
 8 MR. BREEN: Yes, we can give you one.
 9 MS. BLUE: That's -- February the 10th is
 10 Friday after February 6th?
 11 MR. BREEN: No, the Friday before.
 12 ARBITRATOR FAULKNER: The Friday before.
 13 MR. HERMAN: You mean February 3rd.
 14 ARBITRATOR LYON: I'd like it in my
 15 office before that weekend.
 16 MR. BREEN: I thought you were asking for
 17 the box, and I was going to suggest Mr. Tillotson --
 18 ARBITRATOR FAULKNER: Thank you. I'm
 19 sure he appreciates that.
 20 ARBITRATOR FAULKNER: Y'all please do
 21 make sure you have those briefs so that we'll have the
 22 benefit of those and you all will have their benefit
 23 sometime prior to when we resume, which we are
 24 planning to resume February 8th, 9th, if necessary and
 25 the panel will hopefully be able to begin

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1 deliberations, if you are otherwise unsuccessful, so
 2 that we can deliberate the 9th and if necessary on the
 3 10th.
 4 ARBITRATOR CHERNICK: Off the record for
 5 a moment.
 6 (Off-the-record discussion)
 7 ARBITRATOR FAULKNER: Before we conclude,
 8 gentlemen, thank you very much. It's always a
 9 pleasure to do cases with talented counsel who know
 10 what they're doing and work so well together.
 11 Sometimes clients don't appreciate how difficult it
 12 can be to do what trial lawyers do, be it in court or
 13 in arbitration and we thank you very much and y'all
 14 have been consummate professionals throughout all of
 15 this. Thanks and we look forward to seeing your
 16 briefing and we will see y'all back on February 8th.
 17 ARBITRATOR CHERNICK: Here, here.
 18 (Proceedings recessed 1:41 p.m.)
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 25

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1 STATE OF TEXAS)
 2 COUNTY OF DALLAS)
 3
 4 I, Nancy P. Blankenship, Certified Shorthand
 5 Reporter, in and for the State of Texas, certify that
 6 the foregoing proceedings were reported
 7 stenographically by me at the time and place
 8 indicated.
 9 Given under my hand on this the 2nd day of
 10 February, 2006.
 11
 12
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