

			Page 2747	Page 2749
1	IN THE MATTER OF AN ARBITRATION	BETWEEN		
2	LANCE ARMSTRONG and	§		
3	TAILWIND SPORTS, INC.	§		
4	§			
5	Claimants,	§ ARBITRATION BEFORE THE		
6		§ HONORABLE RICHARD		
7	VS.	§ FAULKNER, RICHARD		
8		§ CHERNICK AND TED LYON		
9	SCA PROMOTIONS, INC. and	§		
10	HAMMAN INSURANCE SERVICES, §			
11	INC.	§		
12		§		
13	Respondents.	§		
14				
15	ARBITRATION			
16	TRANSCRIPT OF PROCEEDINGS			
17	JANUARY 20TH, 2006			
18	VOLUME 13			
19	CONFIDENTIAL			
20				
21	On 13th day of January, 2006, at 9:10			
22	a.m., the arbitration in the above proceedings came on			
23	before Arbitrators Richard Faulkner, Richard Chernick			
24	and Ted Lyon, at the offices of Richard Faulkner,			
25	12655 North Central Expressway, Suite 810, in the City			
	of Dallas, County of Dallas, State of Texas.			
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1	ALSO PRESENT:			
2	Ms. Mariela Evora			
3	Mr. Chris Compton			
4	Mr. John Bandy			
5	Mr. Robert Hamman			
6	Mr. Michael Ashenden			
7	Ms. Lynn G. Bone			
8	Ms. Marianne Ross			
9	Mr. Bill Stapleton			
10	Mr. Lawrence Temple			
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<p style="text-align: center;">PROCEEDINGS</p> <p>ARBITRATOR FAULKNER: Doctor, you're still under oath from earlier so let's go ahead and resume cross examination.</p> <p>MR. LEVINSTEIN: Thank you.</p> <p>CROSS EXAMINATION</p> <p>BY MR. LEVINSTEIN:</p> <p>Q. Good morning.</p> <p>A. Good morning.</p> <p>Q. I don't know what day it is anymore, so... you testified previously that in April, when you were contacted by SCA Promotions, April of 2005, you had not yet formed an opinion about whether Lance Armstrong had used performance enhancing drugs; is that correct?</p> <p>A. No, I think I said that I hadn't been satisfied with any of the explanations that I had heard and so I would put myself in the camp of the doubters.</p> <p>Q. And by August of 2005, though, before you had ever seen the l'Equipe article or heard about any testing of 1999 Tour de France samples, you had formed an opinion, correct?</p> <p>A. Before August 2005? I guess I would say that it was becoming -- it was becoming clearer to me in</p>	<p style="text-align: right;">Page 2751</p> <p>1 actually with line 20. Had you formed an opinion at 2 that point on that subject on what -- on whether Lance 3 Armstrong had used performance enhancing drugs. 4 Yes, I had formed an opinion on that 5 topic.</p> <p>6 Before the l'Equipe article? 7 Yes 8 And what was that opinion? 9 That he had used drugs at some point. 10 Do you recall that testimony? 11 A. I recall the testimony, yes. 12 Q. And is that accurate testimony? 13 A. Yes, I mean, I haven't qualified what an 14 opinion was, but, yes. 15 Q. Okay. And part of that opinion was based on 16 conversations with people? 17 A. Yes. 18 Q. And what were those conversations? 19 A. Things like people who had witnessed 20 Armstrong getting to the top of a mountain stage and 21 essentially looking like he had really just been for a 22 walk in the park. People who had been experienced in 23 the sport over a number of years saying, look what I'm 24 seeing now, I find it hard to comprehend how it could 25 happen, that sort of thing.</p>
<p style="text-align: center;">Page 2752</p> <p>1 exchanging some information with SCA and sort of 2 the -- the things that started to become apparent. I 3 mean, the LA Confidential book, things started to 4 become more crystallized in my mind.</p> <p>5 Q. Well, before you received the l'Equipe 6 article, had you formed an opinion at that point on 7 whether Lance Armstrong had used performance enhancing 8 drugs?</p> <p>9 A. Well, I certainly had an opinion, but how 10 clear that was in my mind, I wouldn't be able to 11 recollect. It's -- it's been something that's become 12 more apparent over time. I couldn't say to give an 13 exact distinction.</p> <p>14 MR. LEVINSTEIN: Could you put up 15 Dr. Ashenden's testimony, please. Page 130, please.</p> <p>16 ARBITRATOR CHERNICK: I missed the -- the 17 date of the deposition was sometime in December?</p> <p>18 MR. LEVINSTEIN: December 22 in 19 Washington; I think it was the 23rd in Australia where 20 he was sitting.</p> <p>21 THE WITNESS: Page?</p> <p>22 MR. LEVINSTEIN: Page 130 at the bottom 23 of the page if we could, line 20.</p> <p>24 THE WITNESS: Okay.</p> <p>25 Q. (BY MR. LEVINSTEIN) Why don't we start with</p>	<p style="text-align: right;">Page 2754</p> <p>1 Q. And were these coaches? 2 A. Coaches, sports scientists, you know, those 3 sort of people. I mean, there's been that many 4 comments over that long a period that I wouldn't like 5 to try and classify who said what when, but that's the 6 impression that I formed over a number of years. 7 Q. So were a lot of those conversations even 8 before April 2005? 9 A. Yes. 10 Q. And were some of those conversations with 11 athletes? 12 A. Quite possibly they could have been. 13 Q. And do you have any recollection of any of 14 the specific people that you talked to? 15 A. Do I have any recollection of any of the 16 specific people? Yes. 17 Q. At your deposition you couldn't recall any 18 names at all? 19 A. You're asking if I have any recollection. 20 Yeah, I have some recollection, but as far as names 21 and this go, I explained to you in my deposition there 22 were some people who had spoken to me and said, I 23 don't want to be named. There are other people who 24 would have been a casual conversation who would work 25 in different sports for many years. So, yes, there's</p>

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<p style="text-align: right;">Page 2755</p> <p>1 a recollection, but it's not specific to the point 2 where I wrote down on day X person Y said Z. 3 Q. And because these were people who were 4 experienced in cycling, you just took their opinions 5 as fact? 6 A. Not just cycling. I mean, people who are 7 associated with endurance sports. There's -- there's 8 signs, for example -- I'll just use an example to try 9 and illustrate. A coach who's experienced for years 10 and years what it takes to get an athlete to a certain 11 level of performance knows what that athlete has to 12 do, and knows the sort of things that you expect to 13 see early in their career and a gradual -- I emphasize 14 a gradual improvement over time. A coach's eye is 15 trained to recognize expected progress and expected 16 performances, and when a trained eye says to me, you 17 know, I really can't understand what's going on here, 18 there's no explanation of it, I take that on-board, so 19 that's the nature of those conversations. 20 Q. So you consider yourself a sports scientist? 21 A. Yes. 22 Q. So is it fair to say that a lot of what you 23 do as a sports scientist is you listen to a coach, you 24 rely on his wisdom, and you give up trying to quantify 25 it?</p>	<p style="text-align: right;">Page 2757</p> <p>1 A. Okay, yes. 2 Q. Okay. So what you're saying is you talked to 3 these people, they expressed their opinion that he 4 couldn't do this unless he was using performance 5 enhancing drug, or it didn't make sense and you 6 decided they were right? 7 A. No, I took on board what they said. 8 Q. Okay. But you testified yesterday that when 9 coaches told you that their athletes wanted to use 10 hypoxic tents because it improved performance, you let 11 them do it, but you didn't credit at all their view? 12 A. Yes, that's what I was saying. There's a 13 point where you have to give some leeway to the other 14 person. Now, we took a stance at the Institute of 15 Sport that within reason we would allow the coach to 16 use the house when at times we didn't think it was 17 appropriate, but there was a to and a fro. And other 18 times I think it's fair to say that we said to the 19 coach, no, that is just not going to be appropriate. 20 For example, I remember we had -- I was 21 responsible for the Australian volleyball team, both 22 the men and the womens, and their coach was not 23 experienced with sports science at all, and he 24 realized that part of my research had been with the 25 altitude house and so he said, hey, I want to put our</p>
<p style="text-align: right;">Page 2756</p> <p>1 A. No, I wouldn't say a lot. Part of what you 2 take on-board is that. 3 Q. Okay. 4 A. I should say that it's a -- it is a point 5 of -- it's a point of -- that interface between the 6 coach and the scientist. Often you'll find a coach 7 who thinks they're a scientist and they know better 8 and you find a scientist who thinks they're a coach 9 and that they know better. So often there's a 10 chemistry that just doesn't work, because you have to 11 be able to meet at some point and say, look, you're 12 the coach, I'm going to take that on-board, and 13 they've got to say, well, we're scientists, I'm going 14 to take that on-board. Sometimes that doesn't happen, 15 sometimes it does. 16 Q. Would you go to the top of page 134? 17 Actually the bottom of 133 and 134. 18 Well, was part of what these people 19 talked to you about was Lance's approach to racing the 20 Tour de France and the way that he attacked the 21 mountain stages? 22 A. Yes, that was the -- I mean, the -- I keep 23 getting in trouble with my pronunciation. I said 24 gist-- that's the gist of it. 25 Q. That's the gist of it?</p>	<p style="text-align: right;">Page 2758</p> <p>1 guys in the altitude house. Well, there's no way 2 going to altitude is going to help a volleyballer's 3 performance and so at that point I said to him, no. 4 You're not going to use the house. There's no tenable 5 reason why you should blah, blah. 6 Now, he didn't particularly like it. I 7 think he wanted this idea of my athletes are doing 8 everything they possibly can to prepare, but at that 9 point it was -- it wasn't even close to being tenable, 10 so you draw a line. 11 Q. But a lot of the people you talked to were 12 people who were involved in the Tour de France? 13 A. No, I wouldn't say a lot of the people, no. 14 Q. Let me change subjects, then. With respect 15 to Dr. Coyle's article -- 16 A. Yes. 17 Q. -- you called his research assistants to get 18 information from them? 19 A. No, that's not strictly accurate. Directly 20 or indirectly contact was made with students, past 21 students. 22 Q. By whom? 23 A. In some cases, by me; in other cases, by 24 other people who knew them. 25 ARBITRATOR CHERNICK: Could we pause for</p>

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<p style="text-align: right;">Page 2759</p> <p>1 a moment, please, off the record. 2 (Recess 9:21 a.m. to 9:22 a.m.) 3 ARBITRATOR CHERNICK: What the panel is 4 talking about is the area Mr. Levinstein is going to 5 go into was the subject of a Motion in Limine, and in 6 response to that motion Mr. Tillotson said he would 7 not present evidence on that subject because of the 8 witness's unwillingness to identify specific people 9 and it seems to me at least -- I'm not speaking for 10 the panel, but if you're going to go into that area, 11 you are going to open it up and -- 12 MR. LEVINSTEIN: I wasn't aware of that. 13 ARBITRATOR FAULKNER: You might want to 14 chat with your co-counsel and get an outline on that. 15 MR. LEVINSTEIN: That's fine. I didn't 16 know that. 17 Q. (BY MR. LEVINSTEIN) Then back to these -- do 18 you recall that during your -- 19 MS. BLUE: Wait. 20 MR. LEVINSTEIN: No, no, no, go ahead. 21 ARBITRATOR LYON: I was just going to 22 tell you to admonish your co-counsel there to be a 23 little more alert. 24 MR. LEVINSTEIN: I've learned better than 25 to admonish Mr. Herman. That's not a good approach.</p>	<p style="text-align: right;">Page 2761</p> <p>1 It says, it's not from cyclists who were 2 in races against him. 3 No, it's not. Well, see I don't know 4 which races he competed against cyclists, but I 5 have -- I've spoken with cyclists who have expressed 6 that same opinion. Whether they've competed in a race 7 against him or not, I wouldn't like to say. 8 Do you have in mind specific people or 9 you just can't remember. 10 See, this is a problem I'm running into, 11 part of my work is to find out what athletes are 12 doing. Now, to do that, I can't place a billboard on 13 the side of the road and say, leave your name and 14 number, I'll call you. I need to speak to people, 15 obtain their confidence, and to do that, they need to 16 know that I'm not later on down the track going to 17 name them. Well, if you say, if you can't name the 18 person, I can't use that evidence, sobeit. But if 19 you're asking me how I formed my opinion, I'm telling 20 you. Now, if you're asking for names, I have to say, 21 well, I can't give you those names. 22 And then I asked: Well, you told me 23 before you don't remember the names, but that's not 24 true. If you know the names but you won't tell me, 25 that's okay, but I want a truthful answer. You said</p>
<p style="text-align: right;">Page 2760</p> <p>1 ARBITRATOR CHERNICK: That's what 2 Mr. Breen is here for; that's Breen's role. 3 MR. HERMAN: That would make it 100 4 percent. I've been admonished by everyone in the room 5 now. 6 ARBITRATOR FAULKNER: Please proceed. 7 Q. (BY MR. LEVINSTEIN) Do you recall that 8 during your deposition I asked you if you would 9 identify the people involved in sports science and 10 coaches and athletes who had told you that Lance 11 Armstrong couldn't have done what he achieved in the 12 Tour de France without using performance enhancing 13 drugs? 14 A. I've got some recollection of it. 15 Whereabouts -- whereabouts is that? 16 Q. Let's see. Why don't you go the page 136, 17 please. 18 A. Yes. 19 Q. Actually maybe it starts before that. I'm -- 20 could we go back to the bottom of 134, I apologize, 21 line 20. It says, so it's not from cyclists who were 22 in races against him. 23 Answer: No, it's not. 24 There is line 22 on page 134, I 25 apologize.</p>	<p style="text-align: right;">Page 2762</p> <p>1 you couldn't remember any of them. Now all of a 2 sudden you know who they are and you don't want to 3 tell me who they are, so which is it? 4 I've spoken to people over years and 5 years and years. Now I can't remember all of their 6 names. 7 But you can remember some of their names 8 and they're people upon whom you've placed great 9 reliance because they're involved in high level 10 cycling, correct? 11 No, not any one single person. I base it 12 on what a whole lot of people will say. 13 Then tell me the people you remember. 14 How do I know you haven't just made up that these 15 people have said this. 16 Then there was some discussion, and then 17 I asked: Who have you talked to that you base this 18 idea that his behavior is inconsistent with someone 19 who is a fair competitor. 20 Numerous people. 21 Do you remember their names, any of them? 22 I remember some names. 23 And you won't tell me who they are? 24 For the reasons I've just explained. 25 Okay. So you refuse to give me the names</p>

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

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

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

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

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1 line 12, sorry. It says, okay, has there been
 2 correspondence between you and SCA other than the
 3 retainer letter?

4 Yes.

5 And your sending your bills? What else
 6 besides the retainer letter and your sending them your
 7 bills?

8 Answer: What other correspondence have
 9 we had?

10 Question: Yes.

11 Answer: Well, I've endeavored to brief
 12 them from time to time on what I've been doing and the
 13 areas I've been working on. They've communicated to
 14 me various times how things are looking. And
 15 generally I've just tried to explain where I'm going
 16 and what I'm trying to do, but it's mostly -- it's all
 17 sort of generated information. I kept everything --
 18 you know, the format that eventually I realized that I
 19 would be sending to SCA, for example, but it's never
 20 got to that point up until now.

21 But you sent them progress reports and
 22 analyses along the way.

23 Well, I wouldn't call them reports or
 24 analyses. They're in the form of e-mails.

25 Okay, but you still have those documents?

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1 that -- I don't know what the words were -- would form
 2 the basis -- help me form the basis of my opinion on
 3 this matter.

4 Now, an e-mail from me to Chris saying
 5 can you call me at da-da, da-da, da-da didn't help me
 6 form an opinion, so I didn't think that that sort of
 7 material was required to be requested, so these
 8 e-mails as I -- I tried to convey to you in the
 9 deposition were mostly of a general sort of nature.

10 It wasn't as if I sat down and put together a 3,000
 11 word e-mail and sent that off. So I think that might
 12 be the reason why these -- there's this confusion.

13 Q. (BY MR. LEVINSTEIN) I'll be quick with this,
 14 but let me show you what's been marked as Claimants'
 15 Exhibit 146 and let me represent that it's a notice of
 16 intent to take your deposition and with it is a
 17 request for production of documents.

18 Did you ever see this before today?

19 A. No.

20 Q. No one ever gave this to you?

21 A. No, I have not seen this before today.

22 Q. Okay. Just for the record, if you would turn
 23 to page 3, it requests any and all -- request 2, any
 24 and all documents in your custody or control
 25 concerning this lawsuit. Request 3, any and all of

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1 I imagine I would, yes.

2 And you have their responses to those
 3 documents?

4 I should have, yes.

5 And we asked that they be produced and
 6 Mr. Tillotson acknowledged the request.

7 Have you produced those documents?

8 A. I haven't produced anything to you. I've
 9 left that in the hands of the lawyers, so they would
 10 be able to answer that question.

11 MR. LEVINSTEIN: For the record, we have
 12 never received any documents supplemental since his
 13 deposition.

14 MR. TOWNS: Well, for the record, that's
 15 not true. I delivered a whole packet of information
 16 when we retendered Mr. Ashenden on the 6th, I believe
 17 it was.

18 MR. BREEN: No e-mails or progress
 19 reports.

20 MR. TOWNS: That wasn't the statement.

21 MR. LEVINSTEIN: I received no
 22 communications between Dr. Ashenden and SCA
 23 Promotions.

24 THE WITNESS: I think that my
 25 understanding of what I needed to produce was anything

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1 your records, e-mails, personal notes, calendars,
 2 diaries, phone logs and any other type of document
 3 concerning any fact or opinion in relation to this
 4 lawsuit. Page 4, item 11, all correspondence with any
 5 person concerning this lawsuit. The beginning and end
 6 of request 12 is any and all documents...it goes on to
 7 reflecting or documenting any correspondence,
 8 communication or contact between you and any person
 9 concerning this lawsuit. Page 5, item 26, please
 10 produce all notes, records, e-mails, correspondence
 11 and/or recordings that relate to any contact you've
 12 had with any person from or affiliated with SCA
 13 Promotions, Inc., including but not limited to Robert
 14 Hamman, John Bandy and/or Chris Compton. Okay.

15 And for the record request 30.a, please
 16 produce all documents that discuss or relate problems
 17 with or disagreements about the laboratory
 18 methodologies or any IOC approved or WADA approved
 19 laboratory. So that's just for the record that's
 20 what's contained in the deposition notice.

21 A. Okay. Was this sent to me?

22 Q. Absolutely.

23 A. Where was it sent to?

24 Q. To the counsel tendering you as an expert
 25 witness.

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<p style="text-align: right;">Page 2771</p> <p>1 A. So you're not suggesting it was sent to me. 2 Q. I don't know. We are not generally supposed 3 to communicate directly with you. 4 A. I thought you were inferring that you had 5 sent this to me. 6 Q. I don't have any firsthand knowledge on that 7 subject. 8 Can we go back to the international 9 standard for laboratories document? 10 A. Yes. 11 Q. And I won't spend too much time on this, but 12 I just want to continue where we sort of had left off, 13 which was on page 17 in the middle of the page there's 14 a discussion about handling of samples, section 5.2.2, 15 and it says, the laboratory shall add laboratory 16 internal chain of custody procedures to maintain 17 control of an accountability for samples and receipts 18 for final disposition of the samples. The procedures 19 must incorporate the concepts presented in the WADA 20 technical document for laboratory internal chain of 21 custody (Annex C). 22 Are you aware that there are internal 23 chain of custody requirements in the WADA code? 24 A. I can see where you just read out, yes. 25 Q. And with respect to the chart, let's read the</p>	<p style="text-align: right;">Page 2773</p> <p>1 A. Yes, I'm not an expert on laboratory 2 standards, but, yes, I have a general understanding, 3 yeah. 4 Q. And what's the purpose of it? 5 A. Essentially you've got a situation where a 6 blind sample that's identified with only a number 7 comes into a laboratory and they analyze that sample 8 and then they send the results back to the Federation 9 or the governing body, whoever requested it. 10 Now, there needs to be some way to track 11 what that number corresponds to and so the internal 12 chain of custody is primarily to make sure that they 13 don't bring a sample in, not realize who it is and 14 essentially lose the results. It's to make sure that 15 they -- they essentially don't attribute one sample to 16 someone else. 17 Q. Well, how many -- how long does it take to do 18 an EPO test on a single urine sample? 19 A. Well, it depends on how many people are doing 20 it, 24, 72 hours, thereabouts, in that window. 21 Q. Aren't you aware that it's impossible to do 22 an EPO test under the protocol in 24 hours? 23 A. Now you're talking -- to analyze a sample for 24 EPO? 25 Q. Yes.</p>
<p style="text-align: right;">Page 2772</p> <p>1 four-page document that came from the French 2 laboratory that summarizes the results concerning the 3 1999 Tour de France. You know, the document, the 4 document about the '99 samples. 5 A. The document. 6 Q. I'm sorry, Respondents' 44, the l'Equipe -- 7 I'm sorry, the diaphragm that was in the l'Equipe 8 article. 9 A. Yes. 10 Q. The one we looked at with all the samples. 11 A. I've got 44 here. I can see what you're 12 talking about. 13 Q. In that document it's talking about the 14 results of a research study; it presents the result. 15 A. Yes. 16 Q. Did the laboratory maintain internal chain of 17 custody on all the urine samples involved in that 18 study? 19 A. I don't know. 20 Q. I won't belabor it, but if you turn to 21 page 18, there's more discussion about the fact that 22 how important chain of custody is, if you'll look at 23 section 5.2.3, again, about the laboratory maintaining 24 internal chain of custody procedures. Do you 25 understand why internal chain of custody is important?</p>	<p style="text-align: right;">Page 2774</p> <p>1 A. How much EPO is in it, it could take 24 2 hours, but to do the complete protocol would take 72 3 hours; that's what I said. 4 Q. So to do an EPO test, meaning the EPO test, 5 to test whether there's EPO in your urine takes three 6 days? 7 A. It could. 8 Q. Can it be done in less time? 9 A. I think it can, yes. 10 Q. You're not aware that given the steps and how 11 long it takes that it requires three full days to do 12 the EPO test? 13 A. I said it could. 14 Q. How many different procedures take place in 15 three days in an EPO test? 16 A. I couldn't tell you that. 17 Q. Is it a whole lot of steps? 18 A. How many is a whole lot? 19 Q. Well, do you first have to do a whole bunch 20 of steps in order to get -- 21 A. Can you be a little bit more precise? It's a 22 very time consuming procedure, okay. It's very 23 complicated to the point where even a laboratory who 24 are trained in the method sometimes get it wrong. 25 It's not something that I can convey to this panel</p>

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1 very easily. I mean, if this is a memory test, okay,
 2 I flunk. If you put the methodology in front of me, I
 3 could explain it to you.

4 Q. And you saw the testimony -- I'm sorry. You
 5 saw the pages from l'Equipe where with Mr. Audran,
 6 sorry, Dr. Audran just -- whatever title you like.

7 A. Professor Audran.

8 Q. I don't know him, so I'm sorry. Professor
 9 Audran discusses how labs can mess up the EPO test?

10 A. Yes.

11 Q. And do you understand it's really important
 12 when you have lots of samples moving around the
 13 laboratory that they not get contaminated or -- things
 14 in one sample not end up in another sample?

15 A. Well, I think that's a truism, yes, of
 16 course.

17 Q. And it's important in EPO tests that after
 18 you do certain steps, things have to be put in the
 19 refrigerator and other steps have to be performed at
 20 specific temperature?

21 A. Yes.

22 Q. And do you understand that the whole internal
 23 chain of custody is an important safeguard to protect
 24 the athlete who's going to be accused of doing
 25 something wrong?

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1 A. It's certainly a safeguard, sure.

2 Q. Would you look at page 19 at the bottom,
 3 please?

4 A. Okay.

5 Q. It talks about urine confirmation testing. I
 6 think we established yesterday that the tests we are
 7 referring to that are summarized in the l'Equipe
 8 document is simply a screening test, correct?

9 A. No, I don't think we established that at all.

10 Q. Well, was it your understanding that multiple
 11 samples were all tested on the same gel?

12 A. No. That's not what I said.

13 Q. You don't know whether they were or were not,
 14 correct?

15 A. That's right.

16 Q. But the serie number in the left column
 17 suggests perhaps that, for example, the first four --

18 MR. LEVINSTEIN: Can we pull up that
 19 document, please?

20 ARBITRATOR CHERNICK: 144?

21 MR. LEVINSTEIN: 44.

22 ARBITRATOR CHERNICK: Excuse me, 44.

23 Q. (BY MR. LEVINSTEIN) If we could look at the
 24 top, you see 0507 and there are four samples?

25 A. Yes, I see what you've highlighted, yes.

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1 MR. LEVINSTEIN: She highlighted, but,

2 yes.

3 Q. (BY MR. LEVINSTEIN) Doesn't that suggest to
 4 you that those four samples are on all on the same
 5 gel?

6 A. You asked me that yesterday. That's your
 7 assertion. I said I have never really understood what
 8 that column means, so I can't tell you yes or no.

9 Q. So you can't even tell me whether each those
 10 samples was on its own gel or was on a gel with
 11 multiple samples?

12 A. As I've already explained, I can't.

13 Q. And you can't tell me if there were other
 14 additional samples beyond those four on a gel with
 15 them?

16 A. No, I can't.

17 Q. But you do tell us that in your experience
 18 there's often multiple samples on a single gel?

19 A. Yes.

20 Q. Would it be reasonable that in testing these
 21 91 samples, every one of these tests was a whole test
 22 run on an entire gel for each one of those samples?

23 A. I don't know. I haven't seen the protocol.

24 Q. Well, let's look at the bottom of page 19.

25 It's discussing confirmation -- it's discussing

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1 confirmation procedures.

2 A. Yeah.

3 Q. And the idea is after a screening test if you
 4 have a suspicion that a sample might be positive, you
 5 need to do a confirmation procedure?

6 A. Yeah.

7 Q. Okay. And it says, all confirmation
 8 procedures must be documented and meet applicable
 9 uncertainty requirements. The objective of
 10 confirmation procedure is to ensure the identification
 11 and/or quantification and to exclude any technical
 12 deficiency in the screening procedure. Since the
 13 objective of the confirmation assay is to accumulate
 14 additional information regarding adverse findings a
 15 confirmation procedure should have greater
 16 selectivity/discrimination than a screening procedure.
 17 Do you see that?

18 A. Yes.

19 Q. Okay. Do you understand that in the
 20 confirmation procedure you're required to have the
 21 subject sample and control samples and nothing else on
 22 the gel?

23 A. In order to impose a doping sanction under
 24 the A and B analysis, yes, that's correct.

25 Q. In order to be sure that it has EPO to a

<p style="text-align: right;">Page 2779</p> <p>1 level of satisfaction that you can represent to a 2 tribunal that you could draw a conclusion that a 3 person used performance enhancing drugs? 4 A. No, I don't accept that. 5 Q. Okay. 6 A. I can elaborate if you like, but, no, that's 7 not -- I don't accept that. 8 Q. So then why are they doing this careful 9 confirmation procedure? 10 A. Because that is what is set out in the code. 11 To impose the sanction on an A and a B sample, that's 12 what they do, but now you're asking me a different 13 question, well, that means in order to be comfortable, 14 they have to do it, and that's what I'm saying, no, 15 that's not -- 16 Q. Doesn't the WADA code say, if there's any 17 departure from these standards, the burden shifts to 18 the lab to prove the test is right? 19 A. That's what the code says, yes. 20 Q. Would you look at page 21? First, you 21 testified that it was your -- it's going to be a 22 reference to page 21. 23 You testified, I believe, that you think 24 that an A sample being confirmed is enough to say that 25 an athlete used performance enhancing drugs, correct?</p>	<p style="text-align: right;">Page 2781</p> <p>1 Q. Do you understand that was in the past and 2 long before the issuance of this -- these new rules? 3 A. No. I mean, the last case I'm aware of was 4 in probably December 2005. 5 Q. Are you talking about Tim Montgomery? 6 A. No. 7 Q. Okay. What case are you referring to in 8 which an athlete was sanctioned by a tribunal based 9 only on an A test? 10 A. His name is -- oh, it's an Australian kayaker 11 who was disqualified for -- it was some type of a 12 steroid, December of 2005. CAS heard the case last 13 year. 14 ARBITRATOR LYON: Are you talking about a 15 kayak, like paddling or is that something else? 16 MR. TILLOTSON: The sport? 17 THE WITNESS: Yes, yes. 18 Q. (BY MR. LEVINSTEIN) Are you saying it was 19 CAS panel that said even though the B didn't confirm 20 the A, that he was still going to be sanctioned? 21 A. No. He was found guilty only on his A 22 result. 23 Q. And he challenged that; did the B not confirm 24 the A? 25 A. No, he chose not to even look at the B</p>
<p style="text-align: right;">Page 2780</p> <p>1 A. I think you will find -- in fact, I'm 2 certain, because I know in the past athletes have been 3 sanctioned only on their A sample. 4 Q. Well, are you familiar with the Tyler 5 Hamilton case at the Olympics? 6 A. Oh, yeah. Yeah, I remember that. 7 Q. And do you recall that there was no B sample 8 to test and, therefore, they had to throw out the 9 results? 10 A. I'm familiar with that, yes. 11 Q. And -- 12 A. It caused me some anguish. 13 Q. Well, if you'll look at the bottom of page 14 21, are you aware that the current rule -- the bottom 15 of the page -- if the B sample confirmation does not 16 provide analytical findings that confirm the A sample 17 result, the sample shall be considered negative. Do 18 you see that? 19 A. I see that. 20 Q. Were you not aware that the current rules are 21 without a B, it's absolute there can be no positive 22 finding? 23 A. No, because I just explained to you, there 24 have been cases where athletes have been imposed a 25 sanction based only on the A results.</p>	<p style="text-align: right;">Page 2782</p> <p>1 sample. 2 Q. In other words, he waived his right to have 3 the B sample tested? 4 A. Yes. 5 Q. Do you know of any case in which the athlete 6 required the B to be tested, and he has a right to be 7 there, and the B did not confirm the A? 8 A. Yes. 9 Q. And they still sanctioned the athlete? 10 A. Okay. Under that strict scenario, no, none 11 that I'm aware of. 12 Q. That's not allowed under the code, and it has 13 never been allowed under the code. 14 A. I don't think it's been tested yet. 15 Q. But the code says that they won't even bring 16 a case because the answer is it's negative if that 17 happens. 18 A. Well, the code is the code, and what I see -- 19 what I say here today is not going to change that, but 20 what I'm saying is that it's up to the panel to 21 interpret the code and the code says really any 22 reliable evidence can be used to impose a sanction. 23 Now, if the panel is satisfied that, say, 24 these results are reliable, they can be used to impose 25 a sanction; that is what the code says.</p>

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

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<p style="text-align: right;">Page 2787</p> <p>1 belabor it, but you have no idea if there's any 2 documents showing the steps of testing and which staff 3 member did it, correct? 4 A. That's correct. 5 Q. If you'll look at page 24, please. The 6 middle of the page, it says, athlete confidentiality 7 is a key concern for all laboratories engaged in 8 doping control cases. Confidentiality requires extra 9 safeguards given the sensitive nature of these tests. 10 Are you aware that that's a requirement? 11 A. A requirement to comply with the standard for 12 labs under the WADA code since they sanction under A 13 and B, yes, I am. 14 Q. Are you aware that that athlete 15 confidentiality requirement applies to anyone dealing 16 with doping control samples that come from athletes? 17 A. I wasn't aware of that, no. 18 Q. Well, if an athlete gives a doping control 19 sample and you take it and use it for research, do you 20 think that because you used it to do research, you're 21 now allowed to publicize who the athlete was and what 22 you found in his urine? 23 A. Oh, is the lab allowed to? 24 Q. Yes. 25 A. No, they're not.</p>	<p style="text-align: right;">Page 2789</p> <p>1 A. Yes. 2 Q. Just as a lead-in, if you'll go all the way 3 to page 46, it says at the bottom, 7.1, in support of 4 any adverse analytical finding, the laboratory is 5 required to provide the laboratory documentation 6 package described in detail in the technical documents 7 in laboratory documentation packages. Do you see 8 that? 9 A. Yes. 10 Q. And you haven't received any laboratory 11 documentation package concerning any of those 91 12 samples, correct? 13 A. Have I received anything? No. 14 Q. Do you see page 54, please, the laboratory 15 code of ethics? 16 A. Yes. 17 Q. Are you aware that there have been quotes 18 from the lab director about this project in the media? 19 A. In the meeting? 20 Q. Media. 21 A. Oh. My -- my impression is that he's chosen 22 not to make public comments, though he may have, but I 23 can't recollect seeing them. 24 Q. You weren't aware that there are articles in 25 which he is quoted as saying that our work was 100</p>
<p style="text-align: right;">Page 2788</p> <p>1 Q. Do you think this confidentiality requirement 2 applies with anything they do with those urine samples 3 that were taken during competition? 4 A. I think that you would find that there would 5 be a -- a slightly different scenario. My 6 understanding is that the lab communicated the results 7 to WADA, and I think that that would have a -- that 8 would not be seen to be publicizing the results. I 9 mean, an exchange of information between WADA and one 10 of their laboratories, I think, would probably be 11 an -- it would sit outside of what this is trying to 12 get to. But, again, I'm not an expert on lab 13 standards. That's my opinion. 14 Q. What about giving the report to l'Equipe; 15 would that be different? 16 A. Giving that report to l'Equipe? 17 Q. Yes. 18 A. I don't think a laboratory would do that. 19 Q. And just to emphasize how important 20 confidentiality is, if you'll look at the bottom of 21 page 24, it even says, unencrypted e-mail is not 22 authorized for any reporting or discussion of adverse 23 analytical findings if the athlete could be identified 24 or if any information regarding the identity of the 25 athletes is included. Do you see that?</p>	<p style="text-align: right;">Page 2790</p> <p>1 percent correct and everything we do is right? 2 A. Actually now you jog my memory. I've got a 3 recollection of that, but I'm not clear when or where 4 that was. 5 Q. If you'll look at the top of page 54, this 6 laboratory code of ethics, you see where it says, 7 heads of laboratories, their delegates and laboratory 8 staff shall not discuss or comment to the media on 9 individual results prior to the completion of any 10 adjudication without consent of the organization that 11 supplied the sample to the laboratory and the 12 organization that is asserting the adverse analytical 13 finding or adjudication. Do you see that? 14 A. I see that. Can I comment on it? 15 Q. Sure. 16 A. I think if you look at the second line on 17 individual results and I think that my recollection of 18 what you just mentioned was that Jacques Ceaurriz 19 commented on the results in general rather than a 20 comment on the individual result. 21 Again, I can't recollect the quote you 22 are talking about, but that's my memory of the gist of 23 it. 24 Q. So because he said that all 91 results are 25 correct, he wasn't commenting on any individual</p>

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<p style="text-align: right;">Page 2791</p> <p>1 result, in your mind?</p> <p>2 A. No. I mean, if -- I call an individual</p> <p>3 result one result attributed to one person. If he</p> <p>4 comments on a group of -- he said there's 91 results</p> <p>5 and he says those results are valid, that to me is not</p> <p>6 referring to an individual result. I would draw a</p> <p>7 distinction.</p> <p>8 Q. But when he was commenting, the whole focus</p> <p>9 on the l'Equipe article was the fact that allegedly</p> <p>10 there were six results concerning Lance Armstrong,</p> <p>11 correct?</p> <p>12 A. Well, if you could show me that article, I</p> <p>13 could comment on it.</p> <p>14 Q. We will get to that in a different way. The</p> <p>15 next document I would like to turn to is this document</p> <p>16 that Mr. Herman waved around earlier in this</p> <p>17 proceeding.</p> <p>18 ARBITRATOR LYON: Are you through with</p> <p>19 anti-doping code?</p> <p>20 MR. LEVINSTEIN: I am. You might want to</p> <p>21 keep it handy, because there's one page that</p> <p>22 corresponds.</p> <p>23 MR. HERMAN: I object to the</p> <p>24 characterization of me waving it around, but I</p> <p>25 exhibited it.</p>	<p style="text-align: right;">Page 2793</p> <p>1 Q. Before I ask you, I will do that, but</p> <p>2 offhand --</p> <p>3 A. All right.</p> <p>4 Q. Well, first, in general, do you understand</p> <p>5 that this package contains a tremendous amount of</p> <p>6 chain of custody information?</p> <p>7 A. No, I would have to look through it.</p> <p>8 Q. And if you want to look specifically at pages</p> <p>9 10, 11, 12, 13, 14, 15, 16, 17, 18 -- as well as, I</p> <p>10 guess, pages 6 through 9.</p> <p>11 A. Now, that's a description method. Do you</p> <p>12 want me to focus on this chain of custody?</p> <p>13 Q. First, do you see --</p> <p>14 MR. TILLOTSON: Before we ask him</p> <p>15 questions, can you just identify where this came from</p> <p>16 and who did the blacking out and -- this wasn't</p> <p>17 produced to us previously, and it's not on the exhibit</p> <p>18 list. I'm not objecting to your using it on that</p> <p>19 basis, but if you can tell us where it came from so we</p> <p>20 have some sense of --</p> <p>21 MR. LEVINSTEIN: Where it came from.</p> <p>22 MR. TILLOTSON: Some athletes results.</p> <p>23 I'm wondering how it was obtained and whether or not</p> <p>24 there's -- you blacked it out or someone else blacked</p> <p>25 it out.</p>
<p style="text-align: right;">Page 2792</p> <p>1 ARBITRATOR FAULKNER: I don't know that</p> <p>2 you can object to your co-counsel's description of</p> <p>3 you, although I think several of us have had</p> <p>4 co-counsel that we would have liked to have objected</p> <p>5 to things they've said or done.</p> <p>6 MR. HERMAN: Mr. Levinstein does not fall</p> <p>7 in that category.</p> <p>8 ARBITRATOR CHERNICK: This is 147,</p> <p>9 Claimants' 147.</p> <p>10 *Q. (BY MR. LEVINSTEIN) Let me represent that</p> <p>11 this is a redacted document which some identifying</p> <p>12 information that's connected to an athlete has been</p> <p>13 blacked out, but it is from the UCLA lab. Are you</p> <p>14 familiar with the UCLA lab?</p> <p>15 A. I've never been there, but I know -- you're</p> <p>16 talking about Don Catlin's lab?</p> <p>17 Q. Yes.</p> <p>18 A. Yes.</p> <p>19 Q. And I'll just represent this is a</p> <p>20 documentation package for a positive EPO test.</p> <p>21 A. Yeah. Can I look through it?</p> <p>22 Q. Please, feel free. You can look through any</p> <p>23 document I give you.</p> <p>24 A. Is there a particular part you want to draw</p> <p>25 my attention to?</p>	<p style="text-align: right;">Page 2794</p> <p>1 MR. LEVINSTEIN: I blacked out the</p> <p>2 athlete's identification information. It's from</p> <p>3 another case that I have some involvement in in which</p> <p>4 there's a positive EPO test.</p> <p>5 Any other question?</p> <p>6 MR. TILLOTSON: Well, I guess to the</p> <p>7 extent that who it is and whether there's a challenge</p> <p>8 to it and all that is relevant. We may have to</p> <p>9 explore that, but if the purpose of the cross</p> <p>10 examination is to identify the various things done in</p> <p>11 connection with testing as a demonstrative or</p> <p>12 illustrative aid, I guess I don't object to it.</p> <p>13 MR. LEVINSTEIN: I just want to show what</p> <p>14 one of these looks like.</p> <p>15 MR. TILLOTSON: Without this witness</p> <p>16 knowing who it is or where this file came from and</p> <p>17 what else it might need --</p> <p>18 MR. LEVINSTEIN: I'm not going to ask him</p> <p>19 to draw any conclusions about anything substantive. I</p> <p>20 want to ask just about what information is given when</p> <p>21 there is an attempt to have -- impose an adverse</p> <p>22 finding.</p> <p>23 MR. TILLOTSON: Okay.</p> <p>24 MR. LEVINSTEIN: Just for the panel who</p> <p>25 may not know what an EPO test looks like because</p>

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

<p style="text-align: right;">Page 2799</p> <p>1 ARBITRATOR FAULKNER: Has Mr. Tillotson 2 seen any of these yet?</p> <p>3 MR. TILLOTSON: I haven't, and I would 4 object to just simply introducing articles that 5 criticize some test.</p> <p>6 MR. LEVINSTEIN: I'll go quickly through 7 the questions.</p> <p>8 ARBITRATOR CHERNICK: The only relevant 9 document there would be an article that he had 10 actually seen and whether it bears on his opinion of 11 the lab's reliability.</p> <p>12 MR. TILLOTSON: I have no problem with 13 that.</p> <p>14 Q. (BY MR. LEVINSTEIN) Are you aware that the 15 WADA chartered two gentlemen, Dr. Peltre and 16 Dr. Thormann, to study the EPO test and evaluate it?</p> <p>17 A. Yes, there was several years ago.</p> <p>18 Q. And it was published around March of 2003?</p> <p>19 A. When you say, published, obviously WADA 20 published it.</p> <p>21 Q. Are you aware that it was published on the 22 WADA web site?</p> <p>23 A. If that's what you call published, I would 24 say it was put on their web site.</p> <p>25 Q. And you're aware that it criticized the EPO</p>	<p style="text-align: right;">Page 2801</p> <p>1 different -- several different bases, but basically 2 the laboratory that misinterpreted the results rather 3 than the EPO test that created a false positive. It's 4 two different issues there.</p> <p>5 Q. Well, the laboratory had applied the EPO test 6 as they did it and they said this athlete was guilty, 7 the lab did?</p> <p>8 A. Yes, not because of the test but because of 9 their interpretation of the electropherogram that you 10 just saw.</p> <p>11 Q. And they presented documentation packages 12 like the one we have seen and attempted to sanction 13 the athlete?</p> <p>14 A. Well, I'm assuming they presented those 15 documents.</p> <p>16 Q. And then in the hearing, the athlete proved 17 the lab was wrong and the lab results didn't prove he 18 was guilty, correct?</p> <p>19 A. I've -- I haven't seen those court hearings, 20 but my understanding is that the panel recognized that 21 the laboratory had mistakenly interpreted the results 22 and declared a positive when they should not have 23 declared a positive. Other experts looked at the same 24 electropherograms and said, no, he shouldn't have been 25 declared positive. That's what I mean, the results</p>
<p style="text-align: right;">Page 2800</p> <p>1 test and identified problems with it?</p> <p>2 A. No, I think a balanced reading of that would 3 show you that there was a lot of praise for the test 4 and they also outlined areas where they thought it 5 could be made even better.</p> <p>6 Q. Are you familiar with the Khan article in 7 Clinica Chimica Acta discussing deficiencies in the 8 EPO test that was published in 2005?</p> <p>9 A. Can you just show me the -- yes, I think I 10 have seen that article.</p> <p>11 Q. I asked you about it in your deposition and 12 you said you have.</p> <p>13 A. Yes.</p> <p>14 Q. And you are familiar with various articles in 15 the lay press that discuss pitfalls and problems in 16 the test?</p> <p>17 A. Well, I can't tell you that I've seen all of 18 those that you appear to have there, but I've seen 19 some articles, yes.</p> <p>20 Q. And you understand that a lot of those 21 articles surfaced in 2005 after a number of athletes 22 in the course of their hearings were exonerated based 23 on the fact that the EPO test had generated false 24 positives?</p> <p>25 A. No. They were exonerated on several</p>	<p style="text-align: right;">Page 2802</p> <p>1 are there. One person says that's positive, but a 2 more experienced person said, no, that actually 3 shouldn't have been declared positive.</p> <p>4 Q. So now it's required that for any laboratory 5 to declare an EPO test positive, they have to send the 6 whole package of documents to another WADA approved 7 lab and that lab has to agree with the finding before 8 any positive can be declared, correct?</p> <p>9 A. Yes, that's one of the things after my 10 deposition -- and I realized this was something you 11 focused on -- I checked that with Jacques de Ceaurriz, 12 and the -- from 2006 onwards, that is the official 13 position.</p> <p>14 Earlier than that it has been, I think 15 his words were it had sort of been in place but it 16 hadn't been official, so there's been a transition 17 period, if you like, yes.</p> <p>18 Q. So in 2005 they were told to do it, but it 19 wasn't written formally as a mandatory requirement?</p> <p>20 A. That's the general sense they gave me, yes.</p> <p>21 Q. So just to review, to have a positive test 22 you first have to do a screening, a screening test?</p> <p>23 A. Are we talking about under the WADA code with 24 an A and B sample?</p> <p>25 Q. Under the WADA with an A and B sample, you</p>

Pages 2799 to 2802

<p style="text-align: right;">Page 2803</p> <p>1 first have to do a screening test?</p> <p>2 A. Yes.</p> <p>3 Q. And if that looks suspicious, then you have</p> <p>4 to do a stability test?</p> <p>5 A. Yes.</p> <p>6 Q. And you have to do an A confirmation test?</p> <p>7 A. Yes.</p> <p>8 Q. And if the A confirmation and the screening</p> <p>9 both show the presence of the recombinant EPO and the</p> <p>10 stability test says there's not a problem with</p> <p>11 stability, then you have an A finding?</p> <p>12 A. Yes.</p> <p>13 Q. And then you have to contact the athlete and</p> <p>14 let him and his representatives come and watch the</p> <p>15 three-day EPO test of the B sample?</p> <p>16 A. Yes, you offer that opportunity, yes.</p> <p>17 Q. You have to offer that opportunity?</p> <p>18 A. They don't have to take it, but you offer it,</p> <p>19 yes.</p> <p>20 Q. And then after you've analyzed all that</p> <p>21 information on all of those tests, two independent</p> <p>22 people within the lab have to certify that the results</p> <p>23 are accurate?</p> <p>24 A. Yes, that's my understanding, yes.</p> <p>25 Q. And then you have to take the whole package</p>	<p style="text-align: right;">Page 2805</p> <p>1 148 for Claimants.</p> <p>2 MR. TILLOTSON: I would object to it. If</p> <p>3 he hasn't seen it, this is between two people and it's</p> <p>4 clearly hearsay. If he doesn't know -- I don't see</p> <p>5 how --</p> <p>6 MR. LEVINSTEIN: Clearly hearsay?</p> <p>7 Compared to the '99 chart that came from a newspaper?</p> <p>8 MR. TILLOTSON: I object to your --</p> <p>9 ARBITRATOR CHERNICK: Why don't you</p> <p>10 object --</p> <p>11 MR. TILLOTSON: Yes, I object on the</p> <p>12 basis of no foundation, no authentication. It's</p> <p>13 hearsay. I don't know what it is. I don't know where</p> <p>14 you got it.</p> <p>15 ARBITRATOR FAULKNER: What, if any,</p> <p>16 foundation do you have?</p> <p>17 MR. LEVINSTEIN: That's a good question.</p> <p>18 ARBITRATOR FAULKNER: No, I would like an</p> <p>19 answer. I know it's a good question.</p> <p>20 MR. TILLOTSON: I appreciate your candor.</p> <p>21 MR. LEVINSTEIN: Well, he has had</p> <p>22 discussions with the French laboratory, so I'm really</p> <p>23 offering it for the purpose of he's made reference to</p> <p>24 those investigations that are going on. This is a</p> <p>25 part of the reason for the investigations that are</p>
<p style="text-align: right;">Page 2804</p> <p>1 and send it to another whole WADA lab and they have to</p> <p>2 review it and make sure they agree before you can say</p> <p>3 the athlete is positive?</p> <p>4 A. Yes, that's my understanding from 2006</p> <p>5 onward, that's the requirement.</p> <p>6 Q. Okay. And that's a requirement of the</p> <p>7 standards for laboratories?</p> <p>8 A. As I understand it, yes.</p> <p>9 Q. And the International Standard for</p> <p>10 Laboratories is incorporated by reference to be part</p> <p>11 of the WADA code?</p> <p>12 A. Yes.</p> <p>13 MR. LEVINSTEIN: Can we pass that one</p> <p>14 out? We can also put this one on the screen, but...</p> <p>15 Q. (BY MR. LEVINSTEIN) Do you know what the</p> <p>16 Association of Summer Olympic International</p> <p>17 Federations is? Have you heard of that group?</p> <p>18 A. No.</p> <p>19 Q. Let me just represent that ASOIF stands for</p> <p>20 the Association of Summer Olympic International</p> <p>21 Federations. Have you seen this letter before?</p> <p>22 A. No.</p> <p>23 ARBITRATOR CHERNICK: It's Claimants'</p> <p>24 148.</p> <p>25 MR. LEVINSTEIN: I apologize, Exhibit</p>	<p style="text-align: right;">Page 2806</p> <p>1 going on in the French laboratory. I asked him in his</p> <p>2 deposition was he aware of issues that had been raised</p> <p>3 by the French lab's conduct, and I just want to ask</p> <p>4 him if he was aware that the French lab was operating</p> <p>5 under circumstances in which their statements about</p> <p>6 whether everything they had done was accurate may have</p> <p>7 had -- may have been reasons for making those</p> <p>8 representations.</p> <p>9 ARBITRATOR FAULKNER: How does this</p> <p>10 document advance the panel's understanding in regard</p> <p>11 to how to evaluate this witness's testimony?</p> <p>12 MR. LEVINSTEIN: Well, he wants us to</p> <p>13 rely on hearsay statements from the laboratory, and if</p> <p>14 you'll look at the last sentence of the document, it</p> <p>15 talks about the fact that these organizations are</p> <p>16 calling for the French laboratory's accreditation to</p> <p>17 be suspended because of their conduct in handling the</p> <p>18 tests that he's testifying about. And so when the</p> <p>19 French lab is telling you we are under investigation,</p> <p>20 but all the results are accurate, I think this casts</p> <p>21 some light on the circumstances under which the French</p> <p>22 lab is operating and may raise questions about whether</p> <p>23 he believes it's still fair to credit the French lab.</p> <p>24 ARBITRATOR FAULKNER: Why don't you just</p> <p>25 ask him if he believes it's still fair to credit the</p>

Pages 2803 to 2806

		Page 2807	Page 2809
1	French labs with the statement attributed them?		
2	Q. (BY MR. LEVINSTEIN) Let me just ask, are you	1 Q. Okay.	
3	aware that there have been many criticisms leveled	2 A. I'm sorry, I should complete that -- and,	
4	against the French lab?	3 therefore, Jacques de Ceaurriz told me that I can't	
5	A. So am I reading this document or not?	4 talk about this because it's a subject of those	
6	ARBITRATOR FAULKNER: Not at this point.	5 investigations.	
7	Q. (BY MR. LEVINSTEIN) Are you aware that there	6 Q. Okay. You are aware that the French lab sent	
8	have been many criticisms levied against the French	7 this report to WADA?	
9	laboratory for how these results have ended up in	8 A. That's my understanding, yes.	
10	l'Equipe and in the media?	9 Q. And were you aware that the French lab	
11	A. I would characterize it as there have been	10 imposed conditions when it sent the data to WADA?	
12	many uninformed criticism, yeah.	11 A. I've only had represented to me. I don't	
13	Q. Okay. So you're aware that there have been	12 know that.	
14	criticisms levied at the laboratory?	13 ARBITRATOR CHERNICK: This is	
15	A. Uninformed criticisms. If they're not valid	14 Claimants' 149.	
16	criticisms in my mind, they're uninformed. I would	15 Q. (BY MR. LEVINSTEIN) Have you had discussions	
17	draw a distinction there. Anyone can have an opinion.	16 with WADA about --	
18	I won't use the rest of that phrase but, yes.	17 A. Can I just read this?	
19	Q. Are you aware that the laboratory is	18 Q. Sure.	
20	defending itself against people who are calling for	19 ARBITRATOR FAULKNER: Has this been	
21	the lab's WADA accreditation to be suspended because	20 provided to Mr. Tillotson before?	
22	of its conduct with respect to these tests?	21 MR. TOWNS: No. I mean, this is a --	
23	A. You asked me in my deposition am I aware	22 this is an e-mail between Mr. Stapleton and	
24	that -- I think you said they are threatened with	23 Mr. Armstrong, and I was under the impression	
25	their -- what did you say -- something like they're	24 yesterday or from testimony from Mr. Stapleton, that	
		25 they didn't have any e-mails, because the server had	
		Page 2808	Page 2810
1	going to be decommissioned or something. I wasn't	1 crashed.	
2	aware of it then. I'm still not aware of it now. So	2 MR. BREEN: No, no, that's not what he	
3	I'm not aware of what do you call them, criticisms,	3 said.	
4	claims, whatever it is.	4 MR. TILLOTSON: No e-mails from	
5	Q. Well, after your deposition you called the	5 Mr. Stapleton were produced, and then Lisa Shiels'	
6	lab and you asked them questions?	6 e-mail showed up, and it was represented to us that it	
7	A. Yes, about the test itself.	7 was found in a file folder, and that there was a	
8	Q. Okay.	8 reason for why they didn't have certain e-mails that	
9	A. The methodology, not the test results	9 we had located from other people, and I asked -- I	
10	themselves.	10 said, fine. I just want to make sure that there	
11	Q. You didn't ask them any questions about the	11 weren't any e-mails out there that we had asked for	
12	test results?	12 that were fairly encompassed by our request that we	
13	A. No. As I pointed out, they said that they're	13 didn't have and then they keep showing up.	
14	under -- the subject -- well, this is probably a neat	14 MR. LEVINSTEIN: This is an e-mail from	
15	way to encapsulate it, the laboratory did the research	15 my file.	
16	and the WADA and the UCI are conducting	16 MR. HERMAN: Well, I think	
17	investigations. On the one hand, the WADA seems to be	17 Mr. Stapleton's testimony related to prior to	
18	looking at it from the perspective we need to	18 December 31, 2004; isn't that right?	
19	understand what's going on here. The UCI's	19 MR. STAPLETON: Yes.	
20	investigation seems limited to we just want to know	20 MR. TILLOTSON: I'm not trying to be	
21	how this information got out, because it's hurting	21 difficult. I would request an opportunity for us to	
22	cycling.	22 have the witness look at this document and see what it	
23	I don't think there's anyone questioning	23 is. It hasn't been produced --	
24	the methodology itself. It's more the circumstances	24 ARBITRATOR LYON: Is this a good time to	
25	as to how this information got out.	25 take a break?	

Pages 2807 to 2810

<p style="text-align: right;">Page 2811</p> <p>1 MR. HERMAN: Let's take a break. 2 ARBITRATOR FAULKNER: This is a great 3 time to take a break, gentlemen. 4 (Recess 10:27 a.m. to 10:54 a.m.) 5 ARBITRATOR FAULKNER: Before we get 6 going, have y'all had a chance to chat about any of 7 the documents so we know what, if anything, we have to 8 rule on? 9 MR. TILLOTSON: The -- yes, the current 10 exhibit that's in front of the witness we have no 11 objection to. It's a study. 12 ARBITRATOR FAULKNER: That's number 149? 13 MR. TILLOTSON: Right. 14 ARBITRATOR FAULKNER: Did y'all reach any 15 agreement on 148, the ASOIF? 16 MR. TILLOTSON: We still object to that. 17 I think I know Surge Bubka. 18 MR. HERMAN: You know that being an old 19 pole vaulter yourself. 20 MR. TILLOTSON: I knew a Bubka at one 21 time. 22 ARBITRATOR FAULKNER: Okay. Let's 23 proceed. 24 Q. (BY MR. LEVINSTEIN) Have you had 25 conversations with people at WADA about the fact that</p>	<p style="text-align: right;">Page 2813</p> <p>1 A. I don't recollect any, no. 2 Q. Were you -- let me represent this document, 3 Claimants' 149, is a series of -- 4 A. I'm sorry, let me clarify it a little bit. I 5 can tell you categorically that since the l'Equipe 6 article was published, I've not had any conversations 7 with anyone at WADA about this case apart from the 8 e-mail I sent to Olivier Rabin. 9 Q. So, going back to yesterday there's no way 10 anyone at WADA told you what the purpose of the 11 research was, because that wasn't in either of those 12 e-mails? 13 A. No. I said from the date of the publication 14 of the article. 15 Q. And you wouldn't have had any discussions 16 about the l'Equipe research before the publication of 17 the article, because you didn't know anything about it 18 before that? 19 A. I -- I think there was -- was rumors that it 20 was around. 21 Q. Claimants' 149 is an e-mail chain and 22 attached to it is a one-page memo that was sent from 23 Richard Pound to Lance Armstrong responding to 24 questions that had been asked by Lance of Mr. Pound. 25 I'll represent that.</p>
<p style="text-align: right;">Page 2812</p> <p>1 you were going to come here and testify? 2 A. No. I sent an e-mail to Olivier Rabin in 3 which I thought it was appropriate for me to inform 4 him that the basis of my request was related to the 5 fact that I expected that I would be an expert. 6 Q. But you also talked to various people from 7 WADA, at other times beside the e-mail. I think 8 that's what you said yesterday. 9 A. I've talked to them at various times about 10 other stuff, but not about this case, no. 11 Q. Okay. 12 A. Well, talking to is not when David Howman 13 sends me an e-mail. 14 Q. I understand. I thought you said yesterday 15 that you've had various other conversations about this 16 case and you can't remember if they told you the 17 purpose of the study in those conversations or -- I 18 thought there were other discussions about this case 19 with WADA. I think that's what you said yesterday, 20 but if I'm wrong, correct me. 21 A. What I was trying to do is be careful and say 22 it could have been one of those conversations. I 23 didn't recollect who and when told me. 24 Q. So you don't know if you've had other 25 conversations with WADA about this case?</p>	<p style="text-align: right;">Page 2814</p> <p>1 A. So who's asking the questions and who's 2 answering? 3 Q. If you read the first page, it says, Lance, 4 I've attached a memo with the answers to the best of 5 my present knowledge and belief to the questions you 6 asked, RWP. Do you see that? 7 A. So Lance Armstrong asked the questions and 8 Dick Pound responded. 9 Q. Do you understand that RWP is Mr. Pounds' 10 initials? 11 A. I didn't know that his middle initial was W. 12 So Lance Armstrong is asking and Dick 13 Pound is responding; is that right? 14 Q. Yes. There's the sentence from the -- 15 A. Okay. 16 Q. Going to the last page, did you see the last 17 line of paragraph 1 where it says, this information is 18 confidential and does not have any connection to any 19 individual. 20 A. I see that sentence, yes. 21 Q. So based on WADA taking the position that 22 this research study is confidential and doesn't have 23 any connection to any individual, does that change 24 your view about whether we should attempt to draw any 25 conclusions about individuals based on that summary</p>

<p style="text-align: right;">Page 2815</p> <p>1 you have?</p> <p>2 A. Can you just repeat that question?</p> <p>3 Q. Well, this is WADA, right, WADA governs the</p> <p>4 lab? It's a WADA accredited lab?</p> <p>5 A. It's a WADA accredited lab, yes.</p> <p>6 Q. And with respect to doping control, the</p> <p>7 ultimate authority is WADA?</p> <p>8 A. You could characterize it as that, yeah.</p> <p>9 Q. Okay. And WADA is answering Mr. Armstrong's</p> <p>10 question about what's supposed to happen with the</p> <p>11 research of the French laboratory?</p> <p>12 A. Lance Armstrong is asking, what role did WADA</p> <p>13 have in the research project, and Dick Pound is</p> <p>14 responding it's research.</p> <p>15 THE REPORTER: You have to talk louder</p> <p>16 and slower.</p> <p>17 THE WITNESS: It's not important. I'm</p> <p>18 just reading.</p> <p>19 ARBITRATOR CHERNICK: Then don't read it</p> <p>20 out loud.</p> <p>21 ARBITRATOR FAULKNER: Please don't read</p> <p>22 it out loud if that's the case.</p> <p>23 A. Yes, okay, when I read that, my understanding</p> <p>24 is that Dick Pound is saying it was the lab's own</p> <p>25 research, and actually incidentally, I want to correct</p>	<p style="text-align: right;">Page 2817</p> <p>1 A. No, as I've explained, I've not been privy to</p> <p>2 these conversations, but I look at that and say, well,</p> <p>3 clearly the French government put in a request or they</p> <p>4 stipulated that under certain conditions they wanted</p> <p>5 to make it available to WADA.</p> <p>6 Now, then there's an exchange of</p> <p>7 information, correspondence, I don't know under what</p> <p>8 exact circumstances the information was finally given</p> <p>9 to WADA, but clearly at some point the French</p> <p>10 government said, we need to have some circumstances,</p> <p>11 they discussed it, they came up with whatever</p> <p>12 arrangement they did, I don't know what they are, then</p> <p>13 the information was forwarded.</p> <p>14 Q. In your conversations with the French lab did</p> <p>15 they tell you, if you're using this data, you ought to</p> <p>16 know it can't be used for any sanction purpose?</p> <p>17 A. No, because we haven't discussed this in</p> <p>18 detail. I mean that would come under the umbrella of</p> <p>19 this is under investigation, so I can't talk to you in</p> <p>20 detail about it, so, no.</p> <p>21 When I read this, to me, Lance Armstrong</p> <p>22 is acknowledging, okay, the test is positive. He</p> <p>23 says, when the results were positive, how did this</p> <p>24 data get out. So to me, Lance Armstrong is not</p> <p>25 questioning the validity of the results; he's</p>
<p style="text-align: right;">Page 2816</p> <p>1 something in my deposition where I said that -- one of</p> <p>2 your questions is, did WADA fund this research, and I</p> <p>3 said, yes, in my deposition. I had received that</p> <p>4 e-mail from David Howman before that deposition where</p> <p>5 he pointed out that WADA hadn't funded it and it was</p> <p>6 my error in my deposition. When you asked me did WADA</p> <p>7 fund it, I said, yes, because after receiving that</p> <p>8 e-mail I was under the impression that they had, so I</p> <p>9 want to put that on the record.</p> <p>10 So Dick Pound is saying and they send us</p> <p>11 the results and the results weren't identified, and</p> <p>12 not connected back to any individual, yes.</p> <p>13 Q. (BY MR. LEVINSTEIN) Okay. And if you look</p> <p>14 at the second paragraph --</p> <p>15 A. Yes.</p> <p>16 Q. -- the second sentence, it says, in July 2005</p> <p>17 WADA was informed by the French government that the</p> <p>18 laboratory had this information available and wished</p> <p>19 to share the data with WADA under certain conditions,</p> <p>20 including that WADA would not use the data for any</p> <p>21 sanction purpose. Do you see that?</p> <p>22 A. Yes, I do.</p> <p>23 Q. Were you aware that the laboratory had</p> <p>24 specified that data could not be used for any sanction</p> <p>25 purpose?</p>	<p style="text-align: right;">Page 2818</p> <p>1 acknowledging that he had a positive.</p> <p>2 Q. For the record, this is Dick Pound's</p> <p>3 characterization of what questions Lance Armstrong</p> <p>4 asked. These were never submitted in writing.</p> <p>5 A. My recollection you told me this was Lance</p> <p>6 Armstrong asking the questions.</p> <p>7 Q. No, that's what Dick Pound's e-mail says.</p> <p>8 A. No, you told me these are Lance Armstrong's</p> <p>9 questions. That's how I responded based on that they</p> <p>10 are his questions.</p> <p>11 Q. Okay. Well, can we put up the page from the</p> <p>12 WADA code, please, that you were given. You expressed</p> <p>13 some question about whether the WADA code allows there</p> <p>14 to be an adverse finding when the B sample doesn't</p> <p>15 confirm the A sample. Do you recall that discussion a</p> <p>16 little bit ago?</p> <p>17 A. Yes, but I was -- as I remember, I pulled you</p> <p>18 up on several points, so I don't want to be</p> <p>19 characterized as saying --</p> <p>20 Q. There was something in the International</p> <p>21 Standard for Laboratories, do you remember that, about</p> <p>22 that if the B sample says it doesn't confirm the A</p> <p>23 sample, the sample is negative. Do you recall that</p> <p>24 from the International Standard for Labs?</p> <p>25 A. Okay, yes.</p>

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1 Q. Do you remember saying, that's under the WADA
 2 code and the WADA code is the most important part?
 3 A. I can't -- yeah, I'll accept what you're
 4 saying.

5 Q. So we wanted to bring you the WADA code in
 6 case you wanted to know what was in that code about
 7 this subject. If you'll look at the last provision on
 8 this page, section 7.3.5.7, this is from the WADA
 9 code. If the B sample analysis does not confirm the A
 10 sample analysis --

11 A. Yes.

12 Q. -- the -- in brackets N-A-D-O, that's a
 13 doping organization somewhere in there. I forget what
 14 the N-A stands for. The NADO shall notify the athlete
 15 that the sample has been declared negative and no
 16 further action will occur.

17 A. Yes.

18 Q. Does that now confirm to you that under WADA
 19 code anytime the B sample does not confirm the A, the
 20 athlete has to be told the sample is negative and no
 21 further action will occur?

22 A. Yeah, sure, under the circumstances you're
 23 representing that, yes, I agree.

24 Q. I want to ask you a question about EPO and
 25 how it's used.

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1 advance if I start taking EPO to get the maximum
 2 benefit?

3 A. No, not necessarily.

4 Q. That's not your understanding?

5 A. No.

6 Q. Well, how long after I take -- let's say I
 7 start two weeks -- did you say one week before or two
 8 weeks? What was your testimony?

9 A. It can be anything -- it's not a -- it's not
 10 a set rule. I mean, it's a continuum, so I mean, the
 11 benefit that you're getting from your first EPO
 12 injection really doesn't kick in until day three or
 13 four after. Then it's a matter of you need to keep
 14 your bone marrow producing more cells and the longer
 15 that you have that duration, the more benefit you're
 16 going to get at a particular point in time.

17 Now, you can also alter that scenario by
 18 using higher dosages of EPO. If you gave a massive
 19 dose of EPO, then you get a release of reticulocytes
 20 virtually immediately. That sort of dosage is way off
 21 the scale, so... I can't really answer your question
 22 in a way that you're asking, because there's too many
 23 variables that you need to take into account.

24 Q. So you don't agree that if I want to get the
 25 benefits of EPO, I ought to start taking it three to

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1 A. Are we finished with this letter?

2 Q. Yes.

3 The idea of taking EPO is to increase
 4 one's hemoglobin in one's blood?

5 A. Yes.

6 Q. In order to be able to have more oxygen when
 7 we are involved in competition?

8 A. Yes.

9 Q. And the way that EPO works is we take
 10 recombinant EPO and it's a hormone and it sends a
 11 message to the bone marrow to produce more red blood
 12 cells?

13 A. Yes.

14 Q. If I am a cyclist and I'm going to compete in
 15 the Tour de France and I have recombinant EPO and I
 16 want do well in the Tour de France, when do I need to
 17 start taking EPO?

18 A. When you want to probably depends how much of
 19 a benefit you want to get and when you want that
 20 benefit to kick in, but at least a week, probably a
 21 couple of weeks beforehand.

22 Q. Well, if I want to have the benefit when the
 23 Tour starts --

24 A. Yes.

25 Q. -- don't I need to be three or four weeks in

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1 five weeks prior to the competition at which I want to
 2 have my red blood cell count up?

3 A. Look, you could, but there are also other
 4 ways to do it. That's what I'm trying to convey.

5 Q. Okay. There's a certain amount of benefit
 6 one can get from taking EPO, correct?

7 A. Based on the dosage that you use, yes.

8 Q. And it's your testimony that if I took EPO
 9 today, three days from now I would have a significant
 10 benefit in my ability to process oxygen?

11 A. No. What I said is -- can I put something on
 12 here, too?

13 ARBITRATOR FAULKNER: On the chart?

14 THE WITNESS: Yes.

15 ARBITRATOR FAULKNER: Certainly. Why
 16 don't you go ahead and flip it to a new page and I
 17 think there are some markers beneath it.

18 THE WITNESS: I don't want to seem like a
 19 school teacher, but --

20 ARBITRATOR CHERNICK: Keep your voice up,
 21 please.

22 ARBITRATOR FAULKNER: Please speak louder
 23 so the court reporter can get your comments down,
 24 please.

25 A. I said I don't really want to feel like a

<p style="text-align: right;">Page 2823</p> <p>1 school teacher, but if you think of reticulocytes 2 would be red -- young red blood cells. The red cell 3 when it's released from the bone marrow has certain 4 markers that we can take fairly easily nowadays to 5 show that it's really only just come out of the bone 6 marrow within the last two, three or four days and 7 then gradually over time those markers go away and the 8 reticulocyte transitions into what we call a mature 9 red blood cell and then it remains in the circulation 10 for two, three months, and then the cell itself dies. 11 That's why it's got to be a continual process. You've 12 always got to be making new red cells to replace the 13 ones that die that have been around for a couple of 14 months.</p> <p>15 Now, generally speaking, the amount of 16 these reticulocytes that you find in your circulation 17 would be equivalent to about 1.3 percent of all the 18 cells in -- I'll keep it simple, 1 percent. One 19 percent of all the red cells in your body have just 20 been released from your bone marrow in the last couple 21 of days. What happens when you take EPO is that the 22 number of these reticulocytes increases.</p> <p>23 Now, if you take an injection here, if 24 you use a massive dose of EPO, then there's like a -- 25 a stress reaction where your bone marrow just throws</p>	<p style="text-align: right;">Page 2825</p> <p>1 hematocrit level will start here at 43 percent, 2 that's -- that's the hematocrit level, I believe, 3 Armstrong's natural values, it would stay the same and 4 then gradually over time you find that hematocrit 5 level starts to rise and it will continue to rise as 6 long as you've got more reticulocytes being produced 7 than what have been destroyed at the other end.</p> <p>8 Now, where you choose to stop your 9 hematocrit depends on how long you want to continue 10 injecting EPO. Now, in the early -- you know, the 11 early times when EPO first came onto the cycling 12 scene, you had cyclists keeping injecting until the 13 hematocrit got to like 60 percent, and this is the 14 scenario where you've got a dozen cyclists dying in 15 the middle of the night because when your blood is 60 16 percent red cells, when the body is not accustomed to 17 that, in the middle of the night the body pulls down a 18 little bit and the heart can't pump, it's cast around 19 and you die.</p> <p>20 Now, over time the cyclists realized that 21 that's not a good way to win races if they're dead so 22 they bring it down and they start using a shorter 23 period of EPO injections so they might stop at a point 24 where the hematocrit got to, say, 50 percent, and at 25 this point when your hematocrit is 50 percent, you can</p>
<p style="text-align: right;">Page 2824</p> <p>1 out really, really immature reticulocytes before they 2 would have been released anyway. It's kind of like a 3 production line. If there is a massive dose of EPO, 4 they just get shunted out, but the normal sort of EPO 5 injections you take, it takes three or four days 6 before the stimulus that you gain from the injection 7 starts resulting in more reticulocytes coming out of 8 the bone marrow. So three or four days later the 9 number of reticulocytes in your blood increases and -- 10 I mean, it depends on the dosage that you use, but you 11 might get two to three percent of all of your blood 12 cells showing up as reticulocytes, which reflects the 13 fact your bone marrow is pumping out a lot more young 14 red blood cells than it normally would.</p> <p>15 Now, that level will stay there for as 16 long as you keep giving injections. You need to give 17 injections probably every second day or third day 18 thereabouts.</p> <p>19 The blue -- I want to keep it simple and 20 call it hematocrit. Hematocrit is the percentage of 21 red cells in your blood compared to the volume of your 22 blood. Now, obviously for the first few days that 23 you're using EPO, the reticulocytes haven't left the 24 bone marrow, so your hematocrit won't have changed.</p> <p>25 Then on day three or four you find the</p>	<p style="text-align: right;">Page 2826</p> <p>1 back off your EPO dosages so that instead of having 2 two to three percent reticulocytes, you can bring it 3 back down -- and this is the study I was talking about 4 that you decrease the amount of EPO that you give 5 yourself so you come back to the point where you're 6 still only producing enough reticulocytes to replace 7 what's died so you are at a new steady point where 8 your hematocrit will stay at whatever level you've 9 chosen to keep.</p> <p>10 So the question you're asking is 11 difficult to answer because you need to tell me what 12 dosages, how frequently and for how long they were 13 using it before I can tell you, well, when are you 14 going to get to a point that you're happy with. Does 15 that --</p> <p>16 Q. Okay. But if you're relying on the science 17 and the best evidence from the scientific literature, 18 if you want to get the benefits of EPO, you would have 19 to take it several weeks before, right?</p> <p>20 A. I'm not convinced cyclists use their medical 21 literature strictly speaking, and the reason that 22 I say that is because you see cyclists dying, and 23 they're clearly not using an approach that would be 24 contained in medical literature.</p> <p>25 ARBITRATOR CHERNICK: Doctor, you're not</p>

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<p style="text-align: right;">Page 2827</p> <p>1 answering his question. Listen to the question. It's 2 really specific, and I think we are getting off into 3 areas that aren't germane. 4 ARBITRATOR FAULKNER: Thanks. 5 Q. (BY MR. LEVINSTEIN) Based upon what the 6 science shows about when you get the benefits of EPO 7 if you are a cyclist and you wanted the benefits of 8 EPO, you would have to start taking EPO several weeks 9 before the event? 10 A. Yes. It could be less, but several weeks 11 thereabouts, yes. 12 Q. Okay. And once you get your blood cell count 13 up to a certain level, it lasts for several weeks? 14 A. Yes. 15 Q. And, therefore, if you wanted to do well in 16 the Tour de France, you would, based on science, take 17 EPO several weeks before the Tour de France, get your 18 level up and once you get to the beginning of the 19 event, you don't have to take EPO anymore because your 20 blood cell count would stay up? 21 A. No, no, I disagree with that, because the 22 critical parts of the Tour are the mountains which 23 typically are toward the middle of the event, so you 24 don't really need to have your -- you don't have to 25 have your peak values on the first stage. The really</p>	<p style="text-align: right;">Page 2829</p> <p>1 interim you've only got a slow decline, so on day -- 2 say you stop injections on day zero. On day 7 you're 3 still going to have a performance advantage, day 14 4 you will have a smaller performance advantage, day 21 5 you might still have an advantage but it would be -- 6 typically it would be negligible. 7 Q. Well, given that, if the mountain stages are 8 the key stages -- 9 A. And the time trials, yes. 10 Q. -- once you've gotten to the last mountain 11 stage, it doesn't make sense to take EPO on the day of 12 the last mountain stage, does it? 13 A. Well, in my mind it doesn't make sense to 14 take EPO from the start. 15 Q. But if you want to get a performance 16 advantage, it doesn't make sense to take EPO during 17 the last mountain stage of the Tour de France, does 18 it? 19 A. Well, I would argue that to the -- you're 20 asking me to predict the psychology of an athlete. It 21 doesn't make sense if you read the literature, but 22 that's not what an athlete is basing their 23 administration protocols on. 24 Q. But you testified when you went through your 25 little chart that you would expect --</p>
<p style="text-align: right;">Page 2828</p> <p>1 critical parts are the mountain stages, and so you 2 would want to coincide your EPO regimen with that 3 particular point. 4 Now, an athlete could always choose, 5 well, I'm going to just blitz the whole thing and be 6 at my peak on day one all the way through to the 7 mountains. He could choose that as well. 8 Q. But when you take EPO on a given day, it 9 doesn't help you that day? 10 A. Well, I said if you took a massive dose, it 11 would to a very small amount, but for all intents and 12 purposes for this discussion, you wouldn't take EPO on 13 one day and expect to do a hell of a lot better. 14 Q. But if I had taken it for a while whether I 15 take it today or not will not affect my performance 16 today? 17 A. No, but will it affect your performance four 18 or five, six, seven, eight days later. 19 Q. Two weeks later, right? 20 A. Well, no, see that's not accurate. The -- we 21 have characterized this drop in hematocrit and we have 22 presented mean values, but some people's values drop 23 much quicker than others, so it's an individual thing. 24 Generally speaking, after a couple of 25 weeks your values are back to base line, but in the</p>	<p style="text-align: right;">Page 2830</p> <p>1 A. It's a big chart. 2 Q. Not that chart. 3 You would expect -- the stage-by-stage 4 blitz that you -- would expect to see a cyclist taking 5 EPO by injection on the day of the last mountain 6 races? Is that what you would expect to see by a 7 cyclist who wanted a performance advantage? 8 A. Now you've confused me. 9 Q. Well, do you have that document with your 10 chart that goes stage by stage? 11 A. Yes. 12 Q. And in it it shows -- 13 ARBITRATOR CHERNICK: Could we have an 14 exhibit reference, please? 15 MS. EVORA: Respondents' 76. 16 MR. TILLOTSON: 76. 17 Q. (BY MR. LEVINSTEIN) Okay. Real quick, if 18 you'll look at stages 12 and 14. 19 A. Uh-huh. 20 Q. Are these the last big mountain races, 21 stages? 22 A. I wouldn't like to say. I -- 23 Q. You don't know? 24 A. I don't know for sure. 25 Q. Okay. But taking EPO at stage 12 or stage 14</p>

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<p style="text-align: right;">Page 2831</p> <p>1 of the race with only 7 stages to go isn't going to 2 give you any advantage in terms of blood count, is it? 3 EPO you took at stage 12 or stage 14 wouldn't help you 4 in the Tour de France; it wouldn't kick in until after 5 the Tour de France is over?</p> <p>6 A. No, that's not correct.</p> <p>7 Q. Okay. But --</p> <p>8 A. I can elaborate if you would like, but it's 9 not correct.</p> <p>10 Q. Well, let me just ask it this way, taking EPO 11 in the last mountain stage doesn't make sense from a 12 scientific perspective because the benefit from it 13 isn't going to happen for a long time, correct?</p> <p>14 A. That's not correct.</p> <p>15 MR. LEVINSTEIN: Put up page 121 of his 16 deposition.</p> <p>17 A. Page 121?</p> <p>18 Q. (BY MR. LEVINSTEIN) Yes. My question to 19 you, so it doesn't make a whole lot of sense taking 20 EPO on the last mountain stage if that's the last 21 stage when you think you need help, right, because the 22 benefit from that isn't going to happen for a long 23 time?</p> <p>24 Well, from a scientist's perspective, the 25 scientist reading the textbook would say, no, there's</p>	<p style="text-align: right;">Page 2833</p> <p>1 A. From the -- the mentions that I've heard 2 associated with him, yes.</p> <p>3 Q. Who is Dr. Craig Nichols?</p> <p>4 A. I think he was the chemotherapist in charge 5 of Mr. Armstrong's treatment at Indiana.</p> <p>6 Q. Okay.</p> <p>7 A. I think he was a chemotherapist.</p> <p>8 Q. Have you seen his affidavit?</p> <p>9 A. I think it was included in the medical 10 records, yes.</p> <p>11 Q. It was the first pages of the medical record, 12 yes.</p> <p>13 A. Yes.</p> <p>14 MR. LEVINSTEIN: Could we show paragraphs 15 9 and 10, please?</p> <p>16 THE WITNESS: Do I have that here?</p> <p>17 MR. TILLOTSON: I don't think we do.</p> <p>18 MR. BREEN: Here's a copy.</p> <p>19 MR. LEVINSTEIN: I don't have a paper 20 copy because it was in --</p> <p>21 MR. BREEN: I've got one here.</p> <p>22 THE WITNESS: Thank you.</p> <p>23 A. 9 and 10?</p> <p>24 Q. (BY MR. LEVINSTEIN) Yes. Now, it says, 25 paragraph 9, following successful treatment of his</p>
<p style="text-align: right;">Page 2832</p> <p>1 no reason. Is that correct?</p> <p>2 A. That's in my deposition, but here I'm talking 3 about -- your question was if you want to benefit on 4 the last mountain stage, does it make sense to have an 5 EPO injection on that day. Now, that's different than 6 the question you asked me before is, well, when you've 7 still got another -- what I can see -- six or seven 8 days to go, taking an injection on day -- stage 13, 9 14, when you've still got another week to continue, 10 that does make sense.</p> <p>11 Q. Wasn't it your testimony it takes several 12 days to get the benefit of an EPO injection?</p> <p>13 A. I said it takes several days for it to kick 14 in, and at that point you need to maintain it. As 15 soon as you stop, that's going to start coming down.</p> <p>16 Now, the point at which you say now it's 17 a significant drop is a -- it's a subjective call. It 18 will gradually decrease over time from the point that 19 you stop taking the EPO.</p> <p>20 Q. Okay. I'm going to change subjects here. We 21 are getting close.</p> <p>22 MR. LEVINSTEIN: Could we put up 23 Dr. Nichols' affidavit.</p> <p>24 Q. (BY MR. LEVINSTEIN) Are you familiar with 25 Dr. Craig Nichols, who he is?</p>	<p style="text-align: right;">Page 2834</p> <p>1 cancer in 1996, I continued checks of Lance 2 Armstrong's blood levels on a regular basis from 3 January 1997 to October 2001. Initially he had 4 regular evaluations every several months for the first 5 year, every four months in the second year and twice 6 yearly to 2001. Do you see that?</p> <p>7 A. Yes, I see that.</p> <p>8 Q. And he then says that he confirmed during 9 that monitoring period he saw nothing irregular in 10 Lance Armstrong's hemoglobin or hematocrit level. 11 Lance Armstrong's blood levels remained consistent and 12 did not fluctuate outside the normal range. I 13 confirmed at the checkups and also upon reviewing the 14 material in the file there's nothing irregular with 15 Lance Armstrong's red blood cell levels throughout. 16 I'm a blood specialist and very familiar with the use 17 and effects of EPO. Had Lance Armstrong been using 18 EPO to enhance his cycling performance, I would have 19 likely identified differences in his blood levels. 20 After all, I treated him and administered EPO during 21 his treatment years when he was not cycling between 22 October 1996 and January 1997 and was very familiar 23 with his blood level.</p> <p>24 Do you believe that testimony to be 25 truthful and accurate?</p>

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<p style="text-align: right;">Page 2835</p> <p>1 A. Frankly, no. There's something inconsistent 2 here, because we asked for all the blood results, and 3 the results that we got are inconsistent with his 4 testimony. Now, either he didn't produce the results 5 to us or he didn't do these tests.</p> <p>6 Q. So because you haven't seen the backup data, 7 you can't credit what he says?</p> <p>8 A. No. You asked me, do I think this is 9 truthful. I'm saying either it's not truthful or he 10 didn't produce these records.</p> <p>11 Q. Okay. Well, let's assume it's truthful and 12 he didn't produce the records. Well, strike it the 13 other way. Are you concluding it's not truthful 14 simply because you didn't get the records?</p> <p>15 A. Your question was, do I believe it's 16 truthful, and I pointed out, no. Now, I don't know 17 which is true. It could be that this is false. So do 18 I accept that it is true? No, because I have 19 reservations.</p> <p>20 Q. And you have reservations because you haven't 21 seen the backup data?</p> <p>22 A. Well, I know that he's a doctor and he was 23 served -- someone was served a subpoena to produce the 24 records. He says here they exist. He didn't produce 25 them, so one or the other is wrong. Which one is</p>	<p style="text-align: right;">Page 2837</p> <p>1 A. And I pointed out what those reservations are 2 based on.</p> <p>3 Q. But the French lab gave you a summary of test 4 results in the '99 samples. You've seen none of the 5 underlying data, none of it's been given to you and 6 yet you have no reservations about their results; is 7 that correct?</p> <p>8 A. I didn't request the underlying data, and 9 they didn't say, yes, here it is, and then I found out 10 it's missing. That would be a different case.</p> <p>11 Q. But it's your view that Dr. Nichols is not 12 being truthful when he says that based on his 13 examination of Lance Armstrong's blood results that he 14 didn't -- he didn't use EPO?</p> <p>15 A. I'm sorry, can you rephrase that?</p> <p>16 MR. LEVINSTEIN: I'll leave it. I'm 17 being told to move on.</p> <p>18 ARBITRATOR CHERNICK: Good advice.</p> <p>19 ARBITRATOR FAULKNER: Worth taking.</p> <p>20 Q. (BY MR. LEVINSTEIN) The Tyler Hamilton case 21 has been mentioned in this proceeding, and that's the 22 only other doping case in which you have been a 23 witness?</p> <p>24 A. Yes.</p> <p>25 Q. The only case in which whether an athlete</p>
<p style="text-align: right;">Page 2836</p> <p>1 wrong, I can't tell you, so I can't say this is 2 truthful.</p> <p>3 Q. But because you haven't seen the documents, 4 you can't rely on what he says?</p> <p>5 A. Because the documents weren't produced.</p> <p>6 Q. Okay.</p> <p>7 A. I can't rely on what he says because either 8 he deliberately didn't produce the records or he 9 didn't do them. I can't tell you which one of those 10 is correct.</p> <p>11 Q. So what you're saying is when he says --</p> <p>12 A. I mean, he says, regular evaluations every 13 several months in the first year, every four months in 14 the second year and twice a year in 2001. That data 15 has not been produced to the best of my knowledge. 16 Now, that's exactly the kind of data that we have 17 requested all along because that would help me form an 18 opinion. Now, it's never been produced.</p> <p>19 Q. So you believe that he's not telling the 20 truth when he said he had regular evaluations every 21 several months for the first year, every four months 22 in the second year and twice yearly in 2001?</p> <p>23 A. You asked me, do I accept this as truthful, 24 and I said, no, because I have reservations.</p> <p>25 Q. Well --</p>	<p style="text-align: right;">Page 2838</p> <p>1 used performance enhancing drugs was at issue -- this 2 is not a doping case, so let me just -- I wanted to 3 rephrase my question.</p> <p>4 The only other case besides this one in 5 which you've testified about whether an athlete may 6 have used performance enhancing drugs, correct?</p> <p>7 A. Yes. The only other case I have testified at 8 is the Hamilton case.</p> <p>9 Q. The only case of any kind you've ever 10 testified at is the Hamilton case?</p> <p>11 A. Yes.</p> <p>12 Q. And you were a witness basically for the 13 prosecution, for the people saying that Tyler Hamilton 14 was guilty?</p> <p>15 A. No. They could never really characterize 16 what I was, because Hamilton's side wanted to call me 17 but they didn't want to call me their witness so they 18 called me as an adverse witness or something.</p> <p>19 Q. But the test at issue in that case is this 20 homologous blood transfusion test?</p> <p>21 A. Yes, that was the basis of the case, yes.</p> <p>22 Q. And the claim was that when Tyler Hamilton's 23 blood was tested, there were two different sets of red 24 blood cells in his veins and arteries, in his body?</p> <p>25 A. Yes.</p>

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<p style="text-align: right;">Page 2839</p> <p>1 Q. However you want to say it. 2 So the claim that -- was that this test 3 showed that he had gotten a transfusion with someone 4 else's blood? 5 A. That's what the panel found, yes. 6 Q. But you didn't testify in the first case when 7 the panel found by two to one he was guilty; you were 8 a witness in this second case, correct? 9 A. The CAS case? 10 Q. Yes. 11 A. Yes. 12 Q. And you were part of the group that developed 13 the test? 14 A. Yes, I coordinated that research. 15 Q. And you promoted that test as a test that you 16 think should be used? 17 A. Well, I gave the test to the authorities, 18 and, sure, I felt that it should be used. 19 Q. And you told the media on a number of 20 occasions that the test doesn't yield false positives, 21 correct? 22 A. Correct. 23 Q. You were regularly the main person who they 24 would interview to ask, is this test accurate, and you 25 said, this test is accurate; if it says they're</p>	<p style="text-align: right;">Page 2841</p> <p>1 A. Sir, what are you asking? 2 Q. There was a question about whether you think 3 that this is a practice that's going on, that people 4 are getting blood transfusions to enhance their 5 performance. Do you recall that? 6 A. You mean athletes? 7 Q. Yes. 8 A. Do I suspect athletes of using transfusions? 9 Q. Yes. 10 A. Yes. 11 Q. And your answer was, in fact, that the proof 12 was in the pudding, I think that's your words, the 13 proof is in the pudding that because you caught Tyler 14 Hamilton, that shows this is going on, correct? 15 A. Well, are you saying I've said that in an 16 article? 17 Q. No, you said that in your testimony on 18 direct. 19 A. Okay. Well, I accept that. 20 Q. And in Tyler Hamilton the tested issue was in 21 September 2004, the lab in Lausanne had reported a 22 positive test, correct? 23 A. Correct. 24 Q. And you testified in September 2005 in that 25 case?</p>
<p style="text-align: right;">Page 2840</p> <p>1 positive, there can be no doubt about it; it's 2 reliable; you're positive, correct? 3 A. The situation was that the specialists in the 4 hospital were reluctant to get into the public eye. 5 For personal reasons they -- that's not their -- their 6 deal. 7 Now, as a project coordinator I was happy 8 to take that point position if you like, and so most 9 of the media questions were directed to me and I 10 answered them, yes. 11 Q. And you said the test was reliable and 12 doesn't yield false positives? 13 A. When it's correctly applied, yes. 14 Q. And you testified in the Tyler Hamilton case 15 and you told them that the test doesn't yield false 16 positives, correct? 17 A. When it's correctly applied, yes. 18 Q. And there was a question on your direct about 19 the tests and whether you're -- people are actually 20 doing blood transfusions or that this is going on -- 21 let me strike that and start again. 22 There was a question during your direct 23 about whether you believed that people were enhancing 24 their performance by taking other people's blood and 25 transfusing it into them. Do you remember that?</p>	<p style="text-align: right;">Page 2842</p> <p>1 A. Yeah, I've got a feeling that you know my 2 testimony intimately. 3 Q. Okay. And before your testimony you were 4 asked to produce all documents that related to the 5 test, weren't you? 6 A. Say that again. 7 Q. Before you testified there was a request that 8 you produce all documents that were relevant to your 9 testimony about the Lausanne test? 10 ARBITRATOR FAULKNER: Before you answer, 11 Counselor, what is the relevance of any of this? 12 MR. LEVINSTEIN: One second. 13 ARBITRATOR FAULKNER: Is that a promise? 14 MR. LEVINSTEIN: It is. 15 ARBITRATOR FAULKNER: On the record. 16 MR. LEVINSTEIN: It is. 17 ARBITRATOR FAULKNER: Good. Please 18 proceed with your question. 19 Q. (BY MR. LEVINSTEIN) Go ahead. 20 A. What was the question? 21 Q. In connection with your testimony you were 22 asked to produce all documents that were relevant to 23 assessing whether the test performed by the Lausanne 24 lab was, in fact, a correct test that showed whether 25 Tyler Hamilton had two sets of blood cells.</p>

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

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

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

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

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

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

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

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

14 MR. LEVINSTEIN: Okay.

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

19 A. Yes.

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

21 A. Yes.

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

24 A. Yes.

25 Q. Highly respected journal?

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

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

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

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

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

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

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

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

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

19 A. Is that a question?

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

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

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<p style="text-align: right;">Page 2847</p> <p>1 that your sleeves, if you have any long sleeves, be 2 rolled up? 3 A. Yes. 4 Q. And that's the requirement for a Tour de 5 France or any out-of-competition testing by USADA or 6 anybody else within the Olympic world, that's how you 7 conduct the testing, correct? 8 A. That's what the doping control officers are 9 supposed to do, yes. 10 Q. And Lance Armstrong was tested 13 times 11 during the 2000 Tour de France? 12 A. Is that what you represent? I'll accept 13 that. 14 Q. I think you said there were 15 samples 15 according to l'Equipe and 13 were his. 16 A. Okay, I'll accept that. 17 Q. And you showed us some devices that you can 18 hide urine in other parts of your body and use a 19 tube -- instead of using your own body to pee in the 20 cup, you can use a tube to pee in the cup? 21 A. Yes. 22 Q. And that's what you're talking about when you 23 talk about urine manipulation, right? 24 A. Yes. 25 Q. And it's your view that despite the controls</p>	<p style="text-align: right;">Page 2849</p> <p>1 A. No. I've said that it's consistent with 2 urine manipulation. 3 Q. Now, with respect to the summary chart from 4 '99 samples -- 5 A. Sir, what are we talking about now? 6 Q. We are talking about the document in which 7 there are 91 samples reported supposedly from the '99 8 Tour de France, Exhibit 44, the summary document. 9 MR. TILLOTSON: Respondents' 44. 10 THE WITNESS: Okay. 11 Q. (BY MR. LEVINSTEIN) And this is information 12 about testing done during research, right? 13 A. Yes. 14 Q. And if the testing had been done in 15 accordance with the WADA code, there would be 16 documents in connection with each one of those 91 17 tests confirming the internal chain of custody, the 18 screening tests, with its results and the narrative 19 and the electropherogram; the confirmation A test, 20 with the results, the electropherogram; stability 21 tests, with the results and the electropherogram; the 22 B confirmation, with results and electropherogram. 23 All of that packet like we saw from 24 Dr. Catlin there should be -- if they were going to 25 comply with the WADA code for every one of those 91</p>
<p style="text-align: right;">Page 2848</p> <p>1 and the rules about how you give a urine sample, that 2 you think it's likely that during the 13 times when 3 Lance Armstrong gave a urine sample during the 2000 4 Tour de France he used a tube to fill the cup instead 5 of his own urine? 6 A. I'm saying it's possible based on, first of 7 all, the fact that it's known to have happened as late 8 as 2004 at the International Olympic Games -- at the 9 Olympic games where the best drug controls in the 10 world are being put in charge of supervising it, and 11 the fact that the WADA independent observers' report 12 from the 2003 Tour de France noted that there was no 13 supervision of cyclists for the time that they 14 finished the race until they provided the doping 15 control. 16 Now, that gives an opportunity to use the 17 methods that we put up there, and it's been shown 18 that -- can I get -- and it's been shown that an 19 Olympic gold medalist has successfully substituted 20 urine, so, yes, it is possible. 21 Q. Based solely on the fact that these two guys 22 reported they thought the urine was clear and reported 23 they were all negative, those samples, you've come to 24 the conclusion that it's likely that that's what he 25 was doing in 2000?</p>	<p style="text-align: right;">Page 2850</p> <p>1 tests there should be an entire packet that looks like 2 that, correct? 3 A. No, there shouldn't be. 4 Q. For every one that they want to contend is a 5 positive -- for the 12 that they say are positive 6 there should be those materials if this was for the 7 purposes of the WADA code? 8 A. Well, but it's not, so it's a moot point. 9 ARBITRATOR LYON: Please stop right 10 there. I want to ask a question. 11 How much longer do you have? 12 MR. LEVINSTEIN: Under ten minutes. 13 ARBITRATOR LYON: Are those real minutes 14 or are those Herman minutes? 15 MR. LEVINSTEIN: I've never used Herman 16 minutes. 17 ARBITRATOR FAULKNER: Are those ten 18 minutes going to be addressing new topics or things we 19 have already heard? 20 MR. LEVINSTEIN: Huh? 21 ARBITRATOR FAULKNER: Are those ten 22 minutes to be addressing new topics or things we have 23 already heard. 24 MR. LEVINSTEIN: New topics, I believe. 25 ARBITRATOR FAULKNER: Okay.</p>

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<p style="text-align: right;">Page 2851</p> <p>1 MR. LEVINSTEIN: Or putting old topics 2 together, I think. It includes --</p> <p>3 ARBITRATOR FAULKNER: By the way, what 4 time is lunch scheduled for so we know?</p> <p>5 MR. TILLOTSON: I was told by my 6 secretary that Specialty was sent to pick it up at 7 11:20.</p> <p>8 ARBITRATOR FAULKNER: So that we have our 9 times today, we do have other witnesses we are 10 anticipating today; is that correct? Is Mr. Bandy 11 testifying?</p> <p>12 MR. TILLOTSON: Well, they've asked to 13 call him as a rebuttal witness.</p> <p>14 MR. HERMAN: We have got --</p> <p>15 MR. TILLOTSON: There are some other 16 matters.</p> <p>17 ARBITRATOR CHERNICK: We have some time 18 constraints here.</p> <p>19 MR. HERMAN: Exactly. So, yes, if we 20 can --</p> <p>21 MR. LEVINSTEIN: Never mind. I'll pass 22 the witness.</p> <p>23 ARBITRATOR FAULKNER: Thank you very 24 much. Any redirect?</p> <p>25 MR. TOWNS: Yes.</p>	<p style="text-align: right;">Page 2853</p> <p>1 about document stipulation for Dr. Ashenden. Do you 2 know about that or do you want me to hold off?</p> <p>3 MR. HERMAN: Hold off on that, if you 4 can, and --</p> <p>5 MR. TOWNS: Sure. That's fine.</p> <p>6 RE-DIRECT EXAMINATION</p> <p>7 BY MR. TOWNS:</p> <p>8 Q. Dr. Ashenden, let me first ask you, there was 9 some discussion about the -- the l'Equipe article and 10 the lab that ran the results and I think we heard 11 quite a bit about that actually, but I wanted to ask 12 you, have you been, in the course of this litigation, 13 provided any documents that would assist you in 14 reaching a conclusion that the chain of custody was 15 handled properly?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. I want to show you what's been marked 18 as Respondents' Exhibit 109. Would you describe for 19 the panel what Respondents' 109 is?</p> <p>20 A. It's letter by the director of the lab, 21 Jacques de Cearriuz to Montbrial.</p> <p>22 MR. BREEN: We will object on the basis 23 of hearsay, Your Honor. I don't know if he's going to 24 go through it right now, but on the basis of the 25 objections that were raised to a couple of letters</p>
<p style="text-align: right;">Page 2852</p> <p>1 ARBITRATOR FAULKNER: Is that a yes to 2 her or to us?</p> <p>3 MR. TOWNS: Why don't we do this, why 4 don't we break, find out where lunch is, and I'll put 5 together a very expeditious redirect.</p> <p>6 ARBITRATOR FAULKNER: Okay. We're off 7 the record.</p> <p>8 (Recess 11:45 a.m. to 12:51 p.m.)</p> <p>9 ARBITRATOR FAULKNER: Okay, Mr. Towns.</p> <p>10 ARBITRATOR CHERNICK: I think we probably 11 need Mr. Levinstein, don't we?</p> <p>12 MR. HERMAN: No, go ahead.</p> <p>13 ARBITRATOR FAULKNER: Okay. Please 14 proceed.</p> <p>15 ARBITRATOR CHERNICK: Is it something 16 that we said?</p> <p>17 MR. HERMAN: You never write, you never 18 call.</p> <p>19 ARBITRATOR FAULKNER: We are on a tight 20 schedule.</p> <p>21 MR. TOWNS: No, I understand. Tim, do 22 you know about these documents that we have been 23 discussing with Sean with regard to Dr. Ashenden?</p> <p>24 MR. HERMAN: Pardon me?</p> <p>25 MR. TOWNS: Sean Breen and I had talked</p>	<p style="text-align: right;">Page 2854</p> <p>1 that we were going to try to get in, this is pure 2 hearsay. It's not from Mr. Ashenden. It's apparently 3 to Mr. Montbrial.</p> <p>4 MS. BLUE: Who represents SCA.</p> <p>5 MR. HERMAN: Who represents SCA.</p> <p>6 ARBITRATOR FAULKNER: We recall the name.</p> <p>7 MR. BREEN: Thibeault, I think he's 8 referred to.</p> <p>9 ARBITRATOR FAULKNER: Please respond.</p> <p>10 MR. TOWNS: If I may, Your Honor, as an 11 expert, he's able to testify on the documents that 12 he's reviewed in reaching in his opinion, and if he's 13 relied upon it, it would be up to the panel to afford 14 the weight to that evidence, but as an admissibility 15 matter, it simply is something he's reviewed.</p> <p>16 ARBITRATOR CHERNICK: You're not offering 17 it in evidence, you're simply offering it as a basis 18 for his opinion?</p> <p>19 MR. TOWNS: I will be offering the 20 document into evidence as one of the foundational 21 documents that he relied upon.</p> <p>22 ARBITRATOR CHERNICK: But the underlying 23 document doesn't need to come into evidence for him to 24 say, this is something that I relied on, and we can 25 read it for that purpose.</p>

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<p style="text-align: right;">Page 2855</p> <p>1 MR. TOWNS: No, that's absolutely 2 correct. 3 ARBITRATOR CHERNICK: Why don't we defer 4 the dispute about admissibility and let him testify. 5 ARBITRATOR FAULKNER: Let him testify and 6 then we will decide what we will do with it, if 7 anything. 8 Q. (BY MR. TOWNS) I'm sorry, Dr. Ashenden, 9 would you again tell us briefly who is this letter 10 from and what's the conclusion that's reached? 11 A. The letter is from the director of the lab, 12 Jacques Cearriuz, outlining the chain of custody of 13 the samples at the LNDD laboratory, outlining the 14 security procedures that exist within the laboratory, 15 and pointing out that the samples in question there 16 are in some cases the remnants of the blood that were 17 to be examined. 18 Q. And I want to direct you next to Respondents' 19 Exhibit 44 which we have all seen plenty of times. 20 That's the actual results that were published in 21 l'Equipe out of the lab, and are those, in fact, the 22 results that you used in reaching your opinions that 23 you reach in Exhibit 76? 24 A. In Exhibit 76? 25 Q. Let me ask that over. You used the values</p>	<p style="text-align: right;">Page 2857</p> <p>1 period he was using EPO. I haven't been given any 2 data, and I don't think there's any doubt about it to 3 show one way or another whether he was using in the 4 days that -- leading up to that. I conclude that that 5 would happen, but an EPO program would typically last 6 several weeks and would have begun before the race 7 starts. 8 Q. And in examining the EPO results in the 1999 9 l'Equipe reported findings, was it a combination of 10 Respondents' 44 and Respondents' 109 that led you to 11 those conclusions, among other things? 12 A. Yes, among other thing, yes. 13 Q. Okay. 14 MR. TOWNS: Sean, do you -- 15 MR. BREEN: Yes, sir I'm listening. 16 MR. TOWNS: The documents that we talked 17 about, can I read through those and see if there's 18 anything left that I need to do with Mr. Ashenden -- 19 or Dr. Ashenden on documents? Do you have that list 20 with you? 21 MR. BREEN: I don't have the list, but 22 the only document I had a problem with was the 23 objections we previously raised regarding the 24 so-called test results, et cetera. So if you're 25 just -- the articles -- I have no objections to you</p>
<p style="text-align: right;">Page 2856</p> <p>1 and the results that are demonstrated in Respondents' 2 44 in making your chart in Respondents' 76; is that 3 correct? 4 A. Yes, dovetailed the results from here. The 5 reproductions were better than this, and dovetailed 6 them, yes. 7 Q. Now, one of the points that came up under 8 cross-examination was that it would make no sense to 9 begin an EPO regimen on the first day of the Tour de 10 France at the prologue. Do you recall that line of 11 questioning? 12 A. Yes. 13 Q. Do you agree with that? 14 A. I think it would be unusual to start the 15 first injection on the first day of the race, yes. 16 Q. How would you then reconcile the results that 17 you -- that you show in Respondent's 76 with a doping 18 program that Mr. Armstrong may have been using in 19 1999? 20 A. Well, typically the -- the purative time that 21 you take EPO is depending on what sort of dosages you 22 use or things like that, but typically it goes over a 23 couple of weeks. All that I've been presented with 24 here is a new note from the prologue to the last time 25 the sample was collected which shows that during that</p>	<p style="text-align: right;">Page 2858</p> <p>1 tendering to the panel the articles that you have 2 listed in there, and I believe the last thing was some 3 kind of UCI letter. 4 MR. TOWNS: Right. 5 MR. BREEN: And with the same 6 understanding that it wasn't a letter to this witness, 7 I understand it's being used because he's an expert as 8 something that he looked at and I anticipate the panel 9 would have the same view to it. With that said, go 10 for it. We will streamline it. 11 MR. TOWNS: We offer to admit 12 Respondents' 36, Respondents' 37, Respondents' 42, 13 Respondents' 58 through 74, which is a series of 14 articles, Respondents' 76 and Respondents' 78. 15 ARBITRATOR FAULKNER: Okay, subject to 16 Mr. Breen's comments, they'll be admitted. 17 Q. (BY MR. TOWNS) Now, Dr. Ashenden, please 18 look at what's been marked as Respondents' 79 in 19 front of you there. 20 A. Yes. 21 Q. Can you describe to the panel what that is? 22 A. That is a letter by the UCI's head of 23 antidoping, Leon Schattenberg. I obtained that from 24 UCI's web site, and it had been a letter that he had 25 sent to all riders in the sense of being made a public</p>

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<p style="text-align: right;">Page 2859</p> <p>1 document where he was -- it's essentially addressing 2 some doping issues with the cyclists. 3 Q. And what is it about Respondents' 79 that was 4 helpful to you in reaching your conclusions in this 5 case? 6 A. Well, what -- what drew my attention was 7 the -- going on the second page where this is the head 8 of the antidoping program and he's acknowledging that 9 athletes have been able, currently are able and will 10 be in the future able to use doping products that they 11 aren't able to detect. I found this to be a 12 significant view for the head of the antidoping 13 program to state publicly. 14 Q. Could you point to the panel which sections 15 of this page that you're specifically talking about? 16 A. If you go to the fifth paragraph that starts some other. 17 ARBITRATOR LYON: Who's Leon 18 Schattenberg? 19 THE WITNESS: He's the head of the UCI's 20 antidoping program. 21 Q. (BY MR. TOWNS) Is that the section you're 22 referring to? 23 A. Yes. 24 MR. TOWNS: If you could highlight the</p>	<p style="text-align: right;">Page 2861</p> <p>1 MR. BREEN: Subject to my previous 2 objections, Your Honor. 3 ARBITRATOR FAULKNER: Those are noted. 4 It will be admitted. 5 ARBITRATOR LYON: This letter is 1998; 6 that's what it says. 7 MR. TOWNS: And finally, we would offer 8 to the panel Respondents' Exhibit 44, which is the 9 much talked about l'Equipe results that Mr. -- that 10 Dr. Ashenden relied upon in reaching his conclusions. 11 MR. BREEN: The summary sheet. I won't 12 repeat all our objections to those, Mr. Chairman, but 13 as we -- 14 ARBITRATOR FAULKNER: We are familiar 15 with them. 16 ARBITRATOR LYON: I have a couple of 17 questions about the summary sheet before we go. Where 18 did it come from, the summary sheet? 19 MR. TILLOTSON: In terms of where we got 20 it? 21 ARBITRATOR LYON: Yes. 22 MR. TILLOTSON: It was provided to our 23 French counsel who obtained it from the reporter from l'Equipe. 24 ARBITRATOR LYON: And you --</p>
<p style="text-align: right;">Page 2860</p> <p>1 three paragraphs. 2 A. Yes. So he's acknowledging that some 3 products such as EPO growth hormone can't be detected. 4 He acknowledges that they're bound to be followed by 5 other new and undetectable products. He states in the 6 sentence which he highlights that doping checks will 7 always be a step behind reality. And I found that to 8 be a fairly compelling acknowledgment that what I've 9 been saying for years and years is that the doping 10 programs we have in place need to be improved because 11 athletes are able to get away without being caught. 12 Q. (BY MR. TOWNS) And this was put out by the 13 head of antidoping for UCI; is that right? 14 A. Yes. 15 Q. And it's in the public domain as a public 16 document? 17 A. I got it from the UCI web site. 18 MR. BREEN: When was that, by the way? 19 MR. TOWNS: Does it show a publication date on it? 20 MR. BREEN: I mean, when did you get it? 21 THE WITNESS: I don't recollect. 22 MR. BREEN: Okay. 23 MR. TOWNS: We would offer to the panel 24 Respondents' Exhibit 79, which is this document.</p>	<p style="text-align: right;">Page 2862</p> <p>1 MR. TILLOTSON: Where he got it from is 2 the source of the investigation. I mean, that has not 3 been revealed to anyone. 4 ARBITRATOR LYON: Where the reporter got it from? 5 MR. TILLOTSON: Right. Someone obviously 6 leaked it or gave it; the reporter was able to obtain 7 it. Whether it was leaked to him or leaked to someone 8 and the reporter got it, I don't know, because all we 9 had was the newspaper article and we made inquiries 10 and our French counsel was able to obtain it. 11 ARBITRATOR LYON: You testified earlier 12 that you had seen a color coded version of that? 13 THE WITNESS: Yes. 14 ARBITRATOR LYON: Is that true? I mean, 15 I'm not doubting your -- do you have color coded copy? 16 MR. TILLOTSON: Yes. When he said that, 17 it reminded me that there is a version that's in 18 color, and I can provide that. I just didn't think 19 about it. 20 ARBITRATOR LYON: Where is it? 21 MR. TILLOTSON: In possession of the 22 documents that we were provided. 23 ARBITRATOR FAULKNER: In the possession 24 of who? Who has it?</p>

<p style="text-align: right;">Page 2863</p> <p>1 MR. TILLOTSON: I've got it. The version 2 I got was colored. It was not a black-and-white 3 version. When I sent it to you, I think I sent it by 4 e-mail so the e-mail would be in color, but when it 5 was produced and made part of the exhibits, it was 6 simply colored in black and white.</p> <p>7 ARBITRATOR FAULKNER: You mean copied in 8 black and white?</p> <p>9 MR. TILLOTSON: I mean copied in black 10 and white. And I had forgotten it was colored until 11 he testified.</p> <p>12 ARBITRATOR LYON: Where is the colored 13 copy right now, today?</p> <p>14 MR. TILLOTSON: Physically?</p> <p>15 ARBITRATOR LYON: Yes.</p> <p>16 MR. TILLOTSON: It might be in all of the 17 boxes with the exhibits.</p> <p>18 ARBITRATOR FAULKNER: Could y'all get us 19 a colored copy, please?</p> <p>20 MR. TILLOTSON: Yes. I had forgotten -- 21 until he brought that up, I had forgotten that it was 22 colored, but, yes, we will provide a colored copy.</p> <p>23 ARBITRATOR FAULKNER: Okay.</p> <p>24 We are going to admit it, but we want a 25 color copy provided to each of the members of the</p>	<p style="text-align: right;">Page 2865</p> <p>1 they can?</p> <p>2 I mean, isn't that what you're testifying 3 to in this case, is that there's ways to beat drug 4 tests, so, therefore, part of your opinion is that 5 because there's a way to do it, Mr. Armstrong can do 6 it, right?</p> <p>7 A. No, no, I don't think that's an accurate 8 representation.</p> <p>9 Q. Were you here when Dr. Coyle was talking 10 about the exchange he had with Andrew N. Jones, the 11 professor of applied physiology about Paula Radcliffe?</p> <p>12 A. I don't recall that, no.</p> <p>13 Q. Do you recall that he talked --</p> <p>14 MR. BREEN: Can we put up -- I'm going to 15 offer this because Dr. Coyle did testify about it.</p> <p>16 ARBITRATOR FAULKNER: What is it?</p> <p>17 MR. BREEN: It's a letter that Dr. Coyle 18 testified about.</p> <p>19 ARBITRATOR FAULKNER: Is it identified as 20 anything?</p> <p>21 MR. BREEN: If it's not, it's about to 22 be.</p> <p>23 ARBITRATOR FAULKNER: Okay.</p> <p>24 MR. BREEN: It will be our next exhibit. 25 It's 150.</p>
<p style="text-align: right;">Page 2864</p> <p>1 panel, and to opposing counsel so they can see it as 2 well, because quite frankly, guys, the black and white 3 copies are not good.</p> <p>4 MR. TILLOTSON: I apologize, Your Honor, 5 you mentioned -- did we send it by e-mail or do you 6 want us to provide a hard copy?</p> <p>7 ARBITRATOR FAULKNER: Why don't you make 8 a copy that you know we all can see and read and then 9 you can mail it to everybody. The record is going to 10 be open for a little while.</p> <p>11 Mr. Towns, anything else?</p> <p>12 MR. TOWNS: No.</p> <p>13 MR. BREEN: Do you mind if I do a couple 14 of quick questions on cross examination, just a couple 15 quick ones.</p> <p>16 RE-CROSS EXAMINATION</p> <p>17 BY MR. BREEN:</p> <p>18 Q. Mr. Ashenden, let me ask you something, do 19 they have income taxes in Australia?</p> <p>20 A. Yes.</p> <p>21 Q. And I take it there are ways people cheat on 22 their income taxes in Australia?</p> <p>23 A. Yeah, I've heard that, yes.</p> <p>24 Q. All right. Does that mean that people are 25 cheating on their income taxes in Australia because</p>	<p style="text-align: right;">Page 2866</p> <p>1 ARBITRATOR FAULKNER: Would you please 2 give it to the witness?</p> <p>3 MR. BREEN: Sure, it's right up on the 4 screen, but I'll be happy to.</p> <p>5 THE WITNESS: Thank you.</p> <p>6 MR. BREEN: You're welcome.</p> <p>7 Q. (BY MR. BREEN) Do you also recognize that as 8 a letter from Dr. Coyle's file that was produced in 9 this case?</p> <p>10 A. No, I've never seen this.</p> <p>11 Q. Well, you attended Dr. Coyle's deposition in 12 Austin, in my office, didn't you?</p> <p>13 A. Yes.</p> <p>14 Q. And were you there when he talked about in 15 his deposition the fact that he had had this exchange 16 with Dr. Jones regarding the striking similarities 17 between his study of Mr. Armstrong and Dr. Jones' 18 study of Paula Radcliffe?</p> <p>19 A. Yes, I remember that.</p> <p>20 Q. Do you remember that now?</p> <p>21 A. Yes.</p> <p>22 Q. So when you testified on direct with Cody 23 that you had never seen anything like Ed Coyle's 24 study, actually you weren't remembering the fact that 25 Dr. Coyle had talked specifically about this, both in</p>

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<p style="text-align: right;">Page 2867</p> <p>1 his deposition and here in front of the panel, right? 2 A. No, that's not accurate. 3 Q. You were remembering that, but you just 4 discounted it? 5 A. I think I pointed out that this is about a 6 runner, we are talking about a cyclist and you can't 7 compare the two when you're talking about increases in 8 efficiency, because a runner depends upon elastic 9 energy and energy stored in the muscles, which is 10 simply not an issue in cyclists. So, no, they're not 11 directly comparable. 12 Q. So Dr. Jones is wrong when he writes Dr. 13 Coyle and says, the data I presented in Loughborough 14 showed a continuation of this same trend. What you're 15 saying is that Dr. Jones is just comparing apples to 16 oranges and he's wrong, he shouldn't show that it's 17 the same trend; is that right? 18 A. Given this is the first time I've seen this, 19 can I read, please? 20 Q. You've had -- Dr. Ashenden, it's been in the 21 possession of the lawyers -- 22 MR. TOWNS: Well, that's -- 23 ARBITRATOR FAULKNER: Please, just let 24 him read it, and then you can question further. 25 MR. BREEN: Sure.</p>	<p style="text-align: right;">Page 2869</p> <p>1 here. Physiological factors could be a range of 2 things, so I don't think that's definitive, but I will 3 repeat my stance that I don't believe improvements in 4 efficiency in runners, which I acknowledge have been 5 documented, are comparable with improvements in 6 efficiencies in cyclists, because they are two 7 different things. 8 Q. Okay. And if Dr. Jones thinks otherwise, you 9 would just disagree with him? I'm not saying he does, 10 but if he did think otherwise, that there was a basis 11 to compare the two, you would disagree with Dr. Jones? 12 A. I would like to sit down and talk to him 13 about it. I would disagree with him if that was his 14 stance. 15 Q. Fair enough. Now, when you were hired in 16 this case, did you know that SCA had already denied 17 this claim? 18 A. No. 19 Q. Now, it's fair to say that you testified that 20 when you were hired in this case, you already had a 21 predisposition, you already had a mental outlook, you 22 already had an opinion that Mr. Armstrong was a 23 cheater, right? 24 MR. TILLOTSON: Well, I object. This has 25 been covered and asked and answered and this is</p>
<p style="text-align: right;">Page 2868</p> <p>1 ARBITRATOR FAULKNER: Please read it. 2 THE WITNESS: So can you ask the question 3 again, please? 4 ARBITRATOR FAULKNER: Okay. 5 MR. BREEN: Sure. 6 Q. (BY MR. BREEN) Do you think that Dr. Jones 7 is just mistaken and comparing apples to oranges when, 8 for instance, in the last sentence he says the 9 similarities in the physiological factors linked to 10 continued improvements in performance in Armstrong and 11 Radcliffe are striking? You just disagree with 12 Dr. Jones on that? 13 A. I don't think -- based on this letter, I 14 don't think he's clarified his comments at all, so I 15 mean, I would struggle to make any comparisons one way 16 or another. You're asking me what he was thinking 17 when he wrote it. 18 Q. No, not at all. I'm asking you if you are 19 asserting to this panel that Dr. Jones is comparing 20 apples to oranges and he's just in error when he makes 21 a comparison saying that the physiological factors 22 linked to continued improvements as striking? 23 A. If he had mentioned efficiency, for example, 24 I think it would be, okay, well, he really is talking 25 about that, but he makes no mention of efficiency</p>	<p style="text-align: right;">Page 2870</p> <p>1 re-cross. 2 MR. BREEN: I promise you I have one or 3 two more questions. I know the panel is -- 4 ARBITRATOR FAULKNER: Argument in 5 questions isn't particularly helpful, y'all. We 6 understand where you're coming from, so if you can 7 focus your questions narrowly for this witness, you're 8 going to have an opportunity to argue anything y'all 9 want to. 10 MR. BREEN: Mr. Faulkner, not a problem, 11 just a couple of questions. 12 Q. (BY MR. BREEN) Is that fair that by that 13 time you were hired you had that outlook? 14 ARBITRATOR CHERNICK: Could you reask the 15 question. You really had three different things in 16 there that weren't necessarily the same -- 17 MR. BREEN: Sure. No problem at all, Mr. 18 Chernick. 19 Q. (BY MR. BREEN) When you were hired in this 20 case, you were of the opinion and the belief that Mr. 21 Armstrong had used performance enhancing drugs? 22 A. No. I think I pretty carefully pointed out 23 that based on what I had seen at that point in time, 24 the explanations that I had seen didn't account for 25 that improvement. And I think I categorized it as I</p>

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<p style="text-align: right;">Page 2871</p> <p>1 would have belonged to the group of doubters. 2 Q. You would have belonged to the group of 3 doubters? 4 A. Yes. 5 Q. And that was after SCA had already denied 6 this claim? 7 A. Well, I don't know about the denial of the 8 claim, sir. 9 Q. Fair enough, Dr. Ashenden. That's all I 10 have. 11 ARBITRATOR FAULKNER: Thank you very 12 much. 13 Anything else? 14 MR. TOWNS: No. 15 ARBITRATOR CHERNICK: Thank you. 16 ARBITRATOR FAULKNER: Nothing else, okay, 17 Mr. Chernick? 18 Senator? 19 ARBITRATOR LYON: No questions of this 20 witness. 21 ARBITRATOR FAULKNER: No question, thank 22 you. You may step down, sir. 23 Did y'all have another witness or 24 anything else -- 25 ARBITRATOR CHERNICK: Subject to all of</p>	<p style="text-align: right;">Page 2873</p> <p>1 this time. 2 ARBITRATOR CHERNICK: Can I ask that if 3 you do not reach agreement with respect to the 4 admissibility of the McIlvain/LeMond tape, that you 5 focus in whatever briefing you intend to provide to 6 the panel by February 8th what your arguments might be 7 with respect to the admissibility in this proceeding 8 of that tape. 9 MR. HERMAN: Okay. 10 MR. BREEN: Sure. 11 MR. TILLOTSON: Sure. 12 ARBITRATOR FAULKNER: Anything else, 13 Mr. Tillotson? 14 MR. TILLOTSON: Subject to the some 15 cleanup to ensure that certain documents -- we have 16 prepared a chart of all the documents in regard to 17 what we have moved to admit and what have been 18 admitted. Subject to that, which I don't think we 19 need to go through at this time, I'll try to work with 20 Mr. Herman on that, that would be the conclusion of 21 our case in chief. 22 ARBITRATOR FAULKNER: Mr. Herman? 23 MR. HERMAN: I think -- I was going to 24 call Mr. Bandy, but I think Mr. Tillotson and I have 25 reached an agreement, and let me recite this, because</p>
<p style="text-align: right;">Page 2872</p> <p>1 the things that Mr. Tillotson has mentioned -- 2 ARBITRATOR FAULKNER: Right. 3 MR. TILLOTSON: Can I say what the rest 4 of my case is? 5 ARBITRATOR FAULKNER: Please recite that. 6 MR. TILLOTSON: We would offer and will 7 offer the deposition testimony of Kelly Price, 8 excerpts of Kelly Price and excerpts from Mark Gorksi. 9 We will tender those to Mr. Herman. He can then add 10 any additional things he wants to do and then we can 11 tender that to the panel prior to our next 12 reconvening, if that's okay. 13 ARBITRATOR FAULKNER: Okay. 14 MR. TILLOTSON: I will attempt but have 15 not been able to reach a stipulation with Mr. Herman 16 regarding the Stephanie McIlvain, Greg LeMond tape and 17 I have not had a chance to study in depth the letter 18 from the lawyer. If we reach a stipulation, I'll 19 present that to the panel for next time we reconvene. 20 If not, we may have to take up the issue of the 21 admissibility of the tape. 22 And then subject to the deposition 23 testimony we may offer from Frank Andreu and Emma 24 O'Reilly, those are the only live witnesses that we 25 would have -- the only live witnesses we have left at</p>	<p style="text-align: right;">Page 2874</p> <p>1 we don't have it in writing but please correct me 2 if -- I don't mean to represent that this necessarily 3 is our agreement. Feel free to interrupt me at any 4 time. 5 We are offering -- instead of calling 6 Mr. Bandy, we are offering certain of Mr. Bandy's 7 deposition exhibits -- deposition pages or testimony 8 which I will -- I'm having extracted now, prepared in 9 writing and give to everybody. 10 I think that we agreed that Mr. Bandy was 11 the author of Claimants' Exhibit 71, which is the. 12 Memorandum of September 20, 2004 and it had not been 13 produced to us at the time of Mr. Bandy's deposition. 14 But in any event, he prepared it at or near 15 September 20, and it -- his effort was to accurately 16 reflect the conversation that Bandy and Hamman had 17 with Mr. Walsh and the LeMonds. 18 The rules and regulations of the UCI and 19 the Tour de France have been asserted by SCA to be 20 part of this contract somehow. So I am marking and 21 tendering the regulations of the race and prize money 22 of the Tour de France; part 12, Discipline and 23 Procedures of UCI, and part 14, which is the full 24 chapter on antidoping rules of the UCI. And I think 25 Mr. Tillotson has agreed to the admission of those</p>

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<p>1 documents.</p> <p>2 ARBITRATOR CHERNICK: And those would be</p> <p>3 152, 153 and 154 respectively.</p> <p>4 MR. HERMAN: I think so.</p> <p>5 ARBITRATOR FAULKNER: Would you go ahead</p> <p>6 and write that on there.</p> <p>7 Jeff, I saw your head shake. Was that a</p> <p>8 yes, you're agreeing?</p> <p>9 MR. TILLOTSON: I have no objection to</p> <p>10 the admission --</p> <p>11 ARBITRATOR CHERNICK: Jeff, wait just a</p> <p>12 second. 151 was the letter that was handed to Dr.</p> <p>13 Ashenden.</p> <p>14 MS. EVORA: I have the e-mail from</p> <p>15 Ashenden in the Hamilton case. Did we disallow that?</p> <p>16 ARBITRATOR CHERNICK: I don't think it</p> <p>17 has ever -- I don't think it came back.</p> <p>18 What did you have that as?</p> <p>19 MS. EVORA: 151. The e-mail that</p> <p>20 Mr. Levinstein tried to use regarding the Hamilton</p> <p>21 case.</p> <p>22 ARBITRATOR CHERNICK: So 152 would then</p> <p>23 be the Coyle Jones letter.</p> <p>24 MS. EVORA: That's what I have as 152,</p> <p>25 yes.</p>	<p>Page 2875</p> <p>1 obvious to me since two weeks ago.</p> <p>2 That you would actually admit that in</p> <p>3 that tone of voice.</p> <p>4 ARBITRATOR FAULKNER: What is that?</p> <p>5 MR. HERMAN: The Tour de France</p> <p>6 statistics.</p> <p>7 ARBITRATOR FAULKNER: What number is</p> <p>8 that?</p> <p>9 ARBITRATOR CHERNICK: 156.</p> <p>10 MR. HERMAN: And then I'm offering 157,</p> <p>11 which is an extract of the information on 156, which I</p> <p>12 understand that Mr. Tillotson did not agree to, but I</p> <p>13 have shown him the accuracy of the numbers as</p> <p>14 reflected on the Torelli information, and I might also</p> <p>15 state that this Torelli information agrees with the</p> <p>16 information produced by SCA about what the times were</p> <p>17 and who the winners were, but in the SCA document that</p> <p>18 the actual total kilometers weren't shown, so this is</p> <p>19 just an arithmetic exercise.</p> <p>20 So I'm offering 157, which contains the</p> <p>21 1981, 1991, 2001, 2004 average speeds of the Tour de</p> <p>22 France in kilometers per hour, the difference between</p> <p>23 the preceding entry, and the total overall percentage</p> <p>24 increase over the period of the 24 years.</p> <p>25 ARBITRATOR CHERNICK: Can we go off the</p>
<p>Page 2876</p> <p>1 ARBITRATOR CHERNICK: So these are 153,</p> <p>2 154 and 155.</p> <p>3 MR. HERMAN: Okay.</p> <p>4 ARBITRATOR CHERNICK: Yes, it was shown</p> <p>5 but it wasn't identified as included in the exhibit</p> <p>6 numbers. That's fine.</p> <p>7 So 150 is the Nichols affidavit, 151 is</p> <p>8 the e-mail, 152 is the Coyle Jones letter, and 153,</p> <p>9 154 and 155 are the Tour de France and UCI documents.</p> <p>10 MR. HERMAN: Here's the other one.</p> <p>11 ARBITRATOR FAULKNER: Okay, I've got it.</p> <p>12 MR. HERMAN: Chapter 14 is 153,</p> <p>13 Chapter 12 is 154.</p> <p>14 Okay. I think we have agreed on the</p> <p>15 admission of -- I don't really want to introduce the</p> <p>16 entire document, but, Mr. Tillotson, have we agreed on</p> <p>17 the reliability of these statistics or not?</p> <p>18 MR. TILLOTSON: I'll allow you to</p> <p>19 introduce it into evidence without objection. I'm not</p> <p>20 going to stipulate as to its reliability.</p> <p>21 MR. HERMAN: Once it's in evidence, what</p> <p>22 do I care?</p> <p>23 ARBITRATOR FAULKNER: That's candid.</p> <p>24 What's the number?</p> <p>25 MR. TILLOTSON: That would be apparently</p>	<p>Page 2877</p> <p>1 record for just a second?</p> <p>2 (Discussion held off the record)</p> <p>3 ARBITRATOR CHERNICK: Back on the record.</p> <p>4 So 156 is the statistics from the web</p> <p>5 site -- from the web site and 157 is the extracts?</p> <p>6 MR. HERMAN: That's exactly right, yes.</p> <p>7 I don't have multiple copies of this, but if you'll</p> <p>8 allow me to withdraw it, I'll make sure everybody gets</p> <p>9 copies.</p> <p>10 MR. BREEN: Actually Ms. Ross will make</p> <p>11 sure.</p> <p>12 MR. HERMAN: Finally, with the emphasis</p> <p>13 on the finally, I think Mr. Tillotson has already</p> <p>14 agreed that this particular exhibit should be marked</p> <p>15 Respondents' 25-A, if I'm not mistaken.</p> <p>16 MR. TILLOTSON: Correct. Correct.</p> <p>17 MR. HERMAN: Okay. So with apologies to</p> <p>18 Mr. Tillotson for putting my nose in his case, I want</p> <p>19 to make sure that the panel receives a copy of</p> <p>20 Respondents' 25-A, which is Mr. Bandy's translation,</p> <p>21 which is 27 pages in length, which was produced to us</p> <p>22 by SCA and -- versus the 200-some-odd pages of</p> <p>23 Exhibit 25.</p> <p>24 ARBITRATOR CHERNICK: Do you only have</p> <p>25 one of these?</p>

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<p style="text-align: right;">Page 2879</p> <p>1 MR. HERMAN: I only have one of those so 2 with your permission I'll withdraw that and have -- 3 MR. TILLOTSON: We'll have Mr. Bandy 4 confirm it. 5 ARBITRATOR FAULKNER: Yes, just confirm 6 it and then I'll give it back you and you can submit 7 it when you send copies to all of us. 8 MR. TILLOTSON: Assuming that's it, I 9 have no objection. 10 MR. HERMAN: I don't know if this falls 11 under housekeeping or not, but I think it does. We 12 have the affidavits that the admissibility of which I 13 think we have agreed to, Doctors Nichols and Einhorn, 14 as well as Messrs. Zorzoli, Tygert, Varin, 15 Dr. Schattenberg and Dr. Catlin, which have been 16 previously provided to the panel, but we will bind 17 these and get the -- 18 ARBITRATOR LYON: Are those all of 19 Armstrong physicians? 20 MR. HERMAN: Yes, the Nichols and Einhorn 21 are his treating physicians. Einhorn's affidavit is 22 simply a business records affidavit referring to the 23 medical records. Dr. Nichols is the stipulation -- 24 ARBITRATOR LYON: Who are those other 25 doctors?</p>	<p style="text-align: right;">Page 2881</p> <p>1 MR. TILLOTSON: Part 2. 2 MR. HERMAN: We're dealing with the 3 medical records. I believe that they've been provided 4 to SCA and we will -- we are prepared to leave them at 5 a convenient place, either with the chairman or 6 otherwise. 7 ARBITRATOR FAULKNER: I've already given 8 them back to Mr. Breen. 9 MR. HERMAN: Okay, but we do want to 10 introduce -- I think there are four pages of -- out of 11 the medical record which directly address the only 12 issue for which they were provided, which is to rebut 13 this alleged incident in the Indiana hospital, so the 14 notes from October 27 and 28 are included as pages 139 15 and 140. And then the medical history taken on 16 October 23 is also included as the last two pages. 17 ARBITRATOR FAULKNER: Okay. 18 MR. HERMAN: So we offer those. 19 ARBITRATOR FAULKNER: Do you have any 20 objection? 21 MR. TILLOTSON: I guess I -- in 22 principle, I don't if the medical records have been 23 proven up as -- through an affidavit. I guess I don't 24 have any problem with an excerpt so long as I can see 25 it, but also that we have access to those records in</p>
<p style="text-align: right;">Page 2880</p> <p>1 MR. HERMAN: These are all from the UCI 2 or the U.S. antidoping agency confirming Mr. 3 Armstrong's performance on the tests that have been 4 given over the years. 5 ARBITRATOR FAULKNER: Mr. Tillotson, 6 y'all don't have any objection to those? 7 MR. TILLOTSON: Just one second. 8 MR. HERMAN: He said he didn't the other 9 day. 10 ARBITRATOR FAULKNER: I want to make 11 sure. 12 MR. TILLOTSON: These are the affidavits 13 from UCI officials. 14 MR. HERMAN: Yes. 15 MR. TILLOTSON: That were previously 16 submitted in pleadings at some point? 17 MR. BREEN: Correct. 18 MR. TILLOTSON: We have no objections to 19 the admissibility of those in evidence. 20 ARBITRATOR FAULKNER: Okay. 21 MR. HERMAN: If I might, just for the 22 record, if we could mark this batch of affidavits as 23 Exhibit 158, so we don't have to separately mark each 24 one. 25 And I think finally --</p>	<p style="text-align: right;">Page 2882</p> <p>1 case we want to offer anything else specifically to 2 the panel. 3 MR. HERMAN: Absolutely. We will leave 4 those at a mutually -- 5 MR. TILLOTSON: Both of the records the 6 panel would consider as part of the record even though 7 it's not retaining them, then I suppose I don't have 8 an objection to some excerpt. 9 ARBITRATOR FAULKNER: Does that mean you 10 want to give me back the records to be locked up? 11 MR. BREEN: Why don't I visit with Mr. 12 Tillotson and see if -- 13 ARBITRATOR FAULKNER: And then just let 14 me know. 15 MR. TILLOTSON: I'm prepared to let them 16 retain them and then I can work something out with 17 them. 18 ARBITRATOR FAULKNER: That's fine. 19 Actually that's preferable. 20 MR. HERMAN: Then we will reserve, if the 21 panel please, Exhibit 160 for the Anderson pleading 22 orders that we have repeatedly promised that we were 23 going to give you and we have not given you. 24 ARBITRATOR LYON: Let me ask you about 25 that. Again, I asked you the same question. I mean,</p>

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<p style="text-align: right;">Page 2883</p> <p>1 if there's no dispute, if everything was dismissed but 2 the one defamation claim; isn't that right? 3 MR. BREEN: That's right. 4 ARBITRATOR LYON: So two defamation 5 claims are dismissed, why do we need the documents? 6 MR. HERMAN: Well, I don't know that you 7 do, but I thought the chairman asked for them. 8 ARBITRATOR FAULKNER: I believe we did. 9 Just give them to us all. We will know what to do 10 with them. 11 ARBITRATOR CHERNICK: Can I just -- 12 MR. HERMAN: I don't know how to take 13 that. 14 ARBITRATOR CHERNICK: Can I just step 15 back, 159 is the medical record excerpts? 16 MR. HERMAN: It is. 17 ARBITRATOR FAULKNER: Yes. 18 ARBITRATOR CHERNICK: All right, thank 19 you. 20 ARBITRATOR FAULKNER: Anything else 21 Mr. Herman, and then back to you, Jeff. 22 MR. HERMAN: Oh, yeah. To the extent, 23 Your Honor, Mr. Breen points out that it has been a 24 little haphazard, as Mr. Tillotson indicated earlier, 25 the exhibits, the nonbound exhibits which have been</p>	<p style="text-align: right;">Page 2885</p> <p>1 ARBITRATOR FAULKNER: Jeff, do you have a 2 copy of this? 3 MR. TILLOTSON: I do. 4 MR. HERMAN: That's -- chapter 14 is 153. 5 154 is chapter 12. 155 are the Tour de France rules. 6 ARBITRATOR FAULKNER: Thank you. 7 MR. HERMAN: I think -- 8 ARBITRATOR CHERNICK: Did you pass out 9 156? 10 MR. HERMAN: No, I withdrew that because 11 I need to make copies. It's the chart. 12 ARBITRATOR CHERNICK: The web page, the 13 statistics. 14 MR. HERMAN: Right. 15 157, you should have copies. 16 ARBITRATOR CHERNICK: Got it. 17 MR. HERMAN: 158, those are the 18 affidavits, right, and 159 are the medical record 19 excerpts. 20 Members of the panel, if you wouldn't 21 mind passing one of those down to Mr. Tillotson. 22 ARBITRATOR FAULKNER: Sure. 23 MR. HERMAN: And 160 was the Anderson 24 stuff, wasn't it? 25 Okay, I think that's it.</p>
<p style="text-align: right;">Page 2884</p> <p>1 tendered and marked, I guess all of the exhibits 2 between 111 and 160, other than the ones we just 3 talked about, we want to make sure that they are 4 offered, if we have neglected to do prior to this 5 time, and we will get copies of those in bound form to 6 the panel as well, and to Mr. Tillotson. 7 ARBITRATOR FAULKNER: Is that agreed, Mr. 8 Tillotson? 9 MR. TILLOTSON: Yes, if the panel will 10 give us the liberty of trying to work that out, and if 11 there's any problem, it could be brought up later. 12 ARBITRATOR FAULKNER: Good. 13 MR. HERMAN: And I guess finally, the 14 exhibits -- I think that we agreed that our Exhibit 1 15 through 110 were admitted. 16 MR. BREEN: We can do this, too, Jeff, if 17 you want. He said we can work together to see. Why 18 don't we just work together and if there's problem on 19 any specific exhibit, we will let the panel know. 20 MR. TILLOTSON: Sure. 21 MR. HERMAN: I do have copies of the -- 22 ARBITRATOR CHERNICK: 153, 154 and 155. 23 MR. HERMAN: -- 153, 154, and 155, so 24 with the panel's permission, let me -- this is 153, 25 Madam Reporter.</p>	<p style="text-align: right;">Page 2886</p> <p>1 ARBITRATOR FAULKNER: Anything else? 2 MR. HERMAN: That's it. 3 ARBITRATOR FAULKNER: Mr. Tillotson. 4 MR. TILLOTSON: The only issue I had is 5 this is Respondents' 25-A, which is the excerpts from 6 Mr. Bandy, and I would just point -- since Mr. Bandy 7 is not going to testify about it, I just would point 8 out there is a key at the top as to what's 9 translations, what's summaries and what are quotes. 10 ARBITRATOR FAULKNER: Okay. 11 MR. TILLOTSON: So that's what it is. He 12 might summarize a chapter in his own words as opposed 13 to being a literal translation and other parts are 14 literal translations and other parts he's quoting 15 directly from the book. 16 ARBITRATOR FAULKNER: And he says at top 17 what those are? 18 MR. TILLOTSON: And the top contains the 19 key and he also points that out. I think it's self 20 evident. 21 MR. HERMAN: There's one other issue, 22 with respect to the Tour de France rules and UCI 23 rules, I think Mr. Tillotson and I stipulated, rather 24 than have Mr. Bandy testify about it, that the UCI and 25 their stewards determine who the winners are of the</p>

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

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<p>1 on it in Texas, too. 2 ARBITRATOR LYON: That's what I thought. 3 We had a talk about this earlier. 4 And the next thing I need is a box. 5 MR. HERMAN: A box. 6 ARBITRATOR LYON: Do you all have an 7 empty box? 8 MR. BREEN: Yes, we can give you one. 9 MS. BLUE: That's -- February the 10th is 10 Friday after February 6th? 11 MR. BREEN: No, the Friday before. 12 ARBITRATOR FAULKNER: The Friday before. 13 MR. HERMAN: You mean February 3rd. 14 ARBITRATOR LYON: I'd like it in my 15 office before that weekend. 16 MR. BREEN: I thought you were asking for 17 the box, and I was going to suggest Mr. Tillotson -- 18 ARBITRATOR FAULKNER: Thank you. I'm 19 sure he appreciates that. 20 ARBITRATOR FAULKNER: Y'all please do 21 make sure you have those briefs so that we'll have the 22 benefit of those and you all will have their benefit 23 sometime prior to when we resume, which we are 24 planning to resume February 8th, 9th, if necessary and 25 the panel will hopefully be able to begin</p>	<p>Page 2891</p> <p>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 Nancy P. Blankenship, Certified 16 Shorthand Reporter No. 7351 17 in and for the State of Texas 18 Dickman Davenport, Inc. 19 Firm Registration #312 20 1010 Two Turtle Creek Village 21 3838 Oak Lawn Avenue 22 Dallas, Texas 75219 23 214.855.5100 800.445.9548 24 e-mail: npb@ dickmandavenport.com 25 My commission expires 12-31-06</p>
<p>1 deliberations, if you are otherwise unsuccessful, so 2 that we can deliberate the 9th and if necessary on the 3 10th. 4 ARBITRATOR CHERNICK: Off the record for 5 a moment. 6 (Off-the-record discussion) 7 ARBITRATOR FAULKNER: Before we conclude, 8 gentlemen, thank you very much. It's always a 9 pleasure to do cases with talented counsel who know 10 what they're doing and work so well together. 11 Sometimes clients don't appreciate how difficult it 12 can be to do what trial lawyers do, be it in court or 13 in arbitration and we thank you very much and y'all 14 have been consummate professionals throughout all of 15 this. Thanks and we look forward to seeing your 16 briefing and we will see y'all back on February 8th. 17 ARBITRATOR CHERNICK: Here, here. 18 (Proceedings recessed 1:41 p.m.) 19 20 21 22 23 24 25</p>	<p>Page 2892</p>

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