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IN THE MATTER OF AN ARBITRATION
BETWEEN

LANCE ARMSTRONG and §
TAILWIND SPORTS, INC. §

Claimants, § ARBITRATION BEFORE THE
§ HONORABLE RICHARD
VS. § FAULKNER, RICHARD
§ CHERNICK AND TED LYON

SCA PROMOTIONS, INC. and §
HAMMAN INSURANCE SERVICES, §
INC. §

Respondents. §

ARBITRATION
TRANSCRIPT OF PROCEEDINGS
JANUARY 19, 2006
VOLUME 12
CONFIDENTIAL

On 19th day of January, 2006, at 9:05
a.m., the arbitration in the above proceedings came on
before Arbitrators Richard Faulkner, Richard Chernick
and Ted Lyon, at the offices of Richard Faulkner,
12655 North Central Expressway, Suite 810, in the City
of Dallas, County of Dallas, State of Texas.

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Ms. Marianne Ross
Mr. Bill Stapleton
Mr. Lawrence Temple
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1 PROCEEDINGS
2 ARBITRATOR FAULKNER: Dr. Ashenden,
3 you're still under oath, and you're still testifying
4 according to the statutes, so would you please resume
5 with your cross.
6 CROSS EXAMINATION
7 BY MR. LEVINSTEIN:
8 Q. Dr. Ashenden, you were retained originally in
9 this case in April 2005. We established that
10 yesterday.
11 A. Thereabouts, yes.
12 Q. When you were retained, you had already been
13 involved in the Australian's Institute of Sport and
14 working with elite athletes for years prior to that?
15 A. Yes.
16 Q. When you were contacted, did you at that time
17 have a view as to whether Lance Armstrong used
18 performance enhancing drugs?
19 A. I would say that I hadn't accepted any
20 information that I heard and I had seen his remarkable
21 improvement in performance and so I was -- I was among
22 the band of people who didn't believe the explanation
23 I heard.
24 Q. So even in April when you started, you
25 doubted that his performance was due to physiological

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1 explanations?
2 A. I doubted that it was due to the explanations
3 that I heard.
4 Q. By that time you had already read Coyle's
5 article?
6 A. No, that -- that was shortly thereafter. It
7 was within a matter of weeks before.
8 Q. So you came in with the predisposition that
9 you thought there was a good chance that it wasn't due
10 to his own effort that he succeeded; that it involved
11 the use of performance enhancing drugs?
12 A. I would probably characterize that a little
13 more carefully. I would say that none of the
14 explanations I had heard seemed rational to me and so
15 I -- I would be of the opinion that I've seen this
16 improvement in performance, I haven't heard a rational
17 explanation. So I'm in the band of doubters.
18 Q. And when you testified yesterday, you made
19 reference to working with athletes who -- I'm going to
20 use the words -- you said suspected or knew that the
21 athletes they were competing with were using drugs?
22 A. Yes.
23 Q. When you say knew, you mean the athletes
24 weren't winning and they were working very hard and
25 they somehow couldn't compete with their competitors?

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1 A. When -- when you sit down and talk to
2 athletes, they will give you a very clear impression
3 and they will use the words, I know X is doping, and
4 they relate to you the circumstances, and then when
5 you hear that from enough people over a long length of
6 time, and I would convey to you that the athletes knew
7 that the competitors were doping because that's how
8 they related it to me. Now, that's probably what I
9 was trying to convey to you.
10 Q. So it wasn't that you knew that their
11 competitors were doping?
12 A. No, it's they conveyed that understanding to
13 me.
14 Q. Okay. Now, I asked you yesterday whether an
15 artificial altitude environment increases red blood
16 cells. Do you recall that?
17 A. I recall that discussion, yes.
18 Q. Okay. And you said that it -- while the
19 manufacturer is likely to think so, it doesn't do it?
20 A. That's my opinion, yeah.
21 Q. Okay. But you were involved with a simulated
22 altitude house of the Australian Institute of Sport,
23 right?
24 A. Yes.
25 Q. And they built a whole building or rooms to

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1 do exactly that, to create a hypoxic environment to
2 simulate altitude?
3 A. Yes.
4 Q. And that was the organization that you're
5 with and you were involved in that project?
6 A. Yes.
7 Q. And the purpose of that project was to
8 improve the performance of Australian athletes?
9 A. I think there was -- there was a dual
10 purpose. It was very clearly a heavy research project
11 and there was also the -- the opportunity to give our
12 athletes access to simulated altitude. The -- the
13 coaches and the athletes have a very clear
14 psychological start on altitude. They believe that it
15 works and they feel a disadvantage when they have been
16 competitive overseas, for example, getting access in
17 altitude.
18 Now, quite often a coach would request,
19 literally they would book in, we need X weeks in the
20 altitude house. And they typically got priority, and
21 we would work our research around that, wherever
22 possible we would overlap so that we collected data on
23 their athletes while they were in the house. Now, we
24 knew sometimes the athletes and the coach's request
25 was irrational from the physiology we understood. But

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1 you don't step in and say your approach to training
 2 sucks, you're not going to do this. You comply with
 3 the coach wherever possible, because it's important to
 4 give an athlete a positive psychological frame of
 5 mind.
 6 Now, I would explain to you that they
 7 were the purposes of the altitude house, not one or
 8 the other, both of them.
 9 Q. One of the purposes was for the athletes to
 10 use it?
 11 A. Yes.
 12 Q. And the reason an athlete would use it is
 13 because they thought it was going to increase their
 14 red blood cell count and thereby help them compete
 15 better?
 16 A. Certainly that was a notion, but I would not
 17 accept that as an actual reason for the -- the actual
 18 physiology of what happened. But they might believe
 19 that it was, the same way they believed taking iron
 20 tablets increased their red cell production. These
 21 are false, but you don't step in and say, you know,
 22 you've got no idea. You've got to let them have a
 23 little bit of latitude.
 24 Q. Okay. Yesterday you testified about the
 25 changes in Lance Armstrong's hematocrit from reading

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1 to reading. Do you recall that discussion?
 2 A. I remember something about hematocrit, yes.
 3 Q. Okay. And the three points that we had
 4 from LA Confidential showed about -- a change going up
 5 by about 5.5 points over four months and then down by
 6 about 5.3 points over some period of time.
 7 A. If I -- shall I bring them up?
 8 Q. No, that's okay.
 9 So -- but we had a difference of about
 10 five points from 41 something to 46 something; does
 11 that sound right?
 12 A. Yes. Let me just bring it up so then we
 13 don't have to rely on my memory.
 14 Q. Okay. I'm trying to speed things up, so it's
 15 fine. I'm just trying to get a range.
 16 A. Okay.
 17 Q. And 48.7 was the number from 1991, the
 18 highest number?
 19 A. No, no, I would rather look at the data,
 20 because so I can see if your recollection is
 21 completely accurate.
 22 ARBITRATOR CHERNICK: Exhibit 25 is the
 23 LA Confidential, and I think Exhibit 118 was the 1991
 24 hematocrit level.
 25 A. The hematocrit was 48.8, so...

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1 Q. (BY MR. LEVINSTEIN) Okay. 48.8 was the
 2 highest and the lowest was the 41.2 on the LA
 3 Confidential number?
 4 A. Yes.
 5 Q. Okay. So that's over a seven-year period a
 6 difference of 7.6?
 7 A. Yes, I'll rely on your math.
 8 Q. If I'm wrong, there's a real big ruckus about
 9 this 48.8 minus 41.2, okay, 7.6.
 10 Now, I tried to ask you -- you said this
 11 was consistent with blood manipulation, correct?
 12 A. I said those values in LA Confidential were,
 13 yes.
 14 Q. And you also said the '99 -- I'm sorry, the
 15 1991, 48.8 was as well?
 16 A. I said that when you look at that in relation
 17 to other points in time where it seemed to me his
 18 hematocrit is 43, yes.
 19 Q. Okay. And then I tried to find out what a
 20 person who doesn't take EPO, how much their hematocrit
 21 varies. Do you remember those questions?
 22 A. Yes.
 23 Q. Allright. Well, after I left, I found out
 24 there might be some data about this I wanted to ask
 25 you about.

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1 A. Okay.
 2 Q. Are you aware of any research in which people
 3 were tested, given a placebo and tested over a period
 4 of time, multiple times, to see what their hematocrit
 5 was?
 6 A. If you could quote the study, I can tell you
 7 whether or not I've seen it.
 8 Q. Well, let me first ask you this question.
 9 Let's assume you took 13 men and you tested them 24
 10 times over a period of about seven to ten weeks and
 11 you took care to standardize the procedures for
 12 drawing the blood --
 13 A. Yes.
 14 Q. -- and used the same machine and you
 15 carefully calibrated it.
 16 A. Yes.
 17 Q. Are you aware of any data on how much
 18 variation there would be in their hematocrit?
 19 A. If that study published it, then they would
 20 have data on that.
 21 MR. HERMAN: Can we put that up?
 22 Q. (BY MR. HERMAN) Let me show you data on 13
 23 subjects that shows the range of their hematocrits for
 24 13 men where they took -- 24 times they took their
 25 hematocrit, each over -- it's an eight-week time

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1 period in 1999 and all they received were placebo
2 injections, okay?
3 MR. TILLOTSON: I'm going to object. Can
4 we see what source you're drawing this from, the
5 article or whatever?
6 Q. (BY MR. LEVINSTEIN) Are you familiar with
7 this data?
8 ARBITRATOR FAULKNER: Wait, wait, until
9 we --
10 MR. TILLOTSON: I just want to object on
11 foundation.
12 MR. LEVINSTEIN: I'll show it to him.
13 MR. TILLOTSON: I trust him, but if he
14 would just, perhaps, give the witness the article or
15 data points he's drawing from.
16 Q. (BY MR. LEVINSTEIN) First, I want know, do
17 you --
18 ARBITRATOR FAULKNER: First, Counselor,
19 address the objection.
20 MR. LEVINSTEIN: This is his data.
21 ARBITRATOR FAULKNER: Okay. Can you at
22 least tell him where --
23 MR. TILLOTSON: Is this Dr. Ashenden's --
24 ARBITRATOR FAULKNER: Is this
25 Dr. Ashenden --

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1 Q. (BY MR. LEVINSTEIN) Are you -- Dr. Ashenden,
2 do you remember studies conducted in connection with
3 EPO in 2000?
4 A. Yes.
5 Q. And do you recall that in -- that
6 Dr. Stray-Gundersen and you were both involved in
7 this?
8 A. Yes.
9 Q. And do you recall that you were in charge of
10 collecting data about people who took EPO and people
11 who were given placebo?
12 A. Was I in charge of it?
13 Q. Well, you supervised the data collection from
14 people in Australia?
15 A. No. The supervisory role would have been
16 Robin Parisotto.
17 Q. But it was a study in which you were
18 involved?
19 A. Yes.
20 Q. And these were subjects in Australia?
21 A. Well, you're telling me that, so how can I
22 say otherwise. I -- if you tell me that's a study
23 where my name is on the publication, then I'll say,
24 yes, they are Australian subjects, but I don't know
25 that.

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1 Q. Okay. Well, did you publish data from the
2 study conducted in 1999?
3 A. There was a number of studies, but, yes, that
4 data has been published -- well, let me put it this
5 way, the EPO 2000 studies have been published. If
6 that comes from that quoted, well, then, yes. But I
7 can't say that that data has been published, but we
8 published data, yes.
9 MR. LEVINSTEIN: May I address the
10 tribunal? Dr. Stray-Gundersen will testify in
11 rebuttal subject to connection, then I will represent
12 to you that he will testify that this is data
13 collected from Australia, the project in which he was
14 involved. It comes straight out of their
15 documentation.
16 ARBITRATOR CHERNICK: The he in that
17 sentence is?
18 MR. LEVINSTEIN: The witness was involved
19 in that study and this is the data from that study.
20 ARBITRATOR LYON: Has that been
21 published?
22 MR. LEVINSTEIN: Yes.
23 MR. TILLOTSON: Can we be told what it
24 is?
25 ARBITRATOR FAULKNER: What's the name of

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1 it?
2 MR. TILLOTSON: Because it's not been
3 produced to us.
4 MR. STRAY-GUNDERSEN: This is the
5 Canberra subgroup and placebo subjects, the placebo
6 subgroup. There are three data collections one in
7 Norway, one in Canberra and one in Sydney, but this is
8 the Canberra.
9 MR. TOWNS: Where was it published?
10 MR. STRAY-GUNDERSEN: Well, the paper, as
11 Dr. Ashenden has said, was published for EPO 2000
12 model.
13 MR. TILLOTSON: I need to object to this.
14 This is highly irregular that this guy is giving
15 testimony regarding some document they're trying to
16 establish with this witness. This is not that
17 document. This is something I assume counsel created,
18 and I think out of fairness to this witness, if
19 they're going to represent this to be some materials
20 this expert ought to at least show him what it is
21 they've taken this from.
22 ARBITRATOR FAULKNER: What is the study
23 or the document that is created -- came from if it's
24 an extraction or would you just provide us the title
25 of the work so that the doctor can at least understand

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1 what he's being questioned from?
 2 MR. STRAY-GUNDERSEN: Yeah, it would be
 3 the second generation on and off model source data,
 4 but --
 5 ARBITRATOR FAULKNER: Doctor, you're not
 6 testify. You need to address your -- the attorneys.
 7 MR. LEVINSTEIN: For now I'm going to use
 8 this as a hypothetical. Why don't we do that? --
 9 then we will --
 10 ARBITRATOR FAULKNER: Does that satisfy
 11 you?
 12 MR. TILLOTSON: If Mr. Levinstein
 13 represents that this is a hypothetical study, I
 14 will -- I will -- I'll save objections with respect to
 15 this witness fencing with him about hypothetical. But
 16 sure, he can pose a hypothetical.
 17 ARBITRATOR FAULKNER: But make sure that
 18 eventually we get a copy of that so we know what it
 19 is.
 20 MR. HERMAN: It's a database so we will
 21 produce to you the database of the results.
 22 ARBITRATOR FAULKNER: Please proceed with
 23 your questions.
 24 Q. (BY MR. LEVINSTEIN) Let me just ask about
 25 the study first --

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1 A. Which study?
 2 Q. -- that was conducted in 1999 with the
 3 Canberra subjects.
 4 A. Which study? There was numerous studies. It
 5 was an exceptionally busy period of time.
 6 Q. Okay. Well, let me just ask this: Did you
 7 do any study in which certain individuals were given
 8 EPO and their hematocrit was tracked?
 9 A. Yes.
 10 Q. And did you, as part of that same study, give
 11 a placebo to other subjects whose hematocrit was
 12 tracked?
 13 A. Yes.
 14 Q. And do you recall whether that was over a
 15 period of time, perhaps eight weeks? If you don't
 16 recall, you don't recall
 17 A. Well, I'm trying to recall. It would have
 18 been somewhere around that period of time, sure.
 19 Q. And do you recall that they would have been
 20 giving blood samples for their hematocrit to be
 21 measured about three times a week?
 22 A. Well, not just hematocrit, there was a whole
 23 lot of included in it.
 24 Q. But included in it was their hematocrit?
 25 A. Yes.

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1 Q. All right. Let me say, assume that this data
 2 were presented to you. It's hypothetical that -- that
 3 this was the data, would this be inconsistent with
 4 your understanding of how much hematocrits can vary?
 5 And I'll represent the top number is the maximum
 6 hematocrit reading in the 24 samples, the middle
 7 column is the mean, the bottom is the minimum.
 8 A. And what's the range?
 9 Q. That's subtracting the max from the
 10 minimum -- I'm sorry, the minimum from the maximum.
 11 A. Yeah. I mean, there would have been over
 12 eight weeks, say two or three collections a week, so
 13 there would have been 15 to 30 data points within that
 14 maximum and minimum, and, yeah, I would accept that
 15 that would be -- I mean, it's getting -- if you look
 16 at the subject that's getting a -- that's a fairly
 17 wide variation.
 18 Yeah, I mean, I would -- you've chosen
 19 the two extremes from 20 or 30 data points over a
 20 period of time, yes. But at face value I would accept
 21 that as what were your words?
 22 Q. Is that with -- consistent with what you
 23 would expect from testing male subjects under those
 24 conditions?
 25 A. Yeah, okay, I'll accept that.

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1 Q. Okay. So just to summarize, there are three
 2 of the 13 people there whose hematocrits range from 7
 3 to 9 -- there's a 7, there's an 8 and there's a 9. Do
 4 you see those?
 5 A. Oh, their range was 7, 8, 9, yeah.
 6 Q. So for those three people if the data is
 7 correct, the individuals without any suggestion that
 8 they've manipulated their blood and only looking at
 9 them over an eight-week time period and using
 10 equipment attempting to avoid all technical gaps, that
 11 their hematocrit would range 7 to 9 different points
 12 over that time period?
 13 A. Yes -- yes, but, can I answer -- can I
 14 elaborate a little bit?
 15 Q. Sure.
 16 A. What you're ignoring there is that you
 17 haven't presented their ferritin value. Now, if you
 18 overlap with their hematocrit with their ferritin,
 19 I'll guarantee you that those 7, 8, 9, haven't also
 20 changed their ferritin the way that these values are.
 21 Part of what I'm basing my opinion on is
 22 the ferritin, so you're taking half of what was a very
 23 small aspect of my opinion and you're shaving it down
 24 even more, so I would just like to clarify that.
 25 Q. But a 7.6 shift in hematocrit, even with

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1 no -- is consistent with a person who's been involved
 2 in absolutely no blood manipulation?
 3 A. If you also include into the fact that their
 4 ferritin value changed the way that Armstrong's does,
 5 I would say that -- that puts you in different
 6 category. You asked me to review the data points in
 7 the LA Confidential and I gave my opinion on
 8 hematocrit and ferritin. Now you're asking me just on
 9 hematocrit alone. That's not what I based my opinion
 10 on.
 11 Q. Okay. Let's go to the LA Confidential data
 12 and if we could put that up on the screen, it's page
 13 1543. See the ferritin of 249 for the first data
 14 point?
 15 A. Yes.
 16 Q. And ferritin is how much iron is in your bone
 17 marrow?
 18 A. It's a -- it's a reflection of it.
 19 Q. Okay. And when your body makes red blood
 20 cells it uses the iron to make the hemoglobin?
 21 A. That's -- it's a fairly generalized
 22 explanation, but, yes.
 23 Q. So as you're making red blood cells, your
 24 body draws on the ferritin?
 25 A. Well, no. That's why I said it's a

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1 reflection of it. So it doesn't actually draw the
 2 ferritin out. The serum ferritin is a reflection of
 3 your iron stores. Your bone marrow uses the iron
 4 stores, not the ferritin -- not the serum ferritin.
 5 Q. Okay. And cyclists and other athletes often
 6 take iron to get their ferritin numbers up?
 7 A. Yes.
 8 Q. And part of it is when your body is having to
 9 make red blood cells it needs you to have iron in your
 10 body in order to do a good job making red blood cells?
 11 A. Part of what? Part of what? You said part
 12 of it --
 13 Q. I'm sorry. Your body needs iron -- if I'm
 14 going to be in a hypoxic tent and I want my body to
 15 make more red blood cells, I want my iron level up
 16 high so that when my body goes to make red blood cells
 17 it has enough iron, correct?
 18 A. No, that's -- that's a misunderstanding of
 19 the -- that physiology. That's -- I would classify
 20 that as a -- an incorrect understanding of what's
 21 going on.
 22 Q. Well, as your hematocrit goes up, it is
 23 expected that your ferritin level will go down,
 24 correct?
 25 A. Not necessarily. It depends on why your

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1 hematocrit is going up.
 2 Q. Okay.
 3 A. Well, can I elaborate, give you an example?
 4 If your hematocrit increases because of -- of the half
 5 a dozen of those examples that you used yesterday
 6 posture, diet, hydration, blah, blah, blah, you don't
 7 see a decrease in ferritin in those situations because
 8 the two are uncoupled. But if you see an increase in
 9 hematocrit because of the bone marrow being
 10 stimulated, then a lot of things being equal you would
 11 expect ferritin to decrease. So it can decrease when
 12 hematocrit increases, but it can also not, if you're
 13 talking about some of the factors that you mentioned
 14 that -- really short term transient changes in
 15 hematocrit.
 16 Q. Well, when you looked at -- at Lance
 17 Armstrong's medical records during his treatment, did
 18 you notice what his ferritin levels went to?
 19 A. Yes, they were extreme and I think that was
 20 based on the treatments he would have been receiving.
 21 Q. And they were up to 1,000?
 22 A. Yes. At that point the ferritin -- like I
 23 said, it's a reflection, it's not an accurate
 24 representation of body iron stores at that point. And
 25 when I saw that in the medical records, I gave it no

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1 real credence at all. It's a -- it's not reflective
 2 of iron stores in that sort of reaction, in that
 3 phase.
 4 Q. So the -- the data is wrong or the data is
 5 right? That it --
 6 A. His serum ferritin value would have been a
 7 thousand, but what I'm saying is that would not have
 8 been reflected in his body iron stores at that point
 9 in time. Ferritin can increase for a lot of other
 10 reasons as well.
 11 Q. All right. Let me just ask, though, if --
 12 assume that being at altitude --
 13 A. You want me to assume?
 14 Q. Assume that someone is at altitude and as a
 15 result of that their hematocrit goes up.
 16 A. What altitude are they at?
 17 Q. 8,000 feet.
 18 A. Can you relate that to meters?
 19 Q. 2500 meters. Okay. Will that, living at
 20 altitude at 2500 meters, cause your hematocrit to go
 21 up?
 22 A. Whilst you're up at that altitude, yes.
 23 Q. And if you have a ferritin level and your
 24 body's making red blood cells that's causing the
 25 hematocrit to go up, will that cause your ferritin

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1 level to go down?
2 A. No, because the increase in hematocrit you're
3 talking about at altitude is because your plasma
4 volume is -- is reduced, which increases the
5 hematocrit, because the hematocrit is just a
6 concentration. So, again, that's a situation where
7 it's uncoupled. At altitude I wouldn't accept that at
8 2500 meters that increase in hematocrit should be
9 accompanied by a decrease in ferritin. That's --
10 that's a different scenario.
11 Q. So you don't think that when you go to
12 altitude and you live at altitude your bone marrow
13 makes more red blood cells?
14 A. You need to clarify which altitude you're
15 talking about.
16 Q. Let's take 2500 meters.
17 A. 2500 meters.
18 Q. At 2500 meters your bone marrow does not make
19 more red blood cells?
20 A. Let me, put it to you like this, there's been
21 an enormous debate in the literature about whether or
22 not that happens. Some groups argue that it does,
23 other groups argue that it doesn't. The data that
24 I've seen which is based on exposing athletes to a
25 simulated altitude of up to 3,000 meters we didn't

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1 find in increase in red blood cell production. So
2 based on the data that I'm aware of that was in my
3 doctoral thesis I don't accept that being at 25 will
4 automatically give you a substantial increase in
5 hematocrit reflecting an increase in red cell
6 production. I do accept and don't -- trying not to be
7 too technical -- that you get a transient increase in
8 hematocrit because of a plasma volume production.
9 These -- they are two different things.
10 Q. But there are other articles that have been
11 published about altitude that disagree with your view
12 about this?
13 A. Yes.
14 Q. Okay. Let's go to the clean samples from
15 2000. That subject, just --
16 A. The main study?
17 Q. Switching subjects. I just want to tell you
18 I'm moving to a new subject.
19 In 2000 the Tour de France samples were
20 seized ordered by a judge; do you recall that?
21 A. Oh, okay, I'm with you now, yeah.
22 Q. Okay. So in 2000 after the Tour de France, a
23 judge ordered that all blood samples and urine samples
24 from the Tour de France would be seized. Do you
25 recall that?

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1 A. That's not my recollection. I thought it was
2 only the U.S. Postal team.
3 Q. Okay. But -- let me just represent to you it
4 was them all, but --
5 A. Well --
6 Q. But -- okay. But Michel Audran was involved
7 in this issue, right?
8 A. Can you just go back -- can you clarify was
9 it everyone or just U.S. Postal?
10 Q. It doesn't matter for my purposes.
11 A. Well, my understanding and operating and
12 hearing was only U.S. Postal, so can we operate under
13 that assumption?
14 Q. That would be fine.
15 It is your understanding that Michel
16 Audran was given the blood and urine samples from all
17 the U.S. Postal athletes who had been tested during
18 the 2000 Tour de France?
19 A. I'm not sure if he received the blood
20 samples. I couldn't vouch for that.
21 Q. You weren't aware --
22 A. He may have, but...
23 Q. You weren't aware that it was blood and
24 urine?
25 A. I heard in this hearing earlier on that there

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1 was blood -- it was urine initially and then blood was
2 requested later on. Now, I don't know what that blood
3 was analyzed for and who analyzed it.
4 Q. Well, I'm trying to move along, but I will
5 later on put the pages from LA Confidential that say
6 it was blood and urine.
7 ARBITRATOR LYON: What's the person's
8 name?
9 MR. LEVINSTEIN: Michel Audran,
10 A-U-D-R-A-N.
11 ARBITRATOR FAULKNER: Let us address one
12 thing at a time.
13 ARBITRATOR LYON: I want to know who
14 Michel Audran is.
15 Q. (BY MR. LEVINSTEIN) Why don't you tell the
16 panel who you understand Michel Audran is.
17 A. I'm sorry. Is that a question?
18 Q. Yes, if you could --
19 A. Who's Michel Audran? He's a professor of
20 pharmacology that's based at the University of
21 Montpellier in France. And it's -- he's worked in
22 developing tests in the antidoping context, many
23 years. And I've collaborated with him since, oh,
24 probably the year 2000 onwards.
25 MR. HERMAN: I might note just for the

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1 panel that he was designated as an expert by SCA in
2 this case and I think he was undesignated at some
3 point or withdrawn; is that a fair statement?
4 MR. TILLOTSON: Yes. Yes. Yes.
5 ARBITRATOR LYON: What college in France
6 did you say?
7 THE WITNESS: The University of
8 Montpellier, M-O-N-T-P-E-L-L-I-E-R.
9 Q. (BY MR. LEVINSTEIN) Okay. Let's focus on
10 the urine that Mr. Audran tested. Now, it's your
11 understanding he knew which samples were whose sample,
12 correct?
13 A. I -- I -- I would put it that he knew they
14 came from U.S. Postal. He knew that -- I don't know
15 how many samples they -- if he was given 20 samples
16 that -- all but a few of them would have come from
17 Armstrong, so I think a rational person would
18 conclude, well, most of those samples are Lance
19 Armstrong's.
20 Q. Can we put up page 1504 of the LA
21 Confidential?
22 All right. If you focus on the bottom
23 half of the page, just focus in on the urine samples.
24 The LNDD urine samples -- LNDD refers to the French
25 laboratory?

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1 A. Yes.
2 Q. They've given two experts, Gilbert Pepin and
3 Michel Audran. If you go down the page, it says --
4 starting five lines from the bottom, Professor Audran
5 had 15 urine samples at his disposal, 13 of which were
6 from Lance Armstrong. So that's consistent with what
7 you just said. And he knew -- contrary to normal drug
8 testing procedures he knew whose samples he was
9 testing?
10 A. Well, I just explained that if you're
11 given -- I'll correct my numbers based on than, 15
12 samples, 13 were from Lance Armstrong. I don't think
13 that he knew which 13 were from him, but maybe he did.
14 I -- I don't know. I couldn't vouch for that.
15 Q. Okay.
16 A. 13 of the 15 were from Armstrong according to
17 this account.
18 Q. Okay. But there was one that he said was
19 non-negative. Do you recall that?
20 A. Yes.
21 Q. And he said it wasn't Lance Armstrong's?
22 A. I'm not sure if he said that it was not a
23 negative and then it was revealed that it wasn't Lance
24 Armstrong's or whether he knew when it was analyzed
25 that it was someone else's and then he found that it

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1 was non-negative. I couldn't tell you which -- what
2 the order was there.
3 Q. Okay. Will you turn to the next page, top of
4 the page. It says, in Armstrong's urine there was
5 nothing, nothing at all, it was clear as clear could
6 be. And then it says, but with his it was clear every
7 day, 13 samples all the same. Does that suggest to
8 you he knew which 13 were Lance Armstrong's?
9 A. Well, again I would come back to you're
10 asking me to tell you what Audran knew at that point
11 in time. I knew -- I would suggest that it could have
12 been that he knew which samples were Armstrong's or it
13 could have been that he surmised what 13 of the 15
14 were. Or it could have been that he found out
15 afterwards -- after he'd analyzed it that these
16 samples belonged to Lance Armstrong. So either one of
17 those three I think would be -- would be possible.
18 Q. Okay. But have you discussed these samples
19 with Audran?
20 A. Yes.
21 Q. Did you discuss them at the time he was
22 testing them?
23 A. No.
24 Q. Were you aware that he was given the samples
25 and told to run any test he wanted in order to try to

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1 find out anything that he could that suggested use of
2 performance enhancing drugs?
3 A. Are you paraphrasing the court request? If
4 that's what the court requested, then I'll accept
5 that's what he did.
6 Q. Well, were you aware that he contacted his
7 colleagues and people around the world to try and get
8 advice as to what tests he could run in order to find
9 out if there were use of performance enhancing drugs?
10 A. I didn't advise him at that point in time.
11 He did all of this and I spoke to him after the fact,
12 so I -- I wasn't aware of his thinking as how he
13 approached the -- the request. My understanding is
14 that the courts requested him, as a recognized expert,
15 to analyze these samples. Now, I would expect there
16 to be some record of what they asked him to do.
17 Q. And when you spoke to him, did he tell you he
18 believed that Lance Armstrong had manipulated his
19 urine?
20 A. No. As I pointed out in my deposition, he
21 recounted to me that the urine samples were unusually
22 clear, he found that odd, he noted that the other
23 expert came to the same conclusion independently, and
24 from that basis I have taken the view that it's
25 consistent with urine substitution. But I would not

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1 like to vouch for what Professor Audran's view is.
2 That would be something he should address.
3 Q. Well, why don't you read the last sentence
4 that's up on the board. It might be a crazy
5 hypothesis, but what if Lance Armstrong had been
6 crafty enough to falsify his urine?
7 A. I'm sorry, who's saying this?
8 Q. This is a quote from Michel Audran.
9 A. Can I just take a little while to read it?
10 Q. Sure.
11 A. I found -- I find that -- I don't understand
12 that sentence.
13 Q. Isn't this exactly what you're saying, this
14 hypothesis that maybe Lance Armstrong had falsified
15 his urine?
16 A. Yes. The bit that I found difficult to
17 understand is he says his cancer could then have gone
18 unnoticed.
19 Q. Well, isn't that because -- let me just -- to
20 fill that part in, do you understand that when you get
21 cancer, you have certain things in your urine, certain
22 chemicals that relate to having cancer?
23 A. Yes.
24 Q. And there are things that should be tested
25 for in steroid testing of urine samples?

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1 A. I'm sorry, you've lost me now.
2 Q. When you do the gastroscopometer some of
3 those substances, the hormones that your body creates
4 when it has cancer, could have been detected by a
5 gastroscopometer?
6 A. Oh, yes, yes.
7 Q. So isn't that referring to the fact that if
8 it was in his urine, then that might have something to
9 do with this?
10 A. Okay. All right. All of what you've said
11 there, now that sentence -- it -- can I assume that
12 what you're saying is an accurate representation of
13 this article? If it is, then I would say, okay, well,
14 now I can see that that sentence now makes a little
15 bit more sense.
16 Q. But the cancer could have gone unnoticed has
17 to do with testing on Lance Armstrong's urine in 1996,
18 right?
19 A. Well, I -- now you're asking me to vouch for
20 what that sentence means. I --
21 Q. No. Did you read all of LA Confidential?
22 A. I read through it and I've -- was focusing on
23 the areas that interested me in regard to this
24 hearing.
25 Q. So you weren't aware there's a whole giant

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1 section that discusses about his cancer and why it
2 didn't get detected if he had urine tests?
3 A. I read briefly through that and I think it
4 was very -- I mean, I didn't spend a lot of time
5 because I didn't anticipate that would be something
6 that I would be examined on.
7 Q. Okay. Anyways, skip the cancer could have
8 gone unnoticed part, and we are talking about 1999
9 urine samples.
10 A. Okay.
11 Q. And he says, it might be a crazy hypothesis,
12 but what if Lance Armstrong had been crafty enough to
13 falsify his urine?
14 A. Okay.
15 Q. That is what you're talking about?
16 A. Now you're talking about 1999 urine samples.
17 I thought this was about the 2000 urine samples.
18 Q. I'm sorry, 2000. I apologize, I misspoke.
19 2000 urine samples are what Audran is
20 testing and he says at the end of this discussion, the
21 LA Confidential supposedly it might a crazy
22 hypothesis, but what if Lance Armstrong was crafty
23 enough to falsify his urine. That's what you're
24 testifying you think the clean urine supports?
25 A. I've never said clean urine supports that

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1 sentence. What I've said is that clear urine is
2 consistent with urine manipulation.
3 Q. As long as we have the page up, could you go
4 to the bottom of that page? Now, the testing that
5 Audran did involved EPO testing by the French
6 laboratory, correct?
7 A. No, at the French laboratory he did the
8 testing.
9 Q. He carried out EPO tests at the French lab
10 with their personnel?
11 A. Yes.
12 Q. Okay.
13 A. Not using only their personnel. He went into
14 their lab -- from my understanding, he went into their
15 lab and conducted the tests himself. Now, the test is
16 very labor intensive, so he would have had to have
17 used their personnel to assist him, but I don't think
18 it's accurate to say they did the tests. He was the
19 person the court had appointed to do the analysis, so
20 I don't think he would have just said, well, you go
21 and do it. I think he would have taken a little bit
22 more closer role than that.
23 Q. Okay. And he's talking about EPO testing,
24 but the same EPO testing that you're talking about
25 with respect to the '99 samples?

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1 A. The same methodology?
2 Q. Yes.
3 A. Yes.
4 Q. Okay. And he -- the quotes from him in LA
5 Confidential are exogenous EPO non-negativity can
6 sometimes be refuted during the septic analysis. Do
7 you see that sentence?
8 A. I see the sentence.
9 Q. Why don't you read that paragraph?
10 A. The whole paragraph?
11 Q. Yes.
12 A. Exogenous EPO non-negativity can sometimes be
13 refuted during a septic analysis. It can indeed
14 happen says Michel Audran. It's an extremely delicate
15 process and the septic analysis is sometimes botched.
16 Also, we are dealing with a number of reagents. For
17 example, we have to be absolutely sure that we are
18 using the same ones. If they come from another batch,
19 it's over. Audran recalled one unfortunate example,
20 the EPO screening tests never worked during the 2000
21 Sydney Olympic games simply because the plates used to
22 migrate the molecules were not identical. They came
23 from another manufacturer and those plates did not
24 allow the, brackets, endogenous and exogenous, end
25 brackets, EPO to be separate.

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1 Spanish analysts realized this when they
2 performed the French tests in Barcelona. They started
3 out with the plates in Paris and they bought another
4 batch of plates from another distributor which were
5 intended for the Sydney games and it didn't work.
6 This completely messed up all the tests, the
7 migrations were wrong and so on. This gives you an
8 idea of how complex the detection procedure can be.
9 Q. Well, let's talk about the EPO test. Now,
10 the EPO test is an effort to take protein that's in
11 your urine and separate out two different kinds of EPO
12 that may be in your urine, correct?
13 A. Well, that's a very coarse overview, but
14 okay.
15 Q. We will try to get through this so we can
16 move this along. Your body makes EPO, correct?
17 A. Yes.
18 Q. And the effort of the test is to distinguish
19 the EPO your body makes from EPO that is exogenous,
20 that was not made by your body?
21 A. Yes, it's a representation, yes.
22 Q. Okay. And so the purpose of the test is to
23 find a way to tell from the total EPO, which is a
24 protein, how much of it is endogenous and how much of
25 it is exogenous?

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1 A. Well, no, I would characterize it
2 differently. I would say that the test is to detect
3 the presence of recombinant EPO. That's the goal of
4 the test.
5 ARBITRATOR CHERNICK: Recombinant is the
6 same as exogenous?
7 THE WITNESS: Yes. Exogenous means it
8 comes from outside of your body.
9 ARBITRATOR CHERNICK: And recombinant
10 means that somebody manipulated something to create
11 artificially something the body creates naturally?
12 A. Yes.
13 Q. (BY MR. LEVINSTEIN) And recombinant EPO
14 comes from hamsters or gerbils?
15 A. It comes from -- well, now it comes from a
16 lot of different sources.
17 Q. And the way the test works, as I understand
18 it, is different molecules have different pHs or
19 acidities, different protein molecules?
20 A. That's -- if you want to go quickly through,
21 this I'll accept that, but that's really not what's
22 going on.
23 Q. Well, is it the case that a gel is created, a
24 flat gel that's a substance?
25 A. Yes.

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1 Q. And there are lanes on the gel?
2 A. Yes.
3 Q. And in each lane a drop of urine is placed
4 that comes from either the sample being tested or a
5 control sample?
6 A. Okay, yeah.
7 Q. And an electric current is run through the
8 gel?
9 A. Yes.
10 Q. And that electric current causes different
11 charges at different points in the gel?
12 A. Yeah.
13 Q. And that charge causes the urine to separate
14 or the protein -- that's actually the protein that's
15 on there, and because they've taken the urine and they
16 tried to extract the protein, correct?
17 A. Uh-huh.
18 Q. So what's put on the gel is a protein, a
19 collection of protein?
20 A. No, it's a urine retentate.
21 Q. A urine retentate meaning protein that's been
22 screened out of urine?
23 A. No, the urine retentate is what's -- what's
24 taken out from -- when you've taken this sample, which
25 is like -- you've got a 75 milliliter jar, okay, and

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1 at the end of the day the retentate is like 20
2 microliters and so it's -- it's what's left over after
3 all of these pretreatments.
4 So I don't think it's accurate to say
5 it's just a protein that you drop on there. It's the
6 urine that has been treated to make it able to be
7 analyzed using this process, so...
8 Q. But EPO is a protein?
9 A. It's a hormone and hormone is a protein, so
10 yes.
11 Q. And recombinant EPO is a protein?
12 A. It's a recombinant hormone.
13 Q. You're telling me it is not a protein or it
14 is a protein?
15 A. Well, I would regard it as a hormone, but it
16 is a protein.
17 Q. Okay. And this process that you describe is
18 to try and extract the EPO and the recombinant EPO
19 from the urine and put them on the slide -- on the
20 gel?
21 A. Yeah. I don't really like your terminology,
22 but, yes, I'll accept it for the purposes of this.
23 Q. Okay. And because of the charge being
24 applied to the gel, there's a different charge at
25 different points in the gel?

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1 A. No.
2 Q. And the effect of the test is to cause the
3 molecules that are in the protein to migrate to
4 different points up the gel depending on what their pH
5 is?
6 A. No. It depends on their isoelectric charge,
7 which is distinct from what their pH is.
8 Q. Okay. It separates out the molecules of the
9 protein -- of the EPO along the gel, correct?
10 A. Yes.
11 Q. And it leads to -- and then it's -- through a
12 variety of processes, the protein is connected to
13 substances that give off light?
14 A. Yes, okay. It's a -- yes, it's a -- it's a
15 coarse representation, but, yes.
16 Q. I'm trying to not take the entire day to
17 cover -- if you want I can go into more detail?
18 A. It's up to you.
19 Q. Okay. And the result is that based on
20 research, depending on where in the gel the proteins
21 end up or the EPO molecules end up, we can compare
22 them to control samples and tell whether EPO is
23 present or recombinant EPO is present in the urine?
24 A. Yes, that's the purpose of this discussion.
25 That's a fair representation, yes.

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1 Q. Okay. And the result after they've done this
2 process is they take a photograph of the gel?
3 A. Yes.
4 Q. And that photograph is what is the evidence
5 as to whether there is EPO or recombinant EPO?
6 A. Yeah.
7 Q. And all of these tests that are reflected in
8 those '99 data are analysis of that photograph?
9 A. The only distinction I would make is that I'm
10 not completely certain how they apply the -- the
11 discriminative analysis that they use to generate the
12 mathematical model. I have a feeling that that's
13 through a slightly different approach. But certainly
14 for the first -- if you can remember that data sheet,
15 the first two columns the A and the B, the visual
16 identification, the 80 percent that would come from --
17 from what they're talking about. I'm not certain
18 about the serum, the third column how that's derived.
19 Q. You don't know how the third column is
20 derived?
21 A. I said I'm not certain.
22 ARBITRATOR LYON: Let me ask a question.
23 Do you know or do you not know how the
24 third column was derived?
25 THE WITNESS: When we have analyzed the

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1 results in the past, quite often they've sent me three
2 graphs which it's like all of these -- these peaks.
3 And I've never completely understood how they get that
4 data from just the photograph. I have a feeling that
5 it might come from a slightly different procedure
6 rather than just looking at the photograph. And
7 that's why I'm saying that. I just wanted to clarify
8 that I'm not absolutely certain it's just by looking
9 at the photograph.
10 ARBITRATOR FAULKNER: Doctor, for
11 column A, when they are attempting to do the visual
12 identification, are they using a chart to give them
13 representations of concentrations based on color?
14 THE WITNESS: No, it's --
15 ARBITRATOR FAULKNER: How do they
16 identify or ascertain what the color, I think you
17 testified as to, means?
18 THE WITNESS: Oh. When I said shading,
19 they use a code like a red cell indicated that they
20 declared a positive, a green cell I can't remember the
21 colors, and indicates negative. The color itself is
22 simply things they use to label that particular sample
23 whether it was positive or negative. But the color
24 itself had no particular significance as to how they
25 presented it.

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1 ARBITRATOR FAULKNER: They created a key
2 for that. Okay, now I understand what you're saying.
3 All right. Proceed.
4 Q. (BY MR. LEVINSTEIN) When you're talking
5 about colors, you mean the document we have is in
6 black and white but you believe that the different
7 shadings are actually different colors on a color
8 version of that chart?
9 A. Yes.
10 Q. Okay. And the electropherogram or the
11 photograph that's created in the test only is black
12 and white?
13 A. That's my understanding, yes. That's all
14 I've ever seen.
15 Q. I would like to give you something called the
16 World Antidoping Code International Standard for
17 Laboratories.
18 MR. BREEN: Let's mark this -- mark this
19 as the next exhibit.
20 ARBITRATOR CHERNICK: It's 144.
21 ARBITRATOR FAULKNER: Before you proceed,
22 gentleman, I note it's roughly 10:00. Do you all need
23 to do anything with regard to Mr. Walsh?
24 MR. TILLOTSON: If you can give me a
25 sense of how long you're going to take.

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1 MR. LEVINSTEIN: If we're going to stop
2 at 10:15, I'm not going to be done.
3 MR. TILLOTSON: Well, we represented and
4 assured Mr. Walsh that he would get on and off today.
5 MR. HERMAN: I spoke with -- I think we
6 spoke last night. Do you know how long your direct is
7 going to be?
8 MR. TILLOTSON: I don't. I'll just be
9 honest, I mean, out of an abundance of caution, I want
10 to get him on and off because he literally has to
11 leave, so I'll --
12 MR. HERMAN: If you start at 10:30, would
13 that get it done by noon or so?
14 MR. TILLOTSON: Perhaps. I don't know.
15 Perhaps.
16 MR. HERMAN: Well, if that's the case, I
17 don't -- you know, I don't think my cross is going to
18 be that lengthy based upon our conversations at least,
19 so...
20 ARBITRATOR LYON: Based upon cross
21 examinations you've done so far in this case?
22 MR. HERMAN: Exactly.
23 MR. TILLOTSON: We're not talking about
24 lunch.
25 Here's what I -- I'm prepared to go a

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1 little while longer and take a morning break and then
2 I would -- I would request that we start Mr. Walsh
3 wherever you are in your cross at that time.
4 MR. HERMAN: Sure, that's fine.
5 MR. TILLOTSON: Just to be careful. I
6 feel bad if we get done at 4:45 and you said you had
7 no time.
8 ARBITRATOR LYON: Is he leaving tonight?
9 MR. TILLOTSON: He is.
10 ARBITRATOR LYON: What time is his
11 flight?
12 MR. TILLOTSON: I think he told me he
13 needed to leave for the airport around 4:30 or 4:45.
14 Basically when we leave.
15 ARBITRATOR FAULKNER: Will Dr. Ashenden
16 be with us for the rest of the day? I know that he's
17 been here throughout the hearing.
18 MR. TILLOTSON: That's -- that's no
19 problem. He's -- he's not scheduled to leave tonight
20 so that's no problem.
21 ARBITRATOR LYON: Why don't we do this,
22 out of an abundance of caution. Mr. Chairman, let's
23 let this witness sit in the sideline and bring
24 Mr. Walsh in right now, because if he's going to leave
25 at 4:45 and he thinks he's going to --

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1 MR. TILLOTSON: I'm prepared to start at
2 any time. Take a morning break and bring him in.
3 ARBITRATOR CHERNICK: We are starting a
4 new subject here, so it's probably good.
5 ARBITRATOR FAULKNER: Let's take our
6 break now and then that way y'all can resume.
7 Doctor, we are going to shift you out for
8 a short while we deal with the other witness.
9 Actually we are going to take a real quick break for
10 facilities and then we'll proceed with Mr. Walsh so we
11 can make sure that that's done and accommodate what
12 y'all have represented to him.
13 (Recess 10:02 a.m. to 10:15 p.m.)
14 ARBITRATOR FAULKNER: Are y'all ready?
15 MR. TILLOTSON: We are ready to proceed.
16 We call David Walsh.
17 DAVID WALSH,
18 having been first duly sworn, testified as follows:
19 EXAMINATION
20 BY MR. TILLOTSON:
21 Q. Mr. Walsh, you won't realize how relieved I
22 am that I finally have a name that I will not have
23 trouble pronouncing in the course of these
24 proceedings.
25 If you could begin by first stating your

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1 full name for us.
 2 A. David Walsh.
 3 Q. Mr. Walsh, are you, along with Pierre
 4 Ballester, the author of LA Confidential?
 5 A. Yes.
 6 Q. We are going to discuss the book and other
 7 matters, but before we get into that, we have heard a
 8 lot about you, but we haven't been able to hear it
 9 from you in terms of an introduction. First, if
 10 you'll tell us what your current job is.
 11 A. I'm chief sports writer of the Sunday Times
 12 newspaper in London.
 13 ARBITRATOR CHERNICK: Excuse me, your
 14 voice is a little bit soft. You have to speak loudly
 15 so that the reporter can hear you.
 16 A. Okay. I'm chief sports writer with the
 17 Sunday Times of London.
 18 Q. (BY MR. TILLOTSON) And how long have you
 19 been chief sports writer?
 20 A. Since the beginning of 2001.
 21 Q. When you say chief sports writer, give us a
 22 sense of where that position is within the hierarchy
 23 of the sports page of the paper?
 24 A. Yes, in British newspaper, it's -- in the
 25 sports department every sport has its own

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1 correspondent and its backup people behind the
 2 correspondent, but there is one chief sports writer
 3 and he's regarded as the guy that the newspaper likes
 4 to send to the very big events to give what the
 5 newspaper would consider its most authoritative view.
 6 Really it's -- it's -- it's the job that every sports
 7 writer wants.
 8 Q. Now, as chief sports writer to the Sunday
 9 Times -- place the Sunday Times for those of us whose
 10 knowledge is limited to maybe the Dallas Morning News,
 11 in the context of European newspapers?
 12 A. Sunday Times would be one of the best known
 13 European newspapers. In Britain it's a broad sheet
 14 newspaper, which generally refers to what we call the
 15 quality market and it sells more newspapers each
 16 Sunday than all the other broad sheets combined, so
 17 it's very much the dominant player in the market and
 18 it would have a very good reputation for its
 19 journalism and always has had.
 20 Q. How long have you been a sports journalist?
 21 A. I've been a sports journalist for -- I've
 22 been a journalist for 28 years and purely a sports
 23 journalist for 26.
 24 Q. And where are you from originally?
 25 A. I'm from a little village called Slieverue in

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1 County Kilkenny in Southeast Ireland.
 2 Q. Can you offer us any rational explanation as
 3 to why a British newspaper would allow an Irishman to
 4 be the chief editor of the Sunday Times?
 5 A. I'm -- I had worked for different newspapers
 6 in Ireland and the Sunday Times had an Irish edition
 7 of its newspaper where they made the Sunday Times more
 8 relevant to Irish people by including Irish news
 9 stories, so they offered me a job. I was interested
 10 in trying to see could I operate in what was a bigger
 11 league and I joined the Sunday Times in Ireland.
 12 About a year and a half later they asked
 13 me to come to England, to move my family to England
 14 and -- which was a very big move, because we have lots
 15 of kids. So we moved all the kids and everybody eight
 16 years ago to England. Because the Sunday Times had
 17 said, we believe that ultimately you could end up our
 18 chief sports writer and that -- that possibility
 19 appealed to me. So we made a very big move on the
 20 chance that the job might become mine at some point in
 21 the future.
 22 Q. How many children do you have?
 23 A. Seven.
 24 Q. Now, tell -- give us sort of a sense of your
 25 responsibilities as the chief editor for the Sunday

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1 Times for the sports section. Do you write a column,
 2 do you write about sporting events? Give us a sense
 3 of what your job is like.
 4 A. Basically I'm sent to what I would call all
 5 the big events. I mean, you know, when I look at my
 6 year, I think the first -- the first huge marking --
 7 the -- the one that I would maybe -- probably my
 8 favorite event of the year would be the Masters Golf
 9 Tournament in Augusta. That would be a very big
 10 event. This year the soccer world cup is in Germany;
 11 that will be a huge event. Later this year the Ryder
 12 Cup is on. And I would also be going to the winter --
 13 not the winter -- to Melbourne -- the Commonwealth
 14 Games in Melbourne in March. I tend to cover the very
 15 big horse races, the Olympics. I've covered every
 16 Olympic games since Seoul in 1988. It is whatever big
 17 event for the week the chief sports writer for any in
 18 Britain is supposed to be there.
 19 Q. And how often do you have an article or story
 20 in the Sunday Times? Once a week, twice a week?
 21 A. Well, obviously the Sunday Times is a
 22 once-a-week newspaper and I would expect to have one
 23 what we call feature, one long piece, maybe it's an
 24 interview or maybe it's an assessment piece. And on
 25 Saturday I would then go out and cover something live

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1 and do a report from some live match. Because
 2 Saturday is our live day as a Sunday newspaper. So
 3 for example, this Saturday I go to Newcastle for a big
 4 soccer game and that would be normal at this time of
 5 year because soccer in England is a very big sport.
 6 Q. Now, in addition to writing articles for
 7 newspapers, have you written any books, other than LA
 8 Confidential?
 9 A. Yes, I've written many books. Mostly cycling
 10 books, because cycling has long been a great passion
 11 of mine. The first book I wrote was -- was a book on
 12 the Irish cyclist, Sean Kelley, who was world number
 13 one for -- world number one cyclist for about six
 14 years in the mid 1980s.
 15 And after Sean Kelley I wrote a book on
 16 another Irish cyclist, Stephen Roche. And then I
 17 wrote a golf book history of my local golf club in
 18 Ireland. I've written a book on a steeple chase
 19 jockey, champion jockey, Richard Dunwoody, I wrote his
 20 autobiography. I wrote the autobiography of Paula
 21 Radcliffe, the marathon world record holder. I've
 22 written a book on two footballers, two English
 23 footballers, one of whom was a very wealthy, earned
 24 millions of pounds a year and his best friend who
 25 earned peanuts and they told the story of their

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1 different lives doing the same job. And I've written
 2 a book on the Tour de France in 1993 called Inside the
 3 Tour de France. So I've -- I mean, I don't -- I don't
 4 count them, but I'm sure the number is up around eight
 5 or ten.
 6 Q. Have you won any awards for your writing?
 7 A. Yes, I have.
 8 Q. Tell us what you've won.
 9 A. Well, when I was in Ireland, I worked for a
 10 Provincial newspaper when I first started, a small
 11 local newspaper, and I was Young Journalist of the
 12 Year in Ireland in my first year out of college. And
 13 after that I joined -- I joined a national newspaper
 14 in Dublin, the Irish Press Group, so that I could work
 15 exclusively in sports. And in my first year at the
 16 Irish Press I was Sports Journalist of the Year in
 17 Ireland, and I subsequently won that award three more
 18 times. So I was four time Sports Writer of the Year
 19 in Ireland.
 20 And then we moved to England in 1998 and
 21 in the -- in my -- in the seven years I've been in the
 22 Sunday Times I have won the Sports Writer of the Year
 23 in Britain three times.
 24 Q. Now, you've indicated to us that you've
 25 covered all sports and cover all sports. When did you

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1 begin covering professional cycling?
 2 A. The first event I covered in professional
 3 cycling was the 1980 world championships in
 4 Sallanches, France, so it goes back to 1980.
 5 Q. When did you first start covering the Tour de
 6 France?
 7 A. I first covered the Tour de France in 1983,
 8 but I went as a fan in 1982, went with a friend of
 9 mine who had a motorbike and we traveled for two weeks
 10 on the race. I don't -- I was a sports writer, I took
 11 two weeks of my holiday to go to France and follow the
 12 tour on a motorbike.
 13 Q. And you had indicated that you had written a
 14 book called Inside the Tour de France and that you
 15 published that in 1993?
 16 A. No, it was based around the Tour of 1993
 17 published in 1994.
 18 Q. In connection with that book, did you have an
 19 opportunity to interview and write about Lance
 20 Armstrong?
 21 A. Yes. What happened was the book was based --
 22 I wanted to -- the book to be like an account of
 23 details of the Tour de France where I would interview
 24 a different person at different points of the race and
 25 I would tell their stories and by telling their

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1 stories I would hopefully tell the story of the Tour
 2 de France. And I wanted to write about a young
 3 neophyte riding his first tour, and I decided that
 4 maybe the most interesting one would be Lance
 5 Armstrong.
 6 And I -- each chapter was based, then, on
 7 a, quote, extensive, interview with that subject. I
 8 interviewed Lance for, I suppose, three, three and a
 9 half hours at his hotel just outside Grenoble, and it
 10 was one of the better interviews and it -- and I made
 11 it the opening chapter of the book Inside the Tour de
 12 France. I think it was about 7,000 words.
 13 Q. How would you describe the story in terms of
 14 coverage of Mr. Armstrong in the book, positive,
 15 negative? Give us a sense.
 16 A. Very positive. Anybody who has read that
 17 chapter will know that the picture of the young guy
 18 from Texas who had come to ride the Tour de France was
 19 a very positive one. I liked the guy, I think Lance
 20 liked me, and I thought he was -- he struck me as a
 21 very ambitious, very up front in -- you know, in terms
 22 of stating his ambition, and he -- it was clear to me
 23 the way he described it that he had come from a, you
 24 know, difficult background and a single parent home
 25 and he had worked for what he got and I was impressed

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1 by him. I liked him.
 2 Q. Now, in the course of your sports coverage
 3 about writing about various events, have you or did
 4 you become aware of the issue or problem of abuse
 5 drugs in professional sports?
 6 A. Yes. I think -- for many of us the watershed
 7 event -- our defining moment was the Seoul Olympics in
 8 1988.
 9 Q. And how was that a defining moment for you?
 10 A. Because of Ben Johnson -- I mean, I stayed in
 11 the Olympic Village in Seoul, the journalists' village
 12 and a friend of mine, a journalist from Scotland,
 13 knocked on my door at half two in the morning. I was
 14 obviously asleep and he said, Johnson has been busted,
 15 and obviously it overwhelmed everything else at the
 16 Olympics. But I remember -- my memory of that
 17 Olympics were of watching events that you just weren't
 18 sure of anymore.
 19 And the late Florence Griffith Joyner,
 20 I'll never forget, set a world record in the 200
 21 meters in the Seoul Olympics deceleration. She
 22 actually started to slow down after about 180 meters
 23 and after the last 20 meters she clearly decelerating,
 24 And yet the clock will say world record. And a
 25 Rumanian woman, Paula Ivan ran a 1500 meter and just

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1 broke the world record by miles. The same woman in
 2 her specialist event three days earlier had performed
 3 abysmally in the 3,000 meters. And for people who
 4 watch sports and love it, it was surreal. And then
 5 Ben Johnson was positive. And I for -- a lot of the
 6 people watching were having suspicions about what they
 7 were watching and Johnson's test forced us to address
 8 an issue that I think lots of people believed had to
 9 be addressed.
 10 Q. And since that time period in connection with
 11 covering the famous sporting events of the world that
 12 you have covered. Have you written about the issue of
 13 doping and the suspicion of doping in those sports?
 14 A. Yes, very much. You couldn't not write about
 15 it. I mean, another huge moment for me was the 1996
 16 Olympic games in Atlanta.
 17 Q. Why is that?
 18 A. Well, I come from a country that before 1996
 19 I think had three gold medalists in its entire
 20 history, Ireland. And in Atlanta we had a swimmer who
 21 won three gold medals. And obviously she became a
 22 national icon overnight. Where Irish -- because of
 23 the swimming was at nighttime in Atlanta which is two
 24 or three o'clock in the morning and 50 percent of the
 25 Irish people stayed up to watch swimming, a sport very

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1 few Irish people are naturally interested in. 50
 2 percent of the population were at their televisions at
 3 three o'clock in the morning watching this woman win
 4 gold medals.
 5 And when you looked at the computer, as
 6 we had done before, and when you -- you noted the fact
 7 that her -- her husband and coach was a convicted drug
 8 user and when you listened to everything he said, he
 9 was actually serving his suspension at the time he was
 10 coaching her and you looked at all her past
 11 performance in the Olympics. This woman had been an
 12 international swimmer for 14 years. For her to
 13 suddenly transform herself into what she had become
 14 did not make sense and you had to investigate. And I
 15 was one of those journalists who said, look, folks,
 16 before we apply this we have to check it out. We
 17 really need to ask some questions.
 18 And the more questions you asked of
 19 Michelle Smith the more you became convinced that
 20 further questions had to be asked. And that was a
 21 difficult time, because you can imagine how -- how
 22 offensive Irish people at the time felt the
 23 questioning was. And there were only three
 24 journalists who asked questions at that time and I was
 25 one of them. And, of course, it subsequently

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1 transpired that Michelle Smith was proven to have used
 2 drugs and got a four-year ban. But that was -- that
 3 was big time for us.
 4 Q. We have seen in some testimony here you know
 5 the journalist James Startt.
 6 A. Yes.
 7 Q. Are you familiar with him?
 8 A. Yes.
 9 Q. He testified here earlier in the proceedings
 10 and he described himself as, I write about the sport
 11 cycling because I generally like the sport, and the
 12 doping and stuff is something I personally made a
 13 decision to stay away from. Let me ask you something,
 14 as a journalist who's been covering professional
 15 cycling and other sports, are there a sense among
 16 journalists who choose not to write about the issue of
 17 doping in sports?
 18 A. Yes. I mean, for me journalistically, this
 19 has -- this has been a huge thing because I've always
 20 wanted to write about -- about -- about doping, and
 21 lots of people, readers even, and certainly many of my
 22 colleagues in my profession look upon me as a cynic
 23 and that's never made sense to me, because I believe
 24 that sport can become totally clean.
 25 I'm passionate about sports and I believe

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1 that writing about doping and trying to get people to
 2 confront the issue is actually a statement of great
 3 idealism. And there are many journalists who say I
 4 prefer not to write about it. And, of course, in many
 5 ways life is easier, because it's easier to maintain
 6 contact maybe within the sport, within the
 7 administration, because a lot of people don't like you
 8 writing about doping. But to me the act of cynicism
 9 is to not write about it, to say I'm going to stay
 10 away from that stuff.

11 Q. Well, explain to us what would be -- why is
 12 it easier not to write about doping as a journalist
 13 doing the stories?

14 A. Because -- because there's lots of people who
 15 don't want you to write about doping. I mean, I would
 16 have to say most of the editors I've ever worked
 17 for -- I mean, the sports editors they don't want me
 18 writing about doping, the proprietors of the newspaper
 19 don't especially want me writing about doping, the
 20 administrators definitely don't want me writing about
 21 doping and lots of the athletes -- some of the
 22 athletes don't want you writing about doping. They
 23 just don't think it's your business.

24 Q. So why, if it would be easier and journalists
 25 like Mr. Startt prefer to write about the pure sport

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1 without the dark side, why do you over the course of
 2 your 28-year career, why have you chosen to write
 3 about the topic of doping, including material such as
 4 what we are going to talk about today?

5 A. Well, my fundamental belief has always been
 6 that there are plenty of people who want to play by
 7 the rules, there are plenty of people who perform
 8 clean, and those people are badly treated by the
 9 system because the system doesn't do nearly enough to
 10 help them.

11 I mean, if I could use one example, and
 12 if somebody said to me, what story would you be most
 13 proud of, the stories I'm most proud of are the
 14 stories where I go and write about clean athletes who
 15 I feel have been badly treated by the system. And in
 16 this respect the most startling example that I could
 17 give to you is of an American swimmer that I wrote
 18 about in -- in the year 1999, the piece appeared in
 19 2000. I came from England where I lived at the time
 20 to southern California to interview her, she was
 21 Shirley Babashoff. She won five silver medals in the
 22 1976 Olympics at Montreal in individual events. She
 23 won one gold in relay. If her five silvers had been
 24 five golds, she would now be remembered as Mark Spitz
 25 is remembered. She was beaten by five East Germans.

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1 She said at the time -- she said, the
 2 people who have beaten me are not women in the sense
 3 that we perceive women to be. They're on drugs.
 4 Everybody said, Shirley Babashoff, bad loser. The
 5 American press called her Surly Shirley for not
 6 accepting her beating gracefully.

7 All of those East Germans have been since
 8 proved to have been dopers. She's was 100 percent
 9 right. When Shirley Babashoff now is asked did she
 10 ever compete in sports she says no. That's how
 11 traumatic the whole experience for her was. She was
 12 probably the greatest female swimmer that we have
 13 never heard about.

14 Q. Let me ask you about that. It's been
 15 suggested in these proceedings -- well, not suggested,
 16 said outright, that you're on a mission or have a
 17 vendetta against certain athletes in an effort to
 18 taint them with the scandal of doping. Do you
 19 consider yourself, given your background and what
 20 you've told us, as having a vendetta and approaching
 21 these athletes with the presumption that they must be
 22 doping?

23 A. Absolutely not. I've never considered that
 24 I'm on a vendetta against anybody. I write about
 25 doping as I see fit, as I think it needs to be written

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1 about. And I -- if I look back on the volume of work
 2 I've done as a journalist when -- certainly from Ben
 3 Johnson onwards I was always writing about doping. If
 4 it wasn't Ben Johnson or Michelle Smith or Shirley
 5 Babashoff or whoever, but the list would be pretty
 6 endless.

7 Q. I want to now turn to your coverage of
 8 Mr. Armstrong in the Tour de France. You said you
 9 wrote an article about him in 1993 for your book. Did
 10 you interview Mr. Armstrong or write about him after
 11 your book came out but before he had -- was diagnosed
 12 with cancer?

13 A. No. Because as -- I mean, as a chief sports
 14 writer and because at that time in my career I was
 15 working for a newspaper called the Sunday Independent
 16 in Dublin as chief sports writer, and while I -- while
 17 I would cover the Tour de France I wouldn't cover
 18 cycling outside of the Tour de France, or very little.

19 So at that time Lance was -- was a pretty
 20 good one-day rider in Europe. You know, he wasn't
 21 sensational. And when the Tour de France came around
 22 he wasn't a factor so he wasn't somebody that, you
 23 know, basically I came into contact with
 24 journalistically.

25 When he got cancer, I mean, I knew him in

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1 a distant way because I had once interviewed him,
 2 although it had been a very long interview and I think
 3 I had follow-up phone calls and he gave me numbers to
 4 call his mom and I had spoken to his mom. And I was
 5 really -- I was very saddened by his cancer, because
 6 it was a terrible thing because he was an elite
 7 athlete.
 8 Q. Prior to Mr. Armstrong's cancer and his
 9 return date in -- from that in 1998, can you give us a
 10 sense of what the state of professional cycling was in
 11 1998?
 12 A. Well, 1998 was an absolute watershed year for
 13 the sport of cycling, because there had been a feeling
 14 that the doping question was getting out of control in
 15 cycling. Just a sense that people had. The times
 16 were getting faster; not by the little percentages
 17 that normally happen, but by big percentages. Every
 18 year was a record new time in the Tour de France. And
 19 then you're -- we were hit with the 1998 Tour de
 20 France, which actually was -- was -- began in Dublin
 21 in Ireland.
 22 But as the race -- just before the race
 23 began, Willy Vogt one of the soigneurs with the
 24 Festina team, a very experienced soigneur who worked
 25 in the sport for 30 years and Festina was the world's

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1 number one team at this time, was driving the race by
 2 car and going from Belgium to France and then from
 3 France he would have gone to Ireland. But he was
 4 going from France to Belgium -- I'm sorry, from
 5 Belgium to France he was stopped by customs and they
 6 found a huge cargo of banned performance enhancing
 7 drugs in the trunk of his car.
 8 And arising out of that the police made
 9 raids during the 1998 tour and they found drugs pretty
 10 much everywhere they looked. And if the world's
 11 number one team, Festina, had the systematic drug
 12 program which was clear from the drugs that Willy Vogt
 13 was carrying and clear from the evidence he
 14 subsequently gave the police, well, then clearly
 15 cycling's drug problem was even greater than we had
 16 all feared.
 17 Q. What -- did you write about the Festina
 18 story?
 19 A. Oh yes, very much so. I mean -- you know, I
 20 wasn't on the 1998 Tour, but I followed it, because
 21 that was world cup year in football and for
 22 whatever -- I was working for the Sunday Times at that
 23 time and the football world cup would take precedence
 24 over the Tour de France if they collided.
 25 But subsequently I wrote quite a lot

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1 about it, because it was a huge issue in Europe,
 2 because the 1998 race happened, Willy Vogt was
 3 imprisoned, he cooperated with the police -- this was
 4 a man who had been in the sport for 40 years, worked
 5 for a whole variety of teams and he basically told the
 6 police all he knew and it was clear that cycling
 7 was -- he exposed cycling's doping problem.
 8 The French police became involved, they
 9 organized raids, they found -- you know, the Spanish
 10 teams left the Tour de France in very controversial
 11 circumstances and that -- they said that they felt
 12 they were being hassled by the police. Other people
 13 felt that they went away because they basically didn't
 14 want to be searched during the race.
 15 Q. Now, I understand there has been some
 16 allusion to it that there's been a darker side to the
 17 use of doping in connection with the deaths of various
 18 professional cyclists. Have you explored and written
 19 about the tragic side of the use of drugs?
 20 A. Yes, very much so. I mean, during the -- the
 21 early '90s when EPO came into the Peloton,
 22 erythropoietin, the drug that enhances the oxygen
 23 carrying capacity, produces red cells artificially and
 24 enhances the oxygen carried capacity of the blood.
 25 When that came in first and riders didn't

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1 understand how they could use it properly or use it
 2 relatively safely, lots of riders died. Young guys 22
 3 years -- 24 years or age, early 20s, were dying in
 4 their sleep because their heart simply stopped
 5 beating.
 6 Q. I --
 7 A. It was -- it was huge scandal at the time.
 8 Q. I understand from -- not so much following
 9 professional cycling but in connection with this case
 10 that the incident of the death of professional
 11 cyclists, either after or in connection with the race
 12 and doping and use of drugs is not something that was
 13 a recent occurrence in the Tour de France, that
 14 there's actually been a history of riders -- have you
 15 written about sort what's the similar events
 16 considered to this?
 17 A. Oh, yeah. I mean, I wrote a very big story
 18 about Tommy Simpson the English rider who died in the
 19 Tour de France in 1965.
 20 MR. HERMAN: Excuse me, I didn't get the
 21 year, pardon me.
 22 A. I think it was '65. I want to say -- I
 23 think -- '67 is in my head as well, but I get those
 24 two years -- but anyway, it was mid sixties, Tommy
 25 Simpson, an English rider, was wearing the yellow

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1 jersey and on a very hot day he was climbing Mount
2 Ventoux and he was losing ground and he was struggling
3 to keep up and he was clearly in trouble, he had run
4 out of energy and his bike was zig-zagging from side
5 to side on the road and he collapsed. And his
6 mechanic, Harry Hall, came to pick him up and Harry
7 Hall -- according to Harry Hall, Tommy Simpson was
8 supposed to have said put me back on my bike. And
9 they were reputedly his last words because he
10 collapsed and died.
11 Amphetamines were found in his -- in the
12 back pocket of his cycling jersey and amphetamines
13 were found in his blood stream when the postmortem was
14 done. And the view at the time was that -- was that
15 the amphetamines that Tommy Simpson was using
16 contributed to his death.
17 Q. I asked you about that story because -- just
18 to jump ahead a second, you did ask Mr. Armstrong in
19 connection with -- with the interview in April 2001 if
20 he knew about this story of Tommy Simpson literally
21 dying while wearing the yellow jersey; is that right?
22 A. That's right.
23 Q. And do you recall what he said in response
24 when you asked him about the story of Tommy Simpson?
25 A. I do recall it, because it -- the answer

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1 struck me as funny, that's why I recall it. I said to
2 Lance -- I said, you know I was exploring -- he had
3 come from Texas where, you know, he didn't grow up
4 with the Tour de France background, and I was trying
5 to find out when he started to become conscious of
6 cycling's doping history and I asked him about Tommy
7 Simpson on that basis and he said, but Tommy Simpson
8 wasn't a positive test.
9 They had just started testing in the Tour
10 de France around that time, but the testing was
11 minimum and Tommy Simpson didn't test positive. But
12 the point about his death was that amphetamines were
13 found in his possession, you know, when they picked
14 him up off the road and did his -- and in his system.
15 But Lance's response struck me as strange because he
16 almost -- it almost seemed to me like he wanted to
17 deny that Simpson's death was closely related to
18 drugs, which the postmortem decided it was.
19 Q. Now, Mr. Armstrong won the 1999 Tour de
20 France. Can you describe your reaction to that,
21 when -- and the tenor and tone of the stories you
22 wrote about it?
23 A. Yes. The -- the background to my going to
24 the Tour de France in 1999 was that I felt that 1998,
25 the catching of Willy Vogt, Willy Vogt's admission,

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1 the whole -- the realization that the world's number
2 one team had run a sophisticated doping program which
3 their team manager had now acknowledged to the police,
4 which their soigneur who had done much of the
5 implementation of this doping program had fully
6 admitted to.
7 So we now knew that world's number one
8 team had been doping very systematically. We knew
9 that other teams had been doping. Initially they had
10 been -- the police had been on the case for a number
11 of years and they had something like five doping
12 investigations going on at this time. So we knew that
13 doping was pervasive in cycling, and when I went to
14 the 1999 tour, I went -- I have to say I went as a
15 skeptic. I wanted the race to prove to me that they
16 were going to use 1998 -- that they were going to use
17 1998 as a stepping stone to a better future.
18 Q. What was the 1999 Tour sanctioned or called
19 by the officials?
20 A. Before it started they said it would be -- it
21 would be the tour of renewal. They said it would be the
22 tour of restoration, and the -- the director of the
23 tour, Jean-Marie Leblanc, actually said before the
24 race because of 1998 and the way we are now going
25 to -- you know, the way we are -- we have learned

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1 about how bad things were, we are going to use this to
2 build a better race and you're going to see that the
3 times this year will be slower because there will be
4 much less drugs in the race and the speed of the race
5 will go down. And we went there to see a better tour
6 and, you know, a race that would give us more
7 confidence that doping was much less of a factor.
8 Q. Okay. And what -- what happened? I mean,
9 when you wrote about it, what happened?
10 A. Well, I went and -- it was an extraordinary
11 race because Lance had come back from cancer and had
12 shown the previous September in the Tour of Spain that
13 he was, you know, quite close to being a contender for
14 the Tour de France. He finished fourth in the Tour de
15 Spain the previous -- previous year and he said that
16 would have made him a contender, but before cancer he
17 had never shown any signs that really he was going to
18 be -- he was going to be a contender in the Tour de
19 France.
20 So suddenly he's in contention but nobody
21 was prepared for his domination of the race in 1999.
22 He -- he won the opening prologue, you know, he had
23 never won the prologue before in the Tour de France or
24 even come near winning the prologue. He won that and
25 suddenly he totally dominated the race. I remember

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1 when the first mountain stage happened it was in
2 Sestrieres, and he was totally dominant. And it was,
3 you know, in one respect hugely impressive if you
4 didn't ask any questions, but if you asked questions
5 and you looked at what was happening in the race, you
6 certainly felt -- you know, at least I felt that
7 you've got to be careful before deciding that cycling
8 is now a healthy sport, because some of the signs
9 weren't good.

10 Instead of it being a slower race, the
11 1999 race turned out to be the fastest in history,
12 faster than any of the races when we knew EPO was --
13 was hugely used by the riders. So the 1999 race was
14 faster than any of the EPO races that had preceded it,
15 and there was a big controversy in the 1999 race
16 involving a young French rider Christophe Bassons
17 which made quite an impact on me because I knew
18 Bassons' trainer, I heard about him.

19 He clearly was a young French rider
20 devoted to doing the race clean. He was intelligent,
21 he had huge potential and he said -- he was writing,
22 lots of the riders had columns in newspapers, he had a
23 column in the French newspaper la Parisian, if I
24 remember correctly, and Christophe Bassons said in the
25 race that he believed that in his opinion you still

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1 couldn't get into the top ten at the Tour de France if
2 you weren't doping.

3 Q. Now -- I'm sorry, go ahead. I didn't mean to
4 interrupt you.

5 A. That's okay.

6 Q. In connection with your coverage of the 1999
7 Tour de France, did you have suspicions, doubts,
8 concerns about whether the sport was clean?

9 A. It wasn't just me, I did have but other
10 people had. Jean-Marie Leblanc, the director of the
11 race decided in the middle of the race that he
12 should -- we -- he said -- his quote was, I don't
13 think we can call this the tour of restoration or the
14 tour of renewal. It would be better to call it the
15 tour of transition.

16 Q. Did you write about your suspicions or your
17 concerns?

18 A. Yes.

19 Q. And will you describe it for us here?

20 A. Yes, I did, because on the roadside when
21 there was an altercation in the race between --
22 between Lance and Christophe Bassons in that Lance
23 took exception to what Christophe Bassons was saying
24 in his newspaper column.

25 And there was a situation on the road

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1 where they had an argument and according to Bassons
2 Lance told him that, you know, he should go home, and
3 Lance disputed that and -- but it was clear from --
4 from everybody, from Bassons' own teammates that
5 Christophe Bassons was being put under a lot of
6 pressure in the Peleton for what he said. And he did
7 interviews where he was clearly traumatized by it and
8 he eventually quit the race long before -- and he quit
9 the race because of the psychological stress that the
10 race had put on him.

11 Q. Let me ask you about that. I've seen
12 newspaper articles covering the Tour de France which
13 had spoken about a code of silence among the riders.
14 In connection with your journalistic reporting and
15 investigation have you encountered what amounts to a
16 code of silence among riders making it difficult to
17 obtain information?

18 A. Absolutely. That's -- that's -- that's
19 always been the case. So virtually in all of cycling.
20 They talk in cycling about spitting in the soup.

21 Q. What does that mean?

22 A. It means that a rider who speaks about doping
23 in cycling or talks about the problem of doping in
24 cycling is perceived to be spitting in the soup. In
25 other words, the soup is -- is -- is the rewards he

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1 gets -- it's -- you know, it puts food on your --
2 cycling puts food on your table. If you talk about
3 cycling being -- having a doping problem, you're
4 spitting in that soup, and -- and -- and the guys who
5 do talk honestly about the doping problem in cycling
6 have had real problems.

7 A colleague of mine in the Sunday Times
8 who was a professional racer, Paul Kimmage, wrote an
9 exceptionally good book about the phenomenon of doping
10 in cycling. He wrote it in the mid 80's the problem
11 was -- was EPO didn't exist then, but the doping
12 problem very much did. And Kimmage wrote a book about
13 how cycling authorities, you know, basically forced
14 the riders to make a decision, doping this direction,
15 clean riders this direction.

16 The clean riders couldn't do as well as
17 the doping riders so that was a horrible choice. And
18 Kimmage's argument was that choice, that crossroads
19 should not happen, it should not be there. He
20 wrote -- he wrote this book, which was an acclaimed
21 book, and all of his friends -- so-called friends in
22 the the Peleton turned against him.

23 Q. Well, the -- Mr. Armstrong's 1999 win in the
24 Tour de France was portrayed in the press as a heroic
25 victory. I take it your approach to it from the

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1 journalistic standpoint was slightly different?
2 A. Yes, it was. I mean, what I said was -- was
3 that, you know, on the face of it it was the most
4 fantastically impressive performance, but as fans in
5 sport, the sponsors can force us to go one way, the
6 administrators can tell us one thing, but the one
7 thing that people cannot do is they cannot determine
8 your emotional response to an event. And my emotional
9 response to the 1999 Tour was one of let's just wait
10 before committing to this being a great new dawn for
11 cycling.
12 Q. Now, I notice an opinion that's been
13 previously admitted as evidence in here from a legal
14 proceeding in which you're involved in against
15 Mr. Armstrong in England that's Respondents'
16 Exhibit 43, Lord Justice Brooke writes about you that
17 you see your job as a journalist covering sporting
18 events not as a cheerleader but as someone who asks
19 questions. Would you describe that as an accurate
20 view of what you consider your role as a journalist
21 and the approach you take?
22 A. Absolutely. I mean, my -- my one guiding
23 principle is that I have to believe in my heart that
24 what I'm writing is valid. It must represent what I
25 feel, because I've seen too many of my colleagues who

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1 have said to me, of course I know that he dopes, but
2 nobody wants to read it. I ain't going to write it.
3 And my attitude has been, I'm sorry I would rather --
4 I would rather sweep the streets than to tell that
5 lie.
6 Q. In the words of Lord Brooke did you, in fact,
7 begin asking questions with respect to Mr. Armstrong
8 in the 1999-2000 time period?
9 A. Yes, I did. I mean, I remember there was a
10 press conference --
11 MR. HERMAN: Excuse me, Mr. Walsh. Your
12 Honor, I have not, you know, posed any objections
13 here, but that -- if we could operate on more of a
14 question and answer basis. Mr. Tillotson asked him --
15 MR. TILLOTSON: My defense is he's Irish.
16 MR. HERMAN: I haven't said anything,
17 but --
18 MR. TILLOTSON: I will. I'm sorry, we
19 will. We will.
20 Q. (BY MR. TILLOTSON) Let me -- let me stick
21 back to some -- some questions and answers.
22 A. Okay.
23 Q. Did there come a time in 2001 when you
24 interviewed Mr. Armstrong?
25 A. Yes, I -- because I suppose Lance would have

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1 seen -- he would have recognized me in the 1999 Tour
2 as a guy who had interviewed him in '93. I asked a
3 question at the press conference in 1999, just one
4 question I asked, and the rider who finished second to
5 Lance in 1999 was Alex Zuelle, a Swiss rider. He had
6 been in the Festina team when the Festina team was
7 systematically doping. He admitted to the police that
8 he doped, he was part of the doping campaign. He
9 admitted that he was previously with ONCE and he
10 doped. This was somebody who was finishing -- who
11 finished second to Lance who was seven or eight
12 minutes behind him, and I said to Lance -- I said,
13 presuming that Alex Zuelle is now riding clean, this
14 is his best ever placing in the Tour de France,
15 shouldn't he be preaching the message of clean riding
16 to the public? Shouldn't he be standing up and saying
17 that I'm now clean and I finished second, the best
18 ever? You don't need drugs. And Lance said, well,
19 that's Alex's business, not mine. And in a way it is
20 Alex's business, but I was hoping Lance might have
21 said, yes, you're right. We need to proclaim the
22 message of antidoping; that riders can ride well when
23 they're clean. And I just got a really negative, damp
24 reaction to that. And I just thought --
25 MR. HERMAN: Well, I believe the question

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1 was did you interview him in 2001, and then we heard
2 about a '99 press conference, so if we could -- I'm
3 not going to move to strike his answer or anything --
4 THE WITNESS: All right.
5 ARBITRATOR FAULKNER: Let's just try and
6 keep it in a question and answer format. Also, it
7 makes it easier for us to follow.
8 Q. (BY MR. TILLOTSON) Now, in 2000 and early
9 2001 time period did you investigate or come to learn
10 about Mr. Armstrong's relationship with someone known
11 as Michele Ferrari?
12 A. Well, yes, I did. And what -- yes.
13 Q. Let me try to stick to question and answer.
14 If there's something you need to add to make your
15 answer complete, just say so, you'll have that
16 opportunity.
17 Can you describe for us how you learned
18 about Mr. Armstrong's relationship with Michele
19 Ferrari.
20 A. Lance had actually invited me to come and
21 interview him in April 2001. I think, if memory
22 serves me correctly, there was a phone call to my home
23 from Bill Stapleton and I had called Bill back, as far
24 as I remember, and the interview was set up for France
25 in April 2001. I went and Lance knew that I had been

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1 asking questions, you know, concerning the whole
2 doping situation and he wanted to talk to me. I went.
3 I said to him at the beginning the
4 interview, you know, Lance this interview is going to
5 be about doping because I really do -- there's a lot
6 of questions I would like answered. And I asked him
7 about Michele Ferrari, and during this interview I had
8 no idea that Lance worked with Michele Ferrari at this
9 time. But I did know that Kevin Livingston who was
10 Lance's best friend had worked with Michele Ferrari
11 because I had files in my possession that showed Kevin
12 worked with Ferrari and files that indicated that
13 Kevin used EPO. And I wanted to ask Lance about that
14 because Kevin was his best friend.
15 Q. Okay. Let me show you what we will
16 mark as --
17 MS. EVORA: 105.
18 Q. (BY MR. TILLOTSON) -- 105.
19 First, in connection with this
20 proceeding -- well, let me back up.
21 In connection with the legal proceeding
22 in the United Kingdom that you have ongoing with
23 Mr. Armstrong have you -- have you provided all of
24 your materials that you used in connection with the
25 writing and preparation of your book, LA Confidential?

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1 A. Yes.
2 Q. And have you consented to the use of those
3 materials to being questioned of you in this
4 proceeding?
5 A. Yes.
6 Q. Okay. I have some of them which I'm going to
7 show, but first give us a sense of what volume we are
8 talking about. If we got all your source materials
9 that went behind the book, how many pages or boxes
10 would we be talking about?
11 A. I don't know how many pages, but a huge
12 amount. I mean, folders like this maybe three or four
13 thick folders, pretty full.
14 Q. And does that include transcripts of various
15 interviews that you had with various people?
16 A. Yes, transcripts of interviews, revisions of
17 chapters that I had done, just various e-mails, and
18 stuff like that.
19 Q. Okay. I'm going to show you what's been
20 taken from those materials and I'll ask you if you can
21 identify that as a transcript from your April 2001
22 interview with Mr. Armstrong.
23 A. Yes. I mean -- yes.
24 Q. If you can identify it.
25 A. Yes.

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1 MR. TILLOTSON: Okay, just hang on for
2 one second. I'm going to pass out just the excerpt
3 that we are going to use to avoid a giant bulky copy,
4 but we will make the full transcript available for the
5 record.
6 Your Honor, we would move for admission
7 into evidence of Respondents' Exhibit 105.
8 MR. HERMAN: No objection
9 ARBITRATOR FAULKNER: It will be
10 admitted.
11 Q. (BY MR. TILLOTSON) Now, just for those of us
12 that have always kind of wondered for journalists
13 you're sitting there, you're interviewing, do you tape
14 it?
15 A. Yes, I taped it and Lance asked me if I
16 minded Bill Stapleton sitting in. I said not at all,
17 and Bill sat in on the interview and I think he
18 interjected, but, no, the interview was fine.
19 Q. Okay. I put the front page just so we had a
20 reference point for the starting and if you'll look
21 there in the middle at the highlighted portion, is
22 this the question you referred to earlier where you
23 asked Mr. Armstrong -- down on the very first page
24 about Tommy Simpson and his response that struck you?
25 A. Yes. That's it, yes. That was not a

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1 positive test.
2 Q. Now, at the time you did this interview in
3 April of 2001 were you aware that Mr. Armstrong had an
4 ongoing relationship with Michele Ferrari?
5 A. No.
6 Q. Did you know who Michele Ferrari was?
7 A. Yes.
8 Q. How did you know who Michele Ferrari is?
9 A. Everybody who covered cycling knew who
10 Michele Ferrari was. He was an Italian sports doctor
11 with a very questionable reputation. His riders did
12 extraordinary things. He worked with -- he had
13 come -- apparently he had been Dr. Francesco Conconi's
14 star pupil at the University of Ferrara. This is a
15 University that produced sports doctors to a very high
16 standard, but there was a feeling in Italian -- in
17 Italian sport that the practices at the University of
18 Ferrara were very questionable, that the doctors there
19 basically believed they had to right to dope.
20 Q. Now, did you -- were you aware of legal
21 proceedings in April of 2001 regarding Dr. Ferrari?
22 A. Yes. I mean, at the time --
23 Q. What was your -- what was your understanding
24 as to what was going on with Dr. Ferrari in terms of
25 legal proceedings?

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1 A. My understanding from Italian sources that I
2 had at the time was that they had been investigating
3 cycling generally from 1996, and part of -- one part
4 of that investigation -- what was called the Bologna
5 investigation was investigating Michele Ferrari. And
6 the police -- at that point I think in 2001 Michele
7 Ferrari had already been charged and the case was due
8 to go to trial later that year, later in 2001.

9 Q. Okay. Now, do we have the Cycle Sport
10 magazine?

11 We have a -- it's been argued or
12 suggested and said here that Mr. Armstrong's
13 relationship with Dr. Ferrari was well known during
14 this time period. Would you agree with that sentiment
15 as a journalist covering the sport?

16 A. No, that is totally inaccurate. It was not
17 well known. I spoke with two members of the U.S.
18 Postal team.

19 Q. Hang on. We will get to that in a second. I
20 think I know where you're going. Let me ask for a
21 second.

22 First, are you familiar with Cycle Sport
23 magazine?

24 A. Yes.

25 Q. Have you ever been a contributing editor or

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1 author to Cycle Sport magazine?

2 A. No. I've never been on the staff of Cycle
3 Sport magazine or anything like that, but I have -- I
4 have been commissioned to write particular pieces for
5 them.

6 Q. Okay. Are you aware of the article that was
7 written in Cycle Sport magazine in the January of 1998
8 issue about Mr. Rominger?

9 A. Yes, I'm aware of that article.

10 Q. Okay. Let me show it to you. There's a
11 mention here at the end. Were you aware of the final
12 portion of the article that was mentioned here which
13 has been previously put into evidence that identifies
14 people working with Dr. Ferrari. At the end of that
15 paragraph of that article about Mr. Rominger it
16 mentions Lance Armstrong. Were you aware that that
17 had been published in January 1998?

18 A. No, I was not aware at the time that -- I
19 subsequently learned that it was here, but at the time
20 I had missed this.

21 Q. Now, did you ask in your April 2001 interview
22 of Mr. Armstrong if he was seeing Dr. Ferrari?

23 A. Yes, I did.

24 Q. And let me -- if you'll turn to page 24 of
25 your interview there, if you'll bring up the middle

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1 part.

2 Okay. Now, you asked about Dr. Ferrari.
3 What was his response there?

4 A. I mean, I asked, did you ever visit him and
5 Lance said -- Lance in reply said, have I been tested
6 by him, gone there -- gone and been there and
7 consulted on certain things? Perhaps.

8 Q. Now, did you subsequently investigate the
9 truth of that statement?

10 A. Yes, I did. And --

11 Q. What did you discover in the course of your
12 investigation later that you wrote about in your book?

13 A. Further on, about two months later, an
14 Italian source at a -- a policeman who basically gave
15 me information, he gave me documents that were -- that
16 were basically based on hotels in the town of Ferrara
17 that showed that Lance had been in the town of Ferrara
18 quite a number of times over the previous two years.
19 Different hotels, three nights at such and such hotel,
20 four nights at such a hotel and two nights at such a
21 hotel. And for a cyclist that was quite a lot of time
22 to be spending with your trainer. Really it indicated
23 that it was quite a strong and serious relationship

24 Q. Did you consider the answer you got from
25 Mr. Armstrong in this April of 2001 interview to be

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1 misleading based upon your further investigation?

2 A. Yes. I -- well, I was certainly misled by
3 it.

4 Q. If you'll look at page 23, you had mentioned
5 earlier, did you -- did you -- you had learned in the
6 course of your work that Kevin Livingston had been
7 connected with Dr. Ferrari; is that fair to say?

8 A. Yes.

9 Q. Can you tell us who Kevin Livingston is and
10 what his relationship to Mr. Armstrong was at this
11 time?

12 A. Yeah. I mean, Kevin was a teammate and I
13 would have thought at this time Lance's best friend,
14 certainly best friend in cycling. Lance described him
15 in his book, It's Not About the Bike, he described
16 Kevin as almost like a brother.

17 Q. And did you ask Mr. Armstrong about whether
18 he knew or had discussed with Mr. Livingston these
19 allegations with respect to Ferrari?

20 A. Yes, I did, because I was -- I -- you know, I
21 was intrigued as to what Lance would have thought
22 about Kevin working with Ferrari, particularly as I --
23 you know, I told Lance that I had files that indicated
24 because of different hematocrit levels and widely
25 differing hematocrit levels that indicated Kevin was

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1 using EPO. And I wanted Lance to almost say, show me
2 those files or tell me about them. But he said, no he
3 hadn't discussed this with Kevin. It had never come
4 up in conversation with them. And I just got the
5 impression that Lance didn't want to discuss this in
6 any way.
7 Q. Okay. We have a question there where I guess
8 at the end, you never discussed it ever? No. Did
9 Mr. Armstrong indicate to you that he had never
10 discussed with someone who was described as his best
11 mate this matter regarding Ferrari?
12 A. I'm sorry. The question?
13 Q. Did Mr. Armstrong indicate to you in your
14 interview that he had never discussed this matter with
15 Kevin Livingston?
16 A. Yes, he did.
17 MR. HERMAN: Could you point that out?
18 MR. TILLOTSON: Yes. The middle question
19 there.
20 Q. (BY MR. TILLOTSON) If you'll look at the
21 interview and identify for us where Mr. Livingston --
22 A. Yes, I --
23 MR. HERMAN: Yes, I see the question.
24 Q. (BY MR. TILLOTSON) Now you interviewed
25 Mr. Armstrong in April 2001. And then do you -- do

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1 you continue to investigate some of the things he
2 said, particularly with respect to Dr. Ferrari?
3 A. Yes.
4 Q. And is it after that that you learn about
5 the -- what you've testified to was a rather extensive
6 relationship between Mr. Armstrong and Dr. Ferrari?
7 A. Yes.
8 Q. Contrary to what you had been told in the
9 interview?
10 A. Yes.
11 Q. Can I ask you just a question as a
12 journalist, why is this such a big story? Why does it
13 matter who Lance Armstrong is seeing with Dr. Ferrari?
14 Why does that matter as a journalist, as a news story?
15 Why is it newsworthy?
16 A. If I can put it -- it's newsworthy because
17 Lance at this point was a two-time winner of the Tour
18 de France -- I'm sorry, 1999, 2000. At this time he
19 was a two-time winner of the Tour de France, and the
20 sport had gone through this terrible ordeal in 1998.
21 People wanted to believe that everything was improving
22 and Lance was seen as a symbol of cycling post 1998.
23 He was by far the sport's dominant figure.
24 And if it was true that the sport's
25 dominant figure was working with the sports -- with

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1 the cycling doctor with the worst reputation for
2 doping, a guy who was going on trial, who was going on
3 trial the following September for serious doping
4 charges, well, then, that was going to be at the very
5 least a terrible blow to cycling's image.
6 Q. Now, in testimony provided previously in
7 these proceedings by Mr. Stapleton he testified that
8 Ferrari was not a big story. That you, David Walsh,
9 made it scandalous and made it into a big story by
10 writing it; is that a fair representation?
11 A. It's complete nonsense.
12 Q. Why?
13 A. Because when -- when the Sunday Times ran the
14 story in early July of 2001, pretty much every single
15 newspaper across Europe, some of them on the front
16 pages -- and these were serious, quality newspapers,
17 ran stories saying Sunday Times had revealed Armstrong
18 worked with Ferrari. I went to a local news agent in
19 my -- in my town and got a huge amount of newspapers
20 from across Europe and everyone of them reported on
21 the Armstrong/Ferrari connection, because Ferrari had
22 that kind of reputation and, as I say, Lance was a
23 huge figure in the sport.
24 Q. Now, I want to talk to you about the story.
25 You -- the interview and what you subsequently

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1 discovered about Dr. Ferrari and Mr. Armstrong that
2 became the basis of the story you wrote for the Sunday
3 Times?
4 A. Yes.
5 Q. And do you remember what that story was
6 titled?
7 A. It was called, Saddled With Suspicion.
8 Q. And in that story did you recount the details
9 of what you had learned regarding Mr. Armstrong and
10 Dr. Ferrari's relationship?
11 A. Yes.
12 Q. Now, prior to writing that story did you
13 attempt to contact Mr. Stapleton or Mr. Armstrong to
14 tell them or ask them questions?
15 A. Yes, I did.
16 Q. Can you tell us what it is you asked them or
17 what they -- how they responded?
18 A. Basically what happened is on the Thursday
19 before I ran -- we ran the story, I contacted Bill
20 Stapleton, because this was the Thursday before the
21 Tour de France started, and I said to -- I said to
22 Bill that I was running the story on the following
23 Sunday and I had some follow-up questions based on new
24 information that I had gotten. And Bill asked me
25 would I e-mail him -- I think it was e-mail as opposed

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1 to fax, certainly would I send him the questions and
 2 he would put them to Lance, and on that Thursday
 3 afternoon I sent him -- it was actually by e-mail, I
 4 sent him the questions by e-mail and I was to -- due
 5 to ring him on Friday, the next day.
 6 I rang Bill on the Friday and I said, did
 7 you get my questions? And he said no, I can't access
 8 my e-mail just now. And I said, well, look, I can
 9 call out the questions to you now over the phone. And
 10 he said -- and he said, no, I'm going to -- I've got
 11 to go to a meeting and the phone call ended pretty
 12 quickly. And then the next day I tried to call up or
 13 that afternoon and his phone didn't answer.
 14 Q. Now, in the intervening time between when you
 15 gave them these question and -- would you -- would you
 16 agree that the questions you told or said to
 17 Mr. Stapleton would have fairly revealed what you were
 18 planning on writing about?
 19 A. Totally revealed, because I actually -- in
 20 the questions I said, getting -- can you confirm or is
 21 it true that Lance stayed in the Hotel Annunziata in
 22 the town of Ferrara on the dates, and I quoted the
 23 dates. I quoted the dates of each visit, I quoted the
 24 hotel and I quoted the duration of the stay. And -- I
 25 mean, everything I knew I put in the questions

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1 Q. In between that time period when you told
 2 them what you were planning on writing about, the
 3 questions, what happened with respect to Mr. Armstrong
 4 and Mr. Stapleton in this particular matter?
 5 A. Well, the story ended up in La Gazzetta dello
 6 Sport, which is an Italian sports daily on the
 7 Saturday, which was the day before the Sunday Times
 8 story was due to run. La Gazzetta dello Sport treated
 9 it as a very big story. I -- it was on the front page
 10 and it said something like, Armstrong reveals meetings
 11 with Ferrari.
 12 Q. Have you subsequently learned how it was that
 13 La Gazzetta learned about this to write it? How did
 14 they scoop you?
 15 A. Well, I spoke to Pierre Bergonzi who was the
 16 journalist who wrote the story and Pierre Bergonzi
 17 told me that: I went to interview Lance on Friday and
 18 he said that at the interview Lance said to him
 19 something to the effect of -- according to Pierre, I
 20 haven't told you about my relationship with Michele
 21 Ferrari. And Lance told it to Pierre on the basis
 22 that he had been collaborating with Michele Ferrari
 23 since 1999, which obviously wasn't true, but that they
 24 had been collaborating since '99 and were going to do
 25 the world hour record. They were coming together for

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1 the purpose of Lance trying to break the world hour
 2 record in cycling.
 3 Q. Is it fair to say -- well, let me ask you if
 4 you would agree with Mr. Mark Gorksi's testimony in
 5 this case that the actions by Mr. Armstrong was to
 6 preempt your story?
 7 A. Yes, that's something that I just didn't
 8 decide out of -- all of the European newspapers that
 9 wrote about that, I particularly remember Sam App at
 10 the Harold Tribune, they all -- they all acknowledged
 11 that this was the reason for the La Gazzetta story.
 12 And Pierre Bergonzi was under no illusions, either.
 13 Q. Now, I want you to hold that thought. I'm
 14 going to jump ahead just to connect these two events.
 15 That incident where you had contacted
 16 Mr. Stapleton with questions, been preempted in an
 17 Italian paper, did that affect you in the way that you
 18 ultimately approached Mr. Armstrong and Mr. Stapleton
 19 about commenting with respect to your book?
 20 A. Yes, it did.
 21 Q. Can you tell us how that impacted you?
 22 A. Well, it made -- it made me very careful
 23 about revealing my hand, because I knew that I was
 24 dealing with people who would use those revelations --
 25 if I revealed what I knew, they were going to use it

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1 in a way that suited them best.
 2 Q. Now, in connection with your work with
 3 respect to uncovering the relationship between
 4 Dr. Ferrari and Lance Armstrong, did you -- were you
 5 able to locate or find people close to Mr. Armstrong
 6 who, like you, were unaware of the relationship
 7 between Mr. Armstrong and Mr. Ferrari?
 8 A. Yes.
 9 Q. Who is it -- tell us what it is you found out
 10 in connection with that matter?
 11 A. I spoke with two U.S. Postal riders, Jonathan
 12 Vaughters and Marty Jemison who told me that even
 13 though they were in the team -- I think Marty Jemison
 14 was in the team before Lance arrived in 1998, but both
 15 of them were in the team in 1998 and 1999, and they --
 16 basically both of them told me that they didn't know
 17 Lance worked with Michele Ferrari and they found
 18 out -- I think Marty Jemison said he found out from
 19 newspaper articles that Lance -- you know, at the time
 20 in 2001 that Lance was working with Michele Ferrari
 21 and obviously Marty was in the team. Jonathan was in
 22 the team. Jonathan said he felt that Lance was
 23 working with somebody outside of the team, but he
 24 didn't know who it was, and because he knew Kevin
 25 had -- Kevin Livingston was working with Michele

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1 Ferrari he wondered might it have been Michele
 2 Ferrari, but he didn't know.
 3 Q. Now, we're -- we are in the July 2001 time
 4 period and I want to transition to the book, LA
 5 Confidential, and start talking about that now.
 6 When is it that you began to think about
 7 working on a book about Mr. Armstrong?
 8 A. Well, I think it was -- it was directly after
 9 the 2001 Tour de France that the seed was there to do
 10 something more substantial. The Sunday Times article
 11 had appeared, it had created a huge reaction, but I
 12 think my feeling was that it only -- it -- in many
 13 respects it just skimmed the surface of this story,
 14 that there was much more to find out.
 15 Q. Now, first I want to just ask you about the
 16 co-author, this is written with you and Pierre
 17 Ballester. Who is Mr. Ballester?
 18 A. Pierre Ballester was a journalist with
 19 l'Equipe, which is a French sports daily newspaper.
 20 Q. Before you go on, let me ask you about
 21 l'Equipe. I have here testimony given by
 22 Mr. Stapleton in this very proceeding who said at
 23 page 37 that just for the panel, quote, I consider
 24 l'Equipe a tabloid. They have had a vendetta very
 25 clearly against Lance since 1999?

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1 First let me ask you as a journalist in
 2 the field, is it fair to say that -- to characterize
 3 l'Equipe as a tabloid?
 4 A. No.
 5 Q. Why not?
 6 A. Because l'Equipe in the strictest sense is a
 7 broadsheet newspaper, it's not a tabloid. But in its
 8 own mentality the way it covers sports l'Equipe is
 9 very serious, very conscientious, very conservative
 10 and I think it's unquestionably the best sports
 11 newspaper in -- the best sports newspaper in the
 12 world. I mean, the thing about l'Equipe is that for
 13 some of the journalists it's almost -- it's almost too
 14 conservative, but it sells more newspapers in France
 15 than any other newspaper and it does so by covering
 16 sports in a -- in an absolutely high quality way.
 17 Q. It's been talked about here and Mr. Armstrong
 18 said it and Mr. Stapleton said it that there was this
 19 vendetta by the French press against Mr. Armstrong in
 20 part because he was an American -- is an American who
 21 continues to win their race. Based upon you being in
 22 the journalistic field covering cycling, would you
 23 consider that a fair characterization of the French
 24 press treatment of the American professional cyclists?
 25 A. No, I wouldn't.

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1 Q. Can you offer us any examples that you think
 2 would reflect or tend to show that the French press is
 3 not hostile toward Americans?
 4 A. No. I mean, yes, there's one very glaring
 5 obvious example. When Greg LeMond won his first Tour
 6 de France in 1986 that was a race I covered, and in
 7 that race the French champion Bernard Hinault, who was
 8 arguably the second greatest of all French champions
 9 was attempting to win the Tour de France for the sixth
 10 time. Midway through the race -- nobody had ever won
 11 the race more than five times, so the French hero was
 12 attempting to win it for the sixth -- his sixth time,
 13 it wouldn't be consecutive, and he was leading the
 14 race at one point by nine minutes on the road. He had
 15 a four and a half minute lead in the overall and on
 16 that particular -- on this particular day he got
 17 another four and a half minutes clear. So he's nine
 18 minutes clear. The race is his, he can't lose from
 19 here. The French guy is going to win. But he has --
 20 he has -- he faltered over the last hour of a six-hour
 21 race. He loses his lead of nine minutes. The guy who
 22 gets up to him is the American Greg LeMond and Greg
 23 LeMond goes on to narrowly beat him in a very tense
 24 finish, because there was a lot of animosity between
 25 LeMond and Hinault who were a teammates, but you

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1 couldn't describe them as friends.
 2 And LeMond didn't like Hinault at that
 3 time and Hinault didn't like LeMond and there was just
 4 bad blood between them. And the French public's
 5 reaction to LeMond was -- I thought it was wonderful.
 6 They acclaimed him as a winner, they could see that he
 7 was the deserved winner and if you ask anybody who was
 8 at that race was Greg LeMond acclaimed as a great
 9 champion, the absolute answer would be yes.
 10 Q. I'm going to turn to some of the specific
 11 things about your book and some of the specific
 12 investigatory work that you did, but before we
 13 actually do that I'm just going to request a quick
 14 break.
 15 ARBITRATOR FAULKNER: We'll take a quick
 16 break.
 17 (Recess 11:21 a.m. to 11:35 a.m.)
 18 ARBITRATOR FAULKNER: Sir, you're still
 19 under oath.
 20 Would you go ahead and proceed with the
 21 next question.
 22 Q. (BY MR. TILLOTSON) Mr. Walsh, we are going
 23 talk about your book, but before we do that I want to
 24 ask you about your presence and appearance here. You
 25 are here voluntarily?

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1 A. Yes.
2 Q. In other words, you've agreed to come of your
3 own volition?
4 A. Yes.
5 Q. Okay. Came last week and agreed to come back
6 the second time?
7 A. Yes, this is the third week out of four that
8 I've been in the U.S. in relation to this case.
9 Q. A few weeks ago you came for your deposition
10 voluntarily?
11 A. Yes.
12 Q. Are you being paid by SCA in any way for
13 coming here and testifying?
14 A. SCA are paying my flights to fly here and
15 they're paying for my hotel when I stay here, and
16 that's it.
17 Q. Are you receiving any monetary compensation,
18 payment for time, work, from SCA or anyone to come
19 here and appear to testify?
20 A. No.
21 Q. Are you foregoing income, actually, to be
22 here and come testify?
23 A. Yes, I am.
24 Q. Why -- given that it's costing you dollars
25 and you don't have to come, why are you here and

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1 agreed to voluntarily come to testify?
2 A. I'm here because I believe in the work I've
3 done, I believe our book, Pierre's and my book, is a
4 good book, and I'm -- I'm here basically to defend my
5 reputation and to -- and to help in whatever way I can
6 to establish the truth.
7 In a recent -- in a recent book that was
8 written by Daniel Coyle called, Armstrong's War,
9 that's a best seller in the U.S., certainly top ten on
10 the New York Times best sellers list, Lance described
11 me as a fucking little troll and he described me as
12 a -- an -- a little fucking scumbag and I don't think
13 I'm those things and I -- if I can get the
14 opportunity, you know, to make the case that I'm not,
15 I'm going -- I'm going to take it.
16 Q. Have you ever testified in a court proceeding
17 before today?
18 A. Never.
19 Q. Now, I want to ask you about a quote and then
20 I'm going to ask you about your book.
21 Quote -- someone has said, quote, any
22 allegation of doping should be studied in detail. Do
23 you agree with that?
24 A. Yes.
25 Q. Do you know who said that?

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1 A. No.
2 Q. Would it surprise you that that was said by
3 Mr. Armstrong in a statement issued in April of 2001?
4 A. It wouldn't surprise me.
5 Q. Now, do you think or believe in your book
6 that you studied allegations regarding Mr. Armstrong
7 and doping?
8 A. Yes, I think in a general sense we did that.
9 Q. Tell us first what was the purpose or the
10 thought behind the book, what is it that you wanted to
11 write about in it?
12 A. From our point of view, there was an official
13 version of the Lance Armstrong story which was --
14 which was a version that had a huge impact on hundreds
15 of thousands of people, maybe millions of people, and
16 because Lance was a heroic survivor of cancer, because
17 he was perceived by the cancer community, seen by the
18 cancer community and lots of people who never had
19 cancer as an inspirational figure. And I don't
20 dispute that -- that he is. And his recovery was
21 heroic from cancer. But the sporting side of it --
22 because I am a sports writer, the sporting side of the
23 story was the part that interested me and in the
24 official version of the story, Lance was an iconic
25 sporting hero without any real questions or clouds

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1 over it and I felt that the official story was failing
2 to deal with a number of very important questions, and
3 I wanted those questions explored.
4 Q. When did you begin working on the book?
5 A. I would have thought maybe -- it was in the
6 planning stages in -- in terms of talking to Pierre
7 about the idea late 2002, early 2003.
8 Q. And were you -- did you start off to write a
9 book or was this one of those things where you --
10 you're -- you're continuing your investigatory work
11 and you then decide to write one?
12 A. I think in a general sense, after the 2001
13 article in the Sunday Times I felt that if I was going
14 to address the whole question again, I would like to
15 do it in a forum that did justice to it. To use a
16 mechanism that did justice to the story, and that was
17 a book.
18 Q. Now, in the course of writing or
19 investigating and preparing to write the book, how
20 many people did you interview would you say?
21 A. Well, between Pierre and I, I think it was
22 something like on-the-record interviews the people we
23 were going to attribute quotes to I think the number
24 was a 55 or 56.
25 Q. Let's talk about on-the-record and

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1 off-the-record quotes.
 2 Were there off-the-record sources?
 3 A. Yes.
 4 Q. How many off-the-record sources were there?
 5 A. Well, for me there might have been five or
 6 six.
 7 Q. And what is your principle regarding using
 8 off-the-record sources, how do you use them?
 9 A. Well, there are some people, you know, who
 10 would like -- who want you to know the story, they
 11 know the story, or they know the parts of the story
 12 that you're interested in finding out. They want you
 13 to know it, but because of their position, maybe their
 14 job or their marital relationship, they cannot be seen
 15 to be the person who told you this because it would
 16 have an impact on their job and it may be costing them
 17 their livelihood, and I was sensitive to that and
 18 understanding that I couldn't ask anybody to lose
 19 their job by telling me something.
 20 Q. Did you quote or rely on off-the-record
 21 sources in your book or -- a person you can't identify
 22 as having said X, Y, and Z?
 23 A. No. I mean, there are some quotes in the
 24 book -- a number of quotes in the book used by
 25 off-the-record -- used by unattributed sources. It's

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1 a -- it's a journalistic device that you see
 2 everywhere, but it's not ideal, and we concentrated in
 3 our book on attributing quotes to people. So of all
 4 the quotes that are used in the book I would have said
 5 maybe 95, 97, 98 percent of them maybe are attributed.
 6 Q. Now, when you start to write the book, let me
 7 just be blunt, is this a witch hunt, a vendetta, an
 8 effort to -- to nail Mr. Armstrong?
 9 A. No, absolutely not.
 10 Q. Are there positive things in the book in your
 11 mind about Mr. Armstrong?
 12 A. Of course there are.
 13 Q. Are there negative things?
 14 A. Yes, there are.
 15 Q. Tell us -- give us some sense in terms of the
 16 various incidents reported in the book, did you
 17 identify incidents and then go out and investigate
 18 them or was there a general investigation that led to
 19 discovering these things?
 20 A. Well, basically we wanted to just look at
 21 Lance's life and -- but in a way that was different to
 22 what I would call the official version of his life.
 23 We wanted to, you know, maybe in certain respects lift
 24 up the stones and look under them and see was there
 25 any -- was there stuff that hadn't come out; talk to

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1 the people who were -- who had not been spoken to.
 2 And once you start doing that, you -- we
 3 soon realized that, yes, there was stuff. There was
 4 stuff that hadn't been unearthed, that hadn't been
 5 brought into the public domain before we started
 6 asking questions.
 7 Q. You say you interviewed 55 people on the
 8 record and five or six off the record. Ultimately you
 9 did attempt to contact Mr. Armstrong and Mr. Stapleton
 10 about what you learned is that --
 11 A. Yes.
 12 Q. Let me ask you, you start the book at the end
 13 of '01, '02. In the course of '02 and '03 why don't
 14 you go to Mr. Armstrong up front and say, you know,
 15 I'm writing a book about you, I would like to talk to
 16 you?
 17 A. Well, we made a strategic decision that we
 18 wouldn't do that, because we felt -- we felt that
 19 witnesses who might have cooperated with us wouldn't
 20 have cooperated with us if they had, say, received
 21 phone calls from Lance and Lance had advised them not
 22 to speak to us. We felt it was likely that he would
 23 do that. We felt that if the word -- if the word were
 24 out there, that we were doing a book that publishers
 25 would be pressurized into -- into not publishing the

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1 book and we felt that we would -- we would have a
 2 better chance if we didn't contact Lance until we
 3 absolutely needed to.
 4 Q. I want to focus on a few of the incidents in
 5 the book that have been offered into evidence and
 6 testimony here in this proceeding, and I -- as I go
 7 through these questions, I'm going to try not to ask
 8 you what people said, et cetera, because we're going
 9 to put on testimony about that. But I want to ask you
 10 the work you did and what you did and how you went
 11 about that.
 12 Can you first tell us how you discovered
 13 the event accounted by Stephen Swart?
 14 A. Basically a New Zealand journalist who had
 15 won -- had won a very big prestigious award in New
 16 Zealand came to Cambridge University -- his prize for
 17 winning the -- winning this journalistic prize in New
 18 Zealand was to get a three-month sabbatical where he
 19 could study any subject -- any journalistic subject at
 20 Cambridge University.
 21 He came to Cambridge and started reading
 22 up about doping because doping was the subject of
 23 tremendous interest to Phil Taylor. And Phil Taylor
 24 looked up on the Internet all about doping and decided
 25 that this was a subject and came across my name as

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1 somebody that had been writing about it. He contacted
 2 me and coincidentally I live in -- live in Cambridge
 3 or just outside Cambridge. Phil was staying in the
 4 college at Cambridge University. We had lunch, he
 5 came to my house and he said -- maybe it was in --
 6 maybe in 2001 that Phil contacted me.
 7 He said four years before I interviewed a
 8 young cyclist in New Zealand who had just retired
 9 called Steven Swart and off the record he gave me a
 10 very good interview about his life in cycling. He
 11 rode with the Motorola team, which was Lance
 12 Armstrong's team in the mid '90s, and Stephen Swart
 13 said we, as a team, doped. So that was how I first
 14 realized that Steve Swart might be prepared to talk.
 15 And I got in touch with Stephen Swart, we
 16 built up a relationship, I think he trusted me, and I
 17 went to New Zealand and interviewed him.
 18 Q. And are the -- the events as he told them to
 19 you recounted in your book?
 20 A. Yes.
 21 Q. Was there any other evidence you were able to
 22 obtain to confirm -- first confirm Mr. Swart's account
 23 to you?
 24 A. Well, when I got -- when I got out of the
 25 interview with Stephen and I transcribed it, I then

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1 wrote the chapter and then I sent that chapter to a
 2 rider in the Motorola team whom I trusted and who I
 3 believed in. He was an off-the-record source. He was
 4 very close to Stephen and very close to Lance in the
 5 sense that he rode with both of them for a number of
 6 years. They were teammates. I asked this rider, I
 7 said, would you read everything that Stephen has said.
 8 I told Stephen I was doing this because I
 9 need to get another version. And this guy read all
 10 the stuff that Stephen had told me and he said, yes,
 11 he said, this is exactly how it happened.
 12 MR. HERMAN: I object to that, Your
 13 Honor. I don't -- you know, the hearsay nature of him
 14 talking to Stephen Swart. Swart did testify here, but
 15 it -- this is a -- this is not a tabloid. This is not
 16 a newspaper for him to say, oh, yeah, I confirmed this
 17 through who? At -- which I asked him at his
 18 deposition. Oh, well, I'm not telling you that. So
 19 how are we supposed to test that? It's totally out of
 20 line and it's -- it's completely unfair and
 21 prejudicial.
 22 ARBITRATOR FAULKNER: Response,
 23 Mr. Tillotson?
 24 MR. TILLOTSON: My understanding is that
 25 the transcript of this unnamed unidentified source by

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1 Mr. Walsh has been made part of the papers that have
 2 been produced to them. I have that transcript. This
 3 witness is going to refuse to identify him. I plan on
 4 making that transcript a part of this record and the
 5 panel will be able to connect the dots between who
 6 this unidentified source is and who it really is.
 7 MR. HERMAN: Well, that is --
 8 ARBITRATOR FAULKNER: One at a time.
 9 MR. TILLOTSON: And they know it. And
 10 they had suggested -- not suggested, stated that this
 11 author fabricated the story, that Mr. Swart fabricated
 12 the story and this that is a collection, quote,
 13 unquote, from Mr. Stapleton a total pack of lies. And
 14 this is intended to refute that and, as the panel
 15 knows, Mr. Swart's testimony is a material allegation
 16 in the defense.
 17 ARBITRATOR CHERNICK: May I just ask a
 18 question? You said that there's a transcript --
 19 MR. TILLOTSON: Yes.
 20 ARBITRATOR CHERNICK: -- a transcript of
 21 a conversation between Mr. Walsh and the unnamed
 22 source?
 23 MR. TILLOTSON: Yes.
 24 ARBITRATOR CHERNICK: And the subject of
 25 the transcript is the confirmation or the subject

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1 is --
 2 MR. TILLOTSON: Confirmation of a lot of
 3 different things.
 4 ARBITRATOR CHERNICK: But including the
 5 Swart --
 6 MR. TILLOTSON: Yes.
 7 ARBITRATOR CHERNICK: -- information?
 8 MR. TILLOTSON: Yes.
 9 ARBITRATOR CHERNICK: And does the
 10 transcript identify who the person is that Mr. Walsh
 11 is talking to?
 12 MR. TILLOTSON: No, it's blacked out. He
 13 won't tell me, but the review -- my review of the
 14 transcript I think the evidentiary conclusion is
 15 pretty clear who this is.
 16 MR. HERMAN: Your Honor, this -- I'm
 17 sorry, had you finished, Mr. Tillotson?
 18 MR. TILLOTSON: Yes, I have.
 19 ARBITRATOR FAULKNER: Okay, Mr. Herman.
 20 MR. HERMAN: Fundamentally and -- and
 21 Mr. Walsh repeatedly confirms that he's got no
 22 personal knowledge about anything, the witnesses are
 23 in the book. I mean, and he's stated that publicly.
 24 So first of all, I mean, we have -- haven't -- you
 25 know, the subject or -- of his testimony is

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1 irrelevant, but we are not going to make that argument
2 again. But if Mr. Walsh comes here to talk about what
3 witnesses who have testified have told him, which was
4 my understanding, is that he was going to talk about
5 what Mr. Swart told him. I told Mr. Tillotson I'm
6 not -- I'm not going to object to that even though,
7 you know, technically it is hearsay. But to now --
8 for someone to try to put in a transcript of an
9 interview with an unnamed person on the second to last
10 day of this hearing, a person who has never been
11 identified as a person with knowledge of relevant
12 facts or that would in any way contribute to the -- to
13 advancing this ball. I mean, it's just fundamentally
14 prejudicial and unfair, not to mention inadmissible.
15 MR. TILLOTSON: I would like to respond
16 and go into more detail, but I would like to excuse
17 the witness from this part of the proceedings.
18 ARBITRATOR FAULKNER: Okay. Sir, why
19 don't you step out. And if one of y'all would, you
20 know, go ahead so we can make sure that we can bring
21 Mr. Walsh back in when we're done with this.
22 (The witness exited the room.)
23 MR. TILLOTSON: I'll be blunt. Last
24 night at 11 p.m. I finally get access to all of the
25 documents from the United Kingdom proceedings which I

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1 didn't previously have. They've had them and
2 Mr. Herman has questioned witnesses not showing them
3 the documents, but knowing what's in there. There's a
4 transcript. It's clear as day it's Frank Andreu; that
5 he's an unnamed source.
6 ARBITRATOR FAULKNER: Case approved.
7 MR. TILLOTSON: You know, and it confirms
8 things about the bribe, it confirms the doping
9 program, it discusses the pills. I mean, it's clear
10 as day. Someone is lying. And I want to put this in
11 as part of the record. We are going to depose
12 Mr. Andreu about the instant message. I mean, I don't
13 know what to say. I've got more tapes of more people
14 saying things that he's contradicted sworn testimony
15 that I've had in my entire career. And this witness
16 who I beat up on the way over here saying, what the
17 hell is going on? Who is this? Tells me he's not to
18 going to say.
19 MR. BREEN: Surprise. Okay.
20 MR. TILLOTSON: This is a surprise to me.
21 MR. BREEN: Oh, that's horse hockey.
22 That can't be a surprise to you. You've been
23 cooperating with this guy since September of '04.
24 MR. TILLOTSON: I've never --
25 MR. BREEN: Look at these e-mails.

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1 MR. TILLOTSON: I've never seen the
2 source material.
3 MR. BREEN: To suggest --
4 ARBITRATOR FAULKNER: One at a the time,
5 please.
6 MR. TILLOTSON: If I could finish. I've
7 been told by a variety of witnesses that Mr. Andreu
8 knew a lot more, which explains the 50 questions I
9 asked in his deposition regarding what he knew. The
10 testimony that they played as proof that Mr. Andreu
11 had no firsthand knowledge regarding Mr. Armstrong's
12 doping.
13 I'm unaware of the existence of any taped
14 interview with David Walsh and Frankie Andreu that
15 contradicts that, because I would have demanded it
16 after his deposition and sought to do the same thing
17 that I'm seeking to do to Stephanie McIlvain, which is
18 to say, why are you telling people differently? And
19 we did not -- I did not get all of the British
20 materials and go through them and have them in
21 connection with this litigation and did not get them
22 and did not see this until last night.
23 MR. HERMAN: Well, Your Honor --
24 ARBITRATOR FAULKNER: Wait, let Senator
25 Lyon ask his question.

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1 ARBITRATOR LYON: I have a question. You
2 know, how in the world -- what principle of law, what
3 evidentiary rule can you come up with that allows
4 somebody to put a transcript into evidence in any
5 proceeding when you don't even identify -- when the
6 witness refuses to identify that person? I mean --
7 and then -- I mean, that to me is -- I just -- how do
8 you do that?
9 MR. TILLOTSON: Well, there is a -- first
10 of all, I mean, there is a qualified journalistic
11 privilege for journalists' sources. He has that right
12 to do that. That does not eliminate or keep you from
13 introducing evidence regarding what has been said or
14 what is going on. The trier of fact is entitled to
15 know what evidence has been obtained and, even though
16 this witness won't identify who the source is, make an
17 evidentiary conclusion about who the source of that
18 information is and the credibility to be attached it.
19 ARBITRATOR CHERNICK: Will Mr. Walsh
20 identify that transcript as a transcript between him
21 and an unnamed source that was taken by him and that
22 is accurately depicting what was said?
23 MR. TILLOTSON: Yes, sir.
24 ARBITRATOR CHERNICK: He just won't say
25 the name.

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1 MR. TILLOTSON: I told him it's obvious,
 2 but he still refuses to answer .
 3 ARBITRATOR CHERNICK: Are you intending
 4 at Frankie Andreu's deposition to show me the
 5 transcript and ask him whether, in fact, he had this
 6 conversation with Mr. Walsh?
 7 MR. TILLOTSON: I am.
 8 ARBITRATOR CHERNICK: So you will
 9 eventually be able to hook that up?
 10 MR. TILLOTSON: He can deny it and say
 11 this is not me and I didn't say these things.
 12 ARBITRATOR CHERNICK: My impression of
 13 all of this is that really what we are talking about
 14 here is you used the book to commence an
 15 investigation, you're offering the book as a good
 16 faith basis for your conduct in commencing an
 17 investigation, and the argument that the book is
 18 either baseless or in -- or false and, therefore, the
 19 investigation was baseless or false is what -- is the
 20 real reason Mr. Walsh is here to talk about it. Not
 21 necessarily to talk about proving the underlying
 22 events which you've done through other witnesses.
 23 MR. TILLOTSON: Correct. But I mean,
 24 I -- he's here and I need to establish this is his
 25 interview. I don't know if Frankie Andreu has ever

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1 seen this transcript, for example. So I need to prove
 2 that up with this witness.
 3 ARBITRATOR CHERNICK: We don't need to
 4 see this transcript at this point. All we need to do
 5 is -- is to allow you to establish the foundation you
 6 need to have the transcript then used to the extent
 7 that you want to in Frankie Andreu's deposition. And
 8 at some later date we're then going to have the
 9 opportunity really to respond to Mr. Herman's argument
 10 that we shouldn't consider the transcript for any
 11 purpose. But at this point it's really you're just
 12 creating the foundation, aren't you?
 13 MR. TILLOTSON: Yes.
 14 MR. BREEN: Well, we totally disagree
 15 with that right there.
 16 ARBITRATOR FAULKNER: Okay. Wait a
 17 second, before -- I understand y'all will disagree. I
 18 have a question for you. At this point are you merely
 19 asking Mr. Walsh whether or not this is a second
 20 corroborating source that he's relying on until such
 21 time as you may or may not eventually link it up with
 22 Mr. Andreu?
 23 MR. TILLOTSON: Yes, let me modify that.
 24 I will just simply ask him if what we'll mark as
 25 Respondents' Exhibit 106 is a transcript of an

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1 interview he conducted with the unnamed source. And
 2 is it accurate and reflect to the best of his
 3 knowledge what was said between them.
 4 ARBITRATOR FAULKNER: Next question, do
 5 Claimants' counsel have copies of whatever was
 6 produced, all of it, so that they will be equally well
 7 prepared and able to examine Mr. Andreu on these
 8 points?
 9 MR. HERMAN: We don't know if we have
 10 everything. I mean, we have gotten stuff that was
 11 produced in the British case. I don't know that we
 12 have it all, but I haven't gotten anything from
 13 Mr. Tillotson, other than the -- other than certain
 14 e-mails between Mr. Walsh and SCA, so I'm not saying
 15 that we do or don't have everything. I think I've
 16 seen that, but I haven't looked at it. Obviously
 17 there aren't any names on it.
 18 ARBITRATOR FAULKNER: Okay, gentlemen,
 19 ambush tactics are not something any of us
 20 particularly like, all right. I think I've kind of
 21 made that clear with some of the questions to
 22 Ms. Andreu. Y'all already have clear directions on
 23 what to do with regard to that. Would you be so kind,
 24 Mr. Tillotson, as to make sure that a copy of
 25 everything is provided to Claimants' counsel so

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1 nobody --
 2 MR. TILLOTSON: This is -- I'm sorry, I
 3 didn't mean to interrupt. This is what I believe they
 4 already have. We had it sent to us by e-mail from
 5 British counsel.
 6 ARBITRATOR FAULKNER: Okay.
 7 MR. TILLOTSON: This is an excerpt
 8 from -- it's organized, apparently, in binders.
 9 There's a detailed list of everything that's on there
 10 that was made part of the British proceedings.
 11 ARBITRATOR CHERNICK: That's not an audio
 12 tape, that's a document?
 13 MR. TILLOTSON: No, no, it's just all the
 14 documents in PDF form.
 15 MR. BREEN: Is there an audio tape that
 16 confirms that or did Mr. Walsh peck that out on his
 17 computer or what?
 18 MR. TILLOTSON: I'm told that there's no
 19 audiotape. That the only audiotape that exists is his
 20 on-the-record interview.
 21 MR. BREEN: And, of course, the second
 22 half of the equation is -- if I could be very quickly
 23 heard, is -- is that this witness refused to answer
 24 questions in deposition already, now in trial he is
 25 refusing to answer questions --

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1 ARBITRATOR FAULKNER: Wait. I don't
 2 think the question has been directly put to him yet by
 3 you since you haven't had a chance to cross-examine
 4 him. And certainly none of the tribunal members have
 5 had a chance to put it directly to him. Consequently
 6 we understand where Mr. Tillotson is trying to come
 7 from. I want to make sure you have a copy of
 8 everything that popped up last night so that there are
 9 no surprises. You're going to be deposing Mr. Andreu,
 10 and so if y'all will take care of doing that, then I
 11 think we will eliminate most of the problems with this
 12 unless -- until such time as you have Mr. Andreu and
 13 you submit whatever, if anything, you're going to
 14 submit.
 15 ARBITRATOR CHERNICK: And I would be fine
 16 with marking that and not showing it to the panel.
 17 ARBITRATOR FAULKNER: Yeah. And just put
 18 it in -- seal it.
 19 ARBITRATOR CHERNICK: Not showing -- not
 20 showing it to the panel unless and until you believe
 21 you have sufficient foundation through a later
 22 deposition of Mr. Andreu.
 23 MR. BREEN: And my only point in this,
 24 Your Honor, is that we have the right not only to
 25 depose Mr. Andreu on the subject, if this is going to

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1 be admitted we have the right under the CPRC in Texas
 2 to cross-examine this witness if he's going to sponsor
 3 this as something that's accurate, not just
 4 Mr. Andreu, and I say that very respectfully.
 5 ARBITRATOR FAULKNER: Counselor, we fully
 6 intend to let you cross-examine this witness. We
 7 expect that you will do so to the best of your
 8 ability, and Mr. Herman's preparations of brevity
 9 aside, we had absolutely no expectation that this
 10 would be a brief cross examination.
 11 MR. BREEN: I understand, Your Honor.
 12 ARBITRATOR FAULKNER: So you're going to
 13 have the full abilities you can develop on cross
 14 examination to deal with this witness. Now if he does
 15 not answer, then we will know how to treat that.
 16 MR. BREEN: Okay, understood.
 17 MR. HERMAN: Your Honor, and I -- at the
 18 expense of brevity, let me just say that
 19 fundamentally, he comes in here, he's talked to 55
 20 people and all he's telling you is what he claims 55
 21 people told him, which is by definition frankly is
 22 hearsay. The fact that he might have -- the fact that
 23 one person told him a story and then another person
 24 might have told him the same story does not make it
 25 any more reliable just because it's -- it's all

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1 hearsay.
 2 Now, if Mr. Tillotson wants to impeach
 3 his own witness, Frankie Andreu, with this document,
 4 that's his business. But -- but, you know, I don't
 5 have any problem with this witness saying, yeah that
 6 reflects an interview I did and it accurately reflects
 7 what happened, but I'm not telling who it's with. He
 8 can mark it as an exhibit and then we can move on. He
 9 can authenticate it however he needs to authenticate
 10 it.
 11 MR. TILLOTSON: I don't intend on asking
 12 this witness what people said. One is with respect to
 13 Frankie Andreu and the other is with respect to
 14 Stephanie McIlvain, because those witnesses, I
 15 believe, have given inconsistent, inaccurate
 16 testimony.
 17 ARBITRATOR LYON: So we are not going to
 18 get through the whole book?
 19 MR. TILLOTSON: Are you trying to bait
 20 me? I'm teasing.
 21 No, I'm going to focus on the IU
 22 incident, those witnesses, Stephen Swart --
 23 ARBITRATOR LYON: We are very proud of
 24 you for that.
 25 MR. TILLOTSON: -- and Emma O'Reilly.

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1 ARBITRATOR LYON: Discretion is the
 2 better part of valor.
 3 MR. HERMAN: It would take a lot less
 4 time if we just read the section of Mr. Bandy's
 5 transcript.
 6 ARBITRATOR FAULKNER: All right,
 7 gentlemen, let's go ahead and get Mr. Walsh back in.
 8 But before we do, you're going to have such cross
 9 examination opportunities as you wish to avail
 10 yourself of.
 11 MR. HERMAN: Sure.
 12 ARBITRATOR FAULKNER: And I'm not at all
 13 indicating that any of us on the panel may or may not
 14 ask blunt questions. And we know how to treat what we
 15 hear, y'all.
 16 MR. BREEN: I understand, Chairman,
 17 and --
 18 MR. HERMAN: We're not -- we don't expect
 19 any Judith Miller approach to this.
 20 ARBITRATOR FAULKNER: I don't think we
 21 have that authority. I'm pretty sure we don't have
 22 that authority.
 23 MR. HERMAN: As much as we would like to
 24 see it.
 25 ARBITRATOR FAULKNER: Would you please

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1 retrieve them?
 2 (Witness returned to the room)
 3 MR. HERMAN: You knew I was not referring
 4 to your weight there, Mr. Tillotson.
 5 ARBITRATOR CHERNICK: In kilos?
 6 MR. TILLOTSON: You're lucky statements
 7 made in judicial proceedings are privileged.
 8 ARBITRATOR FAULKNER: Okay. Let's
 9 proceed, guys.
 10 MR. TILLOTSON: That's my V02 max.
 11 Q. (BY MR. TILLOTSON) All right. I'm going to
 12 show you what we have marked as Exhibit 106. Are you
 13 familiar with this document?
 14 A. Yes.
 15 Q. Okay. I'm going to ask you some questions.
 16 MR. TILLOTSON: I'm going to hold off
 17 before, make sure this is what I said it was.
 18 MR. BREEN: Very good.
 19 Q. (BY MR. TILLOTSON) I'm going to ask a couple
 20 of questions, David. I'm going to ask you to answer
 21 my questions specifically without revealing the
 22 contents of what's in this document, okay?
 23 Are we looking at a transcript of an
 24 interview you had with an off-the-record source?
 25 A. I'm -- I wouldn't regard it as a -- as a

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1 transcript.
 2 Q. Okay. What is it then?
 3 A. I would regard it as detailed notes taken
 4 based on the -- on an off-the-record conversation
 5 where I took written -- some small written notes. And
 6 when the conversation ended and the person left the
 7 room, I immediately went to my laptop and wrote up the
 8 notes as accurately as I could.
 9 Q. Okay. Is there a tape -- did you actually
 10 tape this off-the-record conversation?
 11 A. No.
 12 Q. Do you tape any of your off-the-record
 13 conversations?
 14 A. Not unless the off-the-record sources agreed
 15 to it.
 16 Q. Now, let me show you what we will provide and
 17 make copies of, but what we will mark as 107.
 18 First, let me get you to identify it and
 19 tell me what it is. Are these the handwritten notes
 20 of the off-the-record interview?
 21 A. Yes.
 22 Q. Okay. So that I understand the process, you
 23 make handwritten notes, then go turn those notes into
 24 Respondents' Exhibit 106?
 25 A. Yes.

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1 Q. What's the length of time between the
 2 handwritten notes and the creation of 106? I mean,
 3 how long before you turn around and create --
 4 A. I would say the interview lasted for maybe --
 5 judging by the length, maybe 25 minutes, and then the
 6 person left the room and I sat down and -- at the 27th
 7 minute and started typing, and that -- the handwritten
 8 notes are just -- I mean, when the person is speaking
 9 it's off the record so it's very important to him and
 10 I want to try and keep eye contact as much as I can.
 11 So I'm writing down tiny little notes, but I'm
 12 engaging with the person. And, you know, in the
 13 immediate aftermath of him leaving the room I have
 14 quite a vivid recollection of what we have discussed.
 15 Q. If you'll look at Respondents' Exhibit 106,
 16 do you believe it contains an accurate representation
 17 of what you were told in the course of your interview
 18 of this off-the-record source?
 19 A. Yes, I do.
 20 Q. Have you looked at this and used this in
 21 connection with your book?
 22 A. The off-the-record stuff, no. The -- unless
 23 I could attribute any of this stuff, it wasn't used.
 24 It was maybe used in terms of following up questions
 25 with other people, but I wouldn't have taken stuff

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1 from this and quoted it anonymously, except maybe in a
 2 situation where there was no chance of the
 3 off-the-record source being identified.
 4 If it was something that was -- that
 5 could have come from 20 people, and -- or 30 people,
 6 maybe I would -- I would have said an off-the-record
 7 source or a protected resource said. But in a general
 8 sense, no, this stuff is not for use in a public way
 9 that would identify the source.
 10 Q. Do you have any doubts or concerns regarding
 11 the accuracy of what you have written down in
 12 Exhibit 106 as fairly representing what this unnamed
 13 source told you?
 14 A. I have no doubts.
 15 Q. Now, there's blacked out portions in response
 16 to Exhibit 106. What generally has been blacked out?
 17 Don't tell me the information, but what is -- what
 18 things have been attempted to be blacked out?
 19 A. The attempt -- I mean, what has been blacked
 20 out is the stuff that would identify the source of
 21 the -- of this off-the-record interview.
 22 Q. And who did the blacking out?
 23 A. I did it in conjunction with my legal
 24 representatives in London.
 25 Q. And are you willing to reveal who this

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1 unnamed source is in connection with these proceedings
 2 today?
 3 A. No, I'm not.
 4 Q. And on what basis are you refusing to reveal
 5 that?
 6 A. As a journalist, I feel I cannot reveal my
 7 off-the-record sources because the basis upon which I
 8 was given this information was that I would never
 9 reveal the source of the information. This is a
 10 situation where somebody has information that he or
 11 she wants me to know, but they cannot make it public,
 12 because it would maybe cost them their job or cost
 13 them something very important to them. And the basis
 14 upon which I received it was that I wouldn't reveal it
 15 and I wouldn't -- and I would not reveal that source.
 16 MR. TILLOTSON: Mr. Chairman, at this
 17 time I would tender 106 and 107. I will formally
 18 offer them based upon the discussions we had outside
 19 the presence of this witness.
 20 ARBITRATOR FAULKNER: Okay, and those
 21 would be sealed so the panel will not see them?
 22 MR. TILLOTSON: They will be sealed so
 23 the panel will not see them until such time as the
 24 panel considers their admissibility based upon --
 25 ARBITRATOR FAULKNER: But they will be

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1 provided to opposing counsel?
 2 MR. TILLOTSON: They will.
 3 ARBITRATOR FAULKNER: Okay.
 4 MR. HERMAN: Objections have been stated.
 5 ARBITRATOR FAULKNER: We have already
 6 noted your objection stated earlier.
 7 MR. TILLOTSON: I'll get you copies of
 8 107 in a second.
 9 Q. (BY MR. TILLOTSON) I want to turn now to the
 10 incident recorded in your book about the Indiana
 11 University Hospital for purposes of context. First,
 12 can you reveal who the source was to you of that
 13 particular incident?
 14 A. The source of that story for me was Greg
 15 LeMond.
 16 Q. Did you seek to confirm that story?
 17 A. Yes, I did.
 18 Q. How many people did you talk to for purposes
 19 of attempting to confirm it?
 20 A. I spoke to three people.
 21 Q. We have heard from two of them which I
 22 understand are Frankie Andreu and Betsy Andreu?
 23 A. Yes, I spoke to both of the Andreus.
 24 Q. Any hesitation in their confirmation to you?
 25 A. Off the record, I mean, I can -- basically

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1 they both told me that it had happened but they
 2 couldn't publicly say that it happened, because it
 3 would get them into a lot of trouble, as Frankie
 4 Andreu continues to earn his living in cycling.
 5 Q. Now, I want to focus for a moment on
 6 Stephanie McIlvain. You know her?
 7 A. Yes, I do.
 8 Q. In connection with your investigation of the
 9 Indiana University Hospital incident can you tell us
 10 whether or not Ms. McIlvain confirmed the incident as
 11 happening or not?
 12 A. Initially she suggested that she wasn't sure,
 13 but when she got to know me a little bit better and we
 14 spoke a little bit more, she confirmed it obviously
 15 and told me that she remembers feeling shocked when
 16 Lance had -- had made this admission.
 17 Q. Now, you understand in these proceedings that
 18 Ms. McIlvain has testified that she didn't recall the
 19 incident happening. Is that consistent or
 20 inconsistent with what she told you in connection with
 21 your investigation?
 22 A. Totally inconsistent.
 23 Q. It's also been -- you wrote in your book that
 24 Chris Carmichael and Paige Carmichael were there. Did
 25 you attempt to contact Mr. or Mrs. Carmichael?

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1 A. No, I didn't.
 2 Q. Is there a reason why?
 3 A. My feeling was that I had gotten three people
 4 in the room who confirmed it for me. Chris Carmichael
 5 worked with Lance. I felt he was in an impossible
 6 position and I wanted to contact the fourth person who
 7 was in the room, Lisa Shiels, and I made lots of
 8 attempts to contact her, but I didn't get to contact
 9 her.
 10 Q. Now, I want to show you what's been marked as
 11 Respondents' Exhibit 25. Do you recognize this as an
 12 English version of your book, LA Confidential?
 13 A. Yes, it is an English translation of LA
 14 Confidential, but if I could just say it -- it is not
 15 a very good translation, but it is a translation.
 16 Q. Are there English translations of your book
 17 that you're aware of and familiar with?
 18 A. No, this is the only one I'm aware of.
 19 Q. Have you been through this translation?
 20 A. Yes, I have.
 21 Q. And do you sit -- do you accept it as at
 22 least an acceptable translation of the -- the
 23 original?
 24 A. Yes, it is.
 25 MR. TILLOTSON: We would move for

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1 admission into evidence of Respondents' Exhibit 25.
 2 MR. HERMAN: I object to -- it's pure
 3 hearsay in its rawest form. I object to it.
 4 MR. BREEN: And he's also said it's not a
 5 very good translation.
 6 MR. TILLOTSON: The witness has adopted
 7 it; you've shown it to witnesses on cross
 8 examinations, and --
 9 MR. HERMAN: I've shown certain pages of
 10 it that have come up, but I've -- but the book itself
 11 is no -- it's incompetent proof.
 12 MR. BREEN: But it was also represented
 13 that it was an accurate translation. Now the author
 14 of the book has suggested it's not.
 15 MR. TILLOTSON: I'd like to respond to
 16 the objections, but --
 17 ARBITRATOR FAULKNER: Response, please.
 18 MR. TILLOTSON: Yes. First of all, let's
 19 deal with the hearsay objection. It goes beyond -- it
 20 goes to show notice and information with respect to
 21 our clients as to what they knew and what the
 22 allegations were that put them on notice with respect
 23 to this particular matter. So the truth of the
 24 particular events in here we have never suggested can
 25 be proven by this book, which is why we brought all

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1 these other witnesses on. It goes to show what the
 2 allegations were that we knew about and what we did
 3 from an investigatory standpoint.
 4 This witness who wrote the book here, LA
 5 Confidential, has said he has reviewed this, it may
 6 not be the best translation, but he accepts it as an
 7 accurate -- or as an acceptable translation of this
 8 book for the purposes of these proceedings.
 9 MR. HERMAN: If it's only --
 10 MR. TILLOTSON: We have not offered
 11 it for the truth of the matter of the events in here,
 12 as I've said from day one of these proceedings so,
 13 therefore, I think it satisfies any hearsay exception
 14 rules.
 15 ARBITRATOR FAULKNER: Okay. Mr. Herman?
 16 MR. HERMAN: Thank you. If it's offered
 17 only for the purpose of showing what SCA became aware
 18 of at some point, I don't have a problem with it,
 19 except for the fact that all of the SCA witnesses have
 20 said when they became aware of it, it was Mr. Bandy's
 21 translation that they had, they never had Respondents'
 22 Exhibit 25. They looked at Mr. Bandy's translation,
 23 which is not Exhibit 25, it is that -- that is what
 24 SCA was operating off of, so if what they were on
 25 notice of, if that's the point, let's say -- see

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1 Bandy's translation.
 2 MR. TILLOTSON: Well --
 3 ARBITRATOR FAULKNER: Did you have a
 4 response, Mr. Tillotson?
 5 MR. TILLOTSON: Yes, I believe that my
 6 witnesses both identified Exhibit 25 as a version of
 7 the book that they received and used in connection
 8 with their investigation. The testimony has been that
 9 the original understanding of the book came from
 10 translated versions of Mr. Bandy, but both witnesses
 11 identified -- both Mr. Hamman and Mr. Compton
 12 identified Exhibit 25 as the versions of the book that
 13 they got and used in connection with their
 14 investigation. I'll be happy to put the French
 15 version in front of them. I'll be happy to go through
 16 it that way.
 17 ARBITRATOR FAULKNER: The Senator has a
 18 question, then we will come back to you.
 19 ARBITRATOR LYON: Who translated 25?
 20 MR. TILLOTSON: I'll ask him.
 21 Q. (BY MR. TILLOTSON) Who translated?
 22 A. The publishers translated it. And if I could
 23 just clarify, when I said I didn't think it was a good
 24 translation I was making stylistic criticism. I like
 25 to see things written well with a certain style.

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1 This -- this doesn't have that, but it is an accurate
 2 translation of the book.
 3 ARBITRATOR LYON: Can I ask a question?
 4 ARBITRATOR FAULKNER: Go ahead.
 5 ARBITRATOR LYON: When you wrote this
 6 book, did you write it in English or French?
 7 THE WITNESS: I wrote my -- my chapters
 8 in English.
 9 ARBITRATOR LYON: Okay. I don't guess we
 10 have those?
 11 THE WITNESS: Pardon?
 12 ARBITRATOR LYON: We don't have those?
 13 THE WITNESS: I think they have been --
 14 certainly I have disclosed them and I think Mr. Herman
 15 would have them in the documents.
 16 MR. HERMAN: Could you just identify what
 17 numbers, chapter that you wrote?
 18 THE WITNESS: Well, in the actual book,
 19 it's not like that, because some of my bits are in
 20 some chapters. But in a general sense I think the
 21 first chapter and the second chapter are mine, the --
 22 what's called the ME years, that's mine. The Ferrari
 23 chapter is mine. But Mr. Ballester, then, has little
 24 bits that are in those chapters that are his, so it's
 25 very difficult to be categorical.

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1 MR. HERMAN: I understand. I -- I
 2 understand that. If you would, Mr. Tillotson, I mean,
 3 I don't want to force you into an agreement, but you
 4 don't mind if we put Bandy's translation in as well?
 5 MR. TILLOTSON: No, I'll be happy to --
 6 I'll be happy to jointly admit 25 and Mr. Bandy's
 7 translation as 25-A.
 8 MR. HERMAN: Okay, that's fine.
 9 ARBITRATOR FAULKNER: That solves your
 10 problem, gentlemen. Let's move on.
 11 MR. HERMAN: As long as it's admitted
 12 solely for that purpose, Your Honor, that
 13 Mr. Tillotson identified.
 14 ARBITRATOR FAULKNER: Okay. Let's
 15 proceed with more questions.
 16 MR. TILLOTSON: 25-A will then be
 17 Mr. Bandy's translated version since there are several
 18 chapters.
 19 Q. (BY MR. TILLOTSON) I want to term your
 20 attention just briefly to just one page which is 1384,
 21 which is the Indiana Hospital -- University incident.
 22 And I want to focus just exclusively with respect to
 23 the response by Ms. McIlvain that are contained on
 24 page 1385. Can you tell us what role you had in
 25 preparing the response of Ms. McIlvain to your book?

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1 A. Yes. Basically Betsy Andreu and Stephanie
 2 McIlvain both confirmed to me the Indiana Hospital
 3 room admission took place and -- but they both felt
 4 that they couldn't publicly admit it because both of
 5 them had husbands who depended upon cycling one way or
 6 another for their living. And they felt they -- that
 7 they couldn't cross the fine line or it could rebound
 8 very badly on their husbands.
 9 And they said, could we not just -- could
 10 we not just say no comment. And to Stephanie McIlvain
 11 and to Betsy I said, look, I would prefer if I could
 12 have an expanded no comment that actually gave the
 13 impression that you were concealing something. And we
 14 talked about it and I said you know as -- because, you
 15 know, they were saying look, it's -- you know, what I
 16 would like to say it's a question that you should ask
 17 Lance, and I said okay. I said, let's -- let's put
 18 that down. And we did a question and answer that
 19 basically I e-mailed -- certainly to Stephanie
 20 McIlvain I e-mailed it to her and said look, how about
 21 this? And she e-mailed me back and said fine, you
 22 know, something to the effect of yeah, that's fine,
 23 which she saw it.
 24 And what I wanted was at least -- you
 25 know, as a journalist I wanted to get closer to the

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1 truth than a straight no comment. And I told her if I
 2 put the question to them and they said, no, that's a
 3 question for Lance, not for me, and then I said, look,
 4 did he say it or did he not, you know, tell me if he
 5 didn't say it and they said no, no, that's a question
 6 that I would rather -- I'm not going to answer.
 7 You've got to ask Lance that. And that's why the
 8 answers were framed like that, it was like it was a
 9 compromise between them admitting it and just saying
 10 no comment, almost halfway between the truth.
 11 Q. Now, I want to turn from the Indiana
 12 University Hospital incident to Emma O'Reilly.
 13 Were you substantially the author of the
 14 portions of LA Confidential that involved statements
 15 or allegations from Ms. O'Reilly?
 16 A. Yes, I was.
 17 Q. Now, I'm not going to ask you to recount what
 18 she says, because Ms. O'Reilly presumably is going to
 19 be testifying here and can speak for herself so I want
 20 to ask you just a couple of matters about your
 21 involvement with her.
 22 First, how is it you obtained the
 23 cooperation of Ms. O'Reilly to give you information?
 24 A. I had heard from a friend that -- that Emma
 25 O'Reilly might be -- might be somebody who would talk

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1 because she had been in the team. I knew she had been
 2 in the team. I hadn't met her previously, but I knew
 3 that this Irish girl had worked with U.S. Postal and
 4 had recently been on the position of head soigneur,
 5 which was quite a responsible job in a cycling team.
 6 And she was somebody that in terms of when I drew up
 7 the list of the people that I wanted to speak with,
 8 she was on that list, and I didn't -- at this time I
 9 didn't even know where she lived. I had heard from a
 10 source of mine that she lived in England and that she
 11 was married to a guy called Simon Lillistone, that the
 12 marriage had broken up. And what I did was I
 13 contacted Simon Lillistone because I -- he worked with
 14 the British Cycling Federation. And he said he would
 15 contact her and ask her would she speak to me. And
 16 Simon contacted her and that's how I got to talk to
 17 Emma.
 18 Q. And did you conduct on-the-record interviews
 19 of Ms. O'Reilly?
 20 A. Yes, I did.
 21 Q. How many times did you interview her on the
 22 record?
 23 A. Well, the on-the-record interview was all
 24 done in one long day. It was a day I think in early
 25 July 2003, I interviewed her for in excess of six

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1 hours.
 2 Q. Okay. So the original interview of her on
 3 the record was done in early July 2003?
 4 A. Yes.
 5 MR. HERMAN: 2003 did you say?
 6 MR. TILLOTSON: 2003.
 7 A. Yes.
 8 Q. (BY MR. TILLOTSON) Was that interview taped?
 9 A. Yes.
 10 Q. And as a part your work papers, is there a
 11 transcript of that interview?
 12 A. Yes, there is.
 13 Q. Now, July of 2003, then tell us the process
 14 that you had back and forth with Ms. O'Reilly
 15 regarding the things that she had said in terms of
 16 confirming or asking clarifying questions.
 17 A. I -- briefly I went and met her at the end of
 18 June for a first meeting where I said look, what we
 19 are going to -- what we're attempting to do here is
 20 something quite serious and we should sit down and
 21 talk about it in a general sense, no interview, no
 22 tape-recorder, no notes, just like let's talk. And I
 23 went to Liverpool and I met her, and her partner, Mike
 24 Carlisle, came along so the three of us went for
 25 something to eat in a restaurant near where she lived.

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1 We spoke for three hours, maybe four
 2 hours, and we got on well. I was impressed by her.
 3 She was clearly an intelligent woman. She seemed to
 4 be a strong woman. And -- and we agreed that I would
 5 come up, I think it was about two or three weeks later
 6 and we would do the interview. I came up, maybe
 7 did -- the first meeting was in the middle of June,
 8 the interview was done early July, and I did the
 9 interview, it lasted over six hours. I then went away
 10 and covered the Tour de France in 2003 and then in
 11 August of 2003, the following month, I did the
 12 transcript of that interview, and the transcript ran
 13 to I think it's 39,700 words. It was a very, very
 14 long transcript. It would be 74 pages of closely
 15 typed A4 paper.
 16 And I then sent the transcript to Emma
 17 immediately. As soon as I had done it I sent it to
 18 her and I said to her -- I told her that I needed her
 19 to go through this transcript from first page to last
 20 and if there was anything she wanted to take back or
 21 negate or she wanted to change or if there was
 22 anything she wanted to add, and I also asked her that
 23 if I had got spellings wrong, some names of some of
 24 the Belgians who were on the team or stuff like that
 25 would she mind correcting them.

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1 And she went through the transcript,
 2 because I could see her handwritten notes were pretty
 3 much -- or little notes on every page, changes of
 4 spellings. She didn't change anything substantial,
 5 she didn't take anything back, and I did ask her --
 6 she had talked about the team's medical program all
 7 the time, it was a phrase she used, and I felt it was
 8 a euphemism for something and I asked her in a -- a
 9 telephone conversation or in an e-mail to explain what
 10 she meant by the medical program, and she sat down and
 11 told me about it and she wrote out a quite, you know,
 12 detailed explanation of what she understood about the
 13 medical program.
 14 Q. Now, when was this process of giving her the
 15 notes, making changes, allowing corrections, e-mail
 16 communications regarding clarifications, when did this
 17 process begin?
 18 A. It started the -- maybe the middle of August
 19 in 2003. That's when I had the transcript done. And
 20 she would have been doing the -- she would have been
 21 doing her work on the transcript through August, early
 22 September.
 23 Q. 2003?
 24 A. Of 2003.
 25 Q. And did Ms. O'Reilly, to your understanding

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1 or knowledge, spend a substantial amount of time going
 2 through your transcript and notes of what she had
 3 said?
 4 A. Oh, yes, there's no question she spent a lot
 5 of time doing it, because 39,000 words is the
 6 equivalent of half an average sized book and she
 7 wasn't reading half this book just for pleasure, she
 8 was reading it for editing purposes and correcting it
 9 page by page. So that would have taken her, I would
 10 have thought, two or three weeks after work when she
 11 came home from her work as a therapist. She was
 12 sitting down and she was going through these
 13 transcripts bit by bit. So it was -- it was -- it was
 14 a sizable amount of work.
 15 Q. In connection with her editing review, did
 16 she withdraw or recant any of the material allegations
 17 she had told you in the interview?
 18 A. Absolutely not.
 19 Q. Now, did there come a point in time that you
 20 actually gave compensation to Ms. O'Reilly for what
 21 she was doing?
 22 A. What happened was --
 23 Q. First, just answer the question.
 24 A. Yes.
 25 Q. Can you tell us when that took place, when it

1 is you made payment to her?
2 A. I think the payment was made maybe the 17th
3 of September 2003.
4 Q. And I'm going give you a chance to explain
5 the circumstances of what happened, but I want to make
6 sure we have the dates. When is the first time anyone
7 raised the issue of payment or compensation in
8 exchange for what Ms. O'Reilly was doing?
9 A. Do you mean between Emma and I?
10 Q. Yes.
11 A. Maybe in -- maybe a week before the payment
12 was made, so coming up toward the 10th, 12th of
13 September, in a telephone conversation Emma complained
14 that this was taking an awful lot of time, and that
15 she felt that she was going to -- because I had spoken
16 to her, I said the process -- I had told her what the
17 process was going to be, that every time I did
18 something, that if I interviewed her, I was going to
19 get her to read the transcript and to check it.
20 If I did -- when I did the sample chapter
21 that I would do she would read and she would have to
22 correct it, she would have to offer her opinions. So
23 she had done a lot of work, she could see herself
24 doing a lot of work in the future and she thought this
25 was unfair because the authors were going to get

1 would be compensated for what she was going to tell
2 you?
3 A. Absolutely not.
4 Q. It has been said here in connection with
5 these proceedings -- Mr. Stapleton in testimony,
6 Mr. Herman in argument, that you paid Ms. O'Reilly for
7 her story. Is that an accurate characterization of
8 what happened?
9 A. That is totally inaccurate.
10 Q. Why is that wrong? You did pay her, why is
11 that wrong?
12 A. Because -- because Emma O'Reilly gave me the
13 interview before there was any question -- everything
14 she said at the time she said it, in my mind and I
15 believe in her mind, there was no question about
16 receiving a payment for the interview.
17 Q. Did anything change or did she add any new
18 allegations or statements of fact after you agreed to
19 provide her compensation?
20 A. No, absolutely not.
21 Q. How much was she paid?
22 A. She was paid 5,000 pounds and the reason she
23 was paid 5,000 pounds -- we came to that amount --
24 I -- when I had this conversation with Emma, I said
25 Emma, I hear what you're saying in the sense of the

1 certain monies for writing the book, the publishers
2 were going to make money, she felt that she wasn't
3 like any other witness in that -- in that her
4 contribution to this book was well in excess of what
5 anybody else was going to do. She was having to give
6 up a lot of her free time, and she felt that it was
7 morally unjustifiable.
8 I discussed it with her and I felt -- I
9 felt that the case she made was very hard to argue
10 against, and I said, look, I can't say what we will
11 do. I said, if there is a payment, it would be a
12 nominal payment, it will be compensation for the work
13 you're doing. And I was always under the premise that
14 I knew that when we went out on this interview, there
15 had never been any question of money, it had never
16 come up and I was happy in my own mind that everything
17 she had told me had been told to me without there
18 being any prospect in her mind of her earning money
19 for it.
20 Q. Let me ask you, when was the first time --
21 well, let me rephrase it.
22 When you interviewed her on the record in
23 July of 2003, either before that interview or in
24 connection with that interview, was there any request
25 or discussion of the possibility that Ms. O'Reilly

1 moral argument that she was effectively being a
2 serious collaborator in this book. She was putting in
3 a lot of time, a lot of effort and when the book came
4 out she was going to be in the firing line.
5 And the people who she was working with
6 were all going to earn money from this book and she --
7 and that was her argument. I put that argument to
8 Pierre and I will -- I admit, I would have said to
9 Pierre, look Pierre I think her argument is very hard
10 to dismiss, and Pierre agreed. And we decided that we
11 would pay her two and a half thousand pounds each out
12 of our next payment whenever -- it was June pretty
13 much at that time. And when the next payment came,
14 Pierre had two and a half thousand of his next payment
15 diverted to mine and we paid Emma five thousand
16 pounds, which we worked out was about eight or nine
17 percent of what we were going to earn.
18 Q. Let me ask you about that just so we can
19 complete that. How much did -- how much have you
20 earned from the book LA Confidential in terms of
21 royalties or payments?
22 A. I think it was about -- about 45,000 pounds.
23 Q. Now, just to complete this subject matter,
24 you were -- you were asked publicly if anyone had been
25 paid in connection with the book, is that true?

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1 A. Yes.
 2 Q. And your answer was what?
 3 A. At the time -- it was when the book came out
 4 the interview was done, you know, maybe three weeks in
 5 VeloNews, maybe two weeks after the book came out and
 6 I said no, nobody had been paid.
 7 Q. Why did you say what you knew was an untrue
 8 statement publicly?
 9 A. I said it at that time to protect Emma
 10 O'Reilly, because when the book was published, she was
 11 very much in the firing line. Even though with many
 12 witnesses in the book, even though the hospital room
 13 incident was there, everybody focused, in Europe, on
 14 Emma O'Reilly. Her face was appearing on the evening
 15 news and she found it very hard to cope with that.
 16 And her partner, Mike Carlisle, suffers from multiple
 17 sclerosis and he was being very badly affected by it
 18 and I felt that if I brought into the public domain at
 19 that time that Emma had been paid, it would have
 20 been -- made her life even more un -- I mean, she was
 21 finding it tough as it was. I felt it would have made
 22 it absolutely unbearable.
 23 Q. When did you subsequently reveal that
 24 Ms. O'Reilly had gotten compensation for the book?
 25 A. My plan was that whenever -- when that major

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1 controversy died down and I was asked again, I would
 2 volunteer the information. And I was actually never
 3 asked again, but a journalist from an outside
 4 magazine, U.S. magazine, named Joe Lindsey came to
 5 interview me, he didn't ask me about sources being
 6 paid but I volunteered the information. I said this
 7 is my -- now is the time to come to -- to tell this
 8 story and I -- I volunteered the information.
 9 Q. Now, the book was published in France. It
 10 was not published in the United Kingdom or the United
 11 States.
 12 A. That's right.
 13 Q. And I think in your deposition you were asked
 14 by Mr. Herman that you went to a -- that you had gone
 15 to a variety of publishers in the United States and
 16 the United Kingdom who have declined to publish the
 17 book?
 18 A. Yes.
 19 Q. It has been argued by Mr. Herman in opening
 20 statements that the fact that American publishing
 21 houses or British publishing houses won't publish your
 22 book means or implies that the things you've written
 23 in here must be untrue. Is that a fair
 24 characterization of why your book hasn't been
 25 published in the United States?

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1 A. No, it's not.
 2 Q. What is your understanding based upon -- what
 3 is your understanding as to why your book hasn't been
 4 published in the United States or the United Kingdom?
 5 A. I -- I didn't deal directly with the
 6 publishers in the U.S., but the foreign rights
 7 department -- an American woman who worked for la
 8 Martiniere and I was in conversation with her all the
 9 time. She conducted the conversation with the
 10 American publishers, and the information coming back
 11 always was that many American publishers would liked
 12 to have published it. They felt that the -- that the
 13 lawsuits arising out of this publication, they felt
 14 that Mr. Armstrong would definitely sue and that it
 15 would cost the publisher a lot of money to defend the
 16 case. Even though felt they would win the case, the
 17 monies that it would cost them to defend it might not
 18 justify publishing it in the first place.
 19 Q. Well, you were sued by Mr. Armstrong in
 20 France and the United Kingdom?
 21 A. Yes. I mean, as soon as the book arrived in
 22 France, I mean, Mr. Armstrong and his legal
 23 representatives in France brought a case against the
 24 book, just two days after it was published to have an
 25 insertion in the book, and -- saying that

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1 Mr. Armstrong denied every allegation made against
 2 him. And that -- that case was heard in France and it
 3 was dismissed and it was heard again on appeal and it
 4 was dismissed again.
 5 MR. TILLOTSON: Now, two other subject
 6 matters and I think it will be brief. Do you want to
 7 continue going or do you want to break for lunch. I
 8 do want to ask the witness about two other subject
 9 matters.
 10 ARBITRATOR FAULKNER: Go ahead.
 11 Q. (BY MR. TILLOTSON) First, I want to ask
 12 about your efforts to get -- to -- to speak to
 13 Mr. Armstrong and Mr. Stapleton prior to the
 14 publication of the book. There's been testimony here
 15 that the first approach was May 18th or May 19th of
 16 2004 with a fax sent to Mr. Stapleton; is that -- is
 17 that accurate?
 18 A. Yes, that's accurate.
 19 Q. Why so close to the publication date? The
 20 book is going to be published in June, you're at May
 21 18th, it's a pretty big book. Why do you wait until
 22 the very end to contact Mr. Armstrong?
 23 A. Well, we basically didn't want -- at that
 24 time we were very much hoping the book would be
 25 published in English. We also felt that the book in

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1 France, if Mr. Armstrong and his legal people knew
2 that the book was coming out, they would make every
3 effort to stop it coming out and we wanted to protect
4 the book. And that was the reason why we decided
5 to -- to leave it -- to leave it lay.
6 But we still had -- and in our -- in our
7 eyes the way we worked, we still had time to
8 incorporate their viewpoint into the book.
9 Q. What response did you get from Mr. Stapleton
10 or Mr. Armstrong in response to your inquiries?
11 A. There was a series of e-mails where we --
12 it was like shadow boxing. You know, here, Bill, I
13 want to interview Lance and what can you do to
14 organize this.
15 Yes, I talked to Lance. I'll come back
16 to you. And over and back.
17 I e-mailed Lance directly. I got another
18 response from Bill. I was asked would I send a list
19 of questions. We deliberated about whether we should
20 send it as opposed to getting an interview, would we
21 send questions. Because in 2001 when I sent
22 information, it had been used in a way that was
23 counterproductive to certainly my interest, even
24 though I had supplied the information.
25 So we -- we tossed that around for a

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1 couple of days. We sent a number of questions and --
2 and the response was we would have a response for you
3 by tomorrow afternoon. We will answer your questions.
4 We will raise it for the next day. It never came.
5 And in the end nothing came.
6 Q. Did Mr. Armstrong and Mr. Stapleton ever
7 answer the written question you provided the?
8 A. No.
9 Q. In connection with their request did you
10 agree to extend the deadline that they had to respond
11 to you at their request?
12 A. Yes, we did.
13 Q. In the course of these dealings with them did
14 you ever tell them that the purpose of the interview
15 was that you were writing a book?
16 A. No.
17 Q. Why not? Why not tell them you're writing a
18 book? Maybe they think you're writing a newspaper
19 article.
20 A. Yes. My feeling this time was unlike in
21 2001. I was not going to reveal my full hand. And I
22 felt that the truth of the answers shouldn't depend on
23 whether it's a book or a newspaper. You know if you
24 ask questions as a journalist -- my feeling was that,
25 well, truthful answers are truthful answers,

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1 regardless of whether they end up in a book or a
2 newspaper.
3 Q. Last topic. Can you tell us when you first
4 got in touch with or heard from SCA Promotions, my
5 clients in this case?
6 A. Oh, I -- I think it may have been early
7 September of 2004, around that time.
8 Q. Have you had meetings with them in connection
9 with discussions and the issues in your book?
10 A. Yes. I met them in -- I met John Bandy and
11 Bob Hamman in Detroit at the end of September 2003 --
12 2004.
13 Q. Do you remember Mr. Compton?
14 A. Yes.
15 Q. And have you had e-mail communications back
16 and forth with SCA regarding information?
17 A. Yes, some e-mail; not a lot.
18 Q. Why talk to, meet with, speak to, answer
19 inquiries from SCA? Why did you do that?
20 A. Well, I suppose I'm a journalist. I was
21 curious to know what -- who they were and what they
22 wanted, what was happening. And they basically had
23 come across our book. For their reasons it was
24 important to them. And they wanted to -- they were
25 interested in finding out if what was in the book

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1 could be authenticated.
2 And of course, as one of the co-authors
3 of the book, you know, I wanted to say yes, it could
4 be authenticated. We are not -- we are not two big
5 journalists doing this. This has been done very
6 seriously. And if you -- if I can help you to talk to
7 some of my witnesses and Pierre can help you talk to
8 some of his witnesses, we were going to do that
9 because we wanted people to realize the book was an --
10 is an honest attempt to explore a very difficult
11 subject.
12 Q. And do you still stand behind the statements
13 and things you have written in LA Confidential?
14 A. Yes, very much.
15 Q. Is there any allegation made in this book
16 written by you or Mr. Ballester regarding
17 Mr. Armstrong that you now believe is inaccurate and
18 you wish to take back or incorrect?
19 A. No.
20 MR. TILLOTSON: Thank you very much for
21 your time, Mr. Walsh. I'm going to tender you now for
22 cross examination, I think.
23 ARBITRATOR FAULKNER: At this point we
24 are going to take our break for lunch because I saw
25 the trolley outside the door.

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1 (Recess 12:39 p.m. 1:46 p.m.)
2 ARBITRATOR FAULKNER: Mr. Walsh, you're
3 still under oath, and this is cross-examination, so
4 you'll be examined by Mr. Herman.
5 Please proceed.
6 MR. HERMAN: All right. It might be
7 helpful, Jeff, if you have a copy of his deposition to
8 have it in front of him.
9 MS. EVORA: We never got the hard copy.
10 MR. TILLOTSON: I'm not sure we ever got
11 the hard copy. David, did you bring a copy of your
12 deposition?
13 MS. EVORA: I have -- I have an e-tran is
14 all. We can bring it up, I think
15 MR. HERMAN: Okay. All right.
16 MR. BREEN: You can start your exam, and
17 I'll look for a hard copy.
18 MR. HERMAN: If it comes up, you can just
19 throw the page up there if you need to.
20 CROSS EXAMINATION
21 BY MR. HERMAN:
22 Q. Mr. Walsh, how are you, sir?
23 A. Fine.
24 Q. Mr. Walsh, to get started here, it's true, is
25 it not, that you have no personal knowledge about any

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1 illegal or prohibitive conduct undertaken by
2 Mr. Armstrong; isn't that true?
3 A. Yes.
4 Q. It's -- is it true, Mr. Walsh, that at least
5 under contemporary American journalistic standards,
6 you don't pay sources for information?
7 A. In a general sense, that -- that's true.
8 Q. And paying for information violates your own
9 sense of journalistic standards, does it not?
10 A. In a general sense, yes.
11 Q. Now you paid Emma O'Reilly, did you not,
12 \$8500 or 5,000 pounds, whatever the conversion rate
13 is?
14 A. Yes.
15 Q. And you know that the French publisher also
16 has some arrangement with Ms. O'Reilly, but you don't
17 know what that is?
18 A. Precisely.
19 Q. The reason that you submitted, for example,
20 draft chapters to Ms. O'Reilly or Mr. Swart or
21 whatever is to confirm that they agree with the
22 content of those chapters and permit you to publish it
23 with their quotes and so forth?
24 A. Yes, and also to give them the opportunity to
25 make any changes they would wish to make on -- upon

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1 reviewing what they've already said.
2 Q. And when Ms. O'Reilly asked you for money,
3 she had not given you the final go-ahead on her
4 chapter; isn't that true?
5 A. That's true.
6 Q. And her -- the parts in the book about Ms. --
7 with Ms. O'Reilly are, relatively speaking, more
8 sensational than others; wouldn't you agree?
9 A. Yes, I would.
10 Q. And as of the time she demanded money, she
11 had not given you the final approval to publish
12 whatever it was she told you in the interview; isn't
13 that true?
14 A. I'm -- it's -- it's -- it needs to be
15 clarified, I had a six-and-a-half-hour interview on
16 tape. If at that point Emma O'Reilly had said, I
17 don't want to go ahead, I still would have published
18 the contents of the interview and then said, you know,
19 Emma O'Reilly, at the eleventh hour, didn't want to go
20 ahead with this. But the interview was given in good
21 faith and taken in good faith, so I wouldn't have
22 felt -- I wouldn't have felt bound to keep it all out
23 of the public domain. She didn't have the right of
24 veto at -- at any time.
25 Q. You knew from conversations with Prentice

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1 Steffen that Ms. O'Reilly was looking for a payday,
2 did you not?
3 A. I'm -- no, I didn't -- that -- that wouldn't
4 be true.
5 MR. HERMAN: Would you mark this, please?
6 MR. BREEN: What is this?
7 MR. HERMAN: This is to Steffen.
8 MR. BREEN: 145.
9 ARBITRATOR FAULKNER: Thank you.
10 MR. TILLOTSON: Thank you.
11 Q. (BY MR. HERMAN) Now, you recognize
12 Claimant's Exhibit 145 as coming from your material,
13 correct?
14 A. Yes.
15 Q. Tell the panel who Prentice Steffen is.
16 A. Prentice Steffen is a California-based doctor
17 who had -- has worked cycling for quite some time. He
18 worked with the U.S. Postal team in -- in 1996, and
19 worked with the team -- the Subaru team that preceded
20 the U.S. Postal team. Out of that Montgomery Subaru
21 team the U.S. Postal team was formed. So Prentice
22 Steffen had an association with the team, I think, for
23 three or four years.
24 Q. Recently Mr. Steffen has made false comments
25 about Mr. Armstrong which were the subject of a

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1 retraction by him; isn't that true?
2 A. Yes, he made comments that were retracted.
3 Q. And he was recently dismissed from the
4 TIAA-CREF team, correct?
5 A. Correct.
6 Q. When you and I spoke about this issue about
7 Ms. O'Reilly wanting a payday, I believe you indicated
8 to me, and tell me if this is correct, that
9 Mr. Steffen had proposed the idea, but Emma turned him
10 down flat?
11 A. No, I said Emma -- yes, Emma turned it down.
12 The idea that Prentice Steffen was proposing was that
13 Emma would collaborate with what he called a qui tam
14 action against the U.S. Postal team, you know, an
15 action that would -- that was -- I think he called it
16 a whistle-blower's charge or a statute whereby if
17 somebody cooperated with the U.S. government in
18 exposing fraud where a government or state agency was
19 getting money in a fraudulent way, the person who blew
20 the whistle on such a fraud would be entitled to a
21 sizable reward.
22 Q. All right. And when I asked you whether you
23 had informed Mr. Steffen about Ms. O'Reilly's desire
24 for a payday, you said that you did not tell
25 Mr. Steffen that; isn't that right?

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1 A. That's true.
2 Q. Okay. Now, if you look at the second page of
3 Claimant's Exhibit 145, the last paragraph,
4 Mr. Steffen says, I'll be interested to know what you
5 think about this and whether you may agree to contact
6 Emma about this. I recall that you mentioned she was
7 interested in finding a way for her story to involve a
8 payday.
9 Do you deny that you told Mr. Steffen
10 that?
11 A. Yes, I do.
12 Q. Did you point that out to him in your reply?
13 A. No, I didn't. I didn't even -- that didn't
14 register with me to any great extent at the time,
15 because I had had a conversation with Prentice Steffen
16 where he talked -- where we talked in a phone
17 conversation about this whistle-blower's statute that
18 he wanted Emma to become involved in, and he was
19 talking huge numbers, like Emma could earn \$50 million
20 out of this. And in that telephone conversation I may
21 have said something like, oh, \$50 million for
22 cooperating with the U. S. government, that sounds
23 good, or Emma might -- you know, there might be a -- a
24 comment of that kind of -- in -- in reaction to what
25 he was saying, but I know I did not say that Emma

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1 wants a payday for her story.
2 Q. Well, then I asked you -- I mean, I believe
3 you told me that Steffen had -- Prentice Steffen had
4 run it by Emma and she was in -- not in favor of it,
5 correct?
6 A. Yes.
7 Q. Now, look at the first page of this
8 Claimant's Exhibit 145, which is your response --
9 A. Yes.
10 Q. -- to Mr. Steffen. Let me see if I can read
11 this. Prentice, if it can be worked, it's a brilliant
12 idea. Emma is totally in favor as her evidence is
13 going to be in the public domain anyway. Will be in
14 touch, David.
15 A. Yes.
16 Q. All right. So does that reflect your
17 response to Mr. Steffen?
18 A. Yes. And if I could explain.
19 Q. Well, let just -- me just ask you this.
20 Did -- was Emma totally in favor, as you -- as you
21 state there, or not?
22 A. She was in -- she was totally in favor when
23 I -- when I talked to her in a telephone conversation
24 about it, but when I forwarded Prentice Steffen's
25 e-mail to her and she -- she kind of got a better

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1 sense of what was going to be involved, she -- she
2 changed her mind and said, I'm not interested, and --
3 and I believe she wrote an e-mail to Prentice stating
4 that she wasn't interested.
5 Q. If you would turn to page 142 of your
6 deposition. I asked you at line 23: You told him,
7 Mr. Steffen, that Emma was interested in finding a way
8 for her story to involve a payday. That's precisely
9 what you told him, isn't it?
10 And your response was, on line 4 of page
11 143? It's --
12 MR. TILLOTSON: When he does that, it
13 means he wants you want you to either read it or --
14 A. I'm sorry. My answer was, I have
15 recollection of telling him that.
16 Q. (BY MR. HERMAN) And then I asked you, you
17 also told him that you had contacted Emma about this
18 idea of his, this idea of bringing some whistle-blower
19 suit, and that she was totally in favor. Didn't you
20 tell him that?
21 And your answer was that you didn't
22 recall telling him that, correct?
23 A. Yes.
24 ARBITRATOR CHERNICK: Could we see the
25 remainder of the answer?

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1 THE WITNESS: Oh, yeah.
 2 ARBITRATOR CHERNICK: Okay, thank you.
 3 MR. TILLOTSON: At least I have one
 4 question now for redirect.
 5 MR. HERMAN: What's that?
 6 MR. TILLOTSON: What the point was?
 7 ARBITRATOR FAULKNER: He was just
 8 kibitzing.
 9 ARBITRATOR LYON: Ordered by the
 10 tribunal.
 11 MR. HERMAN: I didn't say, but the point
 12 is. That would have had a Q out there in front of it.
 13 Q. (BY MR. HERMAN) In any event, as I recall
 14 your testimony here earlier this morning, you said
 15 that would you rather sweep streets, as I wrote it
 16 down, than been involved in a journalistic lie; is
 17 that right?
 18 A. I don't know if that's precisely what I said.
 19 Q. Well, that's what I wrote down. But anyway,
 20 is that a true statement or not?
 21 A. Yes, would I rather -- I would rather not be
 22 telling a journalistic lie, that's for sure.
 23 Q. Well, after -- right after the book LA
 24 Confidential was published on more or less June 18,
 25 2004 -- that date is fairly accurate, is it not?

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1 A. Yes.
 2 Q. And the reason it was published in mid-June
 3 was to take advantage of the natural interest in the
 4 Tour de France race, which begins the first week of
 5 July, correct?
 6 A. Correct.
 7 Q. And prior to the commencement of the Tour de
 8 France and during the Tour de France, you were doing
 9 numerous interviews, doing the semi book tour in order
 10 to generate interest in the book and at least get
 11 publicity out there; isn't that true?
 12 A. I wasn't doing any tour, and I did some
 13 interviews of -- I wasn't looking to do interviews. I
 14 was -- I -- I did interviews because I was asked.
 15 Q. And the point of the interviews was to talk
 16 to you about the book that you had written, because
 17 normally you're on the other side of the microphone,
 18 aren't you?
 19 A. That's correct.
 20 Q. Okay. And your objective was certainly to
 21 stimulate interest in the book and to at least respond
 22 to those people who indicated an interest in the book,
 23 correct?
 24 A. Correct.
 25 Q. And because of the release date and so forth,

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1 it was apparent that your publisher and you were
 2 attempting to capitalize on the Tour de France?
 3 A. That's a logical time to bring it out.
 4 Q. And you did an interview with VeloNews, did
 5 you not?
 6 A. Yes, I did.
 7 Q. And when you were asked whether you had paid
 8 any of the people who had provided information in the
 9 book, you lied about it, didn't you?
 10 A. Yes, I did.
 11 Q. And in addition to this proposition that
 12 you're protecting Emma O'Reilly from publicity and so
 13 forth, the fact is that if the word had gotten out
 14 that early, when the book had just been published,
 15 that you had violated journalistic standards by paying
 16 people, that would have had some impact on the
 17 credibility of the book, wouldn't it?
 18 A. It may have had.
 19 Q. And let me ask you this, you have been
 20 critical of Mr. Armstrong about this relationship with
 21 Dr. Ferrari. Can you point to any incident where
 22 Mr. Armstrong was asked if he had a relationship with
 23 Dr. Ferrari where he lied?
 24 A. Well, when I asked him did he visit -- did he
 25 ever visit Dr. Ferrari, he said perhaps. That

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1 certainly was misleading.
 2 Q. Well, he never denied that he had a
 3 relationship with Dr. Ferrari, did he? You can't
 4 point to a single instance?
 5 A. I can't point to one.
 6 Q. Yet you criticize him because he waited until
 7 he was asked about it, correct?
 8 A. I didn't criticize him strictly on that
 9 basis.
 10 Q. Well, but you criticize him. You -- you --
 11 you have certainly implied that there was something
 12 sinister about his relationship because he never said
 13 anything about it until he was asked. Is that what
 14 you're -- is that the criticism?
 15 A. Well, if you're the world's greatest cyclist
 16 and you work with a doctor that's regarded as the
 17 world's most suspicious doping doctor and you never
 18 reveal that, yeah, I'm going to wonder about that.
 19 Q. All right. Well, you waited to be asked,
 20 didn't you, whether you had -- whether you had lied
 21 when you were asked the direct question, you never
 22 told a soul about it until you were asked by the
 23 Outside Magazine editor; isn't that true?
 24 A. No, it's not true, because I wasn't asked by
 25 the Outside Magazine. I volunteered the information

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1 to the interview.
2 Q. Well, didn't you testify in direct that
3 you -- you had never been asked?
4 A. No. I've been asked by VeloNews, that's
5 never been in dispute, and I -- I -- I've admitted now
6 that at that time I told the VeloNews reporter that
7 sources -- that no source had been paid, and I did it
8 for the reason of protecting Emma O'Reilly. But
9 when -- when I felt the time was right and that Emma
10 would be -- would be able to cope with the adverse
11 publicity, I volunteered the information into the
12 public domain. I wasn't asked a question by the
13 Outside Magazine journalist.
14 Q. Well, you're the one that paid her. The
15 adverse publicity would be more likely directed to you
16 as a journalist, wouldn't it?
17 A. I wasn't considering myself at all.
18 Q. Now, let me switch topics here with you for a
19 moment.
20 It's clear there is no English
21 publication of this book.
22 A. Yes.
23 Q. And when was it that you provided this
24 translation that is marked as Respondent's Exhibit 25,
25 when did you provide that to SCA?

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1 A. I didn't provide it to SCA.
2 Q. Do you know how SCA got it?
3 A. I'm not sure.
4 Q. When you talked to them -- to SCA on or about
5 September 20, 2004, they were not in possession of
6 that translation, were they?
7 A. They may have been, I don't know.
8 Q. You didn't talk to them about that?
9 A. I certainly didn't -- I don't recall
10 discussing whether they had an English version of the
11 book or not. I was aware that Mr. Bandy had lived in
12 France for seven years and that he had translated
13 large sections of the book for them. I was aware of
14 that.
15 Q. Well, it's true, isn't it, that upon the
16 publication of your book by this French publishing
17 house, La Martiniere -- is that how you pronounce it?
18 A. Yes.
19 Q. -- you were hopeful, very hopeful, that the
20 book would be published in the U.S. because the libel
21 laws in the U.S., particularly where there's a public
22 figure involved, are much less exacting than those in
23 the UK, correct?
24 A. Correct.
25 Q. And you've seen book after book of Kitty

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1 Kelley books, books that are -- are totally scurrilous
2 and so forth, that are published in the United States
3 all the time?
4 MR. TILLOTSON: I object to the
5 characterization of Ms. Kelley's books.
6 MR. HERMAN: Are you a big Kitty -- Kitty
7 Kelley fan?
8 MR. TILLOTSON: I've had to litigate at
9 least one of them.
10 ARBITRATOR FAULKNER: Let's -- let's just
11 stick to this case, please.
12 Q. (BY MR. HERMAN) But in any event, you have
13 never talked to any publisher in the United States?
14 A. No.
15 Q. And at least 14 United States publishers have
16 refused to publish this book, correct?
17 A. Correct.
18 Q. And you have left these negotiations to La
19 Martiniere, who, in addition to being a French
20 publisher, has numerous relationships with United
21 States publishers where they trade publishing rights
22 and so forth, correct?
23 A. I believe they have one definite relationship
24 with Abrams. I don't -- I'm not aware of any other
25 relationship they have.

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1 Q. Well, they've been singularly unsuccessful in
2 getting the book published in the United States; you
3 would agree with that, wouldn't you?
4 A. Yes, I would.
5 Q. And in addition, to the 14 United States
6 publishers who won't publish it, there are at least an
7 additional five publishers in the United Kingdom who
8 won't publish it, correct?
9 A. Correct.
10 Q. Now, you talked about Stephen Swart?
11 A. Yes.
12 Q. All right. He was a rider for the Motorola
13 team?
14 A. Yes, he was.
15 Q. And your transcript of your interview with
16 Stephen Swart is included in the materials that you
17 submitted here?
18 A. Yes.
19 Q. Correct?
20 A. Correct.
21 Q. Now, would you say that Mr. Swart was hostile
22 toward Mr. Armstrong?
23 A. I would have thought he was -- he was
24 reasonably neutral. He wasn't bothered in a personal
25 way. It's been -- it's been almost ten years since

<p style="text-align: right;">Page 2617</p> <p>1 he's left the team. I didn't get any sense of great 2 hostility. 3 Q. Well, he did talk to you about when it was 4 that he left the team? 5 A. Yes. 6 Q. And the last thought he had when he left the 7 team was -- about Mr. Armstrong wasn't too 8 complimentary, would you say? 9 A. No, it wasn't. 10 Q. Why don't you read what Mr. -- why don't you 11 read what Mr. Swart said there on that last sentence? 12 ARBITRATOR FAULKNER: Would you give us 13 the cite so we can keep a track -- keep track of it. 14 MR. HERMAN: It's -- it's part of his -- 15 it's part of the interview. 16 ARBITRATOR FAULKNER: Oh, okay. 17 MR. HERMAN: It's not in evidence, the 18 document is not. 19 A. Six pages from the end, the question to 20 Mr. Swart was: Did you feel Lance was part of the 21 decision not to give you a contract as in renew the 22 contract? 23 And Stephen's answer was, I went -- I 24 went round all the rooms and said goodbye to 25 everybody. The riders who were there obviously knew</p>	<p style="text-align: right;">Page 2619</p> <p>1 A. Yes. 2 Q. But you chose not to talk to anyone who was 3 there except for Mr. Swart? 4 A. Correct. 5 Q. And you know who Lynn Petijohn is, too, don't 6 you? 7 A. Yes. 8 Q. And you know Lynn Petijohn has publicly 9 stated that there was no deal, that no money changed 10 hands? 11 A. I'm also aware that -- that Lynn Petijohn's 12 quote wasn't quite that brief and that succinct. 13 There's another dimension to it where he said that he 14 believed his team had done some deal or a quote to 15 that effect. 16 Q. Well, you know Mr. Petijohn and Mr. Swart 17 testified earlier that they -- confirmed that 18 Mr. Petijohn said that the decision not to attack 19 Armstrong was made so that Coors Light could contend 20 for the team classification. Did you know that? 21 MR. TILLOTSON: I object. I don't think 22 this witness can know that since that testimony was 23 given here. He hasn't been provided it, so... 24 Q. (BY MR. HERMAN) Have you been told that? 25 A. No, I haven't.</p>
<p style="text-align: right;">Page 2618</p> <p>1 that I was out. I knocked on Lance's door to say 2 goodbye and it was basically just a hand coming 3 through the bathroom door, see you later, and that was 4 it. There was no, wait a minute, or anything like 5 that. I thought, you piece of shit, fuck him. There 6 was nothing there. 7 ARBITRATOR FAULKNER: All right. Thank 8 you. 9 Q. (BY MR. HERMAN) In connection with this 10 story about this Triple Crown 1993 three-race deal -- 11 do you follow me? 12 A. Yes. 13 Q. You talked to Mr. Swart about that, and you 14 didn't talk to any other rider that participated in 15 that West Virginia race, did you? 16 A. No. 17 Q. And you know there are ten riders on the 18 Coors Light team, more or less? 19 A. Yes. 20 Q. You know that there are ten riders, more or 21 less, on the Motorola team? 22 A. Yes. 23 Q. And you know there are probably at least 24 another 18 teams with ten riders a piece that 25 participated in that?</p>	<p style="text-align: right;">Page 2620</p> <p>1 Q. And have you been told or did you read -- let 2 me ask you this: Did you read Mr. Petijohn's quote 3 that when they got to Philadelphia for the third jewel 4 in the Triple Crown, there was no deal, and they were 5 attacking Armstrong on the Manayunk Wall or whatever 6 it is? 7 A. Yes. I -- I am also aware that that day the 8 truck came for the Italian riders who had come to 9 America for the race. And one of my off-the-record 10 sources told me that he believed a deal had been done 11 with Mr. Armstrong and the Italians in that race and 12 that money had been paid at the beginning of that 13 following season by Mr. Armstrong to the Italians with 14 whom he had done a deal. 15 Q. Well, you also said in your account that the 16 Coors Light guys got their -- got their money at the 17 end of the season as part of their bonus, correct? 18 A. Yes. Mr. -- that was Mr. Swart's information 19 in his interview with me. 20 Q. All right. Now, speaking of Mr. Swart, in 21 connection with your book, you interviewed Dr. Testa? 22 A. Yes. 23 Q. Dr. Max Testa, who was the team doctor for 24 Motorola? 25 A. Yes.</p>

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1 Q. And Dr. Testa confirmed to you that he had
 2 never tested a hematocrit in excess of 50, correct?
 3 A. I -- I -- I don't precisely remember that,
 4 but if you say it's in -- if it's in his interview,
 5 I'm sure it's -- he said it.
 6 Q. Let me just -- let me get -- let me just get
 7 you to confirm it. I know that -- I wouldn't
 8 intentionally misrepresent anything, but I may have
 9 misread this. Just confirm is that the record of your
 10 interview you with Dr. Testa?
 11 A. That's right.
 12 Q. And Dr. Testa says, among other things,
 13 that I --
 14 A. I never -- I never had an hematocrit above 50
 15 in all those years working with Americans.
 16 Q. Okay. Now, Betsy Andreu.
 17 A. Yes.
 18 Q. You spoke to her in 2003 about this hospital
 19 room -- alleged hospital room incident and so forth?
 20 A. Yes.
 21 Q. Okay. And, of course, your -- your
 22 recollection is that Ms. Andreu told you that as soon
 23 as Mr. Arm -- Mr. Armstrong allegedly made this
 24 admission, that she and Frankie left the room right
 25 away?

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1 A. Yes.
 2 Q. And she did not hear any follow-up questions,
 3 if there were any, because she and Frankie had left
 4 the room?
 5 A. Yes.
 6 Q. And you know and I think maybe even you've
 7 written about the use of EPO in the treatment of
 8 cancer victims?
 9 A. Well, I haven't written about EPO in
 10 treatment of cancer, but I've written about EPO in
 11 terms of drugs in sport.
 12 Q. Right. But you know and you have read that
 13 as part of cancer treatment, EPO is used to replenish
 14 red blood cells?
 15 A. Yes.
 16 Q. And post brain surgery, are you aware that
 17 steroids are also used as postoperative therapy?
 18 A. I didn't know that.
 19 Q. You didn't know that.
 20 Now, after you interviewed Ms. Andreu,
 21 what would be the reason for speaking with Ms. Andreu
 22 20 to 30 times on the phone over the last year or so?
 23 A. I think the principle reason is that when
 24 you're a journalist and you -- you have people who
 25 have been sources or a partial source for stories, you

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1 would -- with some of these people, you end up forming
 2 relationships, and they maybe feel under a little bit
 3 of stress or pressure because of -- of, you know,
 4 other people saying, did you tell this journalist
 5 that. And -- and I tend to keep in touch with people
 6 that are sources of mine long after I do the
 7 interview. I would have spoken with Mr. Swart maybe
 8 20, 30 times in that period as well.
 9 Q. The conversations with Ms. Andreu concerned
 10 Mr. Armstrong for the most part, didn't they?
 11 A. Not -- not -- not at all. Not necessarily.
 12 I mean, he would have come up now and again, but we
 13 would speak about kids, what's happening. I had seen
 14 her kids when I was in Detroit. You know, she's very
 15 much a family woman, into her kids. She would talk
 16 about my kids, I would talk about hers, that kind of
 17 stuff.
 18 Q. Based upon Ms. Andreu's description of this
 19 hospital incident, you have always been under the
 20 impression that it was the Andreus, Carmichaels, Lisa
 21 Shiels, Stephanie McIlvain and Mr. Armstrong?
 22 A. Yes.
 23 Q. And that's all?
 24 A. And the doctors.
 25 Q. Well, right.

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1 But you never attempted to contact Chris
 2 Carmichael or Paige Carmichael, did you?
 3 A. No.
 4 Q. And as a matter of fact, when you met with
 5 SCA, you told them not to bother contacting Paige
 6 Carmichael and Chris Carmichael because they would
 7 profess lack of memory?
 8 A. I have no recollection of saying that.
 9 MR. HERMAN: Could you bring up
 10 Claimant's Exhibit 71, please, the second page?
 11 ARBITRATOR CHERNICK: Could we see the
 12 first page, please?
 13 MR. TILLOTSON: If we could also
 14 establish foundation regarding whether the witness has
 15 ever seen the document.
 16 MR. HERMAN: Well, the document is in.
 17 I --
 18 MR. TILLOTSON: That doesn't mean --
 19 MR. HERMAN: I don't assume that he ever
 20 has seen it, since it came out of SCA's files.
 21 MR. TILLOTSON: I object to foundation
 22 with respect to the witness testifying about this
 23 document.
 24 MR. HERMAN: Well, I'm going to ask him
 25 about a statement in it. I don't want him to testify

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1 about the foundation. It's already in.
 2 MR. TILLOTSON: Didn't you just do that?
 3 I'm sorry. I object to the foundation with respect to
 4 showing him some internal document from us. The
 5 question is --
 6 MR. HERMAN: Put it on the second page,
 7 let me just ask the question.
 8 ARBITRATOR FAULKNER: What -- Mr. Herman,
 9 do you have any specific response to Mr. Tillotson's
 10 objection?
 11 MR. HERMAN: Well, what I'm trying to
 12 figure out is, Your Honor, this is a memorandum that
 13 was made contemporaneously, which contains a
 14 statement, Walsh believes that Chris and Paige
 15 Carmichael would profess lack of memory if subpoenaed.
 16 ARBITRATOR FAULKNER: Is the purpose of
 17 showing him that to refresh his memory?
 18 MR. HERMAN: Yes.
 19 ARBITRATOR FAULKNER: Objection
 20 overruled. Proceed with the question.
 21 MR. HERMAN: Can you highlight that short
 22 paragraph? Not that one. Not that one. That one.
 23 Q. (BY MR. HERMAN) Now, when you met with SCA
 24 in September of 2004, you all discussed who would be
 25 witnesses, who would be willing to testify in this

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1 case, and that sort of thing, did you not?
 2 A. Well, they would have discussed that. They
 3 would have been asking me questions.
 4 Q. Right. That's what I mean.
 5 Because on September 20, 2004, you say --
 6 or at least they attribute to you the statement that
 7 Emma would be willing to testify, Swart would be
 8 willing to testify, and that Chris and Paige
 9 Carmichael would profess lack of memory if subpoenaed,
 10 as well as Lisa Shiels.
 11 Do you recall making that last statement
 12 to them?
 13 A. No, I don't.
 14 Q. You do remember telling them when they asked
 15 you whether Emma would be willing to testify, you said
 16 that you thought she would be, didn't you?
 17 A. I may have, but I don't -- I don't -- I'm
 18 being perfectly honest. I don't remember saying that.
 19 Q. Okay. Let me move to -- let --
 20 MR. HERMAN: Put it on the next page just
 21 for a second. We are -- up there where -- in that
 22 paragraph that says Emma.
 23 Q. (BY MR. HERMAN) Walsh: We will still need
 24 to tread lightly when we contact her, but Walsh said
 25 she -- Walsh says she is prepared to testify.

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1 Clearly your conversation with SCA
 2 involved questions about the willingness of certain
 3 people who were in your book that -- their willingness
 4 to testify in the matter between Armstrong and SCA;
 5 isn't that true?
 6 A. That's true.
 7 Q. Okay. And then if you go down to the next
 8 paragraph where it says miscellaneous, Walsh also says
 9 Swart is prepared to testify and is unafraid. Do you
 10 see that?
 11 A. Yes.
 12 Q. Okay. Now, I'll just tell you that this
 13 document was apparently prepared at or near the time
 14 of your conversation by SCA, but in any event, you
 15 wouldn't dispute that, that you all were discussing
 16 who would be willing to testify, who wouldn't, that
 17 kind of thing?
 18 A. No, I wouldn't dispute it. I couldn't
 19 remember the gist of the conversation.
 20 Q. In any event, you made no attempt to contact
 21 Paige or Chris Carmichael about this hospital thing?
 22 A. No, I did not.
 23 Q. Now we move to this -- you testified about
 24 the 1999 Tour de France. Do you recall that?
 25 A. Yes, I do.

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1 Q. Now, you said that Mr. Armstrong's
 2 performance didn't make sense.
 3 A. Well, to me it didn't. At the very least it
 4 demanded that we ask questions.
 5 Q. And you knew he had been the junior world
 6 champion, that he had been the national champion in
 7 the United States, that he was the youngest winner of
 8 one of the stages of the Tour de France?
 9 A. Yes.
 10 Q. And that he had been in the process of making
 11 or evolving from a classics racer to a stage racer?
 12 A. One thing, you said he was junior world
 13 champion. I could be wrong. Lance became senior
 14 world champion in 1993.
 15 MR. HERMAN: Yeah, youngest world
 16 champion, that's what that is.
 17 A. He was senior world champion at a very young
 18 age. 21, I think.
 19 Q. (BY MR. HERMAN) Do you recall telling me on,
 20 I think it's page 137 of your deposition at lines 12
 21 through 14, that EPO came along and the speeds at the
 22 Peloton going up by 20 percent? Do you see that?
 23 A. Yes.
 24 Q. Do you know what the total increase in speed
 25 in the Tour de France was between 1981 and 2004?

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1 A. No, I don't, I don't know what the -- what
2 the difference between the total speeds of the 1980
3 Tour de France and the 2004.
4 Q. If -- if I were to represent to you that the
5 total increase in kilometers per hour was about 1.28
6 and that the total average or percentage increase was
7 right at 4 percent, would that surprise you?
8 A. No, it wouldn't surprise me.
9 MR. TILLOTSON: I do want to just object
10 to the question that that assumes facts not in
11 evidence and not talked about. No documentary
12 evidence or witness testimony has testified to that.
13 MR. HERMAN: All right, sir, hang on a
14 second. Let me mark this.
15 ARBITRATOR FAULKNER: In the future, sir,
16 if there's an objection, don't answer until we rule on
17 the objection; otherwise, it gets asked and answered,
18 which kind of obviates what the lawyers need to do.
19 So just wait if you hear an objection, we will rule,
20 and then you can proceed. Thank you.
21 MR. HERMAN: May -- may I just approach
22 the witness, Your Honor, to see if he can verify
23 whether he's familiar with this particular source?
24 ARBITRATOR FAULKNER: Okay. Does
25 Mr. Tillotson know whatever it is? Why don't you show

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1 it to him, too, please.
2 MR. HERMAN: I'm sure Mr. Tillotson will
3 probably be more familiar with this.
4 Q. (BY MR. HERMAN) Let me -- are you
5 familiar --
6 MR. TILLOTSON: I'm totally unfamiliar
7 with it, but I don't believe I can stop it, so just
8 like --
9 ARBITRATOR FAULKNER: Is that a new form
10 of concession, like --
11 MR. TILLOTSON: -- like Italian as
12 Torelli.
13 Q. (BY MR. HERMAN) Are you familiar with this
14 source, Torelli racing book?
15 A. No.
16 ARBITRATOR FAULKNER: Don't feel bad,
17 Mr. Tillotson, many of us speak with our hands.
18 MR. TILLOTSON: Sustained.
19 Q. (BY MR. HERMAN) Conversely, you've written a
20 book about Paula Radcliffe, have you not?
21 A. Yes.
22 Q. And Paula Radcliffe is the world record
23 holder in the women's marathon?
24 A. Yes.
25 Q. And do you know -- you would -- you would

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1 consider the marathon an endurance sport as well,
2 would you not?
3 A. Yes.
4 Q. And do you know how much faster the women's
5 marathon is in 2004, the world record, versus 1981?
6 A. No, I don't know what the percentage
7 improvement is.
8 Q. Well, to be fair about it, Mr. Walsh, I think
9 you -- and I think you have been in -- in this respect
10 when you said that you're -- you were going to look
11 under the rocks, I believe, when you wrote this book
12 about Mr. Armstrong.
13 A. Yes.
14 Q. Okay. And you have never made any bones
15 about the fact that the book was designed to show the
16 other side of Mr. Armstrong, the -- the less favorable
17 side of Mr. Armstrong; isn't that true?
18 A. No, I didn't see it like that. I saw it as a
19 book that would challenge the official version. It
20 would -- it would look at Mr. Armstrong's sporting
21 career and ask questions that weren't being asked by
22 other people.
23 Q. Well, the official version, I take it, in
24 your view would be the positive image of
25 Mr. Armstrong; that is, I think you've described it as

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1 an inspiration to millions of people and --
2 A. Yes. Yes.
3 Q. -- and a -- tremendous achievements
4 athletically and personally?
5 A. Yes.
6 Q. And it was the -- the other side of that that
7 you were -- set out to publish; isn't that true?
8 A. Yes, the questions that other people were not
9 asking.
10 Q. Now, you've taken the position, Mr. Walsh,
11 that everyone since Greg LeMond in the mid-'80s, every
12 winner of the Tour de France has been dirty, haven't
13 you?
14 A. I don't think I used the word dirty.
15 Q. Well, that was -- was a dooper?
16 MR. TILLOTSON: Let him finish.
17 MR. HERMAN: I'm sorry, go ahead.
18 A. Yeah. I -- I think I'm -- serious, serious,
19 serious doubts have been raised about every winner at
20 the Tour de France since Greg LeMond.
21 Q. (BY MR. HERMAN) Would you turn to page 51 of
22 your deposition.
23 A. 51?
24 Q. Yes, sir, line 11. I said, essentially
25 everybody except LeMond since the mid-'80s is dirty;

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1 is that what you're saying?
2 And you said, well, I'm not just saying
3 that, but Festina --
4 And then I interrupted you, as usual.
5 No, I'm asking you whether that -- that's
6 what you're saying.
7 And you start to say -- again.
8 I said, is that what you're saying?
9 And then you say, that's what I'm saying,
10 yes.
11 A. If I had been allowed to answer the question,
12 this is how I would have answered it. I started by
13 saying, well, I'm not just saying that the Festina,
14 then I was interrupted, and I didn't get around to
15 finishing that, but what I would have done if I'd been
16 allowed to finish that, I would have said the Festina
17 tribunal went through every winner of the Tour de
18 France since Greg LeMond and cast serious doubts and
19 basically came up with evidence that they had doped.
20 And that's why the Festina tribunal was so important,
21 because it really did look back at the sport.
22 Q. Would you -- I'm going to switch gears with
23 you one more time here.
24 MR. HERMAN: Would you put up Claimant's
25 Exhibit 110.

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1 Q. (BY MR. HERMAN) Now, you haven't seen this
2 before, Mr. Walsh, but this is an e-mail exchange
3 between Lisa Shiels and a lady at ESPN in 2004. And
4 in it Ms. Shiels, when asked about this hospital
5 incident by someone totally unrelated to
6 Mr. Armstrong, indicated she had no recollection of
7 that happening.
8 Had you talked to Ms. Shiels or had you
9 been in possession of this e-mail, would that given
10 you some pause about the reliability of the account
11 that was given to you by Ms. Andreu?
12 A. Absolutely not, because my information had
13 come from three people, the two Andreus and Stephanie
14 McIlvain, and I believed them.
15 Q. All right. What if you had known there were
16 not just six people in the room but nine people in the
17 room, would you still have been as confident with the
18 story from Mr. and Mrs. Andreu who left the room right
19 after the alleged statement was made?
20 A. From my conversation with the Andreus and
21 Stephanie McIlvain, it wouldn't have mattered if there
22 had been one other person in the room. I -- I was --
23 I thoroughly believed what they told me.
24 Q. And in your 2001 interview with Mr. Armstrong
25 you taped that interview, did you not?

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1 A. Yes, I did.
2 Q. And one of the things that Mr. Stapleton
3 asked you in 2004, prior to or -- or after you
4 contacted him finally toward the end of May, was for
5 the tape, correct?
6 A. Yes.
7 Q. And unfortunately, you didn't have it?
8 A. I -- at the time I rang Mr. Stapleton, I was
9 in France, and I wasn't sure that I still had the
10 tapes from that interview, and I said to Bill I didn't
11 think I had the tapes, and at that time I didn't think
12 I had the tapes.
13 Q. Now, I took it from your testimony to
14 Mr. Tillotson that you had kind of a bad taste in your
15 mouth about this 2001 interview, that you had
16 indicated that -- I don't have it here, but that the
17 interview was -- oh, the information was used in a way
18 that wasn't consistent with your best interests. Do
19 you recall that?
20 A. Yes.
21 Q. Okay. And you knew that Mr. Armstrong and
22 Mr. Stapleton had a real bad taste in their mouth
23 about that 2001 interview?
24 A. I wasn't aware of that.
25 Q. Well, you were aware that during your

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1 interview with Mr. Armstrong in 2000 -- in April of
2 2001, the issue of your article which came out in
3 December of 2000 came up. Do you remember that?
4 A. Yes.
5 Q. And in December of 2000, right after the
6 French had announced this investigation of the United
7 States Postal team, you had published in your column
8 that Activogen had first been used on a human just the
9 previous March, didn't you?
10 A. Yes.
11 Q. And that was not true, was it?
12 A. No, that was a mistake.
13 Q. And when you interviewed Mr. Armstrong, he
14 asked you -- he said, somebody who would say or would
15 print that Activogen had just been used last year on a
16 human for the first time would be telling a lie,
17 didn't he?
18 A. Yes.
19 Q. And when -- during the interview, during the
20 tape, you admitted, yes, that was a lie?
21 A. I don't know if I admitted it was a lie. I
22 would like to look at -- I would like to look at
23 the transcript again. It certainly is a mistake,
24 there's no question about that.
25 Q. Well, that's my point. The -- the -- it

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1 doesn't appear in your transcript that you admitted it
 2 was a lie, but Mr. Stapleton or -- let me strike that.
 3 But if you had said it, it would have been on the
 4 tape, wouldn't it?
 5 A. Yes, I imagine it would.
 6 MR. HERMAN: Now, do you have
 7 Respondent's 105? That's the part of your -- an
 8 excerpt of your 2001 interview with Mr. Armstrong.
 9 Oh, here, I've got it.
 10 MR. TILLOTSON: What is 105?
 11 MR. BREEN: Excerpts from the interview
 12 with Mr. Armstrong that you talked to Mr. Walsh about.
 13 ARBITRATOR LYON: Has that been put into
 14 evidence?
 15 MR. TILLOTSON: The excerpts did. I said
 16 I was going to put the full thing in front of the
 17 panel.
 18 ARBITRATOR FAULKNER: Do you want to
 19 designate these 105-A?
 20 MR. TILLOTSON: Yes, yes, the full -- the
 21 excerpts I used were 105.
 22 ARBITRATOR CHERNICK: Can we just replace
 23 105 with this --
 24 MR. TILLOTSON: That's fine.
 25 ARBITRATOR CHERNICK: -- because

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1 everything we referred to is in there?
 2 MR. HERMAN: It doesn't make any
 3 difference to me. I was going to ask him about the
 4 stuff that was in Respondent's 105, but that's okay.
 5 Q. (BY MR. HERMAN) Would you turn to page 24 --
 6 A. Yes.
 7 Q. -- which is the -- I think it's the third
 8 page of Respondent's 105.
 9 But just look at page 24. You asked
 10 Mr. Armstrong -- and incidentally, this entire
 11 interview is about doping, is it not?
 12 A. Yes.
 13 Q. You asked Mr. Armstrong after he said, have I
 14 been tested by him, gone, been there and consulted on
 15 certain things? Perhaps.
 16 And then your question: You did?
 17 Yes.
 18 And now that you know of the
 19 investigation into Michele Ferrari and the
 20 recommendation is that it go to trial and he's going
 21 to be tried for criminal conspiracy?
 22 Mr. Armstrong answers: I think the
 23 persecutors and judges should pursue everybody
 24 regardless of who it is. It is their job to do that
 25 if it was a criminal investigation. If it is a

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1 sporting investigation, they should pursue that.
 2 Correct?
 3 A. That's what Mr. Armstrong said.
 4 Q. Okay. And then in the next question and
 5 answer, Mr. Armstrong points out that he doesn't look
 6 at things like you do. He doesn't look at everything
 7 through the eyes of a cynic and somebody who says
 8 everyone is doped and, therefore, dope is the only
 9 way.
 10 A. That's -- that's a total misrepresentation of
 11 my view, and as I've said this morning, if I could say
 12 briefly, I regard myself a great idealist in sport.
 13 Q. Well, then you continue to talk about
 14 Dr. Ferrari on page 25, and you suggest that
 15 Dr. Ferrari has got a big case to answer, and
 16 Mr. Armstrong says, perfect, that's where they should
 17 end up.
 18 Correct?
 19 A. Correct.
 20 Q. Okay. And then later on in talking about
 21 Dr. Ferrari, Mr. Armstrong said, regardless of what
 22 goes on, I think that these guys that are under a lot
 23 of pressure, guys like Conconi, all of those guys,
 24 Cecchini, Ferrari, these Italian guys, they are
 25 fantastic minds. They are great trainers. They know

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1 about physiology. It is not about doping.
 2 Correct?
 3 A. Yes. If I could make one little point on
 4 that. Three names have been mentioned there, Conconi,
 5 Chicheni and Ferrari. Two of the three have been
 6 convicted in -- or proven in Italian court. Conconi
 7 wasn't convicted, but the judge issued a report in
 8 which he said he did dope athletes. And Michele
 9 Ferrari, as we know, has been convicted of sporting
 10 fraud.
 11 Q. Well, you know that -- you know that in --
 12 following Mr. Ferrari's trial, you know that they had
 13 some 400 athletes' records there that they had gotten
 14 off of Ferrari's computer. You know that, don't you?
 15 A. I know they had a file; I just don't know the
 16 number.
 17 Q. And at no time during the prosecution of that
 18 case or any other time has there been the slightest
 19 implication that Dr. Ferrari gave Lance Armstrong
 20 anything that was a prohibited substance. You know
 21 that to be true, don't you?
 22 A. Yes.
 23 Q. Okay. Now, Dr. Van Mol (phonetic) was a
 24 dutch doctor. He was also convicted of doping, was he
 25 not?

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1 A. I'm not sure. I'm not familiar with Dr. Van
 2 Mol in any case.
 3 Q. Well, he was the team doctor for Greg LeMond;
 4 did you know that?
 5 A. I know that he worked with Greg LeMond at one
 6 time.
 7 Q. But you don't assert that Greg LeMond took
 8 performance enhancing substances, do you?
 9 A. No.
 10 Q. Now, I notice in your -- in your materials,
 11 that you have the entire chapter 14 of the UCI
 12 Antidoping Regulations. I mean, they were the -- some
 13 of the materials that you've turned over in the
 14 British case?
 15 A. Well the Sunday Times turned them over. I
 16 didn't -- those were documents disclosed by the Sunday
 17 Times as opposed to being disclosed by me.
 18 Q. Okay. Well -- but they had something to do
 19 with your work in this -- in this doping book, right?
 20 A. Yes. If you want to be accurate about it, it
 21 just says disclosed by another party in the
 22 litigation.
 23 Q. Well, I don't want to get into it in -- in
 24 tremendous detail, but you recognize that the UCI is
 25 the sanctioning body for the Tour de France?

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1 A. I would be -- it's more a governing body of
 2 cycling.
 3 Q. Okay, a governing body or whatever.
 4 And then the ASO or whatever is the
 5 promoter of the event?
 6 A. Yes.
 7 Q. Okay. And as part of the responsibility for
 8 determining disqualifications, stage winners, official
 9 winner, all of that is the responsibility of the UCI,
 10 is it not, and the stewards?
 11 A. Yes.
 12 Q. And it's true, is it not, that as part of the
 13 UCI Antidoping Regulations, that any third party can
 14 bring to the attention of the UCI a suspected
 15 violation of the antidoping regulations?
 16 A. I wasn't aware of that, but if you say it's
 17 true, I'm sure it's true.
 18 Q. Do you know whether or not there's an
 19 eight-year statute of limitations on disqualification?
 20 A. I'm -- I'm vaguely aware of that -- some
 21 statute of limitation, but I'm not sure if it's eight
 22 years.
 23 Q. Well, you're generally familiar with, are you
 24 not, that the mandatory provision that if a sample,
 25 either a urine or a blood sample, of a rider is

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1 subject to an adverse result, that the rider has the
 2 absolute right to the testing of the B sample?
 3 A. Yes.
 4 Q. Now, did you -- did you tell SCA about
 5 Thibeault de Montbrial?
 6 A. I may have mentioned his name.
 7 Q. Did you tell SCA that Montbrial had
 8 connections with the French police and that the French
 9 police were out to bring Armstrong down?
 10 A. I'm not sure if I did.
 11 Q. Could have, though?
 12 A. Because I was aware that Thibeault de
 13 Montbrial has done a lot of work, very high profile
 14 work in Paris on major criminal cases, so I did -- I
 15 did know that he has contacts in the French police.
 16 Q. When I asked you about the first conversation
 17 that you had with Mr. Hamman or someone from SCA about
 18 the purpose of their call, you told me that they were
 19 looking to verify the allegations contained in LA
 20 Confidential, didn't you?
 21 A. That's true.
 22 Q. Now, you have spoken with SCA at least 25
 23 times in the last year, have you not?
 24 A. Yes, something like that.
 25 Q. And numerous e-mails in addition to that?

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1 A. Not that many e-mails. Maybe 10, 12, 14
 2 e-mails, something like that.
 3 Q. And you have assisted SCA in their, quote,
 4 investigation of this matter, have you not?
 5 A. Yes, I've helped them in their efforts to
 6 ascertain whether what was written in LA Confidential
 7 was true, because I believe in the book, and if
 8 anybody wants to look at our book and find out if it's
 9 true, I would help them.
 10 Q. And you have provided that assistance in --
 11 in whatever efforts SCA was making in that regard on
 12 numerous occasions since January 1, 2005?
 13 A. Yes, but it's not like it's been any great
 14 time commitment on my behalf; a couple of phone calls
 15 here and there, some e-mails, given them a telephone
 16 number of somebody if they wanted to contact somebody
 17 or get in touch with somebody to see where I would ask
 18 them, would you mind taking a call from -- one of
 19 sources, would you mind taking a call from SCA, they
 20 wanted to tape something that was in our book. That's
 21 the kind of stuff I did.
 22 Q. But you have cooperated with them, and as
 23 you've told Mr. Tillotson, at the expense to yourself,
 24 you've come over here has a volunteer three times to
 25 testify in this case, and that you have provided

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1 assistance on numerous occasions without respect to
 2 the degree of -- or concentration of -- of your
 3 assistance since September of 2004?
 4 A. Yes, I have.
 5 Q. And it's your understanding that SCA has been
 6 conducting this investigation, as you put it, to
 7 verify these allegations during calendar year 2005,
 8 about -- yeah, 2005, and I guess up to this point in
 9 2006, correct?
 10 A. Correct.
 11 Q. And they have -- have they ever represented
 12 to you that they had reached a decision on whether the
 13 allegations were -- had merit or not? Have they ever
 14 told you that?
 15 A. No. They haven't come back and said,
 16 everything in your book is 100 percent true, no.
 17 Q. All right. And it's true, is it not, that as
 18 of the first time you ever laid eyes on anybody from
 19 SCA, you all were discussing who would be willing to
 20 testify and who -- who would have to be subpoenaed and
 21 that sort of thing; isn't that true?
 22 A. Yes.
 23 MR. HERMAN: Pass the witness.
 24 ARBITRATOR FAULKNER: At this point let's
 25 take about a ten-minute break, and then we will come

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1 back and resume with redirect.
 2 MR. TILLOTSON: Okay.
 3 (Recess 2:46 to 3:04 p.m.)
 4 ARBITRATOR FAULKNER: On the record, any
 5 questions, Mr. Chernick?
 6 ARBITRATOR CHERNICK: No.
 7 ARBITRATOR FAULKNER: Senator Lyon, any
 8 questions for Mr. Walsh?
 9 ARBITRATOR LYON: Are you passing the
 10 witness?
 11 MR. TILLOTSON: No, I was going to ask
 12 questions, but I'll --
 13 ARBITRATOR LYON: I'll wait until you
 14 finish.
 15 ARBITRATOR FAULKNER: Mr. Tillotson, go
 16 ahead and do your redirect.
 17 MR. TILLOTSON: Thank you.
 18 RE-DIRECT EXAMINATION
 19 BY MR. TILLOTSON:
 20 Q. Mr. Walsh, since we got your comments
 21 regarding Ms. O'Reilly in VeloNews, let me show you
 22 VeloNews from July 9, 2001, and we'll mark this as
 23 Exhibit 108.
 24 This takes us back to the time period in
 25 connection with your story that you were writing and

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1 researching Mr. Armstrong regarding his relationship
 2 with Michele Ferrari; is that right?
 3 A. Yes.
 4 Q. And this references and talks about the
 5 actual story that was run in La Gazzetta, fair?
 6 A. Yes.
 7 Q. In this Mr. Armstrong indicates that his --
 8 that Dr. Ferrari had been following him since 1999.
 9 Was that untrue based upon your research?
 10 A. Yes. All the inquiry I made showed to me, at
 11 least, that Lance had contacted Michele Ferrari or
 12 at -- their relation had begun at the end of 1995.
 13 Q. Now, it also indicates that Mr. Armstrong had
 14 retained or was consulting with Dr. Ferrari in
 15 connection with an attempt to break the world hour
 16 record later that year. Was that untrue based upon
 17 the research and your investigation?
 18 A. Excuse me. Yes, it was.
 19 Q. Do you know if Mr. Armstrong ever attempted
 20 to break the world hour record in 1999?
 21 A. No. I'm sorry.
 22 ARBITRATOR FAULKNER: Get him some water.
 23 A. If I -- if I --
 24 ARBITRATOR FAULKNER: Go ahead and catch
 25 your breath first and then we will go with that.

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1 A. If I could just make one point about the --
 2 the world hour record attempt that Lance had mentioned
 3 to Pierre Bergonzi of La Gazzetta, a sports
 4 journalist. To give you a sense of what it's like
 5 inside the world of cycling, when that appeared on
 6 that Saturday, the derision with which it was kind of
 7 greeted within the Tour de France, the -- all the
 8 journalists were in the press room, and they said --
 9 obviously they knew at this point, even immediately
 10 they knew why the La Gazzetta story had appeared and
 11 they said, world hour record. How long will we have
 12 to wait for that? And they smiled. And it was --
 13 nobody that I spoke to who was involved in the
 14 coverage of cycling believed that that world hour
 15 record attempt would ever take place.
 16 MR. TILLOTSON: I move for admission into
 17 evidence of Respondent's Exhibit 108.
 18 MR. HERMAN: No objection.
 19 ARBITRATOR FAULKNER: It will be admitted
 20 without objection.
 21 Q. (BY MR. TILLOTSON) Also, I don't know if you
 22 ever saw this, but it responds to Exhibit 90, which
 23 has been previously marked, which is a press release
 24 regarding the severing of relationship between Michele
 25 Ferrari and -- and Mr. Armstrong.

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1 It says in that press release that
2 Mr. Armstrong had been with Dr. Ferrari since 1999.
3 Was that, too, inaccurate based upon your
4 investigation?
5 A. Yes.
6 Q. Now, you were asked some questions, I
7 believe, about Dr. Max Testa. Do you remember that?
8 A. Yes.
9 Q. And can you tell us who Dr. Max Testa was or
10 is?
11 A. Dr. Max Testa, I think, is an Italian doctor
12 who now lives in the U.S. who has worked in cycling or
13 did work in cycling directly with professional cycling
14 teams from the late '80s through the '90s, but in the
15 '90s, he worked with the Motorola team in the mid-'90s
16 at the time when Lance Armstrong was with the Motorola
17 team.
18 Q. Now, I want -- I want -- I think you were
19 asked a portion of the transcript you had with
20 Dr. Testa, and I take it you interviewed Dr. Testa for
21 your book?
22 A. Yes, I did.
23 Q. And in connection with your April interview
24 with Mr. Armstrong, did you ask Mr. Armstrong whether
25 or not he and other members of the team had ever

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1 talked about EPO or drug use?
2 A. Yes, I specifically asked because at the time
3 that Motorola was riding, EPO had come into the
4 Peloton and really had changed the nature of
5 competition, and everybody was talking about it
6 because it was a huge subject of discussion.
7 Dr. Ferrari's team in the mid-'80s --
8 Italian team, they had become very successful in the
9 classics. Lots of people were -- were talking about
10 why Dr. Ferrari had made very controversial comments
11 about EPO being no more dangerous than orange juice if
12 used correctly, and it was a subject that everybody
13 was talking about.
14 So I said to Lance, did you guys at
15 Motorola discuss what was happening in the Peloton,
16 and Lance said, no, it was never, ever discussed. And
17 he said -- in that sense, he said the team was, I
18 think his expression was clean as the driven snow.
19 Q. Now, when you interviewed Dr. Testa, was his
20 recollection consistent or inconsistent with what
21 Mr. Armstrong had told you?
22 A. Inconsistent.
23 Q. Let me show you in -- you showed him a
24 portion of Max Testa's transcript, and we will mark
25 the whole thing and offer it as an exhibit.

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1 MR. HERMAN: The only reason that I asked
2 him about Mr. -- about Dr. Testa was to contradict
3 what Mr. Swart's testimony was. I did not ask him
4 about the entire conversation with Dr. Testa. You
5 brought Swart, who testified that Armstrong tested in
6 the mid 50s, and that's the -- I asked him about one
7 statement to contradict that.
8 MR. TILLOTSON: Well, I'm going to show
9 the witness what's been identified as --
10 Q. (BY MR. TILLOTSON) Can you identify this as
11 a -- as the transcript from your interview with Max
12 Testa?
13 A. Yes.
14 Q. A transcript you made?
15 A. Yes.
16 Q. Is this one that's recorded?
17 A. No, this wasn't recorded. This was done with
18 notes.
19 Q. Okay. And will you identify for us here what
20 your notes say Mr. Testa said regarding whether or not
21 there was discussion of EPO on Mr. Armstrong's team?
22 A. Yes.
23 Q. This is taken from the first page of the
24 transcript.
25 A. Dr. Testa's answer was: One of the points

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1 that I'm positive about, and I'm probably in
2 disagreement with what some other people have told
3 you, we never talked about this issue. That is not
4 correct. We discussed it at every single meeting at
5 the beginning of the year where I had the opportunity
6 to talk to riders. We always talked about the health
7 issue. The riders would say, what about if they're
8 using this product, how dangerous is this product? In
9 general I would exaggerate the risk to discourage
10 them.
11 Q. Is that consistent or inconsistent with what
12 Mr. Armstrong told you he and the teammates, what
13 their conduct was regarding whether they discussed
14 EPO?
15 A. Totally inconsistent.
16 Q. Now, did Dr. Testa -- did you discuss with
17 Dr. Testa whether he knew, as team doctor, if
18 Mr. Armstrong and Mr. Livingston were seeing
19 Dr. Ferrari?
20 A. Yes, I did ask him that.
21 Q. And what did Mr. -- Dr. Testa say regarding
22 whether or not their own team doctor knew that
23 Mr. Armstrong was seeing Dr. Ferrari?
24 A. Dr. Testa said to me that Lance and Kevin
25 were working with Dr. Ferrari for some time before he

1 realized, you know, that -- from -- from my
2 recollection, Dr. Testa said that, you know, that
3 Lance had been working with Dr. Testa from, say, the
4 end of 1995, and it was later in 1996, according to
5 Dr. Testa, that he found out about Lance working
6 and -- with Dr. Ferrari.

7 He found out from some other rider who
8 was in the town of Ferrara, where Dr. Ferrari had his
9 practice, some rider had seen Lance in the town of
10 Ferrara in Northeast Italy, and he knew if Lance was
11 in Ferrara or concluded if Lance was in the town of
12 Ferrara, he must have been visiting Ferrari. So he --
13 he then met Dr. Testa at some race, and said, oh, I
14 saw Lance -- I saw Lance in Ferrara. He must be
15 visiting -- he must be working with Ferrari.

16 And according to Dr. Testa's word to me,
17 that was the first he knew about Lance working with
18 Dr. Ferrari.

19 Q. Now, you were asked some questions regarding
20 the investigation of Dr. Ferrari in the files seized
21 about whether or not any of those files showed or
22 indicated whether or not Mr. Armstrong had used any
23 performance enhancing drugs at the behest, request or
24 instruction of Dr. Ferrari.

25 Did you, in the course of your

1 Mr. Armstrong correcting one of your articles
2 regarding what you said about when a performance
3 enhancing substance first came into use. Do you
4 recall that?

5 A. Yes, Activogen. I had written an article in
6 2000 that Activogen had first been used a year before
7 or less than a year before, and that was wrong. That
8 was a mistake. And Lance picked me up on that, and he
9 was right, it had been in -- in -- in existence for
10 long before then.

11 Q. First, tell us why Activogen is even a
12 substance that we're discussing as a point of
13 contention between the two of you in this area.

14 A. Yes, because Activogen is a -- is a
15 performance enhancing drug. It was banned. It's --
16 it's not banned now, but the -- and a lot of the
17 sporting medical opinion is that if Activogen is used
18 in conjunction with EPO, it can make EPO far more
19 effective in that -- in that it just compliments EPO
20 and will prolong the effective use -- if you -- if you
21 put EPO into your body, it's going to be affected,
22 they say, for maybe between ten days and two weeks you
23 get better performance. If you use Activogen, it
24 will -- it will heighten the effectiveness and maybe
25 prolong its benefits to you.

1 investigation of Dr. Ferrari, develop an understanding
2 as to what time period of records were seized from
3 Dr. Ferrari?

4 A. Yes. Most of the records that -- that the
5 police got when they raided Dr. -- Dr. Ferrari's
6 office were from 1997.

7 Q. Can you tell us, then, what was the -- the
8 participation of Mr. Armstrong in professional racing
9 in the course of 1997?

10 A. Virtually nil, because Lance was recovering
11 from his testicular cancer all through 1997. I think
12 he may have come -- may have got back on the bike
13 toward the end of 1997, and if he visited -- I mean,
14 there is -- there are a couple of entries for Lance
15 Armstrong in Dr. Ferrari's file, but they come right
16 at the end of 1997 and the beginning of 1998 when
17 Lance made his return to cycling.

18 Q. So based on your investigation that you did
19 with respect to Dr. Ferrari, the trial, was there any
20 substantial amount of records that Dr. Ferrari had
21 about Mr. Armstrong at all?

22 A. Not a substantial amount, no.

23 Q. Now, you were asked about the interview --
24 the 2001 interview that you had with Mr. Armstrong
25 where, I believe, there was some testimony regarding

1 Q. Okay. Here's the part I don't -- I don't
2 understand looking at the interview. Mr. Armstrong,
3 as I take it, from Mr. Herman is correcting you
4 regarding the -- the history of the development of
5 this substance, but when you go with me on page 29, in
6 talking with Mr. Armstrong in the interview, he tells
7 you, when you ask if he's heard of Activogen, he says,
8 no, the first time he ever heard of it was recently or
9 in connection with the press reports.

10 A. Yes.

11 Q. Now, next, you were asked a couple of
12 questions about Mr. Swart, including Swart and
13 Mr. Armstrong's final parting words, I guess, as
14 Mr. Swart is departing from the team.

15 A. Yes.

16 Q. Do you recall that?

17 A. Yes. I mean --

18 Q. Let me just do the Q and A, then we will give
19 you a chance.

20 The suggestion was that Swart, I guess,
21 is angry or agitated with Mr. Armstrong regarding how
22 he left the team as the source of these allegations.
23 Let me ask you this.

24 Did you send a portion of your book that
25 related to Mr. Swart's story to him for review?

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1 A. Yes.

2 Q. Did he make any changes or requests when he

3 sent it back to you?

4 A. Just one.

5 Q. What's the request that Mr. Swart asked in

6 his side of the story that was published in your book?

7 A. Stephen Swart sent me an e-mail which said,

8 David, I've read the chapter, you know. It represents

9 accurately all that I've told you. There's only

10 one -- there is only one addition that I would like to

11 make, and he said, that is that I believe that if

12 Lance Armstrong had not used performance enhancing

13 drugs, he would still have been a champion.

14 Q. Did you include that in your book?

15 A. Yes. It was -- it was the last line, if

16 memory serves me correctly, of the segment about

17 Stephen Swart, because it was something positive about

18 Lance in a -- in a slightly convoluted way, and -- but

19 it was included. Because it was the last line, it was

20 given a lot of --

21 Q. In connection with -- I think we heard that

22 testimony, but in -- in connection with your dealings

23 with Mr. Swart, interviews, phone calls, did you ever

24 sense hostility as being a reason or basis for his

25 comments about Mr. Armstrong?

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1 A. No. And if -- and if I could make a point

2 about Stephen Swart, and I interviewed a lot of people

3 for this book, and the person I would most admire is

4 Stephen Swart, and it's for this reason in that he was

5 a cyclist through the '90s, beginning late '80s, and

6 he was a professional cyclist. He wasn't one of the

7 sports champions, but he was a -- he was a pretty good

8 cyclist who got to ride the Tour de France and be --

9 be on a very good team, the Motorola team.

10 And ten years after he finished cycling,

11 when he'd gone back to New Zealand where he lived and

12 he had his family, he decided that it was a story that

13 he needed to tell about his past. And one of his

14 primary motivations for telling the story was to try

15 to make -- to have a -- a positive effect on the world

16 of cycling.

17 He knew when he told this story, that he

18 was going to have to admit to the fact that he was --

19 he was part of a team that doped, and he went with the

20 doping program.

21 And the thing that struck me about

22 Stephen Swart more than any other witness that I had,

23 he did this out of considerable personal cost to

24 himself in that he had family. Particularly he had a

25 15-year-old son Rogan, who loved cycling and really

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1 admired the fact that his dad had been a pro cyclist

2 and had ridden the Tour de France. And Stephen said

3 to me, I don't know how Rogan is going to react to the

4 fact that his dad -- he realizes ten years later that

5 his dad doped. And I said, well, Steve, you've got to

6 discuss it with him before it comes out. And he said,

7 I can't. He said, our relationship just isn't like

8 that. We don't talk about things like that.

9 So the story came out, and Stephen's

10 15-year-old learned that his dad had been part of a

11 doping team, and they did reconcile themselves about

12 it. And I kept asking myself, why is Stephen Swart

13 doing this? There's no financial gain for him. He --

14 he -- he was hugely criticized in New Zealand, his own

15 country, for being a whistle-blower in his sport.

16 They -- they didn't look at the big picture; they just

17 said, here's another New Zealand sportsman who doped.

18 Even his wife Jan at one point said to

19 him, you know, Stephen, why did you do this? And he

20 said -- he said, Jan, when I'm on my rocking chair at

21 the age of 84 and I don't have a lot of time to live,

22 I will look back on this and I will regard it as one

23 of the finest things I've ever done in my life.

24 Q. Now, last, in connection with your

25 investigation of Dr. Ferrari in the -- in the trial,

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1 we have heard testimony from Mr. Armstrong and

2 Mr. Stapleton regarding one of the people who

3 testified against Dr. Ferrari was a rider Phil

4 Simeoni. You're aware of that?

5 A. Yes.

6 Q. Did you come to learn or are aware of any

7 other evidence submitted against Dr. Ferrari in

8 connection with his conviction?

9 A. Yes. I -- I did read a lot of the stuff in

10 the Ferrari trial, and the body of evidence against

11 him was basically --

12 MR. HERMAN: Hang on one second. I think

13 the question was, did you come to learn of anything.

14 I mean, I --

15 MR. TILLOTSON: I don't mean to --

16 MR. HERMAN: He's off on another --

17 MR. TILLOTSON: I will rephrase. I will

18 rephrase.

19 Q. (BY MR. TILLOTSON) Did you -- we have heard

20 about Phil Simeoni. My question is, was there

21 anything else that you came to learn in your

22 investigation of Dr. Ferrari's criminal conviction

23 regarding the evidence that was used to convict him

24 for his convictions?

25 A. Yes, I did.

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Page 2661

1 Q. And other than the testimony of Dr. Simeoni,
 2 what other evidence did you come to learn was used in
 3 the criminal conviction?
 4 A. There's two riders that testified against
 5 him, against Ferrari, and there was also evidence of
 6 prescriptions that Dr. Ferrari had written for four
 7 riders, four professional riders, and those
 8 prescriptions were for banned performance enhancing
 9 drugs, class A performance enhancing drugs.
 10 Q. Do you know what one of those banned
 11 prescription drugs for which the evidence was that
 12 Dr. Ferrari wrote prescriptions for?
 13 A. Yes. He wrote a prescription for a drug
 14 called androstene, which is a -- which is a banned
 15 anabolic steroid.
 16 Q. And in connection with continued research on
 17 your book, did you get a chance to meet Michael
 18 Anderson?
 19 A. Yes, I interviewed Michael Anderson last year
 20 in -- in Austin; came to Austin and interviewed him.
 21 Q. And what did Mr. Anderson tell you he found
 22 in Mr. Armstrong's Gerona apartment?
 23 A. Mr. Anderson claimed that found the anabolic
 24 steroid androstene in Mr. Armstrong's apartment in
 25 Gerona, Spain.

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1 MR. TILLOTSON: No further questions.
 2 ARBITRATOR FAULKNER: Any recess?
 3 MR. HERMAN: Yes.
 4 RE-CROSS EXAMINATION
 5 BY MR. HERMAN:
 6 Q. When you were -- when you mentioned the --
 7 the comment that Swart sent back to you when --
 8 whenever he approved his chapter and so forth, you --
 9 you said that it was if Mr. Armstrong hadn't used
 10 performance enhancing drugs, he would still be a
 11 champion. Do you remember that?
 12 A. Yes.
 13 Q. That's not -- that's not what he said, is it?
 14 A. No.
 15 Q. What he said was, if doping didn't exist,
 16 Armstrong would still be a champ. Isn't that what he
 17 said?
 18 A. Yes.
 19 Q. Now, when -- when you were writing this book,
 20 for example, do you consider Mr. LeMond to be a
 21 reliable source?
 22 A. Generally, yes.
 23 Q. Okay. And Mr. LeMond -- well, what was it --
 24 what parts of Mr. -- well, let me -- let me not go
 25 there, but let's talk about Mr. LeMond's criticism of

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1 Dr. Coyle, which was significant, correct?
 2 A. Yes.
 3 Q. And it was Mr. LeMond's lack of confidence in
 4 Dr. Coyle that -- that contributed to this sort of
 5 epiphany he had about Mr. Armstrong, wasn't it?
 6 A. I'm not aware of any epiphany.
 7 Q. Well, didn't you say in your book that it was
 8 as a result of this conference in San Antonio in April
 9 of 2001 that Armstrong had decided that -- I mean
 10 LeMond had decided that something might be up with
 11 Armstrong? Isn't that --
 12 A. Yes, I think that's fair.
 13 Q. And it was Mr. Coyle -- Dr. Coyle's
 14 presentation that he -- that Mr. LeMond was talking
 15 about?
 16 A. Yes.
 17 Q. And you -- you are a colleague with John
 18 Hoberman at UT?
 19 A. I wouldn't -- I mean, I am -- I am a
 20 colleague --
 21 Q. Well, are you -- are you a friend of
 22 Dr. Hoberman?
 23 A. No, I'm not a friend. I know -- I know
 24 Dr. John Hoberman.
 25 Q. But in -- but despite -- despite Dr. Coyle's

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1 work being the basis for Mr. LeMond's suspicions, you
 2 never even contacted Dr. Coyle, did you?
 3 A. Well, I did actually. I sent Dr. Coyle an
 4 e-mail, and I think he may have replied to me, and I
 5 meant to get back to him, but it wasn't -- it wasn't a
 6 huge part of my story.
 7 Q. Well, it provided much of the basis for the
 8 LeMond chapter, didn't it?
 9 A. Well, there wasn't a LeMond chapter in the
 10 book. There were some LeMond segments, but there was
 11 no chapter devoted to Greg LeMond.
 12 Q. Well, it would have been Dr. Coyle who would
 13 know best about the -- about the methodology and so
 14 forth that went into his study; wouldn't you agree?
 15 A. Yes.
 16 Q. But that slipped through the crack, that you
 17 never did follow up after he replied to you?
 18 A. Well, for me it wasn't -- it wasn't a huge
 19 issue. I mean, Greg LeMond had said he listened to
 20 Dr. Coyle's explanation of the physiological basis for
 21 Lance Armstrong's tremendous success, and Greg said he
 22 wasn't -- he didn't find it at all convincing.
 23 Q. Well, let's move on to others who may have
 24 been able to provide information on the other side of
 25 the rock that you were looking under. Chris

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1 Carmichael, you never contacted him?
 2 A. No.
 3 Q. Even though he's been Mr. Armstrong's coach
 4 since the early '90s?
 5 A. I -- I -- yes.
 6 Q. Okay. And Ms. O'Reilly was a soigneur; is
 7 that what you call them?
 8 A. Yes.
 9 Q. A masseuse --
 10 A. Yes.
 11 Q. -- for lack of a better word?
 12 And there are some seven or eight
 13 masseuses employed by the United States Postal team?
 14 A. Yes.
 15 Q. But you didn't talk to any of them?
 16 A. No, I -- my -- my -- my general feeling was
 17 that people who were currently working on the U.S.
 18 Postal team would be in a very difficult position if
 19 they were in possession of any information that would
 20 have been contrary to the team's interests.
 21 Q. And you interviewed Phil Anderson?
 22 A. Yes.
 23 Q. But you placed no credence in what he told
 24 you about there not being any doping because as I
 25 believe in one of your e-mails to Mr. Compton, don't

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1 waste your time talking to him, he'll deny it till the
 2 day he dies; isn't that what you said?
 3 A. The original premise to your question, the
 4 starting point about I put no -- Phil Anderson didn't
 5 talk about doping to me. He didn't deny that there
 6 was doping.
 7 I -- I contacted Phil Anderson for the
 8 specific purpose of getting an older rider's
 9 perspective of the young Lance Armstrong who came into
 10 the team. Phil gave me that perspective, which was
 11 very favorable to Lance Armstrong, and I presented
 12 Phil's perspective in the book, and it reads very well
 13 from Lance's point of view. It paints Lance as a very
 14 young, ambitious guy who was utterly without fear
 15 coming into this world of European cycling. That's
 16 why I contacted Phil.
 17 Q. And did you ask Mr. Anderson about this Swart
 18 story about the Triple Crown?
 19 A. No.
 20 Q. But you knew that it was Phil Anderson that
 21 Swart supposedly made his deal with?
 22 A. Yes.
 23 Q. Why didn't you ask him about that?
 24 A. I'm not sure that I knew at the time I
 25 contacted Phil Anderson. I -- I -- you know, where

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1 the -- maybe I did, maybe I didn't, but I was ringing
 2 Phil solely for the purpose of getting his perspective
 3 on Lance coming into the team.
 4 Q. All right. And, of course, you know that --
 5 that there are over 30 other riders that have been on
 6 the U.S. Postal Service team just since '99, and you
 7 didn't talk to a single one, did you?
 8 A. I spoke with -- the U.S. Postal team?
 9 Q. Right.
 10 A. I spoke -- I spoke with Jonathan Vaughters.
 11 I spoke with Marty Jemison. I spoke with Frankie
 12 Andreu. They were all on the U.S. Postal team.
 13 Q. Now, didn't you tell me in your deposition
 14 that -- talking about this Motorola team in the
 15 mid-'90s where you allege that Frankie and Swart and
 16 presumably -- or at least implicitly Armstrong were
 17 involved in some doping program, didn't you tell me
 18 when I asked you if you had asked Frankie, you said
 19 you didn't ask Frankie?
 20 A. I don't remember saying that. Maybe it's in
 21 the transcript. I don't remember precisely saying
 22 that.
 23 Q. Let me see if I -- let me see if I can locate
 24 that.
 25 But other people that you never spoke to,

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1 people that could provide information contrary -- Mark
 2 Gorksi, for example, did you talk to him? He was the
 3 manager of the team for years.
 4 A. No, I didn't, but I would -- I would say that
 5 I'm -- the Stephen Swart chapter, I -- I did want -- I
 6 did want Frankie Andreu to read through that chapter,
 7 because I wanted his view on it, because if Stephen
 8 Swart was getting things wrong, I wanted to know. So
 9 I asked Frankie Andreu to read that chapter. He did,
 10 and he said the story that Stephen Swart tells in that
 11 chapter is true.
 12 Q. Well, didn't you -- didn't you tell me that
 13 your agreement with Frankie when you talked to Frankie
 14 Andreu was not to ask about whether Frankie Andreu
 15 had -- had ever been involved?
 16 A. On the record, he wasn't going to answer
 17 those questions.
 18 Q. Okay. Now, what about anyone at the UCI, did
 19 you talk to anyone?
 20 A. No.
 21 Q. You knew that the antidoping manager,
 22 Mr. Varin, Dr. Schattenberg, the head of the UCI, you
 23 didn't -- you didn't even attempt to talk to any of
 24 them, did you?
 25 A. I had covered the Tour de France, at that

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1 point, for 22 years. I know how the UCI operates.
 2 Q. Well, the answer to my question is, no, you
 3 didn't even try to talk to them, did you?
 4 A. What I just said is the reason.
 5 Q. Okay. What about Mr. Ochowicz? Prior to
 6 Mr. Gorski, Mr. Ochowicz was the director of the
 7 Motorola team for years?
 8 A. That's right.
 9 Q. You didn't try to talk to him?
 10 A. No.
 11 Q. And it's -- it's this Motorola team that you
 12 allege that -- where this doping program occurred,
 13 and -- but you didn't try to talk to anybody?
 14 A. I -- I -- I knew Mr. Ochowicz. I -- I
 15 had often spoken to him about Motorola, and he said
 16 that there had been absolutely no doping on the team.
 17 When I spoke to Motorola riders, they -- they -- their
 18 line to me was that Jim kind of didn't want to know
 19 about doping. When they spoke about it, he would
 20 leave the room, and his attitude was, guys, if you're
 21 going to do that, I don't want to know about it. And
 22 that's the attitude of lots of team managers in
 23 cycling. It's like, get on with it, but don't let me
 24 know.
 25 Q. Well, the best way to find out what he did

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1 know would have been to talk to him, don't you agree?
 2 A. I'm not sure about that.
 3 Q. There would be one way to be sure.
 4 A. Yes.
 5 Q. What about -- and there -- you would agree
 6 that there are literally hundreds of people that you
 7 could have talked to that had information but that you
 8 knew would -- would not be residing on the bottom side
 9 of the rock?
 10 A. Well, I knew if anybody was -- was involved
 11 in the team, they were dependent upon Lance
 12 Armstrong's goodwill to stay in the team, and people
 13 even in cycling, you know, who were still involved in
 14 cycling, it was -- it's very difficult for them to
 15 tell the truth, because cycling has a history of
 16 being -- of being very cruel and -- and -- and they --
 17 they punish people who, as they say, spit in the soup.
 18 Q. Well, what about Dr. Nichols and Dr. Einhorn,
 19 they weren't involved in cycling, were they?
 20 A. No.
 21 Q. And you never made any attempt to contact
 22 them?
 23 A. No, I -- I -- I -- it wasn't part of my
 24 agreement.
 25 Q. And if -- if Mr. Armstrong had been treated

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1 by Dr. Nichols and had been monitored by Dr. Nichols
 2 or Dr. Einhorn for the -- for the years after he
 3 recovered from cancer, chances are they would know
 4 that -- whether he had ingested any performance
 5 enhancing drug, wouldn't they?
 6 A. Oh, I -- I don't agree with that contention
 7 at all. I think it's possible they wouldn't have
 8 known.
 9 Q. But in any event, the hundreds of people who
 10 could have provided a more balanced look at the
 11 situation you chose not to contact; that's a fair
 12 statement, isn't it?
 13 A. I -- I don't know -- I don't consider it
 14 fair.
 15 Q. Well, the -- the people who could have
 16 offered a perspective that may have been -- that may
 17 have been closer to the -- what did you call the --
 18 the -- that you were trying to show the other side of,
 19 the official version or something to that effect?
 20 People who -- who -- who were familiar
 21 with that side, you were not interested in talking to
 22 them, were you?
 23 A. Well, their side was already out there. It
 24 was the official side.
 25 Q. All right. Thank you.

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1 ARBITRATOR FAULKNER: Any questions,
 2 Senator?
 3 ARBITRATOR LYON: I have a couple.
 4 Mr. Walsh, first of all, I want to
 5 apologize to you. I laughed when you described what
 6 Lance Armstrong said about you in the -- the Coyle
 7 book. I wasn't laughing at you; I was just laughing
 8 at the fact that that sounds very Lance Armstrong
 9 like, and I hope you don't take any -- I hope you
 10 didn't take any offense to that.
 11 THE WITNESS: Okay.
 12 ARBITRATOR LYON: I certainly didn't
 13 mean, if I did, to offend you.
 14 And let me ask you, in your interviews
 15 with Betsy Andreu, did you interview her personally?
 16 THE WITNESS: I spoke -- I interviewed
 17 her about the -- about the hospital room incident.
 18 ARBITRATOR LYON: Did you see -- were you
 19 sitting across the room from her?
 20 THE WITNESS: No, not on -- it was
 21 interviews done on the phone, although I did meet her,
 22 but the interview about the hospital room incident was
 23 carried out over the phone.
 24 ARBITRATOR LYON: And as a journalist
 25 for, I think you said -- how many years did you say?

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1 THE WITNESS: 28 years.
2 ARBITRATOR LYON: 28 years, did you find
3 her to be a credible witness or do you -- do you
4 decide that before you put something in writing?
5 THE WITNESS: Yeah. I mean, it's a very
6 big thing for a journalist when you meet people and
7 you interview them for a controversial story, you make
8 a judgment of how credible this person is. And I
9 would consider Betsy Andreu to be a very credible
10 person.
11 ARBITRATOR LYON: Okay. And did you
12 detect a personal animosity that she had toward
13 Lance Armstrong?
14 THE WITNESS: I don't think she
15 particularly liked him, but I don't think there was
16 any deep-rooted personal antagonism. My feeling about
17 Betsy is that she really didn't -- she doesn't like
18 what cycling is, and she -- she -- she has a real
19 problem with deception and dishonesty, because
20 everything that I've seen from her convinces me that
21 she's a very moral and honest person.
22 ARBITRATOR LYON: Okay. And I think it's
23 Claimant -- Respondent's Exhibit 48, the Lance
24 Armstrong transcript. Would you put that up on the
25 board, please.

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1 MR. TILLOTSON: No, it's a different --
2 it's the transcript of Mr. Armstrong.
3 ARBITRATOR LYON: Yes, it's not the full
4 transcript. It's labeled 48 on what you gave me.
5 MR. HERMAN: It's Respondent's 105, I
6 think.
7 ARBITRATOR LYON: All right, Respondent's
8 105.
9 On page 24, and at the top it says, most
10 medical people say a 9 percent difference in
11 hematocrit level in a six-month period is highly
12 unusual. Do you see that?
13 THE WITNESS: Yes.
14 ARBITRATOR LYON: And I guess is -- as
15 a -- you've done a lot of research in that?
16 THE WITNESS: Yes.
17 ARBITRATOR LYON: Is that your opinion
18 today?
19 THE WITNESS: Yes, very much so. If I
20 could make a clarification that -- I -- the transcript
21 was done accurately. I did say 9 percent, but I meant
22 9 point. Hematocrit is this percentage of red
23 cells as opposed -- percentage of your blood that's
24 red cells.
25 ARBITRATOR LYON: I understand that's what it

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1 is.
2 THE WITNESS: Sorry.
3 ARBITRATOR LYON: So does everybody else.
4 We have heard plenty about it.
5 THE WITNESS: Okay.
6 ARBITRATOR LYON: Just answer the
7 question.
8 THE WITNESS: Yes.
9 ARBITRATOR LYON: So you meant 9 point?
10 THE WITNESS: I meant 9 points, which is
11 something like 21, 22 percent.
12 ARBITRATOR LYON: So if someone went from
13 41 to 48, would that be highly unusual?
14 THE WITNESS: Yes, it would.
15 ARBITRATOR LYON: So -- based on your --
16 what doctors are you talking to that are telling you
17 that?
18 THE WITNESS: Well, every -- every doctor
19 that I've ever seen, you know, talk about fluctuations
20 in hematocrit levels in sports, that that kind of
21 fluctuation in -- you know, if somebody hadn't got
22 some chronic sickness or some trauma, that kind of
23 variation would be highly unusual.
24 ARBITRATOR LYON: Okay. That's your
25 testimony?

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1 THE WITNESS: Yes.
2 ARBITRATOR LYON: Okay. Now, in regard
3 to -- going on down there where it talks about the --
4 this highlighted there, it says perhaps?
5 THE WITNESS: Yes.
6 ARBITRATOR LYON: And it said -- and your
7 question to Mr. Armstrong -- now, you typed this up
8 yourself personally?
9 THE WITNESS: Yes.
10 ARBITRATOR LYON: Okay. If you would,
11 highlight that, please, or enlarge it where you can
12 see it.
13 At that point in the interview when --
14 when you said, did you ever visit him? And you
15 said -- and his answer was: Have I been tested by
16 him, gone and been there and consulted on certain
17 things? Perhaps. Did you think he was trying to
18 evade or trying to not admit that he had gone to
19 Dr. Ferrari? Isn't that what you wrote in your book?
20 THE WITNESS: Yes, that was my question.
21 ARBITRATOR LYON: Well, the next -- go
22 down to the next sentence -- the next question. You
23 said, you did?
24 Yeah.
25 Now, that wasn't indicating to you -- I

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1 mean, you didn't know at that time that he surely
 2 did --
 3 THE WITNESS: No --
 4 ARBITRATOR LYON: -- see him?
 5 THE WITNESS: When I came away from the
 6 interview, if I had spoken to you at the interview,
 7 and you had said to me, does Lance visit Ferrari, I
 8 would have said, I'm not sure, because the answer I
 9 got was ambiguous. I mean, this was a guy who, over
 10 the previous two years, had -- had spent 12 days in
 11 the town of Ferrara, the home Michele Ferrari.
 12 ARBITRATOR LYON: Go over to page 25, and
 13 highlight the question -- the second question -- the
 14 first question on the page, and go and highlight that
 15 and go down to -- all right, that's it. Just
 16 highlight that.
 17 All right. Then you go, but just on
 18 Michele -- or whatever his name is, Michele or
 19 Michele, I'm interested in this because from what I've
 20 seen, I couldn't see what he brought to the party for
 21 a long time and that's he's been investigated for
 22 treating lots of bike riders with EPO, et cetera.
 23 And then his answer was, perfect, that's
 24 where they should end up.
 25 But then the next question is, but what

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1 did he do for you? You're saying your reason for
 2 going to him had nothing to do with EPO, so what did
 3 you do for you?
 4 It seems to me right there you're saying,
 5 you know in the context of this interview and you know
 6 that he's gone to Michele -- Dr. Ferrari; isn't that
 7 right?
 8 THE WITNESS: Yes. I think that's fair.
 9 ARBITRATOR LYON: Isn't that right?
 10 THE WITNESS: Yeah, it's fair. You're
 11 absolutely right.
 12 ARBITRATOR LYON: Okay. All right.
 13 Now, I'm trying to get -- and I got
 14 confused with this Stephanie McIlvain testimony. In
 15 your book she says no comment, right?
 16 THE WITNESS: No, no, that's -- that's
 17 not what she says, and -- but, you know, her no
 18 comment is the -- there were two answers to two
 19 questions, and she says, that's a question -- she just
 20 says something that approximates to that's a question
 21 I would rather not answer, that's a question for
 22 Lance, I prefer not to comment on that. She gave a
 23 very, you know --
 24 ARBITRATOR LYON: Yeah, I know. I know
 25 all that, but she did say no comment, right? That's

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1 what you reported in your -- no comment, you go talk
 2 to Lance, something like that?
 3 THE WITNESS: Yes. And other stuff.
 4 Again, I don't want to answer that question, it's for
 5 Lance to answer, blah, blah, blah.
 6 ARBITRATOR LYON: Okay. But are you
 7 saying that she told you differently?
 8 THE WITNESS: Yes.
 9 ARBITRATOR LYON: Okay. All right. You
 10 paid -- or you and your coauthor paid Mrs. O'Reilly
 11 5,000 pounds?
 12 THE WITNESS: Yes.
 13 ARBITRATOR LYON: And that's the
 14 equivalent of \$10,000 today?
 15 THE WITNESS: I wish it was, but it's
 16 more the equivalent of about eight, eight and a half.
 17 ARBITRATOR LYON: Okay. Do you have --
 18 have you inquired about what your publisher paid her?
 19 THE WITNESS: No, I haven't.
 20 ARBITRATOR LYON: If -- if -- you were
 21 paid \$45,000 --
 22 THE WITNESS: Yes.
 23 ARBITRATOR LYON: -- by the publisher to
 24 write this book, or who paid you?
 25 THE WITNESS: No, we weren't paid that.

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1 The amount that we were paid was based on royalties,
 2 how much the book sold. So, yes, the money came from
 3 the publisher, but it wasn't agreed in advance.
 4 ARBITRATOR LYON: Okay. So it was only
 5 after the book was published?
 6 THE WITNESS: Yes.
 7 ARBITRATOR LYON: Okay. If --
 8 THE WITNESS: No, no, no, no. A certain
 9 amount of the money comes before the book is
 10 published, but the final figure is determined by
 11 sales.
 12 ARBITRATOR LYON: Okay. But you never
 13 have inquired as to what the publisher paid her?
 14 THE WITNESS: No, I haven't, but I am
 15 aware of how it arose, in that Emma O'Reilly --
 16 Paris-Match, the magazine in Paris, which is a very
 17 big magazine in Paris, they wanted to do something on
 18 the book. They were going to do a serialization, an
 19 extract, from the book, but L'Express magazine had
 20 done an extract. Paris-Match would pay for
 21 serialization, which is normally, in our society, if a
 22 magazine or a newspaper serializes a book, they pay
 23 for it.
 24 They were going to pay X amount of -- X
 25 amount of euros for serialization. They decided at

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1 the eleventh hour that they wouldn't serialize because
2 L'Express magazine, which came out before them, had
3 carried a big serialization on the book.
4 Once they decided they didn't want a
5 serialization, they said, what we want instead is an
6 interview with Emma O'Reilly, so the publishers got in
7 touch with Emma O'Reilly and asked her to do this
8 interview, and the publishers were going to receive an
9 amount of money from Paris-Match for an interview that
10 Emma O'Reilly had given Paris-Match, and I think the
11 publishers and Emma O'Reilly both decided that it
12 would be almost immoral for the publishers to take all
13 that money that was coming for an Emma O'Reilly
14 interview, get Emma O'Reilly to give up her time to
15 come over to wherever they did the interview -- I'm
16 not sure -- and not give something to her.
17 So that was agreed. It had nothing to do
18 with me. I didn't know -- didn't know there any
19 agreement between them, and I subsequently learned
20 that long after the book came out.
21 ARBITRATOR LYON: So you still have --
22 you just haven't made an inquiry of the publisher as
23 to how much they paid?
24 THE WITNESS: No, I haven't.
25 ARBITRATOR LYON: Okay. If -- if, in

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1 fact, the Tour de France increase in speed is 1.28
2 kilometers per hour from 1981 to 2004, and that's an
3 increase of a total of 4 percent, that's not
4 inconsistent with other sports records around the
5 world, is it, and endurance races?
6 THE WITNESS: No, but -- but what is
7 inconsistent is the speed at which riders travel up
8 mountains now as opposed to 1980, if you look at
9 the -- and people have --
10 ARBITRATOR LYON: I'm just asking a few
11 questions. You don't have to expand on it.
12 THE WITNESS: The point I -- I made a
13 point about EPO increasing the speeds in the Tour de
14 France by 20 percent. That -- that is provable if you
15 examine the times on the mountains, which is where the
16 races are decided. They go up those mountains now
17 much, much faster than they ever did before, and it's
18 not by 4 percent.
19 ARBITRATOR LYON: It's overall speed.
20 It's - I -- I don't know. I mean, we haven't heard
21 that evidence. I was just asking.
22 Now, did you interview personally
23 Mr. Anderson? Did you come to Austin to interview
24 him?
25 THE WITNESS: Mike Anderson, yes, I did.

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1 ARBITRATOR LYON: Okay. Did you, from
2 your interview of him, develop a -- an opinion about
3 his credibility?
4 THE WITNESS: Yes, I did.
5 ARBITRATOR LYON: And what was that?
6 THE WITNESS: My opinion was that he was
7 a highly credible witness. I found him believable.
8 ARBITRATOR LYON: Did you ever do any
9 police writing when you first started out?
10 THE WITNESS: No.
11 ARBITRATOR LYON: I don't have any other
12 questions. Thank you very much for answering my
13 questions.
14 ARBITRATOR FAULKNER: I have a couple.
15 Mr. Walsh, you said that Ms. O'Reilly had
16 been paid 5,000 pounds sterling.
17 THE WITNESS: Yes.
18 ARBITRATOR FAULKNER: What percentage of
19 a year's income, if you can tell me, is that likely to
20 be for Mrs. O'Reilly? Is that a month, a year, half a
21 year?
22 THE WITNESS: She's a therapist, and a
23 very successful therapist working with elite athletes
24 as well as the general public in England now. I would
25 estimate that her income is probably between 50 and

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1 70,000 pounds, so we are talking about between 10 -- I
2 would say 7 and 12 percent of her annual income.
3 ARBITRATOR FAULKNER: Okay. Let me turn
4 to another question for you, and I'll -- I'll just lay
5 a little bit of background.
6 Earlier in my legal career, I had some
7 experience with confidential informants. What did you
8 do when you were working with any of your, quote,
9 off-the-record, unquote, sources to verify any
10 credibility issues they might have and ascertain what
11 their motive was for assisting you?
12 THE WITNESS: Well, I -- I had spoken to
13 them, and I knew what their situation in life was,
14 where they worked. I knew generally their
15 relationships with the people we were talking about,
16 what they were, and I would have spoken to other
17 people about the off-the-record people if the other
18 informants, some of who were on the record, what do
19 they think of him, how credible is he.
20 After I spoke to Emma O'Reilly in an
21 on-the-record interview, I still went to Jonathan
22 Vaughters, Marty Jemison and Frankie Andreu and said,
23 guys, you were riders on this team with this woman,
24 was she professional, was she credible, was she a good
25 woman, and did you ever find her dishonest.

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1 I asked all those guys all those
2 questions on the record, and all three of them gave
3 her a glowing reference. They didn't have one
4 reservation. Not one of them came up with one
5 reservation about Emma O'Reilly.
6 So that's the kind of thing you did, and
7 I did that as well with my off-the-record sources,
8 talked to other people about them, tried to find out
9 where they might be coming from, and then made my
10 judgments on their credibility.
11 ARBITRATOR FAULKNER: Did you do that
12 with regard do Frankie Andreu?
13 THE WITNESS: Very much so.
14 ARBITRATOR FAULKNER: Did you do that
15 regard to Betsy Andreu?
16 THE WITNESS: Yes.
17 ARBITRATOR FAULKNER: And what kinds of
18 answers did you get?
19 THE WITNESS: Every single person I have
20 spoken to about Frankie Andreu has said, this is one
21 of the finest guys you would ever meet, honest,
22 straight-up, straightforward, in love with cycling,
23 but a good guy. He was hugely popular within the
24 Motorola team when he rode there, hugely popular with
25 the U.S. Postal team, was always regarded as a

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1 straight talker.
2 Not many people, you know, that I spoke
3 with knew Betsy, because she wasn't in that world, so
4 I was making my own judgment on Betsy and not relying
5 on another person.
6 ARBITRATOR FAULKNER: Did you make any
7 inquiries -- since you already knew that she didn't
8 Lance Armstrong, did you make any inquiries as to the
9 perhaps depth of her dislike?
10 THE WITNESS: No, I didn't see her
11 dislike for Lance that was deep. I -- I didn't feel
12 that was a big issue in her mind.
13 ARBITRATOR FAULKNER: Okay.
14 ARBITRATOR LYON: I have a couple.
15 ARBITRATOR FAULKNER: The Senator has
16 some more questions. Thank you much very much, sir.
17 ARBITRATOR LYON: If you had known at the
18 time that you were documenting this Indiana University
19 Hospital -- was that in a hospital room?
20 THE WITNESS: In a consulting room, I
21 believe.
22 ARBITRATOR LYON: Consulting.
23 If you had known that he -- that
24 Mr. Armstrong was being treated at that time with
25 steroids and erythropoietin, which is EPO, would you

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1 have -- if you had known that, would you have done
2 other things to verify what was said in that room?
3 THE WITNESS: Well, I wouldn't -- I
4 wouldn't have -- it wouldn't have dawned on me that
5 the three people I spoke to could have got it wrong,
6 because they were absolutely certain in their mind
7 that Mr. Armstrong had been asked by these doctors --
8 one of the doctors in the room, have you done the
9 banned performance enhancing drugs. The three of them
10 understood this was a question related to
11 Mr. Armstrong's career, and that he answered it in the
12 way they heard him answer it. So they were in no
13 doubts, and there were -- there were three people who
14 were in the room.
15 ARBITRATOR LYON: If you had known at
16 that time that the doctors -- well, I'm not going to
17 ask that question.
18 Thank you very much again, Dr. Walsh.
19 Let me say one thing. Anybody that tries
20 to ban drugs in sports I think is -- it's a great
21 thing, and I -- I want you to know that, because I --
22 I used to be a police officer, and those kind of
23 things concern all of us.
24 Thank you very much.
25 THE WITNESS: Thank you.

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1 ARBITRATOR FAULKNER: Mr. Tillotson,
2 any --
3 MR. TILLOTSON: Nothing further, no.
4 ARBITRATOR FAULKNER: Is this witness
5 released?
6 MR. HERMAN: He's -- as far as I'm
7 concerned, yes, he's free to go.
8 ARBITRATOR FAULKNER: Thank you very
9 much, Mr. Walsh. We appreciate your cooperation in
10 this matter, and you're now free to go wherever you
11 wish. Thank you. And we hope you enjoy whatever more
12 time you may be spending in the United States and in
13 Texas.
14 THE WITNESS: Thank you.
15 MR. TILLOTSON: We will see you next
16 Tuesday, right?
17 ARBITRATOR FAULKNER: Do you all to take
18 a quick break before we start the next one?
19 MR. TILLOTSON: I was going to ask that.
20 ARBITRATOR FAULKNER: Let's take like a
21 five-minute break because it's a few minutes before
22 4:00. Let's resume at 4:00 and get in as much as we
23 can this afternoon.
24 (Recess 3:54 to 4:09 p.m.)
25 MR. TILLOTSON: Mr. Herman asked me if we

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1 would agree to withdraw our objections to the
 2 admissibility of the affidavit submitted by
 3 Dr. Nichols in exchange for him not having to appear
 4 and testify, and we have agreed to that, so we will
 5 withdraw our objection to the admissibility of
 6 Dr. Nichols' affidavit.
 7 MR. HERMAN: And Einhorn is just a
 8 business records affidavit. I don't supposed you have
 9 any --
 10 MR. TILLOTSON: No, I didn't have any
 11 objection to that.
 12 MR. HERMAN: All right.
 13 ARBITRATOR CHERNICK: Are they be offered
 14 to authenticate records that are coming in as
 15 exhibits?
 16 MR. HERMAN: Well, the Einhorn is, and I
 17 suppose to a certain extent, Nichols is, too, but
 18 Nichols has substantive -- there's substance contained
 19 in there beyond that. We will provide copies to the
 20 panel on that.
 21 ARBITRATOR LYON: Is that in your
 22 Claimants' --
 23 MR. HERMAN: Is it? Is it part of the --
 24 MR. BREEN: We're going to put
 25 Dr. Nichols' affidavit along with the other affidavits

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1 that we told the panel we would put in the group
 2 together to put in, but we haven't been able to do
 3 that yet, because we're trying to work out the issue
 4 of whether it's coming in or not. But we will do that
 5 for the panel. We will get those affidavits that we
 6 talked about in one group so you don't have a bunch of
 7 loose affidavits.
 8 ARBITRATOR LYON: So we'll those
 9 tomorrow?
 10 MR. HERMAN: Yes. And we'll have the
 11 Anderson documents for you tomorrow.
 12 ARBITRATOR FAULKNER: Okay, great.
 13 ARBITRATOR LYON: Anderson documents,
 14 what are those?
 15 ARBITRATOR FAULKNER: What did you say?
 16 Mr. Herman, what did you say? I heard --
 17 MR. HERMAN: The Anderson documents about
 18 the orders and the Anderson case in Austin.
 19 ARBITRATOR FAULKNER: Oh, right, okay.
 20 Pleadings and all, okay.
 21 MR. HERMAN: Yes.
 22 ARBITRATOR LYON: Really that isn't an
 23 issue, is it, because his lawyer said that everything
 24 had been dismissed, except for the defamation.
 25 MR. HERMAN: Right, but we agreed to give

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1 them to you, and there's just about this much, and
 2 just to make it clear.
 3 MR. BREEN: And we also need to give them
 4 to you because there are three defamation claims he
 5 made, and two of those got dismissed, so there was
 6 only one left at the time, so I want to --
 7 ARBITRATOR LYON: Okay.
 8 ARBITRATOR FAULKNER: Okay. Are we
 9 ready, gentlemen?
 10 MR. TILLOTSON: We are.
 11 ARBITRATOR FAULKNER: All right.
 12 Mr. Levinstein, please proceed.
 13 Doctor, you're still under oath.
 14 Okay. Please proceed.
 15 MR. LEVINSTEIN: Before we go to
 16 questioning, I just want to put one thing on the
 17 record. Yesterday I asked Dr. Ashenden questions
 18 about what Mr. Armstrong's hematocrit and hemoglobin
 19 was on dates in November and December of '96, during
 20 his treatment, and he hadn't seen these documents he
 21 said.
 22 I just want to put on the record where
 23 they are so he can find them and -- on pages 31, 33
 24 and 46 of the medical records that are upstairs under
 25 lock and key, there was a report dated December 10 of

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1 the specimen taken December 9 that it says it has a
 2 hemoglobin of 9.5 and hematocrit of 27.9.
 3 Page 82 or 082 is a document dated
 4 November 18, 1996 that says the hemoglobin is 11, and
 5 it's hard to read what the hematocrit is, but on page
 6 095, there's another reference to that November 18,
 7 '96 date with a hemoglobin of 11.0 and hematocrit of
 8 31.4, so just for you to -- I didn't make it up, and
 9 if you want to go look at it, it's there.
 10 ARBITRATOR FAULKNER: The question for
 11 you all, do you want to have those records down here?
 12 ARBITRATOR LYON: I -- I do --
 13 ARBITRATOR FAULKNER: Okay.
 14 ARBITRATOR LYON: -- because it's -- you
 15 know, it's hard to remember this stuff. I want to see
 16 it.
 17 MR. BREEN: And if I can address the
 18 panel. We do have the records scanned. They came --
 19 and there's, I think, 200 and some-odd pages of it.
 20 They are scanned in. They are on the computer.
 21 ARBITRATOR FAULKNER: Can you project
 22 them here?
 23 MR. BREEN: Yes, we can project them.
 24 The one issue is whether or not the records get made
 25 part of the official record because of privacy

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1 concerns of his cancer treatment, et cetera, should
 2 the records end up or this entire record end up
 3 somehow becoming public officially or unofficially.
 4 So they're here. They can be projected
 5 up onto the screen. We didn't plan on making the
 6 medical records actually officially part of the
 7 record, but I suppose we can reconsider that. But
 8 they are here to project if we need to.
 9 MR. TILLOTSON: Okay. All we want is the
 10 fair opportunity to examine them so that the
 11 witnesses -- our witnesses, you know, if
 12 cross-examined, can look and see them. They don't
 13 necessarily need to be part of record, but we do need
 14 access to them.
 15 MR. HERMAN: Those are the records --
 16 ARBITRATOR FAULKNER: I understand that.
 17 For purposes of bringing them down here, I just want
 18 to deal with the mechanical issue of getting them down
 19 here.
 20 MR. LEVINSTEIN: I can go get them.
 21 ARBITRATOR FAULKNER: Well, he may want
 22 them for answering your questions.
 23 MR. LEVINSTEIN: I'm not going to ask him
 24 any more questions about this. I just asked yesterday
 25 and I wanted to be fair to the witnesses when I quoted

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1 numbers at him that I didn't make them up.
 2 ARBITRATOR FAULKNER: Okay. Well, if
 3 you're not going to ask any more questions on it, on
 4 break we don't need to do that then, but if they need
 5 to be down here, y'all, we can just get them in a
 6 matter of two or three minutes.
 7 MR. BREEN: Yes, sir. You let me know,
 8 and I'll run up and get them.
 9 ARBITRATOR FAULKNER: If we don't need
 10 them, go ahead and proceed with your question.
 11 MR. LEVINSTEIN: Can we put on the screen
 12 the chart. I don't know the exhibit number. Not that
 13 chart. The results.
 14 MR. HERMAN: Respondents' 29.
 15 Respondents' 44.
 16 CROSS EXAMINATION
 17 BY MR. LEVINSTEIN:
 18 Q. Dr. Ashenden, you've testified about this
 19 document yesterday. First, where did you get it, the
 20 document?
 21 A. I'm not certain that I received this one.
 22 What I received -- a document that looks visually the
 23 same. It was a couple of days before I came over
 24 here. It was very shortly before.
 25 Q. Okay. What month do we think that is?

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1 A. I beg your pardon? It was seven days before
 2 my deposition, which was December, so mid-December,
 3 something like that.
 4 Q. So mid-December of 19 -- of 2005 is the first
 5 time you saw this document?
 6 A. Well, if you want to -- a representation of
 7 it, I saw the l'Equipe article whenever that was
 8 published, and then I got a clearer format sent
 9 through a couple of days before my deposition, which
 10 you can see the color codes in the three columns
 11 there.
 12 Q. Did you get a version of this that's in
 13 color?
 14 A. Yes. It's an Excel sheet, from what I can
 15 gather, and I received it as a -- oh, I think it's
 16 a -- a PDF, and can you see the colors.
 17 Q. Okay. I didn't know there were different
 18 colors.
 19 A. If you look at the top right-hand corner
 20 that's the key, which they have these three columns.
 21 Q. I saw a light shading and dark shading. I
 22 didn't know there were different colors until you said
 23 that today.
 24 Okay. Who gave this to you, the one you
 25 could read, the one that wasn't in the newspaper

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1 article?
 2 A. It was a sent through SCA.
 3 Q. Okay. And where did they get it?
 4 A. I don't know.
 5 Q. And beside the fact that it says Tour de
 6 France 1999 on the top and the l'Equipe article, is
 7 that the basis on which you say that these are all
 8 samples from the Tour de France in 1999?
 9 A. Well, no, because I know that these have been
 10 the focus of some pretty intense scrutiny, and no one
 11 has suggested otherwise, so I think on the weight of
 12 evidence, it wouldn't just be the fact that it said
 13 that in the top corner, no.
 14 Q. Intense scrutiny by whom?
 15 A. Well, I mean, this is very big here.
 16 Q. I understand, but there was a newspaper
 17 article that had this document in it?
 18 A. Yes.
 19 Q. But other than the newspaper article, who
 20 else has said that all of these samples are samples of
 21 riders from the Tour de France?
 22 A. Who else has told me?
 23 Q. Yes.
 24 A. I think by inference I could say that Jacques
 25 de Ceaurriz did because he knew that this was the

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1 focus of an investigation, and if he had realized that
 2 these weren't the actual results, he would have said,
 3 look, Michael, be careful because there's some bogus
 4 results going around and they are not the results that
 5 we produced in our laboratory.
 6 Now, he never said that, and I've never
 7 had any credible suggestion otherwise, so I took it on
 8 faith that they were what they presented to be.
 9 Q. Okay. And how do you know that any of these
 10 samples or which samples are Lance Armstrong's?
 11 A. The number in the second column and the
 12 number on the doping control forms identifies which
 13 samples is which.
 14 Q. Well, it says, F-L-A-C-O-N above the second
 15 column. Do you know what that means?
 16 A. No.
 17 Q. So does anyone -- did you discuss this
 18 document and what column means what with the people
 19 from the lab?
 20 A. I think I asked at some point -- no, I did
 21 not because I subsequently went back and checked. No,
 22 because he made it clear to me that it was the focus
 23 of another investigation and he wasn't allowed to
 24 discuss it in any great detail.
 25 Q. So no one from the lab has told you what the

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1 various columns mean? They haven't --
 2 A. Well, that's what I said, I went back and had
 3 a look at some of the sheets that I had of previous
 4 research that we have done, and the same sort of
 5 notations are used.
 6 Q. Well, is there any prior study you've done
 7 that had doping control numbers on it?
 8 A. Where are doping control numbers?
 9 Q. Well, what do you call the numbers in the
 10 second column?
 11 A. They are the numbers that correspond with the
 12 number on that doping control form.
 13 Q. Well, what would you call them?
 14 A. Well, you're calling them doping control
 15 numbers. I mean, they're the numbers that correspond
 16 with the numbers on the doping control form.
 17 Q. In any prior study that you've been involved
 18 in with a document that looked something like this
 19 were there ever numbers on the document that
 20 corresponded with numbers on doping control forms?
 21 A. Not that I recollect, no.
 22 Q. And in general research, you don't put those
 23 kind of numbers on research, do you?
 24 A. I -- I can't think that I've ever done any
 25 research using doping control samples, so I don't

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1 think there would have been any reason to.
 2 Q. Okay. And were you the one who figured out
 3 which of these sample -- strike that.
 4 There are 91 lines, I'll represent, 30 on
 5 each of the first three pages and one on the last
 6 page, so I'm going to use the number 91. For each of
 7 those 91 lines, who went and figured out which line
 8 corresponded to -- supposedly corresponded to Lance
 9 Armstrong's urine samples?
 10 A. The -- whoever produced that article in
 11 l'Equipe had done so, and I -- I had received like a
 12 PDF file of each of the pages of the l'Equipe story,
 13 but when I received the actual sheets that I mentioned
 14 earlier, I went through just to satisfy myself that
 15 they hadn't made an error and that these did
 16 correspond with that, so I even repeated what someone
 17 else had done, so I don't know who did that.
 18 Q. But the entire basis for your testifying as
 19 to which sample is Lance Armstrong's and what day it
 20 was taken is based on those doping control forms that
 21 have been presented to this panel while you were here
 22 and I wasn't in the room; it's based on those forms
 23 that you were given?
 24 A. Yes.
 25 Q. Okay. Where did you get those forms?

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1 A. They were sent to me as well by SCA.
 2 Q. And where did they get them?
 3 A. I don't know.
 4 Q. Did they get them from the newspaper?
 5 A. I said I don't know.
 6 Q. Okay. So how do you know that those are
 7 actually Lance Armstrong's doping control forms?
 8 A. Like I mentioned in my deposition, they've
 9 got his signature, and no one's suggested that they're
 10 not, and so, again, because it's been the focus of
 11 some pretty intense scrutiny, I would have assumed
 12 that if they weren't the correct forms, that Lance
 13 Armstrong or one of his agents would have said, hang
 14 on a minute, this is a problem, the forms aren't his.
 15 But I haven't heard anything like that, so I would
 16 assume that they're the documents that have got
 17 signatures and they're presented as such.
 18 Q. Were you aware that Lance Armstrong didn't
 19 have those forms until they were produced by SCA?
 20 A. Well, they're represented in the l'Equipe
 21 article.
 22 Q. Are you suggesting that in the l'Equipe
 23 article there are 15 forms that are depicted in the
 24 article?
 25 A. No, extracts of each form, and from what I

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1 understand, Armstrong authorized the release of those
 2 forms for the journalists.
 3 Q. And who told you that?
 4 A. It was presented here.
 5 Q. I'll leave that one then.
 6 If you look at the document, the first
 7 column, what does that mean?
 8 A. I have never really been clear what that is.
 9 I think it may be some sort of a key that the lab
 10 themselves used. It's not clear.
 11 Q. Okay. This is supposed to be the results or
 12 part of the results of a research study?
 13 A. Yes.
 14 Q. Okay. And how many urine samples in total
 15 were tested as part of the research study?
 16 A. I don't know.
 17 Q. You don't know?
 18 A. No.
 19 Q. Okay. Do research studies generally have a
 20 protocol that describes what is going to be done in
 21 the research study?
 22 A. Yes, generally, yeah.
 23 Q. Are you aware of any research studies that
 24 don't have a protocol that says what's going to be
 25 done?

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1 A. Yes.
 2 Q. Okay. Well, then if you don't have a
 3 protocol, how do you know what you're to do?
 4 A. For example, if -- when we were at the AIS, a
 5 group of athletes would come in for testing, and you
 6 tested them three times earlier in year. Everyone
 7 knew what they were going to do, and so there was no
 8 protocol written up for that because everyone
 9 understood what would happen.
 10 So if the project that you're doing is so
 11 clearly understood that the person needs not be
 12 stipulating what each step is, then that's the set of
 13 circumstances where you need a protocol.
 14 Q. Do you understand there's a protocol for this
 15 study?
 16 A. I don't know.
 17 Q. Do you know what the purpose of the study
 18 was?
 19 A. It's been related to me, yes, the purpose was
 20 to --
 21 Q. Where are you going? Related by whom?
 22 A. I think it might have been someone at WADA
 23 and/or the lab themselves. I don't know exactly who
 24 told me because it was -- you know, it was a fair
 25 while ago.

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1 Q. Who was -- I'm sorry, I didn't mean to
 2 interrupt you.
 3 A. I was finished.
 4 Q. Who at WADA have you discussed this with?
 5 A. I wrote an e-mail to Olivier Rabin asking him
 6 whether they were able to give me some information on
 7 the background, because I said that I was an expert
 8 witness in this case or I expected to be and that I
 9 wanted to get their side of what had happened. And he
 10 wrote back to me and -- I beg your pardon, Olivier
 11 Rabin forwarded that e-mail to the director general
 12 David Howman and David Howman responded to me that --
 13 I can't remember. There were several points in the
 14 e-mail.
 15 So I discussed with Olivier, e-mailed him
 16 I should say, and David Howman responded.
 17 Q. And have you produced those e-mails?
 18 A. No, because it was nothing -- essentially
 19 David said, look, we can't talk to you about this, and
 20 there was nothing in there that influenced my opinion
 21 one way or another.
 22 Q. Okay. So David Howman told you that they
 23 couldn't give you information about the study?
 24 A. Yes. He said it's the subject of an ongoing
 25 investigation, words to that effect.

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1 Q. Okay. Let me go back to the original
 2 question. I asked you who told you the purpose of
 3 this study. David Howman didn't tell you the purpose
 4 of this study in his e-mail, I take it?
 5 A. I would have to go back and look at the
 6 e-mail, but, I mean, I -- I was aware what the purpose
 7 of the study was before that, so it must have been
 8 some other time. It wouldn't have been David Howman,
 9 I'm -- I'm certain of that.
 10 Q. Okay. Anyone else at WADA?
 11 A. I said to you I can't recollect because you
 12 asked me who have I spoken with, and that's who I've
 13 contacted.
 14 Q. I asked you who told you the purpose of the
 15 study, and you said it might have been someone at WADA
 16 or someone at the lab.
 17 A. Yes.
 18 Q. So I started with WADA, so I think we've now
 19 established that you have no recollection of anybody
 20 at WADA telling you the purpose of the study.
 21 A. No. I said it might have been someone at
 22 WADA, and you said, who have you spoken to, and I told
 23 you Davis Howman sent me an e-mail.
 24 Q. Have you talked to anyone else at WADA?
 25 A. I talk to WADA quite often. They fund my

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1 research, so, yes, I speak to them. You know, it's a
2 professional relationship.
3 Q. In any of these conversations with WADA has
4 anyone at WADA told you the purpose of this study?
5 A. That's what I'm saying, it could well have
6 been, but I don't recollect.
7 Q. Who else at WADA do you talk to?
8 A. Well, it's mainly Olivier.
9 Q. Well, what do you understand to be the
10 purpose of this study?
11 A. I understand the purpose of the study to be
12 to evaluate three different approaches to evaluating
13 results in order to find a sample positive, negative
14 or otherwise.
15 Q. Now, if you look at the serie labo on the
16 side --
17 A. Yes.
18 Q. -- do you see that the numbers -- there's a
19 two-digit number, which eventually becomes a
20 three-digit number as you go down the column, and a
21 slash and the number 07, okay?
22 A. Yes.
23 Q. And it appears that after you have 05, 07 and
24 three dashes, that it's saying, and I'm guessing, that
25 those four samples have something to do with series

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1 05/07. Would that be your reading of this document?
2 A. I don't understand that column, so, you know,
3 I've looked at it before, and I can't make sense of
4 it, so...
5 Q. Okay. Let me see if I can help.
6 Let's take a look at -- well, first, do
7 you know the largest number of samples that
8 corresponds with one of the numbers in the first
9 column?
10 A. The -- largest number of samples that
11 corresponds with one of the numbers in the column?
12 Q. Well, for example, turn to the second page,
13 if you would, and look at 82/07, please.
14 A. Okay.
15 Q. And there are six samples that correspond to
16 82/07?
17 A. Well, I'm not sure if -- I mean, that's your
18 inference. I'll accept it at face value if you would
19 like. I mean, I'm not sure that that's what the dash
20 means, but if you're saying that's what it means, I'll
21 accept that.
22 Q. Do you -- well, okay. Let's go on, then. Is
23 it your understanding that these samples were all
24 tested using that electrophoresis gel we talked about?
25 A. Yes.

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1 Q. And is it your understanding that when you do
2 a gel and you do a test, you often place multiple
3 samples on a single gel?
4 A. Yes.
5 Q. And how many do you -- in your experience,
6 does the French lab put on a single gel?
7 A. I would imagine -- I've got a feeling
8 something like half a dozen, but it could be as much
9 as a dozen or 18. I honestly don't know.
10 Q. So if it -- so do you think perhaps that each
11 one of those numbers corresponds to a different gel?
12 A. I've got no way of knowing.
13 ARBITRATOR CHERNICK: Did you say a
14 different channel?
15 MR. LEVINSTEIN: Gel.
16 ARBITRATOR FAULKNER: Excuse me,
17 Dr. Ashenden, do you know the dimensions of the gel
18 plates that were being used?
19 THE WITNESS: About that big and that
20 wide.
21 ARBITRATOR FAULKNER: Which way do the
22 columns run?
23 THE WITNESS: From -- well, depends on
24 which way --
25 ARBITRATOR FAULKNER: I'm very familiar

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1 with them. I've prepared some many years ago.
2 Do you know which way they run?
3 THE WITNESS: I know in France they do it
4 opposite the way they do it here in the U.S., and I
5 think it's cap at the top. They stipulate it in the
6 computations which way.
7 ARBITRATOR FAULKNER: Okay, thank you.
8 That's all I was interested in.
9 Please proceed.
10 Q. (BY MR. LEVINSTEIN) Given that the numbers
11 go up to 154 in that first column, do you think
12 perhaps that there are 154 gels with six samples each
13 as part of this study?
14 A. I've got no way of knowing.
15 Q. Okay. When was the testing done that's
16 depicted in this summary?
17 A. I don't know.
18 Q. Well, was it in 2004?
19 A. I don't know. I don't know.
20 Q. Okay. Now, who told you -- or you don't
21 remember who told you that the purpose was to evaluate
22 three different approaches; is that correct?
23 A. I know at some point I've had a discussion
24 with the lab. Now, it probably would have come about
25 at some point in that discussion as well. It could

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1 have come about from a discussion with Olivier. I
 2 can't recollect, so I'm reluctant to say it came from
 3 this person, because it may have come from another
 4 person, but, I mean, it would have been through one of
 5 those persons. It could have even been through maybe
 6 conversation with Michel Audran when he was talking
 7 about it. It's not something that sticks in my mind.
 8 Q. Did the lab tell you they weren't allowed to
 9 tell you about this because it was a confidential
 10 research project?
 11 A. No. They said it's the subject of an ongoing
 12 investigation, and so on that basis, they couldn't
 13 say.
 14 Q. Okay. And the three different approaches you
 15 think that they are testing are represented by the A,
 16 B and C columns?
 17 A. Yes.
 18 Q. And the A column is visual inspection?
 19 A. Yes.
 20 Q. Okay. And that means they look at the
 21 electropherogram, and they use their judgment and
 22 decide if it looks positive or looks negative or looks
 23 inclassifiable or looks to be reanalyzed, is that
 24 correct, from that chart?
 25 A. That's a very simplistic way of presenting a

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1 visual interpretation, but I'll accept that
 2 representation.
 3 Q. Well, that's all the information that they
 4 put on this document is one of those choices?
 5 A. Oh, you know, I was talking about how they
 6 reach that conclusion.
 7 Q. I'm going to get to that in a second. I want
 8 to know what's on this document.
 9 A. Yes.
 10 Q. It's simply whatever they did to inspect it
 11 visually, this tells you whether they thought there
 12 was presence of recombinant EPO, an absence, not
 13 classifiable -- that's what inclassifiable means in
 14 French -- and to be reanalyzed. Those are the
 15 choices, yes?
 16 A. Yes.
 17 Q. And some of them say, if you'll look at
 18 page 2, auto radio (phonetic), those -- if look at
 19 the third sample on the second page. You can't read
 20 it on that screen, but the word auto radio is visual
 21 in the shaded area on the third sample, tenth sample
 22 and perhaps the bottom one. Do you see that?
 23 A. No.
 24 MR. LEVINSTEIN: Can I approach the
 25 witness and show him my copy?

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1 ARBITRATOR FAULKNER: Certainly.
 2 Mr. Tillotson, do you have a copy?
 3 MR. TILLOTSON: I don't.
 4 ARBITRATOR FAULKNER: Why don't you take
 5 a look at it at the same time.
 6 Q. (BY MR. LEVINSTEIN) Do you see auto radio?
 7 A. Sure.
 8 Q. What does that mean?
 9 A. I don't know. I -- that's the first time
 10 that I've been aware of that notation, so I've not
 11 looked into that.
 12 Q. Okay. What was the standard used to
 13 determine whether they would declare that it was
 14 visually present and was a recombinant EPO?
 15 A. I cannot tell you the detail of the actual
 16 method they used to classify it, but I know that
 17 it's -- it's the same approach that has been used by
 18 Barcelona and the LA lab to declare a sample was
 19 positive, and sanctions have been imposed using that
 20 criteria, so it would have been the same criteria
 21 that's used by others in antidoping laboratories to
 22 declare a positive.
 23 Q. Is it your understanding that labs are
 24 allowed to declare a positive simply on visual
 25 inspection?

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1 A. I'm telling you they have.
 2 Q. Well, today; are they allowed to do that
 3 today?
 4 A. I don't know today what protocols and
 5 regulations they use, but my understanding based on
 6 what Dr. Ceaurriz told me is each lab is able to use
 7 its discretion to some extent as to what criteria to
 8 use. So, for example, the laboratory in Paris uses
 9 slightly different criterias to what other
 10 laboratories do, and they're entitled to do that.
 11 Q. And -- but you don't know the words -- the
 12 detail of what standard they used in this case?
 13 A. I've looked at it, and to be quite honest, it
 14 is very difficult to recount any data. It's something
 15 I looked at and I think, yes, I understand that now.
 16 I go away, two days later and I try and recount what
 17 it is, and it's difficult for me to do that.
 18 Q. Okay. And what was the standard in the
 19 second column?
 20 A. That's the 80 percent basic ASO forms. Well,
 21 80 or 85 percent, I'm not sure exactly which
 22 percentage they would use, but that's the most common
 23 approach, if you would like.
 24 Q. So what was the cutoff in that column to
 25 declare a positive?

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1 A. I understood it's 80 percent that had been
2 used, but I've also read in some areas where they talk
3 about 85 percent, so, again, individual laboratories
4 are allowed to use their discretion to some degree.
5 Q. If we look at the sample -- let's see, third
6 sample in 13/07 on the first page.
7 A. Third sample, yes, 186 585.
8 Q. Yes, 186 585. What's the number? It's on
9 the first page.
10 A. As well as I can read it here, it's 81.8.
11 Q. And is that presence, absence or
12 inclassifiable?
13 A. On this version, I can't see what color
14 that's got in there, so...
15 Q. It looks inclassifiable to me on my copy, but
16 can you tell that -- you can't, okay.
17 A. Well, it looks like the cell is cleared, but
18 that's got some other stuff in it. I would not like
19 to say based on this.
20 Q. So you can't tell what the second column
21 result is for that sample?
22 A. Well, you can see it's 81.8. See, I would
23 call that 81. This is a little bit clearer than that
24 one.
25 Q. It looks like 81.3 to me, but that's all

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1 right.
2 Would you turn to the International
3 Standards for laboratories, please?
4 A. Yes.
5 MR. LEVINSTEIN: And everybody has a
6 copy?
7 ARBITRATOR CHERNICK: We do.
8 ARBITRATOR FAULKNER: We do.
9 Q. (BY MR. LEVINSTEIN) What is the document?
10 A. International Standards for Laboratories.
11 Q. Is it the World Antidoping Code -- part of
12 the World Antidoping Code?
13 A. It's a part of it. It's underneath that.
14 Q. Have you seen this document before?
15 A. I couldn't say that I've seen this exact
16 version, but I've seen versions of this.
17 Q. Is this the current version?
18 A. It is August 2004, so I wouldn't be surprised
19 if it is.
20 Q. But you don't know whether this is the
21 current version or not?
22 A. No.
23 Q. Would you turn to page 2, the preamble page.
24 A. Yes.
25 Q. Okay. Why don't you just tell me, what is

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1 the significance of this document as you understand
2 it?
3 A. This, in very broad terms, gives the labs a
4 guideline to follow when they're conducting antidoping
5 testing.
6 Q. Do they have to follow it?
7 A. I -- I don't know if they have to or not. I
8 mean, there's this whole area of ASO accreditation,
9 and these guidelines and WADA accreditation, so I
10 couldn't tell you whether they have to or not, but
11 certainly you can say that labs are aware of this
12 document and expect you to be cognizant of it.
13 Q. Would you look at the preamble page, and
14 would you go to the sixth paragraph that starts with
15 the word, currently?
16 A. Yes.
17 Q. And let me read you the second sentence: As
18 part of the transition of the program from assisting
19 IOC accreditation to WADA accreditation the
20 accreditation bodies shall require the laboratories to
21 which that grant and maintain accreditation to comply
22 with the requirements of the International Standards
23 for Laboratories and ISL/IEC 17025 by January 1st,
24 2004.
25 Does that suggest to you that labs are

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1 required to follow this International Standard for
2 Laboratories?
3 A. Well, what that suggests to me is this
4 document is out of date, because laboratories aren't
5 any longer accredited by the IOC, so I don't think
6 this is the current version.
7 Q. No, no, this is talking about the transition
8 from being accredited by the IOC to being accredited
9 by WADA.
10 A. Yes, but I don't think this is current
11 because now laboratories are accredited by WADA, not
12 the IOC.
13 Q. Let me represent to you this comes off the
14 WADA web site. This is the current International
15 Standard for Laboratories. I'll move on.
16 A. I'm not trying to mislead you. Why did you
17 ask me?
18 Q. Because you're the witness. You're supposed
19 to know the answer to these questions.
20 Would you turn to page 4, please.
21 A. Yes.
22 Q. Do you see the first sentence, the main
23 purpose of the International Standard for Laboratories
24 is to ensure laboratory production of valid test
25 results and evidentiary data and to achieve uniform

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1 and harmonized results and reporting from all
 2 accredited doping control laboratories?
 3 A. Uh-huh.
 4 Q. Did you understand that document is intended
 5 to apply to all WADA accredited labs so they will all
 6 behave in a similar fashion?
 7 A. Yes, I would accept that.
 8 Q. All right. And the question of whether it's
 9 required, if you look at third paragraph where it
 10 says, the International Standard for Laboratories,
 11 including all annexes and technical document is
 12 mandatory for all signatories to the code.
 13 Do you see that?
 14 A. Yes, I see that.
 15 Q. And so that means everybody who is part of
 16 the WADA code has to adopt the International Standard
 17 of Laboratories and comply with it?
 18 A. The reason that I said to you earlier that
 19 I'm not certain is because I've -- I've worked
 20 probably in four or five different labs now, and when
 21 you actually talk to the people in the labs, what
 22 seems like a very clear-cut situation really isn't
 23 clear-cut. So I -- I would say in my opinion that
 24 it's not as clear-cut as what you say, if that's --
 25 there's gray areas that aren't really always apparent.

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1 That's what the document says. I don't dispute that.
 2 Q. Okay. How many cases have you been directly
 3 involved in in which an athlete has been charged with
 4 a doping violation?
 5 A. I've only had one case.
 6 Q. So only one case have you been involved in
 7 with a lab where they were doing doping control and
 8 charging an athlete?
 9 A. And prosecuting a case, yes.
 10 Q. And only one case have you been involved in
 11 where the work being done was to generate an
 12 allegation that an athlete had tested positive?
 13 A. Yes.
 14 Q. If you'll look at the last paragraph on page
 15 4, it says, This document sets out the requirements
 16 for doping control laboratories that wish to
 17 demonstrate that they are technically competent,
 18 operate an effective quality management system and are
 19 able to produce forensically valid results.
 20 What do you understand it to mean by
 21 forensically valid results?
 22 A. To me the term forensically is relating to
 23 the fact that typically in a court case, they want
 24 evidence that's reaching a level that will also be
 25 acceptable in a forensic analysis.

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1 Q. So in other words, you have to follow those
 2 requirements in order to generate results that could
 3 be subjected to judicial or arbitral review, and they
 4 would stand up in a court; is that your understanding?
 5 A. No, I wouldn't agree with that.
 6 Q. Okay. Let's turn the page 5. At the back of
 7 this document I'll represent to you as part of it are
 8 things called WADA technical documents. Are you
 9 familiar did WADA technical documents?
 10 A. Yes.
 11 Q. We will get to those in a minute, but this
 12 provision, if you'll look at the last sentence of the
 13 second paragraph on page 5 -- I'm sorry, the second
 14 paragraph on page 5, last sentence, the incorporation
 15 of the provision of the technical documents into the
 16 laboratory's quality management system is mandatory
 17 for WADA accreditation. Do you see that?
 18 A. Yes.
 19 Q. Do you understand that to mean that the labs
 20 have to follow what's in the technical documents if
 21 they want to stay accredited by WADA?
 22 A. I assume I'm allowed to just read the
 23 paragraph?
 24 Q. Sure, whatever you want to read.
 25 THE WITNESS: Mr. Chairman, can you ask

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1 them to stop talking? It's distracting.
 2 ARBITRATOR FAULKNER: Okay. We
 3 understand it's a little bit distracting. If y'all
 4 could hold it down a little bit so that the witness
 5 can read and understand what questions are pertaining
 6 to, that would be helpful.
 7 THE WITNESS: What was the question, sir?
 8 Q. (BY MR. LEVINSTEIN) My question is, do you
 9 understand that labs had to follow the technical
 10 documents if they want to remain accredited as WADA
 11 labs?
 12 A. Sure.
 13 Q. That's your understanding of what that says?
 14 A. As a -- as a non-expert in lab accreditation,
 15 I would read it to be that, yes.
 16 Q. Would you turn to page 7?
 17 A. Yes.
 18 Q. What I understand -- this says code
 19 provisions at the top, and it says, the following
 20 articles in the code directly address the
 21 International Standard for Laboratories.
 22 A. Uh-huh.
 23 Q. Did you understand the reference to the code
 24 to be the WADA code?
 25 A. Yes.

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1 Q. Okay. If you look at the last section of the
2 indented paragraph, the last sentence.
3 A. Yes.
4 Q. It says, if the athlete rebuts the -- let me
5 start at the beginning of this.
6 It says, WADA accredited laboratories are
7 presumed to have conducted sample analysis and
8 custodial procedures in accordance with the
9 International Standard for Laboratory analysis. The
10 athlete may rebut this presumption by establishing
11 that a departure from the international standard
12 occurred. If the athlete rebuts the preceding
13 presumption by showing a departure from the
14 international standard occurred, then the antidoping
15 organization shall have the burden to establish that
16 such departure did not cause the adverse analytical
17 finding.
18 Do you see that?
19 A. Yes.
20 Q. Do you understand that to mean that if the
21 WADA lab doesn't follow the procedures in the
22 International Standard for Laboratories and claims
23 that the athlete had an adverse finding, that once the
24 athlete shows that the lab didn't follow the standards
25 in some way, the burden shifts to the lab to

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1 demonstrate that the fact that they didn't follow the
2 standards did not cause the positive report?
3 A. Yes.
4 Q. Good. Okay. Now, do you see the next
5 section, analysis of samples?
6 A. Yes.
7 Q. And you see paragraph 6.3, research on
8 samples in the indented quote?
9 A. Yes.
10 Q. Do you see where it says, no sample may be
11 used for any purpose other than the detection of
12 substances or class of substances or methods on the
13 prohibited list or as otherwise identified by WADA
14 pursuant to Article 4.5 monitoring program without the
15 athlete's written consent?
16 A. I see that.
17 Q. Do you understand that to mean that they
18 can't use urine samples taken during competition or
19 out of competition testing for research unless the
20 athlete approves in writing?
21 A. No, I don't understand it to mean that. If
22 you go and have a look at Article 4.5 in the
23 monitoring program, it -- my -- my recollection of it
24 sets out that the lab is allowed to do research on
25 those samples.

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1 Q. But only if it's part of the monitoring
2 program?
3 A. Yes, but if you read the monitoring program,
4 it's a -- it's a broad definition in it.
5 Q. So is it your -- has someone told you that
6 the research being done by the French lab was part of
7 a monitoring program?
8 A. No.
9 Q. Okay. Do you understand that the purpose of
10 this test -- I'm sorry, strike that.
11 Do you understand that the research,
12 these 91 samples, was part of a research study by the
13 French laboratory where they were analyzing hundreds
14 of samples and that the protocol doesn't specify at
15 all where the urine samples are going to come from?
16 A. I haven't seen the protocol, so I can't
17 comment on that.
18 Q. Hasn't anyone told you that the purpose of
19 this research was to create a database of results
20 simply so they would have a database of how positives
21 and negatives look for the purpose of future
22 refinements of this test?
23 A. No. You asked me in my deposition am I aware
24 of a database, and I answered no. My answer is the
25 same.

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1 Q. All right. If you'll look at 6.4 on that
2 same page, 7, laboratories shall analyze doping
3 control samples and report results in conformity with
4 the International Standard for Laboratories analysis.
5 Was this report issued in conformity with
6 the International Standard for Laboratories analysis,
7 do you know?
8 A. I couldn't comment on that.
9 Q. Okay. Now, it's your view that this
10 document, the chart, concerns an adverse finding
11 against certain athletes, correct?
12 A. You need to use that term carefully. You're
13 using adverse finding in the context of the WADA code?
14 Q. Yes.
15 A. It's got some different connotations.
16 Q. Is it or is it not evidence of an adverse
17 finding within the meaning of the WADA code?
18 A. That document is the results of research
19 conducted in the lab. Now, I wouldn't want to comment
20 any further than that, because I haven't seen the
21 protocol. All I can tell you is that they're the
22 results that I've been shown. You -- I'm not clear on
23 your question.
24 Q. Well, if the lab wants the results that they
25 did in their research to count as an adverse finding

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1 involving an athlete, what would they have to have
 2 done?
 3 A. Is this a hypothetical now?
 4 Q. Let me start again. You are asserting that
 5 this panel should consider this document and your
 6 interpretation of what it's supposed to be saying in
 7 order to reach conclusions about whether Lance
 8 Armstrong used performance enhancing drugs, correct?
 9 A. Yes, and that's different from asking him to
 10 have an adverse finding. They're two different
 11 things.
 12 Q. All right. Are you asking them to find that
 13 he used EPO in the 1999 Tour de France?
 14 A. I'm not asking them to find anything. I'm
 15 giving a deposition, so...
 16 Q. Well, is it your opinion that this document
 17 proves that he used EPO during the 1999 Tour de
 18 France?
 19 A. It's my opinion that that document shows, in
 20 conjunction with the doping control forms and the
 21 correspondence, between the numbers, that Armstrong
 22 used EPO during the '99 tour.
 23 Q. Okay. So you are saying that in your view,
 24 the single line that concerns each sample is
 25 sufficient basis for you to conclude that that sample

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1 was positive for EPO?
 2 A. Not that line, no.
 3 Q. Well, for which samples of the ones in your
 4 chart that you made have you concluded that on that
 5 date his urine sample did have EPO in it?
 6 A. If -- I can't remember what the exhibit
 7 number is. The overlay, where you looked at the -- it
 8 was up earlier. I can't remember. When I overlaid
 9 these results with Armstrong's performance during the
 10 tour.
 11 Q. Yes.
 12 A. That to me paints a pretty compelling
 13 picture. Now, bring on board the fact that I've
 14 spoken to the laboratory and they said there's no
 15 doubt about these results, these are valid.
 16 Q. Let's go --
 17 A. Well --
 18 Q. Do you want to keep going? I'm sorry.
 19 A. I was, but...
 20 Q. Go ahead. I didn't mean to interrupt.
 21 A. I've lost my train of thought.
 22 Q. Okay. Why don't you go to the bottom of
 23 page 7.
 24 A. Sure.
 25 Q. It talks about information concerning adverse

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1 analytical findings and other potential antidoping
 2 rule violations, okay?
 3 A. Yes.
 4 Q. Now, you're saying that this is a potential
 5 antidoping violation, correct?
 6 A. When have I said that?
 7 Q. Are you saying that Lance Armstrong violated
 8 the antidoping rules of the Tour de France?
 9 A. I'm saying that these results, in conjunction
 10 with everything that I've outlined before, is a
 11 compelling picture to my mind that he used EPO in the
 12 '99 Tour.
 13 Q. Okay. And you're telling us that the lab has
 14 represented to you that fact as well?
 15 A. The lab has represented to me that -- that
 16 the results are valid.
 17 Q. Would you read the last sentence in Article
 18 14.1 at the bottom of page ? . I'll read it to you.
 19 It says, the recipient organization shall
 20 not disclose this information beyond those
 21 persons with the -- within the organization with a
 22 need to know until the antidoping organization's
 23 results management and responsibility has made public
 24 disclosure or has failed to make public disclosure as
 25 required in Article 14.2.

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1 A. Okay.
 2 Q. How were those results given to the
 3 newspaper, do you know?
 4 A. I don't know.
 5 Q. If you'll look on page 8, there's a
 6 definition of adverse analytical finding.
 7 A. Yes.
 8 Q. It's a report from a laboratory or other
 9 approved testing entity that identifies in a specimen
 10 the presence of preventative substance or its
 11 metabolites or markers, including elevated quantities
 12 of endogenous substances for evidence of the use of a
 13 prohibited matter.
 14 A. Uh-huh.
 15 Q. Are you saying that there is or is not an
 16 adverse analytical finding as to Lance Armstrong's
 17 samples from the Tour de France?
 18 A. The term adverse analytical findings I
 19 pointed out before has a specific meaning and
 20 connotation within the code. Now, the code sits here.
 21 This reference sits there, so it's not appropriate to
 22 try and transfer one name and say, well, were you
 23 basing it on these results. It's not appropriate to
 24 use that term.
 25 Q. Do you understand that the code says if you

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1 want to use any results for forensic purposes, you
 2 need to follow the code and the International Standard
 3 for Laboratories?
 4 A. The code is sitting here. The research is
 5 sitting there, so what the code says is not pertinent
 6 to these research results in my opinion.
 7 Q. Okay. Let's imagine that a laboratory wants
 8 to test a urine sample and prosecute an athlete, okay?
 9 A. Imagine. So this is a hypothetical?
 10 Q. Correct.
 11 I want to know what they have to do.
 12 What's the first test that they do on the urine
 13 sample? What's it called?
 14 A. I don't know the specific name for it. Are
 15 you talking about the very first one that's actually
 16 collected or once it gets to the lab?
 17 Q. When it gets to the lab.
 18 A. When it gets to the lab, a screening
 19 procedure.
 20 Q. Okay. And is the screening procedure the
 21 process by which they -- we talked about earlier --
 22 they put the residual -- what's the stuff they pull
 23 out of the urine, it's called the --
 24 A. Hormones.
 25 Q. No. They run it through a centrifuge and

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1 they come up with the solid material that they use to
 2 test, right, the hormone that's in the sample?
 3 A. Right.
 4 Q. Okay. The first procedure is called the
 5 screening procedure, correct?
 6 A. Yes.
 7 Q. And they test it along with other samples?
 8 A. Yes.
 9 Q. And that's what this was, correct, the first
 10 procedure?
 11 A. I've got no way of knowing that.
 12 Q. Well, if they were going to declare a
 13 positive, they first have to do that initial screening
 14 test, correct?
 15 A. You're talking about now the sample that's
 16 collected for doping control purposes and analyzed
 17 there and then for the purposes of a doping control?
 18 Q. Yes.
 19 A. Yes.
 20 Q. And what can come out of the screening? Can
 21 they declare to the sample positive based on the
 22 screening?
 23 A. Could they? I suppose they could, but I
 24 don't know that they would. I think the
 25 recommendation now would be that you go back and

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1 you essentially take the suspect sample, for lack of a
 2 better word, and you run it through the test again.
 3 Q. Exactly. Let's look at page 11. Turn to
 4 page 11. Do you see where it says screening
 5 procedure, halfway down the page?
 6 A. Yes.
 7 Q. It says, screening procedure, an analytical
 8 test procedure whose purpose is to identify those
 9 samples which are suspicious with respect to
 10 containing prohibitive substance or metabolite or
 11 marker or prohibited method and which require
 12 additional confirmation testing.
 13 A. Yes.
 14 Q. Do you see that?
 15 A. Yes.
 16 Q. And so as far as you know, these samples were
 17 only tested once, correct, the ones from the '99 tour?
 18 A. Well, what you're looking at there that terms
 19 screening procedure, that's more relevant to when
 20 they're screening for steroids. You put a blanket
 21 approach in and that will tell you there's something
 22 there, and then you go in and look at it more
 23 carefully.
 24 So this has been -- you're taking that
 25 term and pasting it down onto a test where it's not

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1 really the same significance, but it may well be
 2 done.
 3 Q. Are you telling me it's your understanding
 4 with EPO testing, you don't have to both do an EPO
 5 screening and a confirmation test?
 6 A. I think they would, but I don't know if you
 7 have to. I think they would.
 8 Q. Well, we will get to that, then.
 9 Would you look at the top of page 11?
 10 A. Yes.
 11 Q. Presumptive analytical finding, the status of
 12 a sample test result for which there is an adverse
 13 screening test but a confirmation test has not been
 14 performed.
 15 A. Yes.
 16 Q. So this says all you have is a presumptive
 17 analytical finding after you've done the screening
 18 procedure, correct; that's the most you can have?
 19 A. Yes.
 20 Q. Correct?
 21 A. Well, it doesn't mention a screening
 22 procedure.
 23 Q. It says for which there is an adverse
 24 screening test.
 25 A. Yes. If there is an adverse screening test,

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1 yes.
2 Q. That's what you have.
3 And if you look back of what a
4 confirmation procedure is on page 10, it says the
5 confirmation procedure is the analytical test
6 procedure whose purpose is to identify the presence of
7 a specific prohibitive substance in a sample.
8 A. Yes.
9 Q. So is it your understanding that without a
10 confirmation procedure, you don't have a finding that
11 there's a prohibited substance in a sample?
12 A. If it's for the purpose of doping control
13 under the code, yes.
14 Q. Okay. Since you've raised the question about
15 whether EPO is required to have a confirmation test,
16 turn to the technical documents page -- right after
17 page 57.
18 ARBITRATOR FAULKNER: Before we go too
19 far on that, do you have an idea as to how much longer
20 you're going to be? I just note that it's 5:00, and
21 that's the only reason I'm inquiring.
22 MR. LEVINSTEIN: I'm not going to finish
23 with him today, so...
24 ARBITRATOR FAULKNER: We rather expected
25 that you wouldn't.

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1 ARBITRATOR CHERNICK: Let's finish up
2 this line and then we'll -- we'll adjourn for the day.
3 ARBITRATOR LYON: Well, this line of
4 questioning related to this document or --
5 MR. LEVINSTEIN: Yes.
6 ARBITRATOR LYON: How long will it take
7 you to do that?
8 I don't want to hurry you.
9 MR. LEVINSTEIN: You mean finish this
10 document?
11 ARBITRATOR FAULKNER: The document being
12 the annex.
13 ARBITRATOR CHERNICK: We have different
14 definitions floating around here.
15 MR. LEVINSTEIN: Ten minutes -- well, 15,
16 15 minutes.
17 ARBITRATOR FAULKNER: We are concerned
18 this may be 15 Herman minutes.
19 MR. LEVINSTEIN: No, no, no. I don't
20 know what that means, but --
21 MR. HERMAN: Well, it's not flattering, I
22 can tell you that.
23 ARBITRATOR FAULKNER: Okay. The Senator
24 asks that we come back tomorrow. Is this a good place
25 where we can break?

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1 MR. LEVINSTEIN: I would rather go
2 through this quickly.
3 ARBITRATOR FAULKNER: Okay. Go ahead.
4 MR. LEVINSTEIN: Trust me. Lawyers say
5 that, but...
6 Q. (BY MR. LEVINSTEIN) You see this WADA
7 technical document?
8 A. Yes, annex. It's page 57; is that --
9 Q. No. Right after the page 57 is the annex
10 with the list of technical documents.
11 A. Yes.
12 Q. Would you turn to the next page?
13 A. Okay.
14 Q. It says, WADA technical document TD 2004 EPO.
15 A. Yes.
16 Q. Do you see the -- under the heading, there is
17 the second paragraph, all laboratories are required to
18 apply these criteria in the routine performance of the
19 urine EPO test?
20 A. Uh-huh.
21 Q. Okay. And then it describes the method at
22 the bottom, and is says under the description of the
23 method, the EPO urinary test must be performed
24 according to the following method?
25 A. Uh-huh.

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1 Q. And then on next page under testing, page
2 2 --
3 A. Yep.
4 Q. -- it says, in compliance with the WADA
5 International Standard for Laboratories --
6 A. Uh-huh.
7 Q. -- clause 5.2.4.3.1.1, a presumptive adverse
8 analytical finding in the screening procedure should
9 be confirmed using a second aliquot taken from the
10 original A sample, correct?
11 A. I see that.
12 Q. So in other words, when you do the EPO test
13 after you've done the screening, you have to, if you
14 want to have a positive test, confirm it was a second
15 test, correct?
16 A. If I come back in my next life as a lawyer, I
17 would probably say, well, hang on a minute, it says it
18 should be confirmed, and say perhaps my legal
19 understanding is not up to scratch, but it doesn't say
20 must be; it says should be.
21 Q. Okay. Then why don't up turn to page 5.
22 What's a stability test?
23 A. Can I read through this?
24 Q. First, you're the expert on these results and
25 the testing, so what is a stability test?

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1 A. I'm not even allowed to read?
2 Q. No. Just separate from the document, what do
3 you understand a stability test is?
4 A. Are you talking about EPO test?
5 Q. Yes.
6 A. Am I at least allowed to know that?
7 Q. It is.
8 A. Stability test, there's been a concern that
9 there's a microbe that can essentially cause -- the
10 EPO tends to migrate, and so a stability test is
11 something that you do to make sure that the sample
12 you've got isn't prone to migrate or whatever.
13 Q. Isn't it the case that there have been
14 reported positives involving athletes in which the
15 positive tests have been thrown out because the
16 arbitration panels have determined that there were
17 false positives reported?
18 A. I think that's a fair comment, yes.
19 Q. Okay. And is there an issue that sometimes
20 in your urine of an athlete or whoever is being
21 tested, there may be a virus or an enzyme or something
22 else, we don't even know what, that interacts with the
23 glucoprotein or whatever the -- glycoprotein, whatever
24 the -- the hormone?
25 A. Introduced into the product, yes.

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1 Q. There's a virus or an enzyme or something in
2 your urine that interacts with the EPO and/or the
3 recombinant EPO and changes them in some way?
4 A. Well, the understanding is that it causes
5 them to migrate in a different way.
6 Q. In other words, it causes them to look on the
7 electropheragram like they're something they're not?
8 A. Yes. And that's why when they did this --
9 this research, they tested these samples to make sure
10 that wasn't the case. It's a valid concern.
11 Q. Where does it say they did a stability test
12 on any of those samples?
13 A. That's what they did.
14 Q. No. Did you not understand the stability
15 test is a whole separate test?
16 A. Yes. You take a drop of -- a drop -- I think
17 it's like 1 milliliter of urine, and you test it to
18 make sure that the urine doesn't cause the EPO to
19 migrate, and that's what they do, and that's what they
20 did here.
21 ARBITRATOR CHERNICK: Here pointing to
22 what?
23 THE WITNESS: The research results.
24 ARBITRATOR CHERNICK: Respondents'
25 Exhibit 44?

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1 THE WITNESS: Respondents' 44.
2 ARBITRATOR CHERNICK: Thank you.
3 ARBITRATOR FAULKNER: Thank you.
4 Q. (BY MR. LEVINSTEIN) Don't you understand
5 that the stability test involves taking some of the
6 urine, adding recombinant EPO to it and running an
7 entire separate test on that sample?
8 A. That's what I just said.
9 Q. Where does it say anywhere that they did that
10 test?
11 A. It doesn't say anywhere on here. That's one
12 of the things I checked in the lab, and they said
13 that's what they had done.
14 Now, if I had been given the protocol, if
15 there was a protocol that existed, somewhere they
16 would be able to say, yes, we have done that testing
17 but, no, it's not included on that sheet. It's a --
18 it's a -- what -- it's something that the laboratory
19 does, because this was a research project and they
20 take great care when they do research.
21 Q. They take great care, but they haven't even
22 indicated anywhere on this document whether the
23 stability test was run or not and whether it was
24 positive or negative?
25 A. That's why I'm telling you when I spoke to

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1 the lab, they told me, yes, you can be absolutely
2 confident in those results because ta-da, ta-da,
3 ta-da. And one of the things they did check was to
4 make sure that none of these samples that have been
5 declared positive were affected by this scenario.
6 Q. Are you aware that in order to do a stability
7 test, you have to generate an entire new
8 electropheragram?
9 A. Well, that sounds like a truism to me, so
10 I'll accept that.
11 Q. And there's nowhere here reported what the
12 results of that test were?
13 A. My understanding is that the sample either
14 does or doesn't cause the migration, so if a sample
15 caused the migration, then you would have concerns
16 about the results, but they've checked it and it
17 didn't, therefore, you don't need to produce those
18 results as well.
19 Q. If you look at this technical document, it's
20 dated October 15th, 2004 at the top.
21 A. I'm sorry, I'm looking at something else.
22 Which technical document?
23 Q. This one here. Go to page 1 or any page, the
24 top of page of this document. It says date,
25 October 15, 2004.

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1 A. I'm sorry. I was looking at the other
2 corner.
3 Q. And it's required for analyses performed
4 after January 15, 2005.
5 A. Oh, I see.
6 Q. Do you know if these samples were tested
7 before or after January 2005?
8 A. I've already answered you, I didn't know.
9 Q. Okay. Do you see on page 4, the last line of
10 the section called identification criteria?
11 A. The last line.
12 Q. Do you see it says, acceptance criteria and
13 then it says identification criteria?
14 A. Yes.
15 Q. And this last sentence of the first paragraph
16 under identification criteria says, therefore, the 80
17 percent basic bands criterion should no longer be
18 used. Do you see that?
19 A. I see that.
20 ARBITRATOR LYON: Where -- where are you?
21 ARBITRATOR FAULKNER: Right here.
22 MR. LEVINSTEIN: You've got acceptance
23 criteria and then identification criteria and so on.
24 ARBITRATOR FAULKNER: Oh, okay.
25 Q. (BY MR. LEVINSTEIN) Then you see the three

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1 lines that follow that, the following identification
2 criteria define the requisites that the image has to
3 fulfill to consider than an adverse analytical finding
4 corresponding to the presence of recombinant EPO or
5 NESP has occurred, and there are three requirements
6 under rEPO -- recombinant EPO?
7 A. Yes.
8 Q. Were those standards the ones applied in this
9 protocol?
10 A. I couldn't tell you.
11 Q. If you look at page 6 where it talks about
12 documentation and reporting, do you see technical
13 documents?
14 A. Yes.
15 Q. 6 of 6?
16 A. Yes.
17 Q. It says, the following information is
18 considered the minimum acceptable as screening and
19 confirmation test data in compliance with the WADA
20 International Standard for Laboratories technical
21 documents TD2003LDOC for this particular method, and
22 it has what screening assay data must be produced, and
23 then it has confirmation assay data that must be
24 produced.
25 A. Yes, I see that.

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1 Q. Have you seen that data with respect to any
2 of the samples addressed in this chart?
3 A. Have I seen it?
4 Q. Yes.
5 A. No.
6 Q. Does it exist?
7 A. I couldn't tell you.
8 MR. LEVINSTEIN: I'm done for today.
9 ARBITRATOR FAULKNER: All right. Thank
10 you very much.
11 Any housekeeping?
12 ARBITRATOR CHERNICK: 9:00 tomorrow?
13 ARBITRATOR FAULKNER: Any other
14 housekeeping matters before we recess for the day?
15 MR. BREEN: Well, we didn't figure out
16 who's up for tomorrow.
17 ARBITRATOR CHERNICK: All we have left is
18 Mr. Bandy and concluding this witness, right?
19 MR. TILLOTSON: Yes, and we are -- we are
20 considering whether we would, in fact, call Mr. Bandy
21 at this time.
22 ARBITRATOR CHERNICK: Okay.
23 MR. TILLOTSON: So we may not -- we may
24 not call Mr. Bandy, so if we finish with this witness,
25 we have a couple of deposition designations, but we

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1 plan on just submitting those to the panel.
2 MR. HERMAN: Will Mr. Bandy be available?
3 We will likely call -- we would to have him available
4 just for a short rebuttal.
5 MR. TILLOTSON: Do you seriously think
6 you need him on your rebuttal case?
7 MR. HERMAN: Yes. I mean, I --
8 MR. BREEN: What about Ms. O'Reilly?
9 ARBITRATOR FAULKNER: What's the status
10 on that?
11 MR. BREEN: The subpoena was supposed to
12 be for tomorrow.
13 MR. TILLOTSON: It was sent to the
14 lawyer, and I don't know if he's gotten this report
15 here.
16 MR. TOWNS: It's not issued.
17 ARBITRATOR FAULKNER: It's not issued?
18 MR. BREEN: So that means it's not issued
19 for me either, I guess.
20 ARBITRATOR LYON: What's the word? I
21 mean, is she going to testify or not?
22 MR. TOWNS: She says that she's not going
23 to volunteer to testify, so unless the British court
24 issues an order and she's unsuccessful in quashing it,
25 which she has a week to do, then theoretically we can

1 require her, but that's a lot of ifs.
 2 ARBITRATOR LYON: On a scale of 1 to 10,
 3 odds aren't very good that she's going to be here.
 4 MR. TILLOTSON: She's not going to be
 5 here tomorrow or likely Monday. We talked originally
 6 today at lunch and he'd been unsuccessful in getting a
 7 court yet to issue a subpoena. Once that's issued, I
 8 think she'll show up. It's just getting the court to
 9 issue the subpoena.
 10 ARBITRATOR FAULKNER: Okay. So I do hear
 11 that you mean that we may need to make -- anticipate
 12 hearing from Ms. O'Reilly on some other date?
 13 MR. TILLOTSON: Yes, Your Honor. We will
 14 contact our British lawyer early in the morning.
 15 ARBITRATOR FAULKNER: Six-hour time
 16 differential, they'll be way ahead us, so we will find
 17 out tomorrow sometime.
 18 All right. Thank you much, gentlemen,
 19 madam.
 20 (Proceedings recessed at 5:15 p.m.)
 21
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 23
 24
 25

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
 13
 14
 15

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