

VOLUME 1 OF 3

STATE OF SOUTH CAROLINA

ORIGINAL

IN THE SUPREME COURT

Appeal from Greenville County

Robin B Stilwell, Circuit Court Judge

RECEIVED

MAR 19 2012

SC Supreme Court

CEDRIC EMMANUEL PERKINS,

PETITIONER,

V

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF
GENERAL SESSIONS

THE STATE OF
SOUTH CAROLINA,

-vs-

DANE JANELLI,
CEDRIC PERKINS AND
ANGELA HURKS,

DEFENDANTS

TRANSCRIPT OF RECORD
DRUG COURT
TERMINATION PROCEEDING

VOLUME 1 -- 4/26/04

APRIL 26-28, 2004
GREENVILLE, SOUTH CAROLINA

B E F O R E

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DAWN V KOFFSKEY
Court Reporter

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1 (PERKINS CHAIN OF CUSTODY DATED 9/17/03 MARKED AS
2 STATE'S EXHIBIT NUMBER 1 FOR PURPOSES OF IDENTIFICATION ONLY)
3 (HURKS CHAIN OF CUSTODY DATED 5/30/04 MARKED AS STATE'S
4 EXHIBIT NUMBER 2 FOR PURPOSES OF IDENTIFICATION ONLY)
5 (HURKS CHAIN OF CUSTODY DATED 8/29/03 MARKED AS STATE'S
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7 (JANELLI CHAIN OF CUSTODY DATED 6/17/03 MARKED AS
8 STATE'S EXHIBIT NUMBER 4 FOR PURPOSES OF IDENTIFICATION ONLY)
9 (PERKINS CHAIN OF CUSTODY DATED 10/1/03 MARKED AS
10 STATE'S EXHIBIT NUMBER 5 FOR PURPOSES OF IDENTIFICATION ONLY)
11 (ADHESIVE FROM PERKINS' PATCH MARKED AS STATE'S EXHIBIT
12 NUMBER 6 FOR PURPOSES OF IDENTIFICATION ONLY)
13 (CARY REPORT AND OPINIONS DATED 2/9/04 MARKED AS STATE'S
14 EXHIBIT NUMBER 7 FOR PURPOSES OF IDENTIFICATION ONLY)
15 (CARY CURRICULUM VITAE MARKED AS STATE'S EXHIBIT NUMBER
16 8 FOR PURPOSES OF IDENTIFICATION ONLY)
17 (60 PAGES OF PROPOSED FEDERAL GUIDELINES REVISIONS DATED
18 4/13/04 MARKED AS STATE'S EXHIBIT NUMBER 9 FOR PURPOSES OF
19 IDENTIFICATION ONLY)
20 (GARNER TRAINING CERTIFICATION MARKED AS STATE'S EXHIBIT
21 NUMBER 8 FOR PURPOSES OF IDENTIFICATION ONLY)
22 **THE COURT** ALL RIGHT ARE WE READY TO PROCEED ON
23 RECORD?
24 **MS. STROM** YES, SIR, YOUR HONOR IF I MAY HAND TO THE
25 COURT REPORTER A DOCUMENT THAT GIVES THE CAPTION OF THE CASE?

MATTERS AND MOTIONS

1 **THE COURT** ALL RIGHT

2 **MS. STROM** YOUR HONOR, THE STATE IS PREPARED TO
3 PROCEED AND IS PREPARED TO CALL CHANDA GARNER

4 **THE COURT** ALL RIGHT BEFORE WE DO THAT, IS THERE
5 ANYTHING WE NEED ON THE RECORD BEFORE WE COMMENCE?

6 **MR. GIBSON** NOT THAT I'M AWARE OF

7 **MR BANNISTER** NOTHING FROM MS HURKS

8 **MR ARMSTRONG** NO, SIR

9 **THE COURT** ALL RIGHT CALL YOUR FIRST WITNESS,
10 SOLICITOR

11 **MS STROM.** THANK YOU, YOUR HONOR CHANDA GARNER

12 **CHANDA GARNER, HAVING BEEN DULY**
13 SWORN, TESTIFIED AS FOLLOWS

14 **DIRECT EXAMINATION BY MS STROM**

15 **Q** COULD YOU SPELL YOUR FIRST NAME, PLEASE?

16 **A** SURE IT'S C-H-A-N-D-A

17 **Q** WITHOUT THE "R" LIKE I ALWAYS TRY TO PUT IN IT I
18 APOLOGIZE MS GARNER, WHERE ARE YOU EMPLOYED?

19 **A** CORPORATE CHOICE

20 **Q** AND WHAT EXACTLY IS THAT?

21 **A** DRUG TESTING

22 **Q** AND WHERE IS THAT LOCATED?

23 **A** ADDRESS IN GREENVILLE

24 **Q** AND HOW LONG HAVE YOU BEEN EMPLOYED THERE?

25 **A** OVER A YEAR

1 Q WHAT IS YOUR JOB DESCRIPTION THERE AT CORPORATE CHOICE?

2 A A LAB TECH

3 Q WHAT DOES A LAB TECH DO?

4 A WE DO DRUG TESTING, URINE SCREENS, PATCH SCREENS, HAIR
5 TESTING

6 Q AS PART OF YOUR JOB AS A LAB TECH DID YOU SPECIFICALLY
7 RECEIVE TRAINING REGARDING THE APPLICATION AND REMOVAL OF
8 WHAT HAVE BEEN CALLED SWEAT PATCHES?

9 A UH-HUH (AFFIRMATIVE) YEAH WE HAD INDIVIDUAL BASIS
10 SOMEONE WHOSE BEEN TRAINED PRIOR TO ME, THEY TRAINED ME WE
11 ALSO WATCHED VIDEOS WE ALSO READ A BOOKLET AND TOOK A TEST

12 Q AND THE VIDEOS THAT YOU SAID YOU REVIEWED, ARE THEY FROM
13 PHARMCHEM?

14 A YES

15 Q PHARMCHEM IS ACTUALLY THE COMPANY WHICH CONDUCTS THE
16 CHEMICAL TESTING OF THE SAMPLES?

17 A YES, MA'AM

18 MR GIBSON I'M GOING TO OBJECT FOUNDATION

19 THE COURT GO AHEAD

20 Q AGAIN, PHARMCHEM IS THE ACTUAL COMPANY THAT DOES THE
21 CHEMICAL TESTING OF THE SAMPLES YOU COLLECT?

22 A YES, MA'AM

23 Q BASICALLY Y'ALL ARE A SAMPLE COLLECTION CORPORATION?

24 A YES, EXACTLY

25 Q OKAY AND YOU SAID THAT YOU TOOK -- YOU HAD INDIVIDUAL

CHANDA GARNER -- DIRECT BY MS STROM

1 TRAINING BY SOMEONE WHO IS TRAINED IN THE APPLICATION AND
2 REMOVAL?

3 A PRIOR, YES

4 Q THEY TRAINED YOU PERSONALLY?

5 A YES

6 Q YOU ALSO WATCHED VIDEOS?

7 A YES

8 Q YOU ALSO READ A BOOKLET?

9 A YES

10 Q AND YOU TOOK A TEST?

11 A YES

12 Q AND BASED UPON THAT WERE YOU GIVEN A CERTIFICATION BY
13 PHARMCHEM AS TO YOUR CERTIFICATION?

14 A THAT'S CORRECT

15 Q I SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT NUMBER
16 10 AN ASK YOU DO YOU RECOGNIZE THAT?

17 A YES

18 Q AND THAT IS YOUR CERTIFICATION REGARDING YOUR TRAINING
19 IN THE SWEAT PATCH----

20 A YES, THAT'S WHAT I RECEIVED FROM PHARMCHEM

21 MS STROM YOUR HONOR, WE WOULD OFFER STATE'S EXHIBIT
22 NUMBER 10 IN EVIDENCE

23 THE COURT ALL RIGHT

24 MR ARMSTRONG YOUR HONOR, WE WOULD OBJECT NOT TO THE
25 DOCUMENT ITSELF BUT TO THE CONTENT THEREIN, SUBJECT TO LATER

CHANDA GARNER -- DIRECT BY MS STROM

1 CROSS EXAMINATION

2 THE COURT CAN I SEE THE DOCUMENT?

3 MS. STROM. (HANDS DOCUMENT UP TO THE COURT)

4 THE COURT OVERRULED YOU WILL CERTAINLY HAVE YOUR
5 OPPORTUNITY TO CROSS EXAMINE AS TO THE SUBSTANCE OF WHAT IT
6 TOOK TO GET THIS CERTIFICATE BUT AT THIS POINT, I'LL ALLOW
7 IT IN

8 (STATE'S EXHIBIT NUMBER 10 CHANDA GARNER'S TRAINING
9 CERTIFICATE MOVED INTO EVIDENCE)

10 Q MS GARNER, IF YOU WOULD, PLEASE TELL THE COURT -- YOU
11 STATED EARLIER THAT YOU WERE INVOLVED IN THE APPLICATION AND
12 REMOVAL OF SWEAT PATCHES?

13 A YES, MA'AM

14 Q AS WELL AS OTHER SAMPLES, COLLECTION OF OTHER SAMPLES?

15 A YES, MA'AM

16 Q BUT SPECIFICALLY AS TO THE SWEAT PATCH APPLICATION AND
17 REMOVAL, COULD YOU PLEASE TELL THIS COURT WHAT YOUR TRAINING
18 WAS IN TERMS OF WHEN A PERSON COMES IN TO HAVE A SWEAT PATCH
19 APPLIED TO THEM, GO THROUGH AND TELL THIS COURT EXACTLY WHAT
20 YOU DO WITH THAT INDIVIDUAL

21 A OKAY WE TAKE THEM BACK INTO A PRIVATE ROOM WE HAVE
22 THE CHAIN OF CUSTODY I PUT ON A NEW SET OF GLOVES THAT'S
23 NEVER BEEN WORN BEFORE THE PERSON SITS IN THE CHAIR I
24 FIND -- WE LOCATE A SPOT TO APPLY THE PATCH

25 Q AND WHERE IS THAT NORMALLY LOCATED?

CHANDA GARNER -- DIRECT BY MS STROM

1 A USUALLY ON THE SHOULDERS, RIGHT HERE ON THE ARM
2 (INDICATING) I CLEAN IT WITH ALCOHOL UNTIL THE AREA IS
3 CLEANED WE HAVE TO USE AT LEAST TWO ALCOHOL PADS BUT WE
4 CLEAN IT UNTIL IT'S CLEAN WE FILL OUT THE PAPERWORK PUT
5 THE NUMBER THAT'S LOCATED ON THE PATCH ON THE CHAIN OF
6 CUSTODY WE SHOW THEM THE CHAIN OF CUSTODY AND THE PATCH
7 THEY IDENTIFY THAT THE TWO NUMBERS ARE WRITTEN DOWN CORRECTLY
8 AND THEY INITIAL THAT GIVES TIME FOR THE ARM TO DRY THEN
9 WE PLACE THE PATCH ON THERE, AND THAT'S ABOUT IT
10 Q YOU SAID THAT WHEN YOU -- WHEN THEY FIRST COME IN, YOU
11 TAKE THEM TO A PRIVATE ROOM?
12 A YES
13 Q AND WHAT DOES THIS ROOM LOOK LIKE?
14 A IT'S JUST A CHAIR, A DESK WITH A COMPUTER, AND THAT'S
15 ALL
16 Q AND IT'S YOU AND THE PARTICIPANT?
17 A YES
18 Q OKAY YOU SAID THAT YOU HAVE ON GLOVES AT ALL TIMES?
19 A YES
20 Q DO YOU EVER TAKE THEM OFF DURING THE PROCESS?
21 A NO
22 Q DO YOU EVER USE THOSE GLOVES AGAIN?
23 A NO THEY ARE THROWN AWAY
24 Q YOU INDICATED THAT -- YOU SAID THAT YOU CLEAN THE AREA
25 WHERE THE PATCH IS GOING TO BE APPLIED?

1 A YES

2 Q WHAT DO YOU USE TO DO THAT?

3 A ALCOHOL SWABS

4 Q HOW MANY TIMES DO YOU CLEAN THE AREA?

5 A AT LEAST TWICE BUT WE CLEAN IT UNTIL THE AREA IS

6 CLEAN, TILL THE ALCOHOL SWAB NO LONGER HAS DIRT ON IT

7 Q SO AT THE BARE MINIMUM YOU DO IT TWICE?

8 A EXACTLY

9 Q BUT YOU COULD DO IT MORE TIMES IF IT IS NECESSARY TO GET

10 THE AREA CLEAN?

11 A YES

12 Q AFTER THE AREA IS CLEAN YOU ALLOW IT TO DRY?

13 A UH-HUH (AFFIRMATIVE) YES I FILL OUT THE PAPERWORK

14 WHILE IT'S DRYING

15 Q AND THE PAPERWORK ARE THE PHARMCHEM REPORTS THAT WILL

16 GET INTO IN DETAIL LATER

17 A OKAY

18 Q AFTER YOU LET THE AREA DRY, YOU PUT ON THE PATCH?

19 A YES

20 Q HOW DO YOU DO THAT?

21 A YOU JUST PLACE IT ON THE ARM YOU STICK IT ON THERE,

22 RUB IT REAL GOOD AND MAKE SURE IT'S STUCK, AND THEN YOU JUST

23 PULL THE OUTER LAYER OFF

24 Q THE PATCH THAT YOU APPLY TO AN INDIVIDUAL DOES IT COME

25 IN A SEALED PACKET?

CHANDA GARNER -- DIRECT BY MS STROM

1 A YES

2 Q IS THAT SEAL EVER BROKEN OUTSIDE THE PARTICIPANT'S
3 PRESENCE?

4 A NO IT'S OPENED IN FRONT OF THEM

5 Q IT'S OPENED IN FRONT OF THEM?

6 A UH-HUH (AFFIRMATIVE)

7 Q AND PLACED ON THEM AT THAT TIME?

8 A EXACTLY

9 Q WOULD YOU TELL US THE PROCEDURES AND TRAINING YOU HAVE
10 RECEIVED REGARDING THE REMOVAL?

11 A OKAY THERE AGAIN, THEY'RE TAKEN BACK INTO A PRIVATE
12 ROOM THE CHAIN OF CUSTODY IS IN MY HAND I PUT ON NEW
13 GLOVES WE COMPARE THE NUMBER WITH THE NUMBER THAT'S ON
14 THEIR ARM JUST TO MAKE SURE THAT THEY BOTH MATCH

15 Q THE NUMBER THAT'S ON THE PATCH SHOULD MATCH THE NUMBER
16 THAT'S ON THE CHAIN OF CUSTODY FORM?

17 A RIGHT

18 Q ALL RIGHT

19 A AND THEN YOU TAKE -- EITHER THEY CAN START IT OR YOU CAN
20 TAKE THE STERILE TWEEZERS -- THAT'S WHAT I'M TRYING TO SAY --
21 AND PULL IT DOWN, AND YOU HAVE A PLASTIC BAG THAT IS PROVIDED
22 BY PHARMCHEM SO YOU TAKE THE TWEEZERS, PULL THE PATCH UP,
23 AND PLACE IT IN THE BAG AND SEAL IT IMMEDIATELY

24 Q LET'S GO BACK YOU FIRST TAKE THEM TO A PRIVATE ROOM?

25 A UH-HUH (AFFIRMATIVE)

1 Q YOU AGAIN PUT ON YOUR GLOVES?

2 A YES

3 Q OKAY DO YOU ROLL UP THE PARTICIPANT'S SLEEVE OR DO YOU

4 HAVE THEM ROLL IT UP?

5 A USUALLY THEY DO

6 Q OKAY AND ONCE THE AREA WHERE THE PATCH IS EXPOSED,

7 ONCE THAT IS EXPOSED---

8 A UH-HUH (AFFIRMATIVE)

9 Q ---WHAT SPECIFICALLY DO YOU DO? DO YOU LOOK AT IT?

10 A WE COMPARE THE NUMBERS, YOU KNOW, AND MAKE SURE THAT

11 IT'S APPLIED -- IT'S STILL ATTACHED CORRECTLY

12 Q YOU FIRST LOOK AT IT?

13 A YEAH

14 Q AND WHAT ARE YOU LOOKING FOR?

15 A WE CHECK TO SEE THE NUMBER AND JUST MAKE SURE IT'S STUCK

16 ON ALL FOUR SIDES, THAT THE PATCH HAS NOT BE EXPOSED

17 Q OKAY AND YOU SAID YOU LOOK AT ALL FOUR SIDES TO MAKE

18 SURE IT'S STILL ADHESING?

19 A UH-HUH (AFFIRMATIVE)

20 Q STICKING TO THE ARM IF IT'S NOT STICKING TO THE ARM,

21 WHAT DO YOU DO?

22 A THE PROCEDURE REALLY DOESN'T CHANGE WE JUST MARK THAT

23 IT'S EXPOSED

24 Q OKAY WHEN YOU -- IF EVER YOU SAW THAT THE CORNERS WERE

25 COMING UP OR SOMETHING LIKE THAT, YOU WOULD MARK ON THE

CHANDA GARNER -- DIRECT BY MS STROM

1 PAPERWORK THAT IT WAS EXPOSED?

2 A EXACTLY

3 Q OKAY YOU WOULD STILL GO THROUGH THE SAME PROCEDURE---

4 A AS FAR AS TAKING IT OFF----

5 Q ---TAKING IT OFF---

6 A ---AND PLACING IT IN THE BAG, YES

7 Q AND YOU SAID YOU USE TWEEZERS TO DO THAT?

8 A YES THEY ARE INDIVIDUALLY WRAPPED, SO

9 Q SO THEY ARE ONLY USED ONCE AS WELL?

10 A EXACTLY

11 Q OKAY YOU TAKE THE TWEEZERS AND WHAT EXACTLY -- I KNOW

12 IT SOUNDS BASIC, BUT WHAT EXACTLY DO YOU DO?

13 A YOU JUST TAKE THE TWEEZERS AND PULL THE PATCH THAT'S

14 STUCK UNDERNEATH THE ADHESIVE, AND YOU PLACE IT IN THE BAG

15 THAT YOU'RE HOLDING WITH ONE HAND, AND YOU SEAL IT

16 IMMEDIATELY IN FRONT OF THEM

17 Q YOU SEAL THAT BAG THE PATCH IS ACTUALLY IN A BAG---

18 A YES

19 Q ---YOU PUT IT IN A BAG AND YOU SEAL THAT BAG?

20 A SEAL IT, YES

21 Q OKAY AND DO THEY WITNESS THAT?

22 A YES

23 Q AND DO THEY SIGN A DOCUMENT STATING THAT THEY WITNESSED

24 IT?

25 A YES, THEY DO

- 1 Q WHAT HAPPENS THEN?
- 2 A AND THEN THERE'S TWO BAR CODES THAT'S LOCATED ON THE
- 3 CHANGE OF CUSTODY YOU TAKE THOSE OFF YOU HAVE TWO BAGS
- 4 YOU PLACE ONE ON THE BAG THAT THE PATCH IS IN, AND THEN YOU
- 5 PLACE ANOTHER ON THE BAG THAT THAT BAG GOES IN AND THE CHAIN
- 6 OF CUSTODY GOES IN AND THEY ARE ALL SEALED IN FRONT OF THAT
- 7 PERSON
- 8 Q SO YOU HAVE THE ACTUAL PATCH THAT YOU REMOVED FROM THE
- 9 PARTICIPANT'S ARM?
- 10 A UH-HUH (AFFIRMATIVE)
- 11 Q YOU PLACE THAT IN THE BAG?
- 12 A UH-HUH (AFFIRMATIVE)
- 13 Q YOU SEAL THAT?
- 14 A YES
- 15 Q YOU PUT A BAR CODE ON THAT?
- 16 A YES
- 17 Q AND IS THE BAR CODE FROM THE CHAIN OF CUSTODY FORM?
- 18 A YES
- 19 Q YOU THEN TAKE THAT BAG AND PLACE IT INTO ANOTHER BAG?
- 20 A YES
- 21 Q AND YOU SEAL THAT BAG?
- 22 A THAT'S CORRECT
- 23 Q THAT BAG HAS THE CHAIN OF CUSTODY FORM AND THE BAG
- 24 INCLUDING THE PATCH?
- 25 A YES AND THEY'VE ALSO INITIALED THE TAMPER SEAL THAT

CHANDA GARNER -- DIRECT BY MS STROM

1 GOES OVER THE BAG, SO

2 Q SO WHEN YOU SEAL THE BAG, THEY INITIAL THAT IT IS SEALED
3 IN THEIR PRESENCE?

4 A EXACTLY

5 Q I WANT TO GO THROUGH WITH YOU SOME SPECIFIC CASES HERE
6 FIRST, AS TO CEDRIC PERKINS, I SHOW YOU WHAT'S BEEN MARKED AS
7 STATE'S EXHIBIT NUMBER 1 I ASK YOU TO TAKE A LOOK AT THAT
8 DOCUMENT DO YOU RECOGNIZE THAT?

9 A I DO

10 Q WHAT IS STATE'S EXHIBIT NUMBER 1?

11 A THIS IS A CHAIN OF CUSTODY FORM FOR CEDRIC PERKINS THAT
12 A PATCH WAS APPLIED ON THE 17TH OF SEPTEMBER

13 Q OF WHAT YEAR?

14 A 2003

15 Q AND DOES THAT DOCUMENT REFLECT WHO APPLIED THAT PATCH?

16 A ANGELA DILLARD APPLIED THE PATCH, AND I REMOVED IT

17 Q AND I BELIEVE YOU ARE AWARE THAT ANGELA DILLARD HAD A
18 SPINAL TAP AND IS UNAVAILABLE THIS MORNING BUT HOPEFULLY
19 WE'LL GET TO HER THIS AFTERNOON OR TOMORROW MORNING?

20 A YES, MA'AM

21 Q YOU STATED ON THAT, STATE'S EXHIBIT NUMBER 1, THAT IT
22 DOCUMENTS THAT YOU REMOVED THE PATCH?

23 A YES

24 Q AND WHEN DID YOU DO THAT?

25 A SEPTEMBER 26TH OF 2003

CHANDA GARNER -- DIRECT BY MS STROM

1 Q AND AGAIN THAT IS ON CEDRIC PERKINS?

2 A IT IS, YES

3 Q TELL US WHAT YOU DID IN ORDER TO REMOVE THAT PATCH GO
4 THROUGH THE PROCESS OF WHEN CEDRIC PERKINS COMES INTO THE
5 OFFICE TO HAVE HIS PATCH REMOVED

6 A OKAY I WAS MISTAKEN ANGELA WAS THERE WITH ME I
7 TOOK CEDRIC BACK AND NOTICED THAT HE HAD IT TAPED -- HIS
8 SLEEVE TAPED TO HIS ARM

9 Q OKAY LET ME MAKE SURE I DIDN'T GIVE YOU THE WRONG --
10 OKAY THIS IS THE -- I WANT YOU TO LOOK AT STATE'S EXHIBIT
11 NUMBER 1 DOES THAT INDICATE THAT ANYTHING WAS WRONG WITH
12 THE PATCH?

13 A NO

14 Q OKAY THERE WAS ANOTHER OCCASION WHERE CEDRIC PERKINS
15 CAME IN AND HE DID HAVE A PROBLEM WITH A PATCH OR IT WAS
16 EXPOSED?

17 A YES

18 Q OKAY WE'LL GET TO THAT IN A MINUTE

19 A OKAY

20 Q AS TO THIS PARTICULAR PATCH, STATE'S EXHIBIT NUMBER 1,
21 TELL US WHAT YOU RECALL AS FAR AS REMOVING THIS PATCH

22 A THIS ONE? I MEAN, I'M SURE THE PROCEDURE WAS THE SAME,
23 BUT I DON'T RECALL THIS EXACT DATE

24 Q OKAY DO YOU ALWAYS FOLLOW PROCEDURES---

25 A YES, ALWAYS

CHANDA GARNER -- DIRECT BY MS STROM

1 Q ---IN REMOVING A PATCH?

2 A ALWAYS

3 Q SO THE REMOVAL OF THAT PATCH WOULD HAVE BEEN DONE IN
4 ACCORDANCE WITH THE PROCEDURES THAT YOU OUTLINED EARLIER?

5 A THAT I WAS TRAINED IN, YES

6 Q AND DOES THAT DOCUMENT BEAR THE SIGNATURE OF CEDRIC
7 PERKINS?

8 A YES, IT DOES

9 Q AND HIS APPROPRIATE INITIALS?

10 A YES, IT DOES

11 Q IF YOU WOULD, LET'S GO THROUGH, AT THE TOP OF THE
12 PHARMCHEM -- ON THE RIGHT-HAND SIDE WITH REGARDS TO REMOVAL,
13 IT HAS A SPECIMEN NUMBER, IS THAT CORRECT?

14 A YES, IT DOES

15 Q AND YOU VERIFY THAT?

16 A I DO

17 Q THEN IT ALSO SHOW AN ACCOUNT NUMBER?

18 A YES

19 Q WHAT IS THAT?

20 A ACCOUNT NUMBER? THAT'S THE ACCOUNT THAT OUR COMPANY HAS
21 WITH PHARMCHEM

22 Q OKAY DO YOU VERIFY THAT?

23 A I DO

24 Q IT NEXT STATES PHARMCHEM REMOVAL IT GIVES A DATE WHO
25 PUTS IN THAT DATE?

1 A I DO

2 Q IT THEN HAS OBSERVER'S INITIALS WHOSE INITIALS ARE

3 THOSE?

4 A THOSE ARE MINE

5 Q AND IT SAYS DONOR'S INITIALS?

6 A THOSE WOULD BE THE DONOR, WHOEVER HAS THE PATCH ON

7 Q AND ON THAT PARTICULAR CASE IT'S CEDRIC PERKINS?

8 A IT'S CEDRIC PERKINS, YES

9 Q THEN THE FORM GOES THROUGH AND IT SAYS "USE

10 INFORMATION"?

11 A UH-HUH (AFFIRMATIVE)

12 Q DESCRIBE FOR US WHAT YOU PUT DOWN, IF ANYTHING

13 A THIS IS IF SOMETHING IS WRONG WITH THE PATCH, THAT'S THE

14 AREA THAT WE FILL OUT

15 Q AND IF THERE IS NOTHING WRONG WITH THE PATCH, DO YOU PUT

16 ANYTHING IN THERE?

17 A NO WE LEAVE IT BLANK

18 Q OKAY THE NEXT SECTION SAYS COMMENTS WHAT DO YOU USE

19 THAT FOR? I KNOW IT'S OBVIOUS BUT WHAT DO YOU USE THAT

20 FOR?

21 A IF SOMETHING WAS TO BE WRONG, WE COULD PUT IN COMMENTS

22 AND THINGS LIKE THAT

23 Q THERE IS ANOTHER SECTION THAT SAYS "LAST USE

24 QUESTIONNAIRE " WHAT DOES THAT CONTAIN?

25 A THAT'S THE NAME OF MEDICATIONS THEY USE DURING WEARING

CHANDA GARNER -- DIRECT BY MS STROM

1 THE PATCH, BUT WE NEVER PUT THAT

2 Q YOU DON'T PUT THAT---

3 A YEAH, THEY DON'T ADVISE US ON ANY MEDICATIONS THAT THEY
4 TAKE

5 Q OKAY AND THEN IT SAYS "DONOR COMPLETES " WHAT IS
6 THAT?

7 A THAT'S JUST A STATEMENT THEY TO READ AND SIGN THAT THE
8 STATEMENT IS TRUE

9 Q AND IF YOU WOULD, READ THAT DONOR CERTIFICATION AND
10 CONSENT

11 A IT SAYS, "DONOR CERTIFICATION AND CONSENT I CERTIFY
12 THAT THE SPECIMEN ACCOMPANYING THIS FORM IS MY OWN FURTHER,
13 I CERTIFY THAT THE SPECIMEN CONTAINER WAS SEALED WITH A
14 TAMPER PROOF SEAL IN MY PRESENCE AND THAT THE INFORMATION
15 PROVIDED ON THIS FORM AND ON THE LABEL IS CORRECT ALSO, I
16 CONSENT TO THE ANALYSIS OF THE SPECIMEN ACCOMPANYING THIS
17 FORM BY THE LABORATORY AND TO THE RELEASE BY THE LABORATORY
18 OF THE RESULTS OF THE ANALYSIS AS WELL AS THE INFORMATION
19 RECORDED ON THIS FORM TO THE ORGANIZATION AND/OR INDIVIDUAL
20 LISTED ON THIS FORM "

21 Q AND WHO SIGNS THAT?

22 A THE DONOR, WHICH IS CEDRIC PERKINS

23 Q AND IT SHOWS CEDRIC PERKINS' SIGNATURE ON THAT LINE?

24 A YES, IT DOES

25 Q THEN RIGHT UP UNDER THAT IT SAYS "OBSERVER

CHANDA GARNER -- DIRECT BY MS STROM

1 CERTIFICATION"?

2 A UH-HUH (AFFIRMATIVE)

3 Q WHAT IS THAT?

4 A THAT'S THE AREA THAT I SIGN

5 Q AND WHAT IS THAT CERTIFYING?

6 A THAT I CORRECTLY DID THE PROCEDURES AND PLACED THE BAR
7 CODE LABELS AND THE SEALS CORRECTLY

8 MS STROM YOUR HONOR, I'M GOING TO LEAVE STATE'S
9 EXHIBIT NUMBER 1 FOR I D AT THIS TIME UNTIL ANGELA DILLARD
10 CAN TESTIFY AS TO THE OTHER PORTIONS OF IT

11 THE COURT OKAY

12 Q MS GARNER, YOU WERE ALSO TALKING ABOUT -- YOU MENTIONED
13 EARLIER ABOUT ANOTHER PATCH REGARDING CEDRIC PERKINS, IS THAT
14 CORRECT?

15 A YES

16 Q I SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT NUMBER
17 5 AND ASK YOU TO LOOK AT THAT

18 A (COMPLIES)

19 Q DO YOU RECOGNIZE THAT DOCUMENT?

20 A YES, I DO

21 Q WOULD YOU PLEASE DESCRIBE FOR THE COURT WHAT OCCURRED --
22 FIRST OF ALL, THAT DOCUMENT INDICATES THAT A PATCH WAS TO BE
23 REMOVED ON WHAT DAY?

24 A TO BE REMOVED?

25 Q YES

CHANDA GARNER -- DIRECT BY MS STROM

1 A 10/7/03

2 Q OCTOBER 7TH OF '03 AGAIN, THAT'S INVOLVING CEDRIC
3 PERKINS?

4 A THAT'S CORRECT

5 Q PLEASE TELL THIS COURT WHAT YOU OBSERVED ON THAT DAY
6 INVOLVING CEDRIC PERKINS?

7 A ON THE REMOVAL?

8 Q ON THE REMOVAL

9 A OKAY HE CAME BACK INTO THE ROOM AND HE HAD A SHORT-
10 SLEEVED T-SHIRT ON HE HAD IT TAPED WITH SOME TAPE AROUND
11 THE BOTTOM EDGE OF HIS T-SHIRT I WENT AND GOT ANGELA, AND
12 WE BOTH HAD GLOVES ON SHE CUT AWAY THE TAPE, AND I HAD THE
13 BAG IN MY HAND AND THE PAIR OF SCISSORS IN THE OTHER HAND
14 AND WHEN SHE LIFTED IT UP, WE IDENTIFIED THE NUMBERS, MADE
15 SURE THEY WERE CORRECT AND THE PATCH WAS NOT INSIDE THE
16 ADHESIVE SO SHE LIFTED THE SHIRT ON UP, AND WE SAW THAT IT
17 WAS LOCATED ON TOP OF HIS SHOULDER SO I THEN TOOK THE
18 TWEEZERS, REMOVED THE PATCH AND PUT IT IN THE BAG

19 Q ANGELA CUT THE TAPE THAT WAS HOLDING THE SHIRT DOWN?

20 A YES

21 Q IT WAS NOT HOLDING THE PATCH DOWN, IT WAS HOLDING THE
22 SHIRT DOWN?

23 A HOLDING THE SHIRT, YES IT WAS AROUND THE SHIRT

24 Q SHE CUT THAT TAPE?

25 A UH-HUH (AFFIRMATIVE)

- 1 Q AND ROLLED HIS SLEEVE UP?
- 2 A YES
- 3 Q AND WHAT WAS ATTACHED TO HIS ARM AT THAT TIME? WAS IT
- 4 ATTACHED TO HIS ARM?
- 5 A THE ADHESIVE YES, IT WAS ATTACHED TO HIS ARM, AND IT
- 6 WAS SEALED ALL THE WAY AROUND
- 7 Q ALL RIGHT INSIDE THIS PATCH IS WHAT I REFER TO AS A
- 8 COTTON SWAB BASICALLY
- 9 A YES
- 10 Q OKAY WAS THAT ATTACHED TO THE ADHESIVE ONTO HIS ARM?
- 11 A NO IT WAS---
- 12 Q THAT WAS MISSING?
- 13 A YES
- 14 Q YOU SUBSEQUENTLY FOUND IT WHERE?
- 15 A IT WAS LOCATED ON TOP OF -- IT WAS LAYING RIGHT ON TOP
- 16 OF HIS SHOULDER
- 17 Q DID YOU DOCUMENT THE FACT THAT THIS PATCH WAS NOT
- 18 NORMAL?
- 19 A YES, I DID
- 20 Q AND HOW DID YOU DO THAT?
- 21 A I WROTE "PATCH EXPOSED "
- 22 Q ON THE PHARMCHEM REPORT?
- 23 A YES YES, ON THE CHAIN OF CUSTODY YES
- 24 Q AND DID YOU SIGN THAT?
- 25 A I DID

CHANDA GARNER -- DIRECT BY MS STROM

1 Q AND DOES IT ALSO REFLECT THAT CEDRIC PERKINS SIGNED THAT
2 DOCUMENT?

3 A YES, HE DID HE SIGNED IT

4 MS STROM YOUR HONOR, I'D MOVE STATE'S EXHIBIT NUMBER
5 5 INTO EVIDENCE

6 THE COURT ALL RIGHT GENTLEMEN, I'M GOING TO ASSUME
7 THERE ARE NO OBJECTIONS UNLESS, OF COURSE, THEY ARE SO
8 STATED

9 MR. GIBSON NO OBJECTION, YOUR HONOR

10 THE COURT ALL RIGHT

11 (STATE'S EXHIBIT NUMBER 5, 10/1/03 CHAIN OF CUSTODY FOR
12 CEDRIC PERKINS, MOVED INTO EVIDENCE)

13 Q I FURTHER SHOW YOU WHAT HAS BEEN MARKED AS STATE'S
14 EXHIBIT NUMBER 6 DO YOU RECOGNIZE THAT?

15 A YES, THIS IS THE ADHESIVE THAT WAS ON HIS ARM

16 Q IF YOU WOULD, WE HAVE SOME SCISSORS, OPEN THAT -- THAT
17 PACKAGE IS SEALED, CORRECT?

18 A YES

19 Q ALL RIGHT WHEN YOU REMOVED THE ADHESIVE FROM MR
20 PERKINS' ARM, YOU PUT IT IN THE SEALED PACKAGING?

21 A YES

22 Q THEN DID YOU LATER TURN THAT OVER TO BOBBIE GODWIN?

23 A YES, WE DID

24 MS STROM IF THERE'S NO OBJECTION, I'M GOING TO HAVE
25 HER OPEN THIS

CHANDA GARNER -- DIRECT BY MS STROM

1 Q WOULD YOU OPEN THAT SO THAT YOU CAN EXPOSE THE ADHESIVE?

2 A (COMPLIES) DO YOU WANT ME TO TAKE IT OFF?

3 Q I JUST WANT TO SEE THE BEST WAY TO VIEW -- ARE YOU ABLE
4 TO LOOK AT IT FROM THAT POSITION---

5 A OH, YEAH, I CAN---

6 Q ---AND DESCRIBE FOR THE COURT WHAT YOU SAW AS CAUSING
7 THE PATCH TO BE EXPOSED?

8 A YES RIGHT -- THIS IS THE PART WHERE THE COTTON PART IS
9 UNDERNEATH, AND IT WAS CUT RIGHT ON THE EDGE IN A STRAIGHT
10 LINE

11 Q CUT IN A STRAIGHT LINE?

12 A UH-HUH (AFFIRMATIVE)

13 Q AND THE COTTON SWAB---

14 A WAS OUT

15 Q ---THAT WOULD BE NORMALLY IN THERE WAS NOT IN THERE?

16 A WAS NOT IN THERE, NO IT LOOKED JUST LIKE THIS ON HIS
17 ARM

18 MS STROM: WE OFFER STATE'S EXHIBIT NUMBER 6 INTO
19 EVIDENCE, YOUR HONOR

20 (STATE'S EXHIBIT NUMBER 6, COTTON SWAB FROM PATCH, MOVED
21 INTO EVIDENCE)

22 MS STROM YOUR HONOR, I'D LIKE TO HAND THIS TO THE
23 COURT SO THAT YOU CAN SEE THE ACTUAL ITEM SHE WAS DESCRIBING

24 Q MS GARNER, I'D LIKE TO NOW DIRECT YOUR ATTENTION TO
25 ANGELA HURKS I SHOW YOU WHAT'S BEEN MARKED AS STATE'S

CHANDA GARNER -- DIRECT BY MS STROM

1 EXHIBIT NUMBER 2 I ASK YOU, DO YOU RECOGNIZE STATE'S

2 EXHIBIT NUMBER 2?

3 A YES

4 Q STATE'S EXHIBIT NUMBER 2 IS A PHARMCHEM CHAIN OF CUSTODY

5 FORM WHICH REFLECTS YOUR INVOLVEMENT IN THE PATCH ON MS

6 HURKS---

7 A YES, MA'AM

8 Q ---INVOLVING WHAT DAY?

9 A WHAT DAY?

10 Q YES

11 A IT LOOKS LIKE JUNE 20TH, 2003

12 Q WAS THE DATE THAT THE PATCH WAS REMOVED?

13 A YES

14 Q OKAY DID YOU APPLY THAT PATCH?

15 A NO, ANGELA DILLARD APPLIED IT

16 Q AND ON 6/20/2003 DID YOU FOLLOW THE PROCEDURE THAT YOU

17 OUTLINED ABOVE---

18 A YES, MA'AM

19 Q ---REGARDING YOUR TRAINING IN REMOVING THAT PATCH?

20 A YES, MA'AM

21 Q DID YOU NOTICE ANY INDISCREPANCIES, ANY PROBLEMS WITH

22 THE PATCH WHATSOEVER?

23 A NO

24 Q IF YOU HAD NOTICED SUCH INDISCREPANCIES, SUCH AS THE

25 CORNER ROLLED UP OR THAT TYPE OF THING, WHAT WOULD YOU HAVE

CHANDA GARNER -- DIRECT BY MS STROM

1 DONE?

2 A I WOULD HAVE MARKED IT IN THE COMMENTS SECTION

3 Q AND ARE THERE ANY COMMENTS -- ARE THERE ANY NOTATIONS IN
4 THE COMMENTS SECTION?

5 A NO, MA'AM

6 Q I SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT NUMBER
7 3 DO YOU RECOGNIZE STATE'S EXHIBIT NUMBER 3?

8 A YES

9 Q I'M SORRY I TOOK IT AWAY FROM YOU STATE'S EXHIBIT
10 NUMBER 3 IS A PHARMCHEM CHAIN OF CUSTODY FORM SHOWING WHAT?

11 A THAT A PATCH HAS BEEN APPLIED AND REMOVED CORRECTLY,
12 WITH SIGNATURES

13 Q OKAY DOES IT REFLECT -- WHO APPLIED THE PATCH?

14 A I DID

15 Q YOU DID?

16 A UH-HUH (AFFIRMATIVE)

17 Q AND WHAT DATE DID YOU APPLY THAT PATCH?

18 A AUGUST 29TH, 2003

19 Q EARLIER WE'VE BEEN TALKING ABOUT THE REMOVAL OF PATCHES
20 THIS ONE YOU ACTUALLY APPLIED?

21 A YES, I DID

22 Q DID YOU APPLY IT IN ACCORDANCE WITH THE TRAINING YOU
23 RECEIVED AND THE PROCEDURES AS YOU OUTLINED THEM EARLIER?

24 A YES, MA'AM

25 Q DOES THAT DOCUMENT FURTHER REFLECT THAT YOU REMOVED THAT

CHANDA GARNER -- DIRECT BY MS STROM

1 PATCH?

2 A YES

3 Q WHAT DATE DID YOU REMOVE THAT PATCH?

4 A SEPTEMBER 5TH, 2003

5 Q AND AGAIN, DID YOU FOLLOW THE SAME PROCEDURES AS YOU
6 OUTLINED ABOVE AND AS YOU WERE TRAINED IN REMOVING THAT
7 PATCH?

8 A YES, MA'AM

9 Q DID YOU NOTICE ANY PROBLEMS OR DISCREPANCIES WITH THAT
10 PATCH?

11 A NO, MA'AM

12 Q IN THE SIGNATURE LINE FOR DONOR COMPLETES---

13 A UH-HUH (AFFIRMATIVE)

14 Q ---DOES THAT REFLECT THE SIGNATURE OR INITIALS OF ANGELA
15 HURKS?

16 A YES, HER INITIALS ARE PRESENT

17 Q HER INITIALS ARE THERE OKAY IS THE PAPERWORK FILLED
18 OUT APPROPRIATELY AND COMPLETELY?

19 A YES, MA'AM

20 MS STROM YOUR HONOR, I WOULD MOVE STATE'S EXHIBIT
21 NUMBER 3 INTO EVIDENCE

22 THE COURT ALL RIGHT

23 MR BANNISTER WITHOUT OBJECTION, JUDGE

24 (STATE'S EXHIBIT NUMBER 3, HURKS CHAIN OF CUSTODY, MOVED
25 INTO EVIDENCE)

1 Q I'D LIKE TO MOVE ON TO DANE JANELLI I SHOW YOU WHAT'S
2 BEEN MARKED AS STATE'S EXHIBIT NUMBER 4 DO YOU RECOGNIZE
3 THAT?

4 A YES

5 Q WHAT DOES STATE'S EXHIBIT NUMBER 4 REVEAL? IT IS A
6 PHARMCHEM CHAIN OF CUSTODY FORM, CORRECT?

7 A THAT'S CORRECT

8 Q REGARDING A PATCH APPLIED TO AND REMOVED FROM DANE
9 JANELLI?

10 A THAT'S CORRECT

11 Q AND WHAT DATE WAS IT APPLIED?

12 A JUNE 17TH, 2003

13 Q AND WHAT DATE WAS IT REMOVED?

14 A JUNE 25TH, 2003

15 Q WERE YOU RESPONSIBLE FOR THE APPLICATION OF THAT PATCH?

16 A YES

17 Q AND DID YOU DO SO IN ACCORDANCE WITH THE TRAINING YOU
18 RECEIVED AND THE PROCEDURES AS YOU OUTLINE ABOVE?

19 A YES, I DID

20 Q THE REMOVAL OF THE PATCH, WAS THAT REMOVED BY YOU?

21 A YES, IT WAS

22 Q ON JUNE 25TH, 2003?

23 A THAT'S CORRECT

24 Q AND WAS THAT DONE IN ACCORDANCE WITH THE PROCEDURES AND
25 TRAINING YOU RECEIVED?

CHANDA GARNER -- DIRECT BY MS STROM

1 A YES, IT WAS

2 Q DID YOU NOTICE ANY DISCREPANCIES OR PROBLEMS WITH THE
3 PATCH?

4 A NO, MA'AM

5 Q IF YOU HAD SO NOTED, WHAT WOULD HAVE HAPPENED?

6 A I WOULD HAVE MARKED IN THE COMMENTS SECTION

7 Q AND DOES THAT PAPERWORK CONTAIN THE REQUIRED SIGNATURES
8 AND/OR INITIALS?

9 A YES

10 MS STROM YOUR HONOR, WE WOULD MOVE STATE'S EXHIBIT
11 NUMBER 4 INTO EVIDENCE AT THIS TIME

12 THE COURT ALL RIGHT

13 (STATE'S EXHIBIT NUMBER 4, JANELLI CHAIN OF CUSTODY,
14 MOVED INTO EVIDENCE)

15 Q MS GARNER, I JUST WANT TO ASK YOU ABOUT THE -- WE
16 TALKED A LOT ABOUT THE FACT THAT THE INITIALS WERE PLACED IN
17 THE APPROPRIATE BLANKS AND THAT THE SIGNATURES WERE HAVE
18 YOU EVER HAD AN OCCASION TO HAVE PHARMCHEM NOT TEST A SAMPLE
19 BECAUSE OF THE PAPERWORK?

20 A YES I'VE SEEN IT WHERE MAYBE THE OBSERVER'S SIGNATURE
21 WASN'T THERE OR -- I'VE SEEN IT COME BACK AND THEY WOULDN'T
22 TEST IT IT HAS TO BE COMPLETELY FILLED OUT CORRECTLY

23 Q AND IF IT'S NOT, THEY DON'T TEST IT?

24 A EXACTLY

25 MS STROM COURT'S INDULGENCE, YOUR HONOR

1 THE COURT ALL RIGHT

2 Q IF YOU WOULD -- I WANT TO GO BACK -- I'M NOT SURE IF I
3 MADE THIS POINT CLEAR WITH REGARDS TO THE PATCH THAT WAS
4 CUT, THE ONE THAT WE ENTERED INTO EVIDENCE---

5 A YES

6 Q ---THE ACTUAL COTTON SWAB OR COTTON PATCH, FOR LACK OF A
7 BETTER TERM, THAT IS IN THE ADHESIVE---

8 A UH-HUH (AFFIRMATIVE)

9 Q ---IS IT LOOSE TO THE ADHESIVE OR IS IT STUCK TO THE
10 ADHESIVE?

11 A NO, IT'S STUCK TO THE ADHESIVE

12 Q IT'S STUCK TO THE ADHESIVE?

13 A UH-HUH (AFFIRMATIVE)

14 Q AND THEN THAT IS---

15 A A LOT OF TIMES WHEN YOU TAKE IT OFF YOU, IT PULLS AWAY
16 WHEN YOU REMOVE IT FROM THE PATCH, SOME OF IT WILL PULL AWAY
17 AND STAY ON THE ADHESIVE

18 Q OKAY SO YOU WHEN YOU ACTUALLY REMOVE A PATCH FROM
19 SOMEONE'S ARM THE COTTON SWAB IS NOT SOMETHING LOOSE THAT
20 FALLS AROUND?

21 A YES

22 Q YOU ACTUALLY HAVE TO USE THE TWEEZERS AGAIN TO REMOVE---

23 A TO HOLD IT, YEAH, AND PULL YES

24 Q ---IT FROM THE ADHESIVE?

25 A THAT'S CORRECT

CHANDA GARNER -- DIRECT BY MS STROM

1 MS STROM THANK YOU I HAVE NO FURTHER QUESTIONS

2 THE COURT MR ARMSTRONG

3 MR ARMSTRONG MAY I HAVE EXHIBIT 10, PLEASE, YOUR
4 HONOR

5 CROSS EXAMINATION BY MR ARMSTRONG

6 Q MS GARNER, YOU HAVE PRESENTED TO THE COURT A DOCUMENT
7 DESIGNATED PHARMCHEM, INC ACKNOWLEDGED THAT CHANDA GARNER IS
8 INDEED -- SUCCESSFULLY COMPLETED THE "PHARMCHEK DRUGS ABUSE
9 PATCH TRAINING COURSE," IS THAT CORRECT?

10 A THAT'S CORRECT

11 Q AND THIS WAS DATED ON OCTOBER THE 6TH, 2003, IS THAT NOT
12 CORRECT?

13 A YES THAT'S CORRECT

14 Q SO YOU WERE NOT CERTIFIED PRIOR TO OCTOBER THE 6TH,
15 2003, WERE YOU?

16 A RIGHT

17 Q LET'S TALK ABOUT MY CLIENT, MR JANELLI AND I BELIEVE
18 THAT'S EXHIBIT NUMBER 4 DOES THIS DOCUMENT -- I'M GOING TO
19 SHOW YOU HERE -- CARRY YOU THROUGH THIS DOCUMENT, MA'AM

20 A UH-HUH (AFFIRMATIVE)

21 Q ON THE APPLICATION SIDE, WHICH IS THE LEFT SIDE OF THE
22 DOCUMENT, YOUR NAME IS WRITTEN AT THE TOP, IS THAT CORRECT?

23 A THAT'S CORRECT

24 Q AND THEN DOWN AT THE BOTTOM IT SAYS -- YOUR SIGNATURE IS
25 HERE, CORRECT?

1 A YES, THAT'S CORRECT

2 Q AND THEN YOU APPLIED THIS PATCH ON JUNE THE 17TH, 2003?

3 A YES

4 Q ALL RIGHT THEN YOU REMOVED IT ON JUNE THE 25TH, 2003?

5 A THAT'S CORRECT

6 Q AND YOU SIGNED IT HERE AS THE OBSERVER ALSO?

7 A THAT'S CORRECT

8 Q YOU HAD ABSOLUTELY NO CERTIFICATION FROM PHARMCHEM,

9 INCORPORATED, PRIOR TO OCTOBER THE 6TH, 2003, DID YOU?

10 A I DID NOT RECEIVE THE CERTIFICATION, NO

11 Q OKAY AND HAVE YOU HAD ANY RECERTIFICATION SINCE YOU

12 RECEIVED THIS CERTIFICATION BACK ON OCTOBER THE 6TH, 2003?

13 A NO

14 MR ARMSTRONG YOUR HONOR, I'D MOVE THAT THIS TESTING
15 AS TO MR DANE JANELLI BE STRUCK IN THAT BY HER OWN TESTIMONY
16 SHE WAS NOT CERTIFIED IN THIS PROCESS UNTIL OCTOBER THE 6TH,
17 2003, WHEN THE DOCUMENTS ARE CLEAR ON THEIR FACE THAT THIS
18 TESTING WAS ACCOMPLISHED BY HER BACK IN JUNE OF 2003

19 THE COURT MS STROM?

20 MS STROM YES, SIR, YOUR HONOR THE STATE IS

21 PREPARED TO GO INTO WITH MS GARNER THE FACT THAT ALTHOUGH

22 SHE HAD NOT RECEIVED THE ACTUAL CERTIFICATE FROM PHARMCHEM

23 THAT SHE HAD GONE THROUGH THE TRAINING, SHE HAD GONE THROUGH

24 THE PROCEDURES, AND SHE HAD TAKEN THE TEST WE ARE ALSO

25 PREPARED TO PUT UP HER SUPERVISOR, WHO WOULD STATE THE SAME

CHANDA GARNER -- CROSS BY MR ARMSTRONG

1 AS WELL, AND THAT IT TAKES A COUPLE OF MONTHS SOMETIMES TO
2 ACTUALLY GET THE CERTIFICATION FROM PHARMCHEM

3 THE COURT MR ARMSTRONG, I'M GOING TO TAKE YOUR
4 MOTION, WHICH MAY IN FACT BE WELL PLACED, UNDER ADVISEMENT
5 SUBJECT TO SOME ADDITIONAL INFORMATION COMING OUT, BECAUSE
6 OBVIOUSLY THAT IS A CRITICAL ISSUE

7 MR ARMSTRONG IT IS A VERY CRITICAL ISSUE AND IF I
8 MIGHT COMMENT ON THE STATE'S POSITION, YOUR HONOR, I DRAW THE
9 ANALOGY OF PRACTICING LAW AFTER COMPLETING LAW SCHOOL AND
10 HAVE ALL THE QUOTE REQUISITE INFORMATION BUT UNTIL I AM
11 INDEED CERTIFIED OR, IN THIS CASE, LICENSED, THEN I'M
12 PRECLUDED FROM PRACTICING LAW

13 THE COURT I UNDERSTAND POINT WELL MADE LET'S MOVE
14 ON

15 MR ARMSTRONG ALL RIGHT I THINK I'LL REST WITH YOU,
16 MA'AM I JUST DECIDED

17 THE COURT MR GIBSON
18 CROSS EXAMINATION BY MR GIBSON:

19 Q I APOLOGIZE IS IT MS GAVIN?

20 A IT'S GARNER

21 Q GARNER, I APOLOGIZE

22 A THAT'S OKAY

23 Q LET'S TALK ABOUT -- YOU SAID YOU WENT TO TRAINING THAT
24 YOU RECEIVED FROM PHARMCHEM

25 A YES

1 Q AND IF YOU WOULD INDULGE ME, GO THROUGH AGAIN WHAT THEY
2 TOLD YOU AS FAR AS WHAT YOU'RE SUPPOSED TO DO UPON
3 APPLICATION, JUST ON APPLICATION

4 A AS FAR AS WHAT THE VIDEO SAID?

5 Q AS FAR AS WHAT IS YOUR UNDERSTANDING OF WHAT YOU WERE
6 TRAINED ON

7 A OKAY YOU MUST WEAR STERILE GLOVES THAT HAS NEVER BEEN
8 USED BEFORE

9 Q YES, MA'AM

10 A YOU MUST CLEAN THE AREA UNTIL IT IS CLEAN

11 Q AND WHEN YOU SAY "THE AREA," DO YOU MEAN THE AREA OF THE
12 ARM WHERE THE PATCH IS APPLIED?

13 A THE AREA THAT THE PATCH WILL BE APPLIED

14 Q AND HOW WOULD YOU GO ABOUT CLEANING THE AREA?

15 A YOU CLEAN IT WITH ALCOHOL SWABS -- ALCOHOL PADS

16 Q WHAT DO YOU DO WITH THE ALCOHOL SWABS, RUB IT LIGHTLY
17 UNTIL IT---

18 A YOU JUST RUB UP AND DOWN, AND GET A CLEAN ONE, RUB UP
19 AND DOWN

20 Q HOW WOULD YOU KNOW WHEN IT WAS CLEAN?

21 A YOU LOOK ON THE ALCOHOL SWAB AND SEE IF DIRT IS PRESENT

22 Q OKAY WOULD YOU USE ANY SOAP AND WATER?

23 A NO

24 Q OKAY PLEASE PROCEED WHAT ELSE WOULD YOU DO?

25 A AND THEN YOU FILL OUT THE PAPERWORK, AND YOU HAVE TO LET

CHANDA GARNER -- CROSS BY MR GIBSON

1 THE AIR DRY FOR TWO TO THREE MINUTES I FILL OUT THE
2 PAPERWORK I PLACE THE PHARMCHEM NUMBER AND GET THEM TO
3 INITIAL THAT THAT'S CORRECT, THAT IT'S WRITTEN CORRECTLY AND
4 MATCHES THE PATCH

5 Q OKAY

6 A AND THEN I APPLY THE PATCH TO THE ARM

7 Q NOW, WHERE WAS ALL OF THIS SUPPOSED TO TAKE PLACE?

8 A IT'S IN A ROOM IN OUR OFFICE

9 Q IS IT SUPPOSED -- PURSUANT TO THE TRAINING IS IT
10 SUPPOSED TO BE A PRIVATE ROOM WITH ONLY YOU AND THE DONOR
11 PRESENT?

12 A NOT TO MY KNOWLEDGE THAT I'VE EVER BEEN TOLD THAT IT HAS
13 TO BE PRIVATE

14 Q OKAY WHAT WOULD THE DONOR DO WHILE YOU WERE WAITING
15 FOR THE ALCOHOL SWAB TO DRY?

16 A THEY JUST SIT THERE

17 Q OKAY IS IT POSSIBLE THAT WHILE YOU ARE FILLING OUT THE
18 PAPERWORK THE DONOR COULD, SAY, TOUCH HIS ARM?

19 A YEAH, BUT WE TELL THEM NOT TO, NOT TO EVEN LET THEIR
20 SLEEVE FALL

21 Q BUT YOU'RE FILLING OUT THE PAPERWORK SO YOU CAN'T TELL
22 WHETHER OR NOT THAT HAPPENED OR NOT, CAN YOU?

23 A WELL, NO, I'M NOT WATCHING THEM COMPLETELY

24 Q OKAY DID YOU EVER APPLY THE PATCHES?

25 A HAVE I EVER APPLIED?

- 1 Q YES, MA'AM
- 2 A YES
- 3 Q WHERE WOULD YOU DO THAT?
- 4 A I'M SORRY, I DON'T UNDERSTAND
- 5 Q WOULD YOU DO THAT AT YOUR LABORATORY OR WOULD YOU DO
- 6 THAT HERE AT THE COURTHOUSE?
- 7 A I'VE DONE BOTH
- 8 Q OKAY LET'S TALK ABOUT WHEN YOU DO IT HERE AT THE
- 9 COURTHOUSE
- 10 A OKAY
- 11 Q IS THAT DONE IN A PRIVATE ROOM?
- 12 A IT'S IN THE BREAK ROOM THERE ARE OTHER PEOPLE PRESENT,
- 13 YES
- 14 Q HOW MANY OTHER PEOPLE WOULD BE PRESENT?
- 15 A IT VARIES, JUST HOW MANY'S IN THERE
- 16 Q FIVE, TEN, FIFTEEN?
- 17 A YEAH, SOMETIMES TWO OR THREE, SOMETIMES NINE, TEN
- 18 Q OKAY AND YOU WOULD WEAR YOUR GLOVES?
- 19 A YES
- 20 Q OKAY WOULD YOU -- TELL ME THE PROCEDURE YOU GO THROUGH
- 21 AS FAR AS---
- 22 A ACTUALLY, WE STAY AT THE TABLE THAT'S CLOSEST TO THE
- 23 WALL WHEN I DONE THEM
- 24 Q YES, MA'AM
- 25 A AND IT WOULD BE ON A ONE-ON-ONE BASIS

1 Q OKAY SO YOU---

2 A HE WOULD SIT IN A CHAIR RIGHT IN FRONT OF ME

3 Q OKAY TAKE ME THROUGH WHAT YOU WOULD DO FROM, SAY---

4 A THE PROCEDURE WOULD NOT CHANGE IT'S EXACTLY THE SAME

5 Q OKAY SO YOU WOULD -- IF YOU WOULD, INDULGE ME PLEASE,
6 AND TELL ME WHAT YOU WOULD DO

7 A OKAY I WOULD TAKE THE FORM, PUT MY GLOVES ON, CLEAN
8 THE AREA, FILL OUT THE PAPERWORK, MAKE SURE THEY MATCH, GET
9 THEM TO INITIAL, AND THEN I WOULD REMOVE THE PATCH FROM THE
10 SEAL AND APPLY IT TO THEIR ARM

11 Q OKAY SO LET ME GET THIS STRAIGHT NOW WHILE YOU WERE
12 ALSO -- WHEN YOU FILL OUT THE PAPERWORK, DID YOU TAKE YOUR
13 GLOVES OFF?

14 A NO

15 Q SO YOU TOUCH A PEN, A PAPER AND OTHER THINGS WHILE YOU
16 WERE FILLING THIS STUFF OUT?

17 A YES

18 Q AND THERE WAS NO POINT BETWEEN TOUCHING OF PAPER AND THE
19 PEN AND THESE OTHER THINGS THAT YOU WOULD CHANGE YOUR GLOVES
20 PRIOR TO ACTUALLY PUTTING THE PATCH ON, IS THAT CORRECT?

21 A THAT'S RIGHT

22 Q OKAY NOW, AFTER YOU WOULD FINISH WITH ONE PERSON, WHAT
23 WOULD YOU DO?

24 A I WOULD REMOVE MY GLOVES AND GET THE OTHER PERSON'S
25 PAPERWORK READY

1 Q OKAY WOULD YOU WASH YOUR HANDS, DO ANYTHING LIKE THAT?

2 A UH-UH (NEGATIVE) NO

3 Q OKAY AND AT THIS TIME THERE WOULD BE SOME TIMES, NINE,
4 TEN, FIFTEEN PEOPLE IN THE ROOM WAITING TO BE TESTED, IS THAT
5 CORRECT?

6 A YES

7 Q SO IT WOULDN'T BE REALLY WHAT WE WOULD CALL A STERILE
8 ENVIRONMENT, WOULD IT?

9 A I WOULDN'T BELIEVE EVEN A PRIVATE ROOM WOULD BE
10 NECESSARILY STERILE BECAUSE PEOPLE COME IN AND OUT I MEAN,
11 WE DON'T CLEAN THE ROOM AFTER EACH PERSON, NO

12 Q OKAY NOW YOU SAID THAT -- AND YOUR EXACT TESTIMONY WAS
13 THAT WHEN MS STROM ASKED YOU WHO WOULD PULL UP THE SLEEVE,
14 YOU SAID THAT THEY WOULD USUALLY PULL UP THE SLEEVE?

15 A YES THEY WOULD USUALLY COME IN AND PULL UP THEIR
16 SLEEVE

17 Q OKAY IF THEY WOULD NOT, WOULD YOU DO IT FOR THEM?

18 A OH, YEAH

19 Q OKAY SO YOU WOULD TOUCH THEIR SHIRT WITH THE RUBBER
20 GLOVES AND THEN PUT THE PATCH ON, IS THAT CORRECT?

21 A THAT COULD HAPPEN, YES

22 Q OKAY DID YOU CHANGE TWEEZERS BETWEEN DIFFERENT
23 PATCHES?

24 A OH, YES

25 Q STERILIZED SO YOU HAD A SEPARATE SET OF TWEEZERS FOR

CHANDA GARNER -- CROSS BY MR GIBSON

1 EVERY PERSON---

2 A THEY COME INDIVIDUALLY PACKED

3 Q OKAY NOW, LET'S TALK ABOUT THE FIRST TEST THAT YOU
4 DID, AND I'M SHOWING YOU STATE'S EXHIBIT 1, THE FIRST PATCH
5 THAT YOU DID OR REMOVED FROM MR PERKINS

6 A UH-HUH (AFFIRMATIVE)

7 Q NOW, THE DATE OF REMOVAL, CAN YOU TELL THE COURT WHAT
8 THAT DATE IS?

9 A SEPTEMBER 26TH, '03

10 Q OKAY AND JUST TO CLARIFY THAT, IT'S PRIOR TO YOUR
11 RECEIVING A CERTIFICATION FROM PHARMCHEM, IS THAT CORRECT?

12 A YES

13 MR GIBSON OKAY YOUR HONOR, I'D LIKE TO MAKE THE
14 SAME OBJECTION AS---

15 THE COURT ALL RIGHT

16 MR GIBSON ---MR ---

17 THE COURT SAME RULING

18 MR GIBSON THANK YOU

19 Q AND LET'S TALK ABOUT THIS ONE, STATE'S EXHIBIT 5 NOW,
20 THIS IS A PATCH THAT WAS PURPORTEDLY TAMPERED WITH?

21 A YES

22 Q OKAY NOW, WHEN WAS THAT PATCH APPLIED?

23 A OCTOBER 1ST, '03

24 Q HOW LONG WOULD THOSE PATCHES NORMALLY STAY ON?

25 A NORMALLY THEY STAYED ON A WEEK, SEVEN DAYS, BUT THEY CAN

CHANDA GARNER -- CROSS BY MR GIBSON

1 STAY UP TO FOURTEEN DAYS, I BELIEVE

2 Q OKAY AND WHEN WAS THAT PATCH REMOVED?

3 A OCTOBER 7TH, '03

4 Q SO THAT'S BEFORE GENERALLY THE TIME FRAME THEY WERE
5 NORMALLY TAKEN OFF, IS THAT CORRECT?

6 A YES, THAT'S CORRECT

7 Q DO YOU KNOW WHY IT WAS TAKEN OFF EARLIER?

8 A WHY IT WAS TAKEN OFF EARLY?

9 Q YEAH WHY WAS IT TAKEN OFF BEFORE A WEEK HAD ELAPSED?

10 A BECAUSE IT WAS -- HE CAME IN AND SAID IT WAS COMING OFF

11 Q SO LET ME GET THIS STRAIGHT SO MR PERKINS CAME IN
12 HIMSELF AND TOLD YOU, "HEY, MY PATCH IS COMING OFF"?

13 A I BELIEVE THAT'S CORRECT, YES

14 Q THIS WASN'T SOMETHING WHERE HE WAS TRYING TO HIDE IT
15 FROM YOU AND ALL OF A SUDDEN WHEN Y'ALL CHECKED THE PATCH OUT
16 YOU SAW IT HAD COME---

17 A WELL, I MEAN, OBVIOUSLY HE KNEW SOMETHING WAS WRONG WITH
18 IT

19 Q OKAY NOW, SOMETHING ABOUT THE ADHESIVE ON THE PATCH

20 A UH-HUH (AFFIRMATIVE)

21 Q WAS ALL THE ADHESIVE ON THE PATCH?

22 A YES IT WAS STUCK -- ALL CORNERS WERE----

23 Q ALL FOUR CORNERS WERE STUCK?

24 A YES

25 Q OKAY BUT YOU'RE SAYING WHEN YOU PULLED THE PATCH UP

1 THAT IT WAS NOT IN THE PLACE IT WAS NORMALLY SUPPOSED TO BE?

2 A IT WAS NOT IN THE ADHESIVE -- UNDERNEATH THE ADHESIVE

3 Q OKAY NOW, WHEN YOU SAY IT WAS STUCK ALL THE WAY

4 AROUND, DID YOU CHECK THE SEAL ALL THE WAY AROUND?

5 A YES IT WAS -- YOU CAN---

6 Q FIRMLY SEALED ALL THE WAY AROUND?

7 A YES YOU CAN SEE IF IT STARTS COMING UP, IT KIND OF

8 TURNS COLORS

9 Q OKAY NOW, YOU SAID -- AND YOU MADE A CONCLUSION THAT
10 THIS PATCH HAD BEEN TAMPERED WITH, IS THAT CORRECT?

11 A YEAH IT APPEARS TO BE, YES

12 Q OKAY NOW, DID YOU RECEIVE ANY TRAINING FROM PHARMCHEM
13 ON WHAT A TAMPERED PATCH WOULD LOOK LIKE?

14 A NO, JUST FROM EXPERIENCE

15 Q WHAT DO YOU MEAN "EXPERIENCE"?

16 A JUST SEEING THEM

17 Q WHAT DO YOU MEAN?

18 A WELL, I MEAN, YOU CAN TELL IF IT'S COMING UP I MEAN,

19 THIS WAS CUT, OBVIOUSLY

20 Q WHY DO YOU SAY IT WAS CUT?

21 A BECAUSE IT'S A STRAIGHT LINE I'VE---

22 Q OKAY NOW, YOU SAY THIS IS A STRAIGHT LINE?

23 A YES

24 Q NOW, WOULDN'T YOU AGREE WITH ME THOUGH THAT THERE IS A
25 LITTLE JAG THERE, IT'S JAGGED OUT THERE---

1 A NO, THAT'S JUST -- WELL, YOU'VE GOT TO THINK, TOO, WE'VE
2 ALSO REMOVED IT FROM THE ARM IT'S NOT PLACED---

3 Q OKAY BUT MY QUESTION---

4 A ---EXACTLY THE SAME

5 Q ISN'T THERE A JAGGED -- ISN'T IT JAGGED RIGHT THERE?

6 A IT LOOKS LIKE THAT ADHESIVE IS STUCK TO EACH OTHER

7 Q ISN'T IT JAGGED RIGHT THERE? THAT'S A YES OR NO

8 QUESTION

9 A YES

10 Q OKAY ISN'T IT ALSO JAGGED DOWN HERE?

11 A YES

12 Q THAT'S A YES OR NOT QUESTION AS WELL

13 OKAY SO ISN'T IT POSSIBLE THAT MR PERKINS COULD HAVE
14 BEEN WORKING IN HIS ATTIC AND CAUGHT THE PATCH ON SOMETHING,
15 GOT CAUGHT ON A NAIL AND IT JUST RIPPED LIKE THAT? ISN'T IT
16 POSSIBLE?

17 A I GUESS ANYTHING'S POSSIBLE I WASN'T THERE

18 Q OKAY AND SO YOU -- AND, AGAIN, YOU'VE HAD NO TRAINING
19 WHATSOEVER ON WHAT A TAMPERED PATCH LOOKS LIKE, IS THAT
20 CORRECT?

21 A NO

22 Q NOW, YOU SAY YOU WORK FOR CORPORATE CHOICE, IS THAT
23 CORRECT?

24 A THAT'S CORRECT

25 Q HOW MUCH DOES CORPORATE CHOICE GET PAID FOR THESE

CHANDA GARNER -- CROSS BY MR GIBSON

1 PATCHES?

2 A I HAVE NO IDEA

3 Q DOES CORPORATE CHOICE GET PAID FOR THEM?

4 A I GUESS FOR THE APPLICATION OF THEM, I GUESS THEY DO

5 Q OKAY HOW MANY PATCHES DO YOU GUYS DO FOR THE DRUG

6 COURT PROGRAM, SAY, IN A MONTH'S TIME?

7 A I DON'T KNOW, BECAUSE THEY ALL WEAR THEM I HAVE -- I

8 DON'T KNOW

9 Q OKAY MORE THAN A HUNDRED?

10 A MAYBE WELL, I DON'T KNOW I HAVE NO IDEA

11 Q MORE THAN FIFTY? IT COULD BE A HUNDRED? COULD IT BE A

12 HUNDRED A MONTH?

13 A I GUESS IT COULD

14 Q OKAY

15 MR GIBSON YOUR HONOR, MAY I HAVE JUST A SECOND TO

16 CONFER WITH MY CLIENT?

17 THE COURT (INDICATES AFFIRMATIVE RESPONSE)

18 Q MS GARNER, DO YOU ALSO PERFORM URINE TESTS?

19 A YES

20 Q DID YOU EVER PERFORM A URINE TEST ON MR PERKINS?

21 A I'M SURE I HAVE BEFORE I MEAN, I DON'T RECALL

22 Q OKAY DO YOU RECALL WHETHER OR NOT MR PERKINS HAS EVER

23 COME UP POSITIVE ON A URINE TEST?

24 A I DON'T RECALL

25 MR GIBSON OKAY THAT'S ALL FOR NOW, YOUR HONOR

CHANDA GARNER -- CROSS BY MR GIBSON

1 THANK YOU

2 **THE COURT** ALL RIGHT MR BANNISTER

3 **CROSS EXAMINATION BY MR BANNISTER:**

4 **Q** MS GARNER, THE ALCOHOL SWABS THAT YOU USE, THOSE
5 CONTAIN ISOPROPYL ALCOHOL?

6 **A** I HAVE NO IDEA IT'S JUST WHATEVER PHARMCHEM SENDS

7 **Q** ALL RIGHT DOES -- I'M GOING TO LET YOU TAKE A LOOK AT
8 STATE'S EXHIBIT NUMBER 2 AND ASK WHAT WAS THE DATE THAT THAT
9 PATCH WAS APPLIED AND REMOVED?

10 **A** IT WAS APPLIED 5/30/03

11 **Q** AND REMOVED?

12 **A** JUNE 20TH, '03

13 **Q** OKAY SO THAT TOO WAS PRIOR -- AND YOU DID THE REMOVAL
14 ON THE PATCH---

15 **A** THAT'S CORRECT I DID THE REMOVAL

16 **Q** ---THAT'S IDENTIFIED AS STATE'S EXHIBIT 2?

17 **A** YES

18 **Q** THAT WAS THEN PRIOR TO YOUR CERTIFICATION?

19 **A** YES PRIOR TO WHEN I RECEIVED IT, YES

20 **Q** ALL RIGHT STATE'S EXHIBIT NUMBER 3, THE DATE THAT IT
21 WAS APPLIED AND REMOVED?

22 **A** IT WAS APPLIED ON AUGUST 29TH, '03, AND IT WAS REMOVED
23 SEPTEMBER 5TH, '03

24 **Q** ALL RIGHT ALSO PRIOR TO CERTIFICATION, RIGHT?

25 **A** YES

1 MR BANNISTER JUDGE, SAME OBJECTION AS THE OTHER---

2 THE COURT ALL RIGHT NOTED ON THE RECORD

3 MR BANNISTER THANK YOU, JUDGE

4 Q IN THE TOP LEFT-HAND CORNER -- I'LL TALK ABOUT STATE'S
5 EXHIBIT NUMBER 3 -- IT SAYS TONY WATERS, CORPORATE CHOICES,

6 [REDACTED]

7 A UH-HUH (AFFIRMATIVE)

8 Q WHAT DOES THAT ADDRESS REPRESENT?

9 A THAT'S JUST WHO THE ACCOUNT IS WITH WITH PHARMCHEM

10 Q ALL RIGHT AND THEN UNDERNEATH IT THERE IS ANOTHER
11 ADDRESS, CORPORATE CHOICES, [REDACTED] WHAT ADDRESS
12 DOES THAT REPRESENT?

13 A I GUESS THE SAME

14 Q OKAY IS THERE ANY REASON THAT YOU KNOW OF THAT STATE'S
15 EXHIBIT 3 AND STATE'S EXHIBIT 2 IN TALKING ABOUT THESE
16 ADDRESSES ARE---

17 A YEAH, BECAUSE THESE ARE -- WE MOVED IN BETWEEN THESE
18 TIMES

19 Q OKAY THANK YOU IS THERE ANY WAY ON WHAT'S BEEN
20 IDENTIFIED AS EXHIBIT 2 AND 3, THIS PHARMCHEM CHAIN OF
21 CUSTODY---

22 A UH-HUH (AFFIRMATIVE)

23 Q ---TO KNOW WHETHER OR NOT A PATCH WAS APPLIED OR REMOVED
24 AT THE COURTHOUSE VERSUS AT YOUR LAB?

25 A NO

1 Q IS THERE ANY TYPE OF NOTES OR DOCUMENTS THAT YOU KEEP
2 THAT WOULD LET US KNOW WHERE THE PATCH WAS APPLIED AND WHERE
3 THE PATCH WAS REMOVED?

4 A NOT THAT I KNOW OF

5 Q SO THEN, LET ME ASK YOU, IS THERE ANY OTHER PLACES OTHER
6 THAN THE BREAK ROOM THAT PATCHES HAVE BEEN APPLIED AND
7 REMOVED FOR THE DRUG COURT PROGRAM THAT YOU ARE AWARE OF?

8 A NOT THAT I'M AWARE OF

9 Q ALL RIGHT SO IF WE HAD TO LIST ALL THE PLACES THAT YOU
10 CAN REMEMBER APPLYING OR REMOVING A PATCH, WE'RE TALKING
11 ABOUT, I'M ASSUMING, DOWNSTAIRS IN THE BREAK ROOM--

12 A YES

13 Q ALL RIGHT DO YOU KNOW WHICH BREAK ROOM THAT IS? I
14 MEAN, WHERE IS IT IN THE COURTHOUSE? IS IT DOWN THERE WHERE
15 RONNIE'S SNACK SHOP IS OR IS IT---

16 A NO, IT'S NEAR WHERE THEY HAVE THEIR CLASS, I THINK I'M
17 NOT REAL SURE I'VE ONLY BEEN -- I DON'T -- GEOLOGICALLY, I
18 DON'T KNOW WHERE EVERYTHING IS

19 Q ALL RIGHT IS IT ON THE FIRST FLOOR, SECOND FLOOR,
20 THIRD FLOOR?

21 A FIRST, I THINK

22 Q ALL RIGHT IS IT NEAR ANY OF THE RESTROOMS?

23 A THE RESTROOM IS DOWN THE HALL

24 Q OKAY ALL RIGHT SO OTHER THAN AT THE BREAK ROOM,
25 WHICH IS ON THE FIRST FLOOR DOWN THE HALL FROM THE RESTROOM,

CHANDA GARNER -- CROSS BY MR BANNISTER

1 AND AT YOUR CORPORATE OFFICE, AND THEN I ASSUME WE'VE GOT
2 POTENTIALLY TWO DIFFERENT PLACES WHERE THE PATCH COULD HAVE
3 BEEN APPLIED?

4 A YES, THAT I'VE EVER DONE YES

5 Q OKAY ALL RIGHT THE PEOPLE THAT ARE -- AS I
6 UNDERSTOOD IT, THERE IS ALWAYS SOMEBODY ELSE PRESENT WATCHING
7 YOU REMOVE AND APPLY A PATCH? DID I UNDERSTAND THAT
8 CORRECTLY? THERE ARE ALWAYS TWO PEOPLE FROM---

9 A NOT ALWAYS

10 Q OKAY SO IS THERE ANY WAY ON THE CHAIN OF CUSTODY TO
11 KNOW WHETHER OR NOT A SECOND PERSON WAS PRESENT DURING THE---

12 A NO, IT'S NOT NOTED

13 Q IS IT A STANDARD PROCEDURE OR IS IT JUST SOMETHING THAT
14 HAPPENS ON OCCASION?

15 A IT'S JUST SOMETHING WE DO, YEAH

16 Q ALL RIGHT IN TERMS OF WHEN YOU APPLY OR REMOVE A PATCH
17 FROM SOMEBODY WHO'S -- LET'S TAKE YOUR LAB, IS IT UNUSUAL TO
18 HAVE OTHER PEOPLE COME IN AND OUT WHILE YOU ARE DOING IT?

19 A YOU MEAN IN THE OFFICE

20 Q IN THE LAB WHEN YOU'RE ACTUALLY SITTING DOWN AT THE
21 TABLE AND THE COMPUTER YOU DESCRIBED AND YOU'RE TAKING THE
22 PATCH OFF OR YOU'RE PUTTING IT ON, IS IT UNUSUAL TO HAVE
23 PEOPLE COME IN AND OUT WHILE THAT PROCESS IS GOING ON?

24 A YEAH, BECAUSE YOU'RE IN A ROOM, I MEAN, INDIVIDUAL ROOM
25 WE HAVE TWO SEPARATE ROOMS THAT WE DO DRUG TESTING IN

1 Q ALL RIGHT SO AT THE LAB IT WOULD BE UNUSUAL?

2 A YEAH

3 Q BUT AT LEAST HERE AT THE COURTHOUSE IT WAS NOT UNUSUAL
4 TO HAVE A NUMBER OF PEOPLE INSIDE?

5 A YES

6 Q ARE THEY LINED UP SOMEWHERE TYPICALLY?

7 A TYPICALLY, THEY'RE STANDING AGAINST THE WALLS OR SITTING
8 AT THE OTHER TABLES, BUT THEY'RE USUALLY NOT NEAR US

9 Q ARE THEY TALKING AND CARRYING ON WITH EACH OTHER, I
10 GUESS, FOR LACK OF A BETTER WORD?

11 A YEAH

12 Q OKAY IS THERE EVER AN OCCASION WHERE SOMEBODY WILL ASK
13 YOU WHAT SHOULD I DO TO MAKE SURE I DON'T SCREW THIS PATCH
14 UP?

15 A WE TELL THEM TO, YOU KNOW, JUST BE CAREFUL IT'S LIKE A
16 BAND-AID YOU KNOW, JUST MAKE SURE TO TRY AND DO THINGS THAT
17 WOULD NOT MAKE IT COME OFF

18 Q DO YOU TELL THEM THEY CAN TAKE A SHOWER WITH IT?

19 A YEAH

20 Q ALL RIGHT DO YOU TELL THEM THAT THEY CAN WASH OFF WITH
21 SOAP? I MEAN, OBVIOUSLY

22 A UH-HUH (AFFIRMATIVE) OH, YEAH

23 Q YES?

24 A YES

25 Q OKAY IS THERE ANYTHING YOU TELL THEM SPECIFICALLY, "DO

1 NOT DO THIS WHATEVER HAPPENS, DON'T DO THIS"?

2 A NO, NOT THAT I CAN RECALL

3 Q DO YOU TELL THEM NOT TO TOUCH THE PATCH?

4 A NO I -- NO

5 Q ALL RIGHT DO YOU TELL THEM NOT TO WEAR IT UNDERNEATH A
6 SLEEVE OR ALWAYS WEAR IT UNDERNEATH A SLEEVE?

7 A NO

8 Q MAYBE I JUST MISHEARD YOU, BUT I THOUGHT AT SOME POINT
9 YOU HAD TESTIFIED EARLIER THAT Y'ALL TELL THEM BE SURE AND
10 MAKE SURE THE SLEEVE DOESN'T COVER UP THE PATCH?

11 A NO THAT'S WHEN YOU'RE APPLYING IT AND YOU CLEAN THE
12 AREA YOU DON'T WANT THE SLEEVE TO FALL BACK DOWN

13 Q OH, I SEE

14 A YEAH

15 Q WHILE YOU'RE WAITING ON THE ALCOHOL---

16 A ALCOHOL TO DRY, YES

17 Q ---TO DRY? OKAY NOW I'M CLEAR

18 IT'S YOUR UNDERSTANDING, IF I UNDERSTOOD YOU CORRECTLY,
19 THAT THE PATCHES ARE SUPPOSED TO BE ON FOR BETWEEN -- WHAT
20 WAS IT? -- SEVEN TO FOURTEEN DAYS?

21 A THAT'S THE NORMAL YOU CAN WEAR THEM LONGER, BUT THEY
22 SAY THAT'S NORMAL

23 Q ALL RIGHT THAT'S -- WELL, IN TERMS OF THE VIDEOS THAT
24 YOU'VE SEEN AND THE TRAINING---

25 A I DON'T RECALL EXACTLY HOW MANY DAYS YOU CAN WEAR THEM,

1 BUT I JUST KNOW ON A NORMAL BASIS IT'S BETWEEN SEVEN AND
2 FOURTEEN DAYS

3 Q ALL RIGHT IS THAT TYPICALLY THE AMOUNT OF TIME---

4 A THAT'S THE TYPICAL AMOUNT OF TIME THAT THEY WEAR THEM

5 Q OKAY ARE YOU AWARE OF ANY LITERATURE FROM PHARMCHEM
6 ABOUT HERE'S HOW LONG YOU SHOULD WEAR THEM?

7 A NO, I'M NOT AWARE OF ANY NO

8 Q OKAY

9 MR BANNISTER JUDGE, JUST ONE MOMENT (PAUSE)
10 JUDGE, THAT'S ALL THE QUESTIONS THAT I HAVE

11 THE COURT ALL RIGHT YOUR WITNESS ANY OTHER
12 QUESTIONS?

13 MS STROM YES, SIR VERY BRIEFLY

14 REDIRECT EXAMINATION BY MS STROM

15 Q MS GARNER, I WANT TO GO BACK TO THIS ISSUE REGARDING
16 THE CERTIFICATE IN STATE'S EXHIBIT NUMBER 10 THAT YOU
17 RECEIVED, AND THAT'S DATED IN OCTOBER OF '03, CORRECT?

18 A NUMBER 10?

19 Q YOUR CERTIFICATION

20 A OH, OKAY YES THAT'S THE DATE THAT IT WAS AUTHORIZED
21 AND SIGNED BY WHOEVER IT WAS

22 Q BY PHARMCHEM?

23 A YES

24 Q WHEN YOU---

25 MR ARMSTRONG YOUR HONOR, I OBJECT TO THAT ANSWER AND

CHANDA GARNER -- REDIRECT BY MS STROM

1 MOVE IT BE STRICKEN IT'S SPECULATION THAT'S THE DAY IT
2 WAS AUTHORIZED BY SOMEBODY AT PHARMCHEM THIS LADY'S
3 INCOMPETENT TO TESTIFY TO THAT

4 THE COURT I SUSTAIN THE OBJECTION

5 Q THE DATE REFLECTED ON THE CERTIFICATION IS OCTOBER OF
6 '03?

7 A YES

8 Q OKAY WHEN YOU FIRST CAME TO WORK WITH THE COMPANY---

9 A YES

10 Q ---DID YOU -- WHEN DID YOU RECEIVE YOUR TRAINING
11 REGARDING THE APPLICATION AND REMOVAL OF SWEAT PATCHES?

12 A AS SOON AS I STARTED I NEVER APPLIED ONE UNTIL I
13 FINISHED MY TRAINING

14 Q DO YOU RECALL WHEN YOU STARTED WITH THE COMPANY?

15 A NOT -- OH, FEBRUARY OF '03, I BELIEVE

16 Q FEBRUARY OF '03?

17 A YES

18 Q AND YOU RECEIVED YOUR TRAINING THEN?

19 A YES

20 Q AND THAT TRAINING INCLUDED WHAT YOU TALKED ABOUT
21 EARLIER, WATCHING A VIDEO?

22 A YES

23 Q READING THE BOOKLET?

24 A YES

25 Q HAVING PERSONAL ONE-ON-ONE TRAINING?

1 A EXACTLY

2 Q AND TAKING A TEST?

3 A YES

4 Q DID YOU EVER APPLY OR REMOVE A PATCH BY YOURSELF BEFORE
5 DOING ALL THAT TRAINING?

6 A NO

7 Q AND I MAY HAVE NOT STATED THE QUESTION CORRECTLY, SO LET
8 ME REPHRASE IT YOU TAKE ALL YOUR TRAINING AND ARE YOU
9 UNDER THE SUPERVISION OF SOMEONE ELSE IN THE OFFICE?

10 A UNTIL THE TRAINING -- YES, UNTIL IT'S COMPLETED

11 Q UNTIL YOU GET -- UNTIL THE TRAINING IS COMPLETED OR
12 UNTIL YOU GET YOUR CERTIFICATION?

13 A UNTIL IT'S COMPLETED

14 Q UNTIL IT'S COMPLETED, OKAY AND UNDER WHOSE SUPERVISION
15 WERE YOU?

16 A ANGELA'S AND MAYBE TONY, MAYBE ERIN, SOMEONE WHO USED TO
17 WORK THERE AND MAYBE CHUCK CARROLL HE USED TO WORK THERE
18 ALSO

19 Q SO UNTIL YOU HAD COMPLETED ALL OF YOUR TRAINING AND TOOK
20 THE TEST---

21 A YES

22 Q ---THERE WOULD BE SOMEONE WITH YOU?

23 A YES

24 Q AFTER YOU TOOK THE TRAINING, TOOK THE TEST, COMPLETED
25 ALL OF THAT, BUT BEFORE YOU GOT YOUR CERTIFICATION, WOULD

CHANDA GARNER -- REDIRECT BY MS STROM

1 SOMEONE ALSO BE WITH YOU?

2 A I DON'T RECALL

3 Q YOU DON'T RECALL?

4 A UH-UH (NEGATIVE)

5 Q YOU TALKED ABOUT THE SAMPLES OR THE PATCHES BEING

6 APPLIED OR REMOVED HERE AT THE COURTHOUSE

7 A YES

8 Q ARE THEY EVER APPLIED HERE AT THE COURTHOUSE OR ARE THEY

9 JUST REMOVED HERE AT THE COURTHOUSE? HAVE YOU DONE BOTH HERE

10 OR ONLY ONE?

11 A I THINK I'VE DONE BOTH

12 Q OKAY AND YOU SAID THAT THAT WAS A ONE-ON-ONE

13 SITUATION THERE MAY BE OTHER PEOPLE IN THE ROOM?

14 A YES

15 Q WERE THE OTHER PEOPLE IN THE ROOM RIGHT THERE AT THE

16 TABLE WHERE YOU WERE APPLYING OR REMOVING THE PATCH?

17 A NO

18 MS STROM COURT'S INDULGENCE, YOUR HONOR

19 THE COURT ALL RIGHT

20 MS STROM THANK YOU I HAVE NO FURTHER QUESTIONS

21 THE COURT ANY OTHER QUESTIONS?

22 RECROSS EXAMINATION BY MR ARMSTRONG

23 Q YOU ARE EMPLOYED BY CORPORATE CHOICES, IS THAT NOT

24 CORRECT?

25 A THAT'S CORRECT

1 Q AND THE ENTIRE TIME THAT WE'RE TALKING ABOUT I THINK YOU
2 SAID YOU STARTED YOUR EMPLOYMENT IN FEBRUARY OF 2003?

3 A YES

4 Q TO THIS VERY DAY YOU ARE EMPLOYED BY CORPORATE CHOICE?

5 A YES

6 Q HAVE YOU EVER BEEN EMPLOYED BY PHARMCHEM?

7 A NO

8 Q IN RESPONSE TO SOME OF THE INQUIRIES THAT MS STROM
9 MADE, YOU STATED THAT YOU HAD WATCHED A VIDEO?

10 A YES

11 Q AND THIS WAS GIVEN TO YOU BY YOUR EMPLOYERS AT CORPORATE
12 CHOICES, ISN'T THAT CORRECT?

13 A YES

14 Q AND ANY OTHER TRAINING, WHATEVER IT WAS, WAS
15 ADMINISTERED BY CORPORATE CHOICES PERSONNEL, ISN'T THAT
16 CORRECT?

17 A YES, THAT'S CORRECT

18 Q YOU TALKED ABOUT ANGELA OR TONY OR A COUPLE OF OTHER
19 PEOPLE---

20 A YES

21 Q ---AND THEY'RE ALL OTHER CORPORATE CHOICES PEOPLE?

22 A YES, THEY WERE

23 Q OKAY YOU WERE NEVER TRAINED BY A PHARMCHEM EMPLOYEE,
24 TO YOUR KNOWLEDGE, WERE YOU?

25 A NO, I WASN'T

CHANDA GARNER -- RECROSS BY MR ARMSTRONG

1 Q YOU NEVER STOOD ANY TESTING FROM PHARMCHEM, DID YOU?

2 A WE HAD TO TAKE A TEST, A WRITTEN TEST, TO BE CERTIFIED

3 Q ALL RIGHT AND WHO WAS THAT ADMINISTERED BY, CORPORATE
4 CHOICES?

5 A THEY GAVE US THE TEST, BUT I BELIEVE THE TEST CAME FROM
6 PHARMCHEM

7 Q YOU DON'T KNOW?

8 A RIGHT

9 Q BUT YOU HAVE NEVER HAD A ONE-ON-ONE MEETING---

10 A NO

11 Q ---WITH---

12 A WITH PHARMCHEM

13 Q ---PHARMCHEM?

14 A NO, SIR

15 Q AND YOU DON'T KNOW WHETHER OR NOT ANY OF THE PEOPLE THAT
16 SO-CALLED "TRAINED" YOU WERE IN FACT CERTIFIED BY PHARMCHEM
17 THEMSELVES, DO YOU?

18 A NOT THE MY KNOWLEDGE I DON'T KNOW

19 Q IS THERE ANY RECERTIFICATION REQUIRED THAT YOU ARE AWARE
20 OF?

21 A NOT THAT I'M AWARE OF

22 Q IS THERE ANY MANDATORY TYPE OF ONGOING CONTINUING
23 TRAINING THAT YOU MUST MAINTAIN TO KEEP YOUR CERTIFICATION?

24 A NOT TO MY KNOWLEDGE

25 Q SO YOU DON'T HAVE TO EVERY SIX MONTHS OR EVERY YEAR OR

1 SOMETIME SUBMIT TO A COURSE OR WATCH A VIDEO OR ANYTHING?

2 A NOT TO MY KNOWLEDGE

3 MR ARMSTRONG COURT'S INDULGENCE, YOUR HONOR

4 (PAUSE) THANK YOU, MA'AM

5 THE COURT MR GIBSON, ANY QUESTIONS?

6 MR GIBSON NO, SIR

7 THE COURT MR BANNISTER?

8 MR BANNISTER THANK YOU, JUDGE

9 RECROSS EXAMINATION BY MR BANNISTER

10 Q HOW LONG WAS YOUR TRAINING PERIOD?

11 A I GUESS IT'S -- I'M NOT -- I DON'T REALLY RECALL EXACTLY
12 HOW LONG IT WAS

13 Q WAS IT A DAY, A WEEK OR -- I MEAN, JUST GIVE ME AN
14 ESTIMATE OF HOW LONG IT TOOK

15 A I GUESS, YOU KNOW, YOU WATCH THEM, JUST WATCH WHATEVER
16 THEY DO, AND THEN YOU WATCH THE VIDEO, AND THEN YOU READ THE
17 PAMPHLET AND -- I DON'T KNOW HOW LONG IT TOOK

18 Q ALL RIGHT SO WOULD IT HAVE BEEN POSSIBLE TO HAVE
19 COMPLETED YOUR TRAINING IN THE VERY FIRST DAY YOU WERE THERE?

20 A OH, NO UH-UH (NEGATIVE) I DIDN'T DO ALL THAT IN ONE
21 DAY I DON'T EVEN THINK I STARTED TRAINING ON THE PATCH THE
22 FIRST DAY

23 Q ALL RIGHT WHAT WAS THE FIRST DAY YOU STARTED WORK,
24 AGAIN?

25 A SOMETIME IN FEBRUARY I THINK IT WAS FEBRUARY 6TH,

CHANDA GARNER -- RECROSS BY MR BANNISTER

1 MAYBE

2 Q OKAY

3 A OF 2003

4 Q DO YOU RECALL WHEN THE FIRST TIME YOU WERE ALLOWED TO
5 APPLY OR REMOVE A PATCH WAS?

6 A NO, I DON'T RECALL

7 Q ALL RIGHT IF WE HAD THE PHARMCHEM -- OR YOU COMPANY'S
8 RECORDS ABOUT WHEN YOU APPLIED OR REMOVED A PATCH, WE
9 CERTAINLY WOULDN'T EXPECT TO SEE ONE APPLIED OR REMOVED ON
10 FEBRUARY 6TH, IF THAT'S THE FIRST DAY YOU WORKED, CORRECT?

11 A NO

12 Q ALL RIGHT HOW ABOUT THE FIRST WEEK THAT YOU WERE
13 THERE?

14 A HONESTLY, I DON'T RECALL EXACTLY WHEN I STARTED

15 Q HOW LONG IS THE VIDEO?

16 A I HAVE NO IDEA

17 Q DID IT TAKE YOU TWO DAYS TO WATCH IT?

18 A OH, NO

19 Q OKAY DID IT TAKE YOU A DAY TO WATCH IT?

20 A OH, YEAH

21 Q A WHOLE DAY?

22 A NOT ALL DAY, NO, IT'S NOT THAT LONG

23 Q HALF A DAY?

24 A NO I DON'T RECALL MAYBE LESS THAN A HOUR, THE
25 VIDEO'S LENGTH

1 Q HOW LONG IS THE BOOKLET THAT YOU REVIEW?

2 A YOU MEAN HOW MANY PAGES?

3 Q YEAH, HOW MANY PAGES

4 A MAYBE TWENTY AT THE MOST I DON'T REALLY REMEMBER I
5 DON'T PAY ATTENTION TO THINGS LIKE THAT

6 Q HOW LONG DID IT TAKE YOU TO TAKE THE TEST?

7 A I DON'T UNDERSTAND HOW LONG IT TOOK ME TO TAKE IT?

8 Q THE TEST FROM PHARMCHEM, HOW LONG DID IT TAKE YOU TO SIT
9 DOWN AND TAKE THAT TEST?

10 A HONESTLY, I DON'T RECALL I MEAN, I DON'T -- I DIDN'T
11 THINK TO REMEMBER THINGS LIKE THAT

12 Q OKAY WELL, WAS IT AN ALL-DAY TEST?

13 A NO

14 Q WAS IT A HALF-A-DAY TEST?

15 A PROBABLY NOT I MEAN, IT'S JUST A BUNCH OF QUESTIONS
16 IT'S LIKE A NORMAL TEST HOWEVER LONG IT TOOK YOU

17 Q DO YOU KNOW HOW MANY QUESTIONS IT WAS?

18 A NO

19 Q OKAY

20 A I MEAN, IT'S BEEN A WHILE

21 Q CHANDA, IS THERE ANY WAY TO KNOW WHETHER OR NOT WHEN YOU
22 SIGNED THE CHAIN OF CUSTODY WHETHER YOU WERE STILL IN
23 TRAINING OR OUT OF TRAINING?

24 A NO

25 Q SO IT'S POSSIBLE THAT ON THE CHAIN OF CUSTODY THERE ARE

CHANDA GARNER -- RECROSS BY MR BANNISTER

1 TIMES WHEN YOU SIGNED THE ONE CERTIFYING REMOVAL OR
2 APPLICATION WHEN YOU WERE STILL IN A TRAINING PERIOD?

3 A YEAH, IT'S POSSIBLE

4 MR BANNISTER THANK YOU NO FURTHER QUESTIONS

5 THE COURT ANYTHING ELSE FROM THE STATE?

6 MS. STROM NOTHING OF THIS WITNESS, YOUR HONOR

7 THE COURT ALL RIGHT THANK YOU, MA'AM YOU CAN STEP
8 DOWN

9 (WITNESS STEPS DOWN AT 10 52 A M)

10 MS STROM YOUR HONOR, WE WOULD ASK THAT SHE BE
11 EXCUSED

12 THE COURT ALL RIGHT ANY OBJECTION, GENTLEMEN?

13 MR GIBSON NO, SIR

14 MR ARMSTRONG NO, SIR

15 THE COURT ALL RIGHT THANK YOU YOU'RE FREE TO GO
16 OR FREE TO STAY

17 (WITNESS EXCUSED AT 10 52 A M)

18 MS WINN YOUR HONOR, THE STATE CALLS PAUL CARY

19 PAUL L CARY, HAVING BEEN DULY
20 SWORN, TESTIFIED AS FOLLOWS

21 MR ARMSTRONG YOUR HONOR, BEFORE MR CARY TESTIFIES,
22 THE DEFENSE HAS AN OBJECTION TO HIS TESTIMONY THERE IS NO
23 PROPER FOUNDATION ACTUALLY WHICH HAS BEEN PUT INTO THE
24 RECORD THERE'S AN 800-POUND ELEPHANT THAT'S IN THE ROOM BUT
25 NOT HERE, AND IT'S SOMEBODY FROM PHARMCHEM AND WE WOULD

PAUL L CARY -- DIRECT BY MS WINN

1 SUBMIT, AS PART OF THE DEFENSE, BEFORE THIS MAN CAN OPINE ON
2 THE VALIDITY OF THE TESTING PROCESSES, COLLECTIONS, ET
3 CETERA, WHATEVER HE MAY TESTIFY, THAT THERE HAS TO BE A
4 FACTUAL FOUNDATION OF RECORD ON WHICH HE CAN THEN BASE HIS
5 OPINIONS, SHOULD HE BE QUALIFIED BY THIS COURT IN SOME AREA
6 OF EXPERTISE

7 WE HAVE LOOKED VERY CAREFULLY AT THE INFORMATION
8 PROVIDED TO US BY THE STATE, AND I'M SOMEWHAT AMAZED, AS WE
9 ALL ARE, THAT THERE IS NOBODY FROM PHARMCHEM AND I THINK
10 THAT YOU CAN SEE, BASED ON THIS PREVIOUS WITNESS' TESTIMONY,
11 THAT IT'S ABSOLUTELY ESSENTIAL TO HAVE A FACTUAL FOUNDATION
12 DEVELOPED BY THE STATE ON THE -- NOT ONLY THE COLLECTION AND
13 TESTING PROCESS BUT THEIR LABORATORY PROCEDURES AS WELL

14 SO, WITH THAT STATED, YOUR HONOR, WE WOULD OBJECT TO
15 THIS WITNESS TESTIFYING ON ANY OF THE PHARMCHEM PROCESSES, BE
16 IT AT HIS LABORATORY OR IN THE COLLECTION TECHNIQUES, WITHOUT
17 THAT FACTUAL BASIS HAVING BEEN DEVELOPED BY THE STATE THE
18 RULES, AS I UNDERSTAND IT, OF THIS PARTICULAR PROCEEDING ARE
19 THIS, THAT IF THE STATE IS GOING TO RELY ON THE PATCH AND
20 SANCTION PEOPLE, DENYING THEM LIBERTY, THEY'VE GOT THE
21 OBLIGATION TO -- OR THE BURDEN OF PROOF TO ESTABLISH THE
22 VALIDITY OF THIS PATCH, AND I DON'T SEE HOW THEY CAN DO IT
23 WITHOUT SOMEBODY FROM PHARMCHEM

24 PHARMCHEM PERMEATED THIS PREVIOUS WITNESS' TESTIMONY,
25 AND I FULL WELL SUSPECT IT'S GOING TO PERMEATE THIS WITNESS'

PAUL L CARY -- DIRECT BY MS WINN

1 TESTIMONY AND ALL HE'S GOING TO BE TESTIFYING ABOUT IS,
2 FROM WHAT WE'VE BEEN ABLE TO DEDUCE FROM WHAT'S BEEN PROVIDED
3 TO US, ARE OPINIONS, REPORTS, CERTIFICATIONS AND OTHER STUFF
4 OUT THERE IN THE NETHERWORLD, BUT IT REALLY DOESN'T GO TO THE
5 NEXUS OF THE PROBLEM HERE IS THE FUNDAMENTAL ISSUES ON THE
6 PATCH, WHICH ARE SOLELY WITHIN THE PURVIEW, IN THIS CASE,
7 WITH PHARMCHEM

8 THE COURT ALL RIGHT AT THIS POINT I'M GOING TO TAKE
9 YOUR MOTION UNDER ADVISEMENT I THINK THESE ARE ISSUES THAT
10 CERTAINLY MAY COME OUT DURING VOIR DIRE BUT AT THIS POINT I
11 THINK IT'S PREMATURE TO ADDRESS IT

12 SO YOU CAN PROCEED

13 DIRECT EXAMINATION BY MS. WINN

14 Q MR CARY, I'M GOING TO HAND YOU WHAT'S PREVIOUSLY BEEN
15 MARKED AS STATE'S EXHIBITS 7, 8 AND 9 CAN YOU PLEASE
16 IDENTIFY BY THEIR EXHIBIT NUMBERS WHAT THOSE DOCUMENTS ARE?

17 A STATE'S EXHIBIT 7 IS A COPY THAT I PREPARED FOR YOUR
18 OFFICE STATE'S EXHIBIT 8 IS A COPY OF MY CURRICULUM VITAE
19 AND STATE'S EXHIBIT 9 IS A COPY OF ABOUT 60 PAGES OF THE
20 FEDERAL REGISTER FROM TUESDAY APRIL 13TH, 2004

21 Q MR CARY, BY WHOM ARE YOU EMPLOYED?

22 A I AM EMPLOYED BY THE UNIVERSITY OF MISSOURI HEALTH
23 SERVICES DEPARTMENT

24 Q AND WHAT IS YOUR POSITION?

25 A I AM SCIENTIFIC DIRECTOR OF THE TOXICOLOGY LABORATORY

PAUL L CARY -- DIRECT BY MS WINN

1 Q AND HOW LONG HAVE YOU BEEN IN THAT POSITION?

2 A I'VE BEEN EITHER SUPERVISOR OR DIRECTOR OF THE
3 LABORATORY SINCE 1977

4 Q AND WHAT TYPES OF SERVICES DO YOU PROVIDE FOR THE
5 LABORATORY?

6 A GENERAL MANAGEMENT AND SUPERVISION OF THE LABORATORY,
7 WHICH IS INVOLVED IN THE TESTING OF BIOLOGICAL FLUIDS FOR
8 DRUGS AND POISONS

9 Q AND IS THAT LABORATORY IN CONNECTION WITH THE UNIVERSITY
10 THERE?

11 A YES, IT'S ACTUALLY AFFILIATED WITH THE UNIVERSITY OF
12 MISSOURI HOSPITAL AND CLINICS

13 Q WHAT IS SAMHSA CERTIFICATION?

14 A SAMSHA IS A BRANCH OF THE DEPARTMENT OF HEALTH AND HUMAN
15 SERVICES THE SAMHSA CERTIFICATION FOR DRUG TESTING
16 LABORATORIES IS AN ACCREDITATION OF LABORATORIES THAT ARE
17 ALLOWED TO PERFORM DRUG TESTING FOR FEDERALLY REGULATED
18 EMPLOYEES

19 Q AND WHAT DOES SAMHSA STAND FOR?

20 A SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES
21 ADMINISTRATION

22 Q AND IN THAT CERTIFICATION DOES YOUR LABORATORY HAVE
23 THAT?

24 A YES, WE ARE A SAMHSA CERTIFIED LABORATORY

25 Q AND WHAT DOES THAT ENABLE YOU TO DO THEN?

PAUL L CARY -- DIRECT BY MS WINN

1 A BASICALLY TO DRUG TEST EMPLOYEES THAT ARE EMPLOYED BY
2 THE DEPARTMENT OF DEFENSE OR DEPARTMENT OF TRANSPORTATION,
3 DEPARTMENT OF ENERGY, NUCLEAR REGULATORY COMMISSION,
4 EMPLOYEES THAT ARE FEDERALLY REGULATED BY STATUTE

5 Q AND IS THAT A DIFFICULT CERTIFICATION TO ACHIEVE?

6 A IT'S A CHALLENGING CERTIFICATION TO BE SURE THE
7 LABORATORY UNDERGOES TWO INSPECTIONS PER YEAR WE GET AROUND
8 FOUR ROUNDS OF PROFICIENCY TEST SAMPLES THE LAB IS VERY
9 HIGHLY SCRUTINIZED TO ACHIEVE THOSE CERTIFICATIONS
10 CURRENTLY THERE ARE ONLY FIFTY LABS NATIONALLY THAT ARE SO
11 CERTIFIED, AND WE ARE ONE

12 Q WHAT SPECIFICALLY DOES YOUR JOB ENTAIL AS DIRECTOR?

13 A BASICALLY, THE GENERAL MANAGEMENT OF THE LABORATORY, THE
14 SUPERVISION OF THE EMPLOYEES I OVERSEE THE TECHNICAL
15 ASPECTS, THE ANALYTICAL TESTING OF THE LABORATORY, THE
16 QUALITY CONTROL, THE SECURITY, ACCOUNTING AND FINANCIAL
17 ASPECTS OF THE LABORATORY, AND I ACT AS CERTIFYING SCIENTIST,
18 WHICH IS AN INDIVIDUAL THAT CERTIFIES DRUG TESTING RESULTS
19 PRIOR TO THEIR BEING RELEASED BY THE LABORATORY

20 Q WHAT IS YOUR EDUCATIONAL BACKGROUND?

21 A I HAVE BOTH A BACHELOR'S DEGREE AND A MASTER'S DEGREE
22 FROM THE UNIVERSITY OF MISSOURI, AND THEN I HAVE BASICALLY
23 CONTINUING EDUCATION DEGREES OR COURSE WORK THAT I'VE DONE
24 SINCE 1974

25 Q WHAT ARE YOUR MASTER'S AND UNDERGRADUATE DEGREES IN?

PAUL L CARY -- DIRECT BY MS WINN

1 A I JUST HAVE A GENERIC BACHELOR OF ARTS DEGREE, AS FAR AS
2 UNDERGRADUATE WORK MY MASTER'S DEGREE IS A MASTER OF
3 SCIENCE

4 Q AND WHAT OTHER TRAINING HAVE YOU HAD IN THE AREA OF
5 TOXICOLOGY AND DRUG TESTING?

6 A WELL, SINCE GRADUATION IN 1974, AS OUTLINED IN MY
7 CURRICULUM VITAE, I'VE BEEN TO A SERIES OF CONTINUING
8 EDUCATION SEMINARS I'VE DONE GRADUATE COURSE WORK IN
9 PHARMACOLOGY AND TOXICOLOGY I ATTEND REFRESHER COURSES PUT
10 ON BY THE SOCIETY OF FORENSIC TOXICOLOGY I DO TRAINING
11 THROUGH THE DEPARTMENT OF TRANSPORTATION AND THE DEPARTMENT
12 OF HEALTH AND HUMAN SERVICES AS A LAB DIRECTOR OF A SAMHSA
13 CERTIFIED LABORATORY

14 Q WHAT IS YOUR PRIOR WORK EXPERIENCE?

15 A PRIOR WORK EXPERIENCE PRIOR TO MY AFFILIATION WITH THE
16 TOXICOLOGY LABORATORY WAS IN UNRELATED AREAS MOST OF MY
17 PROFESSIONAL LIFE HAS BEEN WITH THE TOXICOLOGY LABORATORY AT
18 THE UNIVERSITY OF MISSOURI

19 Q ARE YOU CURRENTLY PROVIDING SERVICES OUTSIDE THAT
20 UNIVERSITY AS A FACULTY MEMBER?

21 A I DO SOME TEACHING AT THE UNIVERSITY I TEACH MEDICAL
22 STUDENTS IN THE AREAS OF ALCOHOL, ALCOHOL METABOLISM I
23 TEACH PATHOLOGY RESIDENTS WHO ARE ESSENTIALLY PHYSICIANS WHO
24 HAVE GRADUATED MEDICAL SCHOOL AND WHO ARE NOT DOING
25 SPECIALIZATIONS IN PATHOLOGY AND SO AS THEY ROTATE THROUGH

PAUL L CARY -- DIRECT BY MS WINN

1 OUR LABORATORY, WE TEACH THEM ASPECTS OF TOXICOLOGY,
2 POISONING, DRUG TESTING AND THE LIKE

3 Q AND ARE YOU A VISITING FACULTY MEMBER TO ANY NATIONAL
4 ASSOCIATIONS?

5 A I'M A VISITING FACULTY MEMBER FOR THE NATIONAL
6 ASSOCIATION OF DRUG COURT PROFESSIONALS, THE NATIONAL DRUG
7 COURT INSTITUTE AND THE NATIONAL COUNCIL OF JUVENILE AND
8 FAMILY COURT JUDGES

9 Q AND WHAT ARE YOUR RESPONSIBILITIES AND DUTIES AS A
10 VISITING FACULTY MEMBER OF THIS ASSOCIATION?

11 A MY ASSOCIATION WITH THOSE GROUPS IS BASICALLY TRAINING
12 DRUG COURT PROFESSIONALS IN TECHNIQUES AND TECHNOLOGIES
13 ASSOCIATED WITH DRUG TESTING SO WE TEACH JUDGES,
14 PROSECUTORS, DEFENSE ATTORNEYS WE TEACH CASE WORKERS,
15 PROBATION AND PAROLE OFFICERS AND CASE MANAGEMENT OFFICIALS,
16 ALL DRUG COURT PROFESSIONALS ASSOCIATED WITH INTERPRETING
17 DRUG TESTING RESULTS, HOW TO PERFORM APPROPRIATE DRUG TESTING
18 COLLECTIONS, BASICS OF TAMPERING THAT DRUG COURT PARTICIPANTS
19 CAN ENGAGE IN, TEACH THEM ABOUT SOME OF THE TECHNOLOGIES USED
20 IN DRUG TESTING, BASICALLY AN OVERVIEW OF TOXICOLOGY AND DRUG
21 TESTING AS IT APPLIES TO THE MONITORING OF DRUG COURT
22 PARTICIPANTS

23 Q ARE YOU INVOLVED IN ANY SEMINARS OR WORKSHOPS RELATED TO
24 DRUG TESTING?

25 A WELL, THROUGH THE UNIVERSITY WE DO SEMINARS BOTH FOR

PAUL L CARY -- DIRECT BY MS WINN

1 FORENSIC CHEMISTS AND OTHERS IN THE FIELD OF TOXICOLOGY, AND
2 THEN MOST OF MY SEMINARS ARE ASSOCIATED WITH MY AFFILIATION
3 WITH THE VARIOUS DRUG COURT AGENCIES IN TEACHING VARIOUS
4 ASPECTS OF TOXICOLOGY AND DRUG TESTING

5 Q WHAT TYPE OF EQUIPMENT IS IN YOUR LABORATORY AND WOULD
6 YOU BE FAMILIAR WITH?

7 A BASICALLY THE SCIENCE OF DRUG TESTING IS DIVIDED INTO
8 TWO PRIMARY ANALYTICAL CATEGORIES, THE TESTING CATEGORIES
9 THE FIRST IS IMMUNOASSAY INSTRUMENTATION THAT DOES BASIC
10 SCREENING OF SAMPLES THE PURPOSE OF SCREENING IS TO
11 SEPARATE POSITIVE SAMPLES FROM SAMPLES THAT ARE CLEARLY
12 NEGATIVE THOSE SAMPLES THAT ARE PRESUMPTIVELY POSITIVE BY
13 THE INITIAL TESTING APPROACH OR THE SCREENING APPROACH ARE
14 THEN TAKEN ON TO GAS CHROMATOGRAPHY MASS SPECTROMETRY, WHICH
15 GO BY THE LETTERS GCMS, WHICH MAY BE FAMILIAR TO MEMBERS OF
16 THE COURT GCMS IS UTILIZED TO CONCLUSIVELY CONFIRM OR
17 VALIDATE THE RESULTS OF THE INITIAL TESTING BASED ON CHEMICAL
18 FINGERPRINT TECHNOLOGY

19 Q AND DO YOU PERFORM ANY PROFESSIONAL CONSULTINGS?

20 A YES, I DO CONSULTATION WORK AS IT'S RELATED TO
21 TOXICOLOGY AND DRUG TESTING YES

22 Q AND ARE YOU A MEMBER OF COMMITTEES THAT RELATE TO THAT
23 SAME AREA?

24 A I'M NOT SURE WHAT YOU MEAN BY THAT

25 Q WHAT TYPE OF -- GIVE ME AN EXAMPLE OF YOUR PROFESSIONAL

PAUL L CARY -- DIRECT BY MS WINN

1 CONSULTING

2 A GENERALLY SPEAKING, I WOULD BE RETAINED TO REVIEW
3 DOCUMENTATION AND POTENTIALLY SERVE AS AN EXPERT WITNESS IN
4 TOXICOLOGY AND DRUG TESTING RELATED MATTERS

5 Q HOW MANY PRESENTATIONS HAVE YOU MADE WITH REGARD TO
6 TOXICOLOGY AND DRUG TESTING?

7 A IT'S HARD TO PUT A NUMBER ON THAT JUST AFFILIATED WITH
8 THE NATIONAL DRUG COURT ORGANIZATIONS, PROBABLY BETWEEN 100
9 AND 200 PRESENTATIONS PRESENTATIONS AT SCIENTIFIC MEETINGS,
10 PROBABLY THREE TO FOUR DOZEN

11 Q AND APPROXIMATELY HOW MANY PUBLICATIONS IN THE SAME
12 AREA?

13 A I THINK MY CURRICULUM VITAE LISTS A COUPLE OF DOZEN, 16,
14 17, 18, SOMEWHERE IN THAT NEIGHBORHOOD

15 Q AND HAVE YOU BEEN -- HAVE YOU TESTIFIED IN COURT BEFORE?

16 A YES, I HAVE

17 Q AND HAVE YOU BEEN QUALIFIED AS AN EXPERT IN THE AREA OF
18 TOXICOLOGY AND DRUG TESTING BEFORE?

19 A YES, I HAVE

20 Q APPROXIMATELY HOW MANY TIMES?

21 A FIFTY TIMES, PERHAPS

22 Q AND IN WHAT COURTS, FEDERAL AND STATE COURTS?

23 A FEDERAL, STATE, CIRCUIT COURTS, AND MUNICIPAL COURTS

24 MS WINN YOUR HONOR, THE STATE WOULD MOVE TO DECLARE
25 MR PAUL CARY AN EXPERT IN TOXICOLOGY AND DRUG TESTING

1 THE COURT ALL RIGHT ANY VOIR DIRE, GENTLEMEN?

2 MR ARMSTRONG YES, SIR

3 THE COURT MR ARMSTRONG

4 VOIR DIRE BY MR ARMSTRONG

5 Q MR CARY, YOU STATED YOUR BACHELOR OF ARTS IS A GENERIC
6 BACHELOR OF ARTS, IS THAT CORRECT?

7 A THAT'S CORRECT

8 Q AND YOUR MASTER OF SCIENCE, IS THAT IN ANY SPECIFIC
9 DISCIPLINE?

10 A MEDICAL MANAGEMENT IS MY AREA OF CONCENTRATION

11 Q SO IT'S NOT IN CHEMISTRY, IS IT?

12 A NO, SIR, IT'S NOT

13 Q IT'S NOT IN ORGANIC CHEMISTRY, OBVIOUSLY?

14 A NO, SIR, IT'S NOT

15 Q YOU DO NOT HAVE A Ph D , DO YOU?

16 A NO, SIR, I DO NOT

17 Q YOU -- ARE YOU CERTIFIED OR LICENSED BY ANY STATE OR
18 FEDERAL OR GOVERNMENTAL AGENCY IN A DISCIPLINE? WHAT I'M
19 ASKING YOU IS LIKE A LICENSE TO PRACTICE LAW, A PROFESSIONAL
20 ENGINEER, OR A SURVEYOR OR A NURSING LICENSE, SOMETHING LIKE
21 THAT

22 A NOT AS I UNDERSTAND YOUR QUESTION I AM CERTIFIED
23 AND/OR RECOGNIZED AS THE RESPONSIBLE PERSON FOR THE SAMHSA
24 CERTIFIED LABORATORY WHILE THAT IS NOT A SPECIFIC FEDERAL
25 CERTIFICATION, IT IS A RECOGNITION OF MY EXPERTISE IN THAT

PAUL CARY -- VOIR DIRE BY MR ARMSTRONG

1 AREA

2 Q SO IN OTHER WORDS TO DO WHAT YOU CLAIM TO HAVE THE
3 EXPERTISE IN YOU DO NOT HAVE TO BE LICENSED BY A GOVERNMENTAL
4 AGENCY TO HOLD YOURSELF OUT IN THIS CAPACITY, IS THAT
5 CORRECT?

6 A THAT'S CORRECT

7 Q DO YOU HAVE ANY AFFILIATION WITH PHARMCHEM AT ALL?

8 A NO, SIR, I DO NOT

9 Q HAVE YOU EVER CONSULTED WITH PHARMCHEM?

10 A NO, SIR

11 Q ARE YOU AWARE OF ANY OF THE CERTIFICATION PROCESSES OF
12 PHARMCHEM FOR THEIR LABORATORY PROCEDURES OR, MORE
13 PARTICULARLY, THEIR COLLECTORS?

14 A WELL, I KNOW THEIR LABORATORY IS CERTIFIED BY SAMHSA,
15 THIS FEDERAL CERTIFICATION, AS IS OUR LABORATORY I AM NOT
16 AWARE OF THEIR CERTIFICATIONS WITH REGARDS TO COLLECTORS
17 OTHER THAN THEY EXIST

18 MR ARMSTRONG YOUR HONOR, I HAVE NO FURTHER QUESTIONS
19 FOR THIS GENTLEMAN AT THIS TIME I SUSPECT MY COLLEAGUES
20 PERHAPS WILL WHEN THAT IS DONE, I HAVE A MOTION TO MAKE

21 THE COURT MR GIBSON, ANY QUESTIONS?

22 MR GIBSON YES, SIR

23 VOIR DIRE BY MR GIBSON

24 Q MR CARY, AS FAR AS DRUG TESTS ARE CONCERNED, WHAT
25 EXPERTISE DO YOU HAVE IN ENVIRONMENTAL CONTAMINATION?

1 A I'M NOT SURE I UNDERSTAND YOUR QUESTION EXACTLY

2 Q ARE YOU FAMILIAR WITH THE POSSIBILITY -- OR ARE YOU
3 FAMILIAR WITH THE THEORY AND BELIEF BY MANY EXPERTS THAT
4 THERE IS THE POSSIBILITY OF ENVIRONMENTAL CONTAMINATION, AND
5 PARTICULARLY IN REGARDS TO THE SWEAT PATCH?

6 A WELL, YOU'VE ASKED A RATHER GLOBAL QUESTION, SO LET ME
7 GIVE YOU A GLOBAL ANSWER

8 Q OKAY

9 A AND THAT WOULD BE THAT I THINK, ONE, AS A SCIENTIST AND
10 AS A REVIEWER OF DRUG TESTING DATA, YOU MUST ALWAYS TAKE INTO
11 ACCOUNT THE POSSIBILITY OF CONTAMINATION WHEN EVALUATING ANY
12 LABORATORY TEST

13 Q YES, SIR

14 A SWEAT PATCH OR OTHERWISE

15 Q MY SPECIFIC QUESTION IS, WHAT IS YOUR EXPERTISE TO THE
16 EXTENT YOU HAVE ANY IN THE POSSIBILITY OF---

17 A MY EXPERTISE WOULD BE LIMITED TO A REVIEW OF THE
18 LITERATURE ON THE SUBJECT MATTER

19 Q OKAY SO YOU HAVE DONE NO INDEPENDENT TEST OF YOUR OWN
20 ACCORD ON THAT GROUNDS, IS THAT CORRECT?

21 A THAT IS CORRECT

22 Q WHAT LITERATURE HAVE YOU REVIEWED ALONG THOSE GROUNDS?

23 A I KEEP CURRENT WITH THE CURRENT ANALYTICAL LITERATURE
24 WITH REGARDS TO WHAT YOU HAVE DESCRIBED AS ENVIRONMENTAL
25 CONTAMINATION WITH REGARDS TO TESTING DEVICES AS A ROLE IN MY

PAUL CARY -- VOIR DIRE BY MR GIBSON

1 JOB AS CERTIFYING SCIENTISTS AND AS R P , OR RESPONSIBLE
2 PERSON, OF A CERTIFIED LABORATORY ONE HAS TO KEEP ABREAST
3 OF CONTAMINATION ISSUES IN ORDER TO BE ABLE TO CERTIFY DRUG
4 TESTING RESULTS AS ACCURATE AND RELIABLE

5 SO THERE IS GENERAL KNOWLEDGE BOTH IN TERMS OF
6 INFORMATION THAT IS PASSED TO US FROM THE ACCREDITING
7 AGENCIES THERE IS SPECIFIC KNOWLEDGE ASSOCIATED WITH
8 PUBLICATIONS AND SCIENTIFIC JOURNALS THAT KEEPS INDIVIDUALS
9 SUCH AS MYSELF ABREAST OF THESE ISSUES, THESE SPECIFIC
10 CONTAMINATION ISSUES

11 Q ARE YOU FAMILIAR WITH DR DAVID KIDWELL?

12 A I AM FAMILIAR WITH DR DAVID KIDWELL, YES

13 Q ARE YOU FAMILIAR WITH HIS WORK ON THE ISSUE OF
14 ENVIRONMENTAL CONTAMINATION?

15 A YES, I AM

16 Q HAVE YOU REVIEWED HIS WORK?

17 A YES, I HAVE

18 Q OKAY WHAT SPECIFIC WORKS OF MR KIDWELL HAVE YOU
19 REVIEWED?

20 A I DON'T KNOW THAT I CAN GIVE YOU THE EXACT NAMES OF THE
21 PUBLICATIONS, BUT HE HAS DONE WORK IN THE AREA OF THE
22 SUSCEPTIBILITY OF PATCH TESTS TO CONTAMINATION HE HAS DONE
23 LABORATORY STUDIES WITH REGARDS TO CONTAMINATION FROM WITHIN
24 AND CONTAMINATION FROM WITHOUT OF THE SWEAT PATCH HE HAS
25 DONE FIELD WORK, I BELIEVE, IN LOOKING AT CERTAIN POPULATIONS

PAUL CARY -- VOIR DIRE BY MR GIBSON

1 OF PEOPLE TO DETERMINE WHETHER OR NOT THEY CONTAIN COCAINE OR
2 OTHER DRUG RESIDUES ON THEIR PERSONS, IN THEIR HAIR, IN THEIR
3 BIOLOGICAL FLUIDS SO TO THAT EXTENT, I AM AWARE OF THOSE
4 ISSUES

5 Q OKAY ARE YOU FAMILIAR WITH ANY OTHER RESEARCHER'S WORK
6 IN THAT AREA?

7 A ANY OTHER RESEARCHER'S WORK?

8 Q RESEARCHERS, SCIENTISTS

9 A WELL, AGAIN, AS PART OF MY JOB RESPONSIBILITIES IN
10 KEEPING ABREAST OF POSSIBLE CONTAMINATIONS OF BIOLOGICAL
11 SPECIMENS THAT WE DO FOR DRUG TESTING, SURE, I'M AWARE OF
12 OTHER RESEARCH THAT'S BEEN DONE IN THIS AREA

13 Q OKAY CAN YOU -- WITHOUT GOING INTO SPECIFIC DETAIL
14 ABOUT EVERY ONE, CAN YOU GIVE ME AN IDEA OF WHAT OTHER
15 RESEARCHERS' WORK YOU ARE FAMILIAR WITH IN THIS AREA?

16 A DO YOU WANT NAMES OF ARTICLES? DO YOU WANT -- I'M NOT
17 SURE WHAT YOU WANT ME---

18 Q LET'S START WITH NAMES OF RESEARCHERS, SCIENTISTS,
19 PRESENTERS, AUTHORS---

20 A I'M FAMILIAR WITH WORK DONE BY ED CONE AND MARILYN
21 HUESTIS AT THE ADDICTION RESEARCH CENTER IN BALTIMORE,
22 MARYLAND I'M FAMILIAR WITH RESEARCH DONE BY TERESA
23 WINHOUSER AT THE UNIVERSITY OF CINCINNATI I'M FAMILIAR WITH
24 RESEARCH THAT HAS BEEN DONE BY DENNIS CROUCH AT THE CENTER
25 FOR HUMAN TOXICOLOGY IN SALT LAKE CITY, UTAH I'M FAMILIAR

PAUL CARY -- VOIR DIRE BY MR GIBSON

1 WITH RESEARCH THAT'S BEEN DONE BY DR KIDWELL AND HIS GROUP,
2 INCLUDING FRED SMITH I'M FAMILIAR WITH RESEARCH THAT'S BEEN
3 DONE -- LET'S SEE -- BY OTHER RESEARCHERS -- AND WITHOUT, YOU
4 KNOW, WITHOUT HAVING THE DOCUMENTS IN FRONT OF ME, I COULDN'T
5 COME UP WITH NAMES OR DATES OR WHATEVER, BUT

6 MR. GIBSON THANK YOU

7 YOUR HONOR, I'LL HAVE A MOTION AFTER MR BANNISTER IS
8 FINISHED

9 MR. BANNISTER THANK YOU, JUDGE

10 VOIR DIRE BY MR BANNISTER

11 Q WOULD YOU UNDERSTAND THE TERMINOLOGY I'M GOING TO USE
12 THE DIFFERENCE BETWEEN A PRODUCTION LAB AND A RESEARCH LAB?

13 A OH, YES

14 Q OKAY AND JUST TELL ME WHAT THE DIFFERENCES ARE IN YOUR
15 MIND BETWEEN A PRODUCTION LAB AND A RESEARCH LAB

16 A A PRODUCTION LABORATORY WOULD BE SIMILAR TO LABORATORIES
17 LIKE MINE OR LIKE PHARMCHEM'S WHERE OUR MAIN JOB OR MISSION
18 IN LIFE, IF YOU WILL, IS TO PROCESS SAMPLES, ANALYZE SAMPLES
19 FOR DRUG TESTING AND TO REPORT OUT THOSE RESULTS A RESEARCH
20 LABORATORY IS A LABORATORY THAT IS NOT SO INTERESTED IN THE
21 COMMERCIAL ASPECTS, IF YOU WILL, OF DRUG TESTING BUT RATHER
22 INVESTIGATING PERHAPS NEW TECHNOLOGIES, NEW TECHNIQUES FOR
23 DOING DRUG TESTING, RESEARCHING AREAS SUCH AS CONTAMINATION,
24 FOR EXAMPLE, PERFORMING EMPIRICAL RESEARCH AS OPPOSED TO DRUG
25 TESTING SAMPLES

1 Q ALL RIGHT AND YOU SAID YOUR LAB IS PRIMARILY A
2 PRODUCTION LAB?

3 A I WOULD NOT DISAGREE WITH YOUR CLASSIFICATION

4 Q ALL RIGHT DO YOU ACTUALLY -- HAVE YOU PERSONALLY
5 PERFORMED ANY SWEAT TESTING?

6 A HAVE I PERSONALLY PERFORMED ANY SWEAT TESTING?

7 Q YES, SIR

8 A NO, I HAVE NOT

9 Q ALL RIGHT DOES YOUR LAB DO ANY SWEAT TESTING?

10 A NO, IT DOES NOT

11 Q SAMHSA CERTIFICATION DOES NOT APPLY TO SWEAT TESTING,
12 DOES IT?

13 A CURRENTLY IT DOES NOT, NO

14 Q SO IF I UNDERSTAND WHERE YOUR AREA OF EXPERTISE IS, IT
15 IS IN REVIEWING IN YOUR OWN LAB WHETHER OR NOT WHAT COMES IN
16 AS A DRUG SAMPLE, WHETHER IT BE FROM HAIR, SWEAT OR URINE,
17 AND THEN LOOKING AT WHAT THE RESULT YOUR LAB HAS PRODUCED AND
18 THEN MAKING SURE THAT THE PROCEDURES THAT WERE FOLLOWED WERE
19 CORRECT PROCEDURES WOULD THAT BE A FAIR STATEMENT?

20 A I WOULD NOT ARGUE WITH YOUR DESCRIPTION

21 Q OKAY WHEN YOU WERE TALKING ABOUT IMMUNOASSAYS, WHAT
22 TYPE DO YOU USE AT YOUR LAB?

23 A WE USE ENZYME IMMUNOASSAYS

24 Q OKAY DO YOU KNOW WHAT TYPE PHARMCHEM USES?

25 A FOR WHAT TEST?

PAUL CARY -- VOIR DIRE BY MR BANNISTER

1 Q FOR SWEAT TESTS

2 A I BELIEVE THEY ARE USING A TECHNIQUE KNOWN AS ELIZA,
3 WHICH IS AN ENZYME-LINKED IMMUNOSORBANT TECHNOLOGY

4 Q ARE THOSE THE SAME?

5 A ARE THEY THE SAME? NO THEY ARE VERY SIMILAR IN THEIR
6 TYPE OF PROCESS IN TERMS OF THE ANALYTICAL TECHNIQUE USED,
7 BUT THEY ARE NOT IDENTICAL

8 Q SO LET'S MAKE SURE I'VE GOT THIS RIGHT PHARMCHEM USES
9 AN IMMUNOASSAY TYPE OF TESTING THAT IS SIMILAR BUT NOT THE
10 SAME AS THE ONE YOU USE IN YOUR LAB, CORRECT?

11 A THAT'S CORRECT

12 Q AND THEY DO SWEAT TESTING BUT YOUR LAB DOES NOT?

13 A THAT'S CORRECT

14 MR BANNISTER I THINK THAT'S ALL THE QUESTIONS I
15 HAVE, JUDGE

16 BY THE COURT

17 Q LET ME ASK A QUESTION WHAT IS YOUR EXPERIENCE AND
18 EXPERTISE SPECIFICALLY IN DEALING WITH THE PHARMCHEM SWEAT
19 PATCH?

20 A I WAS RETAINED BY THE SOLICITOR'S OFFICE HERE IN SOUTH
21 CAROLINA TO REVIEW LITIGATION PACKETS FOR THE THREE
22 DEFENDANTS IN THIS PARTICULAR CASE BECAUSE THE TECHNOLOGIES
23 THAT ARE UTILIZED TO ANALYZE THE SAMPLES, BECAUSE THE QUALITY
24 ASSURANCE PROGRAMS WITH REGARDS TO VERIFYING THAT THE TESTING
25 HAS BEEN DONE APPROPRIATELY, BECAUSE THE CHAIN OF CUSTODY

PAUL CARY -- BY THE COURT

1 DOCUMENTS, THE DOCUMENT POSSESSION OF THE SAMPLES, BECAUSE
2 THE GAS CHROMATOGRAPH MASS SPECTROMETRY ANALYSES ARE VERY
3 SIMILAR BETWEEN THE TESTING OF DIFFERENT TYPES OF SPECIMENS,
4 I WAS ASKED TO REVIEW A SERIES OF LITIGATION PACKETS TO
5 INSURE THAT THESE TECHNIQUES, THAT THE QUALITY ASSURANCE,
6 THAT THE TESTING PROCEDURES WERE SCIENTIFICALLY VALID AND
7 ACCEPTED BY MEMBERS OF THE SCIENTIFIC COMMUNITY AS RELIABLE

8 THE COURT ALL RIGHT ANY OTHER QUESTIONS FROM THE
9 STATE?

10 EXAMINATION CONTINUES BY MS WINN

11 Q AND WHAT YOU REVIEWED FROM PHARMCHEM IN THOSE LITIGATION
12 PACKAGES, ARE THOSE PROCEDURES -- WERE THEY FOLLOWED AND
13 GENERALLY WITHIN STANDARDS?

14 MR. GIBSON OBJECTION, YOUR HONOR, THAT EXTENDS BEYOND
15 VOIR DIRE AND QUALIFICATIONS OF THE WITNESS

16 THE COURT AT THIS POINT, I JUST NEED QUESTIONS TO
17 FOLLOW UP ON THE VOIR DIRE QUESTIONS AS FAR AS HIS
18 QUALIFICATIONS AS AN EXPERT

19 MS WINN NOTHING FURTHER

20 THE COURT MR ARMSTRONG?

21 MR ARMSTRONG YOUR HONOR, I PAID PARTICULAR ATTENTION
22 TO THE QUESTION THAT YOU ASKED THIS GENTLEMAN ABOUT HIS
23 FAMILIARITY SPECIFICALLY WITH PHARMCHEM SWEAT PATCHES, AND I
24 LISTENED TO HIS ANSWER VERY CAREFULLY I WOULD STATE TO THE
25 COURT THAT I BELIEVE THAT THE BEST ANSWER WOULD HAVE BEEN

MATTERS AND MOTIONS

1 NONE WHAT THIS GENTLEMAN HOLDS HIMSELF OUT AS IS AS
2 FOLLOWS A MANAGER OF GREAT SKILL, APPARENTLY, IN A
3 PRODUCTION LABORATORY, PERIOD THIS MAN DOES NOT REALLY HAVE
4 A SCIENTIFIC BACKGROUND GENERAL LIBERAL ARTS, MASTER OF
5 SCIENCE IN MEDICAL MANAGEMENT, NOT CERTIFIED BY ANY STATE OR
6 FEDERAL GOVERNMENTAL AGENCY TO PERFORM WHAT HE IS AND I
7 SUBMIT HE HAS PROBABLY BEEN IN THE LABORATORY MANAGEMENT --
8 PRODUCTION LABORATORY MANAGEMENT BUSINESS FOR QUITE SOME
9 YEARS ACCORDING TO HIS CURRICULUM VITAE, BUT THE SKILLS AND
10 THE ANALYTICAL PROCESSES WHICH ARE BEFORE THE COURT CONCERN
11 WHAT YOU FOCUSED ON IN YOUR QUESTION, AND THAT IS, THE
12 PHARMCHEM SWEAT PATCH, AND THIS MAN DOES NOT HAVE THAT
13 EXPERTISE TO OPINE ON THAT

14 MR GIBSON ASKED HIM ABOUT ENVIRONMENTAL CONTAMINATION
15 HE REVIEWS LITERATURE AND THAT'S NOT SUFFICIENT TO HOLD
16 YOURSELF AS AN EXPERT IN THIS PARTICULAR COURT BECAUSE THAT'S
17 THE EXACT PROBLEM THAT WE'VE GOT IN HERE, WITHOUT
18 CONTAMINATION, WITHIN CONTAMINATION AS HE HAS EVEN RECOGNIZED
19 IN HIS TESTIMONY APPLICATIONS TECHNIQUES HERE, AND AGAIN
20 HE'S NOT AN APPLIER HE'S RUNNING A LABORATORY

21 SO WE WOULD OBJECT COLLECTIVELY TO THIS COURT CERTIFYING
22 THIS MAN AS AN EXPERT AND ABLE TO RENDER OPINION EVIDENCE ON
23 THE PHARMCHEM SWEAT PATCH OR ANY NUANCES ASSOCIATED
24 THEREWITH

25 THE COURT ANYTHING YOU WANT TO ADD, MR GIBSON?

MATTERS AND MOTIONS

1 **MR. GIBSON** YES, YOUR HONOR JUST IN THAT -- I MEAN,
2 I THINK IT'S EXTREMELY RELEVANT THAT HE DOESN'T DO SWEAT
3 TESTING HIS LAB DOESN'T DO SWEAT TESTING THE IMMUNOASSAY
4 THAT HIS LAB USES IS DIFFERENT FROM THE IMMUNOASSAY THAT THE
5 PHARMCHEM SWEAT PATCH PROCEDURES USE HE HAS NO INDEPENDENT
6 RESEARCH ON ENVIRONMENTAL CONTAMINATION I MEAN, YOU KNOW,
7 IN ADDITION TO WHAT MR. ARMSTRONG HAS SAID, I MEAN, I CAN'T
8 SEE HOW HE COULD BE QUALIFIED AS AN EXPERT FOR THIS COURT FOR
9 THE SPECIFIC ISSUES THAT WE'RE DEALING WITH TODAY

10 **THE COURT** MR. BANNISTER, ANYTHING ELSE YOU WANT TO
11 ADD?

12 **MR. BANNISTER** IT SEEMS LIKE WE'VE GOT TWO PROBLEMS
13 RIGHT NOW ONE IS A FOUNDATIONAL PROBLEM FOR GETTING THE
14 RESULTS OF THE SWEAT PATCH INTO EVIDENCE HE'S GOING TO --
15 IF HE'S ALLOWED TO TESTIFY, HE'S GOING TO BE PRESENTING THE
16 EVIDENCE, BUT WE DON'T HAVE THE ACTUAL WITNESS HERE TO CROSS
17 EXAMINE THAT'S THE PROBLEM WE'VE GOT PHARMCHEM HAS GOT TO
18 BE HERE TO GET THE RESULT IN HE'S A PRODUCTION MANAGER HE
19 COULD THEN COME BACK AND SAY, YOU KNOW, BASED ON WHAT THEY
20 DID, THEY DID IT RIGHT BUT WE'VE TO HAVE THE PERSON HERE TO
21 SAY WE DID IT THIS WAY

22 THE SECOND PROBLEM THAT I SEE, ASSUMING THEY GET PAST
23 THE FOUNDATION PROBLEM, IS THAT'S THE LIMIT, AS I UNDERSTAND
24 IT, OF HIS EXPERTISE WHERE I THINK I AM WITH MS. HURKS IS,
25 ASSUMING THEY GET PAST THE FOUNDATIONAL PROBLEM, I CAN JUST

MATTERS AND MOTIONS

1 STIPULATE THAT THE COCAINE WAS PRESENT IN THE PATCH AND
2 ELIMINATE THE NECESSITY FOR THIS EXPERT TO BE HERE AS TO HER
3 WHERE I WILL BE FOCUSING ON IS HOW DID IT GET THERE IS IT
4 ENVIRONMENTAL OR WAS IT INGESTED? AND BASED ON MY
5 UNDERSTANDING OF WHAT HE IS GOING TO BE OPINING ABOUT, IT'S
6 NOT RELEVANT TO AT LEAST MS HURKS

7 THE COURT ALL RIGHT

8 MR BANNISTER THANK YOU

9 THE COURT I'M GOING TO FIND HIM QUALIFIED UNDER RULE
10 702 THE STATE CAN PROCEED

11 MR ARMSTRONG WHAT SPECIFICALLY, YOUR HONOR, ARE YOU
12 FINDING HIM QUALIFIED TO---

13 THE COURT AS AN EXPERT IN THE DRUG TESTING FIELD,
14 INCLUDING HIS REVIEW AND FAMILIARITY WITH DRUG PATCH TESTING
15 METHODS

16 MR. ARMSTRONG FOR THE RECORD, WE OBJECT

17 THE COURT FOR THE RECORD, I UNDERSTAND

18 GO AHEAD

19 DIRECT EXAMINATION CONTINUES BY MS. WINN

20 Q MR CARY, CAN YOU AGAIN IDENTIFY WHAT STATE'S EXHIBIT 8
21 IS?

22 A YES, THAT WOULD BE MY CURRICULUM VITAE

23 MS WINN AT THIS POINT, YOUR HONOR, WE WOULD MOVE
24 STATE'S EXHIBIT INTO EVIDENCE

25 THE COURT ALL RIGHT

PAUL CARY -- DIRECT CONTINUES BY MS WINN

1 (STATE'S EXHIBIT 8, CURRICULUM VITAE OF PAUL CARY, MOVED
2 INTO EVIDENCE)

3 Q MR CARY WHAT IS A SWEAT PATCH?

4 A WELL, IF YOU'LL PARDON THE ANALOGY, IT'S A RATHER FANCY
5 BAND-AID IN THE SENSE THAT IT IS A CELLULOSE PAD, AN
6 ABSORBENT PAD THAT IS COVERED BY A THIN POLYURETHANE FILM
7 THE PATCH IS DESIGNED TO COLLECT SWEAT FROM A DONOR TO WHICH
8 IT IS APPLIED FOR THE PURPOSES OF DETERMINING THE PRESENCE OF
9 DRUGS IN THE PATCH IN ORDER TO BE TESTED AND THEN SOME
10 RAMIFICATIONS OBVIOUSLY ASSOCIATED WITH THE TEST

11 Q HOW DOES THAT SWEAT CARRY THE PRESENCE OF DRUGS, IF
12 THERE ARE ANY, INTO THAT PATCH?

13 A THE DRUGS ARE ELUTED INTO SWEAT AND THEN EXPELLED FROM
14 THE BODY VIA SWEAT GLANDS AND SWEAT DUCTS AND PORES THAT COME
15 OUT THROUGH THE SKIN THE ABSORBENT PAD ESSENTIALLY WICKS
16 THE SWEAT AWAY FROM THE SURFACE OF THE SKIN WHERE BOTH THE
17 DRUGS AND OBVIOUSLY THE LIQUID, THE LIQUID OF THE SWEAT, ARE
18 COLLECTED IN THE PATCH BECAUSE THE FILM IS A NONOCCLUSIVE
19 FILM, THE PATCH IS ESSENTIALLY BREATHABLE THE PATCH ALLOWS
20 OXYGEN AND WATER VAPOR TO PASS THROUGH THE FILM ITSELF, AND
21 SO THAT ALLOWS THE PATCH TO BE WORN FOR AN EXTENDED PERIOD OF
22 TIME AND AS THE WATER VAPOR AND THE GASES PASS THROUGH THE
23 PATCH, THE LARGER MOLECULES, BEING THOSE OF THE DRUGS, ARE
24 RETAINED IN THE CELLULOSE PAD SO LATER THOSE CAN BE EXTRACTED
25 OUT OF THE PAD AND ANALYZED

PAUL CARY -- DIRECT CONTINUES BY MS WINN

1 Q AND OVER HOW LONG IS THIS PATCH COLLECTING SWEAT?

2 A ESSENTIALLY AS LONG AS IT REMAINS ATTACHED TO THE DONOR

3 Q AND HOW IS THIS SWEAT PATCH THEN ANALYZED?

4 A THE CELLULOSE MATERIAL IS ELUTED WITH SOLVENTS AND
5 EXTRACTED SO THAT WE CAN REMOVE THE DRUG FROM THE MATERIAL,
6 AND THEN IT'S ANALYZED BY THE VARIOUS TECHNIQUES THAT WE HAVE
7 ALREADY DISCUSSED, IMMUNOASSAYS AS AN INITIAL SCREEN FOLLOWED
8 UP BY CONFIRMATION TECHNIQUES, IF THE IMMUNOASSAYS ELUCIDATE
9 THAT THERE ARE DRUGS PRESENT IN THE MATERIAL

10 Q AND IS THE SWEAT PATCH FDA APPROVED?

11 A YES, THE SWEAT PATCH IS FDA APPROVED

12 Q IS THE SWEAT PATCH GENERALLY RECOGNIZED BY FEDERAL AND
13 STATE COURTS AS A VALID TESTING METHOD?

14 A THE -- OFFICE ADMINISTRATION OF U S COURTS, I THINK,
15 CERTIFIED THE USE OF THE SWEAT PATCH FOR CRIMINAL JUSTICE
16 APPLICATIONS IN THE MID-NINETIES, '95, '96 SUBSEQUENT TO
17 THAT THERE WERE SOME CONCERNS RAISED ABOUT THE VALIDITY OF
18 THE PATCH, AND I BELIEVE AGAIN THAT THE OFFICE OF U S COURTS
19 DID SOME PILOT STUDIES AND AGAIN IN THE LATE 1990s
20 RECERTIFIED ITS USE AS A DEVICE FOR COLLECTING SAMPLES FROM
21 DONORS WHO WERE ON PROBATION OR PAROLE OR ASSOCIATED WITH
22 DRUG COURTS OR -- YOU KNOW, CRIMINAL JUSTICE APPLICATIONS
23 SO, YES, IT IS CERTIFIED BY THE COURTS AS A RELIABLE
24 TECHNIQUE USED FOR SURVEILLANCE OF THOSE INDIVIDUALS WHO ARE
25 TO REMAIN ABSTINENT FROM DRUG USE

PAUL CARY -- DIRECT CONTINUES BY MS WINN

1 Q IS THE SWEAT PATCH GENERALLY RECOGNIZED BY THE
2 SCIENTIFIC COMMUNITY AS A VALID TESTING METHOD?

3 A I CERTAINLY BELIEVE IT IS THERE IS A LARGE BODY OF
4 RESEARCH OUT THERE, PROBABLY BEGINNING AS EARLY AS THE MID-
5 1980s, WITH REGARDS TO THE USE OF THE SWEAT PATCH FOR THE
6 COLLECTION OF SAMPLES FROM INDIVIDUALS WHERE THE MONITORING
7 OF THEIR DRUG USE WAS DEEMED IMPORTANT, AND THAT LITERATURE
8 REVIEW -- OR THOSE PUBLISHED ARTICLES CONTINUE AS OF TODAY

9 Q I REFER YOU AGAIN TO STATE'S EXHIBIT 9 CAN YOU TELL US
10 AGAIN WHAT THAT IS PLEASE?

11 A THIS DOCUMENT IS A SET OF PROPOSED GUIDELINES THAT HAS
12 BEEN RELEASED BY THE DEPARTMENT OF HEALTH AND HUMAN SERVICES,
13 SPECIFICALLY THROUGH SAMHSA, THE SUBSTANCE ABUSE AND MENTAL
14 HEALTH SERVICE ADMINISTRATION THESE PROPOSED GUIDELINES ARE
15 DESIGNED TO SUPPLEMENT THE CURRENT FEDERALLY MANDATED
16 WORKPLACE DRUG TESTING RULES AND THESE PARTICULAR -- THIS
17 PARTICULAR DOCUMENT INDICATES PROPOSED GUIDELINES FOR
18 ALTERNATIVE MATRICES SO THAT WOULD INCLUDE SWEAT, SALIVA
19 AND HAIR AS ADDITIONAL SPECIMENS FOR DRUG TESTING WITH
20 REGARDS -- OR IN ADDITION TO URINE AS THE SPECIMEN FOR DRUG
21 TESTING CURRENTLY THE ONLY TWO SPECIMENS THAT ARE ALLOWED
22 FOR FEDERAL WORKPLACE TESTING ARE URINE AND BREATH
23 SPECIFICALLY FOR ALCOHOL THESE RULES ESSENTIALLY WOULD PUT
24 INTO FORCE THE APPLICATION OF SWEAT, ORAL FLUIDS AND HAIR AS
25 ADDITIONAL MATRICES FOR TESTING OF EMPLOYMENT RELATED

PAUL CARY -- DIRECT CONTINUES BY MS WINN

1 Q OKAY SO THAT ARTICLE ESSENTIALLY WOULD RECOMMEND USING
2 THIS SWEAT PATCH AS A VALID TESTING DEVICE ON WORKPLACE
3 TESTING?

4 MR ARMSTRONG I OBJECT, THAT'S A CONCLUSION SOUGHT BY
5 THE STATE, AND I'D ASK HER NOT TO LEAD

6 THE COURT REPHRASE THE QUESTION, PLEASE

7 Q IN YOUR OPINION, WHAT DOES THAT ARTICLE PURPORT TO
8 RECOMMEND AS FAR AS SWEAT PATCHES ARE CONCERNED?

9 A IT RECOMMENDS THAT SWEAT PATCHES BE ALLOWED AS ONE
10 TECHNIQUE OR ONE APPROACH TO MONITORING DRUG USE BY
11 PROSPECTIVE OR CURRENT EMPLOYEES THAT ARE FEDERALLY
12 REGULATED

13 Q IS THE SWEAT PATCH EXTENSIVELY UTILIZED BY OTHER COURTS
14 AS A SCREENING METHOD?

15 A WELL, CERTAINLY WITH MY WORK WITH THE NATIONAL
16 ASSOCIATION OF DRUG COURT PROFESSIONALS AND THE NATIONAL
17 ASSOCIATION OF -- NATIONAL COUNCIL OF JUVENILE AND FAMILY
18 COURT JUDGES, IT'S BEEN MY EXPERIENCE IN WORKING WITH THOSE
19 COURTS THAT THE SWEAT PATCH IS WIDELY USED AS A COLLECTION
20 TECHNIQUE DESIGNED TO MONITOR THE DRUG USE BEHAVIOR OF THE
21 INDIVIDUALS WITHIN DRUG COURT, YES

22 MS WINN YOUR HONOR, THE STATE WOULD MOVE STATE'S
23 EXHIBIT 9 INTO EVIDENCE

24 THE COURT ALL RIGHT

25 (STATE'S EXHIBIT NUMBER 9, FEDERAL REGULATION, MOVED

PAUL CARY -- DIRECT CONTINUES BY MS WINN

1 INTO EVIDENCE)

2 Q AND WHAT CAN A SWEAT PATCH REVEAL AS FAR AS A PERSON'S
3 DRUG USE?

4 A BASICALLY THE PATCH IS DESIGNED TO MONITOR DRUG USE
5 DURING THE TIME THAT THE PATCH IS WORN THERE IS ALSO A
6 WINDOW PRIOR TO THE APPLICATION OF THE PATCH THAT MIGHT ALSO
7 PICK UP AND INCLUDE DRUG USE THAT OCCURRED WITHIN, LET'S SAY,
8 24 TO 48 HOURS PRIOR TO THE APPLICATION OF THE PATCH SO IN
9 ADDITION TO PICKING UP POTENTIAL DRUG USE DURING THE TIME THE
10 PATCH IS WORN, IT CAN ALSO PICK UP DRUG USE JUST PRIOR TO
11 WHEN THE PATCH WAS APPLIED SO IT'S THIS WINDOW OF
12 DETECTION

13 Q AND HOW IS THAT POSSIBLE TO PICK UP? YOU SAID 24 TO 48
14 HOURS OF USE PRIOR TO THE PATCH APPLICATION HOW IS THAT
15 POSSIBLE?

16 A WELL, THE PRODUCTION OF SWEAT THAT INCLUDES DRUGS IS A
17 TIME-RELATED PHENOMENON IT DOES NOT HAPPEN INSTANTANEOUSLY,
18 AND CERTAINLY IT CONTINUES FOR A CERTAIN PERIOD OF TIME AS
19 THE DRUGS ARE BEING ELIMINATED FROM THE BODY, SWEAT BEING
20 JUST ONE OF THE MECHANISMS BY WHICH DRUGS ARE ELIMINATED
21 AND SO IF AN INDIVIDUAL WAS TO USE A DRUG THAT WAS GOING TO
22 BE DETECTED BY THE PATCH PRIOR TO THE PATCH APPLICATION, IT
23 IS POSSIBLE FOR THAT USAGE TO BE DETECTED IN THE PATCH AS
24 WELL AS THAT TIME PERIOD THAT THE PATCH IS BEING -- IS
25 APPLIED OR BEING WORN

PAUL CARY -- DIRECT CONTINUES BY MS WINN

1 Q REFERRING YOU TO STATE'S EXHIBIT 7, WHICH I BELIEVE YOU
2 STATED WAS YOUR REPORT?

3 A YES, IT IS

4 Q DOES YOUR REPORT INDICATE THE MATERIALS YOU REVIEWED IN
5 PREPARATION?

6 A YES, IT DOES

7 Q AND WHAT WERE THOSE MATERIALS?

8 A BASICALLY, I REVIEWED FOUR LITIGATION PACKAGES, ONE
9 ASSOCIATED WITH DANE JANELLI, TWO, I BELIEVE, ASSOCIATED WITH
10 ANGELA HURKS, ONE ASSOCIATED WITH CEDRIC PERKINS ALL OF
11 THESE LITIGATION PACKAGES WERE PRESUMABLY SUPPLIED TO THE
12 COURT FROM PHARMCHEM AND THEN I ALSO REVIEWED TWO SETS OF
13 DOCUMENTS FROM QUEST LABORATORY THAT HAD TO DO WITH HAIR
14 ANALYSIS ON ANGELA BURKS AND DANE JANELLI

15 Q DID YOU ALSO REVIEW SOME SCIENTIFIC EVIDENCE AND
16 ARTICLES IN PREPARING YOUR REPORT?

17 A YES AS A BASIS TO ESTABLISH SWEAT PATCH TESTING AS
18 RECOGNIZED BY THE SCIENTIFIC COMMUNITY, UNDER SECTION 3 OF MY
19 REPORT I BELIEVE I LISTED EIGHT PUBLICATIONS WHICH SUPPORT
20 THE SCIENTIFIC ACCEPTANCE OF THIS TECHNOLOGY WITH REGARDS TO
21 MONITORING DRUG USE ALL OF THESE ARTICLES ARE EITHER
22 RESEARCH PAPERS OR SCIENTIFIC INVESTIGATIONS OR STUDIES THAT
23 ARE IN PEER REVIEW JOURNALS INDICATING THAT THE SWEAT PATCH
24 IS BASICALLY A RELIABLE TECHNOLOGY FOR THE MONITORING OF DRUG
25 USE

PAUL CARY -- DIRECT CONTINUES BY MS WINN

1 Q YOU MENTIONED LITIGATION PACKAGES CAN YOU BRIEFLY
2 EXPLAIN WHAT THOSE ARE?

3 A A LITIGATION PACKAGE IS A SET OF DOCUMENTS THAT CAN BE
4 SUPPLIED BY THE LABORATORY IN AN EFFORT TO DOCUMENT VARIOUS
5 ASPECTS OF THE TESTING THAT WOULD INCLUDE THE CHAIN OF
6 POSSESSION OF THE SAMPLES THAT ARE UNDER REVIEW IT SHOULD
7 INCLUDE THE QUALITY CONTROL OF SAMPLES THAT WERE RUN BY THE
8 LABORATORY TO INSURE THAT THE ANALYSES WERE PERFORMED
9 CORRECTLY IT SHOULD INCLUDE ALL OF THE ANALYTICAL DATA
10 ASSOCIATED WITH THE ACTUAL TESTING OF THE SAMPLES SO AS WE
11 TALKED ABOUT EARLIER, THE IMMUNOASSAY TECHNOLOGIES, THE
12 INITIAL TESTING TECHNOLOGIES AS WELL AS THE CONFIRMATORY GCMS
13 TECHNOLOGIES BASICALLY IT'S A PAPERWORK TRAIL THAT
14 ILLUSTRATES EVERYTHING THAT HAS BEEN DONE WITHIN THE
15 LABORATORY TO A PARTICULAR SAMPLE

16 Q AND DID YOU REVIEW A LITIGATION PACKAGE FOR A SWEAT TEST
17 PERFORMED ON CEDRIC PERKINS?

18 A YES, I DID

19 Q AND WHAT WERE YOUR FINDINGS AND INTERPRETATIONS OF THAT
20 TEST?

21 A THE DOCUMENTS THAT I REVIEWED WITH REGARDS TO THE
22 LITIGATION PACKAGE OF MR PERKINS INCLUDED THE EXTERNAL CHAIN
23 OF CUSTODY, WHICH ESSENTIALLY IS A DOCUMENT THAT WOULD FOLLOW
24 THE SAMPLE FROM THE POINT OF PATCH APPLICATION TO THE POINT
25 OF REMOVAL AND THEN SHIPMENT TO THE LABORATORY I REVIEWED

PAUL CARY -- DIRECT CONTINUES BY MS WINN

1 THE INTERNAL CHAIN OF CUSTODY FROM THE LABORATORY, WHICH IS
2 THE POSSESSION DOCUMENT THAT ILLUSTRATES WHO HANDLED THE
3 SAMPLE AT WHAT PERIOD OF TIME WITHIN THE ACTUAL LABORATORY
4 AND HOW THE SAMPLE WAS PROCESSED IN TERMS OF GIVING IT A
5 UNIQUE IDENTIFICATION NUMBER I REVIEWED A SCREENING
6 INTERNAL CHAIN OF CUSTODY, WHICH DOCUMENTS THE POSSESSION AND
7 HANDLING OF A SMALL PORTION OF THAT ORIGINAL SAMPLE FOR THE
8 ORIGINAL TESTING I REVIEWED THE SCREENING TESTING RESULTS,
9 WHICH INCLUDED THE TESTING PROTOCOLS THEMSELVES, THE ASSAY
10 CALIBRATION, IN OTHER WORDS, HOW THE ASSAY OR THE TESTING
11 METHOD WAS SET UP TO DETERMINE THE POSITIVE AND NEGATIVE OF
12 THE SAMPLE, QUALITY CONTROL MATERIALS USED, THE FACT THAT THE
13 SCREENINGS INCLUDED DRUG-FREE BLANKS AND UNKNOWN BLIND
14 QUALITY CONTROL SAMPLES I REVIEWED THE INSTRUMENTATION
15 CHECKS AND THAT'S JUST ASSOCIATED WITH THE INITIAL
16 SCREENING

17 THEN I REVIEWED THE RESULTS OF THE QUALITY CONTROL TO
18 MAKE SURE THAT THEY FELL WITHIN ACCEPTABLE RANGES ESTABLISHED
19 BY THE LABORATORY I REVIEWED THE SAMPLE ANALYSIS PROCEDURES
20 FOR THE SCREENING TECHNOLOGY, DETERMINING WHERE THEY HAD
21 ESTABLISHED THE CUTOFF FOR DETERMINING WHETHER A SAMPLE IS
22 NEGATIVE OR POSITIVE

23 I DID ALL OF THOSE SAME CHECKS WITH REGARDS TO THE
24 CONFIRMATION TECHNOLOGY SO AGAIN, THE CHAIN OF CUSTODYS AND
25 THE POSSESSION DOCUMENTS ASSOCIATED WITH THE CONFIRMATION,

PAUL CARY -- DIRECT CONTINUES BY MS WINN

1 THE QUALITY ASSURANCE, THE CONTROL MATERIALS, THE INCLUSION
2 OF BLANKS, THE INCLUSION OF BLIND SAMPLES I DETERMINED THAT
3 -- OR I EXAMINED DOCUMENTS ASSOCIATED WITH THE HANDLING OF
4 THOSE CONFIRMATION SAMPLES I LOOKED AT DOCUMENTS THAT
5 INDICATED WHETHER OR NOT THE LABORATORY ANALYSES HAD BEEN
6 REVIEWED BY A CERTIFYING SCIENTIST PRIOR TO THEIR BEING
7 RELEASED AND THEN LASTLY I EXAMINED THE LABORATORY RESULT
8 REPORT TO DETERMINE THAT IT ACCURATELY REFLECTED THE ANALYSES
9 THAT HAD BEEN PERFORMED ON EACH ONE OF THESE INDIVIDUALS
10 WITH REGARDS SPECIFICALLY TO THE SWEAT PATCH ANALYSIS ON
11 CEDRIC PERKINS, I DETERMINED AFTER REVIEWING---

12 MR GIBSON OBJECTION, YOUR HONOR PRIOR TO GIVING AN
13 OPINION, IT'S OUR POSITION THAT HE HAS TO HAVE ALSO REVIEWED
14 PHARMCHEM'S PROCEDURES IN TAKING THE TEST AND APPLYING -- AND
15 THERE'S BEEN NO STATEMENT ON HIS BEHALF THAT HE HAS IN FACT
16 DONE SO WITHOUT HIS REVIEW OF THOSE PROCEDURES, I DON'T SEE
17 THAT THERE IS ANY WAY THAT HE CAN ACCURATELY CONCLUDE THAT
18 THE TEST RESULTS ARE CONSISTENT WITH ANYTHING

19 THE COURT IS THE STATE IN A POSITION TO LAY SOME
20 ADDITIONAL FOUNDATION?

21 MS WINN YOUR HONOR, WE CAN, YES

22 Q MR CARY, ARE YOU FAMILIAR AND AWARE OF PHARMCHEM'S
23 PROCEDURES IN DRUG TESTING?

24 A YES I'M FAMILIAR WITH THEIR TESTING METHODOLOGIES,
25 YES

PAUL CARY -- DIRECT CONTINUES BY MS WINN

1 Q AND IS THAT WHAT YOU REVIEWED WITH THESE LITIGATION
2 PACKAGES?

3 A YES I MEAN, ESSENTIALLY, WHAT THESE LITIGATION
4 PACKAGES ARE IS A DOCUMENT THAT DESCRIBES AND PROVIDES ALL OF
5 THE INFORMATION ASSOCIATED WITH THESE TESTING METHODOLOGIES
6 MR GIBSON YOUR HONOR, OUR SPECIFIC OBJECTION IS THAT
7 HE HAS NOT READ THE STANDARD OPERATING PROCEDURE FOR
8 PHARMCHEM, AND THOSE STANDARD OPERATING PROCEDURES BASICALLY
9 SET FORTH THE PROCEDURES FOR APPLICATION AND TESTING AND
10 WITHOUT HIS REVIEW OF THOSE SPECIFIC PROCEDURES, IT IS OUR
11 POSITION HE IS NOT QUALIFIED TO GIVE AN OPINION ON THOSE TEST
12 RESULTS

13 THE COURT GO AHEAD WITH YOUR QUESTIONING

14 MR ARMSTRONG YOUR HONOR, I WOULD MAKE A NOTATION
15 ALSO, WHEN THIS LADY WAS ASKING HIM A QUESTION HERE, HE
16 ANSWERED HESITANTLY YES BUT HE SHOOK HIS HEAD NO I THINK
17 THAT IS VERY INDICATIVE THAT THIS MAN HAS NO KNOWLEDGE,
18 DIRECT KNOWLEDGE OR KNOWLEDGE APPLIED BY THE STATE TO
19 PHARMCHEM

20 THE COURT I UNDERSTAND GO AHEAD

21 MS WINN THANK YOU, YOUR HONOR

22 Q WITH REGARD TO CEDRIC PERKINS, WERE ALL THE TESTING
23 PROCEDURES AND PROTOCOLS THAT YOU REVIEWED ARE THEY
24 ACCEPTABLE AND APPROPRIATE AND IN COMPLIANCE WITH RECOGNIZED
25 FORENSIC STANDARDS AND PRACTICES?

PAUL CARY -- DIRECT CONTINUES BY MS WINN

1 A I BELIEVE THEY ARE, YES

2 Q AND WHAT WERE YOUR FURTHER FINDINGS REGARDING CEDRIC
3 PERKINS' SWEAT PATCH TEST?

4 MR. GIBSON OBJECTION, YOUR HONOR DID YOU---

5 THE COURT I OVERRULED THE OBJECTION SHE CAN
6 PROCEED

7 A I DETERMINED THAT FOR THE SWEAT PATCH THAT WAS APPLIED
8 ON SEPTEMBER 17TH, 2003, AND REMOVED ON SEPTEMBER 26TH, 2003,
9 THAT THE RESULTS OF TESTING ON THAT PARTICULAR SAMPLE
10 INDICATED THE PRESENCE OF BOTH COCAINE AND COCAINE
11 METABOLITE, BENZOYLECGONINE, IN THE SWEAT PATCH SPECIMEN AT
12 CONCENTRATIONS OF 197 NANOGRAMS PER MIL FOR COCAINE AND 21
13 NANOGRAMS PER MIL FOR THE METABOLITE OR THE BREAK DOWN
14 PRODUCT "BE" I DETERMINED THAT THE DRUG CONCENTRATION FOR
15 BOTH COCAINE AND THE METABOLITE "BE" WERE ABOVE THE
16 LABORATORIES CUTOFF THRESHOLD AND WERE CORRECTLY REPORTED AS
17 POSITIVE ON THE LABORATORY REPORT

18 Q AND WHAT DID THE PRESENCE OF "BE" OR BENZOYLECGONINE
19 INDICATE TO YOU?

20 MR BANNISTER JUDGE, THIS IS WHERE I THINK WE HAVE AN
21 OBJECTION AS TO WHAT IS HE AN EXPERT IN, BECAUSE I THINK WHAT
22 HE'S GETTING READY TO GET INTO IS HOW THIS PRESENCE OF "BE"
23 HAS SOME SORT OF APPLICATION IN TERMS OF IS IT ENVIRONMENTAL
24 VERSUS DOES IT MEAN THAT IT'S BEEN INGESTED THAT IS MUCH
25 MORE IN LINE WITH WHAT WE TALKED ABOUT WHEN WE TALKED ABOUT A

PAUL CARY -- DIRECT CONTINUES BY MS WINN

1 RESEARCH LAB VERSUS A PRODUCTION LAB

2 THE COURT THAT MAY VERY WELL GO TO THE WEIGHT OF THE
3 COMPETING EXPERTS, BUT IT DOESN'T GO TO THE ADMISSIBILITY
4 RULE 702 APPLIES I'VE RULED ON THAT, SO LET'S MOVE ON

5 MR BANNISTER THANK YOU I JUST WANTED TO MAKE SURE
6 THAT WAS CLEAR

7 THE COURT YOU'RE PROTECTED ON THE RECORD

8 A BEING A BREAKDOWN PRODUCT THIS "BE" OR THIS
9 BENZOYLECGONINE IS A BREAKDOWN PRODUCT OF COCAINE IT IS
10 SPECIFIC TO THE COCAINE MOLECULE THE BREAKDOWN PRODUCT IN
11 MY REVIEW OF THE DATA INDICATES THAT BY ITS MERE PRESENCE
12 THAT IT INDICATES THAT THE INDIVIDUAL INGESTED, IN SOME
13 MANNER, COCAINE, WHICH WAS THEN METABOLIZED IN HIS BODY AND
14 WAS RELEASED IN THE SWEAT OF -- AND COLLECTED BY THE SWEAT
15 PATCH IT IS AND WILL BE MY CONTENTION THAT THE PRESENCE OF
16 THIS BODILY BREAKDOWN PRODUCT IS INDICATIVE OF INGESTED
17 COCAINE RATHER THAN AS A RESULT OF SOME FORM OF
18 CONTAMINATION, AND THAT ITS PRESENCE IN THIS BIOLOGICAL
19 SPECIMEN INDICATES THAT THERE WAS USE OF COCAINE WHICH WAS
20 THEN ULTIMATELY COLLECTED BY THE PATCH

21 Q AND I BELIEVE YOU WERE PRESENT DURING CHANDA GARNER'S
22 TESTIMONY WHERE SHE DESCRIBED THE PROCEDURES THAT SHE
23 FOLLOWED FOR APPLICATION AND REMOVAL OF THE PATCH YOU HEARD
24 HER TESTIFY WERE -- THOSE PROCEDURES THAT SHE TESTIFIED
25 ABOUT, ARE THEY IN ACCORDANCE WITH NORMAL PRACTICES AND

PAUL CARY -- DIRECT CONTINUES BY MS WINN

1 STANDARDS THAT YOU ARE FAMILIAR WITH?

2 A CERTAINLY WITH MY UNDERSTANDING OF THE USE AND THE
3 APPLICATION OF THE PATCH, HER TESTIMONY WAS CONSISTENT WITH
4 GENERALLY ACCEPTED SCIENTIFIC APPROACHES TO USING THE PATCH
5 AND APPLYING THE PATCH AS A DETECTION DEVICE FOR DRUG USE

6 Q AND WHAT WAS YOUR OPINION WITH REGARD TO THE SWEAT PATCH
7 PERFORMED ON CEDRIC PERKINS FOR THE PATCH HE WORE ON
8 SEPTEMBER 17TH, 2003, THROUGH SEPTEMBER 26TH, 2003?

9 A THAT IT INDICATED COCAINE INGESTION BY THIS INDIVIDUAL

10 Q AND DID YOU REVIEW TWO LITIGATION PACKAGES FOR SWEAT
11 TESTS PERFORMED ON ANGELA HURKS?

12 A YES, I DID

13 Q AND DID YOU REVIEW THOSE SAME CHARACTERISTICS THAT YOU
14 HAD DESCRIBED EARLIER CONCERNING CHAIN OF CUSTODY, QUALITY
15 CONTROL AND ANALYTICAL DATA CONCERNING THIS LITIGATION
16 PACKAGE AND THESE SWEAT TESTS?

17 A YES, I DID

18 Q AND WHAT WAS YOUR CONCLUSION FOR THAT?

19 A FOR THE SWEAT PATCH THAT WAS APPLIED ON MAY 30TH---

20 THE COURT HOLD ON JUST A MINUTE, PLEASE, SIR

21 MR. BANNISTER SUBJECT TO MY PREVIOUS OBJECTION

22 THE COURT I UNDERSTAND YOU'RE PROTECTED ON THE
23 RECORD IT'S AN ONGOING OBJECTION

24 MR BANNISTER THANK YOU

25 A MAY I CONTINUE?

PAUL CARY -- DIRECT CONTINUES BY MS WINN

1 THE COURT YES, SIR THANK YOU

2 A THANK YOU

3 FOR THE SWEAT PATCH APPLIED ON MAY 30TH, 2003 AND
4 REMOVED ON JUNE 20TH OF 2003, IN REVIEWING THE LITIGATION
5 PACKAGE IT WAS EVIDENT TO ME THAT ALL OF THE TESTING
6 PROCEDURES AND PROTOCOLS WERE FOLLOWED AND ARE ACCEPTABLE AND
7 APPROPRIATE IN COMPLIANCE WITH RECOGNIZED FORENSIC STANDARDS
8 THE RESULTS OF THE TESTING ON THIS PARTICULAR SPECIMEN
9 INDICATE THE PRESENCE OF BOTH COCAINE AND AGAIN THE COCAINE
10 METABOLITE, BENZOYLECGONINE, IN THE SWEAT SPECIMENS THE
11 COCAINE WAS PRESENT AT 92 NANOGRAMS PER MILLILITER, AND THE
12 COCAINE METABOLITE WAS PRESENT AT 12 NANOGRAMS PER
13 MILLILITER

14 Q AND WITH REGARD TO THE SECOND SWEAT TEST APPLIED?

15 A THE SECOND TEST WAS ACTUALLY A RETEST THE PATCH WAS
16 APPLIED, I BELIEVE, ON AUGUST 29TH OF 2003, AND WAS REMOVED
17 ON SEPTEMBER 5TH OF 2003 AGAIN, THE LITIGATION PACKAGE
18 WHICH I REVIEWED INDICATED ALL THE TESTING PROCEDURES AND
19 PROTOCOLS FOR THE SAMPLE WERE ACCEPTABLE AND APPROPRIATE AND
20 WERE IN COMPLIANCE WITH RECOGNIZED FORENSIC STANDARDS AND
21 PRACTICES THIS PARTICULAR SAMPLE INDICATED THE PRESENCE OF
22 COCAINE IN THE SWEAT SAMPLE AT A CONCENTRATION OF 103
23 NANOGRAMS PER MIL THE CONCENTRATION IS ABOVE THE CUTOFF OF
24 10 AND WAS CORRECTLY REPORTED THE BENZOYLECGONINE OF THIS
25 PARTICULAR SAMPLE, AGAIN THE COCAINE METABOLITE, WAS

PAUL CARY -- DIRECT CONTINUES BY MS WINN

1 QUANTITATED IN THIS SAMPLE AT 6 NANOGRAMS PER MIL SINCE IT
2 WAS BELOW THE LABORATORY CUTOFF IT WAS REPORTED AS NOT BEING
3 PRESENT

4 Q WHAT FURTHER CONCLUSION DID YOU DRAW FROM THAT?

5 A WELL, CERTAINLY I BELIEVE THAT BASED ON THE FACT THAT
6 THE METABOLITE WAS DETECTED, I WOULD CERTAINLY INFER FROM
7 THIS DATA THAT THIS SAMPLE INDICATES COCAINE INGESTION BY
8 THIS INDIVIDUAL

9 Q AND WAS THERE A RECONFIRMING OF THAT TEST?

10 A YEAH THAT PARTICULAR SAMPLE WAS REQUESTED FOR A RETEST
11 RECONFIRMATION BY A SECOND CONFIRMATION ANALYSIS IT WAS NOT
12 CLEAR TO ME FROM THE DATA WHY THE REANALYSIS WAS REQUESTED
13 BUT THE SAMPLE -- A NEW ALIQUOT OR A NEW PORTION OF THE
14 SAMPLE WAS EXTRACTED FROM THE BEGINNING AGAIN, ALL THE
15 PROCEDURES WERE FOLLOWED, AND THE RETEST OF THE SAMPLE
16 INDICATED THE PRESENCE OF COCAINE IN SWEAT AT 116 NANOGRAMS
17 PER MIL

18 NOW, BECAUSE THERE IS A LIMITED AMOUNT OF BIOLOGICAL
19 MATERIAL IN THE SWEAT PATCH, IN ORDER TO PERFORM THE
20 REANALYSIS OR THE RETEST THEY HAD TO DO A DILUTION OF THE
21 ORIGINAL SAMPLE SO THE METABOLITE CONCENTRATION WAS BELOW
22 THE LIMIT OF DETECTION OF THE TEST BUT CERTAINLY THERE IS
23 EXCELLENT AGREEMENT BETWEEN THE ORIGINAL TEST WHICH PRODUCED
24 A RESULT OF 103 AND A RETEST WHICH PRODUCED A 116 NANOGRAMS
25 PER MIL, PARTICULARLY TAKING INTO ACCOUNT THE VARIANCE THAT

PAUL CARY -- DIRECT CONTINUES BY MS WINN

1 MIGHT BE ASSOCIATED WITH A ONE TO FIVE DILUTION OF THE
2 ORIGINAL SAMPLE

3 Q AND I'M NOT SURE IF YOU MENTIONED THIS, I WANTED TO GO
4 BACK TO THE FIRST SWEAT PATCH ON MS HURKS ON MAY 30TH
5 THROUGH JUNE 20TH, 2003, AND DID YOU MENTION THERE WAS
6 BENZOYLECGONINE PRESENT?

7 A YES, AT 12 NANOGRAMS PER MIL

8 Q AND WHAT DID THAT FURTHER LEAD YOU TO BELIEVE ABOUT THAT
9 TEST?

10 A AGAIN, THAT THE WOULD BE INDICATIVE OF SOMEONE WHO HAD
11 INGESTED COCAINE DURING THE TIME PERIOD THAT THE PATCH WAS
12 BEING WORN

13 Q AND IS THAT YOUR OPINION WITH REGARD TO BOTH OF THESE
14 TESTS?

15 A ABSOLUTELY

16 Q DID YOU REVIEW A LITIGATION PACKAGE FOR THE SWEAT TEST
17 PERFORMED ON DANE JANELLI?

18 A YES, I DID AGAIN, I REVIEWED THE DATA PACKET SUBMITTED
19 BY PHARMCHEM LABORATORIES IN ALL OF THE AREAS THAT WE'VE
20 DISCUSSED

21 MR. ARMSTRONG SAME OBJECTION, YOUR HONOR, AS TO---

22 THE COURT I UNDERSTAND YOU'RE PROTECTED ON THE
23 RECORD YES, SIR

24 GO AHEAD

25 A THANK YOU

PAUL CARY -- DIRECT CONTINUES BY MS WINN

1 THE LITIGATION PACKAGE INDICATED THAT ALL TESTING
2 PROCEDURES AND PROTOCOLS OF THIS PARTICULAR SAMPLE WERE
3 ACCEPTABLE AND APPROPRIATE AND WERE IN COMPLIANCE WITH
4 RECOGNIZED FORENSIC STANDARDS AND PRACTICES THIS PARTICULAR
5 SAMPLE THE RESULTS INDICATED COCAINE PRESENT IN THE SWEAT
6 PATCH AT 49 MILLIGRAMS PER DECILITER AND THE METABOLITE, THE
7 COCAINE METABOLITE, PRESENT AT 31 NANOGRAMS PER MILLILITER

8 Q OKAY AND AGAIN, WHAT DID THE PRESENCE OF THE
9 BENZOYLECGONINE LEAD YOU TO BELIEVE AND WHAT WAS YOUR
10 OPINION?

11 A AGAIN, THAT THIS WOULD BE INDICATIVE OF COCAINE
12 INGESTION DURING THE TIME THAT THE PATCH WAS WORN

13 Q YOU EARLIER MENTIONED THE PROPOSED REVISIONS ARTICLE I
14 BELIEVE IT WAS EXHIBIT NUMBER 9 REFERRING TO THAT ARTICLE,
15 IF THESE SAMPLES ON ALL THREE OF THESE DEFENDANTS HAD BEEN
16 SUBMITTED AND TESTED UNDER THE PROPOSED GUIDELINES IN THAT
17 ARTICLE, WOULD THEY HAVE BEEN POSITIVE RESULTS?

18 A WOULD YOU STATE YOUR QUESTION AGAIN?

19 Q YES IF ALL OF THE SAMPLES THAT HAD BEEN TAKEN ON THESE
20 THREE DEFENDANTS, TWO FOR ANGELA HURKS AND ONE EACH FOR
21 CEDRIC PERKINS AND DANE JANELLI, HAD THEY BEEN TESTED USING
22 THE CUTOFFS AND THE GUIDELINES PROPOSED UNDER THAT ARTICLE,
23 WOULD THESE TESTS STILL HAVE BEEN POSITIVE TESTS?

24 MR ARMSTRONG YOUR HONOR, I OBJECT TO THAT IT'S
25 TOTALLY IRRELEVANT

PAUL CARY -- DIRECT CONTINUES BY MS WINN

1 **THE COURT** WHAT'S THE RELEVANCY OF THAT?

2 **MS WINN** JUST TO SHOW, YOUR HONOR, I THINK THAT
3 ARTICLE IS PROPOSING A HIGHER LEVEL OF CUTOFF THE PHARMCHEM
4 CUTOFF IS LOWER AND EVEN UNDER THOSE PROPOSED STANDARDS BY
5 THE U S GOVERNMENT WORKPLACE REGULATION THAT THESE TESTS
6 STILL WOULD HAVE BEEN POSITIVE

7 **THE COURT** HAVE THESE PROPOSALS BECOME ENACTED?

8 **A** NO, SIR

9 **THE COURT** I'M GOING TO SUSTAIN THE OBJECTION YOU
10 MAY CERTAINLY PROFFER IT, BUT I'M GOING TO SUSTAIN THE
11 OBJECTION

12 **MR. ARMSTRONG** JUDGE, I'D MOVE THAT EXHIBIT BE
13 STRICKEN

14 **THE COURT** OVERRULED IT'S ALREADY IN EVIDENCE

15 **Q** MR CARY, CAN YOU TELL US WHAT A HAIR STRAND TEST IS?

16 **A** HAIR IS JUST ANOTHER ALTERNATIVE MATRIX THAT CAN BE USED
17 FOR THE DETERMINATION OF DRUG USE

18 **Q** AND HOW CAN IT DETECT DRUG USE? HOW EXACTLY DOES
19 THAT

20 **A** WELL, DRUGS, AGAIN, BEING ELIMINATED FROM THE BODY BY
21 VARIOUS ROUTES, ONE OF THOSE ROUTES OR THE PRIMARY ROUTE
22 AGAIN BEING SWEAT, WE'VE ALREADY DOCUMENTED THAT THE SWEAT
23 CAN CONTAIN DRUG MOLECULES AND THEIR BREAKDOWN PRODUCTS
24 SWEAT GLANDS ARE OFTEN IN CLOSE PROXIMITY TO THE HAIR
25 FOLLICLE ITSELF, WHICH IS THE CUP OR THE PORE, IF YOU WILL,

PAUL CARY -- DIRECT CONTINUES BY MS WINN

1 WHERE THE ROOT OF THE HAIR RESIDES CERTAINLY, THROUGH THAT
2 MECHANISM, DRUGS CAN BE INCORPORATED INTO THE HAIR VIA
3 TRANSPOSITION OF THE MOLECULES FROM THE SWEAT AND BEING
4 ABSORBED INTO THE HAIR CAN BE INCORPORATED IN THAT WAY
5 THERE'S ALSO SOME EVIDENCE THAT BLOOD CAPILLARIES CARRYING
6 BLOOD MOLECULES THAT ARE CLOSE TO THESE HAIR FOLLICLES MIGHT
7 INCORPORATE SOME DRUG MATERIAL INTO THE HAIR AS WELL

8 Q SO OVER WHAT PERIOD OF TIME CAN THIS TEST BE PERFORMED
9 TO SHOW DRUG USE?

10 A WELL, I MEAN, THE DRUGS CAN STAY IN HAIR AS LONG AS THE
11 HAIR GROWS BUT CERTAINLY AS HAIR GROWS IT BECOMES DAMAGED
12 IN SUCH A WAY SO THAT IT MAY NOT ACCURATELY REFLECT DRUG USE
13 SO MOST LABORATORIES DOING HAIR TESTING ONLY LOOK AT ABOUT
14 THE PROXIMAL INCH AND A HALF OF HAIR THAT'S LOCATED NEXT TO
15 THE SCALP THAT HAIR IS USUALLY GENERALLY INTACT AND DOES
16 NOT SUFFER FROM SIGNIFICANT DAMAGE ASSOCIATED WITH WASHING OR
17 COMBING OR TREATMENTS OR WHATEVER AND THAT INCH AND A HALF
18 OF HAIR GENERALLY REFLECTS A USAGE PERIOD OF 90 DAYS PRIOR TO
19 THE ACTUAL REMOVAL OF THE HAIR AND SUBMITTING IT TO THE
20 LABORATORY

21 Q HOW IS THIS TEST THEN ANALYZED?

22 A TESTING, AGAIN, BEGINS WITH AN IMMUNOASSAY TECHNOLOGY
23 THAT IS USED AFTER THE HAIR IS PULVERIZED OR DIGESTED, AGAIN,
24 TO REMOVE THE DRUGS FROM THE HAIR SO THERE IS AGAIN THIS
25 INITIAL SCREENING TECHNOLOGY THAT DETERMINES WHETHER OR NOT

PAUL CARY -- DIRECT CONTINUES BY MS WINN

1 THE HAIR IS PRESUMPTIVELY POSITIVE OR MAY CONTAIN A DRUG OR
2 DRUG METABOLITES THEN IT'S SENT ON TO CONFIRMATION TESTING
3 WHERE THE RESULTS OF THE PRESUMPTIVE TESTING -- OR THE
4 INITIAL TESTING IS VALIDATED BY THE GAS CHROMATOGRAPHY MASS
5 SPECTROMETRY METHODOLOGY

6 Q JUST TO REVIEW, SO THE SWEAT PATCHES THAT YOU REVIEWED
7 FOR CEDRIC PERKINS, ANGELA HURKS AND DANE JANELLI WERE ALL
8 POSITIVE SWEAT PATCH RESULTS, IS THAT CORRECT?

9 A THAT'S CORRECT

10 MS WINN NO FURTHER QUESTIONS

11 THE COURT GENTLEMEN, HOW LONG DO YOU ANTICIPATE THE
12 CROSS GOING? I'M TRYING TO SEE IF WE SHOULD TAKE A BREAK
13 NOW

14 MR. GIBSON YOUR HONOR, I WAS GOING TO ASK THAT WE DO
15 THAT, TAKE LIKE A TEN- OR FIFTEEN-MINUTE BREAK

16 THE COURT OKAY WE'LL START BACK AT ABOUT TEN AFTER
17 12 00

18 MR ARMSTRONG YOUR HONOR, WHAT TIME IS THE COURT
19 GOING TO GO TO LUNCH?

20 THE COURT AT THIS PACE WE MAY NOT BE TAKING A LUNCH
21 BREAK, GENTLEMEN BUT WE'LL DECIDE AFTER WE HEAR HOW LONG
22 CROSS EXAM GOES

23 MS STROM AND, YOUR HONOR, I'M GOING TO DIRECT THE
24 WITNESS ON THE RECORD THAT HE'S NOT ALLOWED TO DISCUSS HIS
25 TESTIMONY WITH ANYONE WHILE HE IS ON THIS BREAK

PAUL CARY -- DIRECT CONTINUES BY MS WINN

1 THE COURT THANK YOU

2 (A RECESS WAS TAKEN FROM 11 56 A M TO 12 10 P M)

3 THE COURT GO GET THEM TELL THEM IT'S TEN AFTER

4 (PAUSE) ALL RIGHT DO WE KNOW THE WHEREABOUTS OF MR
5 ARMSTRONG?

6 MR BANNISTER RESTROOM IS MY UNDERSTANDING, JUDGE

7 THE COURT ALL RIGHT MR GIBSON, YOU CAN GO AHEAD
8 AND START WITH YOUR CROSS, PLEASE, SIR

9 CROSS EXAMINATION BY MR. GIBSON.

10 Q MR CARY, I JUST WANT TO CONFIRM SOMETHING ARE YOU
11 SAYING THAT THE PRESENCE OF "BZE" IS CONCLUSIVE THAT IT WAS
12 USE?

13 A YES

14 Q OKAY SO IT'S YOUR UNDERSTANDING THAT "BZE" CAN ONLY
15 HAPPEN IF IT METABOLIZES THROUGH THE BODY?

16 A NO I WOULD NOT AGREE WITH THAT STATEMENT

17 Q OKAY WELL ARE YOU SAYING THAT "BZE" CAN BE PRESENT OR
18 CAN OCCUR IF DRUGS DO NOT GO THROUGH THE HUMAN BODY?

19 A YES

20 Q OKAY THEN WHY IS IT THAT YOU SEEM SO CERTAIN THAT
21 BECAUSE "BZE" HAS OCCURRED OR IS PRESENT IN THIS SITUATION
22 THAT USAGE HAD TO OCCUR AS OPPOSED TO ENVIRONMENTAL
23 CONTAMINATION EITHER FROM WITHIN THE PATCH OR WITHOUT?

24 A WELL, YOUR INITIAL QUESTION DID NOT INCLUDE
25 ENVIRONMENTAL CONTAMINATION IN THE QUESTION

PAUL CARY -- CROSS BY MR GIBSON

1 Q OH, I'M SORRY

2 A "BZE' CAN BE PRODUCED LOTS OF DIFFERENT WAYS

3 Q OKAY SO---

4 A IT'S PRODUCED IN THE LABORATORY I MEAN, OBVIOUSLY, IF
5 WE USE IT AS A STANDARD, IT'S PRODUCED BY A CHEMICAL COMPANY
6 WE CAN PUT COCAINE IN A PETRI DISH AND ADD SOME BASE TO IT
7 AND WE CAN GROW IT RIGHT HERE

8 Q OKAY SO LET ME -- AND I APOLOGIZE MAYBE I JUMPED THE
9 GUN SO BASICALLY IN YOUR ANALYSIS OF THE TEST RESULTS YOU
10 ARE ASSUMING THAT CONTAMINATION DID NOT OCCUR FROM EITHER
11 WITHIN OR WITHOUT THE PATCH?

12 A I'M ASSUMING THAT THE PRESENCE OF "BE" IN THE SWEAT
13 PATCH SAMPLE INDICATES THAT COCAINE WAS INGESTED THE "BE"
14 WAS PRODUCED INSIDE THE BODY---

15 Q UH-HUH (AFFIRMATIVE)

16 A ---AND THEN WAS COLLECTED BY THE SWEAT PATCH

17 Q OKAY AND WHAT IS THAT ASSUMPTION BASED UPON?

18 A THAT COCAINE IS HYDROLYZED IN THE BODY TO ITS BREAKDOWN
19 PRODUCT METABOLITE AND IS EXCRETED IN SWEAT

20 Q OKAY BUT YOU JUST TOLD ME THAT "BZE" CAN ALSO OCCUR
21 OUTSIDE OR ABSENT OF ACTUAL INGESTION THROUGH THE BODY, IS
22 THAT CORRECT?

23 A THAT'S CORRECT

24 Q CAN -- ARE YOU FAMILIAR OR AWARE THAT IT CAN OCCUR IF
25 COCAINE IS EXPOSED TO WATER?

PAUL CARY -- CROSS BY MR GIBSON

1 A UNDER CERTAIN CONDITIONS, THAT'S CORRECT

2 Q OKAY ARE YOU AWARE OR FAMILIAR THAT "BZE" CAN OCCUR
3 WHEN COCAINE IS EXPOSED TO SWEAT?

4 A YES, IT CAN OCCUR

5 Q OKAY SO, I MEAN, IT SEEMS -- I DON'T WANT TO, YOU
6 KNOW, GET INTO AN ARGUMENT WITH YOU BUT IT SEEMS TO ME THAT
7 IF THE PATCH HAD BEEN CONTAMINATED AND BY THE VERY NATURE OF
8 THE PATCH THE PERSON HAD SWEATED, THAT "BZE" OR BE COULD
9 OCCUR AND BE PRESENT IN THAT SITUATION IS THAT NOT TRUE?

10 A I WOULD NOT AGREE WITH THAT PREMISE, NO

11 Q WHY NOT?

12 A I THINK THAT THERE'S AMPLE SCIENTIFIC DATA TO SUPPORT
13 THE FACT THAT A PATCH PROPERLY APPLIED, PROPERLY REMOVED,
14 PROPERLY TESTED, INDICATING THE PRESENCE OF "BE" IN THE PATCH
15 TEST SUPPORTS THE INGESTION OF COCAINE

16 Q WHAT IS THAT DATA? WHAT ARE YOU RELYING UPON
17 SPECIFICALLY?

18 A WELL, I GUESS I CAN'T SIT HERE AND CITE YOU CHAPTER AND
19 VERSE OF SPECIFIC STUDIES, BUT I THINK THERE IS A LOT OF
20 ANALYTICAL SUPPORT OUT THERE TO SUPPORT MY BELIEF

21 Q YOU CAN'T GIVE ME ONE ARTICLE, ONE NAME, ONE RESEARCHER
22 THAT -- I MEAN, BECAUSE THIS SEEMS TO BE -- I MEAN, THIS
23 SEEMS TO BE A FAIRLY CONCLUSIVE STATEMENT AND FAIRLY CENTRAL
24 AND INTEGRAL TO THIS CASE

25 A I'M NOT SURE -- WHAT'S THE CONCLUSIVE STATEMENT?

PAUL CARY -- CROSS BY MR GIBSON

1 Q THAT BECAUSE "BE" WAS PRESENT IT HAD TO BE FROM USAGE AS
2 OPPOSED TO ENVIRONMENTAL CONTAMINATION?

3 A YES, I STAND BY THAT YES

4 Q OKAY AND YOU CAN'T -- AGAIN, YOU CAN'T DIRECT ME TO
5 ANY ARTICLE THAT YOU HAVE READ -- WELL, LET ME BACK UP
6 YOU'VE ALSO SAID THAT THIS ASSUMPTION OR BELIEF ON YOUR PART
7 IS BASED ON YOUR REVIEW OF OTHER PEOPLE'S LITERATURE, IS THAT
8 CORRECT?

9 A THAT'S CORRECT

10 Q NOT THROUGH ANY INDEPENDENT TEST THAT YOU'VE DONE
11 YOURSELF?

12 A THAT'S CORRECT

13 Q NOT THROUGH ANY EXPERIMENTS OR ANYTHING LIKE THAT THAT
14 YOU'VE DONE PERSONALLY, NOT EVEN THROUGH ANY FIRST-HAND
15 OBSERVATION ON YOUR PART, IS THAT CORRECT?

16 A THAT'S CORRECT

17 Q BUT THEN YOU CAN'T DIRECT ME OR POINT TO ANY SPECIFIC
18 ARTICLE THAT YOU CLAIM THAT THIS BELIEF IS BASED UPON, IS
19 THAT CORRECT?

20 A WELL, THERE'S A BODY OF SCIENTIFIC INFORMATION OUT THERE
21 WHICH HAS LED TO THE ACCEPTANCE OF THE SWEAT PATCH BY THE
22 COURTS, BY THE SCIENTIFIC COMMUNITY, BY THE FEDERAL
23 GOVERNMENT IN THE PROPOSED RULES, BY THE FDA THAT HAS
24 APPROVED THE PATCH I MEAN, WE COULD GO BACK TO THE INITIAL
25 SUBMISSIONS THAT PHARMCHEM MADE TO THE FDA IN LOOKING AT THE

PAUL CARY -- CROSS BY MR GIBSON

1 RELIABILITY OF THE PATCH AND THE IDENTIFICATION OF THESE
2 COMPOUNDS THERE HAS BEEN WORK DONE BY ED CONE AND MARILYN
3 HUESTIS AT THE ADDICTION RESEARCH CENTER---

4 Q AND DOES THAT WORK SPECIFICALLY ADDRESS THE PRESENCE OF
5 "BE"?

6 A YES YES, IT HAS

7 Q OKAY SO, ED CONE WE'VE GOT ED CONE AND WHO IS THE
8 OTHER LADY?

9 A MARILYN HUESTIS

10 Q WHO ELSE IS THIS BASED ON?

11 A THERE'S BEEN WORK DONE -- AGAIN, I THINK I CITED WORK
12 THAT WAS DONE AT -- BY DENNIS CROUCH AT THE CENTER FOR HUMAN
13 TOXICOLOGY IN SALT LAKE CITY

14 Q AND THAT'S SPECIFICALLY ON THE ISSUE OF IF "BE" IS
15 PRESENT, THEN IT MUST BE USAGE?

16 A WELL, CERTAINLY THAT MAY NOT HAVE BEEN THE FOCUS OF THE
17 STUDY BUT THAT INFORMATION CAN BE DERIVED FROM THE
18 INFORMATION I MEAN, THE PURPOSES OF MANY OF THESE STUDIES
19 WAS TO DETERMINE WHETHER OR NOT THE PATCH TEST WAS RELIABLE
20 FOR DETERMINING DRUG USE AND IN THESE STUDIES BOTH COCAINE
21 AND "BE" WERE DETERMINED TO BE PRESENT BASED ON GIVING
22 COCAINE TO VOLUNTEERS AND THEN COLLECTING IT IN THE PATCH

23 Q BUT WHAT I'M ASKING YOU IS THIS, SINCE YOU HAVE NOT DONE
24 ANY INDEPENDENT RESEARCH OF YOUR OWN AND YOU ARE OBVIOUSLY
25 DEPENDING UPON THE CONCLUSIONS OF OTHERS, ARE YOU AWARE OF

PAUL CARY -- CROSS BY MR GIBSON

1 ANY PRESENTATION, REPORT, PEER REVIEW ARTICLE WHERE A
2 SCIENTIST THROUGH HIS OWN RESEARCH HAS CONCLUDED THAT BECAUSE
3 "BE" IS PRESENT THAT IT MUST BE USAGE?

4 A THE ARTICLES THAT I MENTIONED, YES, DRAW THAT
5 CONCLUSION

6 Q SO ED CONE AND THE ARTICLE BY DENNIS CROUCH STATE THAT
7 -- MAKE THAT CONCLUSION?

8 A THEY DRAW THAT CONCLUSION, YES

9 Q DO THEY SAY THAT IF "BE" IS PRESENT, IT MUST BE USAGE?

10 A I CAN'T TELL YOU THAT THEY USE THOSE EXACT -- THAT EXACT
11 TERMINOLOGY, NO

12 Q OKAY NOW, YOU TALKED ABOUT THE FDA APPROVING
13 PHARMCHEM'S RESEARCH ISN'T, IN FACT, WHAT THE FDA DID, THEY
14 CLEARED THEIR RESEARCH?

15 A I THINK THAT'S SEMANTICS

16 Q I MEAN, THEY DON'T GO THROUGH AND REDO ALL THE RESEARCH
17 AND EVERYTHING AND SAY---

18 A OH, OF COURSE NOT

19 Q OKAY SO BASICALLY THEY'RE SAYING, OKAY, THIS -- YOU
20 KNOW, "WE'VE LOOKED IT OVER IT SEEMS OKAY WE'RE GOING TO
21 CLEAR IT"?

22 A THAT'S YOUR TERMINOLOGY

23 Q OKAY NOW, YOU SAID THAT THIS THING HAS, THIS SWEAT
24 PATCH, HAS BEEN APPROVED BY ALL THESE COURTS, IS THAT
25 CORRECT?

PAUL CARY -- CROSS BY MR GIBSON

1 A THAT'S CORRECT

2 Q NOW, ARE YOU FAMILIAR WITH WHAT THE COURT DID IN U S
3 VERSUS SNIPE?

4 A I AM -- I HAVE A PASSING FAMILIARITY WITH THAT CASE

5 Q OKAY ARE YOU FAMILIAR THAT THE COURT FOUND THERE WAS
6 SIGNIFICANT -- OR THERE WAS A PROBABILITY OR POSSIBILITY OF
7 ENVIRONMENTAL CONTAMINATION AND, THEREFORE, IT REFUSED TO
8 HOLD PUNITIVE ACTION BASED ON SWEAT PATCH RESULTS?

9 A AGAIN, I HAVE A PASSING FAMILIARITY WITH THAT

10 Q OKAY ARE YOU FAMILIAR WITH WHAT HAPPENED IN UNITED
11 STATES OF AMERICAN VERSUS MARILYN GROBAN (PHONETIC), A
12 DISTRICT OF NEVADA CASE DEALING WITH PROBATION REVOCATION?

13 A NO

14 Q ARE YOU FAMILIAR THAT AT THAT HEARING OR THAT PROCEDURE
15 NEIL FORTNER, ONE OF THE FOUNDERS, PRINCIPALS OF PHARMCHEM
16 TESTIFIED AND THAT HIS TESTIMONY WAS FOUND TO BE SO
17 UNBELIEVABLE THAT NOT ONLY DID THE COURT NOT REVOKE PROBATION
18 BUT THE FEDERAL ATTORNEY'S OFFICE CEASED ANY USE OF THE
19 PATCH, THE SWEAT PATCH, WHATSOEVER IN DETERMINING WHETHER OR
20 NOT PEOPLE SHOULD BE REVOKED?

21 A I HAVE NO KNOWLEDGE OR INFORMATION OF ANY KIND ON THAT
22 CASE

23 Q OKAY SO WHEN YOU MAKE THE CONCLUSORY STATEMENT THAT
24 COURTS HAVE APPROVED THIS PATCH, IT'S NOT BASED ON ANY REAL
25 DETAILED KNOWLEDGE OF EITHER U S VERSUS SNYDER OR UNITED

PAUL CARY -- CROSS BY MR GIBSON

1 STATES OF AMERICA VERSUS MARILYN GROBAN

2 A WELL, I MADE THE STATEMENT THAT I MADE BASED ON THE
3 ADMINISTRATIVE OFFICE OF U S COURTS REVIEWING THE SWEAT
4 PATCH AND DECLARING IT RELIABLE AND EFFECTIVE FOR---

5 Q I'M SORRY WHAT OFFICE?

6 A THE ADMINISTRATIVE OFFICE FOR U S COURTS

7 Q OKAY

8 A AND THEY HAVE NOT ONLY CLEARED IT ON TWO OCCASIONS BUT
9 DID THEIR OWN PILOT STUDY IN THE LATE 1990s AND AUTHORIZED
10 ITS USE AND SUBSEQUENTLY GAVE A CONTRACT TO PHARMCHEM FOR
11 DOING THESE TESTS

12 Q OKAY DID YOU REVIEW THOSE STUDIES?

13 A DID I REVIEW THE ACTUAL STUDIES THEMSELVES?

14 Q YES, SIR

15 A I HAVE REVIEWED THE PILOT STUDY THAT THEY DID

16 Q OKAY DID EITHER OF THOSE STUDIES ADDRESS IN ANY REAL
17 FASHION THE POSSIBILITY OF ENVIRONMENTAL CONTAMINATION?

18 A I CAN'T ANSWER THAT QUESTION I DON'T KNOW

19 Q OKAY NOW, YOU SPOKE EARLIER ABOUT RETESTING SWEAT
20 PATCH RESULTS DO YOU REMEMBER SAYING THAT? I THINK IT WAS
21 IN THE CONTEXT OF MS HURKS?

22 A THERE WAS A RETEST THAT WAS DONE, YES

23 Q WHAT IS YOUR UNDERSTANDING OF WHAT WAS ACTUALLY
24 RETESTED?

25 A I'M NOT SURE I UNDERSTAND THE QUESTION

PAUL CARY -- CROSS BY MR GIBSON

1 Q OKAY ARE YOU FAMILIAR WITH EXACTLY HOW THE SWEAT PATCH
2 IS TESTED OR WHAT HAPPENS WHEN THEY TAKE IT TO THE LAB TO
3 TEST IT?

4 A YEAH

5 Q CAN YOU TELL ME WHAT HAPPENS?

6 A THE DRUG MATERIALS ARE EXTRACTED OR REMOVED FROM THE
7 PATCH, BECAUSE YOU CAN'T PHYSICALLY PUT THE PATCH IN THE
8 TESTING INSTRUMENT SO YOU HAVE TO CREATE A MATERIAL THAT IS
9 -- CAN BE USED BY THE TESTING INSTRUMENT FOR THE ANALYSIS
10 SO---

11 Q OKAY SO -- AND -- GO AHEAD, I'M SORRY

12 A SO THE DRUGS ARE REMOVED FROM THE ABSORBENT MATERIAL BY
13 EXTRACTION TECHNIQUES

14 Q AND DOES THAT BASICALLY MEAN THAT WHAT THEY DO IS THEY
15 CREATE A SOLUTION?

16 A EXACTLY

17 Q OKAY NOW, WHAT TO DO THEY DO WITH THE ACTUAL PATCH AT
18 THAT POINT?

19 A OH, I'M SURE THE PATCH---

20 Q AND WHEN I SAY "THE PATCH," I MEAN THE GAUZE OR -- WHAT
21 IS THAT?

22 A YEAH THE PATCH IS PRETTY MUCH DESTROYED IN THIS
23 EXTRACTION PROCESS I MEAN, IT'S NO LONGER USABLE FOR
24 ANYTHING IN PARTICULAR

25 Q OKAY SO WHEN YOU SAY THEY ARE RETESTING SWEAT PATCH

PAUL CARY -- CROSS BY MR GIBSON

1 RESULTS, WHAT THEY'RE ACTUALLY TESTING IS A SOLUTION EXTRACT,
2 IS THAT CORRECT?

3 A EXACTLY

4 Q SO IS IT ALSO -- I MEAN, DOES IT ALSO SEEM PLAUSIBLE
5 THAT IF THIS SOLUTION IS CONTAMINATED UPON EXTRACTION, THEN
6 IT WILL ALSO BE CONTAMINATED WHEN ANY RETEST -- SUBSEQUENT
7 RETEST IS DONE?

8 A NOW, IS YOUR QUESTION INDICATING THAT THE SWEAT PATCH
9 WAS CONTAMINATED IN THE LABORATORY DURING EXTRACTIONS?

10 Q YEAH LET'S ASSUME THAT'S THE CASE

11 A AND YOUR QUESTION THEN WOULD BE?

12 Q THAT -- LET'S ASSUME THAT DURING THE EXTRACTION PROCESS
13 SOMEHOW THE SOLUTION IS CONTAMINATED

14 A OKAY

15 Q WOULDN'T THAT SOLUTION ALSO BE CONTAMINATED WHEN ANY
16 SUBSEQUENT RETEST IS DONE UPON IT?

17 A ABSOLUTELY

18 Q OKAY NOW WOULD THAT NOT ALSO BE THE SAME IF THE PATCH
19 WAS CONTAMINATED PRIOR TO EXTRACTION?

20 A ABSOLUTELY

21 Q OKAY SO THE FACT THAT THERE IS A RETEST DOESN'T
22 NECESSARILY PROVE THAT CONTAMINATION IS NOT PRESENT ALL IT
23 PROVES IS THERE IS COCAINE PRESENT?

24 A YEAH, THAT THERE IS AGREEMENT WITH THE INITIAL TEST

25 Q OKAY NOW, THIS WAS ADMITTED THROUGH YOU AND WHAT I'M

PAUL CARY -- CROSS BY MR GIBSON

1 TALKING ABOUT IS THESE HEALTH AND HUMAN -- EXHIBIT 9, THE
2 DEPARTMENT OF HEALTH AND HUMAN SERVICES REPORT OKAY?

3 A YES, SIR

4 Q NOW, WHAT EXACTLY IS THAT?

5 A THESE ARE THE PROPOSED RULES PROPAGATED BY, GLOBALLY,
6 THE DEPARTMENT OF HEALTH AND HUMAN SERVICES---

7 Q OKAY

8 A ---MORE SPECIFICALLY BY THE SUBSTANCE ABUSE AND MENTAL
9 HEALTH SERVICES ADMINISTRATION---

10 Q AND YOU---

11 A ---TO GUIDE---

12 Q I'M SORRY

13 A ---TO GUIDE THE COLLECTION OF SAMPLES FOR DRUG TESTING
14 OF FEDERALLY REGULATED EMPLOYEES USING SPECIMENS OTHER THAN
15 URINE AND BREATH

16 Q HAVE YOU REVIEWED THOSE PROPOSALS?

17 A YES

18 Q OKAY AND WHAT DO YOU THINK ABOUT THEM? DO THEY SEEM
19 TO BE REASONABLE?

20 A WELL, I WOULD -- YOU HAVE TO UNDERSTAND THAT THE
21 DEPARTMENT OF HEALTH AND HUMAN SERVICES AND SAMHSA HAVE NO
22 PARTICULAR EXPERTISE IN DEVELOPING THESE RULES SO WHAT THEY
23 DID IS THEY WENT OUT ESSENTIALLY AND PUT TOGETHER A DRUG
24 TESTING ADVISORY BOARD THAT INCLUDES A DOZEN AND A HALF OF
25 THIS COUNTRY'S LEADING FORENSIC TOXICOLOGISTS AS IT RELATES

PAUL CARY -- CROSS BY MR GIBSON

1 TO DRUG TESTING

2 Q YES, SIR

3 A AND THEN THEY ESSENTIALLY GUIDED OR PROPAGATED THESE
4 RULES THROUGH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
5 SO CERTAINLY THESE INDIVIDUALS WHO HELPED IN THE GENERATION
6 AND THE WRITING OF THESE DOCUMENTS ARE ESSENTIALLY THE BEST
7 MINDS IN THE BUSINESS

8 Q OKAY

9 A AND SO WHAT I HAVE GLEANED FROM THIS DOCUMENT AND FROM
10 THESE PROPOSED RULES, THERE'S A LOT OF GOOD STUFF IN HERE

11 Q SO DOES IT SEEM REASONABLE?

12 A IT SEEMS REASONABLE

13 Q OKAY WOULD YOU TURN TO --

14 MR. GIBSON YOUR HONOR, JUST A SECOND TO CONFER WITH
15 COUNSEL?

16 THE COURT (INDICATES AFFIRMATIVE RESPONSE)

17 Q EARLIER YOU HAD TESTIFIED ABOUT RECOGNIZED FORENSIC
18 STANDARDS AND PRACTICES AND THE LIKE DO YOU REMEMBER THAT?

19 A YES, I DO

20 Q OKAY WOULD YOU CONSIDER THESE, THIS PROPOSAL, AS A
21 RECOGNIZED FORENSIC STANDARD AND PRACTICE?

22 A THAT'S DIFFICULT BECAUSE THEY ARE PROPOSED RULES AND
23 EVEN THOUGH THEY HAVE BEEN PUT TOGETHER BY, AS I INDICATED,
24 THE BEST MINDS IN THE BUSINESS, I THINK THESE RULES, AS ANY
25 CODIFICATION PROCESS, WILL INVOLVE PUBLIC HEARINGS, PUBLIC

PAUL CARY -- CROSS BY MR GIBSON

1 INPUT SO THIS IS AN EVOLUTIONARY DOCUMENT THIS DOCUMENT
2 WILL ULTIMATELY, I THINK, BE CHANGED, BE REVISED TO REFLECT
3 WHATEVER THE STATE OF THE ART IS -- OR THE STATE OF THE
4 SCIENCE IS AT THE TIME THEY ARE FINALIZED

5 Q OKAY

6 A SO WHILE I THINK THIS IS A -- CERTAINLY A GOOD DOCUMENT,
7 IT WILL LIKELY GO UNDER -- BE MODIFIED AND HAVE REVISIONS
8 MADE TO IT BEFORE IT IS FINALIZED IN A YEAR OR YEAR AND A
9 HALF

10 Q OKAY SO THEORETICALLY ONCE THESE THINGS ARE ACTUALLY
11 APPROVED, TO THE EXTENT THEY ARE ACTUALLY APPROVED, IT COULD
12 SAY THAT -- IT COULD TOTALLY RECOMMEND AGAINST SWEAT PATCH
13 TESTING, COULD IT NOT?

14 A I WOULD SUGGEST THAT -- I DON'T BELIEVE THAT THE
15 DEPARTMENT OF HEALTH AND HUMAN SERVICES USING THE EXPERTISE
16 THAT HAS BEEN AVAILABLE TO THEM WOULD PUT OUT IN A DOCUMENT
17 THAT A SPECIMEN THAT THEY KNEW WAS INHERENTLY UNRELIABLE I
18 CANNOT FORESEE A CIRCUMSTANCE UNDER WHICH ALL OF A SUDDEN ONE
19 OF THESE SAMPLES, BE IT HAIR, BE IT ORAL FLUIDS OR BE IT
20 SWEAT WILL BE PULLED BACK AND SAID, "YOU CAN'T USE THIS
21 IT'S UNRELIABLE "

22 Q BUT IT IS POSSIBLE?

23 A IS IT POSSIBLE?

24 Q YES, SIR

25 A SURE, ANYTHING IS POSSIBLE

PAUL CARY -- CROSS BY MR GIBSON

- 1 Q OKAY WOULD YOU TURN TO PAGE 19696 OF THIS DOCUMENT?
- 2 A 19---
- 3 Q 696 IT'S UP IN THE UPPER LEFT-HAND CORNER?
- 4 A OKAY
- 5 Q OKAY NOW I WANT YOU TO GO TO THE THIRD COLUMN, DOWN,
- 6 SAY THE LOWER THIRD, RIGHT ABOVE WHERE IT SAYS SUBPART C,
- 7 DRUG AND VALIDITY TESTING OKAY NOW, IF YOU SEE C---
- 8 A GOT IT
- 9 Q OKAY WHERE IT SAYS "SELECT," SEE WHAT I'M TALKING
- 10 ABOUT?
- 11 A YES, SIR
- 12 Q AND DOES THAT IN FACT SAY "TWO FDA PATCHES WORN UP TO
- 13 SEVEN DAYS?"
- 14 A YES, SIR, IT DOES
- 15 Q OKAY DOES THAT SEEM TO IMPLY THAT WHAT THEY'RE
- 16 RECOMMENDING IS THE CUTOFF FOR WEAR OF A SWEAT PATCH WOULD BE
- 17 SEVEN DAYS?
- 18 A YES
- 19 Q OKAY WOULD YOU NOW TURN TO 19676? AND -- YES, SIR,
- 20 196766 LET ME REPHRASE THAT, BECAUSE THESE NUMBERS ARE
- 21 CONFUSING 19766 AND I APOLOGIZE
- 22 A OKAY THOSE NUMBERS AGAIN, PLEASE?
- 23 Q I'M SORRY I KNEW I'D MESS THAT UP 19676
- 24 A 676?
- 25 Q YES, SIR

PAUL CARY -- CROSS BY MR GIBSON

1 A OKAY

2 Q OKAY ACTUALLY, I WANT YOU TO TURN TO 19677

3 A YOU'RE GIVING ME PAGE-TURNING WHIPLASH

4 Q YEAH, I'M TRYING TO MAKE YOU FEEL LIKE YOU'RE IN AN
5 EPISCOPAL CHURCH

6 ALL RIGHT LET'S SEE ACTUALLY, I'M GOING TO HAVE YOU
7 TURN BACK AND GO TO THE VERY LAST SENTENCE

8 A THIS IS A TEST, ISN'T IT?

9 Q EXACTLY I'M TRYING TO CONFUSE AS MUCH AS POSSIBLE SO
10 YOU'LL JUST SAY YES TO ALL MY QUESTIONS IS IT WORKING?

11 ALL RIGHT IT SAYS, "WITH REGARDS TO CONTAMINATION FROM
12 A DRUG PRESENT ON THE SKIN BEFORE APPLYING THE SWEAT PATCH "

13 A TIME OUT WHERE ARE YOU? I'M SORRY

14 Q I'M ON THE VERY LAST SENTENCE ON 19676

15 A OKAY THE SENTENCE THAT STARTS OUT "WITH REGARD "

16 Q YES, SIR "WITH REGARD TO CONTAMINATION FROM A DRUG
17 PRESENT ON THE SKIN BEFORE APPLYING THE SWEAT PATCH, THE
18 DEPARTMENT PROPOSES THAT THE SKIN AREA BE WASHED WITH SOAP
19 AND COOL WATER OR WITH A DISPOSABLE TOWELETTE THEN THE
20 COLLECTOR MUST THOROUGHLY CLEAN THE SKIN AREA WHERE THE
21 PATCHES WILL BE WORN WITH ALCOHOL WIPES PRIOR TO
22 APPLICATION "

23 OKAY DOES THAT SEEM TO IMPLY THAT WHAT THEY ARE
24 PROPOSING IS THAT IN ADDITION TO A ALCOHOL SWABS THAT IN
25 ORDER TO AVOID AGAINST ENVIRONMENTAL CONTAMINATION THAT THE

PAUL CARY -- CROSS BY MR GIBSON

1 SKIN SHOULD ALSO FIRST BE WASHED WITH SOAP AND WATER OR A
2 TOWELETTE?

3 A WELL, I WILL AGREE WITH YOUR PREMISE THAT THEY ARE
4 PROPOSING STANDARDS THAT ARE SOMEWHAT DIFFERENT THAN THE
5 CURRENT STATE OF THE SCIENCE THE DOCUMENT DOES NOT INDICATE
6 WHY THEY ARE PROPOSING IT IT JUST INDICATES THEY ARE
7 PROPOSING IT

8 Q BUT DOESN'T IT SAY -- WELL, LET ME READ THIS THING AGAIN
9 BECAUSE

10 A IT DOES I APOLOGIZE IT DOES SAY "WITH REGARD TO
11 CONTAMINATION "

12 Q YES, SIR

13 A SO THEY ARE APPLYING -- YES, I WOULD SUGGEST THAT THEY
14 ARE APPLYING THESE STANDARDS TO ELIMINATE THAT POSSIBILITY
15 YES, SIR

16 MR GIBSON OKAY THANK YOU, MR CARY

17 WITNESS THANK YOU

18 THE COURT MR ARMSTRONG

19 CROSS EXAMINATION BY MR ARMSTRONG:

20 Q DO I RECALL YOUR TESTIMONY CORRECTLY THAT THE PATCH IS
21 BREATHABLE?

22 A YES

23 Q DOES THAT MEAN THAT THIS FILM -- I THINK IT'S A POLY --

24 A IT'S A POLYURETHANE FILM

25 Q -- POLYURETHANE FILM WHICH IS THE PLASTIC THAT COVERS

PAUL CARY -- CROSS BY MR ARMSTRONG

1 THE PATCH, IS THAT CORRECT?

2 A YES, SIR

3 Q AND THAT IS PERMEABLE WHAT IS IT PERMEABLE TO?

4 A IT IS PERMEABLE TO MOLECULES OF A CERTAIN MOLECULAR
5 WEIGHT, GENERALLY THOSE THAT WOULD BE CLASSIFIED AS WATER
6 VAPOR AND OXYGEN AND CARBON DIOXIDE

7 Q SO THEY CAN GO THROUGH THIS MATERIAL?

8 A YES AND THEN THAT ALLOWS THE PATCH TO BE WORN FOR
9 EXTENDED PERIODS OF TIME IF IT WASN'T OBVIOUSLY BREATHABLE
10 IT WOULD BECOME A SIGNIFICANT SOURCE OF IRRITATION, I
11 SUSPECT

12 Q SO PEOPLE WHEN THEY'RE ON THE PATCH ARE THEY ALLOWED TO
13 TAKE BATHS?

14 A YES, SIR

15 Q ALLOWED TO WASH THIS?

16 A YES, SIR

17 Q ALLOWED TO GO SWIMMING WITH IT?

18 A YES, SIR

19 Q AND IF WATER VAPOR -- YOU'RE SAYING WATER VAPOR WILL
20 PERMEATE THIS?

21 A YES, IT CAN

22 Q IT CAN WELL, OBVIOUSLY, IF YOU'RE IN THE SHOWER OR
23 SWIMMING, IT'S GOING TO GET WET TOO, ISN'T IT?

24 A I WOULD BELIEVE SO, YES

25 Q SO NOT ONLY WILL THE BARRIER BE WET BUT THE CELLULOSE IN

PAUL CARY -- CROSS BY MR ARMSTRONG

1 THERE WOULD ALSO BE WET?

2 A DEPENDING ON THE EXTENT OF THE EXPOSURE TO LIQUIDS, YES

3 Q AND HOW DOES THAT DRY OUT?

4 A AGAIN, BECAUSE THIS MEMBRANE IS, AGAIN, TO USE MY WORD,
5 BREATHABLE, IT ALLOWS THE PAD -- THE WATER VAPOR IN THE PAD
6 TO EVAPORATE

7 Q SO WHAT YOU'RE TESTIFYING IN THIS COURT IS THAT THE
8 PATCH, WHICH IS WHAT IS ULTIMATELY SAMPLED BY THE LABORATORY,
9 THROUGHOUT THE TIME THAT IT'S ON THE SKIN CAN GET WET OR DRY
10 BASED ON WATER OR OTHER SUBSTANCES GOING THROUGH THE SURFACE
11 OF THAT POLYURETHANE COATING?

12 A I WOULDN'T ARGUE WITH THAT DESCRIPTION

13 Q ARE YOU TELLING THIS COURT ALSO THAT THAT PROCESS IS
14 SELECTIVE ENOUGH SO THAT NO CONTAMINANTS OF ANY NATURE
15 WHATSOEVER WOULD GO THROUGH THAT PERMEATION?

16 A YOU'D HAVE TO DEFINE "NO CONTAMINATION" WHATEVER I
17 MEAN, THAT COULD INCLUDE LOTS OF THINGS

18 Q SO, THEN, I ASSUME SOME CONTAMINANTS CAN GET THROUGH, IN
19 YOUR OPINION?

20 A WELL, I WOULD SUGGEST THAT THINGS THAT HAVE SMALL
21 MOLECULAR WEIGHT COULD PASS THROUGH INTO THE PATCH, YES SO
22 WHETHER OR NOT THAT'S DEFINED AS A CONTAMINANT OR NOT, I
23 GUESS, WOULD BE WHAT WOULD BE UNDER DISCUSSION

24 Q SO THERE WOULD BE THEN, IN YOUR OPINION, THINGS OTHER
25 THAN JUST WATER OR MAYBE OXYGEN OR CARBON DIOXIDE THAT COULD

PAUL CARY -- CROSS BY MR ARMSTRONG

1 GET THROUGH THIS PERMEABLE MEMBRANE?

2 A I BELIEVE THAT'S CORRECT I BELIEVE STUDIES HAVE
3 INDICATED THAT CERTAIN SOLVENTS CAN WORK THEIR WAY THROUGH,
4 YES

5 Q WHAT KIND OF SOLVENTS?

6 A I BELIEVE THE STUDIES INDICATE THAT SUBSTANCES THAT HAVE
7 A MOLECULAR WEIGHT THAT IS EQUAL TO OR LESS THAN 36 MOLECULAR
8 WEIGHT CAN GET THROUGH THESE MATERIALS

9 Q WELL, HOW ABOUT THINGS THAT PEOPLE USE WITH SOME
10 REGULARITY, LIKE HAIR SOAPS OR BODY LOTIONS OR PERFUMES, OR
11 RESIDUES FROM LAUNDRY DETERGENT THAT WOULD BE IN CLOTHING,
12 CAN THAT PERMEATE THROUGH? OR BLEACH?

13 A I'M NOT AWARE OF ANY SCIENTIFIC INFORMATION THAT
14 SUGGESTS THAT THESE MATERIALS CAN ROUTINELY BE ABSORBED
15 THROUGH THE MEMBRANE INTO THE PATCH

16 Q IN YOUR REVIEW OF THE LITERATURE YOU CAN'T REALLY TELL
17 ME, OR TELL THIS COURT MORE PARTICULARLY, WHAT TYPE OF
18 MATERIALS CAN GO THROUGH THAT PATCH AND WHAT CAN'T?

19 A OTHER THAN WHAT I'VE ALREADY TESTIFIED TO

20 Q YOU HAVE CONDUCTED NO EXAMINATIONS OR EXPERIMENTS
21 YOURSELF AT ALL, HAVE YOU?

22 A THAT'S CORRECT I HAVE NOT

23 Q WHAT KNOWLEDGE YOU HAVE ON THIS, IF ANY, HAS BEEN
24 DERIVED FROM THE WORK OF OTHERS?

25 A THAT'S CORRECT

PAUL CARY -- CROSS BY MR ARMSTRONG

1 Q INCLUDING WHAT HAS BEEN PRINTED IN THE "PROFESSIONAL
2 LITERATURE" OR WHAT YOUR COLLEAGUES MAY HAVE TOLD YOU?

3 A THAT'S CORRECT

4 Q DO YOU KNOW WHETHER "BE" CAN PERMEATE THROUGH THAT
5 PATCH?

6 A I DON'T KNOW OF ANY STUDY WHERE "BE" HAS PERMEATED THE
7 PATCH, NO I'M NOT AWARE OF IT

8 Q YOU DON'T REALLY KNOW THOUGH, DO YOU?

9 A I STAND ON MY TESTIMONY

10 Q WELL, REFRESH MY MEMORY

11 A I'M NOT AWARE OF ANY SCIENTIFIC ARTICLES OR SCIENTIFIC
12 INFORMATION THAT WOULD LEAD TO THE CONCLUSION THAT "BE" CAN
13 PERMEATE THE OUTSIDE OF A PATCH

14 Q COULD YOU CITE ME ANY ARTICLES OR ANY OF YOUR SOURCES TO
15 BASE THAT ASSERTION ON?

16 A AGAIN, IT WOULD BE BASED ON MY GENERAL UNDERSTANDING OF
17 THE TESTING THAT'S BEEN DONE ON THE PATCH BY THE VARIOUS
18 GROUPS THAT I'VE DESCRIBED

19 Q HOW ABOUT COCAINE? HOW ABOUT IF SOMEBODY WOULD TAKE A
20 COCAINE SOLUTION AND RUB IT ON THE PATCH OUTSIDE? ANY OF
21 THAT GOING TO GET INTO THE PATCH?

22 A WELL, I GUESS WE'VE GOT TO -- MAYBE WE NEED TO
23 DIFFERENTIATE THE PERMEABILITY OF THE PATCH WITH RESPECT TO
24 PURPOSEFUL CONTAMINATION VERSUS THE ABILITY OF A MOLECULE
25 THAT MAY BE FLOATING AROUND IN THE AIR OR ON SOME CLOTHING OR

PAUL CARY -- CROSS BY MR ARMSTRONG

1 WHATEVER AGAIN, WHEN I MAKE THE CLAIM OR THE ASSERTION THAT
2 COCAINE AND "BE" CANNOT PERMEATE THE PATCH, IT DOESN'T APPLY
3 TO POTENTIALLY PURPOSEFUL CONTAMINATION OF THE OUTSIDE OF THE
4 MEMBRANE, WHICH SEEMS TO ME A RATHER LUDICROUS TEST FOR
5 DETERMINING WHETHER SOMETHING WAS A RELIABLE SCIENTIFIC
6 DEVICE IF YOU WOULD ASK ME THE QUESTION, IN A POTENTIALLY
7 CONTAMINATED COCAINE ENVIRONMENT IN A POTENTIALLY
8 CONTAMINATED ENVIRONMENT WHERE OTHER DRUGS ARE PRESENT, IS IT
9 POSSIBLE FOR THOSE MATERIALS TO MIGRATE FROM OUTSIDE THE
10 PATCH TO INSIDE THE PATCH? I WOULD SAY THERE IS NO,

11 UNDERLINE NO, SCIENTIFIC INFORMATION TO DRAW THAT CONCLUSION

12 Q BUT YOU HAVE NOT DONE ANY OF THESE TESTS YOURSELF?

13 A I THINK WE'VE COVERED THAT, AND THE ANSWER IS STILL NO

14 Q WELL, JUST CHECKING

15 A OKAY I'M STILL ANSWERING THE SAME

16 Q HOW DO -- LET'S GO BACK A LITTLE BIT TO SOME OF THESE
17 OTHER MATTERS THAT WE'RE TALKING ABOUT AS FAR AS LIKE SOAP
18 AND PERFUME AND SHAMPOO AND THINGS THAT ONE WOULD PUT ON
19 THEIR BODY, CHLORINE, IF YOU'RE SWIMMING, WOULD ANY OF THEM
20 PERMEATE THROUGH?

21 A I GUESS I DON'T KNOW THE ANSWER TO THAT QUESTION

22 Q YOU'VE HEARD THE CONCEPT OF A DIRTY BAND-AID, YOU KNOW,
23 YOUR MOTHER TOLD YOU TO KEEP YOUR BAND-AID CLEAN AND, YOU
24 KNOW, IF YOU'VE HAD IT ON FOR A WHILE AND YOU TAKE IT OFF,
25 YOU PEEL IT OFF AND THAT PATCH WOULD BE NOT ONLY WET BUT IT

PAUL CARY -- CROSS BY MR ARMSTRONG

1 WOULD BE A BIT DISCOLORED HERE THAT DISCOLORATION WOULD
2 INDICATE SOME TYPE OF A DIRT IN YOUR OPINION, IN YOUR
3 ANALYSIS ON YOUR REVIEW OF THE LITERATURE, WILL "JUST PLAIN
4 OLD DIRT" GO THROUGH?

5 A I KNOW OF NO INFORMATION THAT SUGGESTS THAT WOULD
6 HAPPEN

7 Q THAT COULD EXIST, YOU JUST DON'T KNOW?

8 A AGAIN, I KNOW OF NO INFORMATION THAT WOULD SUGGEST THAT
9 DIRT CAN PERMEATE THE OUTER LAYER OF THE PATCH

10 Q YOU REVIEWED THE PHARMCHEM LITIGATION PACKAGE ON MY
11 CLIENT, MR JANELLI, DID YOU NOT?

12 A I DID

13 Q DID YOU REVIEW ANYTHING ELSE ON MR JANELLI?

14 A YES I REVIEWED SOME INFORMATION ON A HAIR SAMPLE FROM
15 QUEST LABORATORIES

16 Q OKAY IS THAT THIS PACKAGE NUMBER -- DO YOU HAVE IT UP
17 THERE, BY THE WAY?

18 A NO, SIR

19 Q (PAUSE)

20 MS STROM YOUR HONOR, I HAVE A COPY I'D BE GLAD TO
21 PROVIDE THE WITNESS

22 THE COURT THANK YOU

23 MR ARMSTRONG THANK YOU, MS STROM

24 Q YOU HAVE THIS PACKET OF INFORMATION

25 MR ARMSTRONG I'D ASK THIS BE MARKED, YOUR HONOR

PAUL CARY -- CROSS BY MR ARMSTRONG

1 (JANELLI LITIGATION PACKAGE MARKED AS DEFENDANT JANELLI
2 EXHIBIT NUMBER 1)

3 THE COURT DAWN, WHAT EXHIBIT WOULD THAT BE?

4 COURT REPORTER DEFENDANT JANELLI NUMBER 1

5 THE COURT DEFENDANT'S JANELLI NUMBER 1

6 Q THAT HAS BEEN, SIR, DENOMINATED AS DEFENDANT'S JANELLI
7 NUMBER 1

8 THIS GENTLEMAN'S ANALYSIS CAME OUT NEGATIVE, DIDN'T IT?

9 A YES, IT DID

10 Q HOW NEGATIVE?

11 A I'M NOT SURE I UNDERSTAND YOUR QUESTION

12 Q WELL, LET ME JUST LOOK AT SOMETHING HERE (PAUSE)

13 NEGATIVE WOULD MEAN THAT THERE WAS INDICATION OF NO COCAINE
14 OR BECAUSE -- EXCUSE ME, "BZE" IS THAT CORRECT?

15 A I WOULD NOT -- I WOULD NOT CLASSIFY THE RESULTS AS THAT
16 I WOULD CLASSIFY THE RESULTS AS THERE WAS NONE OF THOSE
17 PRODUCTS DETECTED BY THE TEST

18 Q OKAY SO THAT'S A CLEAN TEST AND COLLECTION OCCURRED
19 ON AUGUST THE 14TH, 2003, CORRECT? THAT'S ON THE -- IN THIS
20 PACKET IT WOULD BE ONE, TWO, THREE, FIFTH PAGE IN

21 A AND YOUR QUESTION AGAIN, I'M SORRY?

22 Q THE COLLECTION OCCURRED ON AUGUST THE 14TH, 2003?

23 A YES, THAT'S CORRECT

24 Q NOW, IF YOU RAN A -- OR YOU LOOKED AT A DRUG TEST FROM
25 PHARMCHEM OF MY CLIENT, AND THAT'S PREVIOUSLY BEEN SHOWN TO

PAUL CARY -- CROSS BY MR ARMSTRONG

1 YOU AND THAT COLLECTION WAS TAKE ON JUNE THE 17TH, 2003

2 A NOW, ARE YOU TALKING ABOUT THE PATCH TEST NOW?

3 Q YES, SIR

4 A YES, I DID

5 Q ISN'T IT TRUE, MR CARY, THAT ONCE COCAINE GETS INTO
6 HAIR IT STAYS FOR A WHILE?

7 A I WOULD NOT DISAGREE WITH THAT

8 Q AT LEAST 90 DAYS, I BELIEVE, WAS YOUR TESTIMONY EARLIER,
9 ISN'T IT?

10 A YES, UNLESS THERE IS SOME EFFORT TO, YOU KNOW, DESTROY
11 THE HAIR OR WHATEVER YEAH, INTACT HAIR SHOULD REVEAL
12 RESULTS AT 90 DAYS

13 Q ALL RIGHT IN YOUR REVIEW OF MR JANELLI'S HAIR TEST
14 RESULT, THIS PACKAGE WHICH WAS JUST HANDED TO YOU AS
15 JANELLI'S EXHIBIT 1, IS THERE ANY INDICIA IN THERE AT ALL
16 THAT THE HAIR SAMPLE WAS COMPROMISED, BEEN DESTROYED,
17 ADULTERATED OR ANYTHING LIKE THAT?

18 A NO, SIR

19 Q SO ISN'T IT TRUE, SIR, THAT IF YOU HAVE NO COCAINE OR
20 "BZE" ON AUGUST THE 17TH, 2003, WOULD THAT CALL INTO QUESTION
21 PERHAPS WHY THERE MAY HAVE BEEN SOME COCAINE AND/OR "BZE" ON
22 A SAMPLE TAKEN JUNE THE 17TH, 2003?

23 A I THINK THAT THE RESULTS OF BOTH TESTS STAND ON THEIR
24 OWN MERIT

25 Q WHAT DOES THAT MEAN?

PAUL CARY -- CROSS BY MR ARMSTRONG

1 A WHAT THAT MEANS IS THAT I HAVE NO REASON BASED ON
2 MATERIAL THAT I HAVE REVIEWED, TO DISPUTE THE RESULTS OF THE
3 SWEAT PATCH TEST, NOR DO I HAVE ANY INFORMATION TO DISPUTE
4 THE RESULTS OF THE HAIR TEST

5 Q WELL, LET'S ASSUME FOR THE SAKE OF ARGUMENT THAT BOTH OF
6 THESE TESTS WERE DONE ACCORDING TO ACCEPTED SCIENTIFIC
7 PROCEDURE AND THEY ARE INDEED VALID TESTS HOW DOES THE
8 RESULT THEN SQUARE WITH YOUR TESTIMONY THAT YOU WOULD EXPECT
9 COCAINE TO BE PRESENT IN THE HAIR 90 DAYS AFTER IT GOT THERE,
10 THEREFORE, ON AUGUST THE 14TH, 2003, IF THERE WAS COCAINE IN
11 A PATCH ON THIS SAME MAN WOULD YOU NOT EXPECT SOME TRACE OF
12 EITHER COCAINE OR THE METABOLITE ON AUGUST THE 14TH?

13 A AS I INDICATED IN MY CONCLUSIONS WITH REGARDS TO THE
14 ISSUES INVOLVING BOTH THE SWEAT PATCH TEST AND THE HAIR TEST,
15 I HAVE INDICATED THAT THERE ARE POSSIBLE EXPLANATIONS THAT
16 INCLUDE NO DRUG PRESENT OR NO DRUG DETECTED OR DRUG DETECTED
17 AT BELOW THE CONCENTRATION OF THE LAB'S CUTOFF LEVEL SO
18 THERE IS EITHER ABSOLUTELY NO DRUG PRESENT IN THAT HAIR
19 SAMPLE, THERE IS NO DRUG DETECTED OR THERE IS DRUG PRESENT AT
20 BELOW THE NORMAL CUTOFF LEVELS FOR THIS TEST

21 Q YOU CAN'T TESTIFY WHICH, CAN YOU?

22 A I CANNOT, NO

23 Q ALL YOU KNOW IS THERE ISN'T ANY THERE?

24 A ALL I KNOW IS THAT THE LABORATORY RESULTS IN THE REPORT
25 ARE CONSISTENT WITH NO DRUG DETECTED IN THE HAIR SAMPLE

PAUL CARY -- CROSS BY MR ARMSTRONG

1 Q LET ME ASK YOU THIS, LET'S ASSUME THAT MR JANELLI
2 INGESTED DRUGS ON JUNE THE 17TH, 2003

3 A IS THAT THE DATE OF---

4 Q THAT'S THE DATE THAT THE PATCH WAS APPLIED

5 A OKAY

6 Q LET'S ASSUME THAT HE INGESTED DRUGS THAT DAY

7 A OKAY

8 Q WOULD YOU NOT EXPECT THERE TO BE A POSITIVE FOR COCAINE
9 OR "BZE" ON AUGUST THE 14TH, 2003, SOME ALMOST TWO MONTHS
10 LATER?

11 A WELL, I WOULD SAY THAT IT WOULD CERTAINLY NOT BE AN
12 UNEXPECTED RESULT BUT UNDERSTAND THAT EACH ONE OF THESE
13 SAMPLES -- SWEAT AND HAIR -- ARE DIFFERENT MATRICES THAT ARE
14 TESTED BY DIFFERENT ANALYTICAL TECHNIQUES THAT ARE TESTED AND
15 REFLECT DIFFERENT WINDOWS OF DETECTION AT DIFFERENT
16 SENSITIVITY LEVELS IT IS NOT ALTOGETHER INCONSISTENT THAT
17 YOU COULD HAVE A POSITIVE TEST AND A NEGATIVE TEST IN TWO
18 DIFFERENT SAMPLES I WILL AGREE WITH YOUR PREMISE THAT IF
19 DRUGS WERE USED ON THE 17TH THAT IT WOULD BE CONSISTENT THAT
20 DRUGS WOULD ALSO BE PRESENT IN THE HAIR BUT I DON'T THINK
21 THAT YOU CAN MAKE THE EMPIRICAL LEAP TO SUGGEST THAT BECAUSE
22 NO DRUGS WERE DETERMINED IN THE HAIR THAT THAT MEANS THAT NO
23 DRUGS WERE USED ON THE 17TH

24 Q BUT YOU, AS AN EXPERT IN YOUR AREAS OF EXPERTISE, WOULD
25 EXPECT TO -- WOULDN'T YOU REALLY REASONABLY EXPECT IF THERE

PAUL CARY -- CROSS BY MR ARMSTRONG

1 WAS A DRUG INGESTION ON THE 17TH OF JUNE THAT THERE COULD BE
2 COCAINE PRESENT OR "BZE" ON THE 14TH OF AUGUST?

3 A IT CERTAINLY -- IT CERTAINLY WOULDN'T SURPRISE ME

4 Q YOU WOULD REASONABLE EXPECT THAT?

5 A I WOULD REASONABLY EXPECT THAT

6 Q MOST PROBABLY WOULD?

7 A NOT GOING THAT FAR

8 MR ARMSTRONG THANK YOU, SIR

9 THE COURT MR BANNISTER

10 MR BANNISTER COULD I HAVE JUST A SECOND? I'M GOING
11 TO USE A LITTLE VISUAL

12 CROSS EXAMINATION BY MR BANNISTER

13 Q I WANTED TO ASK A COUPLE OF QUICK QUESTIONS REGARDING
14 THE PATCH, AS I UNDERSTAND IT I'M GOING TO TRY NOT TO COVER
15 GROUND THAT'S ALREADY BEEN COVERED

16 IF I TOOK A CROSS SECTION OF THE PATCH, THE SKIN IS ON
17 THIS SIDE AND THE ENVIRONMENT, EXTERNAL SOURCES, ARE ON THE
18 OTHER SIDE, IF YOU'RE WITH ME WHAT I THOUGHT I HEARD YOU
19 SAY WAS THAT WHAT HAPPENS IS THE COCAINE COMES THROUGH THE
20 SWEAT INTO THE PATCH, CORRECT?

21 A THAT'S CORRECT

22 Q AND THEN THE---

23 A INTO THE COLLECTION PORTION OF THE PATCH THE PATCH IS
24 COMPRISED, OBVIOUSLY, OF SEVERAL COMPONENTS HERE

25 Q SO I'M JUST GOING TO DRAW A LITTLE REPRESENTATION OF

PAUL CARY -- CROSS BY MR BANNISTER

- 1 COLLECTION PORTION OF THE PATCH
- 2 A OKAY
- 3 Q THERE IS A MEMBRANE UP HERE THAT ALLOWS CERTAIN THINGS
- 4 OUT---
- 5 A CORRECT
- 6 Q ---ON THE TOP OF THE PATCH, SUCH AS WATER, RIGHT?
- 7 A CORRECT
- 8 Q ALL RIGHT I'M DOING THIS SIDEWAYS BUT
- 9 THE REASON THAT THE COCAINE, AS I UNDERSTAND YOUR
- 10 TESTIMONY, DOES NOT GET OUT OF THE COLLECTION SAMPLE IS
- 11 BECAUSE IT HAS A MOLECULAR WEIGHT GREATER THAN 36?
- 12 A THE MOLECULE IS BIGGER THAN THE PORE STRUCTURE OF THE
- 13 MEMBRANE
- 14 Q ALL RIGHT AND I THOUGHT YOU USED -- YOU SAID 36 IS
- 15 SORT OF THE CUTOFF FOR GETTING THROUGH THERE?
- 16 A THIRTY-SIX IS ONE BENCHMARK THAT IS USED, YES, TO
- 17 DETERMINE THE SIZE OF THE PORES IN THE PATCH ITSELF, YES
- 18 Q ALL RIGHT SO IF A MOLECULE HAS A MOLECULAR WEIGHT OF
- 19 36 OR MORE, IT'S NOT GOING TO GET THROUGH THE COLLECTION PART
- 20 OF THE PATCH, CORRECT?
- 21 A ESSENTIALLY, THAT'S CORRECT
- 22 Q ALL RIGHT AND SO H2O HAS A MOLECULAR WEIGHT LESS THAN
- 23 36 AND IT DOES GET THROUGH?
- 24 A YES, SIR
- 25 Q ALL RIGHT THEN CAN I ALSO ASSUME THAT ANYTHING THAT

PAUL CARY -- CROSS BY MR BANNISTER

1 HAS A MOLECULAR WEIGHT GREATER THAN 36 IN THE EXTERNAL
2 ENVIRONMENT CANNOT COME BACK THROUGH THE PATCH, AS I
3 UNDERSTAND YOUR TESTIMONY?

4 A IN GENERAL, THAT'S CORRECT

5 Q ALL RIGHT SO IF I'M 36 OUT HERE IN THE EXTERNAL
6 ENVIRONMENT, I CAN'T GET BACK THROUGH THE COLLECTION PATCH?

7 A IN GENERAL, THAT'S CORRECT, YES

8 Q ALL RIGHT THEN IF I HAD A SUBSTANCE WITH A MOLECULAR
9 WEIGHT THAT WAS, SAY, 350, THERE ISN'T ANY WAY IT'S GOING TO
10 GET FROM THE ENVIRONMENT INTO THE PATCH?

11 A THAT'S TOO BROAD A GENERALIZATION, BECAUSE IT WOULD
12 DEPEND ON HOW THAT COMPOUND, THAT HYPOTHETICAL COMPOUND WITH
13 350---

14 Q RIGHT WHATEVER

15 A ---IS ATTACHED TO OR INCORPORATED UPON THE ACTUAL
16 MEMBRANE ITSELF

17 Q ALL RIGHT THEN THERE ARE SCENARIOS WHERE, DEPENDING ON
18 HOW IT GETS ON THE OUTSIDE MEMBRANE OF THE PATCH, MOLECULES
19 OF A MOLECULAR WEIGHT AS GREAT AS 350 CAN IN FACT GET INTO
20 THE COLLECTION SAMPLE?

21 A I KNOW OF LABORATORY CONDITIONS WHERE THE WAY THAT YOU
22 HAVE WORDED YOUR QUESTION THE ANSWER IS YES

23 Q ALL RIGHT HOW -- WELL, THEN LET ME ASK IT THIS WAY,
24 HOW DO YOU KNOW THAT THE LABORATORY CONDITIONS THAT WE'RE
25 TALKING ABOUT THAT ALLOW LARGER MOLECULAR ITEMS TO GET INTO

PAUL CARY -- CROSS BY MR BANNISTER

1 THE COLLECTION SAMPLE DON'T TRANSLATE INTO ENVIRONMENTAL
2 CONDITIONS?

3 A WELL, I HAVE NOT SEEN, AGAIN, REFERRING TO THE BODY OF
4 WORK WITH WHICH I AM FAMILIAR ABOUT, I AM -- HAVE NOT SEEN
5 ANY DATA TO SUPPORT THE CONTENTION THAT ENVIRONMENTAL
6 EXPOSURE -- OR EXTERNAL CONTAMINATION OF DRUGS IS WHAT WE'RE
7 TALKING ABOUT HERE WITH A 350 MOLECULAR WEIGHT -- CAN
8 INCORPORATE THEMSELVES INTO THE PATCH

9 ADDITIONALLY, I WOULD SAY THE FOLLOWING THIS DOCUMENT
10 THAT WAS PROPAGATED BY THE BEST MINDS IN THE BUSINESS, THE
11 BEST SCIENTISTS USING THE ABSOLUTE BEST INFORMATION AVAILABLE
12 TO THEM WHEN THIS DOCUMENT WAS PRODUCED, HAVE CONCLUDED THAT
13 THE SCENARIO THAT YOU HAVE PRESENTED IS UNREALISTIC AND IN
14 FACT, THE MOST CONSERVATIVE RUG TESTING GROUP IN THE UNITED
15 STATES, WHICH IS VERY DONORCENTRIC -- I MEAN, THEY WANT TO
16 PROTECT WORKERS' RIGHTS -- HAVE ESSENTIALLY SAID WHAT YOU
17 HAVE JUST PROPOSED IS NOT FEASIBLE

18 Q ALL RIGHT AND YOU ARE REFERRING TO EXHIBIT NUMBER---

19 A STATE'S EXHIBIT NUMBER 9

20 Q ALL RIGHT AND ARE YOU AWARE THAT DR KIDWELL WAS PART
21 OF THE GROUP THAT HELPED PRODUCE THIS OR THE INFORMATION
22 THERE?

23 A I AM AWARE OF THAT

24 Q ALL RIGHT SO YOU WOULD CONSIDER HIM THEN TO BE ONE OF
25 THE BEST MINDS IN THE BUSINESS?

PAUL CARY -- CROSS BY MR BANNISTER

1 A I WOULD CONSIDER HIS WORK EQUAL TO THE PEOPLE, YES, THAT
2 WERE ON THAT COMMITTEE YES

3 Q YOU WOULD EXPECT HIM TO QUALIFY AS AN EXPERT IN THIS
4 PROCEEDING?

5 A YES, I WOULD

6 Q AND AS A MATTER OF FACT, YOU RELIED ON ONE OF HIS
7 PAPERS?

8 A YES, I DID

9 Q SOME OF THE ASSUMPTIONS, IF I UNDERSTAND YOU CORRECT, IN
10 DETERMINING THAT "BZE" MEANS YOU INGESTED COCAINE, THAT IS
11 PRESENCE OF "BZE" IN THE PATCH MEANS YOU HAVE INGESTED
12 COCAINE IS, ONE, YOU'VE GOT NO CONTAMINATION ON THE SKIN WHEN
13 THE PATCH IS APPLIED, IS THAT A FAIR STATEMENT?

14 A I'D SAY IT'S FAIR

15 Q OKAY WE KNOW THAT THE PROPOSED STANDARDS AND
16 PROCEDURES THAT ARE REPRESENTED IN EXHIBIT 2 INCLUDED WASHING
17 WITH SOAP AND THEN USING AN ALCOHOL PATCH, CORRECT?

18 A YES, THEY DO

19 Q AND AS I UNDERSTOOD YOUR TESTIMONY, CURRENTLY THE
20 ACCEPTED FORENSIC STANDARDS DON'T INCLUDE THAT HOWEVER, IF
21 THAT STANDARD IS IN FACT APPROVED, THEN IT WILL BECOME PART
22 OF THE FORENSIC STANDARDS, CORRECT?

23 A YES

24 Q ALL RIGHT AND IN THAT CASE, ASSUMING THAT THEY DO GET
25 APPROVED, THEN I WOULD ASSUME THAT YOUR TESTIMONY WOULD BE,

PAUL CARY -- CROSS BY MR BANNISTER

1 IN THE FUTURE, IF SOMEBODY DOESN'T USE THE SOAP TO WASH THE
2 ARM FIRST, THIS ASSUMPTION MAY BE WRONG, ASSUMING THESE
3 STANDARDS ARE ACCEPTED IN OTHER WORDS, THEY DIDN'T MEET THE
4 FORENSIC STANDARD PROCEDURES

5 A YEAH, I WOULD SUGGEST THAT IF THESE METHODS ANALYSIS
6 RULES ARE ADOPTED THAT THAT WOULD BE THE LAW OF THE LAND
7 ESSENTIALLY

8 Q OKAY AND YOU ARE ASSUMING, I GUESS, AS WELL THAT THE
9 LENGTH THAT THE PATCH STAYS ON A PERSON -- WELL, WHAT IS THE
10 FORENSIC STANDARD FOR HOW LONG A PATCH CAN STAY ON A PERSON?

11 A I DON'T -- I DON'T KNOW THAT THERE IS ANYTHING THAT I'M
12 AWARE OF WHERE THE LENGTH OF PATCH WEAR DURATION IS CODIFIED
13 IN ANY KIND OF RULE OR GUIDELINE CERTAINLY, WE KNOW THAT
14 FDA APPROVAL FOR THE PATCH IS SEVEN DAYS I KNOW OF RESEARCH
15 THAT HAS EXTENDED THAT WEAR CONSIDERABLY LONGER THAN THAT
16 CERTAINLY, THERE ARE PUBLICATIONS THAT LOOK AT SEVENTEEN --
17 IT SHOULD BE SEVEN TO FOURTEEN DAYS AND I KNOW THAT IN THE
18 WORK THAT ED CONE DID IN BALTIMORE THAT HE INDICATED THAT THE
19 PATCH COULD BE WORN UP TO FOUR WEEKS NOW, I DON'T KNOW WHY
20 YOU WOULD EVER WANT TO DO THAT, BUT CERTAINLY I THINK THERE
21 IS EVIDENCE, ANECDOTAL, SOME SCIENTIFIC, THAT SUGGEST THAT
22 THE PATCH CAN BE WORN LONGER THAN SEVEN DAYS BUT SEVEN DAYS
23 IS THE FDA APPROVED WEARING TIME

24 Q ALL RIGHT SO WHEN YOU STATE THAT THESE -- THE TESTING
25 OF THESE PATCHES MET ACCEPTED FORENSIC STANDARDS AND

PAUL CARY -- CROSS BY MR BANNISTER

1 PROCEDURES, THEN IS ONE OF YOUR ASSUMPTIONS THAT THE PATCHES
2 WERE WORN FOR SEVEN DAYS OR LESS?

3 A WELL, I DIDN'T MAKE THAT DECLARATION HAVING TO DO WITH
4 ANYTHING OTHER THAN THE LITIGATION PACKAGE IN THE WAY THE
5 TESTING WAS DONE IN MY REPORT, I DID NOT REVIEW ISSUES
6 HAVING TO DO WITH APPLICATION I DID NOT REVIEW ISSUES
7 HAVING TO DO WITH HOW LONG THE PATCH WAS WORN, HOW WELL THE
8 SKIN WAS CLEANSED, WHETHER OR NOT THE PEOPLE WERE CERTIFIED
9 MY -- I WAS RETAINED TO REVIEW THE LITIGATION PACKAGES AND
10 DETERMINE WHETHER THE TESTING WAS SCIENTIFICALLY APPLICABLE
11 TO THE RESULTS, WHETHER IT WAS RELIABLE AND COULD WITHSTAND
12 SCIENTIFIC CHALLENGE

13 Q ALL RIGHT SO YOU ARE ASSUMING THEN AS PART OF YOUR --
14 THE "BZE" MUST BE INGESTED -- MUST COME FROM INGESTED
15 COCAINE, AND THAT THERE WAS AN APPLICATION AND A REMOVAL THAT
16 MET ALL THE REQUIREMENTS?

17 A I WOULDN'T ARGUE WITH THAT STATEMENT, NO

18 Q OKAY AND SO AS YOU UNDERSTAND IT, FDA APPROVAL SAYS
19 SEVEN DAYS THERE IS SOME LITERATURE THAT SAYS YOU CAN GO AS
20 FAR AS FOURTEEN DAYS BUT IN YOUR ASSUMPTION, IF IT'S
21 FORENSICALLY ACCEPTED PRACTICES AND PROCEDURES, WE'RE TALKING
22 ABOUT SEVEN DAYS?

23 A WELL, AGAIN, I KNOW THAT THERE IS CERTAINLY MATERIAL IN
24 THE LITERATURE THAT HAS INDICATED STUDIES THAT HAVE EXTENDED
25 THAT SEVEN-DAY WEAR PERIOD OTHER THAN THE FDA APPROVAL, I

PAUL CARY -- CROSS BY MR BANNISTER

1 KNOW OF NO DOCUMENT THAT IS GENERALLY OR UNIVERSALLY ACCEPTED
2 AS GUIDANCE FOR HOW LONG THE PATCH CAN BE WORN, OTHER THAN
3 THE FDA APPROVAL PERIOD

4 Q OKAY THE OTHER ASSUMPTION THAT YOU ALSO MAKE IS THAT
5 THERE HAS BEEN NO CONTAMINATION FROM WITHOUT?

6 A ABSOLUTELY

7 Q ALL RIGHT IN TERMS OF CONTAMINATION FROM WITHOUT YOU
8 HAVE, AS I UNDERSTOOD IT, SAID THAT SOMETIMES IN SPECIFIC
9 LABORATORY PROCEDURES YOU CAN TAKE AN AMOUNT OF COCAINE, PUT
10 IT ON THE OUTSIDE OF THE PATCH AND IF YOU WORK IT RIGHT IT
11 WILL GO THROUGH THE PATCH TO SHOW UP IN THE COLLECTION PART?

12 A THAT IS MY UNDERSTANDING

13 Q OKAY AND I THINK THE WORD YOU USED WAS IN THOSE
14 SITUATIONS IT WAS "PURPOSEFUL" APPLICATION OF THE DRUGS TO
15 THE OUTSIDE OF THE PATCH VERSUS WHAT YOU WOULD EXPECT TO SEE
16 IN THE ENVIRONMENT HAVE I GOT THAT RIGHT? I JUST WANT TO
17 MAKE SURE

18 A ABSOLUTELY THE EXPERIMENT, IF THAT'S WHAT YOU'RE
19 DESCRIBING, IS PURPOSEFUL CONTAMINATION OF THE EXTERIOR OF
20 THE PATCH, WHICH IS CERTAINLY DIFFERENT FROM CASUAL EXPOSURE
21 OR CONTACT IN AN ENVIRONMENTAL CONTEXT

22 Q ALL RIGHT GIVE ME -- BECAUSE THIS IS MY UNDERSTANDING
23 OF IT, WHAT WE'RE TALKING ABOUT IS THE DIFFERENCE THEN IN THE
24 QUANTITY OF COCAINE THAT'S ON THE OUTSIDE OF THE PATCH? IF
25 YOU'RE DOING IT PURPOSEFULLY, THERE'S GOING TO BE MORE ON

PAUL CARY -- CROSS BY MR BANNISTER

1 THERE VERSUS IF IT'S ENVIRONMENTAL, YOU'RE JUST TALKING ABOUT
2 TRACE AMOUNTS?

3 A I DON'T KNOW AS I'D AGREE WITH THAT STATEMENT I THINK
4 IT HAS TO DO WITH THE AMOUNT OF MATERIAL THAT'S APPLIED I
5 THINK THE MANNER IN WHICH IT'S APPLIED, WHETHER THE PATCH IS
6 DRY OR WET WHEN THE MATERIAL IS APPLIED, I THINK THERE ARE A
7 LOT OF DYNAMICS THAT MIGHT AFFECT THAT PROCESS I DON'T
8 THINK IT'S JUST QUANTITY ONLY

9 Q ALL RIGHT AND TELL ME IN YOUR OPINION HOW AMOUNT WOULD
10 AFFECT -- HOW YOU CAN DETERMINE -- LET ME STRIKE THAT I'M
11 TRYING TO GET AT HOW YOU DIFFERENTIATE FROM WHAT YOU PERCEIVE
12 AS PURPOSEFUL APPLICATION OF COCAINE TO THE OUTSIDE OF THE
13 PATCH VERSUS WHAT YOU WOULD EXPECT TO BE IN THE ENVIRONMENT
14 YOU'VE SAID THREE THINGS BASICALLY THE AMOUNT THAT'S
15 INVOLVED, THE WAY IN WHICH IT'S APPLIED, AND WHETHER OR NOT
16 PATCH IS WET OR DRY

17 A YEAH, THOSE WOULD BE THREE THINGS THAT WOULD COME TO
18 MIND IMMEDIATELY

19 Q OKAY THEN LET'S TALK ABOUT AMOUNT WHAT WOULD BE THE
20 DIFFERENCES IN AMOUNT THAT YOU WOULD EXPECT TO SEE?

21 A I HAVE NO IDEA

22 Q OKAY SO I'M -- AND I'M GOING TO PUSH YOU A LITTLE BIT
23 HERE ON EITHER END OF IT BUT IF WE WERE TALKING ABOUT, SAY,
24 YOU KNOW, AN OUNCE OF PURE COCAINE AND WE JUST STICK IT ON
25 TOP OF THERE, OBVIOUSLY THAT WOULD BE AN AMOUNT, I'M

PAUL CARY -- CROSS BY MR BANNISTER

1 ASSUMING, YOU WOULD CONSIDER TO BE A PURPOSEFUL AMOUNT FOR
2 PURPOSES OF THIS QUESTION AND ANSWER?

3 A YOU KNOW, I'M JUST NOT GOING TO GO DOWN THAT ROAD
4 BECAUSE ANYTHING THAT I WOULD SAY TO THAT QUESTION WOULD BE
5 PURELY SPECULATIVE I DON'T DO RESEARCH ON THE SWEAT PATCH
6 I HAVE NEVER APPLIED DRUGS TO THE EXTERNAL SIDE OF THE SWEAT
7 PATCH TO DETERMINE HOW MUCH MAY MIGRATE AND SO I'M JUST
8 GOING TO HAVE TO SAY I CAN'T ANSWER THAT QUESTION I DON'T
9 KNOW

10 Q ALL RIGHT THEN HOW DO YOU -- HOW CAN YOU OPINE THAT AN
11 AMOUNT OR ENVIRONMENTAL THINGS THAT COME ALONG WON'T GET
12 THROUGH THE PATCH? I MEAN, IF I UNDERSTAND YOUR CORRECTLY,
13 YOU CAN'T SAY WHAT AMOUNT WOULD BE TOO MUCH OR TOO LITTLE, SO
14 THERE'S REALLY NO WAY TO KNOW I MEAN, IF I TOUCH, LET'S
15 JUST SAY, A DOLLAR BILL THAT'S GOT A LITTLE BIT OF A TRACE OF
16 COCAINE ON IT AND I GET THAT ON MY PATCH, IF YOU'VE NOT DONE
17 THE RESEARCH AND YOU DON'T KNOW WHAT AMOUNTS ARE INVOLVED,
18 IT'S IMPOSSIBLE, ISN'T IT, FOR YOU TO SAY THAT IT COULDN'T
19 GET THROUGH THE PATCH AND CONTAMINATE THE INSIDE?

20 A IT'S NOT JUST ME SAYING THAT ONCE AGAIN, IT'S THE BEST
21 MINDS IN THE COUNTRY IT'S THE BEST FORENSIC TOXICOLOGISTS
22 WE HAVE IN THE UNITED STATES SAYING, "DOESN'T HAPPEN " SO
23 I'M CERTAINLY NOT GOING TO SIT HERE AND ARGUE WITH THEM AS TO
24 THE POTENTIAL FOR EXTERNAL CONTAMINATION TO BE A REAL LIFE
25 SCENARIO AND POSSIBLY A -- CONTAMINATING A PATCH

PAUL CARY -- CROSS BY MR BANNISTER

1 Q ALL RIGHT SO IF, THOUGH, ENVIRONMENTAL CONTAMINATION
2 IN A REAL-LIFE SCENARIO WAS IN FACT A PROBABILITY OR A HIGHER
3 LEVEL OF PROBABILITY, THEN THAT WOULD BRING INTO QUESTION
4 SOMEWHAT YOUR ASSUMPTION THAT THERE HAS BEEN NO CONTAMINATION
5 FROM WITHOUT ON THESE PATCHES?

6 A IF I UNDERSTAND YOUR QUESTION, I AM DISCOUNTING
7 CONTAMINATION FROM WITHOUT AS A POSSIBILITY FOR THE POSITIVE
8 RESULTS OBTAINED IN THESE PATCHES

9 Q AND, THEREFORE, IF WE WERE TO PROVE TO YOU THAT THERE
10 WAS IN FACT ENVIRONMENTAL WAYS IN WHICH COCAINE CAN GET INTO
11 THE PATCH, THEN THIS ASSUMPTION YOU MIGHT HAVE TO REVISIT,
12 CORRECT, THAT IS, NO CONTAMINATION FROM WITHOUT?

13 A WELL, YOU WOULD HAVE TO CONVINCE ME AND EVERYBODY ELSE
14 WHO WROTE THIS DOCUMENT, YES THAT'S A LOT OF FOLKS

15 Q WHAT IS THE -- WOULD IT BE A CORRECT STATEMENT THAT IN
16 TERMS OF TESTING -- I'M CHANGING SUBJECTS ON YOU A LITTLE BIT
17 -- CHANGING URINE -- I'M SORRY -- TESTING URINE AND SWEAT
18 SWEAT, WE'RE TALKING ABOUT VERY, VERY SMALL AMOUNTS OF
19 TESTABLE SUBSTANCE VERSUS URINE WHERE YOU CAN HAVE, I DON'T
20 KNOW, A LOT?

21 A ABSOLUTELY

22 Q ALL RIGHT AND ISN'T IT TRUE THAT THE SENSITIVITY
23 LEVEL, TOO, IS DIFFERENT FOR URINE AND FOR SWEAT TESTING?

24 A YES

25 Q SO IT WOULD -- IT'S -- OBVIOUSLY, BECAUSE YOU'VE GOT A

PAUL CARY -- CROSS BY MR BANNISTER

1 SMALLER SAMPLE IN SWEAT, THE SENSITIVITY LEVEL HAS TO BE
2 HIGHER THEN BECAUSE YOU'RE DEALING WITH SMALLER AMOUNTS, IS
3 THAT A FAIR STATEMENT?

4 A SAY THAT AGAIN

5 Q I SAID THE SENSITIVITY LEVEL FOR SWEAT TO DETECT DRUGS
6 MUST BE A LITTLE BIT HIGHER -- I'M SORRY -- LOWER -- YOU'RE
7 RIGHT -- LOWER IN ORDER TO DETECT THEM IN THAT SMALLER AMOUNT
8 OF SAMPLE?

9 A YES

10 Q AND THAT'S WHY IN ANGELA HURKS' RETEST OF HER SAMPLE THE
11 AMOUNT THAT GOT TESTED THE SECOND TIME WAS SO MUCH SMALLER
12 THAN THE FIRST AMOUNT, BECAUSE THEY ALMOST USED IT ALL UP IN
13 THAT FIRST TEST?

14 A UH-HUH (AFFIRMATIVE)

15 Q IS THAT RIGHT?

16 A YEAH I'M NOT SURE WHAT YOUR QUESTION WAS THERE, BUT

17 Q WELL, I'M JUST SHOWING A REAL WORLD EXAMPLE OF HOW THE
18 AMOUNTS WE'RE TALKING ABOUT NECESSARY TO GET A RESULT FROM
19 THE TEST OF SWEAT IS SMALLER THAN IT IS FOR URINE

20 A YES, IT IS OH, ABSOLUTELY NO ARGUMENT THERE

21 Q ALL RIGHT AND, THEREFORE, SENSITIVITY IS LOWER, SO IT
22 CAN PICK UP COCAINE IN A SMALLER SAMPLE IN SWEAT VERSUS
23 URINE?

24 A YES

25 Q FURTHERMORE, URINE ALLOWS YOU THE OPPORTUNITY

PAUL CARY -- CROSS BY MR BANNISTER

1 POTENTIALLY TO TEST A SECOND TIME WITH THE ORIGINAL SAMPLE
2 BEFORE YOU HAVE ACTUALLY HAD TO EXTRACT ANYTHING FROM IT?

3 A YEAH IT SURE DOES

4 Q AS OPPOSED TO SWEAT WHERE ONCE YOU'VE EXTRACTED IT, IF
5 THERE'S A PROBLEM PRIOR TO THAT EXTRACTION, A RETEST DOESN'T
6 CHANGE ANYTHING?

7 A YES, I DON'T KNOW WHAT THE CURRENT POLICIES ARE WITH
8 REGARDS TO RETAINING THE PATCH ITSELF BUT I WOULD SUGGEST
9 THAT IT WOULD NOT BE -- YEAH, IT WOULD NOT BE A USEFUL MATRIX
10 AFTER IT'S BEEN -- AFTER THE DRUG'S BEEN REMOVED

11 Q AND WE'RE TALKING ABOUT COCAINE GETTING THROUGH THE
12 PATCH OR HOW IT GETS COLLECTED YOU WOULD AGREE WITH ME THAT
13 "BZE" IS PRESENT ABSENT -- CAN BE PRESENT PRODUCED BY COCAINE
14 ABSENT INGESTION?

15 A YES

16 Q AND, FOR EXAMPLE, IF YOU'RE GOING TO COOK CRACK, YOU PUT
17 BAKING SODA IN IT IF YOU PUT TOO MUCH, YOU END UP WITH
18 NOTHING BUT "BZE"?

19 A YES

20 Q IS THAT CORRECT?

21 A THAT'S CORRECT

22 Q AND "BZE" -- ACTUALLY, IF YOU TOOK A DOLLOP OF PURE
23 COCAINE -- LET'S JUST SAY YOU HAD AN OUNCE OF PURE COCAINE
24 AND YOU JUST PUT H2O ON IT, AT SOME POINT, IF YOU WAITED LONG
25 ENOUGH, YOU'RE PROBABLY GOING TO GET SOME "B Z E," AREN'T YOU?

PAUL CARY -- CROSS BY MR BANNISTER

1 A YES, COULD BE UNDER THE RIGHT CONDITIONS, ABSOLUTELY

2 Q AND ADD ANY AMOUNT OF A BASE PRODUCT, SUCH AS BAKING
3 SODA, LIKE I MENTIONED BEFORE, AND YOU'RE GOING TO GET HIGHER
4 LEVELS OF "BZE," CORRECT?

5 A CORRECT

6 Q ON HAIR TESTING, JUST ONE QUICK QUESTION DID I -- I
7 HEARD YOU CORRECTLY THAT THERE IS POTENTIAL FOR EXTERNAL
8 CONTAMINATION IN HAIR TESTING -- OF HAIR, I'M SORRY?

9 A I DON'T RECALL MAKING THAT STATEMENT

10 Q ALL RIGHT DO YOU DISAGREE WITH THAT STATEMENT?

11 A IS IT -- ARE YOU ASKING ME IF IT'S POSSIBLE FOR HAIR TO
12 BE EXTERNALLY CONTAMINATED WITH DRUG?

13 Q YES

14 A YES

15 Q OKAY

16 MR BANNISTER (OFF RECORD WITH MR GIBSON) NO
17 FURTHER QUESTIONS, JUDGE

18 THE COURT LET ME ASK A QUESTION

19 EXAMINATION BY THE COURT

20 Q HOW LONG AFTER ONE INGESTS COCAINE SHOULD IT BE
21 REASONABLY ANTICIPATED TO SHOW UP ON A HAIR FOLLICLE TEST?

22 A WELL, THE LIMITATION OF HAIR IS NOT THE INCORPORATION OF
23 THE DRUG INTO HAIR AS MUCH AS IT IS THE ABILITY OF THE HAIR
24 OR THE TIME DURATION OF THE HAIR TO GROW OUT OF THE FOLLICLE
25 IN OTHER WORDS, YOU CAN'T TEST HAIR YOU CAN'T GET TO SO,

PAUL CARY -- BY THE COURT

1 GENERALLY SPEAKING, HAIR GROWS ABOUT HALF AN INCH A MONTH
2 SO I THINK WHAT MOST FORENSIC SCIENTISTS USE, THERE'S A
3 WINDOW OF SEVEN TO FOURTEEN DAYS WHERE THE HAIR IS STILL
4 INSIDE THE FOLLICLE, AND IF YOU CLIP IT RIGHT AT THE SCALP,
5 THEN THAT WINDOW IS PROBABLY SOMEWHERE IN THAT WEEK TO TWO-
6 WEEK RANGE WHERE THE HAIR IS STILL INSIDE AND CAN'T BE
7 ACCESSED ACTUALLY, THE INCORPORATION OF DRUG IN THE HAIR IS
8 RELATIVELY QUICK AS THE SWEAT IS ABSORBED OR INCORPORATED
9 INTO THE HAIR, BUT YOU CAN'T GET TO THE HAIR TO TEST IT
10 UNLESS YOU PULLED IT OUT

11 Q ALL RIGHT BUT WHAT IS THE GENERALLY ACCEPTED STANDARD
12 FOR NUMBER OF DAYS YOU SHOULD WAIT FROM USE OF COCAINE TILL
13 YOU SHOULD EXPECT TO SEE IT IN HAIR OR HARVESTABLE HAIR, IF
14 THAT'S A WAY TO SAY IT?

15 A WELL, IT WILL INCORPORATE ITSELF INTO HAIR RELATIVELY
16 QUICKLY, 24 HOURS, MAYBE LESS SO CERTAINLY I WOULD SUGGEST
17 THAT IF YOU DON'T WANT TO -- AND PART OF IT -- NOT TO
18 SIDESTEP YOUR QUESTION, BUT PART OF IT WOULD DEPEND ON THE
19 NATURE AND THE PURPOSE OF YOUR TESTING IF YOU'RE TESTING
20 ABSTINENCE, THEN THERE IS NO TIME IF YOU'RE TESTING WHETHER
21 OR NOT YOU WANT TO DETECT DRUG USE FROM POINT A TO POINT B,
22 THEN CERTAINLY I WOULD SAY PROBABLY TWO WEEKS, TO BE SAFE,
23 BEFORE YOU DECIDED TO COLLECT THAT HAIR AT LEAST

24 THE COURT ALL RIGHT YOUR WITNESS

25 REDIRECT EXAMINATION BY MS WINN

PAUL CARY -- REDIRECT BY MS WINN

1 Q MR CARY, WHAT COURTS OR PROGRAMS HAVE APPROVED THE
2 SWEAT PATCH AS A VALID TESTING METHOD AND ARE CURRENTLY USING
3 THEM?

4 MR ARMSTRONG YOUR HONOR, I OBJECT I BELIEVE THAT
5 WAS ASKED ON DIRECT, AS TO WHAT'S THE COURTS WERE

6 MS WINN I BELIEVE MR GIBSON ASKED IN RELATION TO
7 BRINGING UP CASE LAW AND SNYDER AND SUCH AND THOSE CASES THAT
8 ARE NOT---

9 THE COURT GO AHEAD

10 A COULD YOU ASK YOUR QUESTION AGAIN, PLEASE?

11 Q WHAT COURTS OR PROGRAMS HAVE APPROVED AND ARE CURRENTLY
12 USING THE SWEAT PATCH AS A TESTING METHOD?

13 A WELL, I KNOW THAT THE -- AGAIN, THE OFFICE OF
14 ADMINISTRATION OF U S COURTS HAS APPROVED THE USE OF SWEAT
15 TESTING FOR THE MONITORING OF CRIMINAL JUSTICE INDIVIDUALS,
16 PROBATION AND PAROLE NOW, BECAUSE THEY'VE APPROVED IT DOES
17 NOT NECESSARILY MEAN A PARTICULAR COURT HAS TO USE IT BUT I
18 WOULD RESPECTFULLY INDICATE THAT THE CASES THAT WERE CITED BY
19 DEFENSE COUNSEL AS CASES WHERE THERE ARE -- WHERE THE SWEAT
20 PATCH HAS BEEN DETERMINED UNRELIABLE IS DWARFED BY THE NUMBER
21 OF CASES WHERE THE SWEAT PATCH HAS BEEN FOUND RELIABLE, AND I
22 CAN'T SIT HERE TODAY AND LIST THEM FOR YOU, BUT I WOULD
23 ASSUME THAT ANYONE THAT CAN DO A LEXUS NEXUS SEARCH COULD
24 FIND PLENTY OF CASES WHERE THE SWEAT PATCH HAS BEEN UPHELD
25 Q REFERRING YOU AGAIN TO STATE'S EXHIBIT 9, THE PROPOSED

PAUL CARY -- REDIRECT BY MS WINN

1 REGULATIONS, I BELIEVE DEFENSE COUNSEL HAD YOU READ A PORTION
2 OF THAT THAT REFERRED TO THE PROPOSAL THAT THESE PATCHES BE
3 WORN ONLY SEVEN DAYS DO THEY SAY THAT PATCHES WORN LONGER
4 THAN SEVEN DAYS ARE INVALID?

5 A I DON'T KNOW OF ANYTHING IN THE DOCUMENTATION THAT SAYS
6 THAT, NO

7 Q OKAY AND ARE THESE PROPOSALS FOR LENGTH, THEY ARE NOT
8 REQUIREMENTS AT THIS POINT, IS THAT CORRECT?

9 A SAY THAT AGAIN

10 Q THESE ARE JUST PROPOSALS FOR A LENGTH THAT THE PATCH MAY
11 BE WORN, THEY ARE NOT REQUIREMENTS AT THIS POINT IS THAT
12 CORRECT?

13 A RIGHT I MEAN, THESE RULES COULD BE MODIFIED, YES

14 Q AND, IN YOUR OPINION, WHEN YOU SAY THAT PATCHES WORN
15 LONGER COULD STILL YIELD VALID RESULTS?

16 A OH, ABSOLUTELY

17 Q WOULD YOU LOOK AT THAT SAME PARAGRAPH REFERRED TO BY MR
18 GIBSON ON PAGE 19677 OF STATE'S EXHIBIT 9, THE VERY TOP
19 PARAGRAPH

20 A OKAY 677?

21 Q YES

22 A OKAY

23 Q THE LAST SENTENCE, WOULD YOU PLEASE READ, OF THAT
24 PARAGRAPH CONCERNING USE OF SOAP AND WATER TO CLEAN THE AREA
25 BEFORE THE PATCH IS APPLIED?

PAUL CARY -- REDIRECT BY MS WINN

1 A OKAY I'M -- CAN YOU TELL ME WHERE YOU WANT ME TO READ,
2 PLEASE?

3 Q YES IT IS THE LAST SENTENCE OF THE VERY TOP PARAGRAPH
4 THAT'S ACTUALLY INCOMPLETE IT BEGAN ON THE PREVIOUS PAGE
5 THE SENTENCE BEGINS, "HOWEVER "

6 A OKAY "HOWEVER THE DEPARTMENT ENCOURAGES RESEARCHERS"
7 -- IS THIS -- AM I?

8 Q YES, SIR

9 A "HOWEVER, THE DEPARTMENT ENCOURAGES RESEARCHERS TO
10 CONDUCT FURTHER RESEARCH INTO THIS AREA, THAT BEING APPLYING
11 TO THE WASHING TECHNIQUES "

12 Q OKAY SO AGAIN, THIS IS A PROPOSAL AND THIS IS NOT A
13 CURRENT REGULATION, IS THAT CORRECT?

14 A THAT'S CORRECT

15 Q AND I THINK AS YOU SAID BEFORE, THESE REGULATIONS WERE
16 GOING TO BE SUBJECT TO MANY HEARINGS AND DISCUSSIONS BEFORE
17 THEY ARE ACTUALLY PUT INTO PLACE, IS THAT CORRECT?

18 A YES

19 Q WE HAVE BEEN TALKING ABOUT ESSENTIALLY TWO TYPES OF
20 CONTAMINATION CAN YOU TELL US WHAT THOSE TWO TYPES ARE,
21 PLEASE?

22 A AS I UNDERSTAND IT, CONTAMINATION FROM WITHOUT, SO THAT
23 WOULD BE MATERIALS, SUBSTANCES, DRUGS, MIGRATING EXTERNAL TO
24 THE PATCH INTO THE COLLECTION DEVICE, AND CONTAMINATION FROM
25 WITHIN, WHICH WOULD BE MATERIALS THAT WERE MIGRATING EITHER

PAUL CARY -- REDIRECT BY MS WINN

1 FROM THE SWEAT OR OFF THE SKIN, AGAIN, INTO THE COLLECTION
2 DEVICE UNDERNEATH THE PATCH

3 Q AND YOU SAID, REFERRING TO CONTAMINATION FROM WITHOUT,
4 ESSENTIALLY THE BEST LEGAL MINDS IN THIS AREA HAVE DECIDED
5 THAT THAT IS UNREALISTIC, IS THAT A FAIR STATEMENT?

6 A WELL, I WOULDN'T CALL THEM THE BEST LEGAL MINDS, BECAUSE
7 I DON'T KNOW WHAT THEIR LEGAL TRAINING IS

8 Q I'M SORRY INCORRECT CHARACTERIZATION, I'M SORRY

9 A BUT CERTAINLY THEY ARE THE BEST SCIENTIFIC MINDS AND
10 THEY CONCLUDE THAT BASED ON THAT INFORMATION THAT STUDIES
11 INDICATE THAT THE POLYURETHANE OUTER LAYER IS IMPERMEABLE TO
12 MOLECULES LARGER THAN DIMER WATER BASED ON THE INFORMATION,
13 THE DEPARTMENT BELIEVES THAT EXTERNAL ABSORPTION OF ANY DRUGS
14 THROUGH THE OUTER LAYER IS NOT POSSIBLE UNDER NORMAL
15 CIRCUMSTANCES THAT'S A DIRECT QUOTE

16 Q SO BASED ON YOUR RESEARCH AND IN YOUR OPINION, IS IT
17 POSSIBLE UNDER NORMAL REAL-LIFE CIRCUMSTANCES FOR THE PATCH
18 TO BE CONTAMINATED FROM WITHOUT?

19 A BASED ON WHAT I KNOW AND THE STATE OF THE SCIENCE AT
20 THIS POINT, THE ANSWER TO THAT IS ABSOLUTELY NOT

21 Q REFERRING NOW TO CONTAMINATION FROM WITHIN, HAVE YOU
22 REVIEWED MATERIALS RELATING TO THAT AREA?

23 A YES, I HAVE

24 Q AND, IN YOUR OPINION, WHAT DO THOSE MATERIALS PURPORT TO
25 SAY?

1 A WELL, YOU KNOW, IT'S -- IN SOME SENSES IT'S ALMOST A
2 LACK OF EVIDENCE AS OPPOSED TO THE POSITION THAT IT OCCURS
3 AND WHAT I MEAN BY THAT IS I AM NOT AWARE OF ANY STUDIES THAT
4 INDICATE BEING IN AN ENVIRONMENT THAT CONTAINS COCAINE
5 MOLECULES AS A RESULT OF ENVIRONMENTAL CONTAMINATION OR
6 CASUAL EXPOSURE -- I'M NOT AWARE OF A SINGLE PUBLICATION THAT
7 SUGGESTS THAT KIND OF EXPOSURE TO THAT REAL-LIFE SCENARIO CAN
8 CAUSE A PATCH TEST TO TURN POSITIVE IN AN OTHERWISE NEGATIVE
9 INDIVIDUAL AND I WORD THAT IN A VERY PREMEDITATED WAY,
10 BECAUSE AS WE LOOK AT CONTAMINATION ISSUES, THE WAY THAT
11 SCIENTISTS HAVE FOCUSED ON ADDRESSING THOSE PROBLEMS HAS BEEN
12 TO PLACE INDIVIDUALS IN A CONTAMINATED ENVIRONMENT AND
13 DETERMINE WHETHER THAT REAL-LIFE ENVIRONMENTAL CONTAMINATION
14 OR PASSIVE EXPOSURES WOULD CORRELATE TO AN UNRELIABLE TEST
15 THE CLASSIC EXAMPLE IS PASSIVE MARIJUANA SMOKE WE ACTUALLY
16 TOOK PEOPLE, SCIENTISTS TOOK PEOPLE, STUCK THEM IN A ROOM
17 WITH LOTS OF MARIJUANA SMOKE, AND THEN TESTED THEIR URINE
18 SAMPLES, BECAUSE THE QUESTION WAS CAN PASSIVE INHALATION
19 CAUSE A POSITIVE URINE DRUG TEST

20 I KNOW OF NO STUDY WHERE SOMEONE HAS TAKEN VOLUNTEERS
21 AND PUT THEM IN A ROOM WHERE THERE IS COCAINE FLOATING AROUND
22 IN THE AIR OR HAVE THEM ROLL ON TWENTY DOLLAR BILLS, OR HAVE
23 THEM WEAR CLOTHING THAT HAS BEEN STORED IN A CRACK HOUSE, OR
24 HAVE THEM SLEEP ON SHEETS THAT ARE KNOWN TO BE CONTAMINATED
25 I KNOW OF NO STUDY THAT WOULD INDICATE THAT UNDER THOSE

PAUL CARY -- REDIRECT BY MS WINN

1 CONDITIONS A POSITIVE PATCH TEST HAS BEEN FOUND

2 INSTEAD, WE'VE USED EXPERIMENTS WHERE WE PURPOSEFULLY
3 CONTAMINATE SKIN WITH HUGE CONCENTRATIONS OF DRUG AND THEN WE
4 WIPE IT OFF, AND THEN WE PUT A PATCH ON THERE, AND WE COME
5 AWAY AND SAY, LOOK, THE PATCH WAS CONTAMINATED THAT'S NOT
6 -- THAT IS NOT A REAL-LIFE SCENARIO

7 WE CAN DEVELOP EXPERIMENTS IN THE LABORATORIES AND
8 UNIQUE DESIGNS OF STUDIES WHICH ARE GOING TO SHOW THAT THAT
9 OCCURS, BUT THAT'S NOT WHAT WE'RE INTERESTED IN WE'RE
10 INTERESTED IN WHETHER OR NOT REAL-LIFE SCENARIOS AND EXAMPLES
11 OF PEOPLE IN COCAINE-CONTAMINATED ENVIRONMENTS CAN-- THAT CAN
12 BE TRANSLATED INTO A POSITIVE TEST AND I KNOW OF NO STUDIES
13 THAT CONCLUDE THAT

14 Q MOVING NOW TO HAIR SCREENS, I BELIEVE MR ARMSTRONG
15 ASKED YOU ABOUT A HAIR SCREEN THAT WAS CONDUCTED ON DANE
16 JANELLI

17 A YES

18 Q FOR THAT HAIR SCREEN, WHAT TYPE OF SCREENING TEST WAS
19 PERFORMED ON THAT SAMPLE?

20 A I DON'T HAVE THE LITIGATION PACKAGE IN FRONT OF ME, BUT
21 I BELIEVE IT WAS RADIO-IMMUNOASSAY

22 Q CAN YOU BRIEFLY DESCRIBE WHAT THAT IS?

23 A RADIO-IMMUNOASSAY IS A COMPETITIVE BINDING ASSAY USING A
24 RADIO-LABELED MATERIAL TO DETERMINE WHETHER A SUBSTANCE IS
25 PRESENT OR NOT PRESENT

PAUL CARY -- REDIRECT BY MS WINN

1 Q IS THERE A SECOND TYPE OF TEST THAT CAN BE PERFORMED ON
2 A HAIR SAMPLE?

3 A WELL, IF THE SAMPLE IS DETERMINED TO BE POSITIVE, THEN
4 IT'S SUBMITTED FOR GCMS CONFIRMATION, IF THAT'S WHAT YOU'RE
5 ASKING

6 Q JUST TO REFER, I THINK YOU DO HAVE A LITIGATION PACKAGE
7 IN FRONT OF YOU I THINK IT'S BEEN---

8 A THIS ONE HERE?

9 Q ---MARKED DEFENSE JANELLI 1, IF YOU WOULD LIKE TO REFER
10 TO THAT

11 A OKAY AND YOU'RE ASKING ME AGAIN, PLEASE?

12 Q WAS THE TEST THAT WAS PERFORMED ON DANE JANELLI'S SAMPLE
13 A SCREENING TEST OR A MORE IN-DEPTH TEST TO SHOW YOU ANY
14 TRACE AMOUNT AS OPPOSED TO A HIGHER LEVEL CUTOFF?

15 A IT APPEARS THAT IN THIS PARTICULAR SAMPLE IT WAS
16 SUBMITTED ONLY FOR THE GCMS TESTING SO IT DIDN'T -- IT
17 WASN'T SUBMITTED FOR ANY KIND OF PRESUMPTIVE ANALYSIS,
18 BECAUSE THE ONLY DATA THAT'S INCLUDED IN THIS PACKET IS GCMS
19 DATA

20 Q SO, THEREFORE, WHAT WOULD YOU SAY WOULD HAVE BEEN LEFT
21 OUT OR NOT -- NOT LEFT OUT, BUT WHAT RESULTS WERE YOU NOT
22 ABLE TO GET? I THINK YOUR CONCLUSION WAS ACTUALLY THAT YOU
23 COULD NOT DRAW SPECIFIC CONCLUSIONS

24 MR ARMSTRONG I OBJECT TO HER LEADING HIM, YOUR
25 HONOR

PAUL CARY -- REDIRECT BY MS WINN

1 THE COURT I SUSTAIN THE OBJECTION

2 Q REFERRING TO YOUR REPORT, WHAT WERE YOUR FINDINGS AND
3 INTERPRETATIONS OF THIS TEST CONDUCTED?

4 A WHILE THE NEGATIVE RESULTS OF THE HAIR SAMPLE COLLECTED
5 ON AUGUST 14TH, 2003, CAN BE CONSIDERED CONCLUSIVE, THESE
6 NEGATIVE RESULTS NEITHER SUPPORT NOR CONTRADICT THE DRUG
7 TESTING RESULTS DETERMINED FOR SWEAT

8 MR ARMSTRONG ARE YOU READING, SIR?

9 WITNESS YES, I AM

10 MR ARMSTRONG WHERE?

11 WITNESS THIS WOULD BE PAGE 7 OF 8 IT WOULD BE THE
12 THIRD PARAGRAPH ON THE PAGE UNDER DANE JANELLI, ABOUT HALFWAY
13 DOWN, BEGINNING WITH THE SENTENCE "WHILE "

14 MR ARMSTRONG EXCUSE ME YOU'RE READING YOUR REPORT?

15 WITNESS YES, SIR

16 MR ARMSTRONG OKAY

17 Q WHAT IS AN L O D ANALYSIS?

18 A THE FIRST -- I HAVE TO TAKE A STEP BACK I REVIEWED
19 HAIR TESTING BOTH ON MS HURKS AND MR JANELLI THE SAMPLE
20 THAT WAS SUBMITTED FOR MS HURKS IS WHAT I REFER TO AS AN
21 L O D TEST, WHICH MEANS THAT THE LABORATORY IS SPECIFICALLY
22 DIRECTED TO TEST THE SAMPLE AT THEIR LIMIT OF DETECTION,
23 WHICH WOULD BE THE LOWEST QUANTITY OF MATERIAL THEY COULD
24 DETECT BASED ON THE INFORMATION THAT I HAD DURING THE TIME
25 I WAS WRITING THIS REPORT, IT CERTAINLY APPEARED AS THOUGH

1 THAT THE TEST BEING DONE IN MR JANELLI'S SAMPLE WAS NOT AN
2 L O D TEST IN OTHER WORDS, IT WAS A TEST THAT WAS
3 PERFORMED AT THE REGULAR CUTOFF

4 Q AND WHAT WERE THE RESULTS THEN -- OR WHAT WAS YOUR
5 OPINION AS FAR AS THAT HAIR SCREEN? WHAT WAS YOUR
6 CONCLUSION?

7 A WELL, MY OPINION IS NO DIFFERENT FROM MY OPINION THAT I
8 GAVE TO DEFENSE COUNSEL, AND THAT IS, THAT THERE ARE THREE
9 POSSIBILITIES THAT THERE IS ABSOLUTELY NO DRUG PRESENT IN
10 THE SAMPLE, THAT THERE IS NO DRUG DETECTED, OR THERE IS DRUG
11 THAT IS PRESENT AT BELOW THE CUTOFF LEVEL

12 Q IS IT POSSIBLE THEN TO HAVE A POSITIVE PATCH TEST ALONG
13 WITH A NEGATIVE HAIR SCREEN?

14 A IS IT POSSIBLE? YES

15 Q AND THAT NEGATIVE HAIR SCREEN MAY STILL COVER THAT 90-
16 DAY WINDOW WHEN THAT PATCH WAS WORN?

17 A YES AGAIN, AS I INDICATED TO DEFENSE COUNSEL, I THINK
18 THAT THE TEST -- THAT THESE TESTS ARE SOMEWHAT MUTUALLY
19 EXCLUSIVE AGAIN, THEY ARE TESTING DIFFERENT SAMPLES AT
20 DIFFERENT DETECTION LEVELS IN DIFFERENT MATRICES BY DIFFERENT
21 ANALYTICAL TECHNIQUES AND I THINK THAT IT IS NOT WHOLLY
22 INCONSISTENT TO HAVE A NEGATIVE IN ONE SAMPLE OR AN
23 UNDETECTED IN ONE SAMPLE AND A POSITIVE IN ANOTHER SAMPLE

24 MS WINN NOTHING FURTHER

25 MR ARMSTRONG I HAVE A FOLLOW-UP, YOUR HONOR

PAUL CARY -- REDIRECT BY MS WINN

1 THE COURT MAKE IT BRIEF

2 MR ARMSTRONG I SHALL

3 REDIRECT EXAMINATION BY MR ARMSTRONG

4 Q MR CARY, YOU WERE READING TO ME ON PAGE 7 OF 8 IN YOUR
5 REPORT ON MR JANELLI, ISN'T THAT CORRECT?

6 A YES, SIR, I WAS

7 Q AND YOU WERE STATING IN PART IN THE SECOND PARAGRAPH
8 THAT THIS TEST THAT YOU REVIEWED WAS NOT A LIMITATION OF
9 DETECTION TEST, IS THAT CORRECT?

10 A WHAT I ACTUALLY SAID WAS THAT THE RESULTS THAT I WAS
11 REVIEWING AT THE TIME THAT I PREPARED THIS REPORT INDICATED
12 THAT IT WAS NOT AN L O D TEST THAT'S CORRECT

13 Q OKAY YOU DO HAVE THE TOXICOLOGY -- EXCUSE ME -- THE
14 LITIGATION PACKAGE ON MR JANELLI HERE BEFORE YOU, DO YOU
15 NOT?

16 A YES, I DO I WAS GIVEN THAT LAST NIGHT

17 Q ALL RIGHT AND IS THAT WHAT YOU WERE REVIEWING AT THE
18 TIME

19 A NO, SIR, I WAS NOT

20 Q ALL RIGHT SO WHEN DID YOU FIRST RECEIVE OR REVIEW THIS
21 PACKET, WHICH IS EXHIBIT NUMBER 1 JANELLI?

22 A OH, ABOUT EIGHT O'CLOCK LAST EVENING

23 Q OKAY I'M GOING TO CALL YOUR ATTENTION HERE -- I'M
24 GOING TO TURN HERE, SIR, TO THE AFFIDAVIT IN THIS PACKET HERE
25 ISSUED ON FEBRUARY THE 6TH, 2004, BY JAMES BOYLAN, Ph D , AND

PAUL CARY -- REDIRECT BY MR ARMSTRONG

1 I'M GOING TO HAND THAT TO YOU OUT OF THE EXHIBIT, SIR DO
2 YOU SEE WHERE I'M TALKING ABOUT?

3 A YES, SIR

4 Q I'M GOING TO CALL YOUR FURTHER ATTENTION TO PARAGRAPH
5 THREE, THE PREAMBLE AND THE LAST SENTENCE IN THE PREAMBLE,
6 DOES IT NOT READ, "A LIMITATION OF DETECTIVE TEST FOR COCAINE
7 WAS PERFORMED ON THE SPECIMEN AND THE RESULTS WERE AS
8 FOLLOWS"?

9 A IT SAYS, "A LIMIT OF DETECTION TEST FOR COCAINE WAS
10 PERFORMED ON THE SPECIMEN AND THE RESULTS ARE AS FOLLOWS "

11 Q SO -- BUT YOU STATED IN YOUR INITIAL REPORT AND YOUR
12 TESTIMONY THAT YOU FOUND FLAWS IN THIS ANALYSIS BECAUSE IT
13 WAS NOT A LIMITATION OF DETECTION TEST, ISN'T THAT CORRECT?

14 A NO, THAT'S NOT CORRECT I DON'T RECALL SAYING ANYTHING
15 ABOUT FLAWS IN THE TESTING I DID NOT HAVE THIS
16 DOCUMENTATION AVAILABLE TO ME AT THE TIME THAT I PREPARED
17 THAT REPORT THE RESULT REPORT THAT I HAD, SINGLE-PAGE
18 REPORT, AT THE TIME I PREPARED THAT REPORT DID NOT INDICATE
19 THAT THE TEST WAS A LEVEL OF DETECTION

20 Q BUT IN FACT IT WAS?

21 A YES, WITHOUT FLAWS

22 Q OKAY AND THEREFORE THAT IS A BETTER TEST THAN WHAT YOU
23 ORIGINALLY ASSUMED IT WAS?

24 A IT IS A TEST WITH A LOWER DETECTION LIMIT, YES

25 Q SO IT'S A BETTER TEST?

PAUL CARY -- REDIRECT BY MR ARMSTRONG

1 A IT'S A TEST WITH A LOWER DETECTION LIMIT

2 MR ARMSTRONG THANK YOU

3 REEXAMINATION BY THE COURT

4 Q SO WOULD THAT TYPE OF TEST BE DONE TO SEE IF THERE IS
5 ANY TRACES OF COCAINE?

6 A YES, IT WOULD

7 THE COURT ALL RIGHT

8 MR GIBSON I JUST HAVE ONE QUESTION

9 RECROSS BY MR. GIBSON

10 Q MS HURKS TOOK YOU BACK THROUGH THE H S S REPORT AND
11 HAD YOU READ A SENTENCE SAYING THAT RESEARCHERS SHOULD
12 CONDUCT FURTHER TESTING IN REGARDS TO THE SOAP AND WATER
13 ISSUE?

14 A WHO DID THAT? I'M SORRY START

15 Q I'M SORRY, MS WINN

16 A OKAY YES, SHE DID

17 Q OKAY IS IT ALSO -- IS IT POSSIBLE THEN AND -- GIVEN
18 THAT RESEARCHERS ARE SUPPOSEDLY DO EXTRA TESTS, IS IT
19 POSSIBLE THAT AFTER THEY DO THEIR RESEARCH THAT THEY COULD
20 FIND THAT NOT EVEN SOAP AND WATER AND ALCOHOL IS ENOUGH TO
21 REMOVE ALL THE COCAINE OR ALL OF THE SUBSTANCE?

22 A YES, I GUESS THAT'S POSSIBLE

23 MR. GIBSON OKAY THANK YOU

24 RECROSS BY MR BANNISTER

25 Q DO YOU HAVE CLIENTS THAT ASK YOU, "I'M GOING TO START A

1 DRUG PROGRAM AND I WANT YOU TO TELL ME WHAT'S THE BEST USE OF
2 ALL THE DIFFERENT DRUG TESTS THAT ARE OUT THERE IN ORDER TO
3 CATCH THE MOST POSITIVE USERS, THAT IS, ELIMINATE AS MANY
4 NEGATIVE POSITIVE RESULTS AS YOU CAN, CATCH THE MOST POSITIVE
5 USERS " DO YOU HAVE CLIENTS THAT ASK YOU TO HELP THEM SET UP
6 THE START?

7 A YES

8 Q WHAT IS THE ADVICE THAT YOU GIVE THEM?

9 A I GUESS I HAVE TO ADD A DISCLAIMER THAT OUR LABORATORY
10 IS BASICALLY A URINE DRUG TESTING LABORATORY SO IN THE
11 NATURE OF FULL DISCLOSURE WE PRIMARILY TEST URINE FOR DRUGS
12 OF ABUSE I STILL CONSIDER URINE TO BE THE SPECIMEN OF
13 CHOICE FOR DRUG TESTING BOTH FOR EMPLOYMENT-RELATED AND
14 CRIMINAL JUSTICE PRACTICES HOWEVER, I THINK THAT
15 ALTERNATIVE MATRICES, SUCH AS SWEAT OR ORAL FLUIDS AND HAIR,
16 CAN BE AN IMPORTANT COMPLEMENT TO URINE TESTING AND CAN ADD
17 NEW DIMENSIONS TO THE DETECTION PERIOD AND THE TYPES OF DRUGS
18 THAT ARE DETECTED

19 BUT IF SOMEONE CAME TO ME AND SAID, "WE WANT TO SET UP A
20 DRUG TESTING PROGRAM WHAT WOULD YOU ADVISE?" BASED ON THE
21 GOALS OF THAT DETECTION PROGRAM, I WOULD PROBABLY RECOMMEND
22 URINE AND IF THE GOALS OR THE CIRCUMSTANCES WERE SUCH THAT
23 URINE COULD NOT BE COLLECTED, I WOULD THEN MOVE ON TO ONE OF
24 THE OTHER SAMPLES

25 MR BANNISTER THANK YOU

PAUL CARY -- RECROSS BY MR BANNISTER

1 THE COURT ANYTHING ELSE?

2 MS WINN NO, SIR, YOUR HONOR

3 THE COURT THANK YOU, SIR YOU MAY STEP DOWN

4 (WITNESS STEPS DOWN AT 1 36 P M)

5 THE COURT DOES THE STATE HAVE ANY OTHER WITNESSES AT
6 THIS POINT?

7 MS STROM NO, SIR, WE DON'T GIVEN THE TIME
8 CONSTRAINTS AND EVERYTHING, I HAVE NOTHING ELSE TO PUT UP AT
9 THIS TIME, BASED UPON WHAT WE TALKED ABOUT IN CHAMBERS

10 THE COURT ALL RIGHT JUST FOR THE RECORD, IT'S MY
11 UNDERSTANDING AT THIS POINT THE DEFENDANTS WILL CALL THEIR
12 EXPERT, AND THEN THE STATE WILL CERTAINLY HAVE THE RIGHT TO
13 CALL THEIR EXPERT BACK IN A REBUTTAL CAPACITY

14 ALL RIGHT SO LET ME ASK YOU, GENTLEMEN, REALISTICALLY
15 HOW LONG IT'S GOING TO TAKE TO GET YOUR EXPERT UP AND DOWN
16 I WAS TOLD WE WOULD BE STARTING ABOUT 11 30 WE HAVEN'T HELD
17 TOO TRUE TO THAT ESTIMATE

18 MR GIBSON YOUR HONOR, I THINK WE'RE LOOKING AT ABOUT
19 AN HOUR AND A HALF ON DIRECT I CAN'T MAKE---

20 THE COURT AN HOUR AND A HALF PER LAWYER?

21 MR GIBSON NO, SIR

22 (LAUGHTER IN THE COURTROOM)

23 MR GIBSON HOUR AND A HALF TOTAL, YOUR HONOR

24 THE COURT ALL RIGHT MADAME SOLICITOR?

25 MS STROM YES, SIR, I WAS JUST GOING TO POINT OUT ONE

1 THING IN TERMS OF SCHEDULING PURPOSES I KNOW WE'RE TIGHT,
2 AND I WANT TO WORK WITH THE COURT TO DO THAT BUT ONE OF THE
3 CONCERNS I HAVE IS THAT WHEN THEIR EXPERT TESTIFIES, THEN I'M
4 GOING TO BE EXPECTED TO IMMEDIATELY CROSS HIM AND HE IS NOT
5 -- THEY HAVE NOT PROVIDED US WITH A REPORT FROM HIM SO I'M
6 AT A LITTLE BIT OF A DISADVANTAGE UNLIKE THEY WERE WHERE I
7 HAD PROVIDED THEM WITH A COPY OF MY EXPERT'S REPORT THEY
8 COULD GO OVER THAT WITH THEIR EXPERT PRIOR TO COMING HERE
9 TODAY SO JUST FOR SCHEDULING PURPOSES I WOULD ASK AT THE
10 CONCLUSION OF HIS PRESENTATION THAT I BE ALLOWED SUFFICIENT
11 TIME TO MEET WITH MY EXPERT SO THAT I CAN PROPERLY CROSS
12 EXAMINE

13 THE COURT ALL RIGHT IT'S TWENTY-TWO OF 2 00 NOW
14 WE START BACK AT 2 15

15 MS. STROM THANK YOU, YOUR HONOR

16 MR. GIBSON THANK YOU, YOUR HONOR

17 (A LUNCH RECESS WAS TAKEN FROM 1 38 TO 2 15 P M)

18 THE COURT CALL YOUR FIRST WITNESS

19 MR GIBSON YES, YOUR HONOR (OFF RECORD DISCUSSION)

20 YOUR HONOR, I CALL DR DAVID KIDWELL

21 DAVID A KIDWELL, HAVING BEEN

22 DULY SWORN, TESTIFIED AS FOLLOWS

23 DIRECT EXAMINATION BY MR GIBSON.

24 Q DR KIDWELL, WHERE ARE YOU CURRENTLY EMPLOYED?

25 A I AM EMPLOYED AT THE NAVAL RESEARCH LAB IN WASHINGTON, D C

1 Q AND WHAT DO YOU DO THERE?

2 A I'M A RESEARCH SCIENTIST

3 Q AND PRIMARILY -- CAN YOU GIVE ME A BRIEF DESCRIPTION OF
4 WHAT THAT ENTAILS AND WHAT TYPES OF THINGS THAT YOU DO IN
5 CONNECTION WITH THAT POSITION?

6 A WELL, I DEVELOP NEW TECHNOLOGIES, AND I EVALUATE OLDER
7 TECHNOLOGIES FOR ISSUES RELATED TO THE NAVY

8 Q DOES THAT INCLUDE ANY TESTING ON DRUG PROCEDURES AND
9 TESTS---

10 A YES, IT DOES AT ONE TIME THE NAVY WAS THE WORLD'S
11 LARGEST DRUG TESTING ORGANIZATION, PROBABLY EVEN TODAY IT
12 STILL IS

13 Q YES, SIR HOW LONG HAVE YOU BEEN WITH THE NAVAL
14 RESEARCH LABORATORY?

15 A I WAS POSTDOC FROM 1982 TO 1984, AND I STAYED ON AS A
16 PERMANENTLY EMPLOYEE AFTER 1984

17 Q OKAY CAN YOU TELL ME A LITTLE BIT ABOUT YOUR
18 EDUCATION?

19 A I HAVE A BACHELOR OF SCIENCE DEGREE IN CHEMISTRY FROM
20 THE UNIVERSITY OF NORTH CAROLINA AT GREENSBORO, AND I HAVE A
21 Ph D FROM MASSACHUSETTS INSTITUTE OF TECHNOLOGY IN
22 CAMBRIDGE, MASSACHUSETTS, AND FINALLY I HAVE AN N R C
23 POSTDOC ASSOCIATESHIP AT THE NAVAL RESEARCH LAB FOR TWO
24 YEARS

25 Q HAVE YOU -- DO YOU HAVE ANY QUALIFICATIONS AND

DAVID KIDWELL -- DIRECT BY MR GIBSON

1 EXPERTISE IN DRUG TESTING AND TOXICOLOGY AND THOSE TYPE
2 MATTERS?

3 A I BELIEVE I DO I PUBLISHED A NUMBER OF PAPERS HAVING
4 TO DO WITH HAIR TESTING, SWEAT TESTING, SALIVA TESTING I'VE
5 GIVEN A LARGE NUMBER OF PRESENTATIONS TO TECHNICAL AND
6 NONTECHNICAL AUDIENCES ON THOSE SUBJECTS, AND I HAVE
7 PERSONALLY CONDUCTED A LARGE NUMBER OF EXPERIMENTS MYSELF

8 Q YES, SIR EARLIER THERE WAS TESTIMONY REGARDING SOME
9 DEPARTMENT OF HEALTH AND HUMAN SERVICES REGULATIONS

10 A YES, SAMHSA REGULATIONS

11 Q SAMHSA, YES, SIR

12 A SAMHSA

13 Q DID YOU HAVE ANYTHING TO DO WITH THOSE, WITH THE
14 CREATION OF THOSE?

15 A YES, I DID PARTIALLY, AT LEAST SAMHSA, FOR THE HAIR
16 TESTING PART OF THESE REGULATIONS, CREATED SOMETHING CALLED A
17 HAIR TESTING WORKING GROUP COMMITTEE I WAS A MEMBER OF THAT
18 COMMITTEE AND DEVELOPED -- AND WAS DEVELOPING REGULATIONS
19 HAVING TO DO WITH HAIR TESTING FOR THAT COMMITTEE

20 Q OKAY MR CARY, THE STATE'S EXPERT, HAS DESCRIBED YOU
21 AS ONE OF THE LEADING MINDS IN THE FIELD OF DRUG TESTING, AND
22 PHARMACOLOGY AND TOXICOLOGY WOULD YOU AGREE WITH THAT
23 STATEMENT, PUTTING ALL HUMILITY ASIDE?

24 A WELL, I THINK I'VE VERY KNOWLEDGEABLE IN THOSE AREAS,
25 YES

DAVID KIDWELL -- DIRECT BY MR GIBSON

1 Q OKAY I'M GOING TO GIVE YOU A DOCUMENT

2 MR GIBSON IF YOU WOULD, WOULD YOU MARK THIS AS
3 DEFENDANT PERKINS 1, PLEASE?

4 (CURRICULUM VITAE OF DAVID KIDWELL MARKED AS DEFENDANT
5 PERKINS EXHIBIT NUMBER 1 AND FOR PURPOSES OF IDENTIFICATION
6 ONLY)

7 MS STROM JUDGE, I DON'T OBJECT TO HIS
8 QUALIFICATIONS HE CAN MOVE ON AS FAR AS THE STATE IS
9 CONCERNED

10 THE COURT SO STIPULATED THANK YOU, MA'AM

11 MR GIBSON EXCELLENT I WOULD JUST LIKE TO SUBMIT
12 HIS CURRICULUM VITAE INTO THE RECORD, AND WE CAN GO FORWARD
13 FROM THERE

14 THE COURT ALL RIGHT

15 Q WOULD YOU TAKE A LOOK AT THAT DOCUMENT, PLEASE, SIR?

16 A YES IT APPEARS TO BE A COPY OF MY C V

17 Q OKAY AND DOES THAT APPEAR TO BE AN ACCURATE RECORD OF
18 YOUR QUALIFICATIONS AND PUBLICATION HISTORY ON VARIOUS
19 SUBJECTS, INCLUDING DRUG TESTING?

20 A YES, SIR, IT DOES

21 MR GIBSON OKAY YOUR HONOR, I'D ASK THAT THAT BE
22 ADMITTED AS DEFENDANT PERKINS EXHIBIT NUMBER 1

23 MS. STROM NO OBJECTION

24 THE COURT ALL RIGHT

25 (DEFENDANT PERKINS EXHIBIT NUMBER 1 MOVED INTO EVIDENCE)

1 Q DR KIDWELL, BEFORE WE BEGIN, YOU HAVE SOME DISCLAIMERS
2 THAT YOU WOULD LIKE TO MAKE, IS THAT CORRECT?

3 A YES, I HAVE TWO I WANT TO MAKE CLEAR THAT THIS
4 TESTIMONY IS BEING GIVEN AS A PRIVATE CITIZEN AND EVEN
5 THOUGH I AM EMPLOYED BY THE DEPARTMENT OF THE NAVY, THE
6 OPINIONS ARE MY OWN AND THEY DO NOT NECESSARILY REPRESENT THE
7 DEPARTMENT OF DEFENSE NOR U S GOVERNMENT POLICY

8 SECONDLY, I WANT TO MAKE IT CLEAR TO THE COURT THAT THE
9 U S NAVY HAS BEEN ASSIGNED A PATENT ON IMPROVEMENTS ON THE
10 SWEAT PATCH WITH ME AS AN INVENTOR ALTHOUGH NO LICENSE IS
11 CURRENTLY BEING SOUGHT ON THIS PATENT, IF THIS PATENT WERE TO
12 BE LICENSED AND THE PRODUCT MADE AND SOLD TO A NON-U S
13 GOVERNMENT ENTITY, ROYALTIES MAY OR MAY NOT BE DUE AND IF
14 ROYALTIES ARE COLLECTED ON THAT, I MAY -- I WOULD SHARE IN
15 SOME PERCENTAGE OF THOSE ROYALTIES

16 Q OKAY NOW WHAT WE HAVE, I THINK YOU'VE PUT TOGETHER A
17 COMPUTER PRESENTATION ON THE ISSUE OF DRUG TESTING AS WELL AS
18 IT RELATES TO SOME SPECIFIC ISSUES IN THIS CASE, IS THAT NOT
19 CORRECT?

20 A YES, THAT IS

21 Q OKAY I THINK THE FIRST SLIDE -- TAKE A LOOK AT YOUR
22 FIRST SLIDE WOULD YOU PLEASE EXPLAIN TO THE COURT AND
23 EDUCATE US ALL AS TO HOW YOU GOT INVOLVED IN DRUG TESTING?

24 A WELL, THAT'S A RELATIVELY LONG STORY I THINK, TO BE
25 BRIEF, MY RESEARCH GOALS HAVE BEEN AND CURRENTLY ARE TO

1 IMPROVE AND MONITOR DRUG USE, TO MAKE IT MORE CONVENIENT,
2 LESS INVASIVE, GIVE YOU A LONGER WINDOW OF DETECTION, TO
3 LOWER COST AND YET MAINTAIN HIGH RELIABILITY OF THE TESTING
4 TECHNOLOGY WE ARE INTERESTED IN DEVELOPING TESTING
5 TECHNOLOGY FOR A DIVERSE MATRICES, SUCH AS HAIR, SWEAT AND
6 SALIVA AND BECAUSE THE DEPARTMENT OF DEFENSE TAKES ADVERSE
7 ACTION ON AN INDIVIDUAL BASED ON A SINGLE TEST, WE WANT TO
8 MAKE SURE THAT THINGS LIKE ENVIRONMENTAL CONTAMINATION ARE
9 ELIMINATED OR NOT PRESENT AT ALL, BECAUSE WE DO NOT WANT TO
10 PUNISH SOMEONE FOR MERELY BEING AROUND DRUGS WE WANT TO
11 PUNISH THEM BASED ON THEIR ACTUAL USE OF THE SUBSTANCES

12 Q YES, SIR AND -- NOW, WITH THAT SAID, TRADITIONALLY,
13 WHAT HAS BEEN THE STANDARD OR WHAT YOU WOULD CONSIDER THE
14 GOLD STANDARD FOR DETERMINING DRUG USE?

15 A WELL, THE TRADITIONAL STANDARD HAS ALWAYS BEEN URINE,
16 AND THERE HAVE BEEN PROBABLY A HUNDRED MILLION URINE SAMPLES
17 RUN OVER THE LAST 20 OR 30 YEARS FOR DRUG TESTING URINE
18 LEVELS IS THE GOLD STANDARD FOR MODERN DRUG USE

19 AN EXAMPLE OF THAT IS SHOWN HERE WHERE WE'RE TALKING
20 ABOUT THE WINDOW OF DETECTION, AND THIS SHOWS A STUDY THAT I
21 CONDUCTED LOOKING AT INDIVIDUALS IN A DRUG REHAB FACILITY
22 WHERE WE COULD MONITOR THEIR URINE, ESSENTIALLY, ON A DAILY
23 BASIS THIS SHOWS A SINGLE USE BY THAT INDIVIDUAL ON,
24 PRESUMABLY, A SATURDAY EVENING, AND SHOWING THAT YOU CAN
25 DETECT COCAINE USE FOR TWO TO FOUR DAYS AFTER A SINGLE USE

DAVID KIDWELL -- DIRECT BY MR GIBSON

1 I WANT TO CONTRAST THAT WITH THE WINDOW OF DETECTION FOR
2 A CHRONIC USER IT REALLY DOESN'T MATTER IN URINE TESTING IF
3 THERE IS A CHRONIC USER, BECAUSE YOU CAN DETECT THAT
4 INDIVIDUAL THROUGHOUT THE PERIOD THAT YOU WANTED TO TEST
5 BUT THAT RELATIVELY SHORT WINDOW OF DETECTION FOR URINE, AT
6 LEAST IN SOME INSTANCES, WOULD MEAN THAT URINE HAS TO BE
7 TESTED MAYBE TWICE A WEEK TO ASSURE THAT SOMEBODY IS DRUG
8 FREE

9 Q YES, SIR

10 A IF YOU'RE TESTING LESS FREQUENTLY THAN THAT, THEN THEY
11 COULD PRESUMABLY SLIP INTO THE SYSTEM AND WE WANTED TO LOOK
12 AT ALTERNATIVE MATRICES THAT GIVE A WIDER WINDOW OF
13 DETECTION

14 Q WELL, LET ME ASK YOU THIS BEFORE WE MOVE ON SAY
15 SOMEONE WAS BEING TESTED, SAY, TWICE A WEEK ON A RANDOM
16 BASIS DO YOU THINK THAT WOULD SUFFICIENTLY DETERMINE
17 WHETHER OR NOT THAT PERSON WAS USING DRUGS?

18 A I BELIEVE IT WOULD, AS LONG AS THEY ARE DOING AN
19 APPROPRIATE JOB WITH RANDOM TESTING

20 Q OKAY NOW, YOU SPOKE ABOUT WINDOW OF DETECTION WOULD
21 YOU EXPLAIN TO US HOW THAT DIFFERS WITH DIFFERENT MATRICES OR
22 SOURCES OF TESTING?

23 A YES WELL, DIFFERENT MATRICES HAVE A DIFFERENT WINDOW
24 OF DETECTIONS FOR EXAMPLE, HAIR IS QUITE LONG IT'S
25 ESSENTIALLY -- ONCE IT GETS INTO THE HAIR, HOWEVER IT GETS

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1 THERE, IT STAYS IN THERE AS LONG AS THE HAIR IS ON ONE'S
2 HEAD, AND THAT COULD BE FROM WEEKS TO MONTHS TO YEARS WHERE
3 SWEAT IS SOMEWHERE INTERMEDIATE IN BETWEEN THAT, IT STAYS ON,
4 DEPENDING ON IF YOU'RE WEARING A PATCH, AS LONG AS THE PATCH
5 IS ON, AND GENERALLY THAT'S SEVEN DAYS FOR URINE, LIKE I
6 SAID, IT'S A TWO TO FOUR-DAY WINDOW FOR AT LEAST THE DRUGS OF
7 COCAINE MARIJUANA IS DIFFERENT IT'S MUCH LONGER FOR
8 MARIJUANA AND SALIVA, ESSENTIALLY YOU HAVE TO BE UNDER THE
9 INFLUENCE TO HAVE IT PRESENT IN SALIVA SO SALIVA IS VERY
10 GOOD FOR DRIVING UNDER THE INFLUENCE EXAMPLES, ROADSIDE DRUG
11 TESTING

12 Q YES, SIR NOW, YOU'VE ALSO -- YOU TALKED ABOUT IN
13 CONNECTION WITH YOUR POSITION THAT YOU HAD DONE SOME
14 SIGNIFICANT AMOUNT OF RESEARCH, INDEPENDENT LEGAL RESEARCH,
15 AND DEVELOPMENTAL POLICIES IN REGARDS TO HAIR TESTING

16 A WELL, WE DON'T DEVELOP POLICY

17 Q I'M SORRY

18 A WE SUPPLY SCIENCE, AND THE POLICY MAKERS DEVELOP THE
19 POLICY

20 Q YES, SIR

21 A I PROVIDED A LARGE BODY OF SCIENTIFIC DATA ON HAIR
22 TESTING THAT'S CORRECT

23 Q OKAY CAN YOU TELL ME, WHAT ARE SOME OF THE ISSUES FOR
24 HAIR TESTING?

25 A YES SOME OF THE ISSUES FOR HAIR TESTING, WHEN I FIRST

1 BROUGHT IT UP IN 1988, WERE PASSIVE EXPOSURE, BIAS IN HAIR
2 TESTING AND DETECTION OF LOW USE

3 Q OKAY WHEN YOU SAY PASSIVE EXPOSURE, WHAT DO YOU MEAN
4 BY THAT?

5 A THAT IS SOMEONE BEING AROUND DRUGS AND GETTING THEM ON
6 THEIR HAIR, GETTING THE DRUGS INCORPORATED INTO THEIR HAIR
7 AND MAKING THEM LOOK LIKE A DRUG USER WHEN THEY WERE JUST IN
8 THE PRESENCE OF THE DRUGS

9 Q AND WHEN YOU SAY "LOOK LIKE A DRUG USER," WHAT DO YOU
10 MEAN?

11 A INDISTINGUISHABLE WHEN YOU GO INTO THE LABORATORY AND
12 RUN THE ANALYSIS FOR ALL INTENTS AND PURPOSES, THEY LOOK
13 LIKE A DRUG USER

14 Q OKAY AND WHAT EXACTLY ARE -- OR IN GENERAL, WHAT IS
15 BIAS? WHAT DO YOU MEAN BY BIAS?

16 A BIAS, AS I HOPE TO BRING OUT A LITTLE LATER, IS WHERE
17 NOT ALL HAIR BEHAVE A SAME CERTAIN HAIR TYPES BEHAVE
18 DIFFERENTLY TO BOTH ENVIRONMENTAL EXPOSURE AS WELL AS UPTAKE
19 DURING THE ACTUAL USE OF THE DRUGS

20 Q OKAY ABOUT PASSIVE EXPOSURE, PASSIVE -- YES, SIR,
21 PASSIVE EXPOSURE I BELIEVE THIS NEXT SLIDE -- OR CAN YOU
22 TELL ME HOW THIS NEXT SLIDE SHOWS HOW THAT CAN HAPPEN?

23 A THIS IS A PHOTOMICROGRAPH OF HAIR, AND IT JUST POINTS
24 OUT THAT HAIR IS ACTUALLY A COMPLEX ORGAN IT'S NOT AS DEAD
25 AS PEOPLE WOULD THINK, EVEN THOUGH THERE IS NO LIVING BLOOD

1 SUPPLY THIS IS THE CUTICLE, THE OUTER LAYER OF THE HAIR, OF
2 A NORMAL HUMAN HAIR WITH AN INTACT CUTICLE WHAT YOU SEE ARE
3 THESE LITTLE PLATELETS THAT ARE PROTECTING THE INNER PART OF
4 THE HAIR, THE CORTEX, FROM EXPOSURE TO THE ENVIRONMENT
5 HOWEVER, DURING THE PRESENCE -- IF THE HAIR IS PUT IN THE
6 PRESENCE OF WATER, THESE PLATELETS ACTUALLY OPEN UP AND ALLOW
7 THINGS TO GET INTO THE INTERIOR OF THE HAIR BUT IN THE DRY
8 STATE, IT'S PROTECTED FROM THE ENVIRONMENT

9 Q OKAY WHEN YOU SAY "WATER," WOULD THAT ALSO INCLUDE
10 SWEAT?

11 A ABSOLUTELY

12 Q OKAY CAN YOU TELL ME ABOUT THIS SLIDE?

13 A YES IF YOU RIGHT CLICK ON THE ANIMATION AND SAY PLAY

14 Q OKAY

15 A THIS GIVES WHAT I BELIEVE IS THE ACCEPTED CURRENT MODEL
16 FOR DRUGS OF ABUSE GETTING IN THE HAIR IF DRUGS GET IN THE
17 BLOODSTREAM, THEY GET INCORPORATED IN THE HAIR, AND THE HAIR
18 APPEARS ABOVE THE SCALP AND THEY GET INCORPORATED ALSO, THE
19 DRUGS APPEAR IN THE SWEAT, THE SWEAT BATHES THE HAIR, AND
20 THEY GET INCORPORATED THAT WAY AS WELL SO THERE IS TWO
21 MECHANISMS BY WHICH DRUGS GET INTO HAIR, FROM THE INTERNAL
22 PART OF IT AND FROM WHAT I WOULD CONSIDER THE EXTERNAL PART
23 OF IT, FROM SWEAT OF USING DRUGS

24 NOW, DRUGS CAN GET INTO YOUR SWEAT IN TWO WAYS THEY
25 CAN GET IN FROM ACTUAL USE, YOU SWEATING IT OUT OF YOUR BODY,

1 AND THEY CAN GET IN IT BECAUSE YOU HAD DRUGS ON THE SURFACE
2 OF YOUR SKIN OR ON YOUR HAIR, AND YOU PUT NEGATIVE SWEAT ONTO
3 THAT AND BECAUSE OF THAT EXTERNAL CONTAMINATION ISSUE IN
4 THIS MECHANISM, IT'S VERY DIFFICULT TO DISTINGUISH INTERNAL
5 INCORPORATION, WHICH IS WHAT WE CARE ABOUT, FROM EXTERNAL
6 INCORPORATION

7 IF YOU CLICK AGAIN, IT WILL

8 Q OKAY RIGHT CLICK AGAIN?

9 A YEAH, AND JUST LET IT STOP -- OR PLAY AND THEN PAGE
10 DOWN

11 Q OKAY NOW I DON'T WANT TO GET AHEAD OF MYSELF, BUT WHEN
12 YOU SAY THAT THROUGH THIS EXPOSURE YOU CAN BASICALLY BECOME
13 INDISTINGUISHABLE FROM AN ACTUAL DRUG USER -- MR CARY TALKED
14 A LOT ABOUT PRESENCE OF "BE" OR BENZOYLECGONINE AND THE
15 PRESENCE OF THAT THROUGH YOUR INDEPENDENT TESTING DID YOU
16 -- OR HAVE YOU NOTICED OR ARE YOU AWARE OF ANY STUDIES WHERE
17 BENZOYLECGONINE WAS PRESENT IN SOMEONE'S HAIR ON A HAIR
18 SAMPLE WITHOUT THAT PERSON ACTUALLY USING THE DRUGS?

19 A OH, ABSOLUTELY THERE WAS A VERY NICE STUDY DONE BY A
20 GROUP CALLED -- THE AUTHOR WAS ROMANO IN ITALY WHAT HE DID
21 IS HE TOOK COCAINE, PURE COCAINE, CHEMICALLY PURE COCAINE,
22 PUT IT ON HIS HANDS AND THEN RUBBED HIS HEAD IN FACT, FOUR
23 INDIVIDUALS DID AND WHAT THEY SAW IS THAT THE DRUGS WERE
24 INCORPORATED INTO THE HAIR AND THEY REMAINED THERE UP TO 70
25 DAYS LATER WHEN THEY STOPPED THE STUDY I THINK MORE

1 IMPORTANTLY WAS THEY DEGRADED IN THE HAIR TO BENZOYLECGONINE
2 AND AT THE END OF THE STUDY THEY HAD ABOUT 30 PERCENT
3 BENZOYLECGONINE, IF I RECALL, TO COCAINE IN THAT HAIR AND
4 BETWEEN 5 AND 30 PERCENT IS WHAT WE CONSIDER TO BE THE RIGHT
5 RATIO FOR BENZOYLECGONINE TO BE PRESENT FROM DRUG USERS IN
6 FACT, THERE IS SOME SCIENTIFIC LITERATURE OUT THERE THAT
7 WOULD INDICATE THAT BENZOYLECGONINE ISN'T EVEN PRESENT IN
8 HAIR BECAUSE IT COMES FROM THE BLOODSTREAM BUT COMES ONLY
9 FROM DEGRADATION AFTER THE COCAINE GETS INTO THE HAIR

10 Q OKAY

11 A SO, IN SUMMARY, BENZOYLECGONINE MAKES A VERY POOR MARKER
12 FOR DETERMINING USE VERSUS CONTAMINATION

13 Q OKAY SO JUST TO CLARIFY, THE MERE PRESENCE OF
14 BENZOYLECGONINE DOES NOT IN ANY WAY CONCLUSIVELY ESTABLISH
15 THAT SOMEONE IS A USER?

16 A THAT'S CORRECT

17 Q NOW, CAN YOU TELL ME ABOUT THIS SLIDE?

18 A YES THE IMPLICATIONS OF THE SWEAT MODEL, AGAIN, ARE
19 THAT HAIR IS EASILY CONTAMINATED AND CONTAMINATION IS
20 DIFFICULT TO DETECT AND REMOVE, THAT THE CONCEPT OF
21 INACCESSIBLE REGIONS REALLY DO NOT EXIST, THAT SOMETHING
22 CALLED WASH-OUT KINETICS, WHICH I DON'T THINK IS APPLICABLE
23 IN THIS CASE, DO NOT INDICATE PASSIVE EXPOSURE, AND THEREFORE
24 PASSIVE EXPOSURE CAN BE CONFUSED WITH USE METABOLITES ARE
25 PRESENT, SUCH AS BENZOYLECGONINE, BUT THEY CAN COME FROM MANY

1 SOURCES, INCLUDING THE RAW COCAINE THAT ONE WOULD GET EXPOSED
2 TO, AND YOU CANNOT REALLY CONCLUSIVELY INTERPRET SECTIONAL
3 ANALYSIS SECTIONAL ANALYSIS IS WHERE YOU TRY TO DETERMINE
4 WHAT TIME OR WHAT MONTH AN INDIVIDUAL HAD ACTUALLY INGESTED
5 DRUGS BY CUTTING THE HAIR UP INTO SMALL PIECES BUT BECAUSE
6 THE DRUGS CAN COME FROM SWEAT, THE SWEAT CAN BATHE THE ENTIRE
7 PART OF THE HAIR, AND YOU CAN'T SAY THAT THEY ONLY USED DRUGS
8 ON SUCH AND SUCH A DATE

9 Q OKAY WHAT EXACTLY DO YOU MEAN BY "WASH-OUT KINETICS"?

10 A THERE IS AT LEAST ONE COMMERCIAL COMPANY OUT THERE THAT
11 USES THE CONCEPT OF WASH-OUT KINETICS, WHICH MAYBE IS BETTER
12 ILLUSTRATED ON THE NEXT COUPLE OF SLIDES, TO SAY THAT HAIR IS
13 NEGATIVE OR IS CONTAMINATED OR NOT

14 Q YES, SIR OKAY AND DOES THIS SLIDE HELP EXPLAIN?

15 A WELL, THIS SLIDE EXPLAINS WHY WASH-OUT KINETICS ARE
16 PROBLEMATICAL THE SOURCE OF DRUGS, LIKE I SAID, CAN BE
17 SEVERAL POSSIBILITIES IT CAN BE FROM THE BLOOD IT CAN BE
18 FROM EXTERNAL EXPOSURE, GETTING DRUGS ON THE HAIR, OR IT CAN
19 BE FROM THE SWEAT, EITHER THE SWEAT GOING ONTO HAIR THAT HAD
20 DRUGS PRESENT OR SWEAT FROM A DRUG USER THEN THE PROBLEM
21 COMES IS PASSAGE OF TIME WHAT HAPPENS HERE IS PEOPLE WASH
22 THEIR HAIR IF YOU JUST TAKE HAIR THAT'S DRY, DIP IT IN
23 COCAINE, THE CUTICLE HAS NOT OPENED UP YOU CAN EASILY WASH
24 THAT COCAINE OFF IF YOU TAKE HAIR THAT'S BEEN EXPOSED TO
25 DRUGS AND IMMEDIATELY TRY TO ANALYZE IT, THE WASH-OUT

1 KINETICS ARE A LITTLE BIT FUZZY THEN YOU TAKE THAT HAIR,
2 PUT IT ON SOMEONE'S HEAD, HAVE THEM SHAMPOO THEIR HAIR A FEW
3 TIMES, WHAT HAPPENS IS THEN THE WASH-OUT KINETICS START TO
4 LOOK LIKE A DRUG USER IN FACT, YOU CAN GO INTO A
5 LABORATORY, DO THESE PROCEDURES OF EXPOSED HAIR TO DRUGS OF
6 SOLUTIONS, AND THEY WILL SEND IT TO COMMERCIAL LABORATORIES,
7 AND THE LABS WILL REPORT THEM OUT AS TRUE POSITIVE SAMPLES
8 Q HAVE YOU DONE ANY STUDIES OR DO YOU HAVE ANY INFORMATION
9 REGARDING HOW DIFFICULT OR EASY IT IS TO HAVE HAIR PENETRATED
10 BY DRUGS?
11 A YES I'VE EXPOSED A LARGE NUMBER OF NEGATIVE HAIR
12 SAMPLES THAT ARE HAIR SAMPLES FROM A NON-DRUG USER TO
13 SOLUTIONS OF DRUGS WE TYPICALLY USE BETWEEN FIVE AND TEN
14 MICROGRAMS PER MIL TO PUT THAT INTO PERSPECTIVE, TEN
15 MICROGRAMS PER MIL IS ONE TEN-THOUSANDTH OF A DOSE OF
16 COCAINE SO WE COULD, IN THEORY, CONTAMINATE TEN THOUSAND
17 PEOPLE WITH THAT SINGLE DOSE OF COCAINE WE TOOK, FOR
18 EXAMPLE, IN THIS CASE, TWO HAIR SAMPLES, A CAUCASIAN BROWN
19 HAIR AND A CAUCASIAN BLOND HAIR, EXPOSED IT TO DRUGS AND THEN
20 TRIED TO WASH IT OUT AND EVEN AFTER FIVE HOURS IN A
21 LABORATORY ENVIRONMENT OF WASHING THE HAIR WITH SOLUTIONS
22 THAT OTHER COMMERCIAL COMPANIES USE, WE STILL HAD DRUGS
23 PRESENT IN THE HAIR AND PEOPLE WOULD LOOK AT THIS WASH OUT
24 CURVE, NOTICE HOW IT DECREASES WITH TIME, AND SAY, "GOSH, IT
25 ALMOST GOES TO ZERO AND THEN WE HAVE THIS BIG SPIKE OF

1 DRUGS," AND THEN THEY WOULD SAY THAT MUST BE FROM INTERNAL
2 USE OF THE DRUGS, WHERE IN THIS CASE IT WAS CLEARLY NOT IT
3 WAS FROM EXTERNAL EXPOSURE

4 Q OKAY I DON'T WANT TO GET TO FAR AHEAD OF MYSELF CAN
5 YOU EXPLAIN TO ME THE DISTINCTION OR IMPORTANCE OF USING A
6 CAUCASIAN BROWN HAIR SAMPLE AND A CAUCASIAN BLOND?

7 A WELL, THIS JUST ILLUSTRATES -- AND IT'S BETTER
8 ILLUSTRATED LATER ON -- THAT DIFFERENT HAIR TYPES EVEN UNDER
9 IDENTICAL CONDITIONS WITH ABSORB THE DRUGS FROM THE
10 ENVIRONMENT IN DIFFERENT WAYS AND IT HAS TO DO WITH BOTH
11 GENETICS AND THE THICKNESS OF THE HAIR AND HOW THE CUTICLE IS
12 TREATED AND HOW MUCH MELANIN IS IN THE HAIR, ET CETERA, AND
13 FACTORS WE PROBABLY DON'T EVEN UNDERSTAND SO YOU CAN GO
14 INTO A LABORATORY AND SEE WIDE VARIATIONS EVEN IF EVERYTHING
15 WAS IDENTICAL THAT YOU COULD MAKE IT IN A LABORATORY
16 ENVIRONMENT TO SHOW THE DIFFERENT CONTAMINATIONS

17 Q NOW, I WANT TO BACKTRACK A LITTLE BIT TO SOMETHING ELSE
18 YOU SAID YOU TALKED ABOUT THE SAMPLE SIZE, AND I THINK WHEN
19 WE HAD TALKED BEFORE YOU HAD GIVEN AN EXAMPLE OF A POOL, AN
20 OLYMPIC-SIZED POOL, TO GIVE US AN IDEA OF WHAT THESE SAMPLES
21 MEAN CAN YOU TELL THE COURT?

22 A YEAH IT'S HELPFUL TO UNDERSTAND WHAT NANOGRAMS PER
23 MILLILITER REALLY MEANS IF YOU TAKE AN OLYMPIC SWIMMING
24 POOL, WHICH IS ABOUT A MILLION LITERS, AND YOU PUT IN A
25 QUARTER OF A TEASPOON OF DRUGS, THAT'S A ONE NANOGRAM PER

1 MILLILITER

2 Q OKAY SO THAT'S LIKE THE SAME RATIO?

3 A YES, SAME RATIO

4 Q OKAY ALL RIGHT NOW, I THINK WE'RE STILL TALKING
5 ABOUT HOW THE HAIR IS -- OR THE SUSCEPTIBILITY OF HAIR TO
6 PENETRATION, IS THAT CORRECT?

7 A THAT'S CORRECT

8 Q DOES THIS SLIDE HELP SHOW THAT IN ANY WAY?

9 A YES, IT DOES THIS IS AN EXAMPLE OF -- A VISUAL EXAMPLE
10 OF INSTEAD OF USING DRUGS WE USED A FLUORESCENT DYE,
11 RHODAMINE 6G, AND WHAT THIS SHOWS IS THAT THE DYE PENETRATES
12 THE HAIR RELATIVELY RAPIDLY SO AFTER TWO HOURS, IT'S
13 ESSENTIALLY COMPLETELY THROUGHOUT THE HAIR SHAFT AND IT
14 LIGHTS UP LIKE A LIGHT BULB AND THAT INDICATES TO ME AT
15 LEAST THERE IS NO MACROSCOPIC, THAT YOU CAN VISUALLY SEE,
16 REGIONS OF THAT HAIR SHAFT THAT ARE INACCESSIBLE FROM THE
17 EXTERNAL ENVIRONMENT THE LONGER YOU EXPOSE IT, THE MORE
18 GOES IN, BASICALLY WE HAVE OTHER EVIDENCE, CHEMICAL
19 EVIDENCE, WHICH I DON'T THINK IS APPROPRIATE TO DISCUSS AT
20 THIS TIME, THAT SHOWS THAT THERE ARE REALLY CHEMICALLY NO
21 INDISTINGUISHABLE, EVEN ON THE ATOMIC LEVEL, REGIONS OF THE
22 HAIR FROM EXTERNAL ENVIRONMENT

23 Q OKAY NOW, WHEN MR CARY TALKED A LOT ABOUT -- IT WAS
24 DISCUSSED WITH HIM ABOUT THE POSSIBILITY FROM HIS PERSPECTIVE
25 OR WHAT HE THOUGHT ABOUT THE POSSIBILITY OF CONTAMINATION

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1 ACTUALLY OCCURRING IN REAL LIFE AND I THINK THAT IF I
2 REMEMBER CORRECTLY IT WAS HIS OPINION THAT IT JUST -- THAT
3 THAT WAS JUST NOT A REALISTIC SITUATION DO YOU HAVE AN
4 OPINION ON THAT?

5 A WELL, I BELIEVE IT DOES OCCUR AND WHAT WE DID IS,
6 INSTEAD OF STUDYING INDIVIDUALS THAT WE COULD NOT ASSURE
7 OURSELVES WERE DRUG FREE, WE LOOKED AT THE STUDIES OF
8 CHILDREN SO WHAT WE -- WHAT I DID IS I SAID, LET'S LOOK AT
9 CHILDREN LIVING IN A DRUG-USING ENVIRONMENT AND SO THESE
10 WERE CHILDREN WHERE THE MOTHERS WERE DRUG USERS THEY WERE
11 IN DRUG REHAB WHERE THEY HAD DEMONSTRATED DOCUMENTED RECENT
12 USE OF COCAINE, AND THEN WE LOOKED AT THE CHILDREN AND THE
13 ADULTS LIVING IN THIS ENVIRONMENT AND WE DID ACTUALLY TWO
14 STUDIES WE DID A PILOT STUDY WHERE WE USED 20 COCAINE REHAB
15 ADULTS AND 34 OF THEIR CHILDREN WE COLLECTED HAIR, SALIVA
16 AND SKIN SWABS, WHICH IS VERY SIMILAR TO SWEAT PATCH DATA
17 THEN WE DID A FOLLOW-UP STUDY WE WERE REALLY SHOCKED BY THE
18 RESULTS OF THE FIRST STUDY, AND WE DID A FOLLOW-UP STUDY
19 WHERE WE USED A NEW SET OF SUBJECTS, IN THIS CASE, 16 COCAINE
20 REHAB ADULTS AND 36 CHILDREN, AND WE ALSO COLLECTED HAIR,
21 SALIVA AND SKIN SWABS PLUS, IN THAT CASE, URINE TO AT LEAST
22 PARTIALLY ASSURE THAT THESE INDIVIDUALS WERE NOT INGESTING
23 DRUGS AND BOTH RESULTS WERE REMARKABLY SIMILAR

24 Q DOES THIS SLIDE SUMMARIZE WHAT THOSE RESULTS WERE?

25 A YES I BELIEVE THIS IS A -- THE TWO STUDIES COMBINED

1 SHOWING YOU THAT THE CHILDREN POSITIVE, WHERE THEY HAD
2 DETECTABLE LEVELS OF DRUGS IN THEIR HAIR, MIMICKED THE ADULTS
3 POSITIVE HAD DETECTABLE LEVELS OF DRUGS IN THEIR HAIR AND I
4 MUST REITERATE, THESE WERE CHILDREN BETWEEN ONE AND, I
5 BELIEVE, THIRTEEN YEARS OLD SO THEY WERE NOT PRESUMABLY
6 TAKING DRUGS WILLINGLY AND PLUS WE HAD, AT LEAST, NEGATIVE
7 URINE SAMPLES THAT WOULD INDICATE THAT THEY WEREN'T TAKING
8 DRUGS AS WELL

9 Q YES, SIR NOW, WHEN YOU SAY THAT THEY CAME UP POSITIVE,
10 WHAT DO YOU MEAN THEY CAME UP POSITIVE? OR HOW DID YOU
11 DETERMINE THEY CAME UP POSITIVE?

12 A WELL, AFTER WE -- DEPENDING ON WHICH STUDY, WE
13 DECONTAMINATED THE HAIR IN DIFFERENT WAYS BUT AFTER WE
14 DECONTAMINATED THE HAIR, WE ANALYZED THE HAIR BY GCMS, GAS
15 CHROMATOGRAPHY MASS SPECTROMETRY, THE SAME TYPE OF SCIENCE
16 THAT'S INVOLVED IN THESE OTHER TESTING PROCEDURES AND WHAT
17 WE FOUND WERE DRUGS IN THEIR HAIR, COCAINE AND, IN MANY
18 CASES, BENZOYLECGONINE IN THEIR HAIR

19 Q OKAY

20 A AND IT---

21 Q GO AHEAD I'M SORRY

22 A IN FACT, THE LEVELS OF THE ADULTS, IF YOU TAKE THEM AS
23 AN AGGREGATE, TEND TO MIMIC THE LEVELS OF THE CHILDREN,
24 SAYING THAT ONE COULD NOT DESIGN A CUTOFF LEVEL THAT WOULD
25 SEPARATE THOSE TWO GROUPS OF INDIVIDUALS -- THE ADULTS WHERE

1 WE KNEW HAD USED DRUGS AND THE CHILDREN WHICH WERE PRESUMABLY
2 NONUSERS OF THE DRUGS

3 Q OKAY THAT'S SHOWN BY THIS SLIDE, IS THAT CORRECT?

4 A RIGHT IT'S VERY DIFFICULT TO DRAW A LINE ON THAT SLIDE
5 SAYING YOU CAN SEPARATE THE BLUE BARS FROM THE YELLOW BARS

6 Q SO I'M LOOKING AT SOME OF THESE THINGS, AND IT LOOKS
7 LIKE SOME OF THE CHILDREN HAD HIGHER CONCENTRATIONS OF DRUGS
8 IN THEIR HAIR SAMPLES THAN SOME OF THE ADULTS?

9 A RIGHT THAT'S CORRECT IN FACT, THERE IS ONE CHILD
10 THAT ISN'T IN THIS STUDY -- IN THIS SUMMARY WELL, THAT
11 INDIVIDUAL IS IN THIS SUMMARY, BUT IT'S NOT SEPARATED OUT
12 THAT CHILD ACTUALLY HAD A THOUSAND NANOGRAMS PER MILLIGRAM OR
13 -- I'M SORRY PER TEN MILLIGRAMS -- OR A HUNDRED NANOGRAMS PER
14 MILLIGRAM IN HIS OR HER HAIR I DON'T REMEMBER THE SEX OF
15 THE CHILD THAT WAS A ONE-YEAR-OLD CHILD AND THE
16 HYPOTHESIS THAT I HAVE ABOUT THAT IS THESE MOTHERS WERE
17 BOTTLE FEEDING THEIR CHILDREN AND SO IF THEY HAD COCAINE ON
18 THEIR HANDS, YOU TYPICALLY HOLD THE BABY'S HEAD IN THEIR
19 HANDS AS THEY'RE GIVING BOTTLE FEEDING AND THEY JUST TRANSFER
20 THE DRUG TO THEIR HAIR

21 Q YES, SIR AND CAN YOU TELL ME WHAT THIS SLIDE SHOWS?

22 A THIS SLIDE SHOWS THAT THE COCAINE CONTAMINATION REALLY
23 DOESN'T REFLECT NECESSARILY ADULTS BUT CHILDREN YOU CAN
24 HAVE CASES WHERE THE ADULT IS MUCH HIGHER THAN THE CHILD, AS
25 WHAT YOU WOULD EXPECT IN THIS TYPE OF STUDY IF THERE WAS NO

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1 CONTAMINATION, OR YOU CAN HAVE CASES WHERE THE ADULT IS
2 RELATIVELY LOW AND THE THREE CHILDREN ARE HIGH, OR YOU CAN
3 HAVE CASES WHERE THE ADULT IS IN THE MIDDLE AND THE THREE OR
4 FOUR CHILDREN ARE HIGHER AND LOWER THAN THE ADULT SO WE
5 OBSERVED ESSENTIALLY ALL THE PATTERNS IN THIS TYPE OF A
6 STUDY

7 Q OKAY AND AGAIN THIS IS A TEST THAT YOU DID YOURSELF,
8 IS THAT CORRECT?

9 A THAT'S CORRECT

10 Q YOU ALONG WITH DR SMITH?

11 A THAT'S CORRECT WELL, AND I HAVE TO RECALL WHETHER I
12 ACTUALLY PHYSICALLY RAN THE SAMPLES

13 Q OKAY DO YOU RECALL?

14 A I CAN'T RECALL I'M SORRY

15 Q OKAY

16 A I RAN SOME OF THEM BUT WHETHER I RAN THEM ALL, I
17 REALLY DON'T REMEMBER

18 Q OKAY AND DR SMITH, WOULD IT BE FAIR TO SAY THAT DR
19 SMITH IS ONE OF THE LEADING MINDS IN THIS FIELD?

20 A I WOULD SAY SO, YES

21 Q OKAY ALL RIGHT NOW, IF WE COULD GO -- I THINK WE HAD
22 TALKED ABOUT BIAS AND ABOUT HOW DIFFERENT HAIR SAMPLES ABSORB
23 DRUGS IN DIFFERENT WAYS IS THAT WHAT THIS SLIDE DEALS WITH?

24 A YES THIS GIVES AN EXAMPLE OF, AS I HAD MENTIONED
25 BEFORE, OF EXPOSURE OF HAIR, DIFFERENT TYPES OF HAIR, TO THE

1 SAME SOLUTION OF DRUG, THE SAME LENGTH OF TIME, AND TRYING TO
2 WASH AND DECONTAMINATE THAT HAIR WHAT ONE OBSERVES IS A
3 WIDE VARIATION IN THE AMOUNT OF THE DRUGS THAT REMAIN IN THE
4 HAIR, IN THIS CASE, UP TO 27 TIMES BETWEEN ONE GROUP OF HAIR
5 AND THE OTHER GROUP OF HAIR AND IN FACT, AT LEAST IN OUR
6 HANDS, AFRICAN AMERICAN FEMALES TENDED TO HAVE THE FASTEST
7 DRUG INTAKE AND THE HIGHEST CONCENTRATION ENDING UP IN THEIR
8 HAIR THAN OTHER GROUPS BUT I WILL POINT OUT WE ONLY STUDIED
9 A FEW HANDFUL OF DIFFERENT TYPES OF HAIR

10 Q YES, SIR AND WHY DO YOU THINK THAT AFRICAN AMERICAN
11 FEMALES TEND TO COME UP SO HIGH?

12 A WELL, AS WILL BE BRIEFLY MENTIONED A LITTLE LATER, THE
13 CUTICLE IS IMPORTANT IN PROTECTING THE HAIR FROM
14 ENVIRONMENTAL EXPOSURE, AND AFRICAN AMERICAN FEMALES TEND TO
15 PERM OR STRAIGHTEN THEIR HAIR OR HOT COMB THEIR HAIR, ALL OF
16 WHICH TEND TO DAMAGE THE CUTICLE AND MAKE IT MORE SUSCEPTIBLE
17 TO UPTAKE OF DRUGS FROM EXTERNAL ENVIRONMENT

18 Q YES, SIR AND JUST TO CLARIFY, ARE THESE ALL STUDIES IN
19 REGARDS TO ENVIRONMENTAL CONTAMINATION OR INGESTION---

20 A THESE ARE STUDIES HAVING TO DO WITH ENVIRONMENTAL
21 CONTAMINATION WE'RE STILL ON THAT ASPECT OF IT,
22 ENVIRONMENTAL CONTAMINATION AND BIAS

23 Q OKAY JUST TO -- OKAY IT SPEAKS FOR ITSELF
24 NOW, AGAIN, WE'RE BACK TO THE ISSUE OF, YOU KNOW, YEAH,
25 THIS MAY ALL SEEM, YOU KNOW, NICE AND CUTE AND A SCIENTIFIC

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1 STUDY, BUT DOES THIS ACTUALLY OCCUR IN REAL LIFE
2 CIRCUMSTANCES?

3 A WELL, IT'S DIFFICULT TO KNOW REAL LIFE THE STUDIES I'M
4 REFERRING TO ON THIS SLIDE IS WHERE INDIVIDUALS WERE GIVEN
5 KNOWN DOSAGES OF DRUGS, EITHER COCAINE, CODEINE, ANTIBIOTICS,
6 ET CETERA, AND WHAT THEY FOUND IS TYPICALLY THAT BLACK-HAIRED
7 INDIVIDUALS HAD MORE DRUGS IN THEIR HAIR THAN BROWN HAIR,
8 WHICH HAD MORE THAN BLOND, WHICH WAS MORE THAN GRAY IN
9 FACT, WHEN YOU ADMINISTER DRUGS TO AN INDIVIDUAL WITH WHAT'S
10 CALLED SALT AND PEPPER HAIR, IN OTHER WORDS, A MIXTURE OF
11 GRAY AND BLACK HAIR, ON THE SAME HEAD THE GRAY HAIR HAD
12 HARDLY ANY DRUGS PRESENT WHERE THE BLACK HAIR HAD
13 CONSIDERABLE AMOUNTS OF DRUGS, SHOWING THAT EVEN IN THE SAME
14 INDIVIDUAL, PRESUMABLY WITH THE SAME AMOUNT OF SWEAT, ET
15 CETERA, THAT COLOR OF THE HAIR HAS SOME VARIANT ON THE
16 AMOUNTS OF DRUGS TAKEN UP FROM THE EXTERNAL -- OR FROM THE
17 INTERNAL PART OF THE BLOODSTREAM

18 Q OKAY DOES THAT ALSO APPLY TO -- AND I THINK YOU MAY
19 HAVE JUST ANSWERED THAT, BUT ARE YOU SEEING THAT THAT IS THE
20 CASE WITH BOTH INGESTION AND ENVIRONMENTAL CONTAMINATION?

21 A YES AND I DIDN'T MENTION THERE ARE A LARGE NUMBER OF
22 STUDIES WHERE WE EXPOSE HAIR TO SOLUTIONS OF DRUGS AND SHOW
23 THAT DIFFERENT HAIR TYPES, TYPICALLY THE DARKER HAIR,
24 TYPICALLY FROM AFRICAN AMERICANS, TENDS TO ABSORB DRUGS
25 FASTER FROM SOLUTIONS FROM THE ENVIRONMENT AND RETAIN THEM

1 BETTER THAN OTHER TYPES OF HAIR

2 Q OKAY CAN YOU TELL ME ABOUT THIS SLIDE?

3 A WE WERE NOT THE ONLY INDIVIDUALS THAT WERE LOOKING AT
4 CHILDREN LIVING IN DRUG USING ENVIRONMENTS CHRISTINA MOORE,
5 DOUG LEWIS, ET AL, AT THE U S DRUG TESTING LABORATORIES NEAR
6 CHICAGO, ILLINOIS, HAVE ALSO BEEN STUDYING CHILDREN LIVING IN
7 A DRUG-USING ENVIRONMENT, IN THIS CASE FOR CHILD PROTECTIVE
8 SERVICES WHERE THEY TRY TO REMOVE THE CHILDREN FROM THAT
9 ENVIRONMENT IF THE HAIR TEST IS POSITIVE AND WHAT THEY FIND
10 IS TYPICALLY THAT BLOND-HAIRED CHILDREN DON'T SEE ANY DRUGS
11 WHERE BLACK-HAIRED TEND TO HAVE THE MOST DRUGS AND RED, BROWN
12 AND LIGHT BROWN IN THAT SORT OF ORDER TEND TO HAVE THE DRUGS
13 AND THESE ARE INDIVIDUALS LIVING IN ENVIRONMENTS WHERE THEY
14 ARE SUSPECTED OF USING ILLICIT DRUGS, PRIMARILY COCAINE AND
15 METHAMPHETAMINE

16 Q OKAY WHEN YOU SAY "SUSPECTED OF USING DRUGS," YOU MEAN
17 THE PARENTS?

18 A THE PARENTS ARE USING THE DRUGS, YEAH, OR MANUFACTURING
19 THEM IN THE CASE OF METHAMPHETAMINE

20 Q OKAY NOW, I THINK WE TOUCHED ON THIS EARLIER, ABOUT
21 HOW VARIOUS HAIR TREATMENTS CAN MAKE HAIR MORE SUSCEPTIBLE TO
22 CONTAMINATION CAN YOU EXPLAIN HOW THIS SLIDE FURTHER
23 CLARIFIES THAT ISSUE?

24 A WELL, THIS IS A SLIDE WHERE WE AGAIN SEE THE NORMAL HAIR
25 WITH THE INTACT CUTICLE ON THE LEFT, AND ON THE RIGHT IS HAIR

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1 THAT'S BEEN COMBED WHEN WET AND WHAT YOU SHOULD NOTE IS
2 THAT THE CUTICLE HAS BEEN REMOVED IN CERTAIN SECTIONS, AND
3 THE UNDERLYING CORTEX, THAT'S THE INNER PART OF THE HAIR IS
4 VISIBLE, AND THAT IS WHERE THE DRUGS WOULD PRESUMABLY BE
5 ABSORBED AND GET INTO THE HAIR, AND THEN THE HAIR WOULD START
6 TO BECOME MORE EASILY CONTAMINATED FROM EXTERNAL ENVIRONMENT
7 INDIVIDUALS THAT USE RELATIVELY ROUGH TREATMENT ON THEIR
8 HAIR, LIKE HOT COMBING OR PERMING, WHICH DAMAGES THE CUTICLE
9 CONSIDERABLY, WOULD TEND TO REMOVE MORE CUTICLE THAN
10 INDIVIDUALS WHO DON'T TREAT THEIR HAIR AT ALL

11 Q OKAY SO, BASICALLY, IF SOMEONE TREATED THEIR HAIR OR
12 COMBED IT WHILE WET OR USED A HOT COMB, THEY ARE MUCH MORE
13 LIKELY TO -- THEIR HAIR IS MUCH MORE LIKELY TO ABSORB DRUGS
14 THAN SOMEONE WHO DOES NOT?

15 A THAT'S CORRECT AND SOME OF THAT DAMAGE REALLY DEPENDS
16 ON GENETICS, WHAT TYPE OF HAIR YOU HAVE AND WHETHER YOU WANT
17 TO HAVE FROM CURLY TO STRAIGHT OR STRAIGHT TO CURLY, BECAUSE
18 THAT'S WHAT TELLS YOU WHAT COSMETIC-TYPE OF TREATMENT AND
19 SOME OF THAT IS CULTURALLY AND SOCIALLY SELECTIVE, THAT IS,
20 YOU WANT TO BELONG WITH A GROUP WITH STRAIGHT HAIR, YOU HAVE
21 NATURALLY CURLY HAIR, SO THEN YOU MUST HAVE TO TREAT IT IN
22 DOING SO, YOU WILL DAMAGE YOUR HAIR

23 Q YES, SIR NOW, JUST A POINT OF CLARIFICATION DOES THE
24 CUTICLE EXTEND THE ENTIRE LENGTH OF THE HAIR?

25 A FOR THE MOST PART AT THE ENDS -- MR CARY IS CORRECT

1 AT THE ENDS, THE ENVIRONMENT WILL START DAMAGING THE CUTICLE,
2 SUNLIGHT, MAYBE JUST COMBING, AND YOU WILL GET SPLIT ENDS AND
3 THINGS LIKE THAT SO RIGHT AT THE END IS WHERE THE CUTICLE
4 STARTS GETTING REMOVED IF YOU LOOK UNDER A MICROSCOPE, YOU
5 CAN SEE THAT CLEARLY, AS I HAVE DONE

6 Q AND YOU HAVE YOURSELF FIRST-HAND DONE THESE TESTS---

7 A LOOKED UNDER A MICROSCOPE AND OBSERVED THIS DAMAGE TO
8 HAIR THOSE ARE NOT MY MICROGRAPHS THOSE CAME FROM A
9 MAGAZINE

10 Q OKAY

11 A SO I WANT TO MAKE THAT CLEAR

12 Q NOW, DOES -- ARE YOU FAMILIAR WITH ANY STUDIES OR DATA
13 REGARDING CHARACTER OR HABITS OF HIGH SCHOOL SENIORS?

14 A WELL, ONE OF THE ISSUES ABOUT HAIR TESTING IS IF IT
15 BECOMES CONTAMINATED, IS IT GOING TO BECOME DECONTAMINATED?
16 AND JUST WASHING YOUR HAIR LONG ENOUGH WOULD DECONTAMINATE
17 IT BUT THERE ARE GROUPS OF INDIVIDUALS BECAUSE OF THEIR
18 HAIRSTYLING, THAT THEY DYE IT OR PERM IT OR STRAIGHTEN IT,
19 AND THEY DO NOT WANT TO GET IT WET FREQUENTLY, BECAUSE IF
20 THEY DO, THEN THEY WILL LOSE THE COSMETIC TREATMENT THAT THEY
21 HAVE SPENT MONEY OR TIME DOING AND SO THEY WON'T WASH THEIR
22 HAIR AS FREQUENTLY SO THOSE INDIVIDUALS, IF THEY BECOME
23 CONTAMINATED, ARE MORE LIKELY TO STAY CONTAMINATED THAN
24 INDIVIDUALS THAT WASH IT SEVERAL TIMES A DAY, BECAUSE THE
25 WASHING PROCESS DOES REMOVE SOME OF THE DRUGS FROM THE HAIR,

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1 NORMAL HYGIENE DOES

2 Q OKAY SO BASICALLY DEPENDING ON THE GROUP -- DIFFERENT
3 GROUPS HAVE DIFFERENT---

4 A YEAH, DEPENDING ON THE GROUP AND IN THIS CASE WE
5 LOOKED AT HIGH SCHOOL SENIORS, AND WHAT WE FOUND IS AFRICAN
6 AMERICAN SENIORS DIDN'T WASH THEIR HAIR AS FREQUENTLY AS
7 THESE OTHER GROUPS

8 Q ALL RIGHT

9 A PRESUMABLY FOR COSMETIC REASONS

10 Q YES, SIR BEFORE WE GO PAST THIS, I WANT TO -- I JUST
11 WANT TO CLARIFY THE IMAGE THAT KEEPS POPPING IN MY MIND IN
12 REGARDS TO THIS EXPOSURE AND CONTAMINATION OF HAIR IS SORT OF
13 LIKE WHEN SOMEBODY MAYBE DYES OR COLORS THEIR HAIR IS THAT
14 SITUATION SIMILAR TO WHAT HAPPENS WHEN IT'S CONTAMINATED BY
15 DRUGS?

16 A YES EARLY ON, I GAVE AN EXAMPLE -- EARLY ON, IN LIKE
17 THE 1980s -- OF HOW ONE HAS MOST EXPERIENCE WITH
18 CONTAMINATION AND DYE MOLECULES ARE ROUGHLY THE SAME SIZE
19 AS DRUG MOLECULES ONE TYPICALLY HAS EXPERIENCE WHERE YOU
20 CAN PLACE SOLUTIONS OF DYE ON YOUR HAIR, AND IT WILL BECOME
21 COLORED VERY RAPIDLY, MINUTES TO HOURS, AND THEN IT WILL STAY
22 THERE, EVEN THOUGH YOU WASH YOUR HAIR ON A DAILY BASIS SO
23 THAT JUST SHOWS YOU THAT DYES OR MOLECULES GET INTO THE HAIR
24 AND THEY STAY THERE

25 Q YES, SIR

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1 A IF MOLECULES OF DYES, WHICH, AGAIN, HAVE SIMILAR SIZES
2 TO MOLECULES OF DRUGS DO IT, WHY CAN'T DRUGS AND WE HAVE A
3 LOT OF EVIDENCE, I BELIEVE, THAT IT DOES IT JUST GIVES YOU
4 A VISUAL PICTURE THAT MOLECULES GET INTO HAIR AND STAY THERE

5 Q YES, SIR NOW, THIS NEXT SLIDE, I THINK THE ISSUES FOR
6 HAIR TESTING -- CAN YOU TELL ME BASICALLY WHAT THIS SLIDE
7 MEANS?

8 A WELL, THIS IS JUST A SUMMARY AGAIN THAT THE ISSUES I
9 COMPOSED IN 1987 OF PASSIVE EXPOSURE, BIAS AND DETECTION OF
10 LOW LEVEL USE, I DON'T BELIEVE ARE SOLVED EVEN 17 YEARS
11 LATER

12 Q YES, SIR SO THESE THREE ISSUES, PASSIVE EXPOSURE, BIAS
13 AND DETECTION OF LOW LEVEL USE STILL EXIST AND CREATE A
14 PROBLEM FOR HAIR TESTING?

15 A I BELIEVE THEY DO

16 Q OKAY NOW LET'S TAKE A LOOK MORE AT -- I MEAN, WE
17 TALKED ABOUT THE POSSIBILITY OF CONTAMINATION LET'S TALK
18 SOME ABOUT JUST HOW PREVALENT CONTAMINATION OF DRUGS ARE IN
19 OUR ENVIRONMENT, OKAY?

20 AND IF -- I THINK YOU'VE DONE SOME STUDIES ON CURRENCY

21 A THAT'S CORRECT

22 Q CAN YOU TELL ME ABOUT THAT, PLEASE?

23 A WELL, WE'VE DONE A LARGE NUMBER OF STUDIES FOR
24 CONTAMINATION IN THE ENVIRONMENT, INCLUDING ACTUALLY TESTING
25 PEOPLE IN THE ENVIRONMENT BUT THE ONES I THINK THAT ARE

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1 MOST APPLICABLE IN THIS CASE ARE STUDIES WHERE WE LOOKED AT
2 THE CURRENCY FROM IN WASHINGTON, D C , AND OTHER PARTS OF THE
3 COUNTRY AND LOOKED AT THE LEVELS OF BOTH COCAINE AND
4 BENZOYLECGONINE ON THESE BILLS

5 HERE ARE SOME EXAMPLES OF TENS AND TWENTIES IT TURNS
6 OUT THAT ONES AND FIVES ARE ACTUALLY MUCH MORE CONTAMINATED
7 THAN TENS AND TWENTY, SHOWING THAT YOU CAN GET WIDE AMOUNTS
8 OF DRUGS ON THOSE BILLS AND HAVE BENZOYLECGONINE PRESENT ON
9 THOSE BILLS AS WELL FIFTY THOUSAND NANOGRAMS, TO PUT IT IN
10 PERSPECTIVE, IS ESSENTIALLY A THOUSAND PATCH -- I'M SORRY,
11 TWO THOUSAND PATCH WORTHS OF POSITIVES SO YOU COULD
12 CONTAMINATE -- IF YOU COULD GET THE DRUGS OFF THE MONEY, YOU
13 COULD CONTAMINATE APPROXIMATELY TWO THOUSAND PATCHES WITH IT
14 FROM A SINGLE, IN THAT CASE, TWENTY-DOLLAR BILL

15 Q NOW, IS IT POSSIBLE FOR -- I MEAN, IT'S ON THE BILL
16 IS IT POSSIBLE FOR, SAY, THE DRUGS OFF THE BILL TO GET IN
17 SOMEONE'S HANDS?

18 A WELL, WE WERE CONCERNED ABOUT THIS BECAUSE OF SOME OF
19 OUR STUDIES OF ROADSIDE DRUG USE -- OR ROADSIDE DRIVERS, ET
20 CETERA, WHETHER YOU COULD GET DRUGS FROM MONEY, FROM CASUAL
21 HANDLING SO WE TOOK MONEY THAT WE DIDN'T CONTAMINATE, JUST
22 RIGHT OUT OF THE BANK, RUBBED IT BETWEEN THE PALMS OF OUR
23 HANDS, HAVING OUR HANDS DRY, FOR 30 SECONDS, AND THEN TESTED
24 OUR HANDS BY SWEAT WIPES WHAT WE FOUND IS RELATIVELY LOW
25 LEVELS OF DRUGS ON OUR HANDS BUT IF YOU HAD YOUR HANDS WET

1 WITH ARTIFICIAL SWEAT, HELD THE MONEY IN YOUR HANDS FOR 30
2 SECONDS, YOU HAD QUITE HIGH LEVELS, A FEW HUNDRED NANOGRAMS
3 OF DRUGS ON YOUR HANDS

4 Q A FEW HUNDRED NANOGRAMS HOW MANY PATCHES COULD THAT

5 A WELL, A TYPICAL PATCH IS 25 NANOGRAMS IS A POSITIVE SO
6 200 NANOGRAMS IS EIGHT PATCHFUL, IF ONE COULD DISTRIBUTE IT
7 EQUALLY OVER ALL THE PATCHES, AND THAT'S A BIG IF

8 Q OKAY NOW, I THINK YOU HAVE A DEMONSTRATION THAT MAY
9 SHOW THE PREVALENCE OF DRUGS ON CURRENCY EVEN HERE IN
10 GREENVILLE, IS THAT CORRECT?

11 A YES JUST TO GIVE YOU AN IDEA THAT DRUGS ARE ON MONEY,
12 ONE COULD EASILY RUN SOMETHING CALLED A LATERAL FLOW
13 AMINOCHROMATOGRAPHY SYSTEM, WHICH IS THE EQUIVALENT OF A HOME
14 PREGNANCY TEST FOR DRUGS OF ABUSE AND THEY MANUFACTURE
15 THESE THEY ARE USED FOR SURFACE WIPE TESTING TO SEE IF AN
16 AREA IS CONTAMINATED OR FOR SALIVA TESTING AND AS AN
17 EXAMPLE WE RAN ONE ON -- OR TWO TODAY ON MONEY THAT WAS --
18 CAME FROM SOME PLACE IN THIS AREA, AND BOTH WERE POSITIVE

19 Q OKAY DO YOU HAVE THOSE TEST RESULTS?

20 A FOR COCAINE IN THIS AREA

21 Q YES, SIR

22 A WE RAN ONE LAST NIGHT ON A RANDOM DOLLAR BILL TAKEN FROM
23 MY WALLET, AND IT WAS POSITIVE BOTH FOR COCAINE AND HEROIN

24 Q THAT'S FROM YOUR WALLET?

25 A THAT'S FROM MY WALLET AND WASHINGTON, D C GETS THEIR

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1 MONEY FROM BALTIMORE, WHICH IS ACTUALLY PER CAPITA ONE OF THE
2 HIGHEST HEROIN USE AREAS IN THE UNITED STATES

3 Q YES, SIR

4 MR. BANNISTER JUDGE, I'M GETTING THESE MARKED IF YOU
5 DON'T MIND

6 THE COURT ALL RIGHT

7 (DOLLAR BILL MARKED AS DEFENDANT HURKS NUMBER 1 FOR
8 PURPOSES OF IDENTIFICATION ONLY)

9 (DOLLAR BILL MARKED AS DEFENDANT HURKS NUMBER 2 FOR
10 PURPOSES OF IDENTIFICATION ONLY)

11 (DRUG WIPE TWIN TEST MARKED AS DEFENDANT HURKS NUMBER 3
12 FOR PURPOSES OF IDENTIFICATION ONLY)

13 (DRUG WIPE TWIN TEST MARKED AS DEFENDANT HURKS NUMBER 4
14 FOR PURPOSES OF IDENTIFICATION ONLY)

15 MR GIBSON YOUR HONOR, WE'RE MARKING THESE AT THIS
16 POINT FOR JUST IDENTIFICATION PURPOSES ONLY (OFF RECORD
17 WITH MR BANNISTER) MR BANNISTER'S PARALEGAL IS GOING TO
18 LAY THE FOUNDATION

19 DO YOU WANT ME TO SHOW THEM TO YOU NOW OR DO YOU WANT TO
20 SEE THEM LATER OR WHAT?

21 MS STROM I'LL LOOK AT THEM LATER

22 Q CAN YOU EXPLAIN TO US HOW THESE TESTS WERE DONE?

23 A YES TO DO AN APPROPRIATE ANALYSIS OF DRUGS ON MONEY
24 YOU REALLY HAVE TO EXTRACT THE DRUGS OUT OF THE MONEY AND
25 SO I TOOK A DOLLAR BILL THAT WAS HANDED TO ME, PLACED IT IN A

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1 SOLUTION OF WATER AND SHOOK IT UP FOR A FEW SECONDS AND THEN
2 APPLIED A SMALL QUANTITY OF THAT WATER TO THESE IMMUNOASSAY
3 TESTS AND DETERMINE WHETHER IT'S POSITIVE OR NOT IT'S A
4 VISUAL DETERMINATION

5 Q OKAY I'M GOING TO HAND YOU TWO THINGS THEY'VE BEEN
6 IDENTIFIED AS DEFENDANT'S HURKS EXHIBIT 3 AND DEFENDANT HURKS
7 EXHIBIT 4 CAN YOU LOOK AT THESE AND TELL ME WHAT THE
8 RESULTS OF THOSE TESTS ARE?

9 A YES BOTH OF THEM ARE POSITIVE ONE IS A STRONG
10 POSITIVE FOR COCAINE, AND THE OTHER ONE IS A LITTLE BIT
11 WEAKER POSITIVE FOR COCAINE AND THEY BOTH APPEAR TO BE
12 NEGATIVE FOR OPIATES, AND OPIATES ARE HEROIN AND CODEINE AND
13 MORPHINE DRUGS

14 Q OKAY FOR THE RECORD, HOW CAN YOU TELL THAT THEY ARE
15 POSITIVE FOR THOSE THINGS?

16 A WELL, A POSITIVE LINE MEANS TWO -- TWO LINES MEAN A
17 POSITIVE, AND THERE ARE TWO RED LINES ON THIS DEVICE AND A
18 SINGLE LINE, WHICH IS THE CONTROL LINE WHICH MUST BE PRESENT
19 SAYING THE DEVICE IS WORKING CORRECTLY, IF THAT'S ONLY
20 PRESENT AND THE OTHER LINE IS ABSENT, THEN IT IS A NEGATIVE

21 MR GIBSON DO YOU WANT TO SEE THESE AT ALL?

22 THE COURT THAT'S OKAY

23 Q OKAY NOW, I THINK WE'VE ESTABLISHED THAT DRUGS MAY BE
24 ON MONEY IS IT POSSIBLE FOR ENVIRONMENTS, HOMES, HOUSES,
25 ROOMS, CLOTHING TO BE CONTAMINATED BY DRUGS AS WELL?

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1 A OH, ABSOLUTELY NOW, I HAVEN'T PERSONALLY TESTED AN
2 INDIVIDUAL'S HOUSE

3 Q YES, SIR

4 A I'VE TESTED OTHER AREAS THAT PEOPLE HAVE CONTACT WITH
5 ONE OF THE USES OF SOME OF THIS TECHNOLOGY, WE HAD A
6 COLLABORATION WITH U S CUSTOMS, AND THEY WERE INTERESTED IN
7 TESTING PEOPLE COMING INTO THE UNITED STATES FOR CARRYING
8 DRUGS, AND SO I HAD TO GO INTO THE AIRPORTS THAT THEY WOULD
9 FREQUENT AND MAKE SURE THAT THE DRUGS WERE NOT EVERYWHERE IN
10 THE AIRPORT, SO IF ONE HAD DRUGS ON ONE'S HANDS, IT WASN'T
11 BECAUSE OF CASUAL CONTACT TYPICALLY, THE AIRPORT WAS CLEAN,
12 WE HAD SOME LUGGAGE CARTS THAT HAD FIFTY NANOGRAMS ON IT
13 WHERE THE DIRTIEST PARTS WERE WERE THE AREAS WHERE CUSTOMS
14 DID SEARCHES, AND THEY WERE TYPICALLY VERY CONTAMINATED

15 Q YES, SIR

16 A BUT THE PUBLIC AREAS WERE RELATIVELY CLEAN

17 Q GIVEN THAT, WOULD YOU EXTRAPOLATE THAT IF SOMEONE WAS AN
18 HABITUAL DRUG USER THAT THERE WOULD BE DRUGS PRESENT IN HIS
19 ENVIRONMENT, HIS HOME, HIS ROOM WOULD BE CONTAMINATED WITH
20 DRUGS?

21 A OH, I BELIEVE SO, YES BECAUSE THE DRUGS DO NOT
22 EVAPORATE, DO NOT GO AWAY IF THEY ARE PLACED THERE IN THE
23 ENVIRONMENT, JUST LIKE THEY'RE PLACED ON MONEY, THEY WILL
24 STAY THERE UNTIL THE ENVIRONMENT IS WASHED THOROUGHLY

25 Q OKAY AND THAT GOES FOR FABRIC AS WELL?

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- 1 A YES, FABRIC IS PARTICULARLY PROBLEMATIC
- 2 Q HOW ABOUT CLOTHING?
- 3 A CLOTHING IS ALSO PROBLEMATIC
- 4 Q OKAY
- 5 A BUT CLOTHING PRESUMABLY YOU WASH MORE FREQUENTLY THAN---
- 6 Q YES, SIR
- 7 A ---THAN YOUR COUCH
- 8 Q ALL RIGHT LET'S MOVE ON TO SWEAT TESTING LET'S GO TO
- 9 THE NEXT SLIDE, AND I THINK WE'VE SEEN THIS ONE BEFORE IT
- 10 SHOWS -- WELL, CAN YOU TELL ME WHAT THIS SLIDE SHOWS?
- 11 A YES THIS IS A REPEAT OF AN EARLIER SLIDE JUST SHOWING
- 12 THAT WE LOOKED AT HAIR TESTING, AND WE SAY IT HAS A LONG
- 13 WINDOW OF DETECTION BUT IT HAS THE OTHER ISSUES WITH PASSIVE
- 14 EXPOSURE BIAS AND LOW DETECTION USE AND SO WE NOW WANTED TO
- 15 LOOK AT THE NEXT MAJOR MATRIX THAT WE THOUGHT WAS APPLICABLE
- 16 TO WIDEN OUR WINDOW OF DETECTION, AND THAT WOULD BE SWEAT
- 17 TESTING
- 18 Q YES, SIR AND ARE YOU FAMILIAR WITH ANY SWEAT TESTING
- 19 PROCEDURES OR SWEAT TESTING TECHNOLOGY?
- 20 A YES WE BOTH HAVE DEVELOPED SOME OF OUR OWN, BUT WE
- 21 CAME ACROSS THE PHARMCHEK SWEAT PATCH, WHICH LOOKED KIND OF
- 22 ATTRACTIVE IT APPEARED TO TRAP DRUGS AND ACCUMULATE THEM
- 23 FOR AS LONG AS YOU WORE THE PATCH, AND IT WAS RECOMMENDED
- 24 BETWEEN ONE TO TWO WEEKS, SEVEN TO FOURTEEN DAYS, AND THAT
- 25 THE THAT POLYURETHANE COVERING WAS CLAIMED -- I WILL SAY

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1 CLAIMED -- TO PROTECT THE PATCH FROM EXTERNAL CONTAMINATION,
2 YET ALLOWING COMFORTABLE WEAR FOR THE USER PREVIOUS SWEAT
3 PATCHES HAD AN OCCLUSIVE MEMBRANE, THAT IS, JUST A PIECE OF
4 PLASTIC, AND THEY BECAME UNCOMFORTABLE TO WEAR AFTER A FEW
5 DAYS THIS WAS ACTUALLY A LITTLE BIT MORE COMFORTABLE, AND
6 SO IT DID LOOK LIKE A NICE TECHNOLOGY

7 Q OKAY AND BACK IN THE NINETIES, EARLY NINETIES, EVEN
8 THE MID-NINETIES, WHAT WAS THE OPINION OF MOST EXPERTS ON HOW
9 THE PATCH PERFORMED?

10 A WELL, THE MAIN CONCERN AGAIN IS PASSIVE EXPOSURE, AND AT
11 THAT TIME THERE WERE A NUMBER OF PAPERS OUT THERE IN THE
12 LITERATURE THAT INDICATED THAT THEY -- AT LEAST THE AUTHORS
13 OF THOSE PAPERS THOUGHT THAT THE POLYURETHANE FILM PROTECTED
14 THE INTERIOR OF THE PATCH FROM EXTERNAL CONTAMINATION BECAUSE
15 OF FOR VARIOUS REASONS, AND THIS JUST SUMMARIZES SOME OF
16 THEIR STATEMENTS THAT NONVOLATILE SUBSTANCES FROM THE
17 ENVIRONMENT CANNOT PENETRATE THE TRANSPARENT FILM, ET CETERA
18 AND THAT'S PASCAL KINTZ'S CONCEPT, THAT LARGER MOLECULES THAT
19 CANNOT PASS THE POLYURETHANE LAYER AND REMAIN TRAPPED ON THE
20 COLLECTION PAD, THAT'S BURNS AND BASELTS THE TRANSPARENT
21 FILM PORTION OF THE PATCH ALLOWS OXYGEN, CARBON DIOXIDE, ET
22 CETERA TO ESCAPE, AND THAT'S ED CONE'S AND THEN MOLECULES
23 LARGER THAN VAPOR PHASE ISOPROPANOL ARE EXCLUDED BY THE
24 MOLECULAR PORE STRUCTURE OF THE PLASTIC MEMBRANE, AND THAT'S
25 SPIEHLER'S AND J FRY'S, ET CETERA, OPINION

1 Q OKAY WHEN YOU SAID ED CONE, DOES THAT APPEAR TO BE THE
2 SAME ED CONE MR CARY WAS SPEAKING OF EARLIER?

3 A YES IT'S PROBABLY EVEN THE SAME PAPER

4 Q OKAY NOW, DID THERE EVER COME A POINT WHERE YOU BEGAN
5 TO QUESTION THIS RESEARCH AND WANTED TO DO SOME INVESTIGATION
6 OF THIS ON YOUR OWN?

7 A YES LIKE I SAID, WE WERE ACTIVELY INVESTIGATING SWEAT
8 TESTING AND WHAT PROMPTED US TO LOOK AT THE PATCH IN A
9 LITTLE MORE DETAIL AT THIS TIME WAS I HAD A CALL FROM THE
10 U S PUBLIC DEFENDER'S OFFICE AND WHAT SHE SAID, HER NAME
11 WAS FANNY FORSMAN, THAT SHE HAD SEVERAL CLIENTS WHO WERE
12 CREDIBLE TO HER, AND SHE SAID SHE WAS IN THE PROGRAM A LONG
13 TIME, AND SHE COULD, IN THEORY, TELL IF THE CLIENTS WERE
14 LYING, AND THEY SEEMED TO BE CREDIBLE TO HER AND THEY WOULD
15 ADMIT TO ILLEGAL DRUGS BUT NOT THE ILLEGAL DRUGS THAT WERE
16 FOUND IN THE PATCH AND SOME OF THESE CLIENTS HAS
17 CONSECUTIVE 48-HOUR URINE SPECIMENS WHICH WERE NEGATIVE AND
18 THE PATCH WAS POSITIVE, AND DID I HAVE ANY EXPLANATION FOR
19 THAT AND, OF COURSE, I DIDN'T

20 BUT I DID HAVE SOME PATCHES LAYING AROUND THE
21 LABORATORY, SO I DID SOME QUICK EXPERIMENTS THAT SAID THAT
22 THERE WERE SOME ISSUES WITH THESE PATCHES AND THAT WE NEEDED
23 TO INVESTIGATE IT A LITTLE BIT FURTHER

24 Q OKAY LET'S TALK SPECIFICALLY ABOUT THIS CONCEPT OF
25 HAVING A POSITIVE PATCH AND A NEGATIVE URINE

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1 A WELL, THERE ARE SOME, OF COURSE, EXPLANATIONS FOR WHY
2 THIS SHOULD HAPPEN THE DRUG USER COULD BEAT THE URINALYSIS
3 TEST, IN THEORY, IS THE TYPICAL EXPLANATION PUT OUT THERE
4 THAT IS A POSSIBILITY IT'S HARD TO SAY BUT IT'S HARD TO
5 UNDERSTAND HOW A DRUG USER COULD BEAT A URINE TEST IF THE
6 URINE IS GIVEN UNDER OBSERVATION AND IF THEY'RE NOT
7 SUBSTITUTING THE URINE OR ADULTERING THE URINE BY DRINKING
8 LARGE QUANTITIES OF WATER, ALL OF WHICH WE CAN DETECT IF ONE
9 IS CAREFUL IN HOW THE COLLECTION PROCEDURE IS DONE BUT
10 PEOPLE TEND NOT TO WANT TO COLLECT URINE, AND SO THEY DO NOT
11 NECESSARILY WATCH IT BE OBSERVED AS CAREFULLY AS THEY COULD,
12 AND SO PEOPLE CAN CHEAT BUT AT LEAST THE CONCEPT IN THE
13 DEPARTMENT OF DEFENSE IS, IF WE DON'T CATCH YOU TODAY, WE'LL
14 CATCH YOU TOMORROW SO WE TRY TO USE IT AS A DETERRENT
15 PROGRAM AND WE'RE NOT -- WE TRY TO TAKE STEPS TO KEEP
16 PEOPLE FROM BEATING URINALYSIS, AND FOR THE MOST PART WE'RE
17 SUCCESSFUL

18 THE OTHER EXPLANATION, OF COURSE, IS THE SKIN IS
19 CONTAMINATED, AND THE CLEANING THAT'S PROPOSED WAS
20 INSUFFICIENT AND PRIOR TO THIS STUDY WE HAD ACTUALLY DONE
21 EXPERIMENTS WHERE WE HAD CONTAMINATED SKIN AND FOUND THAT IT
22 WAS DIFFICULT TO REMOVE THAT CONTAMINATION SO THIS PROMPTED
23 US TO GO BACK AND REINVESTIGATE, "WHAT ARE THE PARAMETERS
24 WHICH SKIN COULD BECOME CONTAMINATED? AND WHAT ARE THE
25 PARAMETERS FOR REMOVAL OF THAT CONTAMINATION?" AND FINALLY,

1 THE EXTERNAL CONTAMINATION, THE PATCH REALLY IS PERMEABLE TO
2 THE EXTERNAL ENVIRONMENT AND THAT THE CONCEPT THAT THE
3 MEMBRANE PROTECTS THE PATCH AND THE INTERIOR SURFACE WAS
4 INCORRECT

5 I HAD GREAT INTEREST IN THE LATTER BECAUSE
6 SCIENTIFICALLY IT'S HARD TO UNDERSTAND HOW ONE COULD DESIGN A
7 PRODUCT OR A MEMBRANE THAT ALLOWS WATER TO ESCAPE BUT
8 INHIBITS SMALLER -- OR LARGER MOLECULES FROM GETTING BACK IN
9 THAT IS INCREDIBLY DIFFICULT TO DO AND AS IT TURNS OUT,
10 THERE IS NO -- THIS DEVICE WAS ACTUALLY DEVELOPED TO KEEP
11 BACTERIA OUT, NOT DRUGS OUT AND SO IT WAS A STRETCH TO GO
12 FROM A LARGE BACTERIA, WHICH YOU CAN SEE UNDER A MICROSCOPE,
13 TO A DRUG MOLECULE, WHICH YOU CAN'T AND SO I WAS VERY
14 INTERESTED IN THE OUTSIDE-IN-TYPE SCENARIO

15 Q BEFORE YOU MOVE ON, WHEN YOU SAY IT WAS CREATED TO KEEP
16 BACTERIA OUT, HOW DO YOU KNOW THAT?

17 A YEAH THE 501K SUBMISSIONS BY PHARMCHEM AND, I BELIEVE,
18 ANOTHER COMPANY THAT THEY PURCHASED THE PATCH FROM SAY THAT
19 THE PATCH IS MADE BY 3M, AND THE POLYURETHANE IS THE SAME
20 MEMBRANE THAT 3M USES IN THEIR BAND-AIDS THAT YOU CAN BUY IN
21 THE STORE, AND THOSE ARE BASICALLY JUST TO KEEP BACTERIA AWAY
22 FROM THE SKIN

23 Q YES, SIR

24 A THAT'S WHAT THEY WERE DESIGNED FOR THAT'S WHAT THEY
25 WERE TESTED FOR THE PRODUCT NAME IS CALLED TEGADERM, BY THE

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1 WAY

2 THE COURT CAN I ASK JUST ONE QUESTION FOR
3 CLARIFICATION?

4 MR GIBSON YES, SIR, PLEASE

5 THE COURT ON SLIDE 28 UNDER -- IT'S TITLED
6 ALTERNATIVE DRUG TESTING TECHNOLOGY, IT SAYS THE PHARMCHEK
7 SWEAT PATCH IS THAT THE SAME AS THE PHARMCHEM?

8 WITNESS YES, SIR WHAT THAT IS IS I BELIEVE
9 PHARMCHEK IS THE TRADEMARK NAME FOR THIS DEVICE THAT IS --
10 IT'S SOLD BY PHARMCHEM THEY CALL IT THE PHARMCHEK

11 THE COURT I JUST WANT TO MAKE SURE THAT WE ARE IN
12 FACT TALKING ABOUT THE SAME

13 WITNESS YES, WE ARE

14 THE COURT SO THIS PATCH THAT WAS DISPLAYED IN SLIDE
15 28 IS THE SAME ONE THAT IS BEING USED HER?

16 WITNESS TO THE BEST OF MY KNOWLEDGE, YES IN FACT, I
17 SHOULD MAKE IT CLEAR THAT THAT PICTURE CAME OUT OF
18 PHARMCHEM'S LITERATURE

19 THE COURT OKAY

20 WITNESS IT'S NOT ME I WISH IT WAS, BUT IT'S NOT ME

21 THE COURT THANK YOU

22 Q ALL RIGHT I THINK WE'LL GET INTO THIS LATER OR IF YOU
23 WANT TO FULLY EXPLAIN NOW, MR CARY AGAIN SAYS THAT, OKAY,
24 YOU KNOW, TO THE EXTENT THERE IS EXTERNAL CONTAMINATION,
25 YEAH, THAT MAY BE OKAY OR MAY BE FOUND IN A LAB WHEN YOU

1 PURPOSELY CONTAMINATE IT BUT HE SAYS THAT'S JUST NOT
2 REALISTIC TO THINK THAT THAT COULD OCCUR IN REAL LIFE DO
3 YOU HAVE AN OPINION ON THAT?

4 A WELL, I WOULD LIKE TO GET INTO THAT A LITTLE BIT LATER

5 Q OKAY

6 A BUT BASICALLY I BELIEVE IT DOES OCCUR IN REAL LIFE, AND
7 WE HAVE, I THINK, FIRM EVIDENCE THAT WE SEE IT

8 Q OKAY AND WE'LL GET TO THAT

9 A BUT I THINK IT WOULD BE MORE USEFUL TO SHOW YOU VISUALLY
10 HOW DRUGS CAN GET INTO THE SWEAT PATCH

11 Q OKAY NOW, IT'S MY UNDERSTANDING THAT THERE ARE
12 BASICALLY TWO TYPES OF CONTAMINATION THERE CAN BE
13 CONTAMINATION FROM WITHOUT AND CONTAMINATION FROM WITHIN IS
14 THAT CORRECT?

15 A THAT'S CORRECT THOSE ARE TWO TERMS THAT I AND FRED
16 SMITH ACTUALLY COINED TO DESCRIBE THE TECHNOLOGY AND TO
17 ILLUSTRATE CONTAMINATION FROM WITHOUT, I CAN SHOW YOU A
18 SIMPLE EXPERIMENT I MYSELF PERFORMED WE TOOK SOME RHODAMINE
19 B, WHICH IS A FLUORESCENT DYE, AND PLACED IT IN ARTIFICIAL
20 SWEAT, AND THEN WE PLACED IT ON THE SWEAT PATCH THAT WAS
21 GLUED TO A PETRI DISH AND INSIDE THE PATCH IS SWEAT AND
22 THIS IS THE KEY PART OF HOW I DID THE EXPERIMENTS AND WHY THE
23 OTHER PEOPLE'S FAILED IF THE PATCH IS DRY ON THE INSIDE,
24 NOTHING HAPPENS BUT IF THE PATCH HAS SWEAT ON THE INSIDE,
25 EITHER PRESUMABLY FROM THE USER OR BECAUSE WE PLACED

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1 ARTIFICIAL SWEAT THERE, ONE WOULD SEE AFTER TRYING TO WASH
2 THIS OFF UNDER RUNNING WATER THAT ONE SEES A LITTLE BIT OF
3 RHODAMINE STILL STUCK TO THE OUTER MEMBRANE BUT WHEN ONE
4 PULLS IT OFF AND PUTS IT UNDER A U V LIGHT, ONE SEES THAT
5 THE RHODAMINE HAS PENETRATED THE OUTER MEMBRANE AND WENT INTO
6 THE PATCH

7 Q AND THIS IS A TEST THAT YOU DID YOURSELF, IS THAT
8 CORRECT?

9 A THAT'S CORRECT

10 Q NOW, CAN YOU DEFINE FOR US WHAT YOU MEAN BY ARTIFICIAL
11 SWEAT?

12 A WELL, IT'S SWEAT -- INSTEAD OF HAVING PEOPLE SWEAT AND
13 COLLECT THEIR SWEAT, WE MAKE A SOLUTION THAT HAS SOME OF THE
14 MAJOR COMPONENTS IN IT THAT WOULD BE CONTAINED IN SWEAT,
15 THINGS LIKE LACTIC ACID, LIKE AMMONIUM CHLORIDE, LIKE
16 PHOSPHATE, LIKE UREA, ET CETERA

17 WE TAKE A RECIPE THAT PEOPLE HAVE IN THE LITERATURE
18 THERE IS ACTUALLY A RECIPE THAT PEOPLE USE FOR METAL
19 CORROSION, FOR EXAMPLE, TO TEST JEWELRY TO SEE WHETHER THE
20 JEWELRY CORRODES YOU MAKE THIS RECIPE YOU PUT YOUR
21 JEWELRY IN IT AND IF IT DOESN'T CORRODE, YOU CAN PUT IT ON
22 PEOPLE IF IT DOES CORRODE, THEN INSTEAD OF HAVING A NICE
23 COPPER RING, THEIR FINGER TURNS GREEN SO THEY USE THIS TYPE
24 OF TECHNOLOGY ALL THE TIME TO TEST THINGS LIKE JEWELRY TO SEE
25 WHETHER IT CORRODES OR NOT

1 SO WE MADE UP A SOLUTION, AND WE HAVE A STANDARD RECIPE
2 THAT WE FOLLOWED, AND THAT HAS MAJOR COMPONENTS IN IT, AND
3 THEN WE PLACED IT IN THAT PATCH SO WE TRY TO MAKE A DEFINED
4 STANDARD THAT WOULDN'T VARY WITH TIME

5 Q YES, SIR IS THERE ANYTHING IN THAT STANDARD RECIPE FOR
6 SWEAT THAT YOU BELIEVE WOULD MAKE THE RESULTS OF THIS TEST
7 PERFORM DIFFERENTLY IF IT WAS REAL SWEAT?

8 A NO IN FACT, THE KEY THING IS WATER ON THE INSIDE AND
9 YOU CAN USE OTHER THINGS OTHER THAN SWEAT YOU CAN USE A
10 BUFFER, FOR EXAMPLE, IF YOU DON'T WANT TO HAVE ALL OF THOSE
11 OTHER COMPONENTS IN IT

12 Q OKAY NOW, LET'S TALK ABOUT THE RHODAMINE THAT'S WHAT
13 YOU USED?

14 A RHODAMINE B, YES

15 Q RHODAMINE B, YES, SIR DOES THAT HAVE A LARGER
16 MOLECULAR WEIGHT THAN 36?

17 A ABSOLUTELY

18 Q HOW MUCH LARGER, DO YOU KNOW?

19 A I DON'T REMEMBER THE EXACT MOLECULAR WEIGHT I THINK
20 IT'S IN THE THREE HUNDREDS

21 Q OKAY

22 A SO IT'S VERY SIMILAR TO COCAINE, WHICH IS 303

23 Q AND AGAIN, THIS IS SOMETHING YOU OBSERVED WITH YOUR OWN
24 EYES, IS THAT CORRECT?

25 A THAT'S CORRECT I TOOK THESE PICTURES MYSELF

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1 Q OKAY ALL RIGHT LET'S GO TO DIFFUSION OF DRUGS
2 THROUGH OUTSIDE OF THE PATCH WHAT EXACTLY TO YOU MEAN BY
3 THAT, DR KIDWELL?

4 A WELL, IN THE CASE -- IT'S NICE TO LOOK AT DYES, BUT DYES
5 ARE NOT DRUGS THEY GIVE YOU A VISUAL INDICATION SO WHAT
6 ONE CAN DO IN THE LABORATORY ENVIRONMENT IS PLACE DRUGS ON
7 THE OUTSIDE OF THE PATCH IN SOLUTIONS -- AND WE USE
8 RELATIVELY LOW DOSAGES, TEN MICROGRAMS PER MIL -- A MIXTURE
9 OF DRUGS, IN THIS CASE, COCAINE, HEROIN AND METHAMPHETAMINE
10 WE'VE EXPANDED IT SINCE THEN TO ANOTHER TWO OR THREE DRUGS
11 AND WHAT WE FIND IS EVEN AFTER FIVE MINUTES THERE IS ENOUGH
12 DRUGS IN THE PATCH FROM THIS SOLUTION TO BE POSITIVE AT THE
13 COMMERCIAL CUTOFF LEVEL AND AS YOU SEE, DIFFUSION, MEANING
14 THINGS GOING IN, AS YOU WAIT LONGER, THE MORE YOU GET IN IT
15 AND HERE WE'VE REACHED A LEVEL OF COCAINE OF ABOUT SEVENTEEN
16 HUNDRED NANOGRAMS PER PATCH, WHICH IS QUITE HIGH

17 Q YES, SIR NOW, WHEN YOU SAY ONE TEN-THOUSANDTH OF A
18 DOES, CAN YOU SEE THAT WITH THE NAKED EYE?

19 A OH, ABSOLUTELY NOT

20 Q CAN YOU SEE IT WITH A MICROSCOPE?

21 A NO

22 Q SO IF YOU PUT AN ABSOLUTELY ALMOST INVISIBLE SIZE DOSE
23 ON THE OUTSIDE OF A PATCH OVER TIME, UNDER YOUR EXPERIMENTS,
24 IT WILL SEEP THROUGH?

25 A YES AND I WANT TO MAKE CLEAR THAT IT HAS TO BE IN

1 SOLUTION ON THE OUTSIDE HOW IT GOT THERE IN SOLUTION
2 ISN'T---

3 Q WHEN YOU SAY "IN SOLUTION," WHAT DO YOU MEAN?

4 A IT HAS TO BE IN AN AQUEOUS SOLUTION OF SOMETHING, SWEAT,
5 WATER IT DOESN'T MATTER

6 Q SO SWEAT OR WATER, AS LONG AS---

7 A YES JUST IF YOU PLACED -- TOOK A DRY PATCH, YOU PUT
8 DRY STUFF ON THE OUTSIDE, JUST DUSTED COCAINE ON IT OR
9 SOMETHING LIKE THAT, IT WOULD NOT BE ON THE INTERIOR

10 Q YES, SIR

11 A SO THE CONDITIONS ARE WET-WET -- WET ON THE INSIDE AND
12 WET ON THE OUTSIDE FOR EFFECTIVE TRANSFER

13 Q SO, GIVEN YOUR STUDIES, DID THAT ALLOW YOU TO COME TO
14 ANY CONCLUSION ABOUT WHAT THAT PREVIOUS -- ABOUT THE
15 RELIABILITY OF THAT PREVIOUS RESEARCH?

16 A YES I THINK OUR STUDIES -- AND WE DID A NUMBER OF
17 THESE STUDIES -- THAT THE PRIOR WISDOM ABOUT PERMEABILITY OF
18 THE MEMBRANE IS JUST WRONG THE MEMBRANE IS PERMEABLE TO
19 SMALL MOLECULES SUCH AS DRUGS, AND THE DIFFUSION IS
20 SURPRISINGLY RAPID, MEANING THE DRUGS GOING INTO THE PATCH
21 ARE SURPRISINGLY RAPID

22 Q YES, SIR SO, BASICALLY IN LAYMAN'S TERMS OR TERMS EVEN
23 I CAN UNDERSTAND, IT DOESN'T HAVE TO BE THERE VERY LONG FOR
24 IT TO GET THROUGH?

25 A THAT'S CORRECT AND WE DID STUDIES TALKING ABOUT THE

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1 MECHANISM OF WHICH THE DRUGS ARE, BUT I DON'T KNOW IF THAT'S
2 IMPORTANT IN THIS CASE

3 Q OKAY NOW LET'S TALK ABOUT THE OTHER CONTAMINATION FROM
4 WITHIN DID YOU DO ANY EXPERIMENTS IN REGARDS TO THIS?

5 A YES, WE DID THE EXPERIMENTAL DESIGN IS SHOWN ON THIS
6 SLIDE WE APPLY ABOUT FIVE MICROGRAMS OF DRUG, OR TEN
7 MICROGRAMS IN SOME CASES, TO A SMALL AREA OF SKIN WE WAIT A
8 FEW HOURS AND THEN WE TRY TO REMOVE IT WE TAKE THIS CLEAN
9 SKIN, AND THEN WE APPLY THE PATCH, AND THEN WE WAIT,
10 ESSENTIALLY, THREE DAYS IN OUR TYPICAL EXPERIMENT, AND WE SEE
11 WHAT'S IN THE PATCH AND THE REASON THE PASSAGE OF TIME IS
12 IMPORTANT IS BECAUSE SOME AUTHORS HAVE TRIED TO REPRODUCE OUR
13 STUDIES, THEY ACTUALLY GET VERY SIMILAR RESULTS, BUT, IN MY
14 OPINION, THEY DON'T WAIT LONG ENOUGH AND SO THEY PUT THE
15 DRUGS ON THEY IMMEDIATELY TRY TO TAKE THEM OFF THAT WILL
16 OCCUR, AND YOU GET MOST OF IT OFF BUT IF YOU WAIT, IN THIS
17 CASE, AN EXAMPLE OF ABOUT HALF AN HOUR, YOU STILL HAVE -- YOU
18 GET ABOUT 80 PERCENT OF THE DRUGS TO BIND THAT YOU PLACE ON
19 YOUR SKIN

20 Q OKAY NOW, DOES THAT BINDING OCCUR -- WELL, LET ME ASK
21 THE QUESTION A DIFFERENT WAY DOES -- THE SAME TYPE OF BIAS
22 THAT YOU HAVE IN THE HAIR SAMPLES, DO YOU EVER SEE THAT?

23 A WELL, WE'VE NEVER STUDIED THAT ONE CAN HYPOTHEZIZE
24 THAT BIAS OCCURS IN SWEAT PATCH TESTING BY THE FOLLOWING
25 SCENARIO -- BUT IT'S JUST HYPOTHESIS AT THIS POINT IN TIME --

1 THAT IF DRUGS ARE KNOWN TO BIND TO MELANIN AND DIFFERENT
2 SKINS HAVE DIFFERENT AMOUNTS OF MELANIN, SO ONE WOULD
3 HYPOTHESIZE THAT IF DRUGS BIND TO MELANIN, WHICH THEY ARE
4 BELIEVED TO, THAT DARKER-COLORED SKIN, MELANIN BEING THE
5 COLORING COMPONENT, WOULD BIND MORE DRUGS MORE RAPIDLY THAN
6 NONMELANIN-CONTAINING SKIN

7 Q YES, SIR NOW, DID YOU DO ANY MORE STUDIES?

8 A YES, I THOUGHT WE DID A COUPLE OF INTERESTING STUDIES
9 WHERE WE APPLIED TEN MICROGRAMS OF A MIXTURE OF DRUGS, IN
10 THIS CASE, COCAINE, HEROIN AND METHAMPHETAMINE, TO OUR SKIN,
11 AND THEN WE WENT HOME AND TOOK A SHOWER AND THE NEXT
12 MORNING WE APPLIED A PATCH THAT'S DAY ONE THEN THE NEXT
13 DAY WE APPLIED ANOTHER PATCH TO A DIFFERENT AREA OF OUR BODY
14 AND THEN THE NEXT DAY WE APPLIED A THIRD PATCH TO A DIFFERENT
15 AREA OF OUR BODY AND THE NEXT DAY WE APPLIED ANOTHER PATCH
16 TO A DIFFERENT AREA OF OUR BODY SO THESE ARE ALL AREAS OF
17 OUR BODY THAT WERE CONTAMINATED WITH DRUGS THAT WE'RE NOW
18 APPLYING PATCHES AFTER DIFFERENT LENGTHS OF TIME

19 AND THEN, AS YOU SEE IN THE BOTTOM TIMELINE, THE FIRST
20 PATCH WAS TAKEN OFF ON DAY FOUR, BECAUSE IT'S BEEN ON FOR
21 THREE DAYS, AND THE SECOND PATCH IS TAKEN OFF ON DAY FIVE, ET
22 CETERA AND THEN WE ANALYZED ALL THE PATCHES TO SEE WHETHER
23 THERE WERE DRUGS PRESENT FROM THIS EXPOSURE

24 Q AND YOUR RESULTS?

25 A THE RESULTS SHOW THAT ALL THE DRUGS ARE PRESENT, AND

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1 EVEN SIX DAYS OF HYGIENICALLY CLEANING OUR SKIN, USING SOAP
2 AND WATER IN THE SHOWER ENVIRONMENT WHERE WE WOULDN'T BE RE-
3 EXPOSING OURSELVES TO THE DRUGS, WE COULD SEE DRUGS APPEAR IN
4 THE PATCH AND, IN FACT, ALL OF OUR SAMPLES WERE ABOVE THE
5 CUTOFF LEVEL

6 Q I'M SORRY SAY THAT AGAIN

7 A ALL OF OUR SAMPLES WERE ABOVE THE COMMERCIAL CUTOFF
8 LEVEL

9 Q SO BASICALLY, IN OTHER WORDS, ALL OF YOUR RESULTS WOULD
10 HAVE COME UP AS A POSITIVE ON THE SWEAT PATCH TEST?

11 A THAT'S CORRECT AND MORE IMPORTANTLY, EVEN THOUGH WE
12 ONLY PLACED COCAINE ON OUR SKIN, WE SAW BENZOYLECGONINE BEING
13 PRODUCED

14 Q IN THIS SHORT PERIOD OF TIME?

15 A IN A SIX-DAY PERIOD OF TIME, YES

16 Q YES, SIR

17 A AND I THINK THAT'S BEST ILLUSTRATED ON THE NEXT SLIDE
18 WHERE I JUST LEFT OUT -- IT'S THE SAME DATA, LEFT OUT THE
19 HEROIN AND METHAMPHETAMINE, AND THIS SHOWS YOU THAT "BE" IS
20 PRESENT AFTER EVEN ONE DAY AND LET ALONE SIX DAYS LATER AND
21 IF ONE WERE TO TAKE SOME SORT OF RATIO BETWEEN "BE" AND
22 COCAINE, THAT WOULD BE THE TYPICAL RATION ONE WOULD SEE FOR A
23 DRUG USER OF ABOUT FIVE TO ONE

24 Q YES, SIR SO, AGAIN, IT DOES NOT APPEAR THAT
25 BENZOYLECGONINE IS A CONCLUSIVE DETERMINANT OF WHETHER DRUGS

1 COME FROM USAGE?

2 A NOT IN OUR STUDIES

3 Q NOW I WANT TO TALK ABOUT THIS AMOUNT OF DRUGS THAT YOU
4 PUT ON AGAIN, THAT'S A ONE TEN-THOUSANDTH OF A DOSE?

5 A THAT'S CORRECT

6 Q AND, AGAIN, IS THAT -- CAN YOU SEE THAT?

7 A NO

8 Q WITH A MICROSCOPE?

9 A NO

10 Q OKAY

11 A TO GIVE SOMEBODY A CONCEPT, ONE-HUNDREDTH OF A DOES IS A
12 CRYSTAL THE SIZE OF A PENCIL POINT THAT'S ONE MILLIGRAM
13 THIS IS TEN MICROGRAMS OR ONE-HUNDREDTH OF THAT

14 Q OKAY SO LET ME JUST -- SO BASICALLY IF THE SKIN COMES
15 IN CONTACT WITH A PARTICLE OF DRUGS THAT IS SO SMALL WHICH
16 YOU CAN'T EVEN SEE IT WITH A MICROSCOPE AND IT GETS CAUGHT IN
17 THERE, EVEN AFTER WASHING IT AND SHOWERING IT, YOU CAN STILL
18 COME UP WITH A POSITIVE SWEAT PATCH?

19 A THAT'S CORRECT

20 Q OKAY CAN YOU TELL ME WHAT THIS SLIDE IS?

21 A WELL, THIS JUST ILLUSTRATES HOW DIFFICULT IT IS TO
22 REMOVE DRUGS FROM THE SKIN IF WE'RE INTERESTED IN USING THE
23 SWEAT PATCH, WHICH I BELIEVE IS A NICE CONCEPT, COULD WE FIND
24 ANOTHER SOLVENT OR ANOTHER SOLUTION OR ANOTHER PROCEDURE THAT
25 WOULD REMOVE DRUGS FROM THE HUMAN SKIN AND WE TRIED

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1 ESSENTIALLY EVERYTHING WE HAD IN OUR LABORATORY WE TRIED
2 DIFFERENT SOLVENTS, SUCH AS METHANOL, ETHANOL, ISOPROPANOL
3 WE TRIED SEVENTY PERCENT ISOPROPANOL, WHICH IS USED
4 COMMERCIALY, WE TRIED ETHANOL PLUS SOME SORT OF ACID MEDIA
5 GIVEN OUR CONCEPT OF HOW THE DRUG IS BOUND WE TRIED HAND
6 CLEANER WE TRIED SURFACTANTS, SOAPS, ET CETERA, ALL OF
7 WHICH LEAVE RESIDUES OF THE DRUG ON OUR SKIN THE BEST WE
8 HAVE FOUND IS A SCOURING PAD IF YOU SCOURED THE SKIN
9 ENOUGH, YOU CAN REMOVE THE SURFACE LAYERS WHERE, I BELIEVE,
10 THE DRUGS ARE BOUND AND REDUCE IT EVEN A SCOURING PAD
11 DOESN'T ELIMINATE EVERYTHING, AND IT KIND OF HURTS AFTER YOU
12 GET DONE TOO

13 Q SO THEN AN ALCOHOL SWAB IN AND OF ITSELF, AS PHARMCHEM
14 SAYS, WOULD NOT BE SUFFICIENT?

15 A NOT IN OUR HANDS

16 Q OKAY HOW ABOUT SOAP AND WATER AND AN ALCOHOL SWAB?

17 A IF YOU GO BACK TO THE CONCEPT THAT WE TOOK SHOWERS---

18 Q YES, SIR

19 A ---THAT'S SOAP AND WATER, AND THAT'S WARM WATER IN THAT
20 CASE RATHER THAN COLD WATER AND THEN WE CLEANED IT WITH
21 ALCOHOL BEFORE WE APPLIED THE PATCH

22 Q YES, SIR

23 A OKAY

24 Q BEFORE WE GO ON TO THIS SLIDE, IS THERE A REASON WHY
25 COCAINE -- WELL, LET ME JUST ASK YOU THIS, DOES COCAINE SEEM

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1 TO LINGER ON THE SKIN LONGER THAN OTHER DRUGS?

2 A WELL, DRUGS HAVE DIFFERENT CHEMICAL STRUCTURES, AND
3 COCAINE IS CONSIDERED TO BE A LIPOPHILIC MOLECULE IT LIKES
4 TO BIND TO OILS

5 Q YES, SIR

6 A AND FOR THE REASON IS WHY IT TENDS TO BIND TO PROTEINS
7 MORE READILY THAN DRUGS SUCH AS METHAMPHETAMINE, FOR EXAMPLE,
8 WHICH IS MORE HYDROPHOBIC, MORE LIKE WATER -- WATER-LIKING
9 VERSUS OIL-LIKING SO COCAINE TENDS TO STICK TO MONEY
10 BECAUSE I BELIEVE IT STICKS TO THE OIL THAT'S ON THE MONEY
11 AND MONEY IS NOT PRINTED WITH AN INK THAT DRIES MONEY IS
12 PRINTED WITH AN OILY-BASED INK THAT STAYS ESSENTIALLY
13 PARTIALLY RUBABLE (SIC) OFF FOR THE LIFE OF THE BILL

14 Q OKAY I KNOW WE DIDN'T TALK ABOUT THIS, BUT IS IT --
15 GIVEN THAT IT BONDS TO THE OIL MORE READILY, IS IT
16 CONCEIVABLE THAT SOMEONE WHO MAY HAVE HAD OILY SKIN

17 A IT'S CONCEIVABLE WE DIDN'T STUDY, AT GREAT LENGTH,
18 DIFFERENT SKIN TYPES IT JUST WASN'T RELEVANT IN MY
19 OPINION, IF YOU CAN PUT IT ON A FEW PEOPLE AND YOU CAN'T GET
20 IT OFF, WHAT DIFFERENCE DOES IT MAKE WHAT TYPE OF SKIN TYPE
21 YOU HAVE?

22 Q EXACTLY OKAY NOW TELL ME WHAT WE CAN DERIVE FROM
23 THIS SLIDE

24 A WELL, WE NOT ONLY STUDIED OURSELVES IN A LABORATORY
25 SITUATION, BUT WE ALSO LOOKED AT ADDICTS, AGAIN, IN DRUG

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1 TREATMENT, AND THIS IS AN EXAMPLE OF AN ADDICT WHERE WE
2 FOLLOWED THAT INDIVIDUAL BY URINALYSIS HE WAS IN -- HE OR
3 SHE, I'M NOT SURE WHICH, WAS IN A PROGRAM, AND WE TESTED THE
4 URINE ESSENTIALLY ON A DAILY BASIS AND WHAT WE FOUND WERE
5 THE URINE WAS NEGATIVE AND THE SWEAT PATCHES WERE POSITIVE
6 WE ALSO DID THINGS LIKE SKIN WIPES

7 WE HAD PROPOSED THAT ONE SHOULD WIPE THE SKIN BEFORE
8 PUTTING ON THE PATCH, WHICH EVERYBODY AGREES WITH, BUT ALSO
9 SAVED THOSE WIPES AND TEST THE WIPES TO SEE WHETHER THERE WAS
10 ANY DRUG PRESENT PRIOR TO PUTTING ON THE PATCH IF THERE WAS
11 DRUG PRESENT, THEN THE PATCH RESULTS HAVE NO VALIDITY

12 IN THIS PARTICULAR CASE, IF I REMEMBER CORRECTLY, THIS
13 INDIVIDUAL, I DON'T BELIEVE, HAD DRUG RESIDUES PRESENT ON THE
14 SKIN BEFORE WE PUT ON THE PATCH, WHICH WOULD LEAD US TO
15 BELIEVE THAT THIS IS AN EXAMPLE OF CONTAMINATION FROM
16 WITHOUT

17 Q YES, SIR

18 A BUT IT DEFINITELY IS CONTAMINATION, WHICHEVER IS THE
19 CASE, WITHIN OR WITHOUT, BECAUSE THIS INDIVIDUAL DID NOT USE
20 DRUGS DURING THIS PERIOD OF TIME THAT WE WERE MONITORING HIM

21 Q OKAY CAN YOU TELL ME WHAT THIS SLIDE REVEALS?

22 A WELL, AGAIN, WHEN WE WERE STUDYING CHILDREN FOR HAIR
23 TESTING, WE ALSO DID WIPES OF THE CHILDREN AND THE ADULTS
24 LIVING IN THIS ENVIRONMENT, AND YOU CAN SEE QUITE A LOT OF
25 DRUGS PRESENT ON THEIR SKIN, UP TO 300 NANOGRAMS IN THE CASE

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1 OF THE CHILD, AND IT LOOKS LIKE ABOUT 450 NANOGRAMS IN THE
2 CASE OF THE ADULT AND THIS IS DRUG THAT IS REMOVABLE BY
3 ALCOHOL, NOT THE DRUG THAT HAS BOUND TO THE SKIN SO THAT'S
4 A KEY POINT THERE MAY BE MUCH HIGHER CONCENTRATIONS THAT WE
5 CAN'T GET OFF BY JUST RUBBING IT WITH ALCOHOL, SHOWING YOU
6 THAT IN REAL-LIFE CIRCUMSTANCES PEOPLE HAVE DRUGS ON THEIR
7 SKIN

8 AGAIN, I WANT TO REMIND YOU THAT 25 NANOGRAMS IS THE
9 CUTOFF LEVEL AND HERE YOU HAVE SOMETHING THAT IS 12 TIMES
10 THAT FOR ONE CHILD POSITIVE REMOVABLE CONTAMINATION

11 Q OKAY WELL LET ME ASK YOU THIS, HOW DO YOU THINK THIS
12 STUDY THAT YOU DID ALONG WITH DR SMITH, HOW DO YOU THINK
13 THAT RELATES OR AFFECTS MR CARY'S POSITION THAT
14 CONTAMINATION SUCH AS THIS CANNOT OCCUR IN REAL LIFE?

15 A WELL, I'D LIKE TO SEE DATA SUPPORTING THAT, BECAUSE WE
16 HAVE, I THINK, A LOT OF DATA SHOWING THAT IT DOES OCCUR IN
17 REAL LIFE

18 Q YES, SIR

19 A AND HERE'S AN EXAMPLE OF CONTAMINATION OCCURRING WITH
20 CHILDREN LIVING IN AN ADULT ENVIRONMENT AND PRESUMABLY THE
21 MOTHER IS NOT USING DRUGS RIGHT IN FRONT OF THE CHILD
22 THAT'S A PRESUMPTION WE HAVE NO IDEA WHETHER THEY DO OR
23 NOT SO THAT'S A PRESUMPTION SO THEY USE IT SOMEWHERE IN
24 THE HOUSE, AND THE CHILD HAS CONTACT WITH IT OR CONTACT WITH
25 THE MOTHER WHO HAS DRUG RESIDUES ON HER SKIN

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1 Q OKAY NOW, IS THERE A CERTAIN AMOUNT OF CONTAMINATION
2 NEEDED TO REACH THE CUTOFF?

3 A YES IN OUR LABORATORY, AGAIN, USING THE FACT THAT THE
4 DRUGS HAVE TO REMAIN ON THE SKIN FOR SEVERAL HOURS BEFORE WE
5 TRY TO WASH IT OFF, WE FIND THAT ABOUT HALF THE NANOGRAMS
6 OR -- SORRY, HALF A MICROGRAM TO ONE MICROGRAM APPLIED TO THE
7 SKIN WILL REACH THE COMMERCIAL CUTOFF, AND THAT JUST LARGER
8 AMOUNTS, LIKE FIVE MICROGRAMS, WILL REACH IT MUST EASIER
9 AND AGAIN, THIS IS DRUGS PLACED ON THE SKIN AND TRIED TO BE
10 WASHED OFF

11 Q OKAY HOW BIG IS A MICROGRAM? CAN YOU SEE IT?

12 A NO, YOU CANNOT SEE A MICROGRAM IT'S ONE-THOUSANDTH OF
13 THAT PENCIL POINT TOP

14 Q OKAY NOW, ARE THERE ANY OTHER STUDIES THAT YOU ARE
15 AWARE OF REGARDING CONTAMINATION?

16 A YES ED CONE IN HIS EARLIER PAPER ACTUALLY SAW
17 CONTAMINATION IN HIS STUDY AND WHAT HE DID AT THE TIME --
18 AND THIS WAS 1994 -- IS HIS BELIEFS WERE THAT THE PATCH WAS
19 PROTECTED AND, THEREFORE, THIS MUST HAVE BEEN HANDLING ERROR
20 BUT HE SAW LEVELS THAT WERE QUITE HIGH WHAT HE HAD DONE --
21 IT'S NOT DESCRIBED WELL IN THAT PAPER, BUT HE HAD PLACED
22 INDIVIDUALS WHO WERE DRUG FREE IN A ROOM WHERE PEOPLE HAD
23 BEEN -- ARE USING DRUGS HE BURNED CRACK COCAINE IN THE
24 CENTER OF THE ROOM, AND THEN HE MEASURED THE PATCHES THAT
25 THEY WERE WEARING, SOME OF WHICH WERE POSITIVE MOST WERE

1 NEGATIVE, BUT SOME WERE POSITIVE

2 AND THEN WE LOOKED AT PHARMCHEM'S INTERNAL STUDIES
3 WHEN WE FIRST PUBLICIZED, IN 1999, OUR REPORT, PHARMCHEM WAS
4 QUITE CONCERNED, AND THEY WENT INTO THEIR LABORATORY AND
5 TRIED TO REPRODUCE OUR STUDIES AND SURE ENOUGH, THEY FOUND
6 VERY SIMILAR RESULTS THEIR OWN INTERNAL STUDY SHOWED THAT
7 CONTAMINATION FROM WITHIN AND CONTAMINATION FROM WITHOUT IS
8 POSSIBLE THEN PHARMCHEM SPONSORED A STUDY AT THE CENTER FOR
9 HUMAN TOXICOLOGY -- DENNIS CROUCH WAS THE LEAD AUTHOR --
10 THAT, IN MY OPINION, USED TOO LITTLE OF A DOSE THEY USED
11 ONE ONE-HUNDRED-THOUSANDTH VERSUS ONE TEN-THOUSANDTH, AND
12 THEY ALSO DIDN'T LEAVE IT ON VERY LONG BUT EVEN WITH THOSE
13 PROBLEMS WITH THE STUDY, THEY STILL SAW FOUR OUR OF FIVE
14 SUBJECTS WITH DRUG PRESENT, ONE OF WHICH WAS OVER THE CUTOFF
15 AND THE OTHER---

16 Q CAN YOU BACK UP? NOW, WHEN YOU SAY THEY USED ONE ONE-
17 HUNDRED-THOUSANDTH OF A DOSE, THAT'S ONE-TENTH OF THE
18 NANOGRAM DOSE THAT YOU CAN'T EVEN SEE WITH A MICROSCOPE, IS
19 THAT CORRECT?

20 A ONE-TENTH OF THE MICROGRAM DOSE, YES, THAT'S CORRECT

21 Q YES, SIR OKAY NOW, DO YOU HAVE ANY CONCLUSIONS OR
22 OPINIONS REGARDING THE HANDLING OF PATCHES GIVEN YOUR
23 RESEARCH?

24 A WELL, BECAUSE THE AMOUNT TO GENERATE A POSITIVE WITH
25 DIRECT APPLICATION TO THE PATCH IS SO LOW -- THAT'S DISTINCT

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1 FROM APPLYING TO THE SKIN AND TRYING TO WASH OFF THE SKIN,
2 THAT IF YOU APPLY IT TO PATCH IT'S REALLY ONE FOUR-MILLIONTH
3 OF A DOSE IF I TAKE A SINGLE DOSE OF COCAINE, I CAN
4 PROBABLY CONTAMINATION THE ENTIRE POPULATION OF SOUTH
5 CAROLINA WITH THAT SINGLE DOSE OF COCAINE I THINK GREAT
6 CARE NEEDS TO BE USED IN APPLICATION AND REMOVAL OF THIS
7 PATCH, BECAUSE THE CONTAMINATION LEVEL IS SO SMALL, AND THAT,
8 IN MY OPINION, BECAUSE YOU DON'T CLEAN THE PATCH, THE SWEAT
9 PATCH IS REALLY MORE SUSCEPTIBLE THAN HAIR TESTING TO
10 CONTAMINATION BECAUSE HAIR, ONCE IT'S CUT, ONE CAN GO IN
11 THE LABORATORY AND TRY TO DECONTAMINATE IT YOU CAN'T DO
12 THAT WITH THE PATCH

13 Q ALL RIGHT

14 A SO CARE IS VERY CRITICAL IN THAT CASE

15 Q NOW, WITH THAT SAID, YOU DON'T BELIEVE THAT -- OR YOU DO
16 YOU BELIEVE THAT -- WELL, LET ME BACK UP WITH ALL THE
17 PROBLEMS THAT YOU HAVE IDENTIFIED THROUGH YOUR INDEPENDENT
18 STUDIES REGARDING THE SWEAT PATCH, DO YOU THINK THAT THERE IS
19 A USE?

20 A OH, DEFINITELY I THINK IT DOES HAVE APPLICABILITY
21 FOR EXAMPLE, ONE COULD USE IT FOR INTELLIGENCE GATHERING IN
22 A PRISON SYSTEM, WHICH IS A PRESUMABLY CONTROLLED
23 ENVIRONMENT, PRESUMABLY LOW DRUG USE, ALTHOUGH SOME PRISON
24 SYSTEMS AREN'T, IF ONE DENIED USE WEARING THE PATCH, THEN YOU
25 WOULD WANT TO MEASURE THE ENVIRONMENT THAT THAT INMATE WAS

DAVID KIDWELL -- DIRECT BY MR GIBSON

1 SUSCEPTIBLE TO IS THAT INMATE A DEALER? IS THE INMATE'S
2 ROOMMATE A DEALER? WHAT'S GOING ON? IF IT'S STILL
3 UNEXPLAINED THOUGH, I DO NOT BELIEVE YOU SHOULD TAKE
4 SANCTIONS ON THAT INDIVIDUAL UNTIL YOU DO FREQUENT URINE
5 TESTING AND IF THE URINE TEST IS POSITIVE, THEN YOU WOULD
6 TAKE SANCTIONS IF NOT, YOU WOULD PROBABLY THROW IT AWAY
7 BUT YOU WOULD USE IT FOR INTELLIGENCE GATHERING DATA

8 ALSO, I BELIEVE THE PATCH REALLY HAS ADVANTAGES IT'S
9 ON YOU, AND IT'S A CONSTANT REMINDER THAT YOU ARE BEING DRUG
10 TESTED SO IT HAS ITS DETERRENT VALUE FOR PEOPLE THAT HAVE
11 GRADUATED FROM THE MORE RIGOROUS URINE TESTING PROGRAM AND
12 INTO SOMETHING LESS RIGOROUS, SUCH AS THE PATCH TESTING

13 Q OKAY AND, AGAIN, ALL THESE APPLICATIONS THAT YOU'RE
14 SPEAKING ABOUT ON THIS OTHER SLIDE ARE LIMITED TO SITUATIONS
15 WHERE ENVIRONMENTAL CONTAMINATION OR THE POSSIBILITY OF
16 ENVIRONMENTAL CONTAMINATION IS MINIMAL?

17 A THAT'S CORRECT NOW, THERE IS A CHANCE THAT BECAUSE ONE
18 DOESN'T KNOW WHAT ENVIRONMENT TO HAVE, ONE COULD STILL USE
19 THE SWEAT PATCH OUTSIDE OF A CONTROLLED ENVIRONMENT IF ONE
20 WERE WILLING TO USE IT IN A CERTAIN MANNER, SUCH AS ON THIS
21 SLIDE HERE FOR EXAMPLE, IF YOU HAD A DRUG TESTING PROGRAM
22 WHERE YOU HAD INITIAL ENTRY INTO THE PROGRAM, I WOULD SUGGEST
23 YOU DO FREQUENT URINE TESTING OR SALIVA TESTING, BUT SOME
24 SORT OF DRUG TESTING WHERE WE ARE SURE THAT THE INDIVIDUAL IS
25 POSITIVE BECAUSE THEY USED DRUGS NOT BEEN AROUND THEM THEN

DAVID KIDWELL -- DIRECT BY MR GIBSON

1 IF THEY PASS OR GRADUATE FROM THAT PART OF A TESTING REGIME
2 INTO SOMETHING ELSE, THEN YOU COULD APPLY THE PATCH YOU
3 COULD APPLY IT AND MONITOR THAT INDIVIDUAL FOR SOME PERIOD OF
4 TIME FOR EXAMPLE, IN THIS CASE, TWO TO TWELVE MONTHS IF
5 THEY WERE NEGATIVE THEN, THEY GO ON TO HAIR TESTING FOR MAYBE
6 13 MONTHS TO 24 MONTHS AND IF THEY ARE NEGATIVE FOR THAT,
7 THEN YOU GRADUATE DRUG FREE BUT IF THEY ARE POSITIVE IN ANY
8 OF THESE ALTERNATIVE MATRICES, HAIR OR SWEAT, THEN THEY
9 REALLY SHOULD GO BACK INTO THE URINE TESTING PROGRAM BECAUSE
10 THAT PARTICULAR INDIVIDUAL IS NOW IN AN ENVIRONMENT OR HAS
11 BEEN IN AN ENVIRONMENT WHERE DRUGS MAY BE A CONCERN SO WHAT
12 YOU DO IS YOU VIOLATE THE INDIVIDUAL ON URINE TESTING, YOU
13 ALLOW THEM TO GRADUATE, IF THEY SO DESIRE, INTO THESE OTHER
14 PROGRAMS BUT ONCE THEY HAVE A POSITIVE, GO BACK INTO URINE,
15 FORCE THEM INTO URINE AND KEEP THEM IN URINE FOR AS
16 FREQUENTLY AS YOU DESIRE, AND ONLY APPLY SANCTIONS BASED ON
17 THAT

18 Q SO AGAIN, YOU DO NOT BELIEVE THAT SANCTIONS SHOULD BE
19 APPLIED SOLELY ON SWEAT PATCHES?

20 A NO, NOT WITH THE PROBLEMS THAT WE'VE IDENTIFIED

21 Q OKAY NEXT SLIDE, PLEASE OKAY DO YOU HAVE ANY OTHER
22 OPINIONS ABOUT THE APPLICATION OF THIS TEST AS CAN BE SHOWN
23 ON THIS SLIDE?

24 A YES THIS SLIDE -- PRESS DOWN, PLEASE -- GIVES YOU AN
25 EXAMPLE OF HOW YOU COULD SAVE MONEY IN SUCH A TESTING REGIME,

DAVID KIDWELL -- DIRECT BY MR GIBSON

1 THAT IF ONE WERE TO USE URINE TESTS ONLY, YOU WOULD HAVE TO
2 TEST QUITE FREQUENTLY, AND I THINK YOU COULD SLACK OFF ON THE
3 URINE TEST AFTER THE INDIVIDUAL IS IN THE PROGRAM FOR A
4 NUMBER OF PERIODS OF TIME YOU'D RUN ROUGHLY A HUNDRED
5 TESTS, WHICH MEANS YOU HAVE TO HAVE A HUNDRED VISITS, A
6 HUNDRED DIRECT OBSERVATIONS, ET CETERA IF YOU TRY WITH THE
7 FLOW CHART THAT I SUGGESTED, YOU WOULD HAVE FAR FEWER VISITS
8 AND PRESUMABLY FAR FEWER TESTS AND PRESUMABLY THOSE WOULD
9 SAVE YOU MONEY AND STILL ENSURE A DRUG-FREE CLIENTELE

10 Q OKAY CAN YOU TELL ME ABOUT THE -- WHAT ARE YOUR
11 CONCLUSIONS?

12 A WELL, IN CONCLUSION, BECAUSE OF THE EASE OF COLLECTION
13 OF HAIR AND SWEAT TESTING, THEY SHOULD BE CONSIDERED WHERE
14 ENVIRONMENTAL CONTAMINATION PERMITS THE ORDER OF
15 DETECTABILITIES IN HAIR AND SWEAT REALLY IS COCAINE IS
16 GREATER THAN METHAMPHETAMINE GREATER THAN HEROIN, WHICH IS
17 GREATER THAN MARIJUANA SO IF YOU'RE TRYING TO MEASURE
18 INDIVIDUALS WHO ARE MARIJUANA USERS, SWEAT TESTING OR HAIR
19 TESTING IS PROBABLY NOT THE WAY TO GO URINE TESTING IS
20 STILL THE BEST METHODOLOGY IF MARIJUANA IS NOT THE DRUG
21 THAT YOU'RE CONSIDERING THAT'S OF CONCERN TO YOU THAN ONE
22 LIKE COCAINE IS, THEN SWEAT OR HAIR TESTING IS APPLICABLE
23 BOTH HAIR AND SWEAT TESTING MEASURE USE AND EXPOSURE
24 THAT'S IMPORTANT USE AND EXPOSURE EXPOSURE MAY PRODUCE
25 VALUABLE INTELLIGENCE BUT IF USE IS YOUR ONLY CONCERN, THEN

DAVID KIDWELL -- DIRECT BY MR GIBSON

1 EXPOSURE MUST BE ELIMINATED IF EXPOSURE IS A PROBLEM,
2 URINALYSIS IS REALLY THE ONLY WAY TO GO AND I BELIEVE THAT
3 FREQUENT TESTING ACTS AS A DETERRENT TO DRUG USE, AND YOU MAY
4 SAVE MONEY AND PERSONNEL WITH A COMBINED TESTING PROGRAM

5 FINALLY, I THINK IT'S IMPORTANT TO KNOW THE LIMITATIONS
6 OF THE TECHNOLOGY, WHAT IT CAN DO, WHAT IT CANNOT DO, AND ITS
7 FAIR APPLICATION, SO THAT ONE USES THE TECHNOLOGY IN THE BEST
8 APPROPRIATE MANNER

9 Q OKAY NOW, WE DIDN'T TALK ABOUT THIS, BUT -- WE HAVEN'T
10 TALKED ABOUT THIS YET, BUT IT IS MY UNDERSTANDING THAT YOU
11 ALSO HAVE SOME OPINIONS ABOUT HOW -- WHAT TYPE OF JOB SOMEONE
12 MAY HAVE, LIKE IF THEY WERE IN A WHITE COLLAR ENVIRONMENT AS
13 OPPOSED TO A BLUE COLLAR ENVIRONMENT, HOW THAT MAY AFFECT
14 THEIR TEST RESULTS ON THE SWEAT PATCH?

15 A YEAH WHAT WE FOUND IN OUR STUDIES, THAT IF YOU WANTED
16 EFFICIENT TRANSFER FROM THE SKIN TO THE SWEAT PATCH, ONE HAD
17 TO SWEAT AND IF I WENT OUT AND I PLACED DRUGS ON MY SKIN,
18 PLACED THE SWEAT PATCH ON ME, AND THEN I WENT OUT AND
19 EXERCISED -- IN THIS CASE I SPLIT WOOD IN WASHINGTON, D C ,
20 IN THE SUMMER, SO I WAS SWEATING A LOT I WAS SWEATING SO
21 MUCH, YOU KNOW, SWEAT WAS RUNNING DOWN MY THING AND SO -- AND
22 I HAD A HARD TIME KEEPING THE SWEAT PATCHES ON ME UNDER THOSE
23 CIRCUMSTANCES AND THAT ALLOWED VERY EFFICIENT TRANSFER OF
24 THE DRUGS IF WE JUST SAT AROUND IN OUR OFFICES WITH OUR
25 FEET PROPPED UP ON OUR DESKS DRINKING COFFEE, WE HAD MUCH

DAVID KIDWELL -- DIRECT BY MR GIBSON

1 LOWER TRANSFER

2 NOW, WE ACTUALLY DEVELOPED WAYS TO INCREASE THAT
3 TRANSFER, IF ONE SO DESIRED, BUT I DON'T THINK THAT'S
4 NECESSARY TO DISCUSS AT THIS TIME

5 Q OKAY NOW, AS PART OF US BRINGING YOU HERE, YOU'VE ALSO
6 HAD A CHANCE TO REVIEW THE LITIGATION PACKETS---

7 A YES, I HAVE

8 Q ---ON VARIOUS INDIVIDUALS NOW, SPECIFICALLY ABOUT THE
9 SWEAT PATCH RESULTS WERE YOU ABLE TO COME TO ANY CONCLUSION
10 BASED ON THOSE LITIGATION PACKETS AS TO WHETHER OR NOT THE
11 INDIVIDUALS IN QUESTION HERE ACTUALLY USED DRUGS?

12 A NO I CANNOT TELL BASED ON THE LITIGATION PACKETS

13 Q CAN YOU EXPLAIN WHY?

14 A WELL, THEY SHOW THE PRESENCE OF DRUGS, BUT HOW THOSE
15 DRUGS GOT THERE IS UNKNOWN THEY COULD HAVE BEEN EXPOSED TO
16 DRUGS, THEY COULD HAVE BEEN USING DRUGS OR ONE OF THOSE TWO
17 POSSIBILITIES OR THE LAB COULD HAVE MADE AN ERROR, BUT I'M
18 ASSUMING THE LAB DID A GOOD JOB I'M ASSUMING -- I'M MAKING
19 A PRESUMPTION THE COLLECTION PROCESS WAS PERFECT AND I DO
20 NOT KNOW, AND I CANNOT TELL FROM THE LITIGATION PACKAGES HOW
21 PERFECT THAT COLLECTION PROCESS WAS BUT RULING OUT
22 CONTAMINATION IN THE LABORATORY AND RULING OUT CONTAMINATION
23 IN THE COLLECTION PROCESS, THEN ALL I CAN TELL WITH THE
24 USERS, OR WITH THESE INDIVIDUALS, IS THAT THEY WERE EXPOSED
25 TO DRUGS THAT'S IT

DAVID KIDWELL -- DIRECT BY MR GIBSON

1 Q OKAY I THINK YOU ALSO HEARD TESTIMONY FROM MS GARNER
2 ABOUT SOME OF HER COLLECTION PROCEDURES AND I THINK I HAD
3 ASKED HER A QUESTION OR HAD BROUGHT OUT IN HER TESTIMONY THAT
4 THERE WERE TIMES WHEN SHE WOULD -- DURING THE TESTING PROCESS
5 SHE WOULD TOUCH VARIOUS ITEMS, LIKE PENS AND PAPERS AND DESKS
6 IN THE ENVIRONMENT DO YOU REMEMBER THAT?

7 A I DON'T REMEMBER SPECIFICALLY, BUT OKAY

8 Q WELL, LET'S ASSUME FOR THE PURPOSES OF THIS QUESTION
9 THAT DURING THE APPLICATION AND REMOVAL PROCEDURE THAT THE
10 PERSON WHO WAS DOING THE TESTING IN THE MIDDLE OF THE
11 PROCEDURE TOUCHED OTHER ITEMS IN THE ENVIRONMENT

12 A WELL, THE PROBLEM IS, ONCE YOU PUT THOSE GLOVES ON YOU
13 ESSENTIALLY HAVE TO PRETEND YOU'RE A DOCTOR, HOLD YOUR HANDS
14 UP LIKE THIS (DEMONSTRATING) AND DO NOT TOUCH ANYTHING,
15 DESKS, WALLS, ET CETERA, PERSON, DON'T ROLL UP THEIR SLEEVES,
16 DON'T DO ANYTHING LIKE THAT, BECAUSE ANY TIME YOU DO THAT,
17 YOU CAN TRANSFER THOSE TRACES OF DRUGS THAT YOU CAN'T SEE
18 FROM YOU TO THE SURFACE OF THOSE GLOVES AND THAT HAS THE
19 POTENTIAL TO CONTAMINATE THAT PATCH

20 Q YES, SIR

21 A SO IF SHE FOLLOWED THOSE PROCEDURES CAREFULLY, THERE
22 WERE NO DRUGS IN THE ENVIRONMENT, AND THEY WERE CAREFUL IN
23 CLEANING, ET CETERA, ET CETERA, THEN THE CONTAMINATION WOULD
24 HAVE BEEN MINIMIZED IN THAT ENVIRONMENT

25 Q OKAY IF YOU WOULD, PLEASE -- OH, I'M SORRY BEFORE WE

DAVID KIDWELL -- DIRECT BY MR GIBSON

1 GET TO THAT POINT THERE ARE SOME STUDIES --

2 MR GIBSON (HANDS DOCUMENTS TO MS STROM)

3 MS. STROM ARE YOU TRYING TO ADMIT THESE ACTUAL
4 ARTICLES INTO EVIDENCE?

5 MR. GIBSON YEAH DO YOU HAVE AN OBJECTION?

6 MS. STROM WELL, I WOULD OBJECT AT THIS TIME, YOUR
7 HONOR I MEAN, I THINK THIS IS BASICALLY WHAT HE HAS
8 ALREADY TESTIFIED TO IN TERMS OF HIS CONCLUSIONS AND RESULTS

9 MR GIBSON TO A LARGE EXTENT, SHE IS ABSOLUTELY
10 RIGHT, YOUR HONOR

11 MS STROM AND I HAVEN'T HAD A CHANCE -- AN
12 OPPORTUNITY TO READ THEM TO SEE IF THEY'RE---

13 THE COURT IF HE'S ALREADY TESTIFIED THAT'S WHAT HE'S
14 RELIED UPON, I THINK THAT WOULD BE SUFFICIENT

15 MR GIBSON OKAY THEN I HAVE NOTHING FURTHER AT THIS
16 TIME, YOUR HONOR

17 IF YOU WOULD, ANSWER ANY QUESTIONS THAT MR ARMSTRONG
18 HAS

19 CROSS EXAMINATION BY MR ARMSTRONG

20 Q DR KIDWELL, YOU TESTIFIED THAT YOU HAD REVIEWED CERTAIN
21 LITIGATION PACKAGES IS THAT INDEED CORRECT?

22 A YES, THAT'S CORRECT

23 Q IN PARTICULAR DID YOU REVIEW A LITIGATION PACKAGE OR
24 PACKAGES ON MR JANELLI?

25 A YES, I DID

DAVID KIDWELL -- CROSS BY MR ARMSTRONG

1 Q I BELIEVE THAT THEY ARE PROBABLY BEFORE YOU

2 A YES, THERE'S JANELLI EXHIBIT 1

3 Q THAT'S CORRECT AND THAT IS THE -- I BELIEVE THAT'S THE
4 HAIR STRAND ANALYSIS, IS IT NOT?

5 A THAT'S CORRECT THIS IS QUEST DIAGNOSTICS' HAIR TEST ON
6 MR DANE JANELLI

7 Q OKAY AND WHAT DID YOUR REVIEW -- EXCUSE ME AFTER YOU
8 HAD REVIEWED THIS INFORMATION, WHAT DID YOU DETERMINE?

9 A THE HAIR IS ABSOLUTELY NEGATIVE AT THE LIMIT OF
10 DETECTION OF THIS TECHNOLOGY

11 Q OKAY DID YOU ALSO REVIEW A DRUG PATCH LITIGATION
12 PACKET ON MR JANELLI?

13 A YES, I DID IT'S NOT BEFORE ME RIGHT NOW

14 Q I BELIEVE YOU HAVE THAT I'VE GOT A COPY, BUT IT WILL
15 TAKE ME A SECOND TO FIND IT (PAUSE)

16 MR. ARMSTRONG I WOULD OFFER THIS PACKET AS AN
17 EXHIBIT, YOUR HONOR

18 THE COURT ALL RIGHT

19 (PATCH LITIGATION PACKET FOR DANE JANELLI MARKED AS
20 DEFENDANT JANELLI NUMBER 2 AND MOVED INTO EVIDENCE)

21 Q I HAND YOU WHAT HAS BEEN MARKED AS JANELLI NUMBER 2, AND
22 I CALL YOUR ATTENTION TO THE FIFTH PAGE, SIR

23 A OKAY

24 Q THAT INDICATES THAT THIS PATCH WAS INSTALLED ON JUNE
25 17TH, 2003?

DAVID KIDWELL -- CROSS BY MR ARMSTRONG

- 1 A I SEE DATE REMOVED AND DATE APPLIED YES
- 2 Q AND IT WAS REMOVED ON JUNE THE 25TH, 2003?
- 3 A THAT'S WHAT IT SAYS, YES
- 4 Q ALL RIGHT AND YOU HAVE REVIEWED THIS PACKET ALSO?
- 5 A YES, I HAVE
- 6 Q WHAT DID THIS PACKET INDICATE?
- 7 A IT SAYS THAT MR JANELLI HAD DRUGS PRESENT IN HIS PATCH
- 8 Q ALL RIGHT AND THAT'S A MERE PRESENCE DOES THAT
- 9 INDICATE TO YOU IN YOUR PROFESSIONAL OPINION WHETHER OR NOT
- 10 IT WAS A RESULT OF USE OR RESULT OF CONTAMINATION?
- 11 A I CANNOT TELL BASED ON THIS PACKET THAT WAS GIVEN TO ME
- 12 Q OKAY DR KIDWELL, MR JANELLI'S PATCH WAS REMOVED --
- 13 EXCUSE ME -- INSTALLED ON JUNE THE 17TH, 2003, AND REMOVED ON
- 14 JUNE THE 25TH, 2003 YOU TESTIFIED THAT THERE WAS AN
- 15 INDICATION OF SOME COCAINE, IS THAT CORRECT?
- 16 A I---
- 17 Q I'LL TURN YOU BACK HERE
- 18 A THE REPORT SAYS IT IS POSITIVE FOR COCAINE THAT'S
- 19 CORRECT
- 20 Q AND SOME "BZE" ALSO?
- 21 A THAT'S CORRECT
- 22 Q I CALL YOUR ATTENTION TO EXHIBIT NUMBER 1 ALSO, WHICH IS
- 23 HAIR STRAND ANALYSIS TEST PERFORMED ON HAIR TAKEN FROM MR
- 24 JANELLI ON AUGUST THE 14TH, 2003
- 25 A OKAY

DAVID KIDWELL -- CROSS BY MR ARMSTRONG

1 Q OKAY MY POINT IS THIS, THAT WHEN YOU LOOK AT THESE TWO
2 TESTS, ONE, THE HAIR STRAND TEST TAKEN APPROXIMATELY TWO
3 MONTHS AFTER THE PATCH TEST HERE, HOW DO YOU SQUARE
4 PROFESSIONALLY THE FACT THAT THE HAIR STRAND HAD NO INDICATED
5 COCAINE OR "BZE" WHEN IN FACT THE PATCH TEST TWO MONTHS
6 EARLIER DID?

7 A WELL, I WANT TO CLARIFY, IT'S NOT -- WELL, IT'S ALMOST
8 TWO MONTHS, ALMOST TWO

9 Q RIGHT

10 A PRESUMABLY THE SWEAT PATCH IS WRONG, THAT HE WAS EXPOSED
11 TO DRUGS AND HE HAD NOT INGESTED THEM

12 Q DO YOU HAVE ANY OTHER EXPLANATION IN YOUR PROFESSIONAL
13 OPINION OTHER THAN THAT WHICH YOU HAVE JUST RENDERED?

14 A WELL, IT IS TECHNICALLY FEASIBLE THAT HE HAD TAKEN SOME
15 LOW DOSAGES OF DRUGS THAT WERE BELOW THE CUTOFF FOR HAIR,
16 TECHNICALLY FEASIBLE, BUT IT'S HIGHLY UNLIKELY GIVEN THE
17 SENSITIVITY OF THE HAIR TEST

18 Q ALL RIGHT AND THE HAIR TEST SENSITIVITY TALKS OF
19 LANGUAGE -- IF YOU WOULD LOOK AT THAT, THAT'S ON THE THIRD
20 PAGE, I BELIEVE, SIR WHAT DOES THE TERMINOLOGY IN PARAGRAPH
21 THREE OF DR BORLAND'S AFFIDAVIT INDICATE TO YOU TALKING
22 ABOUT A LIMIT OF DETECTION TEST FOR COCAINE WAS PERFORMED ON
23 THE SPECIMEN AND THE RESULTS WERE AS FOLLOWS?

24 A WELL, LIMIT OF DETECTION MEANS YOU'RE PUSHING THE
25 TECHNOLOGY AS FAR AS IT WILL GO AS THEY'RE APPLYING IT IN

DAVID KIDWELL -- CROSS BY MR ARMSTRONG

1 THIS PARTICULAR SAMPLE I DO NOT KNOW WHAT THE LIMIT OF
2 DETECTION IS FOR THIS LABORATORY I CAN ESTIMATE IT BASED ON
3 THIS DATA AT AROUND A HUNDRED PICOGRAMS PER MILLIGRAM, AND A
4 PICOGRAM IS ONE-THOUSANDTH OF A NANOGRAM SO IT IS ROUGHLY
5 ONE-FIFTH OF THE LEVEL, THE CUTOFF LEVEL, THAT WE HAVE --
6 THAT IS PROPOSED IN SAMHSA, AND ONE-TENTH THE CUTOFF LEVEL
7 THAT I WOULD LIKE TO SEE USED FOR HAIR TESTING CUTOFF IS
8 IMPORTANT

9 Q ALL RIGHT LET ME ASK YOU THIS FOLLOW-UP QUESTION TO
10 CLARIFY IT WOULD YOU -- BASED ON YOUR REVIEW OF THIS
11 LIMITATION OF DETECTION TEST FOR COCAINE, IS THAT A MORE
12 SENSITIVE OR A LOWER LEVEL THAN PERHAPS THE PATCH TEST WAS?

13 A YOU MEAN AS FAR AS THE CONCENTRATION IS CONCERNED?

14 Q YES

15 A THE CONCENTRATION IS THE LOWER NUMBER, BUT THEY'RE
16 DIFFERENT MATRICES, SO YOU REALLY CAN'T -- YOU'RE COMPARING
17 APPLES TO ORANGES

18 Q ALL RIGHT WELL, WOULD YOU EXPECT -- I GUESS MY
19 QUESTION TO YOU IS THIS, THAT ONCE SOMEONE IS EITHER EXPOSED
20 TO COCAINE EITHER FROM THE ENVIRONMENTAL STANDPOINT OR FROM
21 INGESTION, WOULD YOU REASONABLY EXPECT THERE TO BE AN
22 INDICATION OF SUCH IN HIS HAIR?

23 A YES, I WOULD LET ME CLARIFY THAT THERE ARE
24 SCIENTIFIC STUDIES WHERE PEOPLE HAVE ADMINISTERED DRUGS TO
25 HUMANS, AND THEY TYPICALLY ADMINISTER APPROXIMATELY ONE DOSE

DAVID KIDWELL -- CROSS BY MR ARMSTRONG

1 OF COCAINE TO HUMANS AND THE PREMIER ONES WERE DONE BY
2 HENDERSON, HARKY AND REECE JONES WHERE THEY ADMINISTERED
3 DEUTERATED DRUGS, AND THEY DID THAT BECAUSE THEY COULD TELL
4 THE DEUTERATED DRUGS FROM THOSE NATURALLY PRESENT AND THEN
5 THEY LOOKED AT THE HAIR OF THESE INDIVIDUALS, AND EVERYBODY
6 BUT ONE HAIR -- ONE INDIVIDUAL HAD DRUGS PRESENT, AND THEY
7 ALL WOULD HAVE BEEN ABOVE THE HUNDRED PICOGRAM PER MILLIGRAM
8 RANGE THE ONE INDIVIDUAL JUST HAPPENED TO BE AN AFRICAN
9 AMERICAN INDIVIDUAL AND WHY THAT INDIVIDUAL WAS NEGATIVE IS
10 NOT CLEAR AT THIS POINT IN TIME BUT THERE WERE ABOUT
11 APPROXIMATELY, I'M TRYING TO REMEMBER, I THINK IT WAS 37
12 SO THERE IS A TWO TO THREE PERCENT CHANCE THAT AN
13 INDIVIDUAL COULD TAKE A SINGLE DOSE OF COCAINE AND ESCAPE
14 HAIR TESTING AT THE LIMIT OF DETECTION SO IT'S NOT
15 ABSOLUTE IT IS TECHNICALLY FEASIBLE THAT INDIVIDUAL COULD
16 TAKE THAT DOES, THAT SINGLE DOSE OF COCAINE, AND GET -- HAVE
17 A PATCH POSITIVE AND A HAIR TEST NEGATIVE, ALTHOUGH THE
18 LEVELS, SAY, IN PATCH WOULD CORRESPOND TO A FEW MORE THAN A
19 SINGLE DOSE
20 Q GOING BACK TO MR JANELLI'S PARTICULAR SITUATION HERE
21 WITH THE LEVEL THAT WAS DETECTED IN THE PATCH WHICH WAS
22 REMOVED ON JUNE THE 25TH, WOULD YOU HAVE EXPECTED IN THE HAIR
23 STRAND TEST, WHICH IS EXHIBIT NUMBER 1, THAT THERE WOULD BE
24 AN INDICATION OF COCAINE IN THE HAIR?
25 A WELL, YES THE LEVELS THAT ARE REPORTED BY PHARMCHEM

DAVID KIDWELL -- CROSS BY MR ARMSTRONG

1 ARE A LITTLE CONFUSING WHAT THEY REPORT THEM IN IS
2 NANOGRAMS PER MIL THE SCIENTIFIC LITERATURE IS ACTUALLY
3 NANOGRAMS PER PATCH SO YOU HAVE TO CONSIDER HOW THEY
4 EXTRACT THE SAMPLE, ET CETERA THEY EXTRACT IT INTO TWO AND
5 A HALF MILLILITERS OF SOLVENT AND ANALYZE THAT SOLVENT IT'S
6 ACTUALLY A BUFFER WITH A SURFACTANT AND SO YOU MULTIPLY
7 THIS NUMBER TIMES TWO AND A HALF, AND THAT CORRESPONDS TO
8 MAYBE ONE TO TWO DOSAGES OF COCAINE, MAYBE EVEN MORE

9 Q OKAY

10 A FROM THE TECHNICAL LITERATURE

11 Q SO BASED ON THAT THEN WOULD YOU EXPECT THE HAIR STRAND
12 TEST TO HAVE BEEN POSITIVE?

13 A I WOULD HAVE EXPECTED IT TO BE POSITIVE, YES

14 Q OKAY AND THE FACT THAT IT'S NOT POSITIVE LEADS YOU TO
15 WHAT CONCLUSION?

16 A THAT IT'S NOT LIKELY THAT HE USED DRUGS I CAN'T SAY
17 FOR CERTAIN, BUT IT'S NOT LIKELY THAT HE USED DRUGS

18 Q AND MOST PROBABLY HOW DO YOU FEEL, IF YOU CAN TESTIFY TO
19 THIS, THAT THIS PATCH CAME UP WITH A POSITIVE?

20 A PRESUMABLY ENVIRONMENTAL CONTAMINATION OF SOME SORT,
21 CONTAMINATION FROM WITHIN, CONTAMINATION FROM WITHOUT,
22 HANDLING ERROR DURING THE PATCH REMOVAL OR IN THE LABORATORY
23 I DO NOT KNOW

24 MR ARMSTRONG THANK YOU, SIR

25 THE COURT MR BANNISTER?

DAVID KIDWELL --- CROSS BY MR ARMSTRONG

1 MR BANNISTER THANK YOU, JUDGE

2 CROSS EXAMINATION BY MR. BANNISTER

3 Q WHEN PHARMCHEM APPLIED FOR FDA CLEARANCE, THAT'S WHEN
4 THEY SUBMITTED THESE 501KS THAT YOU'VE REFERENCED?

5 A YES, THAT'S CORRECT

6 Q ALL RIGHT THE EXPERIMENTS THAT PHARMCHEM USED, AS I
7 UNDERSTOOD IT, THEY WERE USING A PATCH ON A DRY PETRI DISH?

8 A LET ME EXPLAIN PHARMCHEM IN THEIR 501K SUBMISSIONS,
9 WHAT THEY DID TO SHOW THAT THE PATCH WAS IMPERMEABLE IS THEY
10 TOOK A PETRI DISH, PUT A DRY PATCH ON IT---

11 Q GO AHEAD I'M SORRY

12 A TOOK A PETRI DISH, TOOK DRUGS, VERY LOW LEVELS ACTUALLY,
13 PUT IT ON THE PATCH, GLUED THE PATCH TO THE PETRI DISH, AND
14 THEN INSERTED THAT DRY PATCH INTO A BATH OF WATER THEN
15 AFTER SOME PERIOD OF TIME, THEY PEELED THE PATCH OFF,
16 ANALYZED WHAT'S LEFT IN THE PATCH, SAW THAT THERE WASN'T A
17 REMARKABLE CHANGE IN CONCENTRATION FROM WHAT THEY ORIGINALLY
18 APPLIED AND CONCLUDED THAT THE PATCH WAS IMPERMEABLE

19 Q AND SO WHAT YOU DID THAT WAS DIFFERENT THAN WHAT
20 PHARMCHEM HAD DONE IS YOU SIMULATED SWEATING UNDER THE PATCH
21 AND HOW THAT CHANGED THAT ANALYSIS?

22 A THAT'S CORRECT AND WE LOOKED NOT FROM OUT IN BUT THE
23 OTHER WAY AROUND, BECAUSE THE OTHER WAY AROUND IS MORE
24 IMPORTANT, IN OUR OPINION -- IN MY OPINION

25 Q ALL RIGHT IN YOUR OPINION, IS THERE ANY VALIDITY TO A

DAVID KIDWELL -- CROSS BY MR BANNISTER

1 PATCH THAT HAS BEEN LEFT ON A SUBJECT FOR MORE THAN FOURTEEN
2 DAYS?

3 A THEY HAVE VALIDITY THAT ISSUE ON THE LONGER PERIODS OF
4 TIME, OTHER THAN IT HAS A GREATER CHANCE OF HAVING
5 CONTAMINATION FROM PEELING OFF AND HAVING COMPROMISE, IS
6 CONTAMINATION THE LONGER YOU LEAVE IT ON, THE MORE CHANCE
7 FOR CONTAMINATION TO OCCUR AND IF THAT'S THE CASE, THEN ONE
8 COULD FALSELY ACCUSE SOMEONE OF BEING A DRUG USER

9 ALSO, I THINK IT'S IMPORTANT THAT IF FOR SOME REASON
10 SOMEONE CAME INTO CONTACT WITH ONLY PURE COCAINE, NOT COCAINE
11 WITH BENZOYLECGONINE IN IT, ONLY PURE COCAINE, AND WAS
12 CONTAMINATED ON DAY ONE, THE LONGER ONE WAITS, THE MORE THAT
13 COCAINE DEGRADES INTO BENZOYLECGONINE AND THE MORE THAT LOOKS
14 LIKE A DRUG USER VERSUS JUST A CONTAMINATION EVENT

15 Q SO IN YOUR DESCRIPTION OF HOW BEST TO USE THE PATCH, YOU
16 ARE USING IT JUST TO, SAY, AS AN INVESTIGATIVE SOURCE, TO
17 FIGURE OUT WHETHER THE INDIVIDUAL SUBJECT IS EITHER EXPOSED
18 TO AN ENVIRONMENT CONTAINING COCAINE OR THAT THEY MAY BE
19 DABBING IN USE AT SOME POINT IN TIME THE FURTHER OUT IN
20 TIME YOU GO WITH THE PATCH ON YOUR ARM, THE LESS INFORMATION
21 THAT POSITIVE PATCH IS GIVING YOU ABOUT WHETHER OR NOT YOU
22 ARE REALLY GETTING IT FROM THE CORE ENVIRONMENT OR WHETHER OR
23 NOT THIS PERSON ACTUALLY INGESTED IT?

24 A THAT'S CORRECT AND THE DRUGS DO DEGRADE IN THE PATCH,
25 AND SO YOU HAVE THAT ISSUE

DAVID KIDWELL -- CROSS BY MR BANNISTER

1 Q AND I'M JUMPING AROUND A LITTLE BIT HERE, BUT THESE ARE
2 THE LAST COUPLE OF QUESTIONS IS THERE ANY LITERATURE THAT
3 YOU ARE AWARE OF THAT REFERENCES A MOLECULAR WEIGHT OF 36 AS
4 BEING THE CUTOFF FOR WHAT CAN GET IN AND OUT OF THE PATCH?

5 A WELL, 36 WAS A SURPRISING NUMBER THE LITERATURE THAT I
6 SHOWED ON THE SLIDE SAID ISOPROPANOL, WHICH IS NOT 36
7 MOLECULAR WEIGHT IT IS 59 -- I'M SORRY -- 50 -- 60,
8 MOLECULAR WEIGHT OF 60

9 Q DOES SOAP CONTAIN BASE?

10 A ABSOLUTELY

11 Q ALL RIGHT SO IN TERMS OF THE AGENT THAT YOU HAD
12 DESCRIBED, THE SOLUTION THAT'S NECESSARY IN YOUR EXPERIMENTS
13 TO CAUSE THE LEECHING THROUGH, SOAP COULD -- SOAP AND WATER
14 COULD DO EXACTLY WHAT YOUR EXPERIMENT HAS SO SHOWN IN TERMS
15 OF THAT LEECHING THROUGH OF COCAINE?

16 A THAT'S CORRECT IN FACT, TAP WATER IS BASIC AS WELL

17 Q IF YOU HAVE PURE COCAINE AND YOU PUT -- SAME QUESTION I
18 ASKED THE PREVIOUS WITNESS, BUT IF YOU HAVE PURE COCAINE AND
19 YOU PUT WATER ON IT AND ADD A LITTLE BASE FROM SOAP, ARE YOU
20 GOING TO GET "BZE" OUT OF THAT?

21 A I PRESUME SO I'VE NEVER DONE IT WITH BASE AND SOAP
22 WHEN I WAS MAKING BENZOYLECGONINE IN THE LABORATORY FOR SOME
23 EXPERIMENTS, WE ALWAYS USE SODIUM BICARBONATE

24 MR BANNISTER UNDERSTOOD THANK YOU NO FURTHER
25 QUESTIONS

DAVID KIDWELL -- CROSS BY MR BANNISTER

1 THE COURT MS STROM, HOW MUCH OF A BREAK DO YOU
2 ANTICIPATE NEEDING TO MEET WITH YOUR EXPERT?

3 MS STROM YOUR HONOR, HE HAS COVERED A LOT OF GROUND
4 AGAIN, SINCE I DIDN'T HAVE THIS MATERIAL BEFOREHAND, I WOULD
5 ASK FOR 45 MINUTES

6 THE COURT ALL RIGHT AND HOW LONG DO YOU ANTICIPATE
7 YOUR CROSS GOING?

8 MS STROM I THINK GIVEN THAT LENGTH OF TIME TO
9 PREPARE, IT WILL DRAMATICALLY CUT DOWN WHAT I ASK I DO NOT
10 EXPECT I WOULD BE LONGER THAN 30 MINUTES, 40 MINUTES

11 THE COURT ALL RIGHT LET'S SEE IF WE CAN DO IT IN
12 MAYBE A 30-MINUTE BREAK AND IF IT BECOMES OBVIOUS TO YOU
13 THAT WE CAN'T, THEN I WILL CERTAINLY ACCOMMODATE YOU ON THAT
14 AS WELL

15 MS STROM THANK YOU, YOUR HONOR

16 THE COURT THANK YOU SO WE'LL TAKE A BREAK UNTIL
17 4 30, AND THEN Y'ALL REPORT TO MY BAILIFF AND WE'LL KNOW
18 WHERE WE ARE AT THAT POINT

19 (A RECESS WAS TAKEN FROM 3 59 TO 4 35 P M)

20 THE COURT ALL RIGHT SOLICITOR, HAVE YOU HAD
21 SUFFICIENT TIME?

22 MS STROM EXCUSE ME, YOUR HONOR I BELIEVE SO
23 (WITNESS RETAKES THE STAND)

24 THE COURT I JUST REMIND YOU THAT YOU ARE STILL UNDER
25 OATH, SIR

DAVID KIDWELL -- CROSS BY MS STROM

1 CROSS EXAMINATION BY MS STROM

2 Q GOOD AFTERNOON, DR KIDWELL

3 A GOOD AFTERNOON

4 Q I JUST WANT TO GET A COUPLE OF POINTS CLARIFIED BEFORE
5 WE SORT OF GET INTO THE MEAT OF WHAT YOU TALKED ABOUT HERE
6 TODAY, AND THAT IS, YOU DID NOT PREPARE A REPORT REGARDING
7 THIS MATTER INVOLVING THE SPECIFIC LITIGATION PACKETS OF
8 THESE INDIVIDUALS IN QUESTION?

9 A THAT'S CORRECT

10 Q AND WERE YOU ASKED NOT TO PREPARE A REPORT?

11 A NO

12 Q YOU JUST DID NOT DO THAT?

13 A I WAS NOT ASKED TO PREPARE ONE NOR ASKED NOT TO PREPARE
14 ONE

15 Q AND SO YOU DID NOT PREPARE ONE?

16 A I DID NOT PREPARE ONE

17 Q AND YET YOU HAVE HAD, HAVE YOU NOT, PAUL CARY'S REPORT?

18 A I GOT PAUL CARY'S REPORT ABOUT A WEEK, MAYBE TWO WEEKS
19 AGO

20 Q SO YOU HAVE HAD TIME TO LOOK OVER HIS REPORT, SEE WHAT
21 HIS CONCLUSIONS WERE?

22 A THAT'S CORRECT BUT I DID NOT SEE THE RAW DATA

23 Q OKAY BUT WE'VE NOT HAD THAT SAME OPPORTUNITY WITH YOU?

24 A BECAUSE I HAVEN'T PREPARED A REPORT

25 Q CORRECT

DAVID KIDWELL -- CROSS BY MS STROM

- 1 A THAT'S CORRECT
- 2 Q BUT YOU DID GO THROUGH THE PROCESS OF PREPARING THIS
- 3 PRETTY EXTENSIVE SLIDE SHOW?
- 4 A YES, BUT THE SLIDES WERE PREPARED FROM OTHER TECHNICAL
- 5 TALKS I PUT THEM TOGETHER---
- 6 Q HOW MANY TIMES HAVE YOU GIVEN THE SLIDE SHOW?
- 7 A THIS PARTICULAR ONE? NO THIS WAS PREPARED -- THIS
- 8 PARTICULAR ONE WAS PREPARED FOR THIS -- FOR THE TESTIMONY
- 9 TODAY
- 10 Q OKAY AND HOW LONG HAVE YOU HAD IT?
- 11 A HOW LONG HAS IT BEEN PREPARED?
- 12 Q YES
- 13 A IN THE PRESENT STATE, APPROXIMATELY SEVEN O'CLOCK LAST
- 14 NIGHT
- 15 Q OKAY AND PRIOR TO THAT YOU SAID THAT THESE OTHER --
- 16 YOU HAD GIVEN SIMILAR PRESENTATIONS INVOLVING THESE SAME
- 17 SLIDES?
- 18 A YES, THAT'S CORRECT
- 19 Q OKAY AND HOW LONG HAVE YOU HAD THEM?
- 20 A THE SLIDES? I'VE GIVEN PRESENTATIONS SINCE THE 1980s,
- 21 ALTHOUGH THEY WERE NOT POWER POINT SLIDES THEY WERE SLIDES
- 22 OF SIMILAR NATURE THAT'S CORRECT
- 23 Q THE PRESENTATION YOU MADE HERE TODAY OR VERY SIMILAR
- 24 PRESENTATIONS -- I KNOW THERE MAY BE A SLIDE IN AND OUT HERE
- 25 OR THERE -- BUT HOW MANY TIMES WOULD YOU SAY THAT YOU HAVE

1 GIVEN THIS PRESENTATION?

2 A I'M A LITTLE BIT CONFUSED HOW MANY TIMES HAVE THESE
3 SLIDES BEEN USED?

4 Q WELL, THIS SAME PRESENTATION, HOW MANY TIMES HAVE YOU
5 COME INTO COURT AND---

6 A I'VE NEVER GIVEN THIS PRESENTATION BEFORE

7 Q YOU'VE NEVER GIVEN IT BEFORE?

8 A IN A COURT OF LAW, NO NOW, ARE YOU ASKING FOR
9 TECHNICAL TALKS?

10 Q SO YOU'VE NEVER GIVEN THIS PRESENTATION IN A COURT
11 BEFORE, AND YOU'VE ONLY GIVEN IT TO OTHER SCIENTISTS,
12 TECHNICAL PRESENTATIONS, THAT TYPE OF THING?

13 A SCIENTISTS, POLICY-MAKING INDIVIDUALS, ET CETERA, YES

14 Q BASICALLY, FROM WHAT I UNDERSTAND, DO YOU AGREE THAT
15 MANY OF THE COURTS THROUGHOUT THE UNITED STATES HAVE ACCEPTED
16 SWEAT PATCH TESTING AS A RELIABLE METHOD OF MONITORING DRUG
17 USAGE?

18 A THAT'S MY UNDERSTANDING, BUT I HAVE NOT FOLLOWED THE
19 COURTS THROUGHOUT THE U S

20 Q DO YOU ALSO AGREE THAT THE SWEAT PATCH METHOD OF
21 MONITORING DRUG USAGE HAS ALSO BEEN ACCEPTED BY THE
22 SCIENTIFIC AND TOXICOLOGY COMMUNITY AS BEING A RELIABLE
23 METHOD FOR MONITORING DRUG USAGE?

24 A YOU HAVE TO DEFINE RELIABLE IF YOU MEAN CAN IT DETECT
25 INDIVIDUALS WHO USE DRUGS, THAT'S YES IS IT ONLY DETECTING

DAVID KIDWELL -- CROSS BY MS STROM

1 INDIVIDUALS WHO USE DRUGS, I DON'T BELIEVE THAT'S THE
2 CONSENSUS OF THE SCIENTIFIC COMMUNITY

3 Q AND TO WHOM WOULD YOU POINT TO OTHER THAN YOURSELF THAT
4 WOULD HOLD THAT CONCLUSION?

5 A I WOULD POINT TO FRED SMITH I WOULD ALSO POINT TO ED
6 CONE

7 Q FRED SMITH HE BASICALLY WORKS AS, FOR LACK OF A BETTER
8 TERM, YOUR PARTNER? Y'ALL WORK TOGETHER ON STUDIES MANY
9 TIMES?

10 A THAT'S CORRECT

11 Q OKAY AND THE OTHER ONE YOU SAID WAS?

12 A ED CONE

13 Q ED CONE AND WHAT SPECIFICALLY DO YOU POINT TO TO STATE
14 THAT HE BASES -- HE HOLDS THAT SAME OPINION?

15 A HIS 1994 STUDY WHERE HE STATES IT IN WRITING NOW,
16 MAYBE HIS CO-AUTHORS AS WELL, BUT I DON'T THAT FOR A FACT

17 Q THE -- FROM WHAT I UNDERSTAND, ISN'T IT ALSO TRUE THAT
18 THE SWEAT PATCH TESTING HAS BEEN APPROVED BY THE FDA?

19 A IT'S NOT APPROVED THAT'S NOT THE RIGHT WORD

20 Q WHAT WORD WOULD YOU USE?

21 A THE WORD ESCAPES ME RIGHT THIS MINUTE

22 Q BUT THE FDA HAS SAID THAT THE SWEAT PATCH TEST CAN BE
23 USED TO MONITOR DRUG USAGE, WE SEE NO GLARING PROBLEMS WITH
24 IT THAT WOULD CAUSE US TO SAY YOU SHOULD NOT USE IT?

25 A THAT'S CORRECT

DAVID KIDWELL -- CROSS BY MS STROM

1 Q OKAY I WANTED TO GET A LITTLE BIT ABOUT THESE -- LET
2 ME GO THIS ROUTE YOU TALKED ABOUT ISSUES OF CONTAMINATION
3 WITHOUT AND CONTAMINATION FROM WITHIN, CORRECT?

4 A THAT'S CORRECT

5 Q AND CONTAMINATION FROM WITHOUT IS WHERE THE PATCH IS
6 ALREADY ON THE PERSON AND SOMETHING PERMEATES THROUGH THE
7 PATCH INTO THE PATCH?

8 A THAT'S CORRECT

9 Q OKAY AND YOU ARE AWARE -- I KNOW WE'VE ALL TALKED
10 ABOUT ON THE FEDERAL REGISTER, THE PROPOSED GUIDELINES?

11 A YES, I AM

12 Q I BELIEVE YOU STATED EARLIER THAT YOU WERE PART OF
13 PREPARING -- ONE OF THE SCIENTISTS THAT WAS INVOLVED IN
14 PREPARING -- AND I THINK THAT MAY HAVE HAD TO DO WITH HAIR
15 TESTING?

16 A THAT WAS HAIR TESTING

17 Q AND NOT THE SWEAT PATCH?

18 A THAT'S CORRECT

19 Q OKAY AND I POINT YOU TO PAGE 19676---

20 A MAY I REFER TO STATE'S EXHIBIT 9?

21 Q STATE'S EXHIBIT NUMBER 9, RIGHT, PAGE 19676

22 A OKAY

23 Q AND IN THE FAR RIGHT COLUMN WE'RE TALKING ABOUT SWEAT

24 A THAT'S CORRECT

25 Q AND IT TALKS ABOUT THE CONTAMINATION FROM WITHOUT,

DAVID KIDWELL -- CROSS BY MS STROM

1 CORRECT?

2 A THAT'S CORRECT

3 Q IF YOU WILL START WITH "BASED UPON" -- OR "BASED ON
4 THAT"---

5 A WOULD YOU LIKE ME TO READ IT?

6 Q YES, PLEASE

7 A "BASED UPON THAT INFORMATION, THE DEPARTMENT BELIEVES
8 THAT EXTERNAL ABSORPTION OF ANY DRUGS THROUGH THE OUTER LAYER
9 IS NOT POSSIBLE UNDER NORMAL CIRCUMSTANCES WITH REGARD TO
10 CONTAMINATION FROM A DRUG PRESENT ON THE SKIN BEFORE APPLYING
11 THE SWEAT PATCH, THE DEPARTMENT PROPOSES THE SKIN AREA BE
12 WASHED WITH SOAP AND COOL WATER OR WITH A DISPOSABLE
13 TOWELETTE "

14 Q AND THAT WAS -- THE SECOND PART WAS DEALING WITH
15 CONTAMINATION FROM WITHIN?

16 A THAT'S CORRECT

17 Q AS TO THE CONTAMINATION FROM WITHOUT, THE FEDERAL
18 GUIDELINES STATE, "THE DEPARTMENT BELIEVES THAT THE EXTERNAL
19 ABSORPTION OF ANY DRUGS THROUGH THE OUTER LAYER IS NOT
20 POSSIBLE UNDER NORMAL CONDITIONS"?

21 A THE PROPOSED GUIDELINES SAY THAT THAT'S CORRECT

22 Q THE PROPOSED GUIDELINES, THAT'S WHAT THEY SAY?

23 A THAT'S CORRECT

24 Q AND SO YOUR POSITION THAT IT CAN BE, WOULD YOU CLASSIFY
25 THAT AS OUT OF THE MAINSTREAM?

DAVID KIDWELL -- CROSS BY MS STROM

1 A ABSOLUTELY NOT

2 Q BUT ALL OF THESE OTHER SCIENTISTS WHO WE'VE ALL NOW BEEN
3 TOLD ARE THE BEST MINDS IN THIS AREA HAVE COME UP WITH THESE
4 PROPOSALS?

5 A THIS PROBABLY WAS NOT DONE BY A GROUP OF SCIENTISTS TO
6 THE BEST OF MY KNOWLEDGE, SAMHSA DID NOT FORM A COMMITTEE
7 LIKE THEY DID FOR HAIR TESTING FOR SWEAT

8 Q AND YOU KNOW THAT SPECIFICALLY?

9 A I DO NOT BELIEVE THEY DID

10 Q BUT YOU DO NOT KNOW THAT SPECIFICALLY?

11 A I DO NOT KNOW THAT SPECIFICALLY THAT'S CORRECT

12 Q THANK YOU BUT THERE AGAIN, YOUR POSITION IS OUTSIDE
13 AND VERY DIFFERENT FROM WHAT THE FEDERAL PROPOSED GUIDELINES
14 IS?

15 A I DON'T KNOW IF IT'S VERY DIFFERENT ARE YOU TALKING
16 ABOUT THE CONTAMINATION WITHOUT?

17 Q YES, SIR, CONTAMINATION FROM WITHOUT

18 A IT WOULD SEEM TO BE INCONSISTENT WITH THAT SENTENCE,
19 THAT'S CORRECT

20 Q AND THE TESTING THAT YOU DID ON CONTAMINATION FROM
21 WITHOUT BASICALLY, AS I UNDERSTAND IT, IS A PERSON WOULD HAVE
22 A PATCH APPLIED -- AN AREA CLEANED, A PATCH APPLIED?

23 A YES

24 Q THE PATCH WOULD BE WET OR WETTED IN SOMEHOW, SOME
25 SOLUTION?

DAVID KIDWELL -- CROSS BY MS STROM

- 1 A THE INSIDE
- 2 Q OKAY
- 3 A OR THE OUTSIDE?
- 4 Q THE INSIDE OF THE PATCH---
- 5 A OKAY
- 6 Q ---OR THE COTTON GAUZING
- 7 A IT'S CELLULOSE PAPER, BUT, YES
- 8 Q WOULD BE WET?
- 9 A YES
- 10 Q AND THEN YOU WOULD THEN PUT A WET SOLUTION ON THE
- 11 OUTSIDE OF THE PATCH?
- 12 A THAT'S CORRECT
- 13 Q OKAY IN FACT, I BELIEVE THAT YOUR SPECIFIC TESTIMONY
- 14 WAS IT HAD TO BE WET ON WET IN ORDER FOR IT TO PERMEATE INTO
- 15 THE PATCH?
- 16 A FOR EFFICIENT PERMEATION, THAT'S CORRECT
- 17 Q OKAY SO A DRY PARTICLE WOULD NOT GO THROUGH OR YOU
- 18 HAVE NO TESTING TO SUPPORT THAT DRY PARTICLES GOING THROUGH
- 19 THE PATCH TO PERMEATE INTO THE GAUZE?
- 20 A WELL, WHEN WE WERE DOING THE MECHANISTIC STUDIES WE
- 21 ACTUALLY EXPOSED PATCHES UNDER VARIOUS CONDITIONS WE PLACED
- 22 DRY PATCHES WE PLACED PATCHES THAT HAD ARTIFICIAL SWEAT
- 23 WE HAD SWEAT ON THE OUTSIDE, BICARBONATE ON THE OUTSIDE, ET
- 24 CETERA AND WE EXPOSED THEM TO VAPORS OF DRUGS AND THEY
- 25 ALL WENT THROUGH, BUT THE MAJORITY, VERY HIGH CONCENTRATIONS

DAVID KIDWELL -- CROSS BY MS STROM

1 WENT THROUGH WHEN IT WAS WET ON WET, VERY LOW CONCENTRATIONS

2 WENT THROUGH WHEN IT WAS DRY ON THE INSIDE

3 Q BUT WASN'T IT YOUR TESTIMONY EARLIER THAT IN ORDER FOR

4 THERE TO BE PERMEATION THERE HAS TO BE WET ON WET?

5 A LET'S REITERATE EFFICIENT PERMEATION

6 Q SUFFICIENT TO RESULT---

7 A EFFICIENT EFFICIENT

8 Q OH, EXCUSE ME I'M SORRY THAT WOULD RESULT IN IT

9 BECOMING A POSITIVE PATCH?

10 A WELL, WHAT IT DOES IT TAKES MORE CONTAMINATION WHEN IT'S

11 DRY ON DRY THAN IT DOES WHEN IT'S WET ON WET NOT THAT IT'S

12 IMPOSSIBLE DRY ON DRY, JUST IT TAKES A LOT MORE AND I THINK

13 UNDER THOSE CONDITIONS IT'S PROBABLY UNREALISTIC IN THE REAL

14 WORLD OKAY?

15 Q DID YOU SAY UNREALISTIC?

16 A UNREALISTIC IN THE REAL WORLD

17 Q WHAT ABOUT DRY ON WET? DRY COMING INTO A WET---

18 A DRY ON THE OUTSIDE VERSUS WET ON THE INSIDE?

19 Q A DRY PARTICLE GOING INTO A WET---

20 A THE PROBLEM WITH THAT IS YOU HAVE TO MAKE A PRESUMPTION

21 THAT THE USER'S SWEAT NEVER GETS ON THE OUTSIDE IF YOU HAVE

22 THAT PRESUMPTION, IT'S ENTIRELY DRY ON THE OUTSIDE, NO WATER

23 VAPOR GETS THROUGH IT, YOU WASH IT OFF REASONABLY QUICKLY,

24 YOU HAVE RUNNING WATER ON THE OUTSIDE, I THINK THE

25 PERMEABILITY UNDER THOSE CIRCUMSTANCES WOULD BE LOW

DAVID KIDWELL -- CROSS BY MS STROM

1 Q THE STUDIES THAT YOU HAVE CONDUCTED NOW REGARDING
2 CONTAMINATION FROM WITHIN -- AND THERE AGAIN, MY BASIC
3 UNDERSTANDING OF THAT IS YOU TAKE A PERSON, YOU CLEAN THE
4 AREA OF THE ARM, YOU THEN APPLY A CONTAMINATED SUBSTANCE---

5 A YES

6 Q OKAY AND THEN YOU THEN GO THROUGH THE PROCEDURES OF
7 WASHING IT AS YOU WOULD NORMALLY DO TO APPLY A PATCH?

8 A THAT'S CORRECT

9 Q AND THEN PUT THE PATCH ON?

10 A THAT'S CORRECT

11 Q AND THEN LATER REMOVE IT AND TEST IT?

12 A THAT'S CORRECT

13 Q OKAY ISN'T IT TRUE THAT FROM SOME OF THE LITERATURE
14 REGARDING DERMATOLOGY AND THAT TYPE OF TESTING THAT WHEN YOU
15 CLEAN AN AREA OF THE ARM OR OF THE SKIN, OF ANY PORTION OF
16 THE SKIN -- I USE THE ARM AS AN EXAMPLE -- WHEN YOU CLEAN
17 THAT WITH A SOLUTION, THAT MAKES THAT SKIN MORE SUSCEPTIBLE
18 TO ABSORPTION THAN IF YOU HAD NOT CLEANED THE SKIN?

19 A YES AND WE CONSIDERED THAT IN THE DESIGN OF OUR
20 EXPERIMENTS

21 Q DID Y'ALL CONDUCT ANY TESTING WHERE YOU DIDN'T CLEAN THE
22 SKIN AND PUT THE SUBSTANCE ON IT?

23 A WE MAY HAVE, BUT NOT THAT I CAN RECALL

24 Q BUT NOT LIKELY?

25 A NOT THAT I CAN RECALL AT THIS TIME

DAVID KIDWELL -- CROSS BY MS STROM

1 Q OKAY ALSO, THE ACTUAL SUBSTANCE -- AND AGAIN, I THINK
2 YOU MAY HAVE GONE OVER THIS -- BUT THE ACTUAL SUBSTANCE THAT
3 YOU ARE PUTTING ON THE SKIN IS A LIQUID SUBSTANCE, IT'S A
4 SOLUBLE SUBSTANCE---

5 A IT WAS DISSOLVED IN A LIQUID THAT'S CORRECT

6 Q IT'S NOT A DRY PARTICLE YOU'RE NOT TAKING A PARTICLE
7 OR PARTICLES OF COCAINE AND RUBBING IT ON THE HAND?

8 A WE DID NOT DO THAT

9 Q YOU DID NOT DO THAT DID YOU -- WE TALKED ABOUT THE
10 FACT THAT -- OR YOU TALKED ABOUT THE FACT THAT THERE IS
11 COCAINE RESIDUE FOUND ON MONEY?

12 A THAT'S CORRECT

13 Q IT COULD BE IN THE ENVIRONMENT?

14 A THAT'S CORRECT

15 Q AND DID YOU CONDUCT ANY TEST WHEREIN YOU TOOK SOMEONE
16 THAT WAS NOT USING DRUGS AND EXPOSED THEM TO MONEY THAT HAS
17 BEEN CONTAMINATED WITH DRUGS AND THEN HAVE THAT PERSON WEAR A
18 PATCH AND TEST THAT PATCH AS TO ITS RESULTS?

19 A NO

20 Q NO

21 A IN FACT, LET'S GO A LITTLE FURTHER WE TESTED OURSELVES
22 WHERE WE APPLIED DRUGS ON THE SURFACE OF OUR SKIN AND TEST
23 OUR URINE, AND THE URINE'S NEGATIVE SO THE DRUGS ON THE
24 SURFACE OF THE SKIN DO NOT PENETRATE INSIDE ONE AND TO GO
25 BACK OUT TO GET INTO THE PATCH

DAVID KIDWELL -- CROSS BY MS STROM

1 Q OKAY

2 A AT LEAST IN REASONABLE QUANTITIES THAT ONE WOULD CALL A
3 POSITIVE

4 Q YOU TALKED ABOUT THE FACT OF EXTERNAL CONTAMINATION -- I
5 MEAN, DID YOU DO ANY TESTING WHERE -- YOU WERE TALKING ABOUT
6 IT BEING IN CLOTHING AND THAT TYPE OF SITUATION, THAT RESIDUE
7 CAN BE ON CLOTHING

8 A WE DIDN'T BUT PHARMCHEM ACTUALLY DID

9 Q AND WHAT WERE THE RESULTS OF THAT?

10 A WELL, WHAT THEY DID IS THEY WERE -- THEY PUT A PATCH ON
11 THEIR ARM -- AND I'M NOT QUITE CLEAR OF THE EXACT DETAILS,
12 BUT MY UNDERSTANDING IS THEY PUT PATCHES ON THEIR ARMS THEY
13 PUT A T-SHIRT THAT WAS CONTAMINATED OVER THE PATCH, AND THEY
14 WORE IT FOR SOME PERIOD OF TIME WHETHER THEY EXERCISED OR
15 NOT REALLY ESCAPES ME AT THIS POINT IN TIME AND THEY FOUND
16 THAT THE PATCHES HAD DRUGS IN THEM

17 Q THAT THE PATCHES, EXCUSE ME?

18 A THE PATCHES HAD DRUGS IN THEM

19 Q OKAY YOU DID NOT SPECIFICALLY CONDUCT THAT---

20 A I DID NOT CONDUCT THAT

21 Q YOU HAVEN'T CONDUCTED ANY OF THOSE TYPES OF TESTS?

22 A NO, I DID NOT

23 Q OKAY I WANT TO GO BACK AND TALK ABOUT THE FACT THAT
24 WHEN WE'RE TALKING ABOUT EITHER CONTAMINATION FROM WITHOUT OR
25 CONTAMINATION FROM WITHIN -- WELL, LET'S JUST LEAVE OUT

DAVID KIDWELL -- CROSS BY MS STROM

1 CONTAMINATION FROM WITHOUT LET'S GO WITH CONTAMINATION FROM
2 WITHIN WHERE YOU PUT THIS LIQUID -- PURPOSEFUL CONTAMINATION,
3 YOU'RE PUTTING A LIQUID SUBSTANCE ON THE PERSON'S SKIN AND
4 EVEN YOU SAID IT HAD TO BE WET -- OR NEEDED TO BE WET

5 A WAIT A MINUTE ARE WE TALKING ABOUT THE SOLUTION THAT
6 WE'RE PUTTING ON?

7 Q YES THE CONTAMINANT SOLUTION THAT YOU ARE PUTTING ON
8 IN YOUR TESTING

9 A IT DOESN'T HAVE TO BE WET WE CONTAMINATE OUR SKIN THAT
10 WAY ON PURPOSE SO WE KNOW HOW MUCH DRUG IS PRESENT ON THE
11 SKIN

12 Q RIGHT

13 A THAT'S THE ONLY REASON WE'RE USING A SOLUTION OF DRUGS

14 Q OKAY HAVE YOU CONDUCTED ANY TESTS WHERE YOU DID NOT
15 USE IT IN SOLUTION FORM?

16 A I THINK I JUST TESTIFIED THAT WE DID NOT USE SOLID
17 DRUGS

18 Q OKAY HOW MANY PEOPLE OR HOW MANY SITUATIONS ARE YOU
19 AWARE OF IN THE WORLD WHERE LIQUID FORMS OF COCAINE ARE?

20 A I MEAN, COCAINE CAN BE IN LIQUID FORM, BUT PROBABLY THE
21 SWEAT OF AN INDIVIDUAL WHO IS A DRUG USER IS THE BEST PLACE
22 TO FIND LIQUID FORMS OF COCAINE AND HOW MANY DRUG USERS ARE
23 THERE IN THE U S ? APPROXIMATELY FOUR MILLION

24 Q BUT IN TERMS OF ONE THAT -- YOU HAVE SWEAT FROM A DRUG
25 USER, OKAY? BUT IN ORDER FOR THAT TO BE CONTAMINATION, HE'D

1 HAVE TO TAKE THAT SWEAT AND RUB IT ON HIMSELF OTHERWISE---

2 A OR TOUCH SOMEONE WHO IS DRUG NEGATIVE THE OTHER
3 POSSIBILITY IS IF YOU GET SOLID DRUGS ON YOUR SKIN AND YOU
4 SWEAT, WHICH EVERYBODY DOES ALL THE TIME, THAT WILL GIVE YOU
5 A SOLUTION OF DRUGS ON THE SKIN IN YOUR SWEAT

6 Q HAVE YOU DONE SPECIFIC TESTS WHERE YOU TOOK AN
7 INDIVIDUAL, PUT SOLID DRUGS ON THEIR SKIN, HAD THEM SWEAT AND
8 TEST THAT TO SEE WHAT THE RESULTS WERE?

9 A NO, I HAVE NOT

10 Q NO I WANT TO GO SPECIFICALLY---

11 A LET ME REITERATE THAT GO BACK JUST A SECOND WE HAVE
12 DONE EXPERIMENTS WHERE WE HAVE RUBBED MONEY ON OUR SKIN AND
13 WE GET TRACES OF DRUGS SO IS THAT WHAT YOU'RE REFERRING TO,
14 BECAUSE THAT'S---

15 Q TRACES OF DRUGS -- WHEN YOU SAY YOU GET "TRACES OF
16 DRUGS," FROM WHAT?

17 A FROM THE MONEY

18 Q YOU TEST THE MONEY?

19 A NO, NO, NO WE TAKE MONEY -- WE HAVE NO IDEA WHETHER
20 IT'S CONTAMINATED OR NOT WE RUB IT ON OUR SKIN AND WE FIND
21 DRUGS ON OUR HANDS SO THAT IS SOLID TO SKIN TRANSFER NOW,
22 THE MONEY IS THEN SUBSEQUENTLY TESTED TO SAY WHETHER IT WAS
23 CONTAMINATED OR NOT AND THE APPROXIMATE LEVELS SO WE HAVE
24 DONE THOSE STUDIES, WHICH IS SOLID TO SKIN

25 Q OKAY AND WHAT YOU HAVE IN THOSE TYPE SITUATIONS IS

1 SOMEONE WHO IS TOUCHING MONEY ON THEIR HANDS---

2 A RIGHT

3 Q ---AND THEN YOU TEST THEIR HANDS TO SEE IF THERE IS---

4 A THAT'S CORRECT

5 Q RIGHT YOU DON'T HAVE SOMEONE WHO IS ROLLING AROUND IN
6 MONEY---

7 A THAT'S CORRECT

8 Q I MEAN, IT'S AN INTENTIONAL, PURPOSEFUL EXPOSURE?

9 A YES I FEEL THAT MONEY IS NOT A GOOD SOURCE OF
10 CONTAMINATION IT IS POSSIBLE BECAUSE SOME MONEY HAS VERY
11 LARGE QUANTITIES OF DRUGS ON IT I MEAN, HUNDREDS AND
12 HUNDREDS OF MICROGRAMS ON IT SO YOU CAN FIND CURRENCY OUT
13 THERE THAT HAS HUGE AMOUNTS OF DRUGS, WHICH COULD EASILY
14 CONTAMINATE IT BUT I WOULD SAY THE GENERAL CURRENCY, YOU
15 HAVE TO GET IT ON YOUR HANDS, FROM YOUR HANDS TO THE SWEAT
16 PATCH NOW, THE SWEAT PATCH SOMETIMES IS FALLING OFF,
17 SOMETIMES IT'S ITCHY, SOMETIMES PEOPLE RUB THEM SO IT IS
18 POSSIBLE TO DO THAT I DON'T KNOW THE HABITS OF INDIVIDUALS
19 WHO WEAR THAT PATCH

20 Q AND HAVE YOU DONE ANY SPECIFIC TESTS REGARDING THAT? IN
21 OTHER WORDS, SOMEONE RUBS ON THEM---

22 A WE HAVE NOT TRIED TO TRANSFER IT FROM OUR HANDS TO THE
23 SURFACE OF THE PATCH

24 Q TO THE PATCH OKAY THE SAME WOULD BE TRUE REGARDING
25 ANY OTHER TYPE OF ENVIRONMENTAL CONTAMINATION SUCH AS BED

DAVID KIDWELL -- CROSS BY MS STROM

1 SHEETS, CLOTHING, I THINK WAS ONE OF THE EXAMPLES YOU WORE --
2 I MEAN, THAT YOU CITED, SOMEONE WORE CLOTHES THAT WERE
3 CONTAMINATED WITH DRUGS?

4 A WELL, WE HAVE DONE THE OPPOSITE WE HAVE LOOKED AT THE
5 SWEAT TRANSFER FROM AN INDIVIDUAL TO CLOTHING, BUT NOT THE
6 OTHER WAY AROUND

7 Q NOT THE OTHER WAY AROUND, TO SAY THAT THE CLOTHES THAT
8 WERE CONTAMINATED THEN IN FACT CONTAMINATED THE PERSON?

9 A WE HAVE NOT DONE THAT STUDY BUT AS I STATED, I BELIEVE
10 PHARMCHEM HAS

11 Q I WANT TO TALK A LITTLE BIT ABOUT A COUPLE OF THE
12 SLIDES AND WE DON'T NEED TO PROJECT THEM BACK UP I THINK
13 YOU WILL REMEMBER THEM THIS IS THE REAL LIFE STUDY WITH
14 ADDICTS NO USE SUBJECT

15 A THEY HAVE NUMBERS ON THE BOTTOM

16 Q YES, NUMBER 44, EXCUSE ME

17 A OKAY, YES

18 Q WHAT EXACTLY WAS THAT STUDY SHOWING?

19 A AGAIN, WHAT WE WERE INTERESTED IN IS WAYS TO MONITOR
20 INDIVIDUALS WHO HAD THE POTENTIAL FOR BEING CONTAMINATED WE
21 DID NOT MEASURE THEIR ENVIRONMENTS WE DON'T KNOW WHETHER
22 THE CONTAMINATION IS SUBSTANTIAL OR NOT ALL WE DID WAS
23 MEASURE THE INDIVIDUAL ON ESSENTIALLY A DAILY BASIS, EXCEPT
24 FOR SUNDAY AND THE HOLIDAY, WHICH THANKSGIVING, IN THIS CASE
25 WE MEASURED THE INDIVIDUALS TO SEE WHAT WAS PRESENT ON THE

DAVID KIDWELL -- CROSS BY MS STROM

1 SURFACE OR THEIR SKINS AND WE TESTED THEIR SALIVA, WE TESTED
2 THEIR URINE, AND WE TESTED THEIR HAIR, AND WE TESTED THEIR
3 SWEAT USING A SWEAT PATCH

4 Q WHAT DID YOU SAY THE TIME FRAME WAS FOR URINALYSIS, THAT
5 IT COULD TEST?

6 A TWO TO FOUR DAYS

7 Q TWO TO FOUR DAYS AND WHEN WERE THESE SAMPLES TAKEN,
8 WERE THEY TAKEN IN THE MORNING OR WERE THEY TAKEN IN THE
9 AFTERNOON?

10 A I PERSONALLY DID NOT TAKE THEM MY UNDERSTANDING IS
11 THEY WERE ALL TAKEN IN THE MORNING

12 Q TAKEN IN THE MORNING AND YOU SAID THAT THERE WERE DAYS
13 IN FACT THAT THE PERSON WAS NOT TESTED BY URINALYSIS?

14 A THEY WERE NOT TESTED ON SUNDAYS

15 Q THEY WERE NOT TESTED ON SUNDAYS OR THANKSGIVING?

16 A AND THANKSGIVING

17 Q SO, IN FACT, UNDER YOUR SLIDE THERE ARE SEVERAL DAYS
18 THAT THEY WERE NOT TESTED?

19 A THAT'S CORRECT I THINK IT'S -- ON THIS GROUP OF
20 INDIVIDUALS IT WOULD HAVE BEEN FIVE DAYS OUT OF THE FOUR
21 WEEKS

22 Q FIVE DAYS THAT THEY WERE NOT ACTUALLY TESTED BY
23 URINALYSIS?

24 A THAT'S CORRECT IT MAY HAVE BEEN FOUR DAYS

25 Q AND THIS IS ACTUALLY ONE OF THE PARTICIPANTS OUT OF TEN,

1 IS THAT CORRECT?

2 A WE HAVE ACTUALLY DONE ABOUT APPROXIMATELY 40
3 INDIVIDUALS WE ANALYZED THREE TO FIVE THOUSAND DIFFERENT
4 SAMPLES FROM THESE INDIVIDUALS WE PARTIALLY REPORTED THE
5 COMPLETED STUDY, AND THIS IS ONE OF THE TEN

6 Q ONE OF THE HOW MANY?

7 A TEN THAT WE REPORTED IN THIS PARTICULAR STUDY

8 Q AND HOW MANY OF THOSE CAME OUT AS POSITIVE?

9 A BY THE PATCH OR BY THE URINE OR BY WHAT?

10 Q IN OTHER WORDS, YOU'VE GOT THIS SLIDE OF THIS ONE
11 INDIVIDUAL THAT SHOWS THAT HE HAD A POSITIVE SWEAT PATCH---

12 A RIGHT WHEN YOU'RE EXAMINING INDIVIDUALS WHO ARE FALSE
13 POSITIVE, THAT'S A DIFFERENT STORY FROM INDIVIDUALS WHO ARE
14 TRUE POSITIVES TRUE POSITIVES ARE WHERE THERE IS INDICATION
15 OF DRUG USE FALSE POSITIVE IS WHEN THERE IS NO INDICATION
16 OF DRUG USE

17 Q HOW MANY CAME OUT AS WHAT YOU CALL FALSE POSITIVES?

18 A OF THE INDIVIDUALS THAT WE STUDIED IN THIS GROUP OF TEN,
19 ONLY THREE OF THEM HAD ZERO DRUG USE DURING THE TIME THE
20 OTHER ONES HAD OCCASIONAL DRUG USE OR CONSISTENT DRUG USE
21 OF THOSE THREE INDIVIDUALS, I BELIEVE THAT -- CAN I REFER TO
22 THE TECHNICAL REPORT TO REFRESH MY MEMORY?

23 Q IF IT'S YOUR REPORT

24 A I BELIEVE IT'S NOT AS PART OF THE EVIDENCE IF WE WANT
25 TO ADMIT IT, WE CAN BUT IF I CAN DO IT FROM MEMORY, I

1 BELIEVE THERE WERE SEVEN FALSE POSITIVE PATCHES IN THOSE
2 THREE INDIVIDUALS WHERE THERE WERE NO INDICATIONS OF DRUG
3 USE

4 Q AND YOU'RE BASING THAT NO INDICATION OF DRUG USAGE ON
5 WHAT YOU'RE CALLING DAILY URINALYSIS?

6 A THAT'S CORRECT

7 Q ALTHOUGH WE KNOW THAT THERE ARE DAYS WHEN THEY HAVE NOT
8 BEEN EXAMINED?

9 A THERE IS SUNDAY AND THANKSGIVING THAT'S CORRECT

10 Q SUNDAY AND THE THANKSGIVING HOLIDAY?

11 A THAT'S CORRECT

12 Q OKAY I WANT TO GO NOW TO WHAT YOU TALKED ABOUT IN
13 TERMS OF OTHER STUDIES, SLIDE NUMBER 47

14 A OKAY

15 Q AND SPECIFICALLY THE PHARMCHEM SPONSORED CENTER FOR
16 HUMAN TOXICOLOGY STUDIES

17 A YES

18 Q IN THAT I BELIEVE YOU SAID FOUR OUT OF FIVE SUBJECTS
19 SHOWED THAT DRUGS WERE PRESENT BUT ONLY ONE WAS OVER THE
20 CUTOFF LEVEL WHICH WOULD HAVE BEEN REPORTED AS A POSITIVE?

21 A THAT'S CORRECT

22 Q AND IT'S MY UNDERSTANDING HOWEVER THAT THERE WERE NO
23 "BZE" METABOLITES IN THAT REPORT?

24 A THAT'S CORRECT BUT THERE'S REASONS FOR THAT

25 Q OKAY BUT THEY WERE NOT FOUND, CORRECT?

DAVID KIDWELL -- CROSS BY MS STROM

1 A I DON'T BELIEVE THEY WERE BUT I, AGAIN, WOULD HAVE TO
2 REFER TO THE ORIGINAL STUDY

3 Q IS THIS A COPY OF THE STUDY?

4 A THAT IS ONE OF THEM, YES

5 Q AND SPECIFICALLY I HAVE UNDERLINED AS TO WHETHER "BZE"
6 METABOLICS HAVE BEEN -- WERE FOUND?

7 A THAT'S CORRECT

8 Q AND WHAT DOES IT REFLECT?

9 A WOULD YOU LIKE ME TO READ IT?

10 Q JUST SUMMARIZE IT

11 A IT SAYS, "HOWEVER, NO METABOLITES, AMPS" OR AMPHETAMINES
12 OR 'BZE' WERE DETECTED IN ANY OF THE PATCHES FOLLOWING THE
13 THOUSAND NANOGRAM EXPERIMENTS "

14 Q THANK YOU AND I BELIEVE YOU CITED THIS REPORT EARLIER
15 IN YOUR SLIDE SHOW PRESENTATION AS OTHER STUDIES THAT SHOW
16 THAT CONTAMINATION FROM WITHIN AND CONTAMINATION FROM WITHOUT
17 IS POSSIBLE?

18 A THAT'S CORRECT

19 Q WOULD YOU PLEASE READ FOR ME THE CONCLUSION REACHED IN
20 THIS REPORT, WHICH I HAVE STARRED FOR YOU?

21 A "THE SUGGESTED ADMINISTRATIVE REPORTING CUTOFF
22 CONCENTRATION OF 25 NANOGRAM PER PATCH WAS EFFECTIVE IN
23 REDUCING THE POSSIBILITY OF RESIDUAL DRUG ON THE SKIN
24 RESULTING IN A POSITIVE SWEAT PATCH RESULT "

25 Q THANK YOU AND YOU SAID YOU REVIEWED THE LITIGATION

DAVID KIDWELL -- CROSS BY MS STROM

1 PACKAGES ON THE TESTS PERFORMED ON THESE INDIVIDUALS AND THEY
2 WERE ALL OVER THE 25 NANOGRAMS, CORRECT?

3 A YES, THEY WERE

4 Q I WANT TO GO BACK TO ONE OF THE THINGS THAT YOU SAID
5 WHEN YOU FIRST STARTED TESTIFYING, AND THAT WAS THIS
6 DISCLAIMER YOU GAVE REGARDING THE FACT THAT YOU HAVE BEEN
7 ASSIGNED TO A PATENT -- THE NAVY HAS BEEN ASSIGNED A PATENT
8 ON IMPROVEMENTS IN THE SWEAT PATCH?

9 A THAT'S CORRECT

10 Q AND THAT YOU WERE THE INVENTOR OF THIS?

11 A THAT'S CORRECT

12 Q AND YOU COULD POSSIBLY GET ROYALTIES FROM THIS IF IT IS
13 EVER LICENSED AND GONE THROUGH?

14 A IF IT'S LICENSED AND SOLD TO A NON-U S GOVERNMENT
15 ENTITY AND ROYALTIES ARE REQUESTED IN THE LICENSING PROCESS

16 Q SO THERE IS SOME FINANCIAL ASPECT TO THIS?

17 A THERE IS THE POSSIBILITIES OF SOME FINANCIAL ASPECT TO
18 IT, YES

19 Q ARE YOU IN THE PROCESS OF CONDUCTING ANY OTHER
20 IMPROVEMENTS TO THE SWEAT PATCH?

21 A NO, WE ARE NOT

22 Q AND WHAT SPECIFICALLY -- I READ SOMETHING ABOUT A
23 WRISTWATCH-TYPE SWEAT PATCH YOU WERE INVOLVED IN THAT?

24 A YES, I HAVE AN INVENTION ON THAT AS WELL

25 Q OKAY AND THAT -- IF I REMEMBER CORRECTLY FROM THE

DAVID KIDWELL -- CROSS BY MS STROM

1 DATA, VERY SIMPLISTIC TERMS, IT'S ALMOST LIKE IT HAS A G P S
2 SYSTEM IN IT?

3 A WELL, THERE WERE SOME PROPOSALS TO DO THAT THE TROUBLE
4 IS G P S WILL NOT WORK INSIDE OF A BUILDING, AND SO THAT IS
5 NOT A FEASIBLE SITUATION

6 Q BUT IT WAS A SWEAT PATCH THAT GAVE A MORE IMMEDIATE---

7 A WHAT IT WAS WAS THE ORIGINAL ONE WAS AN IMMUNOASSAY-
8 BASED SYSTEM AND BASICALLY ALTHOUGH IT'S TECHNICALLY
9 FEASIBLE, TO DEVELOP A LONG-TERM WEAR DEVICE WAS NOT
10 TECHNICALLY FEASIBLE AT THAT POINT IN TIME SUBSEQUENT THAT,

11 WE MAY HAVE THE TECHNOLOGY, MAY, IF ONE WERE TO FUND IT TO
12 DEVELOP SUCH A DEVICE BUT WE DO NOT HAVE ONE CURRENTLY

13 Q SO THAT WOULD THERE AGAIN BE SOMETHING THAT YOU WOULD BE
14 LOOKING TO AS AN IMPROVEMENT OF WHAT WE ALREADY HAVE?

15 A THAT'S CORRECT BUT YOU SHOULD REALIZE THAT THAT CAN BE
16 LICENSED, THAT PARTICULAR ONE, BECAUSE IT WAS DEVELOPED IN
17 CONJUNCTION WITH THE JET PROPULSION LABORATORY THAT CAN BE
18 LICENSED FROM J P L WITHOUT ANY ROYALTIES ACCRUING TO THE
19 U S GOVERNMENT, BECAUSE J P L IS THE ASSIGNEE ON THAT
20 LICENSE

21 MS. STROM COURT'S INDULGENCE, YOUR HONOR

22 THE COURT ALL RIGHT

23 MS STROM (OFF RECORD WITH CO-COUNSEL) COURT'S
24 INDULGENCE JUST ONE SECOND, PLEASE

25 Q ONE FINAL QUESTION REGARDING THE -- YOU TALKED A

DAVID KIDWELL -- CROSS BY MS STROM

1 LITTLE BIT ABOUT YOU WERE AWARE OF A PHARMCHEM STUDY
2 REGARDING CONTAMINATION ON CLOTHES THAT THEN---

3 A I HEARD ABOUT IT, THAT'S CORRECT

4 Q DO YOU KNOW IF THAT RESULTED IN "BZE" BEING REPORTED
5 OUT?

6 A I DON'T RECALL MY -- I BELIEVE -- NOW, THIS IS MY
7 BELIEF -- THAT THEY WERE ALSO CONTAMINATING THEMSELVES WITH
8 "BZE" ON PURPOSE BECAUSE THEY WANTED TO SEE WHAT---

9 Q SO IT WAS PURPOSEFUL CONTAMINATION?

10 A I BELIEVE SO BUT, AGAIN, I WANT TO REITERATE, TO THE
11 BEST OF MY RECOLLECTION, ALL OF THOSE LEVELS WERE BELOW THE
12 CUTOFF THAT PHARMCHEM WAS USING, I BELIEVE

13 Q AND IT WOULD NOT HAVE BEEN REPORTED OUT AS POSITIVE?

14 A IT WOULD NOT HAVE BEEN REPORTED OUT AS POSITIVE THAT'S
15 CORRECT

16 MS. STROM THANK YOU I HAVE NO FURTHER QUESTIONS

17 THE COURT MR GIBSON, ANY QUESTIONS?

18 MR GIBSON SURE

19 REDIRECT EXAMINATION BY MR. GIBSON

20 Q DR KIDWELL, SOMETHING ABOUT FDA ISSUE?

21 A CLEARED IS THE WORD

22 Q SAY AGAIN?

23 A CLEARED IS THE WORD

24 Q I'M SORRY SAY AGAIN?

25 A CLEARED IS THE WORD

DAVID KIDWELL -- REDIRECT BY MR GIBSON

1 Q OKAY CLEARED

2 A YES

3 Q SO CAN YOU EXPLAIN WITH THAT MEANS AS OPPOSED TO CLEARED
4 VERSUS APPROVED?

5 A WELL, TO THE BEST OF MY KNOWLEDGE, CLEARED MEANS THE FDA
6 LOOKS AT THE INFORMATION PROVIDED BY THE MANUFACTURER AND
7 REVIEWS IT AND DETERMINES WHETHER THE DEVICE OR THE PROCESS
8 THAT IS BEING REQUESTED TO BE PUT INTO INTERSTATE COMMERCE IS
9 SUBSTANTIALLY EQUIVALENT TO A PRODUCT THAT WAS ON THE MARKET
10 PRE-, I BELIEVE, 1978 IF IT IS, THEN THE 501K SUBMISSION IS
11 A RELATIVELY SIMPLISTIC PROCESS THAT CAN ALLOW THAT PRODUCT
12 TO BE USED IN THE MARKETPLACE

13 Q OKAY SO JUST TO CLARIFY, THERE WAS NEVER ANY SITUATION
14 WHERE THE FDA WENT OUT AND SAID, YOU KNOW, "WE PUT OUR FDA
15 STAMP OF APPROVAL ON THIS SWEAT PATCH AND "?

16 A I DON'T BELIEVE THEY APPROVE ANYTHING I BELIEVE THEY
17 CLEAR MANY DRUGS

18 Q OKAY

19 A AND THE PROCESS IS SOMEWHAT OF A MYSTERY TO ME BECAUSE
20 I'M NOT INVOLVED IN IT

21 Q OKAY DO YOU KNOW WHEN THIS FDA CLEARANCE OCCURRED?

22 A I CAN BARELY RECALL IT WAS IN THE MID-NINETIES I KIND
23 OF RECALL '97, BUT IT COULD HAVE BEEN, YOU KNOW, '95 I
24 REALLY DON'T RECALL

25 Q OKAY SO THIS WAS ALL PRIOR TO A LOT OF THE RESEARCH

DAVID KIDWELL -- REDIRECT BY MR GIBSON

1 THAT YOU HAVE DONE ON THE ENVIRONMENTAL CONTAMINATION?

2 A OH, ABSOLUTELY

3 Q SO TO THE BEST OF YOUR KNOWLEDGE DO YOU KNOW IF THE FDA
4 EVEN CONSIDERED THE ISSUE OF ENVIRONMENTAL CONTAMINATION?

5 MS STROM YOUR HONOR, I'M GOING TO OBJECT HE'S
6 ALREADY SAID THAT THE PROCESS WAS A MYSTERY TO HIM

7 THE COURT TO THE EXTENT HE HAS PERSONAL KNOWLEDGE

8 Q YEAH TO THE EXTENT YOU HAVE ANY PERSONAL KNOWLEDGE

9 A WELL, I HAVE READ THE FDA SUBMISSION, THE 501K
10 SUBMISSION, WHICH IS A CONSIDERABLE PIECE OF DOCUMENTATION---

11 Q YES, SIR

12 A ---AND NOWHERE IN IT MENTIONED ABOUT OUR WORK BECAUSE,
13 OF COURSE, IT WAS BEFORE OUR WORK TOOK PLACE

14 Q OKAY MS STROM SEEMED TO DESIRE TO CHARACTERIZE YOUR
15 VIEWS ON CONTAMINATION FROM WITHOUT AS OUT OF THE MAINSTREAM
16 DO YOU CONSIDER YOUR VIEWS ON ENVIRONMENTAL CONTAMINATION
17 FROM WITHOUT OUTSIDE THE MAINSTREAM?

18 A I DO NOT THINK SO, NO

19 Q WHY NOT?

20 A THERE ARE NOT THAT MANY PEOPLE DOING SWEAT PATCH
21 TESTING, FIRST OF ALL SO WE COULD PROBABLY -- MAYBE TEN
22 INDIVIDUALS ARE DOING IT, SOMETHING LIKE THAT, IN THE WORLD

23 Q OKAY

24 A AND OF THOSE TEN INDIVIDUALS, I KNOW MANY OF THEM
25 PERSONALLY, AND I THINK THAT THEY'RE SERIOUSLY CONSIDERING

DAVID KIDWELL -- REDIRECT BY MR GIBSON

1 OUR VIEWS ON THE ISSUES

2 Q OKAY LET'S TALK ABOUT THE ISSUE OF---

3 A BEFORE I SAY---

4 Q I'M SORRY

5 A I WANT TO REFER TO RESEARCH ON THE SWEAT PATCH NOT THE
6 USE OF THE SWEAT PATCH LET ME CLARIFY

7 Q OKAY ABOUT -- MS STROM ASKED YOU ABOUT DRY-TO-DRY
8 CONTAMINATION AND THE LIKE

9 A UH-HUH (AFFIRMATIVE)

10 Q AND LET ME ASK YOU THIS, IF SOMEONE WERE SWEATING AND
11 THEY WERE IN AN ENVIRONMENT WHERE DRY MICROSCOPIC COCAINE
12 PARTICLES WERE GETTING IN CONTACT WITH THEIR SKIN, IS IT
13 REASONABLE TO BELIEVE THAT THAT SITUATION WOULD MIMIC THE
14 SITUATION THAT YOU CREATED IN YOUR LAB?

15 A CERTAINLY

16 Q CAN YOU TELL ME SOME MORE ABOUT THIS T-SHIRT PHARMCHEM
17 TEST?

18 A FRANKLY, I HAVE NOT -- IT'S REALLY, TO ME, HEARSAY
19 I'VE LOOKED AT THE ANALYTICAL RESULTS, BUT I DO NOT HAVE --
20 PHARMCHEM HAS NOT PROVIDED ME, NOR HAVE I SEEN, THE TESTIMONY
21 THAT THEY HAD IN OTHER COURT CASES WHERE THEY DESCRIBED HOW
22 THEY CARRIED OUT THIS STUDY SO ALL I HAVE IS THE SHEET WITH
23 AN ANALYTICAL RESULT THAT SAYS "T-SHIRT STUDY" ON IT

24 Q YES, SIR

25 A AND THAT'S ALL I HAVE NOW, MY UNDERSTANDING IS THEY

DAVID KIDWELL -- REDIRECT BY MR GIBSON

1 HAVE PLACED DRUGS ON ONE ARM OF A T-SHIRT AND NOT ON THE
2 OTHER AND THEY PUT ON TWO SWEAT PATCHES THEY WORE THE T-
3 SHIRT, DID SOME SORT OF EXERCISE ROUTINE AND CAME BACK AND
4 THEN TESTED THE SWEAT PATCHES BUT THAT'S MY UNDERSTANDING
5 I HAVE NOT READ THAT IN WRITING

6 Q OKAY DOES THAT UNDERSTANDING SEEM TO -- CONSISTENT
7 WITH YOUR BELIEF THAT ENVIRONMENTAL -- THAT CONTAMINATION
8 FROM WITHOUT CAN OCCUR?

9 A YES, IT'S CONSISTENT WITH THAT

10 Q MS STROM ALSO ASKED YOU -- SHE WANTED TO TRY TO GET YOU
11 TO SAY THERE WERE NO LIQUID FORMS OF COCAINE AROUND, ALL THAT
12 STUFF AGAIN, IF SOMEONE WERE SWEATING AND THEY TOUCHED DRY
13 COCAINE, WOULD THAT NOT CONSTITUTE OR CREATE A LIQUID FORM OF
14 COCAINE?

15 A OH, ABSOLUTELY COCAINE HYDROCHLORIDE IS INCREDIBLY
16 SOLUBLE IN SOLUTION, AND SO IT'S VERY READILY, EASILY PUT IN
17 SOLUTION

18 Q OKAY NOW LET ME ASK YOU THIS HYPOTHETICAL LET'S SAY,
19 FOR INSTANCE, SOMEONE IS WORKING OUT OR, YOU KNOW, JUST
20 WORKING, YOU KNOW, MENIAL LABOR, AND THEY'RE SWEATING REAL
21 HARD AND THEY END UP TOUCHING SOMETHING THAT'S CONTAMINATED
22 WITH DRY COCAINE IT GETS ON THEIR HANDS, AND THEN THE PATCH
23 ITCHES AND THEY SCRATCH IT IS IT POSSIBLE FROM THAT
24 SITUATION THAT THAT PATCH WOULD BE CONTAMINATED FROM WITHOUT?

25 A THAT'S CORRECT AND I WOULD RECOMMEND THAT THEY NEVER

DAVID KIDWELL -- REDIRECT BY MR GIBSON

1 TOUCH THE PATCH, IF I WERE THEM AND WEARING IT

2 (LAUGHTER IN THE COURTROOM)

3 THE COURT HOLD IT DOWN

4 Q NOW, MS STROM ALSO MADE A BIG POINT ABOUT THE 25-
5 NANOGRAM CUTOFF POINT ISN'T IT TRUE THAT YOU SAW THAT 25-
6 NANOGRAM CUTOFF POINT -- LET ME BACK UP LET ME ASK THIS
7 QUESTION AGAIN ISN'T IT TRUE THAT IN YOUR OWN INDEPENDENT
8 TEST RESULTS YOU SAW INSTANCES WHERE FROM CONTAMINATION FROM
9 BOTH WITHOUT AND WITHIN WHERE IT REACHED THE 25-NANOGRAM
10 CUTOFF POINT?

11 A YES, WE DID

12 Q SO TO THE EXTENT THAT THERE IS SOME LITERATURE OUT THERE
13 THAT SHE MENTIONED WHICH SAYS THAT THE RISE OR THE CREATION
14 OF THIS 25-NANOGRAM CUTOFF POINT SEEMS TO DO AWAY WITH THE
15 POSSIBILITY OF ENVIRONMENTAL CONTAMINATION, THAT'S REALLY,
16 QUITE FRANKLY, INCORRECT, ISN'T IT?

17 A RIGHT AND IT'S ALSO BECAUSE OF THE WAY THEY CONDUCTED
18 THE TEST IN MY OPINION, THEY DID NOT DO A GOOD JOB OF IT

19 Q CAN YOU EXPLAIN?

20 A WELL, THEY USED A CONCENTRATION OF DRUGS WHERE WE HAD
21 PREVIOUSLY SHOWN AND PUBLISHED WOULD BARELY REACH THE CUTOFF
22 LEVEL THEN THEY DIDN'T LEAVE IT ON THE SKIN VERY LONG TO
23 BIND SO THEY PUT IT ON, IMMEDIATELY TOOK IT OFF -- WELL,
24 WITHIN A REASONABLE PERIOD OF TIME TOOK IT OFF AND THEN,
25 FINALLY, THEY SPRAYED IT ON THEIR SKIN SO WE REALLY DON'T

DAVID KIDWELL -- REDIRECT BY MR GIBSON

1 KNOW WHETHER THEY HAD A THOUSAND NANOGRAMS ON THERE OR NOT

2 Q OKAY SO TO THE EXTENT THAT THEY DIDN'T ACTUALLY REACH
3 THE 25-NANOGRAM CUTOFF POINT, IT COULD BE A WHOLE HOST OF
4 REASONS OTHER THAN ANY CONCLUSION ABOUT THE POSSIBILITY OF
5 ENVIRONMENTAL CONTAMINATION?

6 A THAT'S CORRECT BUT THE FUNNY THING IS THEY FOUND
7 DRUGS

8 Q YEAH

9 A IT JUST WASN'T QUITE MAKING THE CUTOFF, EXCEPT FOR ONE
10 PERSON

11 Q NOW LET'S TALK ABOUT MS STROM'S ATTEMPT TO -- OR
12 EXPLANATION THAT YOU MIGHT BE DOING THIS TESTING AND
13 CRITICIZING THIS PATCH WITH THE IMPLICATION THAT YOU MAY BE
14 ONLY CRITICIZING THIS PATCH BECAUSE YOU HAVE SOME FINANCIAL
15 INCENTIVE IN TRYING TO IMPROVE IT

16 A UH-HUH (AFFIRMATIVE)

17 Q WHAT'S YOUR RESPONSE TO THAT?

18 A WELL, I'M UP FRONT ABOUT IT THERE IS POTENTIAL
19 FINANCIAL INCENTIVE BUT I WILL ALSO SAY THAT WE CRITICIZED
20 THE PATCH LONG BEFORE WE EVEN APPLIED FOR THE PATENT THE
21 REASON WE APPLIED FOR IT IS I TALKED TO THE SPONSORS WHO PAY
22 FOR THIS RESEARCH, AND I SAID, "DO WE WANT TO PATENT THIS TO
23 PROTECT THE GOVERNMENT INTEREST?" AND THEIR ANSWER WAS YES
24 OTHERWISE, I PROBABLY WOULD NOT HAVE EVEN PATENTED IT

25 Q NOW, I WANT TO GO BACK TO THESE GUIDELINES THAT WERE --

DAVID KIDWELL -- REDIRECT BY MR GIBSON

1 THAT ARE NOW PROMULGATED, PROPOSED -- OR THAT ARE NOT YET
2 ENACTED BUT ARE PROPOSED NOW, YOU HAD SAID THAT -- IN MS
3 STROM'S QUESTION YOU HAD SAID THAT THEY DID NOT DO A
4 COMMISSION, TO THE BEST OF YOUR KNOWLEDGE

5 A TO THE BEST OF MY KNOWLEDGE, THEY DID NOT

6 Q OKAY AND YOU SAID THEY HAD DONE A COMMISSION WITH HAIR
7 STRAND TESTING?

8 A THAT'S CORRECT

9 Q WHAT EXACTLY DO YOU MEAN BY THAT?

10 A WELL, THEY FORMED A WORKING GROUP OF EXPERTS IN THE
11 FIELD, BOTH THE COMMERCIAL INTEREST AS WELL AS ACADEMICS IN
12 THE FIELD, BROUGHT THEM TOGETHER INTO A ROOM AND TALKED ABOUT
13 THE ISSUES, AND THE INDIVIDUALS IN THAT ROOM PROPOSED
14 GUIDELINES TO THE BEST OF MY KNOWLEDGE, IN THE CASE OF
15 SWEAT PATCH TESTING, IT WAS JUST THE COMMERCIAL INTEREST
16 PROPOSED GUIDELINES

17 Q YES, SIR

18 A SO THAT'S THE BEST OF MY KNOWLEDGE

19 Q OKAY WELL, LET ME ASK YOU THIS, WERE YOU PART OF ANY
20 COMMISSION ON THOSE GUIDELINES?

21 A ON THE SWEAT PATCH, NO

22 Q OKAY DO YOU THINK THAT AS -- EVEN AS ADMITTED BY THE
23 STATE'S EXPERT, MR CARY, THAT YOU ARE ONE OF THE TOP MINDS
24 IN THIS FIELD---

25 A WELL, I---

DAVID KIDWELL -- REDIRECT BY MR GIBSON

1 Q ---AND IF THEY WERE GOING TO COME UP WITH A COMMISSION
2 THAT YOU SHOULD BE ON IT?

3 A I BELIEVE SO BUT YOU HAVE TO LOOK AT THE TIMING ON
4 THIS AND THE TIMING WAS THAT WE DIDN'T START GETTING
5 INTERESTED IN THE SWEAT PATCH, WHICH WAS THE DEVICE UNDER
6 CONSIDERATION, UNTIL THE 1990s, '99 AND SO BEFORE THAT THEY
7 ALREADY STARTED TO CONSIDER THESE ALTERNATIVE SPECIMENS,
8 SEVERAL YEARS BEFORE, I BELIEVE SO THE HAIR TESTING WORKING
9 GROUP WAS FORMED TO TRY TO IRON OUT SOME OF THE CONTROVERSIES
10 IN HAIR TESTING, THE BIAS, THE CUTOFFS, ET CETERA, WHERE
11 THERE WASN'T THAT MUCH OUT THERE ON THE SWEAT PATCH TESTING
12 TO BOTHER TO GET TOGETHER PEOPLE TO TALK ABOUT IT

13 Q ALL RIGHT NOW, THERE WAS -- SHE HAD ASKED YOU
14 SOMETHING -- QUITE FRANKLY, I APOLOGIZE, BUT I DON'T REMEMBER
15 EXACTLY WHAT THE SPECIFIC ISSUE WAS BUT YOU HAD MENTIONED
16 OR REFERRED THAT YOU HAD A STUDY THAT YOU COULD LOOK TO TO
17 REFLECT YOUR RECOLLECTION ON SOME OF THE DATA

18 A YES THAT WAS THE STUDY -- SHE ASKED ME HOW MANY
19 INDIVIDUALS -- HOW MANY POSITIVE SWEAT PATCHES WERE FALSELY
20 POSITIVE IN THESE THREE NEGATIVE INDIVIDUALS, AND I DID NOT
21 RECALL WHAT THE NUMBERS WERE

22 Q DO YOU REMEMBER WHAT STUDY THAT WAS?

23 A IT WAS THE PEER-REVIEWED STUDY THAT I AND FRED SMITH, ET
24 AL HAD PUBLISHED VERY RECENTLY JUST A SECOND, I WILL GIVE
25 YOU A CITE, IF YOU'D LIKE IT'S -- THE TITLE IS "COMPARISON

DAVID KIDWELL -- REDIRECT BY MR GIBSON

1 OF DAILY URINE, SWEAT AND SKIN WIPES AMONG COCAINE USERS,"
2 DAVID A KIDWELL, JOHN D KIDWELL, F SHINOHARA, C HARPER,
3 K ROARTY, K BERNADT, R A MCCAULLEY AND F P SMITH,
4 FORENSIC SCIENCE INTERNATIONAL, VOLUME 133, PAGES 63-78,
5 2003

6 Q OKAY IS THIS A COPY OF THAT?

7 A YES, IT IS

8 MR GIBSON YOUR HONOR, AT THIS TIME I'D LIKE TO HAVE
9 THAT STUDY ADMITTED IT CLEARLY DEALS WITH ISSUES THAT WERE
10 NOT ADDRESSED ON HIS ORIGINAL TESTIMONY CAN YOU PLEASE MARK
11 THIS?

12 THE COURT HAVE YOU SEEN A COPY OF IT, MS STROM?

13 MS STROM I'M SORRY, YOUR HONOR?

14 THE COURT HAVE YOU SEEN A COPY OF IT?

15 MS STROM YOUR HONOR, IT WAS HANDED TO ME, BUT QUITE
16 HONESTLY I WAS PREPARING FOR CROSS AND I DID NOT HAVE A
17 CHANCE TO READ IT I WOULD LIKE -- IF HE WANTS TO MARK IT
18 FOR IDENTIFICATION, I'LL BE GLAD TO READ OVER IT THIS
19 EVENING

20 THE COURT WELL, FROM WHAT I UNDERSTAND, THIS
21 GENTLEMAN---

22 MR GIBSON HE'S GOING TO BE GONE, SO I DON'T KNOW
23 EXACTLY WHAT WE'RE GOING TO IDENTIFY IT FOR

24 THE COURT GO AHEAD AND MARK IT

25 MR GIBSON FOR?

DAVID KIDWELL -- REDIRECT BY MR GIBSON

1 **THE COURT** FOR IDENTIFICATION AT THIS POINT, AND THEN
2 MS STROM CAN LOOK AT IT WHILE YOU'RE FINISHING UP YOUR
3 EXAMINATION

4 **MR GIBSON** OKAY

5 (FORENSIC SCIENCE INTERNATIONAL ARTICLES MARKED AS
6 DEFENDANT PERKINS EXHIBIT NUMBER 2 FOR PURPOSES OF
7 IDENTIFICATION ONLY)

8 **THE COURT** DO YOU HAVE A COPY THAT MS STROM CAN BE
9 REVIEWING?

10 **MR GIBSON** I'VE GIVEN HER A COPY, YOUR HONOR

11 **MS STROM** YES, YOUR HONOR I'M SORRY I LEFT IT IN
12 MY OFFICE I'VE GOT SOMEONE GOING TO GET IT RIGHT NOW

13 **THE COURT** ALL RIGHT THANK YOU

14 **Q** CAN YOU TELL ME -- I'M SORRY WHAT DOES FDA PEER REVIEW
15 MEAN? I'M SORRY WHAT DOES PEER REVIEW MEAN?

16 **A** PEER REVIEW IS WHEN YOU PUBLISH PAPERS IN THE TECHNICAL
17 LITERATURE, VERY FREQUENTLY, IF NOT ALWAYS, THEY SEND THEM
18 OUT TO OTHER SCIENTISTS THAT ARE FAMILIAR WITH THIS TYPE OF
19 RESEARCH AND THEY ASK THOSE SCIENTISTS WHAT DO THEY THINK
20 ABOUT THIS WORK AND THEN YOU GET BACK COMMENTS THAT YOU
21 EITHER -- TO IMPROVE YOUR PAPER OR THE PAPER IS REJECTED OR
22 IT'S ACCEPTED AS IT IS SO IT'S A PROCESS THAT ONE GOES
23 THROUGH TO HELP IMPROVE BOTH SCIENCE AND TO ASSIST IN MAKING
24 SURE THE SCIENTIFIC LITERATURE CONTAINS REASONABLE AND
25 ACCURATE RESULTS

DAVID KIDWELL -- REDIRECT BY MR GIBSON

1 Q OKAY TO THE BEST OF YOUR KNOWLEDGE, IS THE FDA PEER
2 REVIEWED?

3 A THE SUBMISSIONS TO THE FDA?

4 Q YES, SIR

5 A TO THE BEST OF MY KNOWLEDGE, THE SUBMISSIONS TO THE FDA
6 ARE NOT, ALTHOUGH SOME ARE, BECAUSE THEY DO SUBMIT STUDIES AS
7 WELL AS INTERNAL STUDIES, WHICH ARE NOT PEER REVIEWED

8 Q YES, SIR DO YOU KNOW WHETHER OR NOT THE 501K BY THE
9 PHARMCHEM PEOPLE WAS PEER REVIEWED?

10 A I DO NOT KNOW PERSONALLY I DOUBT IT THOUGH

11 Q OKAY

12 MR GIBSON YOUR INDULGENCE, YOUR HONOR (OFF RECORD
13 WITH DEFENSE COUNSEL)

14 Q WELL, LET ME ASK YOU ANOTHER QUESTION ON THE
15 GUIDELINES, THESE PROPOSED GUIDELINES, HAVE THEY BEEN PEER
16 REVIEWED?

17 A NO

18 Q OKAY

19 A TO THE BEST OF MY KNOWLEDGE

20 Q NOW, AGAIN, EVEN BY STATE'S OWN WITNESS---

21 A THESE WOULDN'T BE -- TYPE OF GUIDELINES WOULD NEVER BE
22 PEER REVIEWED

23 Q OKAY

24 A IN MY OPINION

25 Q OKAY

DAVID KIDWELL -- REDIRECT BY MR GIBSON

1 MR GIBSON THAT'S ALL FOR NOW, DR KIDWELL THANK
2 YOU

3 THE COURT MR BANNISTER

4 MR BANNISTER VERY BRIEFLY

5 RECROSS EXAMINATION BY MR. BANNISTER

6 Q LET ME SHOW YOU WHAT WE HAD PREVIOUSLY MARKED AS ANGELA
7 HURKS EXHIBITS NUMBER 3 AND 4 THOSE ARE THE IMMUNOASSAY
8 DRUG TESTS THAT YOU USED ON THE MONEY THAT I PROVIDED YOU,
9 CORRECT?

10 A THAT'S CORRECT

11 Q ALL RIGHT AND IN HURKS EXHIBITS 1 AND 2, THIS IS THE
12 MONEY THAT YOU WERE PROVIDED TO GET THOSE RESULTS IN 3 AND 4?

13 A IT APPEARS TO BE, YES

14 Q ALL RIGHT AND DID YOU GET THE MONEY FROM MY PARALEGAL,
15 SHEREE AIKEN WHO IS BACK THERE IN THE YELLOW?

16 A WELL, SHE HANDED IT TO YOU AND YOU HANDED IT TO ME

17 MR. BANNISTER JUDGE, ASSUMING I CAN LAY THE
18 FOUNDATION WITH MS AIKEN, I WOULD MOVE ALL FOUR OF THESE
19 INTO EVIDENCE AT THIS TIME

20 THE COURT ANY OBJECTION TO THAT, MS STROM?

21 MS. STROM NO OBJECTION, YOUR HONOR

22 THE COURT ALL RIGHT THANK YOU

23 MR BANNISTER THAT'S IT, JUDGE

24 (DEFENDANT HURKS EXHIBIT NUMBER 1 MOVED INTO EVIDENCE)

25 (DEFENDANT HURKS EXHIBIT NUMBER 2 MOVED INTO EVIDENCE)

DAVID KIDWELL -- RECROSS BY MR BANNISTER

1 (DEFENDANT HURKS EXHIBIT NUMBER 3 MOVED INTO EVIDENCE)

2 (DEFENDANT HURKS EXHIBIT NUMBER 4 MOVED INTO EVIDENCE)

3 THE COURT MR ARMSTRONG

4 MR. ARMSTRONG JUDGE, I WOULD JOIN IN WITH MR GIBSON

5 ON THE EXHIBIT WHICH HAS BEEN ID'd THE PEER REVIEW

6 DOCUMENT---

7 THE COURT ALL RIGHT

8 MR. ARMSTRONG ---AND MOVE THAT INTO EVIDENCE

9 RECROSS EXAMINATION BY MR. ARMSTRONG

10 Q QUESTION FOR YOU DR KIDWELL, YOU TALKED A GOOD DEAL

11 THIS AFTERNOON ABOUT SOLUTIONS OF COCAINE WHICH ARE

12 ESTABLISHED BY SWEAT ON ONE'S BODY, VARIOUS DEGREES OF SWEAT

13 DEPENDING ON EXERCISE, SEDENTARY STYLE, ET CETERA HAVE YOU

14 DONE ANY QUANTIFICATION OF WHAT THE VOLUME OF SWEAT IS ON AN

15 INDIVIDUAL PER UNIT OF TIME GIVEN BE IT SEDENTARY OR---

16 A I HAVEN'T DONE SO, BUT I HAVE EXAMINED SOME OF THE

17 TECHNICAL LITERATURE CIBA-GEIGY PUBLISHES SOMETHING CALLED

18 THE CRITICAL SCIENTIFIC TABLES, AND IN THERE ARE VOLUMES OF

19 INFORMATION IT'S A SUMMARY OF SCIENTIFIC LITERATURE

20 BASICALLY, THERE'S APPROXIMATELY HALF A LITER OF SWEAT PER

21 DAY PER PERSON OVER THEIR ENTIRE BODY AREA JUST SITTING

22 AROUND DOING NOTHING

23 Q OKAY

24 A FROM THE SKIN NOW, THERE IS A LOT MORE FROM THE LUNGS

25 BUT FROM THE SKIN

DAVID KIDWELL -- RECROSS BY MR ARMSTRONG

1 Q FROM THE SKIN SOLELY SO THAT'S BASICALLY ABOUT A PINT?

2 A YES, THAT'S CORRECT

3 Q IN NOT SCIENTIFIC TERMINOLOGY I WOULD SUSPECT ALSO AS
4 EXERCISE INCREASES AND THERE IS PROFUSIVE SWEAT, IT'S
5 SIGNIFICANTLY MORE?

6 A OH, OBVIOUSLY AND THAT'S REALLY THE BASIC REQUIREMENT
7 OF HOW MUCH WATER ONE HAS TO DRINK IT HAS TO BE AT LEAST
8 WHAT YOU LOSE BY SWEAT OTHERWISE, WE GO INTO SHOCK SO YOU
9 HAVE TO AT LEAST TAKE A PINT OF WATER AND CERTAINLY MUCH MORE
10 TO BE HEALTHY, PER DAY

11 Q AND THIS SOURCE, IS THAT AKIN TO THE FORMULA THAT YOU
12 FOUND WITHIN YOUR LITERATURE AND YOUR DISCIPLINE FOR
13 ARTIFICIAL SWEAT? IN OTHER WORDS, IS THE AVAILABILITY OF THE
14 FORMULA FOR ARTIFICIAL SWEAT A WELL-KNOWN STANDARD WITHIN THE
15 SCIENTIFIC COMMUNITY AS IS THE AMOUNT OF SWEAT THAT AN
16 INDIVIDUAL WOULD---

17 A WELL, YOU HAVE TO BE CAREFUL ABOUT -- THERE ARE A NUMBER
18 OF DIFFERENT SWEAT FORMULAS -- A NUMBER OF DIFFERENT ONES
19 THERE IS AN INTERNATIONALLY RECOGNIZED ONE, AND THAT'S THE
20 ONE I USED BUT PEOPLE FOR COSMETIC PURPOSES HAVE PREPARED
21 ALL SORTS OF DIFFERENT ONES WITH BASICALLY DIFFERENT
22 IMPURITIES IN THEM, WHATEVER YOU'RE TRYING TO MIMIC

23 Q BUT THE POINT IS THIS HALF-LITER PER DAY, IS THAT AN
24 ACCEPTED STANDARD WITHIN THIS DISCIPLINE OF WHICH YOU SPEAK?

25 A THE EXCRETION OF A HALF-LITER PER DAY?

DAVID KIDWELL -- RECROSS BY MR ARMSTRONG

1 Q YES

2 A YES I BELIEVE SO, YES

3 Q AND IS THAT EXCRETION SUFFICIENT ENOUGH TO CAUSE A
4 REACTION WITH DRY COCAINE TO PUT IT IN "SOLUTION"?

5 A I REALLY DO NOT KNOW I MEAN, I HAVE ENOUGH SWEAT ON MY
6 HANDS RIGHT NOW TO HAVE IT IN SOLUTION, AND I'M NOT ACTIVELY
7 SWEATING

8 Q OKAY SO ANY MOISTURE---

9 A ANY MOISTURE BASICALLY NOW, IF YOU WERE IN A---

10 Q ---CAUSES A REACTION WITH COCAINE?

11 A IF YOU WERE IN A VERY DRY ENVIRONMENT, NON-HUMID, SO
12 THAT THE WATER THAT YOU EXCRETED IMMEDIATELY EVAPORATED,
13 THAT'S DISTINCT FROM A RELATIVELY HUMID ENVIRONMENT

14 Q AND WHEN YOU HAVE SWEAT, COCAINE, THEN YOU GET "BZE" AS
15 WELL?

16 A IF TIME PASSES NOW, IT'S ENHANCED IF YOU HAVE SOAP
17 RESIDUE OR ANY BASIC RESIDUE ON YOUR HANDS SOAP, CEMENT --
18 CEMENT IS A REALLY GOOD ONE IF YOU WANTED TO USE SOMETHING
19 TRULY CAUSTIC

20 MR. ARMSTRONG THANK YOU, SIR

21 MS. STROM I HAVE NO FURTHER QUESTIONS, YOUR HONOR

22 THE COURT ALL RIGHT ANY POSITION AS RELATES TO THE
23 STUDY THAT MR GIBSON AND MR ARMSTRONG HAVE INTRODUCED?

24 MR GIBSON I'M SORRY, YOUR HONOR?

25 THE COURT I WAS JUST ASKING MS STROM IF SHE HAD ANY

DAVID KIDWELL -- RECROSS BY MR ARMSTRONG

1 POSITION ON THE STUDY THAT YOU AND MR ARMSTRONG WERE TRYING
2 TO INTRODUCE

3 MS STROM NO OBJECTION

4 THE COURT ALL RIGHT THANK YOU, SIR YOU CAN STEP
5 DOWN

6 (DEFENDANT PERKINS EXHIBIT NUMBER 2 MOVED INTO EVIDENCE)

7 (WITNESS STEPS DOWN AT 5 26 P M)

8 THE COURT ALL RIGHT ANY OTHER WITNESSES FROM THE
9 DEFENSE TODAY?

10 MR GIBSON (INDICATES NEGATIVE RESPONSE) NO, YOUR
11 HONOR

12 THE COURT ALL RIGHT ANYTHING ELSE FROM THE STATE AT
13 THIS POINT?

14 MS. STROM NOT AT THIS POINT, YOUR HONOR

15 THE COURT OKAY YES, SIR, MR ARMSTRONG

16 MR. ARMSTRONG SOMETHING FROM THE DEFENSE, YOUR HONOR
17 YOUR HONOR, WE FILED A BRADY REQUEST BACK IN JANUARY, AND IN
18 PARTICULAR WERE SEEKING RAP SHEETS ON STATE'S WITNESSES AS
19 TO MR JANELLI IN PARTICULAR, CHARLENE ROBERTSON AND A FAITH
20 ALEXANDER ARE SUPPOSED TO TESTIFY I BELIEVE THAT THEY DO
21 HAVE A CRIMINAL RECORD, AND I WOULD ASK THE STATE TO BE
22 ORDERED TO PRODUCE A RAP SHEET ON THESE INDIVIDUALS

23 THE COURT MS STROM?

24 MS STROM JUST ONE SECOND

25 THE COURT AND I DON'T MIND IF YOU WANT SOME TIME I

DAVID KIDWELL -- RECROSS BY MR ARMSTRONG

1 THINK WE CAN ADDRESS THAT IN THE MORNING AND I'M ASSUMING
2 TO A LARGE DEGREE THEY ARE PUBLIC RECORD

3 MR ARMSTRONG WELL, THEY MAY BE, YOUR HONOR, BUT THE
4 DEFENSE DOESN'T HAVE ACCESS TO N C I C RECORDS WE MIGHT BE
5 ABLE TO GET, THANKS TO MR WICKENSIMER, STUFF WHICH MAY HAVE
6 HAPPENED IN GREENVILLE COUNTY IN SOME RECENT PAST HERE, BUT
7 I'M NOT SURE (A) HOW COMPLETE THAT IS AND IT CERTAINLY
8 DOESN'T GO OUT OF COUNTY

9 THE COURT LET ME SEE WHAT THE STATE'S POSITION IS
10 THEN

11 MS. STROM YOUR HONOR, IF I COULD ADDRESS THAT, I WILL
12 GO AHEAD AND RUN THE RECORDS ON THE INDIVIDUALS, SO THAT WAY
13 IF YOU DO ORDER ME TO GIVE THEM, THEY WILL BE THERE AND WE
14 WON'T HAVE ANOTHER DELAY BUT I WOULD JUST ASK IF YOU COULD
15 HAVE THE EVENING TO THINK ON THAT

16 THE COURT THAT'S FINE

17 MS. STROM THANK YOU

18 THE COURT ALL RIGHT AND LET ME ALSO BROACH TWO
19 OTHER ISSUES I KNOW WE HAVE DISCUSSED IT AT SOME POINT BUT
20 THAT ARE NECESSARILY GOING TO BE ADDRESSED DURING THE
21 PROCEEDINGS FIRST, OBVIOUSLY, IS GOING TO BE THE QUESTION
22 OF WHO HAS THE BURDEN OF PROOF IN THIS ACTION AND SECOND,
23 WHAT IS THE BURDEN OF PROOF? IS IT A PREPONDERANCE OR IS IT
24 A REASONABLE DOUBT? SO YOU JUST THROW THAT OUT TO GIVE YOU
25 FINE LAWYERS SOMETHING ELSE TO THINK ABOUT

DAVID KIDWELL -- RECROSS BY MR ARMSTRONG

1 AND IF I COULD SEE ALL COUNSEL BACK IN CHAMBERS FOR JUST
2 A MOMENT

3 (TRIAL RECESSED FOR THE DAY AT 5 30 P M)
4
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CERTIFICATE

I, THE UNDERSIGNED, DAWN V KOFFSKEY, OFFICIAL COURT REPORTER FOR THE 13TH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR GREENVILLE COUNTY, SOUTH CAROLINA, ON THE 26TH DAY OF APRIL 2004

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO

FEBRUARY 14, 2006



DAWN V KOFFSKEY
COURT REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF
GENERAL SESSIONS

THE STATE OF
SOUTH CAROLINA,

-vs-

DANE JANELLI,
CEDRIC PERKINS AND
ANGELA HURKS,

DEFENDANTS

TRANSCRIPT OF RECORD
DRUG COURT
TERMINATION PROCEEDING

VOLUME 2 -- 4/27/04

APRIL 26-28, 2004
GREENVILLE, SOUTH CAROLINA

B E F O R E

THE HONORABLE CHARLES B SIMMONS

A P P E A R A N C E S

BETTY C STROM, Esquire
KRISTIN WINN, Esquire
13th Circuit Solicitor's Office

DAVID ARMSTRONG, Esquire
Attorney for the Defendant Dane Janelli

KENNETH GIBSON, Esquire
Attorney for the Defendant Cedric Perkins

JAMES BANNISTER, Esquire
Attorney for the Defendant Angela Hurks

DAWN V KOFFSKEY
Court Reporter

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1 (TRIAL RESUMED AT 9:30 A.M. ON 4/27/04)

2 THE COURT YOU CAN CALL YOUR WITNESS

3 MS STROM YOUR HONOR, I DIDN'T KNOW IF WE NEEDED TO
4 ADDRESS THE ISSUE OF THE RAP SHEET AND THE REASON, FAITH
5 ALEXANDER AND CHARLENE ROBINSON ARE GOING TO BE MY NEXT
6 WITNESSES BECAUSE LUCKILY ANGELA DILLARD IS ON HER WAY SHE
7 WAS FEELING BETTER THIS MORNING, SO SHE WILL BE HERE

8 THE COURT GOOD

9 MS STROM MY POSITION ON THE CRIMINAL RECORDS, YOUR
10 HONOR, IS THIS IS NOT AN ADJUDICATION AS TO WHETHER THE
11 DEFENDANT IS GUILTY OR NOT GUILTY

12 MR GIBSON EXCUSE ME, YOUR HONOR I APOLOGIZE THIS
13 ISSUE REALLY AFFECTS MR ARMSTRONG'S CLIENT---

14 THE COURT WE AGREED LAST NIGHT WE WERE GOING TO START
15 AT 9 30 IT'S 9 30 AND WE'RE STARTING

16 MR. GIBSON YES, SIR

17 THE COURT GO AHEAD

18 MS. STROM YOUR HONOR, WE ARE ALL AWARE THAT OBVIOUSLY
19 THESE PEOPLE HAVE CRIMINAL RECORDS, BECAUSE THEY ARE IN THE
20 DRUG COURT PROGRAM YOU DON'T GET IN THE DRUG COURT PROGRAM
21 WITHOUT HAVING SOME CRIMINAL RECORD I DON'T THINK IT'S
22 NECESSARY FOR THE DEFENSE COUNSEL TO HAVE CRIMINAL RECORDS ON
23 OTHER INDIVIDUALS THAT ARE GOING TO BE TESTIFYING

24 I WILL BE HAPPY TO PROVIDE THEM TO THE COURT SO THE
25 COURT CAN BE AWARE OF THE CRIMINAL RECORDS, AND THAT'S THE

MATTERS AND MOTIONS

1 WHOLE POINT YOU PRODUCE CRIMINAL RECORDS FOR THE
2 FACTFINDERS TO MAKE A DETERMINATION AS TO THAT PERSON'S
3 CREDIBILITY YOU ARE MINUTELY FAMILIAR WITH THESE
4 INDIVIDUALS BECAUSE YOU ARE HEAD OF THE DRUG COURT I WILL
5 BE GLAD TO PROVIDE THEM TO YOU SO YOU WILL HAVE EXTENSIVE
6 INFORMATION ON THEIR CRIMINAL RECORD, BUT I DON'T THINK IT'S
7 APPROPRIATE TO GIVE IT TO DEFENSE COUNSEL

8 **THE COURT** MR ARMSTRONG, MS STROM HAS BEEN TALKING
9 ABOUT ANY BASIS FOR PRODUCING THE CRIMINAL RECORDS OF MS
10 ALEXANDER AND---

11 **MS. STROM** MS ROBERTSON

12 **THE COURT** ---MS ROBERTSON WHAT IS THE BASIS TO
13 PROVIDE THIS INFORMATION, MR ARMSTRONG?

14 **MR. ARMSTRONG** WE HAD BEEN NOTIFIED BY THE STATE THAT
15 THEY PLAN TO CALL THESE TWO WITNESSES TO TESTIFY ABOUT
16 CERTAIN ASPECTS, GIVE TESTIMONY AS TO WHAT MY CLIENT
17 ALLEGEDLY STATED OR ADMITTED TO EITHER, I SUSPECT, IMPEACH
18 HIM OR ATTEMPT TO CONTRADICT WHAT THE STATE ANTICIPATES TO BE
19 HIS TESTIMONY

20 THE CREDIBILITY OF THESE WITNESSES IS VERY IMPORTANT
21 THEY OBVIOUSLY HAVE SOME TYPE OF CRIMINAL RECORD I HAVE
22 BEEN ABLE TO DO SOME SEARCH ON THE INTERNET, AND I SUSPECT
23 THAT SOME OF THEM HAVE FORGERIES AND FINANCIAL TRANSACTION
24 FRAUD, BURGLARIES, ET CETERA, WHICH ARE CRIMES OF MORAL
25 TURPITUDE AND I AM ENTITLED TO THE INFORMATION NOT JUST

1 WHAT I CAN GET OFF THE INTERNET ON PUBLIC RECORD, BUT I'M
2 ENTITLED TO THE ENTIRE RAP SHEET BECAUSE THESE PEOPLE MAY
3 WELL HAVE INFORMATION OR PROBLEMS IN OTHER COUNTIES OR OTHER
4 JURISDICTION OR IN THE FEDERAL JURISDICTION, WHICH WE DON'T
5 REALLY HAVE ACCESS TO

6 THE OTHER ISSUE, AS I WAS CHECKING THE INTERNET ON FAITH
7 ALEXANDER, THERE'S ACTUALLY TWO FAITH ALEXANDERS IN THE
8 SYSTEM THERE'S A FAITH AND THEN THERE'S A CAMILLA FAITH
9 I'M MAKING AN ASSUMPTION THAT I'VE GOT THE RIGHT ONE, AND I'M
10 NOT CERTAIN BECAUSE I DON'T HAVE SOCIAL SECURITY NUMBERS,
11 ADDRESS, ET CETERA, ET CETERA

12 THE COURT WHAT'S THE AUTHORITY IN A CRIMINAL ACTION
13 TO REQUIRE THE STATE TO PRODUCE THIS INFORMATION?

14 MR. ARMSTRONG WELL, IT'S UNDER BRADY AND IF IT'S
15 ANY INFORMATION WHICH COULD BE BENEFICIAL TO THE DEFENDANT,
16 THEN THE STATE IS OBLIGATED TO PRODUCE THIS INFORMATION AND
17 THAT COULD AGAIN, WE DON'T HAVE ACCESS TO N C I C

18 THE COURT MS STROM, IS THIS SOMETHING COVERED UNDER
19 A BRADY MOTION?

20 MS STROM YOUR HONOR, IN A NORMAL CRIMINAL
21 PROCEEDING, IF A WITNESS WERE TO TESTIFY BEFORE A JURY WE
22 WOULD GIVE TO THE DEFENSE COUNSEL ANY CRIMINAL RECORD ON THAT
23 WITNESS SO THAT THEY COULD REVEAL TO THE FACT FINDER ANY BIAS
24 OR PREJUDICE THAT WITNESS MAY HAVE AND SINCE WE'RE NOT
25 BEFORE A JURY TODAY, WE'RE BEFORE A JUDGE, I SUBMIT THE

MATTERS AND MOTIONS

1 APPROPRIATE WAY IS JUST TO HAND IT TO YOU

2 THE COURT ALL RIGHT BUT IF THAT IS SOMETHING THAT
3 THE FACT FINDER RELIES UPON, COULD I RELY UPON IT IF IT WAS
4 NOT DISCLOSED TO THE DEFENDANTS?

5 THE COURT COULD YOU RELY UPON IT IF IT WERE NOT
6 DISCLOSED TO THE---

7 THE COURT IN OTHER WORDS, CAN THE COURT RELY UPON
8 SOME ELEMENT IN MAKING A FACTUAL FINDING THAT IS NOT A MATTER
9 OF RECORD?

10 MS. STROM I THINK THAT THE COURT DOES THAT IN A
11 NUMBER OF OCCASIONS BY TAKING JUDICIAL NOTICE OF CERTAIN
12 ITEMS IN EVIDENCE AND THAT TYPE OF THING YOU KNOW, THE SOLE
13 PURPOSE IS FOR THE FACT FINDER TO DETERMINE IF THAT PERSON IS
14 BEING CREDIBLE OR NOT BEING CREDIBLE

15 THE COURT ALL RIGHT AT THIS POINT I'M GOING TO
16 REQUIRE PRODUCTION OF THE MATERIALS TO MR ARMSTRONG AND TO
17 ALL DEFENSE COUNSEL

18 AND YOU CAN GO AHEAD AND CALL YOUR FIRST WITNESS

19 MS STROM YES, SIR, YOUR HONOR

20 THE COURT SUBJECT TO YOUR OBJECTION

21 MS STROM THAT'S FINE, YOUR HONOR AND JUST TO COVER
22 MYSELF ON THE N C I C REQUIREMENTS, YOU HAVE ORDERED ME TO
23 PROVIDE THAT

24 THE COURT YES, MA'AM YOU'RE COVERED UNDER THAT

25 MS STROM THANK YOU YOUR HONOR, THE STATE CALLS

MATTERS AND MOTIONS

1 FAITH ALEXANDER

2 CAMILLA FAITH M. ALEXANDER,

3 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS

4 DIRECT EXAMINATION BY MS. STROM

5 Q SO YOU ARE CAMILLA FAITH ALEXANDER NOT FAITH M , OKAY?

6 A "M" IS THE MAIDEN NAME

7 Q OH, IT IS? OKAY MS ALEXANDER, WHERE PRESENTLY ARE
8 YOU EMPLOYED?

9 A COVINGTON COMMERCIAL REAL ESTATE

10 Q AND HOW LONG HAVE YOU BEEN EMPLOYED THERE?

11 A TWO MONTHS

12 Q TWO MONTHS OKAY AND YOU HAVE A CRIMINAL RECORD,
13 DON'T YOU?

14 A YES, I DO

15 Q AN EXTENSIVE CRIMINAL RECORD?

16 A YES, MA'AM

17 Q AND YOU WERE -- ARE YOU A PARTICIPANT IN THE DRUG COURT
18 PROGRAM?

19 A YES, MA'AM, SINCE FEBRUARY OF '03

20 Q SINCE FEBRUARY OF '03?

21 A YES, MA'AM

22 Q AND DURING THIS TIME OF YOUR PARTICIPATION -- WELL, LET
23 ME GO BACK IN ORDER TO BE A CANDIDATE FOR DRUG COURT YOU
24 OBVIOUSLY HAVE TO HAVE COMMITTED CRIMINAL OFFENSES?

25 A YES, MA'AM, AND IT HAS TO BE DRUG RELATED IN SOME FORM

1 Q OKAY AND YOU PLED GUILTY TO YOUR CHARGES THAT
2 ULTIMATELY RESULTED IN YOUR COMING INTO DRUG COURT?

3 A YES, MA'AM, I DID

4 Q OKAY DO YOU KNOW DANE JANELLI?

5 A WE HAD CLASSES TOGETHER HE WAS IN DRUG COURT WHEN I
6 CAME INTO DRUG COURT

7 Q HOW LONG HAVE YOU KNOWN HIM, APPROXIMATELY?

8 A SINCE FEBRUARY OF LAST YEAR

9 MR. ARMSTRONG COULD YOU PLEASE REPEAT THAT? I DIDN'T
10 HEAR THAT

11 MS. STROM SINCE FEBRUARY OF '03

12 Q DO YOU KNOW HIM THROUGH YOUR ASSOCIATION IN DRUG COURT?

13 A YES, MA'AM

14 Q DID YOU KNOW HIM PRIOR TO THAT?

15 A NO, MA'AM

16 Q I WANT TO DIRECT YOUR ATTENTION TO JULY OF LAST YEAR AT
17 A TIME WHEN MR JANELLI'S SWEAT PATCH DRUG SCREEN HAD COME
18 BACK POSITIVE?

19 MR. ARMSTRONG YOUR HONOR, I WOULD OBJECT TO THIS LINE
20 OF INQUIRY AND TESTIMONY THIS IS BASICALLY IN ANTICIPATION
21 OF AN IMPEACHMENT CHALLENGE OF MY CLIENT'S TESTIMONY

22 MS STROM NO, SIR, IT'S NOT

23 MR. ARMSTRONG IT CERTAINLY IS

24 THE COURT LET ME HEAR FROM MR ARMSTRONG, THEN I'LL
25 HEAR FROM THE STATE

CAMILLA FAITH ALEXANDER -- DIRECT BY MS STROM

1 MS STROM I'M SORRY

2 MR ARMSTRONG IT CERTAINLY IS YOU KNOW, WHAT DID HE
3 SAY? OR WHAT DID HE DO? ASSUMING FOR THE SAKE OF ARGUMENT
4 HE GETS UP THERE AND SAYS A, B, C AND D, AND THAT'S WHAT THIS
5 LADY WILL RECITE HERE, THEN THERE IS NO NEED FOR HER
6 TESTIMONY OTHER THAN FROM A STANDPOINT IT'S NOT AN
7 IMPEACHMENT BUT IF HE WOULD GET UP AND SAY A, B, C, AND D,
8 AND THEN SHE WOULD SAY, NO, NO, AT THAT PARTICULAR TIME HE
9 SAID X, Y AND Z, THEN I THINK IT WOULD BE APPROPRIATE FOR THE
10 STATE TO LAUNCH AN IMPEACHMENT CHALLENGE

11 THE COURT I'M GOING TO OVERRULE YOUR OBJECTION I
12 DON'T THINK IT'S AN IMPEACHMENT FROM WHAT I UNDERSTAND
13 WHERE WE HEADING IS THAT THIS IS PART OF THE REQUIREMENT FOR
14 THE STATE TO SHOW AS A BASIS FOR TERMINATING MR JANELLI FROM
15 THE PROGRAM SO NOTED ON THE RECORD
16 GO AHEAD

17 MS. STROM THANK YOU, YOUR HONOR

18 Q AGAIN, I WANT TO DIRECT YOUR ATTENTION BACK TO JULY OF
19 2003 AND ARE YOU AWARE THAT AS PART OF YOUR PARTICIPATION
20 IN DRUG COURT WERE YOU AWARE THAT MR JANELLI HAD A POSITIVE
21 DRUG SCREEN PATCH?

22 MR ARMSTRONG YOUR HONOR, I OBJECT THAT'S A LEADING
23 QUESTION

24 THE COURT OVERRULED

25 Q ARE YOU AWARE THAT HE HAD A POSITIVE DRUG SCREEN PATCH?

CAMILLA FAITH ALEXANDER -- DIRECT BY MS STROM

1 A YES, MA'AM

2 Q AND HOW DID YOU BECOME AWARE OF THAT?

3 A ACTUALLY IN TWO WAYS WE WERE IN CLASS BEFORE IT WAS
4 EVER MADE PUBLIC KNOWLEDGE THAT EVENING, AND MR JANELLI WAS
5 TELLING THE CLASS AS A WHOLE THAT HE HAD USED COCAINE HE
6 HAD HAD PROBLEMS WITH HIS GIRLFRIEND AND THAT HE HAD USED
7 WHEN HE WAS OUT OF TOWN WITH HER AND THEN LATER ON THAT
8 EVENING THEY DID ARREST HIM FOR THE POSITIVE PATCH

9 Q SO THEY ARRESTED HIM FOR THE POSITIVE PATCH BUT PRIOR
10 TO THAT HE HAD SAID IN YOUR PRESENCE THAT HE HAD USED?

11 A YES, MA'AM

12 MS STROM THANK YOU I HAVE NO FURTHER QUESTIONS
13 PLEASE ANSWER ANY QUESTIONS MR ARMSTRONG MAY HAVE

14 CROSS EXAMINATION BY MR. ARMSTRONG:

15 Q YOU ARE CAMILLA FAITH ALEXANDER?

16 A YES, SIR

17 Q ALL RIGHT ARE YOU ALSO KNOWN AS FAITH M ALEXANDER?

18 A THAT'S NOT AN ALIAS I DON'T USE MY FIRST NAME "M" IS
19 FOR MY MAIDEN NAME

20 Q SO CAMILLA FAITH ALEXANDER AND FAITH M ALEXANDER ARE
21 THE SAME PEOPLE, IS THAT CORRECT?

22 A EXACTLY

23 Q AND HOW LONG HAVE YOU -- YOU SAY YOU'VE BEEN IN THE DRUG
24 COURT PROGRAM SINCE FEBRUARY OF 2003?

25 A RIGHT, FEBRUARY 14TH, 2003

CAMILLA FAITH ALEXANDER -- CROSS BY MR ARMSTRONG

1 Q ALL RIGHT AND YOU'VE HAD -- UNDER FAITH M ALEXANDER
2 YOU HAVE HAD ONE, TWO, THREE FORGERY CHARGE YOU HAVE ONE,
3 TWO, THREE, FOUR, FIVE, SIX, SEVEN, EIGHT FINANCIAL
4 TRANSACTION OR CREDIT CARD FRAUD CONVICTIONS, IS THAT
5 CORRECT?

6 A ACTUALLY, I CAN'T GIVE YOU AN EXACT NUMBER I DO HAVE
7 AN EXTENSIVE, AS MS STROM SAID, RECORD AND IF IT'S THERE,
8 I'M SURE IT'S CORRECT

9 Q SO IT'S BASICALLY FOR FORGERIES, FINANCIAL CREDIT CARD
10 TRANSACTION, PROBLEMS WITH LARCENY, UTILITY FRAUD WOULD YOU
11 AGREE THAT THOSE -- SHOPLIFTING --

12 MR ARMSTRONG COURT'S INDULGENCE HERE A MINUTE AS
13 THE COURT IS AWARE, I JUST RECEIVED SOME OF THIS INFORMATION

14 THE COURT TAKE YOUR TIME THAT'S FINE

15 MS STROM AND SO THE COURT IS AWARE AND MR ARMSTRONG
16 IS AWARE, HE'S REALLY ONLY ALLOWED TO GO OVER THE
17 CONVICTIONS, NOT ARRESTS

18 THE COURT LET'S LIMIT IT TO WHAT'S APPROPRIATE UNDER
19 THE RULES

20 MR ARMSTRONG ABSOLUTELY

21 Q BUT YOU'VE HAD NUMEROUS CONVICTIONS, MA'AM, OF FINANCIAL
22 TRANSACTION FRAUDS AND FORGERIES, HAVE YOU NOT?

23 A WHAT DO YOU TERM NUMEROUS? I HAVE -- I'M IN HERE ON
24 NINE DIFFERENT CHARGES, OF WHICH I BELIEVE THREE OR FOUR OF
25 THEM ARE NO, WAIT A MINUTE FINANCIAL TRANSACTION CARD,

1 ONE OF THOSE IN HERE IS THAT

2 Q REPEAT THAT, PLEASE

3 A ONE OF THE CHARGES THAT I'M IN HERE ON DRUG COURT ON IS
4 A FINANCIAL TRANSACTION CARD FRAUD

5 Q ALL RIGHT AND PRIOR TO YOUR INVOLVEMENT IN DRUG COURT
6 YOU'VE HAD OTHER CONVICTIONS ALSO, HAVE YOU NOT?

7 A YES, SIR, QUITE NUMEROUS

8 Q ALL RIGHT AND THEY HAVE BEEN FOR OBTAINING GOODS BY
9 FALSE PRETENSES?

10 A THAT'S A DRUG COURT CHARGE

11 Q ALL RIGHT BUT YOU HAD ONE IN 1990? YOU PLED GUILTY
12 BEFORE JUDGE BAGGOTT? DO YOU AGREE WITH THAT?

13 A IF IT'S THERE, I AGREE WITH IT

14 Q SO OVER THE PAST THAT YOU HAVE, NOT INCLUDING ALL THAT'S
15 IN DRUG COURT, PRIOR TO YOUR ENROLLMENT IN DRUG COURT YOU
16 HAVE HAD MANY OTHER CONVICTIONS?

17 A YES, I DID I ADMITTED THAT NUMEROUS

18 Q FOR LARCENY, FOR BURGLARY, FOR FORGERY?

19 A I HAVE NEVER HAD A BURGLARY CHARGE, AND I DON'T KNOW
20 WHAT YOU TERMING AS LARCENY MINE IS -- I DON'T THINK I'VE
21 EVER HAD ONE THAT SAID LARCENY

22 Q ALL RIGHT LARCENY, SHOPLIFTING AND THINGS OF THAT
23 NATURE?

24 A NO, I DON'T THINK I'VE EVER HAD A LARCENY I'VE HAD
25 NUMEROUS BAD CHECKS AND THINGS LIKE THAT

1 Q ALL RIGHT NOW, YOU ARE TESTIFYING, MA'AM, THAT YOU
2 WERE AT SOME TYPE OF MEETING IN JULY WHEN IN JULY?

3 A IT WAS THE DAY THAT DANE GOT ARRESTED FOR THE BAD
4 CHECK -- I MEAN, EXCUSE ME, I'M SORRY I WAS STILL THINKING
5 ON THAT IT WAS THE DAY THAT DANE GOT ARRESTED FOR THE BAD
6 PATCH

7 Q WHAT DAY IS THAT?

8 A ACTUALLY, I DON'T THINK I REMEMBER THE EXACT DATE, BUT
9 IT WAS THE DAY THAT HE -- THEY CARRIED HIM DOWNSTAIRS AND
10 TOOK HIM IN TO JAIL FOR THE POSITIVE PATCH RETURNING

11 Q AND YOUR TESTIMONY IS THAT HE SAID THAT HE HAD HAD
12 PROBLEMS WITH HIS GIRLFRIEND?

13 A EXACTLY

14 Q AND THAT HE USED WHAT?

15 A COCAINE

16 Q AND WHAT OTHER DETAILS DID HE STATE ACCORDING TO YOUR
17 RECOLLECTION?

18 A IT WAS JUST SOMETHING ABOUT HIS PROBLEMS HE HAD WITH HIS
19 GIRLFRIEND HE HAD USED HE WAS UPSET HE WAS WONDERING IF
20 THE PATCH WAS GOING TO REALLY COME BACK POSITIVE IT WAS
21 JUST NORMAL TALK THIS WAS NOT A MEETING THIS WAS OUR
22 REGULAR COUNSELING CLASS THAT WE WENT TO THE ENTIRE CLASS
23 WAS IN THERE

24 Q WHERE WAS THAT HELD, MA'AM?

25 A THIS WAS HELD IN THE THIRD FLOOR CONFERENCE ROOM IN

1 FRONT OF THE SOLICITOR'S OFFICE, WHICH NO LONGER EXISTS

2 IT'S BEEN TORN DOWN

3 Q DID HE STATE WHO THIS GIRLFRIEND WAS?

4 A NOT TO MY RECOLLECTION, NO

5 Q DID HE STATE WHERE THIS ALLEGEDLY OCCURRED?

6 A YOU MEAN WHERE HE ACTUALLY USED THE COCAINE AT?

7 Q YES, MA'AM

8 A NO, HE DID NOT SAY EXACTLY WHERE HE USED IT AT

9 Q YOU SAID SOMETHING ABOUT OUT OF TOWN WHAT WAS THAT
10 ABOUT?

11 A THEY HAD WENT OUT OF TOWN BOBBIE HAD GIVEN HIM
12 PERMISSION TO GO OUT OF TOWN, I BELIEVE, IF I REMEMBER
13 CORRECTLY, IT WAS A FAMILY REUNION

14 Q DO YOU KNOW WHERE THAT WAS?

15 A I DON'T KNOW THE CITY, STATE AND -- I MEAN, THE CITY AND
16 ADDRESS OF IT I BELIEVE IT WAS IN ALABAMA

17 Q ALL RIGHT AND THEN HE WAS ARRESTED AT THAT MEETING, IS
18 THAT CORRECT?

19 A THEY CALLED HIM TO GO DOWNSTAIRS, AND HE WAS TAKEN INTO
20 CUSTODY DOWNSTAIRS ON THE FIRST FLOOR

21 Q IS IT -- LET ME SEE IF I UNDERSTAND THE SEQUENCE OF
22 EVENTS HERE CORRECTLY YOU CAME INTO THIS MEETING WITH THE
23 REST OF THE CLASS OUTSIDE OF THE SOLICITOR'S OFFICE, THE
24 NORMAL PROCESS, THAT THERE WAS A DISCUSSION THAT YOU HAVE
25 RELATED UNDER YOUR TESTIMONY, AND THEN WHAT HAPPENED IS THAT

CAMILLA FAITH ALEXANDER -- CROSS BY MR ARMSTRONG

1 AFTER THE MEETING DANE WAS TAKEN INTO CUSTODY ON A FAILED
2 PATCH IS THAT CORRECT?

3 A NO, SIR YOU'RE PARTIALLY CORRECT IT WAS NOT AFTER
4 THE MEETING, AFTER OUR COUNSELING SESSION IT WAS BEFORE
5 WE ALL COME IN BEFORE A GROUP SESSION, AND WE'RE ALL SITTING
6 THERE CHIT-CHATTING BEFORE WE START, AND THAT'S WHEN THE
7 CONVERSATION TOOK PLACE HOWEVER, DANE WAS CALLED DOWNSTAIRS
8 BEFORE WE EVER ACTUALLY GOT INTO OUR SESSION

9 Q BUT YOUR TESTIMONY IS THAT HE DID INDEED MAKE IT TO THE
10 MEETING AND WAS READY TO GO TO THE MEETING AND THEN THEY CAME
11 AND GOT HIM?

12 A RIGHT

13 Q ALL RIGHT ISN'T IT TRUE THAT YOU AND FAITH ALEXANDER
14 WENT TO HIS GRANDMOTHER'S HOME AT LEAST ONCE WHILE IN PHASE
15 ONE OR TWO AND THESE VISITS WERE IN VIOLATION OF THE DRUG
16 COURT RULES AND REGULATIONS?

17 A I TALKED TO HIS GRANDMOTHER IN THE PARKING LOT A GOOD
18 BIT I WENT UP THERE ONE TIME, AND I HAD MY COUNSELOR'S
19 PERMISSION BECAUSE DANE HAD A MOBILE HOME HE WAS WANTING ME
20 TO RENT HE KNEW I WAS LOOKING FOR A PLACE TO MOVE TO AND
21 SHE HAS ASKED -- I HAD ASKED HER COULD I GO UP THERE AND LOOK
22 AT IT AND WHILE SHE EXPRESSED SOME RESERVATIONS OVER THE
23 ADVISABILITY OF ME LEASING ANYTHING FROM SOMEBODY IN DRUG
24 COURT, SHE DID ALLOW ME TO GO LOOK SO, YES, I DID GO LOOK
25 AND PART OF THAT TRIP TO GO LOOK WAS TO STOP BY HIS

1 GRANDMOTHER'S HOUSE AND FIND OUT WHERE IT WAS

2 Q ALL RIGHT AND IN FACT---

3 A THAT WAS IN PHASE TWO

4 Q ALSO, IN FACT, YOU WENT TO HIS JOB TOO, DIDN'T YOU?

5 A NO, I DID NOT

6 Q SO YOU DENY EVER GOING TO HIS JOB?

7 A NO, SIR

8 MS. STROM: OBJECTION, YOUR HONOR WHAT'S THE
9 RELEVANCY OF THIS?

10 THE COURT MR ARMSTRONG?

11 MR. ARMSTRONG CREDIBILITY ISSUES, YOUR HONOR

12 MS STROM: MS ALEXANDER IS NOT THE SUBJECT OF A
13 TERMINATION HEARING AS TO WHETHER SHE VIOLATED ANY RULES OF
14 DRUG COURT THE DRUG COURT WILL HANDLE HER VIOLATION

15 THE COURT LET'S MOVE ON I THINK WE'RE GETTING TOO
16 FAR AFIELD

17 MR ARMSTRONG ONE MOMENT, PLEASE, YOUR HONOR

18 Q WHO IS BRENDA NABORS?

19 A SHE IS A GRADUATED MEMBER OF DRUG COURT

20 Q (PAUSE) YOU ARE STILL IN THE PROGRAM, ARE YOU NOT,
21 MA'AM?

22 A YES, I AM

23 Q WHAT STAGE ARE YOU AT?

24 A I'M IN PHASE FOUR

25 Q ALL RIGHT AND YOU ARE HOPING FOR TERMINATION OR TO

CAMILLA FAITH ALEXANDER -- CROSS BY MR ARMSTRONG

- 1 COMPLETE THE PROGRAM VERY SHORTLY?
- 2 A I -- THAT'S MY GOAL
- 3 Q ALL RIGHT AND BOBBIE ASKED YOU TESTIFY, I'M SURE?
- 4 A ACTUALLY, SHE DIDN'T
- 5 Q ALL RIGHT WHO DID?
- 6 A MS STROM ASKED ME TO
- 7 Q AND THE FACT IS THAT YOU ARE STILL IN THE PROGRAM AND
- 8 YOU -- HOW FREQUENTLY DO YOU HAVE TO REPORT IN?
- 9 A WELL, THE LAST MONTH I'VE BEEN ON A SANCTION, SO I'M
- 10 FINISHING UP THIS WEEK GOING EVERY DAY TO PHASE ONE BUT AS
- 11 OF THURSDAY, I'LL BE REVERTING BACK TO MY ONCE A MONTH WITH
- 12 PHASE FOUR
- 13 Q ARE YOU STILL WEARING A PATCH?
- 14 A I DO WEAR THEM I'M NOT WEARING ONE AT THIS MOMENT
- 15 Q ARE YOU SUBJECT TO URINE TESTING?
- 16 A YES, I AM
- 17 Q WHAT'S THE FREQUENCY?
- 18 A IT DEPENDS IT'S RANDOM TESTING I HAVE BEEN TESTED
- 19 THREE OR FOUR TIMES A WEEK I HAVE ONLY BEEN TESTED ONE TIME
- 20 A WEEK IT JUST DEPENDS ON WHAT MS GODWIN THINKS SHE NEEDS
- 21 TO DO
- 22 Q AND YOU ARE WORKING WITH MS GODWIN DID MS GODWIN
- 23 INTERVIEW YOU AND DISCUSS YOUR TESTIMONY?
- 24 A NO, SHE DIDN'T
- 25 MR. ARMSTRONG NO FURTHER QUESTIONS

1 MS STROM I HAVE NO FURTHER QUESTIONS, YOUR HONOR

2 THE COURT DO ANY OF THE OTHER LAWYERS HAVE ANY
3 QUESTIONS?

4 MR GIBSON NOT OF THIS WITNESS, YOUR HONOR

5 MR BANNISTER NO, YOUR HONOR

6 THE COURT THANK YOU, MA'AM YOU MAY STEP DOWN

7 (WITNESS STEPS DOWN AT 9 53 A M)

8 MS STROM: THE STATE CALLS CHARLENE ROBINSON, PLEASE
9 YOUR HONOR, WE WOULD ASK THAT MS ALEXANDER BE EXCUSED

10 THE COURT ANY OBJECTION?

11 MR. GIBSON NONE, YOUR HONOR

12 MR BANNISTER NO, YOUR HONOR

13 CHARLENE ROBERTSON, HAVING
14 BEEN DULY SWORN, TESTIFIED AS FOLLOWS

15 DIRECT EXAMINATION BY MS STROM.

16 Q IT'S ROBERTSON WITH A "T"?

17 A YES

18 Q OKAY I APOLOGIZE FOR MISPRONOUNCING IT EARLIER
19 WHERE ARE YOU EMPLOYED?

20 A BALSER (PHONETIC) BUILDERS

21 Q AND WHAT DO YOU DO THERE?

22 A WELL, RIGHT NOW, BECAUSE OF MY ACCIDENT FROM NOT JOB-
23 RELATED, I JUST GOT LOOSE FROM THE DOCTOR YESTERDAY SO I
24 HAVEN'T PHYSICALLY GONE BACK TO WORK

25 Q HOW LONG HAVE YOU BEEN WITH THEM?

CHARLENE ROBERTSON -- DIRECT BY MS STROM

- 1 A ABOUT THREE, FOUR YEARS
- 2 Q AND YOU ARE A PARTICIPANT IN DRUG COURT?
- 3 A YES
- 4 Q HOW LONG HAVE YOU BEEN IN DRUG COURT?
- 5 A SINCE NOVEMBER 1ST, 2002
- 6 Q NOVEMBER 1ST, 2002 AND YOU ALSO HAVE A CRIMINAL
- 7 RECORD, CORRECT?
- 8 A YES, VERY EXTENSIVE CRIMINAL RECORD
- 9 Q A VERY EXTENSIVE CRIMINAL RECORD OKAY AND DO YOU
- 10 KNOW DANE JANELLI?
- 11 A YES
- 12 Q HOW DO YOU KNOW HIM?
- 13 A THROUGH THE DRUG COURT PROGRAM
- 14 Q DID YOU KNOW HIM PRIOR TO YOUR PARTICIPATION IN THE DRUG
- 15 COURT PROGRAM?
- 16 A NO
- 17 Q SO WHEN YOU SAY YOU KNOW HIM THROUGH THE DRUG COURT
- 18 PROGRAM, DO Y'ALL TAKE CLASSES TOGETHER, GROUP SESSIONS
- 19 TOGETHER OR RUN INTO EACH OTHER---
- 20 A JUST GROUP SESSIONS
- 21 Q JUST GROUP SESSIONS?
- 22 A YES
- 23 Q AND THEN EVERYBODY HAS TO SHOW UP FOR COURT ON THURSDAY
- 24 NIGHT
- 25 A YES

1 Q OKAY I WANT TO DIRECT YOUR ATTENTION, AS I DID WITH
2 MS ALEXANDER, BACK TO JULY OF LAST YEAR WHEN---

3 MR ARMSTRONG EXCUSE ME SAME OBJECTION TO THIS
4 LADY'S TESTIMONY AS I HAD TO THE PREVIOUS WITNESS, YOUR
5 HONOR

6 THE COURT ALL RIGHT OKAY THANK YOU SAME RULING

7 Q BACK TO JULY OF LAST YEAR WHEN MR JANELLI -- THE DAY
8 THAT MR JANELLI WAS ARRESTED HERE AT THE COURTHOUSE FOR
9 HAVING A DIRTY PATCH OR POSITIVE DRUG SCREEN, EXCUSE ME, DO
10 YOU RECALL THAT DAY?

11 A YES

12 Q OKAY WOULD YOU TELL US WHAT HAPPENED PRIOR TO THAT --
13 TELL US WHAT HAPPENED ON THAT DAY

14 A WELL, WE WERE IN PHASE TWO AND WE MEET IN THE CONFERENCE
15 ROOM UP HERE ON THE THIRD FLOOR WE WERE ALL COMING IN FROM
16 DOWNSTAIRS TESTING, IF TESTING WENT ON THAT DAY I BELIEVE
17 TESTING WENT ON THAT DAY AND YOU COME ON UPSTAIRS TO GET
18 READY FOR GROUP SESSION AND AS YOU COME IN YOU GET YOUR
19 SEAT AND ALL, AND HE JUST OPENED UP AND STARTED TALKING THAT
20 DAY, YOU KNOW, HE HAD SOME THINGS---

21 Q AND WHO WAS THAT THAT STARTED TALKING?

22 A DANE JANELLI

23 Q OKAY

24 A YOU KNOW, HE HAD SOME THINGS ON HIS MIND HE WAS WORRIED
25 ABOUT

CHARLENE ROBERTSON -- DIRECT BY MS STROM

- 1 Q AND WHAT SPECIFICALLY DID HE SAY?
- 2 A HE BELIEVED HE HAD A DIRTY PATCH COMING BACK, AND HE WAS
- 3 WORRIED ABOUT IT AND WE ASKED HIM, YOU KNOW, WHAT HAPPENED?
- 4 WHAT YOU DO YOU FEEL THAT WAY? AND HE SAID HE WAS HAVING
- 5 SOME PROBLEMS WITH HIS GIRLFRIEND AND THAT HE HAD USED
- 6 Q DID HE SAY SPECIFICALLY WHAT HE HAD USED?
- 7 A COCAINE
- 8 Q HE SAID HE HAD USED COCAINE?
- 9 A YES
- 10 Q DID HE GIVE YOU ANY SPECIFICS AS TO WHERE OR WHEN HE HAD
- 11 DONE THIS?
- 12 A JUST FROM OVER THE WEEKEND THAT BOBBIE HAD GAVE HIM
- 13 PERMISSION TO GO OUT OF TOWN
- 14 Q AND DID HE ATTEND THE GROUP SESSION THAT EVENING OR WAS
- 15 HE ARRESTED PRIOR TO THAT?
- 16 A HE WAS ARRESTED PRIOR TO ROSA STARTING GROUP
- 17 Q SO THIS OCCURRED PRIOR TO THE OFFICIAL GROUP MEETING?
- 18 A YES
- 19 MS STROM. THANK YOU PLEASE ANSWER ANY QUESTIONS THE
- 20 DEFENSE MAY HAVE
- 21 CROSS EXAMINATION BY MR ARMSTRONG
- 22 Q ARE YOU STILL IN THE PROGRAM, MS ROBERTSON?
- 23 A YES, I AM
- 24 Q WHAT PHASE ARE YOU AT?
- 25 A PHASE FOUR

- 1 Q DO YOU ANTICIPATE GRADUATING SOON?
- 2 A YES, I DO
- 3 Q ARE YOU STILL SUBJECT TO URINE TESTING?
- 4 A YES, I AM
- 5 Q DO YOU STILL WEAR A PATCH?
- 6 A WHEN I AM TOLD TO WEAR ONE, YES
- 7 Q BUT YOU HAVE WORN THEM, HAVEN'T YOU?
- 8 A YES, I HAVE
- 9 Q AND YOU'VE HAD A POSITIVE PATCH YOURSELF, HAVEN'T YOU?
- 10 A YES, I HAVE
- 11 Q AND YOU RAISED A LOT OF SAND ABOUT THAT AND THREATENED
- 12 TO SUE EVERYBODY ABOUT THAT PATCH, DIDN'T YOU?
- 13 A THAT'S INCORRECT I DIDN'T THREATEN TO SUE ANYBODY I
- 14 WAS UPSET, VERY UPSET, YOU KNOW BUT IT WAS POSITIVE
- 15 Q YOU DIDN'T GO TO JAIL EITHER ON IT, DID YOU?
- 16 A YES, I DID
- 17 Q HOW LONG?
- 18 A FOURTEEN DAYS
- 19 Q OKAY YOU DIDN'T SPEND SIX MONTHS IN JAIL, DID YOU, ON
- 20 IT?
- 21 A NO, I DIDN'T SPEND SIX MONTHS IN JAIL ON IT
- 22 Q BUT YOU WERE REINSTATED INTO THE PROGRAM ON IT, WEREN'T
- 23 YOU?
- 24 A I WAS NEVER TERMINATED OUT OF THE PROGRAM I WAS STILL
- 25 IN THE PROGRAM I WAS DOING MY SANCTION FOR HAVING A

CHARLENE ROBERTSON -- CROSS BY MR ARMSTRONG

1 POSITIVE PATCH

2 Q DO YOU KNOW WHAT YOUR READING WAS ON THE PATCH?

3 A I CANNOT RECALL

4 Q AND WHEN WAS THIS DIRTY PATCH THAT YOU HAD?

5 A APRIL OF LAST YEAR

6 Q SO THAT'S APRIL OF 2003?

7 A YES

8 Q DID YOU USE?

9 A MY PATCH WAS POSITIVE, SO, YES, I GUESS I DID

10 (LAUGHTER IN THE COURTROOM)

11 Q I'M GOING TO ASK YOU AGAIN DID YOU INGEST COCAINE TO
12 CAUSE A POSITIVE PATCH?

13 A YEAH YES, I DID

14 Q AND THAT WAS DONE WHEN?

15 A IT WAS DONE IN MARCH THE PATCH CAME BACK IN APRIL, AND
16 I WENT TO JAIL IN APRIL I DID MY STRAIGHT TIME IN APRIL,
17 RETURNED BACK TO PHASE ONE

18 Q YOUR TESTIMONY IS THAT MR JANELLI STATED HE HAD
19 PROBLEMS WITH HIS GIRLFRIEND OVER THE WEEKEND WHILE HE WENT
20 OFF TO -- WITH FAMILY, IS THAT CORRECT?

21 A I DON'T KNOW IF HE WAS WITH HIS FAMILY I KNOW HE WENT
22 OUT OF TOWN

23 Q AND WHEN DID THIS MEETING ALLEGEDLY OCCUR?

24 A THE MEETING WITH ME AND HIM TALKING?

25 Q YES, MA'AM

1 A IT WAS BACK IN JULY OF LAST YEAR RIGHT BEFORE CLASS I

2 KNOW IT WAS HOT I BELIEVE IT WAS JULY

3 Q WHEN DID HE GO FOR THE REUNION?

4 A REUNION?

5 Q WAS IT RIGHT BEFORE THAT? WAS IT OVER THE FOURTH OF

6 JULY WEEKEND?

7 A OH, I REALLY CAN'T SAY I'D HATE TO SPECULATE ON THAT

8 Q YOU TOLD THE SOLICITOR THAT YOU HAVE AN EXTENSIVE

9 CRIMINAL RECORD, IS THAT CORRECT?

10 A YES, I DO

11 Q EVEN BEFORE YOU GOT YOURSELF INTO THE DRUG COURT YOU HAD

12 PROBLEMS WITH THE LAW, DIDN'T YOU?

13 A YES, I DID, A LOT OF IT

14 Q AND YOU HAVE BEEN -- YOU HAVE FORGERY CONVICTIONS, YOU

15 HAVE CONVICTIONS INVOLVING FEDERAL BANKS -- FEDERALLY INSURED

16 BANKS YOU'VE GOT PROBLEMS WITH -- ACTUALLY, YOU HAD A

17 COUPLE OF THOSE CHARGES IN ADDITION FOR THE DRUG COURT,

18 ISN'T IT TRUE, MA'AM, THAT YOU ARE IN THIS PROGRAM FOR

19 FORGERIES, THREE BURGLARY SECONDS AND TWO LARCENY CHARGES?

20 A ABSOLUTELY THAT'S CORRECT

21 Q WHEN ARE YOU ANTICIPATING OR HOPE TO GRADUATE FROM THIS

22 PROGRAM?

23 A WITHIN ABOUT EIGHT WEEKS TO NINE WEEKS I WILL HAVE

24 COMPLETED THE PROGRAM THE GRADUATION WILL TAKE PLACE AFTER

25 THAT, WITHIN FOUR TO EIGHT WEEKS

CHARLENE ROBERTSON -- CROSS BY MR ARMSTRONG

1 Q LET ME MAKE SURE I JUST UNDERSTAND ONE THING HERE
2 YOU'RE STATING THAT IN EARLY JULY THIS MEETING WITH DANE TOOK
3 PLACE AS A RESULT OF A DIRTY PATCH, IS THAT CORRECT?

4 A YES

5 Q AND YOUR TESTIMONY IS THAT THAT DIRTY PATCH GOT DIRTY
6 WHEN HE WAS OFF ON THAT TIME THAT BOBBIE ALLOWED HIM TO GO
7 WHEN HE WAS WITH HIS GIRLFRIEND?

8 A I DON'T KNOW IF HE WAS WITH HIS GIRLFRIEND ON THIS TRIP
9 ALL I KNOW IS HE HAD JUST GOTTEN BACK FROM BEING GIVEN
10 PERMISSION TO GO OUT OF TOWN I DON'T KNOW IF IT'S THE PATCH
11 THAT HE WAS WITH HIS GIRLFRIEND OR THAT HE HAD WENT ON A
12 TRIP ALL I KNOW IS IT WAS A PATCH THAT HAD CAME BACK, AND
13 IT WAS DIRTY, AND HE WAS TELLING US ABOUT SOME PROBLEMS HE
14 WAS HAVING WITH HIS GIRLFRIEND IF THEY BOTH GO TOGETHER,
15 I'M NOT SURE

16 MR ARMSTRONG ALL RIGHT I HAVE NO FURTHER
17 QUESTIONS?

18 THE COURT ANY OTHER QUESTIONS?

19 MR BANNISTER JUDGE, JUST A FEW FROM ME

20 THE COURT YES, SIR

21 CROSS EXAMINATION BY MR. BANNISTER

22 Q MS ROBERTSON, ONCE YOU HAD A POSITIVE PATCH, WHAT
23 HAPPENED IN THE DRUG COURT PROGRAM? DID SOMEBODY TELL YOU
24 THAT?

25 A YES

CHARLENE ROBERTSON -- CROSS BY MR BANNISTER

1 Q ALL RIGHT WHO WAS THAT?

2 A MS GODWIN

3 Q ALL RIGHT AND AT THAT POINT IN TIME WHAT WERE THE
4 CHOICES THAT YOU WERE GIVEN ABOUT THIS POSITIVE PATCH, IF
5 ANY?

6 MS STROM: YOUR HONOR, I'M GOING TO OBJECT THE BASIS
7 OF HER TESTIMONY WAS REGARDING THE STATEMENTS MADE BY DANE
8 JANELLI, AND I DON'T SEE WHERE MS HURKS HAS STANDING IN THAT
9 REGARD

10 THE COURT AND I UNDERSTAND BUT IN AN EFFORT TO HAVE
11 ALL OF THIS DONE GLOBALLY AS OPPOSED TO PIECEMEAL, SUBJECT TO
12 TYING IT ALL TOGETHER, I'M GOING TO ALLOW HIM TO PROCEED

13 MS STROM: THANK YOU

14 MR BANNISTER THANK YOU, JUDGE I WILL JUST GIVE
15 ME A LITTLE LATITUDE RIGHT QUICK, JUDGE

16 Q MS ROBERTSON, WHEN MS GODWIN APPROACHED YOU ABOUT THE
17 POSITIVE PATCH, JUST GIVE ME AN IDEA WHAT GOES ON IN THAT
18 TYPE OF CONVERSATION

19 A YOU'RE EITHER CALLED INTO THE OFFICE OR YOU ARE TAKEN
20 OUT OF THE CLASSROOM, WHATEVER THE SITUATION MAY BE AT THAT
21 TIME EVEN BEFORE THEY EVEN TELL YOU, THEY SOMETIMES WILL
22 SAY, SOMEBODY HAS A DIRTY PATCH, AND IF YOU ARE ONE OF THOSE
23 PEOPLE, WOULD YOU PLEASE COME FORWARD? YOU HAVE "X" AMOUNT
24 OF DAYS

25 Q ALL RIGHT AND DID YOU GET -- WAS THAT QUESTION ASKED

1 PRIOR TO YOU FINDING OUT ABOUT YOUR POSITIVE PATCH?

2 A NO I WAS PULLED OUT OF THE ROOM AND TOLD I HAD A DIRTY
3 PATCH

4 Q OKAY SO YOU WERE NOT GIVEN AN OPPORTUNITY TO COME
5 FORWARD IF YOU THOUGHT YOU HAD A DIRTY PATCH?

6 A NO

7 Q ALL RIGHT DID -- WHEN YOU WERE PULLED OUT OF THE ROOM,
8 WHO WAS THERE WITH YOU?

9 A JUST ME AND MS GODWIN

10 Q OKAY AND THEN WHAT DID SHE TALK TO YOU ABOUT WITH
11 REGARDS TO THE POSITIVE PATCH?

12 A SHE TOLD ME I HAD A DIRTY PATCH

13 Q OKAY AND WHAT WAS YOUR REACTION?

14 A I WAS SHOCKED

15 Q AND WERE YOU SHOCKED BECAUSE YOU DIDN'T FEEL LIKE YOU
16 HAD USED DRUGS DURING THE TIME PERIOD THE PATCH WAS ON YOUR
17 ARM?

18 A UM

19 Q NOW, YOU'RE UNDER OATH, MS ROBERTSON

20 A NO, I DID NOT

21 Q OKAY AND SO WHAT WERE THE ALTERNATIVES THAT MS GODWIN
22 GAVE YOU AT THAT POINT?

23 A TO ADMIT THAT I HAD USED

24 Q OR?

25 A ACCEPT MY SANCTION

1 Q OR?

2 A THOSE ARE MY CHOICES I DON'T REALLY RECALL ANOTHER
3 CHOICE

4 Q DID YOU TELL HER YOU DIDN'T UNDERSTAND WHY HAD COME BACK
5 POSITIVE?

6 A WELL, YES, I DID YES

7 Q OKAY AND DID SHE BELIEVE YOU?

8 A DID SHE BELIEVE ME?

9 Q THAT YOU HADN'T USED DRUGS DURING THAT TIME

10 A SHE TOLD ME TO TAKE SOME TIME TO THINK ABOUT IT

11 Q SO WHAT WAS THE OPTION THAT YOU HAD IN YOUR MIND, MS
12 ROBERTSON, IF -- LET ME JUST SEE IF I CAN GET TO IT YOU
13 FELT LIKE YOU EITHER HAD TO ADMIT THAT THE PATCH WAS POSITIVE
14 AND YOU HAD USED OR ELSE -- AND TAKE YOUR SANCTIONS -- OR
15 ELSE YOU MIGHT GET TERMINATED FROM THE PROGRAM, IS THAT A
16 FAIR STATEMENT?

17 A NOT REALLY, NO, BECAUSE YOU DON'T JUST GET TERMINATED
18 OFF OF ONE DIRTY PATCH YOU'VE GOT TO HAVE SEVERAL SANCTIONS
19 OR SOMETHING TO BE TERMINATED, YOU KNOW

20 Q OKAY UNDERSTOOD WHAT WOULD HAVE BEEN -- WHAT WAS
21 YOUR UNDERSTANDING OF WHAT WOULD HAVE HAPPENED IF YOU HAD
22 REFUSED TO ADMIT THAT YOU HAD USED COCAINE AND THAT'S WHY THE
23 PATCH WAS DIRTY?

24 A REALLY, EVEN IF I DIDN'T ADMIT TO IT, WHICH I HAVE SEEN
25 IN GOING TO COURT ON THURSDAYS THAT PEOPLE JUST REALLY JUST

1 NEVER ADMIT TO IT, YOU CAN'T BE TERMINATED I MEAN, I
2 HAVEN'T SEEN IT DONE

3 Q OKAY SO WHAT MADE YOU DECIDE TO -- DID YOU EVER ADMIT,
4 YES, DURING THE TIME PERIOD THE PATCH WAS ON MY ARM, I USED
5 COCAINE? DID YOU EVER THEN SUBSEQUENTLY SAY TO SOMEBODY,
6 YEAH, I DID DO THAT?

7 A NO

8 Q ALL RIGHT SO EVEN SITTING HERE TODAY YOU UNDER OATH
9 WOULD SAY, "I DON'T RECALL EVER INGESTING COCAINE DURING THE
10 TIME PERIOD THAT PATCH THAT CAME BACK DIRTY WAS ON MY ARM
11 UNTIL WHEN IT WAS TAKEN OFF"?

12 A REPEAT THAT ONE MORE TIME

13 Q ALL RIGHT WHILE THAT DIRTY PATCH WAS ON YOUR ARM---

14 A UH-HUH (AFFIRMATIVE)

15 Q ---YOU CAN'T REMEMBER EVER USING ANY COCAINE DURING THAT
16 TIME PERIOD?

17 A DO I NOT REMEMBER? I -- YEAH, I REMEMBER WHAT HAPPENED
18 YES, I DO REMEMBER WHAT HAPPENED

19 Q OKAY WHAT HAPPENED?

20 A I JUST USED COCAINE, YOU KNOW

21 Q WHILE THE PATCH WAS ON YOUR ARM OR BEFORE?

22 A YES, WHILE THE PATCH WAS ON MY ARM

23 Q ALL RIGHT THEN WHY WERE YOU SHOCKED THAT THE PATCH
24 CAME BACK DIRTY?

25 A I GUESS I THOUGHT I COULD GET AWAY WITH IT, YOU KNOW

1 Q ALL RIGHT DO YOU REMEMBER WHAT THE TIME PERIOD WAS
2 THAT THE PATCH WAS ON YOUR ARM?

3 A THE TIME -- NOT REALLY I DON'T REMEMBER HOW MANY DAYS
4 I HAD HAD IT ON I CAN'T HONESTLY SAY IT MIGHT HAVE BEEN
5 THREE DAYS IT COULD HAVE BEEN SEVEN

6 Q ALL RIGHT DID YOU HAVE ANY OTHER TESTS DONE AFTER YOU
7 FOUND OUT YOUR PATCH WAS POSITIVE?

8 A YES, I DID

9 Q WHAT DID YOU HAVE DONE?

10 A I HAD A HAIR ANALYSIS DONE

11 Q WHY DID YOU HAVE A HAIR ANALYSIS DONE?

12 A BECAUSE AT THE TIME I WAS STILL DETERMINED TO NOT HAVE A
13 DIRTY PATCH, AND THAT'S PART OF BEING AN ADDICT

14 Q OKAY AND DID YOU PAY FOR THE URINALYSIS ON YOUR OWN?

15 A YES, I DID

16 Q AND WHAT DID IT COME BACK?

17 A NEGATIVE

18 Q ALL RIGHT DID YOU TAKE THAT TO MS GODWIN?

19 A NO

20 Q WHAT DID YOU DO WITH THAT NEGATIVE?

21 A I JUST KEPT IT FOR MY OWN KNOWLEDGE

22 Q OKAY

23 A I JUST LET IT GO AND ACCEPTED THE FACT THAT I HAD USED

24 Q DO YOU RECALL EXACTLY THE TIME THAT YOU USED?

25 A UH

CHARLENE ROBERTSON -- CROSS BY MR BANNISTER

1 Q WHERE WERE YOU? WHAT WERE YOU DOING?

2 A IT'S BEEN OVER A YEAR NO, I REALLY CAN'T REMEMBER WHAT
3 I WAS DOING

4 Q OKAY HOW MANY TIMES HAVE YOU USED WHILE YOU'VE BEEN IN
5 THE DRUG COURT PROGRAM?

6 MS. STROM: YOUR HONOR, I'M GOING TO OBJECT THIS IS
7 GETTING WAY FAR AFIELD OF WHAT WE'RE HERE TO DETERMINE, AND I
8 THINK THAT WOULD BE -- I MEAN, WHAT SHE HAS DONE DURING THE
9 PROGRAM IS MONITORED BY THE DRUG COURT PROGRAM I DON'T
10 SEE -- SHE'S AN ADDICT SHE'S ADMITTED TO BEING AN ADDICT
11 I DON'T SEE WHAT THE RELEVANCY IS OF HOW MANY TIMES SHE'S
12 USED WHILE SHE'S BEEN IN THE PROGRAM

13 THE COURT MR BANNISTER?

14 MR. BANNISTER BECAUSE SHE'S SAYING THAT SHE CAN'T
15 REMEMBER -- IF IT'S TWO OCCASIONS, WHICH I THINK IS WHAT SHE
16 WAS GOING TO SAY, DURING AN ENTIRE DRUG COURT PROGRAM, I
17 THINK IT GOES TO THE CREDIBILITY OF HER STATEMENT THAT I
18 DIDN'T USE WHEN I GOT THIS DIRTY PATCH, IF SHE CAN'T REMEMBER
19 WHAT THAT OCCASION WAS

20 THE COURT GO AHEAD

21 Q ALL RIGHT HOW MANY TIMES DID YOU USE, IF YOU CAN
22 RECALL, WHILE YOU WERE IN THE DRUG COURT PROGRAM?

23 A TWICE

24 Q ALL RIGHT DO YOU RECALL ANYTHING ABOUT THE FIRST TIME
25 YOU USED?

1 A DO I RECALL ANYTHING ABOUT IT?

2 Q YEAH, WHERE YOU WERE, WHAT YOU WERE DOING I MEAN

3 A I'M SURE I WAS AT HOME

4 Q ALL RIGHT WHERE WOULD---

5 A I HAD TWO PATCHES PUT ON BACK TO BACK DURING THAT TIME

6 I WAS HAVING PROBLEMS WITH MY HUSBAND WE WEREN'T TOGETHER

7 Q ALL RIGHT

8 A OKAY I WAS IN AN ENVIRONMENT OF DRUG USAGE, WHICH I

9 SHOULDN'T HAVE BEEN AND I HAD TWO PATCHES COME BACK BACK-TO
10 BACK FROM DIRTY USAGE

11 Q ALL RIGHT

12 A WHICH I DID ADMIT TO AND I GOT A SANCTION FOR

13 Q ALL RIGHT AND SO I'M JUST ASKING YOU IF YOU REMEMBER

14 WHETHER YOU -- JUST THE PARTICULARS OF THE ACTUAL USE OF

15 COCAINE, THAT IS, DID YOU SMOKE CRACK? DID YOU SNORT

16 COCAINE? WHERE DID YOU GET IT? WHERE DID YOU DO IT? THAT

17 KIND OF THING, JUST ANY PARTICULARS OF IT

18 A NO, I DON'T REMEMBER WHERE I GOT IT IT WAS COCAINE,

19 POWDER FORM

20 Q ALL RIGHT AND THAT'S -- THAT'S ALL YOU CAN REMEMBER?

21 A YES

22 MR. BANNISTER OKAY I DON'T HAVE ANY FURTHER

23 QUESTIONS, JUDGE

24 MR. GIBSON YOUR HONOR, I HAVE A FEW

25 THE COURT ALL RIGHT

CHARLENE ROBERTSON -- CROSS BY MR GIBSON

1 CROSS EXAMINATION BY MR GIBSON:

2 Q MS ROBERTSON, YOU SAY YOU GOT A HAIR STRAND TEST?

3 A YES

4 Q AND YOU PAID FOR THAT YOURSELF?

5 A YES, I DID

6 Q HOW MUCH DID THAT COST YOU?

7 A I DON'T REMEMBER I DON'T REMEMBER HOW MUCH IT COST

8 IT WAS LESS THAN A HUNDRED DOLLARS, I THINK

9 Q OKAY DO YOU CONSIDER YOURSELF WEALTHY?

10 A NO

11 MS STROM: OBJECTION, YOUR HONOR WHAT IS THE

12 RELEVANCY OF THIS?

13 THE COURT LET'S MOVE ON

14 MR. GIBSON I'LL TIE IT IN

15 Q LET ME GET THIS STRAIGHT SO YOU KNEW YOU COULDN'T BE
16 TERMINATED FROM THE PROGRAM FOR ONE DIRTY PATCH THAT'S WHAT
17 YOU TESTIFIED TO BEFORE, IS THAT CORRECT?

18 A YES FROM MY EXPERIENCE IN BEING IN DRUG COURT, I HAVE
19 NEVER SEEN ANYBODY BE TERMINATED FROM ONE DIRTY PATCH OR ONE
20 SANCTION

21 Q OKAY SO YOU KNEW YOU WEREN'T GOING TO BE TERMINATED AT
22 THE TIME THIS PATCH CAME BACK POSITIVE?

23 A THAT'S WHAT I WAS TOLD, YES

24 Q OKAY BUT YET YOU STILL GO OUT AND SPEND YOUR OWN MONEY
25 TO GET A HAIR STRAND TEST TO PROVE YOU DIDN'T USE?

1 A WELL, LIKE I SAID EARLIER, THAT'S PART OF BEING AN
2 ADDICT I WAS STILL STUBBORN I STILL WANTED TO HAVE MY
3 WAY

4 Q OKAY BUT YOU KNEW YOU HAD USED?

5 A YEAH

6 Q I JUST WANT TO GET THIS STRAIGHT YOU KNEW YOU HAD
7 USED YOU KNEW THAT YOU WEREN'T GOING TO GET TERMINATED IF
8 YOU ADMITTED USAGE, BUT YET YOU STILL GO OUT AND SPEND YOUR
9 OWN MONEY TO GET A HAIR STRAND TEST?

10 A YES, I DID

11 Q BUT, YET, WHEN YOU GET THAT HAIR STRAND TEST AND IT
12 SUPPORTS YOUR POSITION, YOUR STUBBORNNESS AS AN ADDICT, YOU
13 DON'T SUBMIT THAT TEST TO MS GODWIN?

14 A THAT'S PART OF BEING AN ADDICT I MEAN---

15 Q SO PART OF BEING AN ADDICT IS GOING OUT AND GETTING
16 TESTS THAT PROVE YOUR CASE AND THEN NOT USING THAT TEST?

17 A I KNOW I HAD USED OKAY? BUT FROM WHAT THE PEOPLE THAT
18 GAVE ME MY HAIR ANALYSIS TOLD ME, I DIDN'T GIVE ENOUGH TIME
19 FOR MY HAIR TO TEST SO I LEFT IT ALONE I JUST LEFT THE
20 WHOLE THING ALONE

21 Q OKAY

22 A YOU KNOW, I KNOW WHAT I HAD DONE I ADMITTED TO IT

23 Q YES, MA'AM AND TELL ME ABOUT THIS ADMISSION ISSUE
24 ISN'T ONE OF THE TENETS OF THE PROGRAM ACCEPTANCE OF YOUR
25 PROBLEM?

1 A YES

2 Q I MEAN, IN ORDER TO REMAIN IN THE PROGRAM, DON'T YOU
3 HAVE TO ADMIT AND ACCEPT THAT YOU ARE AN ADDICT AND THAT YOU
4 HAVE A PROBLEM, IS THAT CORRECT?

5 A CORRECT

6 Q NOW, IF YOU'VE GOT A TEST THAT CAME BACK POSITIVE AND
7 YOU REFUSE TO ADMIT USAGE, WOULDN'T THAT SORT OF CONTRADICT
8 THE WHOLE ACCEPTANCE OF YOUR PROBLEM?

9 A WELL, THAT'S WHY YOU'RE IN THE PROGRAM, TO LEARN HOW TO
10 DEAL WITH YOUR PROBLEMS

11 Q THAT'S WHAT I'M SAYING BUT IF YOU HAD SAID, WELL,
12 OKAY, I DIDN'T USE YOU KNOW, WOULDN'T MS GODWIN OR WOULD
13 IT BE POSSIBLE THAT MS GODWIN WOULD COME BACK AND THEN SAY,
14 WELL, YOU KNOW, YOU'RE NOT REALLY ACCEPTING---

15 MS STROM: I WOULD OBJECT, YOUR HONOR I THINK THE
16 QUESTION IS MORE APPROPRIATELY PUT TO BOBBIE GODWIN SHE
17 CAN'T SPECULATE AS TO WHAT BOBBIE GODWIN WOULD DO OR WOULDN'T
18 DO IN A PARTICULAR SITUATION

19 MR GIBSON IT GOES TO STATE OF MIND, YOUR HONOR

20 THE COURT GO AHEAD

21 Q DO YOU REMEMBER THE QUESTION?

22 A NO REPEAT IT FOR ME

23 Q OKAY IF ONE OF THE TENETS OF THE PROGRAM IS YOUR
24 ACCEPTANCE OF YOUR DRUG USAGE AND YOU COME BACK POSITIVE ON A
25 TEST AND YOU STUBBORNLY SAY, "WELL, I DIDN'T USE," DOESN'T

CHARLENE ROBERTSON -- CROSS BY MR GIBSON

1 THAT CONTRADICT THE WHOLE TENET THAT YOU'RE SUPPOSED TO
2 ACCEPT YOUR PROBLEM AS AN ADDICT?

3 A WELL, THAT'S PART OF BEING AN ADDICT WE'RE STUBBORN

4 Q YES, MA'AM

5 A WE ARE STUBBORN AND BEFORE YOU LEAVE THIS PROGRAM YOU
6 WILL BE ABLE TO ACCEPT THINGS LIKE THAT

7 Q OKAY SO BUT -- IF YOU HAD SAID -- IF YOU HAD STUCK TO
8 YOUR ORIGINAL GUNS AND SAID, "I DIDN'T USE DURING THIS
9 PERIOD, BOBBIE I DIDN'T USE THE TEST IS WRONG," WOULDN'T
10 YOU HAVE SUBJECTED YOURSELF TO THE POSSIBILITY THAT MS
11 GODWIN WOULD HAVE SAID, "YOU'RE NOT ACCEPTING YOUR PROBLEM,
12 CHARLENE AND IF YOU'RE NOT GOING TO ACCEPT YOUR PROBLEM AND
13 YOU'RE GOING TO REMAIN IN DENIAL, WE'RE GOING TO HAVE TO KICK
14 YOU OUT OF THIS PROGRAM "

15 A I CAN'T SAY WHAT SHE WOULD HAVE SAID I REALLY CAN'T

16 MR GIBSON THANK YOU

17 THE COURT ANY OTHER QUESTIONS?

18 MS. STROM NO, SIR, YOUR HONOR

19 THE COURT ALL RIGHT THANK YOU, MA'AM YOU CAN STEP
20 DOWN

21 (WITNESS STEPS DOWN AT 10 15 A M)

22 THE COURT MAY MS ROBERTSON BE EXCUSED?

23 MS. STROM NO OBJECTION FROM THE STATE THAT SHE BE
24 EXCUSED

25 MR. GIBSON NO OBJECTION, YOUR HONOR

CHARLENE ROBERTSON -- CROSS BY MR GIBSON

1 MR. ARMSTRONG NO OBJECTION

2 THE COURT ALL RIGHT MS ROBERTSON, YOU ARE FREE TO
3 STAY OR FREE TO GO

4 MS. STROM THANK YOU

5 CONTINUE?

6 THE COURT YES, MA'AM

7 MS. STROM WE CALL ANGELA DILLARD

8 ANGELA DILLARD, HAVING BEEN

9 DULY SWORN, TESTIFIED AS FOLLOWS

10 DIRECT EXAMINATION BY MS. STROM:

11 Q MS DILLARD, WHERE ARE YOU EMPLOYED?

12 A ATTORNEY NOONE AND HAMMETT'S REAL ESTATE LAW FIRM

13 Q AND PRIOR TO THAT WHERE WERE YOU EMPLOYED?

14 A CORPORATE CHOICE

15 Q HOW LONG WERE YOU WITH CORPORATE CHOICE?

16 A THREE AND A HALF YEARS

17 Q AND PRIOR TO GETTING ANY FURTHER INTO QUESTIONING, THANK

18 YOU SO MUCH FOR BEING HERE I KNOW YOU'VE GONE THROUGH SOME

19 SERIOUS MEDICAL SITUATIONS AND I APPRECIATE YOU BEING HERE

20 A THANK YOU

21 Q IF YOU NEED TO TAKE A BREAK OR ANYTHING, PLEASE LET US

22 KNOW

23 A OKAY THANK YOU

24 Q WHEN YOU WERE EMPLOYED WITH CORPORATE CHOICE, WHAT WAS

25 YOUR POSITION THERE? WHAT DID YOU DO?

ANGELA DILLARD -- DIRECT BY MS STROM

1 A BEFORE I LEFT OR

2 Q ANY TIME---

3 A WELL, I STARTED OUT AS A LAB TECHNICIAN DOING THE
4 TESTING, AND THEN I WORKED MY WAY UP TO OFFICE MANAGER

5 Q AND BACK WHEN YOU WERE A LAB TECHNICIAN, WHAT TYPE OF
6 TRAINING DID YOU RECEIVE IN ORDER TO -- LET ME ASK YOU THIS
7 WAY WHAT DID YOU DO AS PART OF A LAB TECHNICIAN? WHAT WERE
8 YOUR DUTIES?

9 A URINE TESTING, HAIR TESTING AND ALSO SWEAT PATCH
10 APPLICATION AND REMOVAL, THE COLLECTING

11 Q SO YOU BASICALLY WERE THE COLLECTION AGENCY OF THESE
12 SAMPLES?

13 A YES, MA'AM

14 Q OKAY DID YOU CONDUCT ANY OF THE TESTS ON THE SWEAT
15 PATCHES?

16 A NO, MA'AM

17 Q YOU JUST APPLIED AND COLLECTED?

18 A YES, MA'AM

19 Q WHAT TYPE OF TRAINING DID YOU RECEIVE IN ORDER TO KNOW
20 HOW TO PUT ON THE PATCH AND REMOVE THE PATCH?

21 A WE WATCHED A VIDEO AND READ A MANUAL

22 Q AND THE VIDEO WAS PROVIDED BY?

23 A PHARMCHEM

24 Q PHARMCHEM AND YOU READ A MANUAL?

25 A YES, MA'AM

ANGELA DILLARD -- DIRECT BY MS STROM

1 Q OKAY DID YOU HAVE TO TAKE ANY TESTS OR COMPLETE ANY
2 OTHER TYPE OF COURSES?

3 A YES, MA'AM WE HAD TO TAKE A MULTIPLE-CHOICE TEST

4 Q AND YOU TOOK THE MULTIPLE CHOICE TEST?

5 A YES, MA'AM

6 Q DID YOU DO THIS IN THE FIRST PART OF YOUR EMPLOYMENT
7 THERE WITH CORPORATE CHOICE?

8 A WE STARTED DOING THE SWEAT PATCH LATER -- LATER ON IN
9 THE PROCESS

10 Q OKAY SO---

11 A IT WAS PART OF MY TRAINING, BUT IT WAS LATER, WAY LATER

12 Q I SEE WHAT YOU'RE SAYING WHEN YOU WERE FIRST EMPLOYED
13 BY CORPORATE CHOICE, Y'ALL WERE NOT DOING THE SWEAT PATCH?

14 A CORRECT

15 Q SO IT WAS ONLY WHEN YOU BEGAN TO DO THE SWEAT PATCH THAT
16 YOU RECEIVED THE TRAINING?

17 A YES, MA'AM

18 Q AND IF YOU WOULD, DID YOU RECEIVE A CERTIFICATE FROM
19 PHARMCHEM STATING THAT YOU HAD COMPLETED THE TRAINING?

20 A YES, MA'AM

21 Q I'M GOING TO SHOW YOU THIS DOCUMENT WHICH IS PURPORTED
22 TO BE THE CERTIFICATE YOU RECEIVED FROM PHARMCHEM BUT PRIOR
23 TO THAT---

24 MS STROM WHAT NUMBER AM I ON?

25 COURT REPORTER THE LAST ONE YOU MARKED WAS TEN

ANGELA DILLARD -- DIRECT BY MS STROM

1 MS STROM ELEVEN

2 (CERTIFICATE MARKED AS STATE'S EXHIBIT NUMBER 11 FOR
3 PURPOSES OF IDENTIFICATION ONLY)

4 Q I SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT NUMBER
5 11 AND ASK YOU IS THAT YOUR DOCUMENT FROM PHARMCHEM THAT YOU
6 HAVE COMPLETED THE TRAINING?

7 A YES, MA'AM

8 Q AND PRIOR TO YOUR RECEIVING -- WELL, LET ME BACK UP
9 YOU DO THE TRAINING YOU WATCH THE VIDEO YOU READ THE
10 BOOKLET DO YOU RECEIVE ANY ONE-ON-ONE TRAINING FROM ANYONE
11 ELSE?

12 A AFTER THEY WATCH THE VIDEO, WE, I GUESS YOU CAN SAY,
13 PRACTICED ON ONE ANOTHER I PRACTICED ON ONE OF OUR OTHER
14 WORKERS, AND THEY PRACTICED ON ME AS WELL SO IT WAS -- WE
15 DIDN'T ACTUALLY HAVE ANYBODY FROM PHARMCHEM THERE BUT, YOU
16 KNOW, THAT WAS HOW WE PRACTICED TO PUT THOSE PATCHES ON

17 Q AND WAS TONY WATERS THERE?

18 A THERE ACTUALLY WHEN WE DID IT OR---

19 Q OR---

20 A HE WAS IN THE BUILDING, YES

21 Q OKAY TELL US HOW YOU WERE TRAINED IN THE APPLICATION
22 OF A SWEAT PATCH WHAT WAS YOUR TRAINING? HOW WERE YOU
23 TRAINED TO DO THAT?

24 A WE JUST WATCHED THE VIDEO AND DID THE MANUAL I MEAN,
25 THAT WAS---

ANGELA DILLARD -- DIRECT BY MS STROM

- 1 Q WHAT DID YOUR TRAINING CONSIST OF? IN OTHER WORDS, WHAT
2 DID THEY TELL YOU TO DO?
- 3 A OH, THE PROCESS OKAY
- 4 Q THE PROCESS
- 5 A WE ACTUALLY -- WE HAVE PAPERWORK THAT WE FILL OUT IT'S
6 THE CHAIN OF CUSTODY FORM -- NAME, SOCIAL SECURITY NUMBER
7 EACH PATCH HAS A NUMERIC NUMBER ON IT THAT'S AN ID FOR THAT
8 PARTICULAR PATCH ALL THE PAPERWORK IS FILLED OUT THE
9 PATIENT, CLIENT, WHATEVER YOU WANT TO CALL THEM, IS ACTUALLY
10 SHOWN THE PATCH AND THE PAPERWORK THAT WE FILLED OUT TO MAKE
11 SURE THE NUMBERS ARE MATCHED UP THEY ARE THEN TOLD TO
12 INITIAL IN THAT SPOT, IF THE NUMBERS MATCH WE THEN IN TURN
13 CLEAN THEIR ARM WITH TWO ALCOHOL PADS OR UNTIL THE ALCOHOL
14 PAD COMES BACK CLEAN WE ARE GLOVED AT THIS TIME BEFORE WE
15 ACTUALLY DO THE CLEANING WE WAIT FOR THE ALCOHOL TO
16 COMPLETELY DRY, USUALLY ABOUT A MINUTE, 60 TO 90 SECONDS,
17 JUST DEPENDING ON HOW MUCH ALCOHOL WAS ACTUALLY USED WE
18 THEN IN TURN -- AFTER THE ALCOHOL IS DRY, WE APPLY THE PATCH
19 TO THE ARM, MAKE SURE IT IS COMPLETELY SEALED, AND THEN WE
20 REMOVE THE WHITE TAPE THAT IS ACTUALLY -- OR THE WHITE PAPER
21 THAT IS ACTUALLY AROUND IT AND CONTINUE TO SEAL THE PATCH
22 AGAINST THE ARM
- 23 Q I BELIEVE YOU SAID THAT YOU WERE WEARING GLOVES DURING
24 THE APPLICATION OF THE PATCH?
- 25 A YES, MA'AM

1 Q AND ARE THESE DRUGS USED OVER AND OVER OR ARE THEY ONLY
2 USED ONE TIME?

3 A THEY ARE ONE TIME USE

4 Q ONE-TIME-USE GLOVES?

5 A YES, MA'AM

6 Q AND THE PATCH THAT YOU APPLY TO SOMEONE'S ARM IS THAT
7 HOW -- HOW IS THAT PACKAGED, IN TERMS OF, DOES IT COME
8 SEALED? DOES IT COME OPEN?

9 A IT'S SEALED IN A STERILE SEALING IT'S ACTUALLY SEALED,
10 AND WE OPEN IT IN FRONT OF THE ACTUAL CLIENT SO THEY SEE
11 THAT IT'S SEALED WE ACTUALLY HAND IT TO THEM TO SEE THE
12 ACTUAL NUMBER STILL IN THE SEALED CONTAINER

13 Q SO WHEN IT'S IN THE SEALED CONTAINER YOU HAND IT TO THE
14 PARTICIPANT?

15 A RIGHT

16 Q SO THEY CAN SEE THE NUMBER ON IT?

17 A CORRECT

18 Q AND AT THIS TIME YOU ARE GLOVED?

19 A YES

20 Q YOU OPEN THE SEALED PACKAGE?

21 A YES, MA'AM

22 Q AND THAT IS WHEN YOU BEGIN TO APPLY THE PATCH TO THE
23 ARM?

24 A YES, MA'AM

25 Q I BELIEVE YOU STATED THAT YOU WERE ALSO GLOVED WHILE YOU

1 WERE CLEANING THE AREA WITH THE ALCOHOL SWAB?

2 A YES, MA'AM

3 Q WOULD YOU PLEASE TELL US WHAT THE PROCESS IS AND HOW YOU

4 WERE TRAINED ON THE REMOVAL OF A SWEAT PATCH?

5 A YES, MA'AM THE PATIENT COMES BACK WE GET THE PROPER

6 PAPERWORK WE AGAIN CHECK THE NUMBER THAT IS ON THEIR PATCH

7 WITH THE NUMBER THAT WE HAVE PREVIOUSLY WRITTEN ON THE FORM

8 WE THEN FILL OUT THE REST OF THE PAPERWORK, SHOW THEM -- YOU

9 KNOW, MAKE SURE THAT THEY HAVE ACTUALLY SEEN THAT IT IS THE

10 SAME, THE NUMBERS ARE ALL THE SAME WE THEN MAKE SURE THAT

11 EVERYTHING IS STILL SEALED, THAT THE PATCH IS NOT EXPOSED TO

12 ANY KIND OF AIR IT'S NOT BEEN CUT IT'S NOT BEEN TORN,

13 ANYTHING LIKE THAT SO WE CONTINUE TO FILL OUT THE

14 PAPERWORK WE THEN ARE GLOVED AGAIN, WITH A DIFFERENT PAIR

15 OF ONE-TIME-USE GLOVES WE HAVE A PAIR OF DISPOSABLE

16 TWEEZERS THAT ARE SEALED IN THEIR OWN SEPARATE CONTAINER, AND

17 WE HAVE SEPARATE BAGS THAT PHARMCHEM PROVIDES TO -- ONE BAG

18 FOR THE ACTUAL PATCH AND ONE BAG FOR THE PAPERWORK AND THE

19 PATCH WE THEN PEEL DOWN PARTLY A CORNER OF THE TAPE, TAKE

20 THE DISPOSABLE TWEEZERS AND REMOVE THE COTTON PART OF THE

21 PATCH AND PUT IT INTO ITS INDIVIDUAL BAG AFTER THAT WE TAKE

22 THE SECOND PAGE OF THE CHAIN OF CUSTODY, FOLD IT IN HALF AND

23 STICK IT IN A BIGGER BAG, AND EVERYTHING IS TAPED AND SEALED,

24 WITH THEIR INDIVIDUAL NUMBERS WHERE THEY HAVE BAR CODES WHERE

25 IT CAN MATCH UP WITH A CHAIN OF CUSTODY

1 Q SO YOU ACTUALLY SEAL THESE BAGS AND PLACE THE BAR CODE
2 NUMBER ON THEM?

3 A YES

4 Q AND THAT IS DONE IN THE PRESENCE OF THE PARTICIPANT?

5 A YES

6 Q I WANT TO GO THROUGH THE PARTICULAR EXHIBITS I WANT TO
7 SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT NUMBER 1 FOR
8 IDENTIFICATION AND ASK YOU, DO YOU RECOGNIZE THAT?

9 A YES, MA'AM

10 Q AND DOES IT BEAR YOUR SIGNATURE ON IT?

11 A YES, MA'AM, ON THE APPLICATION

12 Q SO THAT DOCUMENT REFLECTS THAT YOU APPLIED THIS PATCH TO
13 CEDRIC PERKINS, IS THAT CORRECT?

14 A YES, MA'AM

15 Q AND WHAT DATE WAS THAT DONE?

16 A SEPTEMBER 17TH OF 2003

17 Q AND DOES IT ALSO BEAR THE APPROPRIATE SIGNATURES AS
18 REQUIRED BY THAT DOCUMENT?

19 A ON ALL OF IT OR JUST ON MY PART?

20 Q ON YOUR PORTION?

21 A YES, MA'AM

22 Q OKAY AND THE OTHER PORTION REGARDING THE REMOVAL OF
23 IT, ALTHOUGH YOU DID NOT DO IT, IT BEARS THE APPROPRIATE
24 SIGNATURE AND INITIALS?

25 A YES, MA'AM

1 Q WHEN YOU APPLIED THAT PATCH TO CEDRIC PERKINS WOULD YOU
2 HAVE FOLLOWED THE PROCEDURES AS YOU OUTLINED AS YOU WERE
3 TRAINED?

4 A YES, MA'AM

5 MS. STROM YOUR HONOR, AT THIS TIME I WOULD MOVE
6 STATE'S EXHIBIT NUMBER 1 INTO EVIDENCE

7 MR. GIBSON NO OBJECTION

8 THE COURT ALL RIGHT

9 (STATE'S EXHIBIT NUMBER 1 MOVED INTO EVIDENCE)

10 Q I WANT TO DIRECT YOUR ATTENTION, ALSO, IF I MAY, TO
11 OCTOBER 7TH OF 2003. DID YOU HAVE AN OCCASION AGAIN TO BE
12 INVOLVED WITH CEDRIC PERKINS REGARDING A PATCH THAT HAD BEEN
13 EXPOSED?

14 A YES, MA'AM I WAS CALLED OUT OF MY OFFICE

15 Q I REFER YOU TO STATE'S EXHIBIT NUMBER 5 EVEN THOUGH IT
16 DOES NOT BEAR YOUR SIGNATURE, IT BEARS THE SIGNATURE OF
17 CHANDA GARNER, IS THAT CORRECT?

18 A YES, MA'AM

19 Q DO YOU RECALL THAT INCIDENT?

20 A YES, MA'AM

21 Q WOULD YOU PLEASE TELL US WHAT HAPPENED ON THAT -- AND
22 WHAT DATE WAS THAT?

23 A IT WAS OCTOBER 7TH

24 Q WOULD YOU PLEASE TELL US WHAT YOU OBSERVED, WHAT
25 HAPPENED?

ANGELA DILLARD -- DIRECT BY MS STROM

1 A I WAS IN MY OFFICE DOING SOME PAPERWORK WHEN I WAS --
2 CHANDA ASKED ME TO COME INTO THE ROOM WHERE WE DO ALL THE
3 PATCHES AND THE HAIR TESTING I WAS -- CEDRIC SHOWED ME HIS
4 ARM WHERE THE OUTSIDE OF HIS T-SHIRT WAS TAPED WITH PACKING
5 TAPE I THEN, YOU KNOW, ASKED WHY IT WAS TAPED LIKE THAT,
6 AND HE SAID -- I DON'T REMEMBER EXACTLY WHAT HE SAID
7 SOMETHING WAS WRONG WITH THE PATCH OR SOMETHING LIKE THAT
8 HE WAS SCARED IT WAS COMING OFF, SOMETHING LIKE THAT AND SO
9 I THEN TOOK MY GLOVES, PUT THEM ON, AND REMOVED THE TAPE THAT
10 WAS ON THE OUTSIDE OF HIS SHIRT I THEN LIFTED UP HIS SHIRT,
11 AND THE PATCH WAS NOT THERE THE TAPE WAS THERE, BUT THERE
12 WAS NO COTTON PART OF THE PATCH I COULD SEE THAT IT WAS CUT
13 OR TORN IT WAS CUT THERE WAS A HOLE IN THE ACTUAL TAPE
14 I CONTINUED TO LIFT UP HIS SLEEVE TO SEE IF MAYBE THE PATCH
15 WAS SOMEWHERE INSIDE, MAYBE STUCK TO HIS ARM, AND I PROCEEDED
16 TO SEE THAT THE PATCH WAS UP ON THE TOP OF HIS SHOULDER AND
17 THAT IS WHEN CHANDA GRABBED THE PATCH SO IT WOULDN'T FALL TO
18 THE FLOOR WE GRABBED IT OUT OF HIS SHIRT AND PUT IT INTO
19 THE ENVELOPE -- OR INTO THE PLASTIC BAG
20 Q AND DO YOU RECALL HER -- IF SHE USED ANY INSTRUMENT?
21 DID SHE USE THE TWEEZERS? DID SHE USE HER HAND?
22 A SHE USED THE DISPOSABLE TWEEZERS, AND HER HANDS WERE
23 GLOVED
24 Q OKAY AND WHAT WAS ACTUALLY ON THE TOP OF HIS SHOULDER
25 WAS THE COTTON PORTION OF THE SWEAT PATCH?

ANGELA DILLARD -- DIRECT BY MS STROM

- 1 **A** YES, MA'AM
- 2 **Q** THE ADHESIVE WAS STILL STUCK TO HIS ARM?
- 3 **A** YES, MA'AM
- 4 **Q** IN YOUR EXPERIENCE OF REMOVING THE -- WELL, WHEN YOU DO
- 5 **A** REMOVAL OF A PATCH FROM A PARTICIPANT, HOW EASY IS IT TO
- 6 GET THE -- OR HOW DIFFICULT, WHATEVER IT MAY BE, TO GET THE
- 7 COTTON PATCH OFF OF THE ADHESIVE?
- 8 **A** USUALLY -- I MEAN, IT'S NOT UNBEARABLY HARD OR ANY -- I
- 9 MEAN, BUT IT IS SOMETIMES GOOD AND STUCK TO THEIR ARM TO
- 10 WHERE, I MEAN, YOU REALLY, YOU'RE GOING TO HAVE TO PULL IT
- 11 OUT BECAUSE, YOU KNOW, THE TAPE IS THERE AND THE ACTUAL PATCH
- 12 IS USUALLY -- IT'S USUALLY STUCK TO THEIR ARM PRETTY GOOD
- 13 BUT, I MEAN, IT'S NOT -- YOU KNOW, YOU DO HAVE TO TUG ON IT,
- 14 YOU KNOW, A LITTLE BIT
- 15 **Q** BUT IT'S NOT DIFFICULT?
- 16 **A** NO NO
- 17 **Q** OKAY I SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT
- 18 NUMBER 2 FOR IDENTIFICATION AND ASK YOU, DO YOU RECOGNIZE
- 19 THAT?
- 20 **A** YES, MA'AM
- 21 **Q** AND DOES THAT DOCUMENT REFLECT THAT YOU APPLIED A PATCH
- 22 TO MS ANGELA HURKS ON JUNE THE 20TH, 2003?
- 23 **A** I APPLIED A PATCH ON MAY 30TH OF '03
- 24 **Q** I'M SORRY I MAY HAVE GIVEN YOU THE WRONG ONE OH, I'M
- 25 SORRY YOU'RE RIGHT, MAY 30TH 2003, MAY 30TH

ANGELA DILLARD -- DIRECT BY MS STROM

1 A YES, MA'AM

2 Q AND DID YOU FOLLOW THOSE PROCEDURES AS YOU OUTLINED
3 ABOVE WITH REGARDS TO THE APPLICATION OF THIS PATCH?

4 A YES, MA'AM

5 Q AND THE CHAIN OF CUSTODY FORM, DOES IT BEAR ALL OF THE
6 APPROPRIATE SIGNATURES?

7 A YES, MA'AM

8 Q AND STATE'S EXHIBIT NUMBER 2 FOR IDENTIFICATION REFLECTS
9 THAT SOMEONE OTHER THAN YOU CONDUCTED THE REMOVAL OF PATCH,
10 CORRECT?

11 A YES, MA'AM

12 MS STROM YOUR HONOR, AT THIS TIME, I WOULD MOVE
13 STATE'S EXHIBIT NUMBER 2 INTO EVIDENCE

14 THE COURT ALL RIGHT

15 MR. BANNISTER JUDGE, LET ME JUST STATE FOR THE
16 RECORD, AS I UNDERSTAND, THE PURPOSE OF STATE'S EXHIBIT
17 NUMBER 2 IS TO ESTABLISH THE CHAIN OF CUSTODY AT THIS POINT
18 I WOULD OBJECT IF IT'S GOING IN TO PROVE THE PROOF OF THE
19 MATTER ASSERTED, THAT IS, THAT IT WAS A POSITIVE PATCH I
20 THINK WE'VE GOT TO HAVE THE PHARMCHEM REPRESENTATIVE HERE FOR
21 THAT TWO, OBVIOUSLY, I HAVE AN OBJECTION BASED ON THE OTHER
22 YOUNG LADY WHO TESTIFIED YESTERDAY NOT BEING CERTIFIED AT THE
23 TIME THAT SHE WAS PARTICIPATING IN THIS SO---

24 THE COURT ALL RIGHT SUBJECT TO YOUR OBJECTION, I'M
25 GOING TO ALLOW IT IN

ANGELA DILLARD -- DIRECT BY MS STROM

1 MR GIBSON YOUR HONOR, WITH THAT SAID---

2 THE COURT I'M OVERRULING YOUR OBJECTION, JUST FOR THE
3 RECORD

4 MR. GIBSON YOUR HONOR, WITH THAT SAID, WE MADE THE
5 SAME OBJECTION TO THIS YESTERDAY

6 THE COURT I UNDERSTAND YOU'RE PROTECTED SAME
7 RULING

8 MR GIBSON THANK YOU, JUDGE

9 (STATE'S EXHIBIT NUMBER 2 MOVED INTO EVIDENCE)

10 MS STROM AND I THINK I FAILED TO MOVE HER DOCUMENT
11 FROM PHARMCHEM INTO EVIDENCE, STATE'S EXHIBIT NUMBER 11 ANY
12 OBJECTION?

13 MR. GIBSON NO OBJECTION

14 MR BANNISTER NONE

15 MS STROM WE'D MOVE THAT INTO EVIDENCE, YOUR HONOR
16 (STATE'S EXHIBIT NUMBER 11 MOVED INTO EVIDENCE)

17 MS STROM COURT'S INDULGENCE, YOUR HONOR

18 THE COURT ALL RIGHT

19 MS. STROM (OFF RECORD WITH CO-COUNSEL) THANK YOU
20 PLEASE ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE

21 WITNESS YES, MA'AM

22 CROSS EXAMINATION BY MR. GIBSON

23 Q ALL RIGHT MS DILLARD, GOOD MORNING

24 A GOOD MORNING

25 Q HAVE YOU EVER SEEN---

ANGELA DILLARD -- CROSS BY MR GIBSON

1 **THE COURT** IF YOU NEED TO GET UP AND STRETCH OR MOVE
2 AROUND, THAT'S FINE

3 **WITNESS** THANK YOU

4 **Q** AS PART OF YOUR TRAINING DID YOU EVER REVIEW THIS? LET
5 ME BRING IT OVER I'M SORRY I'M SURE YOU CAN'T SEE

6 **A** YES, SIR

7 **Q** OKAY CAN YOU TELL THE COURT WHAT THAT IS?

8 **A** IT'S JUST TELLING THE PROCEDURES OF HOW TO APPLY THE
9 PATCH AND THE REMOVAL OF THE PATCH

10 **Q** OKAY

11 **MR. GIBSON** HAVE YOU GOT AN OBJECTION TO THIS BEING
12 ADMITTED?

13 **MS. STROM** JUST GIVE ME A SECOND TO LOOK OVER IT, BUT
14 I DON'T THINK SO JUST A SECOND NO, I HAVE NO OBJECTION

15 **MR. GIBSON** THANK YOU I'D LIKE TO ADMIT THIS AS
16 DEFENDANT PERKINS EXHIBIT WHATEVER NUMBER I'M UP TO QUITE
17 FRANKLY, I DON'T EVEN REMEMBER

18 (PHARMCHEM DOCUMENT MARKED AS DEFENDANT PERKINS EXHIBIT
19 NUMBER 3 AND MOVED INTO EVIDENCE)

20 **THE COURT** WHAT'S THAT EXHIBIT NUMBER?

21 **MR GIBSON** IT'S DEFENDANT'S EXHIBIT 3 DEFENDANT
22 PERKINS EXHIBIT 3

23 **Q** OKAY I WANT TO GO INTO A LITTLE MORE DETAIL ABOUT WHAT
24 YOUR PRACTICES AND PROCEDURES WERE WHEN YOU WOULD APPLY
25 PATCHES, OKAY?

ANGELA DILLARD -- CROSS BY MR GIBSON

- 1 A OKAY
- 2 Q GENERALLY, WHERE WOULD YOU DO THAT?
- 3 A IN THE BUILDING OR
- 4 Q WOULD YOU DO IT AT THE COURTHOUSE, AT MRW OR
- 5 A WE DO IT AT MRW AND ACTUALLY HERE AT THE COURTHOUSE AS
- 6 WELL AT MRW WE HAVE JUST A ROOM -- AN OFFICE THAT WE DO IT
- 7 IN
- 8 Q OKAY DO YOU REMEMBER WHERE YOU APPLIED THE PATCH THAT
- 9 WAS APPLIED TO MR PERKINS ON SEPTEMBER 17TH?
- 10 A I DON'T I'M SORRY I DON'T RECALL
- 11 Q OKAY SO IF HE SAID IT WAS HERE, YOU WOULDN'T HAVE ANY
- 12 REASON TO---
- 13 A I'D HAVE TO LOOK AT A CALENDAR ACTUALLY TO KNOW IF IT
- 14 WAS ACTUALLY HERE OR IF IT WAS AT THE OFFICE I MEAN,
- 15 BECAUSE WE COME HERE ON CERTAIN DAYS
- 16 Q OKAY WHEN YOU WOULD APPLY A PATCH HERE, CAN YOU
- 17 EXPLAIN TO MYSELF AND THE COURT -- WELL, LET ME BACK UP IN
- 18 WHAT ROOM HERE WOULD YOU NORMALLY APPLY -- HERE IN THE
- 19 COURTHOUSE, WOULD YOU NORMALLY APPLY PATCHES?
- 20 A I USUALLY DO IT IN THE BREAK ROOM DOWNSTAIRS
- 21 Q YES, MA'AM
- 22 A ON THE FIRST FLOOR
- 23 Q OKAY WOULD IT JUST BE YOU AND THE DONOR OR WOULD THERE
- 24 BE OTHER PEOPLE PRESENT IN THE ROOM?
- 25 A SOMETIMES ME AND THE DONOR SOMETIMES THERE'S OTHER

1 PEOPLE PRESENT

2 Q OKAY WHAT WAS THE LARGEST NUMBER OF PEOPLE THAT YOU
3 CAN REMEMBER HAVING BEEN IN THE ROOM AT THE SAME TIME WHILE
4 YOU APPLIED PATCHES?

5 A I COULDN'T EVEN SPECULATE I REALLY DON'T EVEN KNOW

6 Q MORE THAN TEN?

7 A SOMETIMES, COULD BE

8 Q MORE THAN FIFTEEN?

9 A YOU KNOW, I DON'T EVEN -- I MEAN, IT JUST DEPENDED ON
10 THE DAY

11 Q OKAY NOW, WHEN YOU ARE APPLYING PATCHES, LET'S GO
12 THROUGH THE PROCEDURES YOU WOULD DO FIRST OF ALL, WHERE
13 WOULD THESE OTHER PEOPLE BE IN THE TIME FRAME WHAT YOU APPLY
14 A PATCH?

15 A THEY'D BE IN THE ROOM I MEAN, THEY WOULDN'T---

16 Q IN THE ROOM MULLING ABOUT?

17 A YES, SIR

18 Q OKAY AND WHERE WOULD YOU BE IN RELATION TO THE DONOR?

19 A I WAS USUALLY IN THE BACK CORNER WE HAD A LITTLE TABLE
20 SET UP WITH A COUPLE OF CHAIRS, AND I WOULD BE IN ONE CHAIR
21 AND THE DONOR WOULD BE IN THE OTHER

22 Q OKAY NOW, ONCE THAT DONOR SITS DOWN, PLEASE TAKE ME
23 THROUGH THE STEPS THAT YOU WOULD DO IN DETAIL IN APPLYING THE
24 PATCH

25 A YOU PULL OUT THE PAPERWORK, PROPER CHAIN OF CUSTODY

ANGELA DILLARD -- CROSS BY MR GIBSON

- 1 FORM, CONTINUE TO FILL THAT OUT, NAME, SOCIAL SECURITY
2 NUMBER, THE ID OF THE PATCH, PULL THE PATCH OUT, YOU KNOW,
3 WRITE DOWN THE NUMBER, THE ID NUMBER THAT'S ACTUALLY ON THE
4 PATCH, WRITE IT ON THE CHAIN OF CUSTODY FORM, GET THEM TO
5 LOOK AT THE PATCH -- WHILE IT'S STILL SEALED, GET THEM TO
6 LOOK AT THE PATCH TO MAKE SURE THAT THE NUMBER THAT I WROTE
7 DOWN IS THE SAME NUMBER THAT'S ON THE PATCH THEY THEN
8 INITIAL IT I'M GLOVED CLEAN THE ARM OF THE PERSON THAT
9 I'M APPLYING THE PATCH TO, LET IT DRY AND APPLY THE PATCH
10 Q OKAY NOW, WHEN YOU SAY, "I'M GLOVED," WHEN WOULD YOU
11 NORMALLY PUT THE GLOVES ON?
12 A RIGHT BEFORE I CLEAN THE ARM
13 Q OKAY SO RIGHT BEFORE YOU CLEAN THE ARM NOW, IF HIS
14 SHIRT WAS THERE, WHAT WOULD YOU DO?
15 A GET HIM TO PULL IT UP
16 Q YOU GET THEM TO PULL IT UP? DID YOU EVER PULL IT UP?
17 A NO I ALWAYS GOT THEM TO PULL IT UP BECAUSE, I MEAN,
18 ESPECIALLY IF I WAS GLOVED
19 Q OKAY AND THEN YOU WOULD RUB THE ARM, I PRESUME?
20 A YES, WITH THE ALCOHOL
21 Q WITH THE ALCOHOL SWAB WOULD YOU EVER USE SOAP AND
22 WATER FIRST?
23 A NO
24 Q OKAY WOULD YOU EVER WASH YOUR HANDS PRIOR TO DOING THE
25 TEST?

1 A NO

2 Q SO IT ALSO GOES TO SAY THAT YOU WOULD NEVER WASH YOUR
3 HANDS IN BETWEEN TESTS AS WELL, RIGHT?

4 A NO, BECAUSE I WAS ALWAYS GLOVED

5 Q OKAY NOW, AFTER YOU RUB THE ARM WITH THE ALCOHOL---

6 A UH-HUH (AFFIRMATIVE)

7 Q ---AND YOU SAID YOU HAVE TO WAIT FOR IT TO DRY?

8 A YES

9 Q OKAY WHAT WOULD YOU DO NEXT? HOW LONG WOULD IT
10 NORMALLY TAKE FOR IT TO DRY?

11 A A MINUTE

12 Q A MINUTE OR SO?

13 A YEAH

14 Q SO DURING THAT MINUTE WHAT WOULD YOU DO? WHAT DID YOU
15 DO WITH YOUR HANDS?

16 A SIT THERE WITH MY HANDS ON THE TABLE I MEAN, I WOULD
17 SIT JUST -- YOU KNOW, JUST SIT, LIKE, YOU KNOW---

18 Q DID YOU PUT THEM ON THE TABLE, PUT THEM TOGETHER?

19 A YEAH, SITTING THERE TALKING WITH THE PERSON

20 Q SO YOU DIDN'T KEEP YOUR HANDS UP LIKE THIS THE WHOLE
21 TIME (DEMONSTRATING) LIKE YOU WERE SOME SURGEON WITH WHATEVER
22 SCRUB ON AND ALL THIS STUFF, WOULD YOU?

23 A NO

24 Q WOULD YOU TOUCH YOUR CLOTHES SOMETIMES?

25 A I DON'T EVER RECALL IT, NO

ANGELA DILLARD -- CROSS BY MR GIBSON

1 Q OKAY

2 A I WOULD TRY NOT TO TOUCH MY FACE, MY CLOTHES I WOULD
3 NEVER, -- YOU KNOW, I WOULD TRY TO KEEP MY HANDS IN SIGHT OF
4 THE DONOR AT ALL TIMES

5 Q WELL, LET ME ASK YOU THIS, CAN YOU SAY FOR CERTAIN THAT
6 DURING THESE APPLICATIONS YOU NEVER TOUCHED YOUR CLOTHES AND
7 YOUR FACE AND---

8 A I CAN'T SAY THAT I NEVER, EVER DID THAT

9 Q OKAY LET'S GO TO THIS PATCH THAT YOU OBSERVED ON
10 OCTOBER 7TH, OKAY?

11 A UH-HUH (AFFIRMATIVE)

12 Q TAKE ME THROUGH AGAIN IN DETAIL BASICALLY WHAT
13 HAPPENED -- WELL, LET ME ASK YOU THIS TAKE ME THROUGH IN
14 DETAIL WHAT HAPPENED WHEN MR PERKINS SHOWED UP AT YOUR
15 OFFICE

16 A WHEN HE SHOWED UP, I WAS NOT UP FRONT I WAS IN MY
17 OFFICE IN THE BACK

18 Q YES, MA'AM

19 A AND I WAS DOING SOME PAPERWORK, AND I WAS CALLED OUT OF
20 MY OFFICE BY CHANDA SHE CAME AND GOT ME OUT OF MY OFFICE,
21 WHICH IS RIGHT NEXT DOOR TO WHERE THE PATCH ROOM, HAIR
22 STRAND, WHATEVER YOU WANT TO CALL IT I THEN WENT INTO THE
23 ROOM CEDRIC WAS STANDING THERE AND I COULD SEE THAT HIS --
24 THE TAPE -- HIS SHIRT WAS TAPED AGAINST HIS ARM WITH PACKING
25 TAPE

- 1 Q OKAY WHAT TYPE OF SHIRT DID HE HAVE ON?
- 2 A IT WAS A BLUE T-SHIRT
- 3 Q OKAY PLEASE CONTINUE
- 4 A I THEN WAS GLOVED, AND I REMOVED THE TAPE THAT WAS ON
- 5 HIS ARM I CONTINUED TO LIFT HIS T-SHIRT UP TO SEE THAT
- 6 THERE WAS ADHESIVE BUT NO COTTON PART OF THE PATCH
- 7 Q OKAY NOW LET ME BACK UP I JUST WANT TO CLARIFY THIS
- 8 YOU'RE SAYING THAT YOU REMOVED THE TAPE?
- 9 A THE PACKING TAPE THAT WAS ON THE OUT---
- 10 Q YEAH, THE PACKING TAPE
- 11 A YES
- 12 Q OKAY SO IF CHANDA YESTERDAY SAID THAT---
- 13 MS STROM OBJECTION, YOUR HONOR, PITTING WITNESSES
- 14 THE COURT SUSTAIN THE OBJECTION
- 15 MR GIBSON WITHDRAWN
- 16 Q SO, LET'S GO FROM THERE YOU REMOVED THE TAPE?
- 17 A UH-HUH (AFFIRMATIVE)
- 18 Q AND THEN WHAT DID YOU DO?
- 19 A I CONTINUED TO LIFT HIS SHIRT TO SEE IF, YOU KNOW, TO
- 20 SEE THE PATCH UNDERNEATH HIS SHIRT
- 21 Q OKAY
- 22 A AND WHEN I LIFTED THE SHIRT, THERE WAS ADHESIVE BUT NO
- 23 COTTON PART TO THE PATCH
- 24 Q OKAY
- 25 A AND I COULD SEE THAT THERE WAS A SLIT IN THE TAPE OF THE

1 PATCH

2 Q OKAY NOW, WHEN YOU SAY "SLIT," WHAT DO YOU MEAN?

3 A IT WAS CUT THE LENGTH OF THE PATCH

4 Q OKAY LIKE A TEAR? DO YOU HAVE THAT EXHIBIT? HERE IT
5 IS FIRST OF ALL, IS THIS THE PATCH? DO YOU KNOW?

6 A IT APPEARS TO BE, YES

7 Q OKAY

8 A I'D HAVE TO COMPARE IT WITH THE NUMBER

9 Q LET'S ASSUME FOR THE PURPOSE OF THIS QUESTION -- WHY
10 DON'T YOU DO THAT? JUST GO AHEAD AND COMPARE IT AND BE SURE

11 A YES

12 Q OKAY NOW, IS THIS THE CONDITION THAT THE PATCH WAS
13 PRETTY MUCH IN WHEN YOU REMOVED IT?

14 A YES

15 Q OKAY AND THIS IS THE TEAR THAT YOU'RE SPEAKING OF?

16 A THE TEARS ARE ALONG THE SIDE THERE, YES

17 Q OKAY ALL RIGHT

18 MR GIBSON DO YOU WANT TO LOOK?

19 THE COURT NO, I'M FAMILIAR WITH IT

20 Q OKAY I JUST WANT TO VERIFY, DOES THAT APPEAR TO BE
21 JAGGED, THAT TEAR?

22 A I MEAN, I -- I MEAN, IT DIDN'T -- NO, IT DOES NOT APPEAR
23 TO BE IT APPEARS TO BE A TEAR ALONG THE LINES THERE OF THE
24 PATCH?

25 Q ISN'T THAT JAGGED?

- 1 A I MEAN, THAT COULD BE FOLDED UNDERNEATH
- 2 Q OKAY HOW ABOUT THAT?
- 3 A THIS HERE?
- 4 Q YEAH IS THAT JAGGED?
- 5 A I MEAN, IT COULD BE FOLDED UNDERNEATH
- 6 Q BUT IT COULD ALSO BE JAGGED?
- 7 A IT COULD BE FOLDED UNDERNEATH
- 8 Q BUT IT COULD ALSO BE JAGGED?
- 9 THE COURT WE'RE NOT HAVING A TENNIS MATCH HERE
- 10 (LAUGHTER IN THE COURTROOM)
- 11 Q OKAY DID YOU MAKE A CONCLUSION AS TO WHAT HAPPENED
- 12 WITH THAT PATCH?
- 13 A YES
- 14 Q AND YOUR CONCLUSION WAS?
- 15 A THAT IT HAD BEEN CUT
- 16 Q DID YOU HAVE THE TRAINING IN WHETHER OR NOT A PATCH HAS
- 17 BEEN CUT, BY PHARMCHEM?
- 18 A WELL, WE COULD TELL IF -- I MEAN, IF -- THERE WAS
- 19 TRAINING, YES, TO IF THE PATCH WAS EXPOSED TO AIR, THEN WE
- 20 WERE TOLD THAT IF IT WAS EXPOSED, IT WAS EXPOSED AND IT WAS
- 21 TAMPERED
- 22 Q YES, MA'AM
- 23 A BUT---
- 24 Q I'M SORRY GO AHEAD
- 25 A GO AHEAD NO, GO AHEAD

ANGELA DILLARD -- CROSS BY MR GIBSON

1 Q NO PLEASE CONTINUE YOU SAID IF IT WAS EXPOSED TO AIR
2 IT HAD BEEN TAMPERED WITH?

3 A WE WERE TOLD THAT IF IT HAD BEEN EXPOSED, THEN WE WERE
4 SUPPOSED TO TELL THAT IT WAS EXPOSED AND IT WAS ON OUR
5 CONCLUSION HAD IT BEEN TAMPERED WITH AND IT WAS MY
6 CONCLUSION THAT IT HAD BEEN CUT

7 Q OKAY DID YOU HAVE ANY TRAINING FROM PHARMCHEM
8 REGARDING WHAT A TAMPERED PATCH LOOKED LIKE?

9 A OTHER THAN THE VIDEO AND THE MANUAL, NO

10 Q IN THE VIDEO AND THE MANUAL DID THEY TRAIN YOU IN HOW TO
11 DETERMINE WHAT A TAMPERED PATCH LOOKED LIKE?

12 A I DON'T RECALL TO BE HONEST WITH YOU, I DON'T RECALL

13 Q OKAY HAVE YOU RECEIVED ANY TRAINING FROM ANY OTHER
14 SOURCE ON WHAT A TAMPERED PHARMCHEM SWEAT PATCH LOOKS LIKE?

15 A OTHER SOURCE OTHER THAN PHARMCHEM?

16 Q YES, MA'AM

17 A NOT THAT I CAN RECALL

18 Q OKAY

19 MR GIBSON YOUR INDULGENCE, YOUR HONOR, PLEASE?

20 THE COURT YES, SIR

21 MR GIBSON NO FURTHER QUESTIONS THANK YOU, MS

22 DILLARD

23 WITNESS YES, SIR

24 THE COURT MR ARMSTRONG, ANY QUESTIONS?

25 MR ARMSTRONG NO QUESTIONS

1 THE COURT MR BANNISTER?

2 MR BANNISTER REAL QUICK

3 CROSS EXAMINATION BY MR BANNISTER:

4 Q DID YOU EVER TAKE ANY URINE TESTS, URINALYSIS TESTS?

5 A YES, UH-HUH (AFFIRMATIVE)

6 Q ALL RIGHT AND WHERE ARE THE RECORDS OF THOSE

7 URINALYSES MAINTAINED?

8 A THE -- WHAT WERE YOU -- THE ACTUAL---

9 Q THE ACTUAL RESULTS

10 A THEY ARE AT OUR OFFICE IN OUR FILING CABINETS

11 Q OKAY DID -- YOU SAID YOU APPLIED AND REMOVED PATCHES

12 POTENTIALLY DOWNSTAIRS IN THE BREAK ROOM ON CERTAIN DAYS,

13 CORRECT?

14 A YES, SIR

15 Q AND DO YOU KNOW, WOULD THAT HAVE BEEN A FRIDAY? WAS

16 THAT THE TYPICAL DAY YOU WERE HERE?

17 A WE USUALLY DON'T COME OUT HERE ON FRIDAYS, NO, SIR

18 Q OKAY WHAT IS THE TYPICAL DAY YOU WOULD COME?

19 A I WAS USUALLY HERE ON MONDAYS

20 Q OKAY DID ANYBODY ELSE COME ON FRIDAYS OR OTHER DAYS TO

21 THE COURTHOUSE THAT YOU WERE AWARE OF?

22 A WE HAD A PERSON WHO USUALLY CAME OUT ON WEDNESDAYS BUT

23 IT'S WHENEVER BOBBIE GODWIN WANTED US TO COME OUT HERE

24 Q SO IT COULD BE DAYS WHEN YOU WERE HERE ON A FRIDAY IF

25 THAT'S SOMETHING SHE WANTED?

ANGELA DILLARD -- CROSS BY MR BANNISTER

- 1 A I'VE NEVER BEEN HERE ON A FRIDAY
- 2 Q OKAY BUT OTHER PEOPLE COULD HAVE?
- 3 A POSSIBLY, BUT I DON'T RECALL EVER COMING OUT HERE ON A
- 4 FRIDAY
- 5 Q ALL RIGHT
- 6 A UNLESS IT WAS A PLEA DAY, BUT THAT WAS FOR NEW MEMBERS
- 7 Q AND WHAT IS Y'ALL'S CURRENT ADDRESS NOW?
- 8 A ADDRESS
- 9 Q OKAY DID YOU EVER TAKE URINE SAMPLES OR PATCH TESTS
- 10 ANYWHERE OUTSIDE OF THE BREAK ROOM, LIKE IN THE HALL?
- 11 A YEAH, I DID WE DID START DOING URINE TESTING SO I
- 12 COULD WATCH THE BATHROOMS OUTSIDE IN THE HALLWAY
- 13 Q OKAY ANY PATCH TESTING DONE OUTSIDE IN THE HALL,
- 14 REMOVAL OR APPLICATION?
- 15 A YES
- 16 Q ALL RIGHT SO REALLY THERE WERE TWO PLACES IN THE
- 17 COURTHOUSE THAT THAT'S OCCURRED, ONE IS INSIDE THE BREAK
- 18 ROOM---
- 19 A AND ONE IS RIGHT OUTSIDE, YES
- 20 Q AND THE OTHER IS OUTSIDE IN THE HALL? AND THIS WAS THE
- 21 BATHROOMS NEAR THE PUBLIC DEFENDER'S OFFICE?
- 22 A DOWNSTAIRS ON THE FIRST FLOOR
- 23 Q I GOT YOU OKAY WHO IS THE NAME OF YOUR BOSS?
- 24 A TONY WATERS
- 25 Q TONY WATERS DOES HE RUN THE BUSINESS?

1 A YES

2 Q CORPORATE CHOICE?

3 A YES

4 MR. BANNISTER OKAY THANK YOU NO FURTHER
5 QUESTIONS

6 MR GIBSON BEFORE HE FINISHES, YOUR HONOR

7 MR. BANNISTER OH, I'M SORRY (OFF RECORD WITH MR
8 GIBSON)

9 Q WHEN YOU WOULD TAKE THE TEST IN THE HALL, EITHER URINE
10 OR PATCH TEST, THE PEOPLE WOULD BE LINED UP ONE AFTER THE
11 OTHER ALONG THE WALL? DOES THAT SOUND

12 A THEY WOULD MINGLE AROUND, BUT THEY WERE NOWHERE -- I
13 MEAN, THE PATIENT WAS EITHER SITTING BESIDE ME OR THEY WERE
14 AROUND THE AREA

15 Q OKAY I'M CHANGING SUBJECTS ON YOU BUT

16 A OKAY

17 Q EXHIBIT NUMBER 6, THIS IS THE PATCH YOU'VE BEEN TALKING
18 ABOUT THAT HAD THE TEAR IN IT

19 A YES

20 Q DID -- AFTER THAT OCCURRED DID YOU REQUIRE THAT
21 INDIVIDUAL TO TAKE A URINE TEST RIGHT THERE ON THE SPOT?

22 A I DON'T RECALL I DON'T REALLY REMEMBER, TO BE HONEST
23 WITH YOU

24 MR BANNISTER OKAY ALL RIGHT THANK YOU NO
25 FURTHER QUESTIONS

1 THE COURT ANYTHING ELSE FROM THE STATE?
2 MS. STROM NOT FROM THIS WITNESS, YOUR HONOR
3 THE COURT ALL RIGHT THANK YOU, MA'AM YOU MAY STEP
4 DOWN
5 MS. STROM YOUR HONOR, WE WOULD ASK THAT SHE BE
6 EXCUSED AND ALLOWED TO GO BACK HOME
7 THE COURT ALL RIGHT ANY OBJECTION?
8 MR GIBSON NO, SIR
9 THE COURT ALL RIGHT THANK YOU YOU ARE FREE TO GO
10 OR FREE TO STAY
11 (WITNESS EXCUSED AT 10 47 A M)
12 THE COURT HOW LONG DO YOU ANTICIPATE THE NEXT
13 WITNESS?
14 MS STROM YOUR HONOR, THE DIRECT WILL BE RELATIVELY
15 SHORT I EXPECT TO HAVE TWO WITNESSES, TONY WATERS AND BOBBIE
16 GODWIN WOULD YOU LIKE TO TAKE A BREAK NOW OR
17 THE COURT WHY DON'T WE GO AHEAD AND TAKE MR WATERS?
18 MS STROM OKAY THE STATE CALLS TONY WATERS
19 TONY WATERS, HAVING BEEN DULY
20 SWORN, TESTIFIED AS FOLLOWS
21 DIRECT EXAMINATION BY MS STROM:
22 Q BY WHOM ARE YOU EMPLOYED?
23 A CORPORATE CHOICE, INCORPORATED
24 Q WE'VE, ALSO, I THINK, BEEN REFERRING -- OR I THINK SOME
25 QUESTIONS HAVE BEEN AT MRW

1 A AT ONE TIME WHEN I BECAME PART OF THE COMPANY -- I'VE
2 OWNED CORPORATE CHOICE FOR ELEVEN YEARS NOW WE MERGED WITH
3 A COMPANY CALLED MEDICAL REVIEW AND WELLNESS ACTUALLY, WE
4 BECAME AN LLC FOUR YEARS AGO WITH THAT MERGER THEY
5 SHORTENED THE MEDICAL REVIEW AND WELLNESS TO MRW CORPORATE
6 CHOICE

7 Q SO WHEN WE HAVE BEEN REFERRING TO MRW AND/OR CORPORATE
8 CHOICE, WE'RE TALKING ABOUT THE SAME FACILITY, THE SAME
9 COMPANY?

10 A SAME COMPANY, YES

11 Q AND YOU SAID YOU'VE OWNED THAT COMPANY FOR ELEVEN YEARS?

12 A YES, MA'AM

13 Q AND BASICALLY WHAT IS YOUR POSITION THERE? WHAT DO YOU
14 DO? WHAT ARE YOUR DUTIES?

15 A PRETTY MUCH ANYTHING THAT'S INVOLVED WITH THE COMPANY
16 I HANDLED, OBVIOUSLY, ALL THE FINANCIAL, THE PAPERWORK I'M
17 IN CHARGE OF EVERYONE THAT WORKS IN THE OFFICE I OVERSEE
18 ANY DOCUMENTS, MAKE SURE, BASICALLY, THAT THE BUSINESS IS
19 RAN

20 Q AND WHEN Y'ALL BEGAN THERE WAS A TIME WHEN YOU WERE
21 OBVIOUSLY NOT DOING SWEAT PATCH TESTING?

22 A CORRECT

23 Q WHEN YOU WERE ANTICIPATING BEGINNING TO DO SWEAT PATCH
24 APPLICATIONS AND REMOVAL DID YOU RECEIVE ANY SPECIFIC
25 TRAINING REGARDING THE APPLICATION AND REMOVAL OR HOW YOU

1 SHOULD CONDUCT THAT BUSINESS?

2 A YES, I DID

3 Q AND FROM WHOM DID YOU RECEIVE THAT TRAINING?

4 A JIM HALE, WHO IS THE VICE PRESIDENT OF SALES AND
5 MARKETING WITH PHARMCHEM I MET WITH HIM IN COLUMBIA, AND HE
6 TOOK ME THROUGH THE TRAINING

7 Q ALL RIGHT AND BASICALLY WHAT WERE YOU TRAINED AT THAT
8 TIME?

9 A TRAINED ON THE APPLICATION AND REMOVAL OF THE PATCH AS
10 WELL AS THE HISTORY OF THE PATCH AS FAR AS QUESTIONS, THE
11 PROFICIENCY OF THE PATCH THEY BASICALLY GAVE ME THEIR SALES
12 PITCH AS WELL AS THEIR TRAINING ON THE PATCH

13 Q ALL RIGHT AND THE TRAINING THAT YOU RECEIVED REGARDING
14 THE APPLICATION AND THE REMOVAL OF THE PATCHES, IS THAT THE
15 SAME TRAINING THAT CHANDA AND ANGELA DILLARD HAVE DISCUSSED?

16 A AS FAR AS THE VIDEO AND THE TEST, YES I ALSO HAD TO
17 TAKE THAT AS WELL AND WHEN I SAY "I HAD TO," I DIDN'T HAVE
18 TO TAKE THE TEST, BUT I DID PARTICIPATE IN TAKING THE TEST

19 Q I'M SORRY?

20 A WHEN I SAY "I HAD TO" TO TAKE THE TEST, IT'S NOT -- THE
21 TEST IS BASICALLY AN ACCREDITATION THAT YOU'VE COMPLETED
22 TRAINING IT'S NOT A REQUIREMENT

23 Q AND ARE YOU AWARE OF PHARMCHEM'S STANDARDS REGARDING
24 WHAT IS NECESSARY BEFORE SOMEONE CAN APPLY OR REMOVE A PATCH?

25 A YES, I AM

1 Q AND WHAT IS THAT?

2 A BASICALLY, YOU SHOULD GO THROUGH THE VIDEO, THE TRAINING
3 AND THE TESTING THEY ASK THAT YOU DO THAT YOU DO NOT HAVE
4 TO RECEIVE THE CERTIFICATE BACK IN ORDER TO START TESTING
5 ONCE YOUR HAVE RECEIVED THE TRAINING AND PRACTICED, AS ANGELA
6 MENTIONED, ONE-ON-ONE AND COMPLETED YOUR TESTING, SENT IT TO
7 PHARMCHEM, YOU CAN START TESTING IMMEDIATELY WHEN I SAY
8 "TESTING," YOU START TESTING IMMEDIATELY WE DON'T TEST IT

9 Q YOU DON'T DO THE ACTUAL TESTING?

10 A RIGHT

11 Q YOU DO THE COLLECTION?

12 A RIGHT

13 Q AND DO YOU RECALL WHEN CHANDA BEGAN WORKING FOR YOU?

14 A IF I RECALL CORRECTLY, I THINK IT WAS FEBRUARY 16TH IT
15 WAS MID-FEBRUARY

16 Q OF '03?

17 A YES, MA'AM

18 Q AND ARE YOU AWARE IF SHE CONDUCTED HER TRAINING THERE
19 UNDER YOUR EMPLOYMENT?

20 A SHE DID

21 Q AND DID SHE DO EVERYTHING THAT PHARMCHEM REQUIRES IN
22 TERMS OF WATCHING THE VIDEO, READING THE BOOKLET, TAKING THE
23 TEST?

24 A YES, MA'AM, SHE DID

25 MR ARMSTRONG I OBJECT, YOUR HONOR THAT'S A LEADING

TONY WATERS -- DIRECT BY MS STROM

- 1 QUESTION IT'S WHAT DID SHE DO
- 2 THE COURT REPHRASE THE QUESTION, PLEASE, MA'AM
- 3 Q ARE YOU AWARE OF WHAT TRAINING CHANDA WENT THROUGH?
- 4 A I AM
- 5 Q AND WHAT TRAINING WAS THAT?
- 6 A SHE WAS GIVEN THE VIDEO SHE WAS GIVEN THE OPPORTUNITY
- 7 TO READ OVER THE DOCUMENTATION, THE PAPERWORK, AND ALSO TAKE
- 8 THE TEST, AS WELL AS TAKE TRAINING BOTH ON PRACTICE WITH
- 9 OTHER EMPLOYEES, AND THEN SHE WAS ALSO SUPERVISED ON HER --
- 10 FOR ABOUT A WEEK AND A HALF PERIOD OF ACTUALLY APPLYING TO
- 11 PATIENTS
- 12 Q AND, AS HER SUPERVISOR, WERE YOU SATISFIED WITH THE
- 13 TRAINING THAT SHE HAD RECEIVED?
- 14 A YES, I WAS
- 15 Q AS HER SUPERVISOR, WERE YOU COMFORTABLE IN ALLOWING HER
- 16 TO BEGIN APPLYING AND REMOVING THE SWEAT PATCH TEST?
- 17 A YES, MA'AM, I WAS
- 18 Q IF YOU WERE AT ANY TIME UNCOMFORTABLE WITH HER
- 19 ABILITIES, WHAT WOULD YOU HAVE DONE?
- 20 A I WOULD HAVE IMMEDIATELY STOPPED IT IN FACT, THERE
- 21 WERE A COUPLE OF EMPLOYEES THAT I DID NOT ALLOW TO DO PATCH
- 22 TESTING BECAUSE I DIDN'T FEEL LIKE THAT THEY WERE ADEQUATE IN
- 23 WHAT THEY WERE TRAINED
- 24 MS STROM COURT'S INDULGENCE, YOUR HONOR (OFF
- 25 RECORD WITH CO-COUNSEL_ THANK YOU PLEASE ANSWER ANY

1 QUESTIONS THE DEFENSE MAY HAVE

2 CROSS EXAMINATION BY MR ARMSTRONG

3 Q MR WATERS, WHAT IS YOUR EDUCATIONAL BACKGROUND?

4 A I HAVE A BACHELOR'S ACCOUNTING DEGREE

5 Q FROM WHERE?

6 A UNIVERSITY OF SOUTH CAROLINA

7 Q WHAT YEAR?

8 A '91 I'M SORRY, '92

9 Q IS -- MRW/CORPORATE CHOICE, LLC, IS THAT AFFILIATED IN
10 ANY WAY WITH PHARMCHEM?

11 A NO, SIR

12 Q ARE YOU LICENSED BY PHARMCHEM OR ARE YOU IN ANY TYPE OF
13 A CONTRACTUAL BUSINESS RELATIONSHIP WITH PHARMCHEM?

14 A WE'RE A DISTRIBUTOR FOR PHARMCHEM CONTRACTUALLY, YES

15 Q BUT AS FAR AS BEING AN AGENT OR A REPRESENTATIVE, YOU
16 ARE NOT, IS THAT CORRECT?

17 A NO, SIR NO, SIR

18 Q YOU DO THE TRAINING OF THESE PEOPLE?

19 A I TRAINED ANGELA, AND ANGELA CONDUCTED MOST OF THE
20 TRAINING, YES

21 Q AND YOU GOT YOUR TRAINING FROM THIS JIM HALE WHO GAVE,
22 BY YOUR TESTIMONY, THE PHARMCHEM SPIEL AND SOME OF THE
23 TRAINING, IS THAT CORRECT?

24 A YES, SIR

25 Q WHERE IS YOUR CERTIFICATE OF CERTIFICATION ON THE PATCH?

TONY WATERS -- CROSS BY MR ARMSTRONG

- 1 A I BELIEVE I LEFT THAT WITH---
- 2 Q DO YOU HAVE ONE?
- 3 A YES, I DO
- 4 Q AND WHEN DID YOU GET THAT?
- 5 A I'M THINKING IT WAS IN OCTOBER OF 2002 I THINK I'M
- 6 NOT SURE OF THE DATE EXACTLY
- 7 Q ARE YOU REQUIRED TO HAVE ANY---
- 8 MS STROM I HAVE IT, IF HE WANTS IT
- 9 THE COURT ALL RIGHT
- 10 Q ARE YOU REQUIRED TO HAVE ANY FOLLOW-UP TRAINING OR ANY
- 11 CONTINUING TRAINING IN THIS PHARMCHEM PATCH APPLICATION?
- 12 A TO MY KNOWLEDGE, NO UNLESS THE PROCEDURE CHANGES,
- 13 THERE IS NO NEED FOR THAT
- 14 Q DID YOU EVER PERFORM ANY TEST ON MR DANE JANELLI?
- 15 A NO, SIR, NOT TO MY KNOWLEDGE
- 16 Q DO YOU ALSO DO HAIR STRAND TESTING?
- 17 A WE DO, YES, SIR
- 18 Q NOT WE DO YOU DO IT?
- 19 A YES, SIR
- 20 Q DID YOU PERFORM ANY HAIR STRAND TEST ON MR JANELLI?
- 21 A I CAN'T RECALL
- 22 Q DID YOU EVER PERFORM ANY URINE TESTS FOR MR JANELLI?
- 23 A I CAN'T RECALL EXACTLY BUT, YES, I'M SURE I HAVE, AS
- 24 MANY TESTS AS HE HAS HAD TO TAKE
- 25 Q ARE YOU UNDER CONTRACT WITH THE DRUG COURT PROGRAM?

- 1 A YES, MA'AM I MEAN, YES, SIR
- 2 Q ALL RIGHT WHAT ARE YOU UNDER CONTRACT TO DO?
- 3 A TO PROVIDE DRUG AND ALCOHOL TESTING AT THEIR DISCRETION
- 4 Q AND AT THEIR DIRECTION?
- 5 A YES, SIR
- 6 Q ALL RIGHT AND HOW MUCH DO YOU GET PAID FOR DOING THAT?
- 7 A WELL, IT VARIES FROM TEST TO TEST
- 8 Q WELL, LET'S TALK ABOUT THIS PATCH HOW MUCH ARE YOU
- 9 PAID TO DO A PATCH TEST?
- 10 A FOR AN APPLICATION-REMOVAL WE ONLY CHARGE FOUR DOLLARS
- 11 Q IS THAT FOR THE APPLICATION AND REMOVAL OR JUST THE
- 12 APPLICATION OR REMOVAL?
- 13 A AS I SAID, APPLICATION AND REMOVAL, FOUR DOLLARS
- 14 Q SO IT'S BOTH?
- 15 A YES
- 16 Q AS FAR AS THE ANALYSIS GOES, YOU THEN FORWARD IT TO
- 17 PHARMCHEM?
- 18 A YES, SIR
- 19 Q AND YOU HAVE COST THERE, DO YOU NOT?
- 20 A THE COST IS PAID DIRECTLY BY DRUG COURT
- 21 Q OKAY AND DO THEY ALSO PAY FOR THE ANALYSIS WHICH IS
- 22 DONE BY PHARMCHEM?
- 23 A YES, THEY DO
- 24 Q IS THAT THE SAME WITH HAIR STRAND SAMPLES?
- 25 A NO, SIR

TONY WATERS -- CROSS BY MR ARMSTRONG

- 1 Q ALL RIGHT WHAT IS THE COST ON A HAIR STRAND SAMPLE?
- 2 A I THINK THE CHARGE TO DRUG COURT IS \$60
- 3 Q ALL RIGHT IS IT MORE TO A PRIVATE INDIVIDUAL?
- 4 A ABSOLUTELY
- 5 Q HOW MUCH?
- 6 A SEVENTY
- 7 Q AND IS THAT FOR THE ENTIRE TEST OR JUST THE APPLICATION
- 8 OR THE COLLECTION?
- 9 A THE ENTIRE TEST WHEN WE PRICE, IT'S FROM BEGINNING TO
- 10 END THERE IS NO IN-BETWEEN COSTS
- 11 Q SO OUT OF THAT \$60 THEN YOU WOULD PAY THE LABORATORY FOR
- 12 ITS WORK?
- 13 A ABSOLUTELY
- 14 Q PLUS ALL THE TRANSPORTATION BACK AND FORTH?
- 15 A YES
- 16 Q THE URINE TEST, DO YOU HAVE A CONTRACT TO DO URINE TESTS
- 17 FOR DRUG COURT?
- 18 A YES, SIR, WE DO
- 19 Q WHAT IS THE COST OF A URINE TEST?
- 20 A URINE TESTING VARIES FROM A SINGLE PANEL TO AS MANY AS A
- 21 TEN PANEL, SO I CAN GIVE YOU TEN DIFFERENT PRICES
- 22 Q OKAY WELL, WHAT IS THE BASIC COCAINE PANEL, I ASSUME
- 23 IS WHAT---
- 24 A I WOULD SAY THE BASIC WOULD BE A FIVE PANEL, AND THE
- 25 COST ON THE FIVE PANEL TO DRUG COURT IS \$7 50

1 Q SEVEN DOLLARS AND FIFTY CENTS?

2 A THAT IS FOR THE INITIAL SCREEN IF IT HAS TO GO TO
3 CONFIRMATION, THERE IS ADDITIONAL COST WITH THE LABORATORY
4 FOR THAT

5 Q AND IF YOU HAVE AN INDIVIDUAL OFF THE STREET COME IN,
6 WHAT'S THE COST?

7 A FOR A FIVE PANEL, I THINK IT'S \$35 00

8 MR. ARMSTRONG I HAVE NO FURTHER QUESTIONS FOR THIS
9 GENTLEMAN

10 THE COURT MR GIBSON?

11 CROSS EXAMINATION BY MR GIBSON

12 Q JUST CLARIFY, WHEN YOU SAY A "FIVE PANEL TEST," EXPLAIN
13 TO THE COURT WHAT THAT MEANS

14 A IT CONTAINS FIVE DRUG CATEGORIES

15 Q AND THOSE DRUG CATEGORIES ARE?

16 A MARIJUANA, COCAINE, OPIATES, AMPHETAMINE AND
17 METHAMPHETAMINE

18 Q OKAY DO YOU HAVE ANY IDEA HOW MUCH THE ADDITIONAL COST
19 IS TO---

20 MS STROM YOUR HONOR, I'M GOING TO OBJECT I DON'T
21 KNOW THE RELEVANCY OF THE COST OF ALL---

22 THE COURT WHAT'S THE RELEVANCY OF THE COST OF ANY OF
23 THIS?

24 MR GIBSON WELL, QUITE FRANKLY, YOUR HONOR, I'M GOING
25 TO BRING IT UP FOR YOUR FUTURE REFERENCE AS FAR AS WHAT TYPE

TONY WATERS -- CROSS BY MR GIBSON

1 OF PROGRAM YOU WANT TO INITIATE

2 THE COURT I APPRECIATE THAT, BUT I DON'T THINK IT'S
3 NECESSARY AT THIS POINT SO I'M GOING TO SUSTAIN THE
4 OBJECTION

5 MR. GIBSON OKAY

6 Q HAVE YOU EVER RECEIVED ANY FOLLOW-UP TRAINING FROM
7 PHARMCHEM?

8 A NO,

9 Q WHEN DID YOU RECEIVE YOUR FIRST TRAINING?

10 A I CAN'T RECALL DIRECTLY IT WAS IN THE FALL OF 2002, I
11 THINK

12 Q 2002

13 A I SAY THE FALL IT COULD BE SOMETIME -- I KNOW THAT IT
14 WAS COLD IT WAS WINTER IT WAS EITHER LATE 2002 OR LIKE
15 JANUARY OF 2003 IT WAS ONE OR THE OTHER I'M NOT SURE

16 Q OKAY

17 MR. GIBSON JUST A SECOND, YOUR HONOR LET ME SEE IF
18 I HAVE ANYTHING ELSE I MAY BE DONE (PAUSE) NOTHING
19 FURTHER, YOUR HONOR

20 THE COURT MR BANNISTER?

21 MR. GIBSON THANK YOU, MR WATERS

22 CROSS EXAMINATION BY MR BANNISTER

23 Q DO YOU HAVE ANY CLIENTS THAT COME TO YOU AND SAY, "WE
24 WANT YOU TO HELP US SET UP A DRUG SCREENING PROGRAM FOR OUR
25 EMPLOYEES" OR ANYTHING LIKE THAT?

1 A YES QUITE A FEW

2 Q AND I ASSUME THAT PART OF THE ADVICE YOU GIVE THEM IS
3 YOU WANT TO AVOID FALSE POSITIVE BUT STILL AT THE SAME TIME
4 CATCH AS MANY TRUE POSITIVE AS POSSIBLE?

5 A ABSOLUTELY

6 Q COST IS ALSO AN ISSUE?

7 A YES

8 Q WHAT IS THE ADVICE THAT YOU GIVE THOSE CLIENTS?

9 A WELL, IT DEPENDS ON WHAT THEY ARE ASKING FOR IT CAN
10 VARY DEPENDING ON THE TYPE OF JOB IF THEY ARE ASKING FOR --
11 SAY IN A WHITE COLLAR JOB THEY ARE WANTING TO KNOW THE
12 HISTORY OF A PERSON, THEN OBVIOUSLY HAIR TESTING IS MORE
13 ADEPT TO THAT FOR THE LONGEVITY OF ITS DETECTION IF IT'S A
14 COST ISSUE, OBVIOUSLY URINE IS GOING TO BE THE CHEAPEST, AND
15 THAT'S WHAT I'M GOING TO RECOMMEND WHAT'S ACCEPTED AS THE
16 GOLD STANDARD WOULD BE URINE

17 Q SO A CLIENT WHO WANTED AN ONGOING ANALYSIS OF
18 INDIVIDUALS, YOU WOULD RECOMMEND URINE?

19 A IF YOU'RE SPEAKING IN TERMS OF COST, YES

20 Q ALL RIGHT

21 A I WOULD QUOTE ALL THREE

22 Q WOULD YOU CONSIDER URINE TO BE SORT OF, I'LL USE THE
23 TERM, THE GOLD STANDARD FOR---

24 A WHEN I SAY "GOLD STANDARD," I DON'T MEAN THAT'S IT'S
25 BETTER I JUST MEAN THAT IT'S RECOGNIZED BY THE DEPARTMENT

1 OF TRANSPORTATION, THE D O T MOST PEOPLE ADHERE TO WHAT THE
2 D O T DOES

3 Q OKAY

4 A NOT BECAUSE IT'S BETTER

5 Q ALL RIGHT WHO INTRODUCED YOU TO THE DRUG PATCH? HOW
6 DID YOU BECOME AWARE OF THAT?

7 A ACTUALLY, THROUGH THE DRUG COURT PROGRAM BOBBIE CALLED
8 ME WHEN I WAS FIRST NOTIFIED -- OR ASKED ABOUT THE PATCH, I
9 DIDN'T KNOW ANYTHING I HAD TO DO SOME RESEARCH AND FIND OUT
10 THE MANUFACTURER AND THE COMPANY

11 Q ALL RIGHT AND THAT STARTED YOU ON THE PROCESS?

12 A EXACTLY

13 MR. BANNISTER THANK YOU NO FURTHER QUESTIONS

14 THE COURT ANYTHING ELSE FROM THE STATE?

15 MS STROM VERY BRIEFLY, YOUR HONOR

16 (WATERS CERTIFICATE MARKED AS STATE'S EXHIBIT NUMBER 12
17 FOR PURPOSES OF IDENTIFICATION ONLY)

18 REDIRECT EXAMINATION BY MS. STROM

19 Q YOU WERE ASKED ABOUT DID YOU RECEIVE YOUR DOCUMENT OR
20 DIPLOMA, OR WHATEVER WE WANT TO CALL THIS, FROM PHARMCHEM I
21 SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT NUMBER 12 IS
22 THAT THE PHARMCHEM CERTIFICATE YOU RECEIVED?

23 A YES, IT IS

24 Q AND WHAT DATE DOES IT HAVE ON IT?

25 A IT HAS THE DATE OF JANUARY 2003

1 Q WHEN DO YOU RECALL HAVING RECEIVED YOUR TRAINING?

2 A SEVERAL -- WELL--

3 Q IF YOU KNOW

4 A I REALLY DON'T KNOW IT WAS SOMETIME BEFORE THAT

5 MS STROM THANK YOU I WOULD MOVE THAT INTO
6 EVIDENCE

7 THE COURT ALL RIGHT

8 (STATE'S EXHIBIT NUMBER 12 MOVED INTO EVIDENCE)

9 MS. STROM THANK YOU NO FURTHER QUESTIONS

10 THE COURT ALL RIGHT MAY THIS GENTLEMAN BE EXCUSED?

11 MS. STROM WE WOULD ASK THAT HE BE ALLOWED TO BE
12 EXCUSED

13 MR BANNISTER JUDGE, ACTUALLY, I NEED THE URINALYSIS
14 RECORDS FOR MS HURKS I CAN HAND HIM A SUBPOENA HERE TODAY
15 FOR THOSE I THOUGHT THEY WERE GOING TO BE IN MY DRUG COURT
16 FILE, BUT I CAN'T FIND THEM IF THEY CAN SHOW ME WHERE THEY
17 ARE, I'LL BE HAPPY TO LOOK AT THEM

18 THE COURT DOES THE STATE HAVE A COPY OF THOSE?

19 MS STROM I'M NOT SURE YOU'RE WANTING COPIES OF THE
20 LITIGATION PACKETS FOR ALL THE URINALYSIS?

21 MR. BANNISTER NO, NO, NO I JUST NEED TO SEE WHAT
22 DATE MS HURKS GOT URINALYSIS TESTS BETWEEN THE RELEVANT
23 DATES TO THIS PROCEEDING -- MAY THE 30TH TO TODAY -- AND WHAT
24 THE RESULTS WERE IN OTHER WORDS, IF SHE GOT ONE TEST, I
25 JUST WANT TO BE ABLE TO SEE WHEN IT WAS AND WHAT THE RESULT

1 WAS IF SHE'S HAD THIRTY, I WANT TO BE ABLE TO SEE WHEN THEY
2 WERE ADMINISTERED AND WHAT THE RESULTS WERE

3 MR. GIBSON I HAVE THE SAME REQUEST, YOUR HONOR

4 MR. ARMSTRONG SAME REQUEST, YOUR HONOR

5 MS. STROM YOUR HONOR, THAT'S JUST GOING TO TAKE SOME
6 LOOKING WE MAY HAVE THAT I DON'T KNOW WE'VE GOT TO GO
7 BACK AND LOOK WE PURGE OUR RECORDS AFTER A CERTAIN TIME
8 SO WE CAN LOOK AND SEE IF WE HAVE THEM

9 THE COURT LOOK OVER THE LUNCH BREAK WE'LL ADDRESS
10 THAT AND IF IT'S NOT AVAILABLE THROUGH THE SOLICITOR'S
11 OFFICE, THEN YOU CAN CERTAINLY REQUEST IT THROUGH A SUBPOENA

12 MR. GIBSON THAT'D BE FINE I'VE GOT A SUBPOENA READY
13 TO GO, SO I'LL JUST SERVE THAT AND I ASSUME MR. WATERS CAN
14 GET IN TOUCH WITH MS. STROM AND SEE WHETHER OR NOT HE
15 ACTUALLY NEEDS TO COME BACK

16 THE COURT ALL RIGHT

17 MR. BANNISTER THANK YOU, JUDGE

18 THE COURT ARE THOSE RECORDS READILY ACCESSIBLE AT
19 YOUR OFFICE?

20 WITNESS YES, SIR IT'D JUST TAKE A LITTLE BIT OF
21 TIME BUT WE DO HAVE THEM ON FILE NOW, I'M NOT SURE -- UP
22 UNTIL TODAY'S PRESENT I DIDN'T DO ALL OF THE TESTING THEY
23 WERE GOING SOMEWHERE ELSE SO I DON'T HAVE ALL OF THE
24 RECORDS ANOTHER FIRM WOULD HAVE THAT

25 THE COURT DOES YOUR SUBPOENA SPECIFY THE TIME PERIOD

MATTERS AND MOTIONS

1 THAT YOU ARE LOOKING FOR?

2 MR BANNISTER YES, SIR IT SAYS -- FOR ME IT SAYS
3 MAY 30TH TILL TODAY THAT'S THE FIRST PATCH THAT WAS APPLIED
4 THAT TURNED OUT DIRTY

5 THE COURT OVER THE BREAK, GENTLEMEN, EACH ONE OF YOU
6 ARE GOING TO NEED TO PUT IN WRITING AND GIVE IT TO THIS
7 GENTLEMAN AS WELL AS A COPY TO MS STROM THE SPECIFIC TIME
8 PERIOD THAT YOU ARE LOOKING FOR

9 MR BANNISTER THANK YOU, JUDGE

10 MR GIBSON YES, SIR

11 THE COURT ALL RIGHT THANK YOU, SIR

12 (WITNESS STEPS DOWN AT 11 05 A M)

13 MS STROM THANK YOU, YOUR HONOR

14 THE COURT LET'S TAKE ABOUT A 15-MINUTE BREAK WE'LL
15 START BACK AT 11 20 THE STATE HAS ONE MORE WITNESS?

16 MS STROM YES, SIR

17 THE COURT OKAY

18 (A RECESS WAS TAKEN FROM 11 05 TO 11 20 A M)

19 THE COURT STATE, CALL YOUR NEXT WITNESS

20 MS STROM THANK YOU, YOUR HONOR THE STATE CALLS
21 BOBBIE GODWIN

22 BOBBIE SUE GODWIN, HAVING BEEN
23 DULY SWORN, TESTIFIED AS FOLLOWS

24 DIRECT EXAMINATION BY MS STROM

25 Q MS GODWIN, I KNOW THIS IS A RIDICULOUS QUESTION, BUT BY

BOBBIE SUE GODWIN -- DIRECT BY MS STROM

1 WHOM ARE YOU EMPLOYED?

2 A THE THIRTEENTH JUDICIAL CIRCUIT SOLICITOR'S OFFICE

3 Q AND IN WHAT CAPACITY DO YOU WORK FOR US?

4 A I AM PROGRAM MANAGER FOR THE DRUG COURT PROGRAM, ADULT
5 DRUG COURT PROGRAM

6 Q THE ADULT DRUG COURT PROGRAM AND IF YOU WOULD, JUST --

7 MS STROM WELL, YOUR HONOR, I WAS GOING TO HAVE MS
8 GODWIN GO THROUGH JUST BASICALLY WHAT DRUG COURT IS, BUT YOU
9 ARE SO FAMILIAR WITH THE DRUG COURT, I DON'T THINK WE NEED
10 THAT, UNLESS YOU THINK I NEED SOMETHING IN THE RECORD

11 THE COURT I THINK PROBABLY JUST A BRIEF OVERVIEW FOR
12 THE RECORD

13 Q MS GODWIN, IF YOU WOULD, PLEASE TELL US BRIEFLY ABOUT
14 THE DRUG COURT PROGRAM

15 A THE DRUG COURT PROGRAM WAS STARTED IN THIS OFFICE IN
16 NOVEMBER 1998 IT IS A DIVERSIONARY PROGRAM WHERE CLIENTS
17 WHOSE CRIMINAL ACTIVITY IS DRUG-DRIVEN OR DRUG-RELATED --
18 THERE ARE CHARGES THEY PLEAD GUILTY TO THOSE CHARGES THEY
19 ARE ALLOWED TO COME INTO THE DRUG COURT PROGRAM, WHICH IS A
20 DIVERSION THEY ARE UNDER AN ACTIVE SENTENCE, BUT THEIR
21 SENTENCE IS SUSPENDED UPON THEIR SUCCESSFUL COMPLETION OF
22 DRUG COURT THEIR SENTENCE IS SUSPENDED INTO DRUG COURT
23 AND UPON THEIR SUCCESSFUL COMPLETION OF THAT PROGRAM, THE
24 SENTENCE IS SATISFIED

25 Q AND THIS IS A VOLUNTARY -- IT'S A VOLUNTARY PROGRAM FOR

1 THEM? IN OTHER WORDS, THEY VOLUNTEER, THE PARTICIPANTS
2 VOLUNTEER, TO COME INTO THIS PROGRAM?

3 A YES

4 Q AND THEY ACTUALLY PLEAD GUILTY TO THEIR CHARGES AND ARE
5 GIVEN A SENTENCE?

6 A YES

7 Q ALL RIGHT AND AS YOU SAID, THAT SENTENCE IS EITHER
8 SUSPENDED OR DEFERRED WHILE THEY ARE IN THE DRUG COURT
9 PROGRAM AND ULTIMATELY THEY ARE EITHER TERMINATED FROM THE
10 PROGRAM OR THEY GRADUATE FROM THE PROGRAM?

11 A THEY ARE EITHER TERMINATED UNSUCCESSFULLY FROM THE
12 PROGRAM OR THEY GRADUATE SUCCESSFULLY, YES

13 Q AND IF THEY ARE TERMINATED, THEN THEY GO BACK BEFORE THE
14 JUDGE TO DETERMINE WHAT SENTENCE -- IF HE IMPOSES THE FULL
15 SENTENCE OR HE COULD MODIFY THE SENTENCE AT THAT TIME, RIGHT?

16 A (INDICATES AFFIRMATIVE RESPONSE)

17 Q AND IF THEY SUCCESSFULLY---

18 THE COURT IF YOU COULD, ANSWER YES OR NO

19 A YES

20 Q AND IF YOU SUCCESSFULLY COMPLETE THE PROGRAM, YOUR
21 SENTENCE HAS BEEN SATISFIED BY THE COMPLETION, THE SUCCESSFUL
22 COMPLETION OF THE PROGRAM?

23 A THAT IS CORRECT

24 Q AND TELL US A LITTLE BIT ABOUT THE PROGRAM IN TERMS OF
25 ITS LENGTH AND THE DIFFERENT PHASES

BOBBIE SUE GODWIN -- DIRECT BY MS STROM

1 A THE PROGRAM IS A MINIMUM OF EIGHTEEN MONTHS
2 PARTICIPATION, AND IT IS DIVIDED INTO FOUR SEPARATE PHASES
3 THE FIRST THREE PHASES ARE A MINIMUM OF FOUR MONTHS OR 16
4 WEEKS THE LAST PHASE, PHASE FOUR, IS A MINIMUM OF 26 WEEKS
5 OR SIX MONTHS THE FIRST THREE PHASES OF THE PROGRAM ARE
6 ACTUALLY DESIGNED AS OUT-PATIENT COUNSELING TREATMENT FOR THE
7 TREATMENT OF ALCOHOL AND DRUG DEPENDENCY PROBLEMS THE LAST
8 PHASE IS MORE OF A, FOR LACK OF A BETTER WORD, I WOULD SAY
9 PROBATIONARY PERIOD, WHERE WE REALLY HOPE WE GET TO SEE HOW
10 THE TREATMENT WORKS THEY STILL REPORT TO US FOR CASE
11 MANAGEMENT IN PHASE FOUR THEY STILL REPORT FOR GROUP BUT
12 IT'S SO LIMITED, THEIR EXPOSURE HERE, THEY ONLY COME TO COURT
13 IN PHASE FOUR ONCE A MONTH BUT THEY ARE ROUTINELY STILL
14 DRUG SCREENED, AND WE HAVE -- WE'RE MONITORING THEM IN FOUR
15 BASICALLY TO SEE HOW WELL THEIR TREATMENT SUCCESS IS AFTER
16 COMPLETING THE FIRST THREE PHASES

17 Q SO PHASE FOUR -- OR AS YOU GRADUATE FROM PHASE ONE, TO
18 PHASE TWO, TO PHASE THREE AND THEN ULTIMATELY TO PHASE FOUR,
19 YOU ARE GIVEN A LITTLE BIT MORE LEEWAY?

20 A YES

21 Q IT'S LESS RESTRICTIVE?

22 A THAT IS CORRECT THE PROGRAM IS DESIGNED WHERE IN PHASE
23 ONE THEY ATTEND GROUP THREE NIGHTS A WEEK, COURT ONCE A WEEK,
24 CASE MANAGEMENT ONCE A MONTH THEY ARE REQUIRED TO ATTEND
25 TWELVE-STEP MEETINGS THREE TIMES A WEEK, EVERY FRIDAY,

BOBBIE SUE GODWIN -- DIRECT BY MS STROM

1 SATURDAY, SUNDAY SO WHEN THEY FIRST COME INTO THE PROGRAM
2 IN PHASE ONE, SEVEN DAYS A WEEK THEY ARE OCCUPIED FILLING
3 REQUIREMENTS OF DRUG COURT

4 IF THEY SUCCESSFULLY COMPLETE PHASE ONE, WE MOVE THEM
5 INTO PHASE TWO, WHERE THEY THEN COME TO GROUP TWO NIGHTS A
6 WEEK, COURT EVERY OTHER WEEK THEY STILL TO CASE MANAGEMENT
7 ONCE A MONTH THEY STILL HAVE TO ATTEND THREE AA/NA MEETINGS
8 EVERY WEEK

9 IN PHASE THREE, SHOULD THEY COMPLETE PHASE TWO
10 SUCCESSFULLY, THEY THEN ARE GIVEN -- MOVED INTO PHASE THREE
11 NOW THEY COME TO GROUP ONE NIGHT A WEEK, COURT EVERY OTHER
12 WEEK, CASE MANAGEMENT ONCE A MONTH, ROUTINELY DRUG SCREENED,
13 AND, OF COURSE, THEIR AA AND NA CONTINUES TO BE THEY HAVE TO
14 ATTEND AT LEAST THREE OF THOSE MEETINGS THE WHOLE TIME THEY
15 ARE IN THE PROGRAM REGARDLESS OF THE PHASE

16 Q OKAY AND THEN YOU SAID PHASE FOUR WAS MORE OF A PERIOD
17 TO SEE HOW THE TREATMENT WORKED AND IF IT HAS BEEN
18 SUCCESSFUL?

19 A CORRECT

20 Q AS PART OF YOUR DUTIES AS HEAD OF THE DRUG COURT PROGRAM
21 YOU HAVE OBVIOUSLY BEEN INVOLVED IN TERMINATION HEARINGS
22 PRIOR TO THIS?

23 A YES

24 Q AS A PREPARATION FOR THOSE HEARINGS DO YOU OFTEN PREPARE
25 SUMMARIES FOR THE COURT TO INFORM THE COURT AS TO YOUR BASIS

BOBBIE SUE GODWIN -- DIRECT BY MS STROM

1 FOR RECOMMENDING TERMINATION IN PARTICULAR CASES?

2 A YES, I DO

3 Q AND SPECIFICALLY DID YOU RECOMMEND TERMINATION IN THE
4 CASE OF CEDRIC PERKINS? HAVE YOU RECOMMENDED TO THE COURT
5 THAT CEDRIC PERKINS BE TERMINATED?

6 A WE HAVE AS A STAFF RECOMMENDED TERMINATION

7 Q SO IT'S NOT YOUR DECISION ALONE TO RECOMMEND TO THE
8 COURT TERMINATION, YOU STAFF THIS WITH OTHER COUNSELORS?

9 A CORRECT YES, MA'AM

10 Q AND WOULD YOU PLEASE TELL THE COURT THE DIFFERENT
11 VIOLATIONS, IF THERE ARE ANY, AND THE REASONS FOR YOUR
12 RECOMMENDATION AND YOUR STAFF'S RECOMMENDATION FOR
13 TERMINATION?

14 A WE REALLY BASE OUR TERMINATION ON FOUR BASIC FACTORS
15 WE LOOK AT HOW MANY RULES HAVE BEEN VIOLATED, THE LENGTH OF
16 TIME THE PERSON HAS BEEN IN THE PROGRAM, SPECIFICALLY, HOW
17 MUCH PROGRESS DID THEY MAKE IN THAT LENGTH OF TIME OR, YOU
18 KNOW, WAS MOST OF THAT TIME SPENT IN PHASE ONE A THIRD
19 THING WE LOOK AT IS THE TYPE OF INTERVENTIONS WE HAVE USED AS
20 A STAFF TO HELP THIS PROGRAM -- HELP THE PERSON GET RECOVERY
21 AND I THINK THE LAST THING THAT WE ALSO LOOK AT WOULD BE THE
22 PERSON'S OVERALL WILLINGNESS, ATTITUDE WE CALL THAT, IN
23 RECOVERY, PARTICIPATING IN THEIR OWN RECOVERY YOU KNOW, IF
24 WE'RE WORKING HARDER THAN THEY ARE, OBVIOUSLY THEY DON'T WANT
25 RECOVERY SO WE LOOK AT THOSE FOUR FACTORS, BASICALLY

1 Q TELL ME, IF YOU WOULD, WHAT ARE SOME OF THE
2 REQUIREMENTS I KNOW WE TALKED ABOUT THE REQUIREMENTS OF
3 COMING TO DRUG COURT, COMING TO COUNSELING, GOING TO NA
4 MEETINGS, BUT WHAT OTHER TYPES OF INSTANCES ARE THE
5 PARTICIPANTS WARNED ABOUT? WHAT ARE THEY TOLD IN TERMS OF
6 THEIR OWN RECOVERY AND HOW BEST TO COMPLETE THAT RECOVERY?

7 A THERE ARE SOME BASIC GUIDELINES THAT THEY ARE GIVEN IN
8 PHASE ONE REPEATEDLY, AND THEY WILL ALSO BE GIVEN THOSE
9 GUIDELINES REPEATEDLY IN PHASES TWO AND THREE AND THOSE
10 THINGS ARE VERY BASIC KNOWLEDGE OF WHAT ANYONE WHO IS TRAINED
11 IN ADDICTION KNOWS THEY ARE TOLD TO STAY AWAY FROM PEOPLE
12 WHO USE, DRUG USING ENVIRONMENT IF YOU'RE GOING TO TAKE
13 CARE OF YOUR OWN RECOVERY, YOU HAVE TO MAKE SURE IT'S YOUR
14 RESPONSIBILITY IS ANOTHER THING THAT WE TEACH THEM AND, OF
15 COURSE, YOU KNOW, WE ENCOURAGE THEM TO BE HONEST, CHANGE --
16 YOU HAVE TO CHANGE YOUR OLD WAY OF DOING THINGS, AND IT IS
17 CERTAINLY WHO YOU ARE HANGING OUT TOWARD

18 Q SPECIFICALLY AS TO CEDRIC PERKINS, IF YOU WOULD, PLEASE
19 INFORM THIS COURT THE BASIS FOR YOUR RECOMMENDING AND YOUR
20 STAFF'S RECOMMENDING TERMINATION

21 A I CAN READ THE SUMMARY

22 Q DID YOU PREPARE A SUMMARY?

23 A YES, I DID

24 Q OKAY

25 A CEDRIC PERKINS ENTERED DRUG COURT ON SEPTEMBER THE 13TH,

BOBBIE SUE GODWIN -- DIRECT BY MS STROM

1 2002 ON SEPTEMBER THE 16TH---

2 MR GIBSON OBJECTION, YOUR HONOR YOUR HONOR, I
3 OBJECT TO -- I THINK WHAT SHE IS ABOUT TO READ IS REGARDING A
4 DRUG TEST I OBJECT ON THE GROUNDS THAT THERE IS NO
5 FOUNDATION BEEN MADE FOR ANY RESULTS FROM ANY DRUG TESTS SO
6 TO THE EXTENT THERE IS ANY CONSIDERATION OF THAT, IT IS MY
7 POSITION THAT IS SHOULD BE INADMISSIBLE FOR THIS PROCEEDING

8 MS STROM YOUR HONOR, TO SAY THAT I HAVE TO PRODUCE A
9 FOUNDATION ON EVERY HEARING WHERE WE ARE GOING TO TERMINATE A
10 DRUG CASE IS HOLDING ME DIFFERENT IN THIS CASE THAN IN ANY
11 OTHER CASE IN ALL OTHER CASES INVOLVING TERMINATION, THIS
12 COURT HAS NEVER REQUIRED US TO GO THROUGH AND PRODUCE THE
13 CHAIN OF CUSTODY AND THE FOUNDATION AND THE TESTING
14 PROCEDURES THAT WERE USED I THINK TO REQUIRE THAT IN THIS
15 CASE IS INAPPROPRIATE SINCE IT'S NOT BEEN REQUIRED BEFORE AND
16 WE COULDN'T POSSIBLY DO THIS IN EVERY CASE IN EVERY
17 TERMINATION THESE PARTICIPANTS VOLUNTEER TO COME INTO THIS
18 PROGRAM, AND THEY VOLUNTEER TO COME INTO THIS PROGRAM UNDER
19 OUR TERMS TO SAY THAT ANY TIME WE HAVE A TERMINATION
20 HEARING WE'RE GOING TO HAVE TO GO THROUGH AND SET FORTH ALL
21 OF THESE THINGS, I THINK, IS AN UNREALISTIC BURDEN ON THE
22 STATE

23 MR GIBSON YOUR HONOR, I CAN'T COMMENT AS TO WHAT WAS
24 DONE BEFORE BUT THE EVIDENTIARY RULES REQUIRE A FOUNDATION
25 TO BE LAID BEFORE A TEST RESULT CAN BE ADMITTED IF THEY'RE

1 NOT -- IF THERE IS NO FOUNDATION, IT'S MY POSITION THAT THOSE
2 TEST RESULTS SHOULD NOT BE ADMITTED AND SHOULD NOT BE
3 CONSIDERED BY THIS COURT

4 THE COURT WHY IS IT NOT A REQUIREMENT FOR THE STATE
5 TO PRODUCE THE BASIS OF SUCH ITEMS THAT THEY ARE RELYING
6 UPON? AND GRANTED, IT'S NOT BEEN DONE IN THE PAST, AND I
7 DON'T THAT THAT'S EVER BEEN RAISED AS AN ISSUE

8 MS STROM WELL, YOUR HONOR, FIRST OF ALL --

9 MS GODWIN, IF I MAY SEE A CONTRACT THAT'S SIGNED BY
10 THESE INDIVIDUALS

11 IT'S GOING TO TAKE JUST A MOMENT, YOUR HONOR

12 THE COURT THAT'S FINE

13 MR ARMSTRONG YOUR HONOR, IN ANTICIPATION, I WOULD
14 JOIN IN MR GIBSON'S MOTION HERE ONE THING THAT CONCERNS
15 THE DEFENSE COLLECTIVELY, AND IN PARTICULAR MY CLIENT, DANE
16 JANELLI, THERE WAS A CONTRACT BETWEEN THE DRUG COURT PROGRAM
17 AND MR JANELLI, WHICH WE'LL GET INTO, I'M SURE, FURTHER
18 BUT IN PARAGRAPH SEVEN IT STATES, AS FAR AS WAIVERS AND
19 AGREEMENTS, "I UNDERSTAND AND AGREE TO SUBMIT TO RANDOM DRUG
20 TESTING AT THE REQUEST OF THE TREATMENT PROVIDER, DRUG COURT
21 CASE MANAGER, THE JUDGE OR ANY OTHER STAFF INVOLVED IN THE
22 PROCESS OF MY TREATMENT PROGRAM " KEY POINT, YOUR HONOR, IS
23 THIS, DRUG TESTS INCLUDE URINE, BLOOD, HAIR ANALYSIS AND
24 BREATHALYZER IT DOES NOT INCLUDE ANY SWEAT PATCH TESTING,
25 ANY SWEAT ANALYSIS OR ANYTHING

MATTERS AND MOTIONS

1 SO FOR THE STATE TO TRY AND TERMINATE ON THESE PATCH
2 TESTS, THE SWEAT TESTS, IN ADDITION TO THE PROBLEMS WHICH
3 HAVE BEEN VENTED HERE FOR THE LAST DAY OR TWO, THERE IS A
4 FUNDAMENTAL CONTRACTUAL BREECH OF THESE PARTICIPANTS ENTRANCE
5 INTO THIS PROGRAM THAT THE STATE HAS CHANGED THE RULES ON
6 THEM WITHOUT ANY AMENDMENT AND AS A CONSEQUENCE, WE WOULD
7 SUBMIT THAT THE COURT CANNOT -- OR THE STATE CANNOT RELY ON
8 ANY PATCH TESTING UNDER ANY CIRCUMSTANCES WHATSOEVER BASED ON
9 THE CONTRACTUAL AGREEMENT FOR THEIR ENROLLMENT IN THE
10 PROGRAM

11 **THE COURT** LET'S HEAR FIRST ON MR GIBSON'S ARGUMENT

12 **MS. STROM** FIRST OF ALL, EACH PARTICIPANT SIGNS A
13 CONTRACT, WITH WHICH YOU ARE VERY FAMILIAR, WHICH SAYS,
14 NUMBER ONE, "I EXPRESSLY AGREE TO ACCEPT AND ABIDE BY ALL
15 TERMS AND CONDITIONS OF THE DRUG COURT TREATMENT PROGRAM AS
16 ESTABLISHED BY THE COURT AND TREATMENT PROVIDERS " IT
17 FURTHER STATES IN PARAGRAPH TWO, "I WAIVE ANY AND ALL RIGHTS
18 TO APPEAL I MAY HAVE IN THE EVENT I AM DISMISSED FROM THE
19 DRUG COURT TREATMENT PROGRAM AND UNDERSTAND AND CONSENT TO
20 THE COURT BEING THE SOLE AUTHORITY FOR DETERMINING SUCH
21 DISMISSAL " AND, YOUR HONOR, TO BE TECHNICAL, I WOULD CLAIM
22 THAT THIS HEARING, THEY'RE VIOLATING THEIR CONTRACT BY
23 APPEALING THEIR DECISION AND THE TESTING THAT WE HAVE DONE
24 SO FOR US TO HAVE TO -- THEY HAVE SIGNED -- THIS IS A
25 VOLUNTARY PROGRAM THAT THEY ENTER INTO THEY UNDERSTAND THAT

MATTERS AND MOTIONS

1 IT IS YOUR DETERMINATION AS TO WHETHER THEY SHOULD BE
2 TERMINATED, AND I THINK BY SIGNING THIS THEY HAVE WAIVED
3 THEIR RIGHT TO REQUIRE THE STATE TO MEET THAT BURDEN IN EVERY
4 TERMINATION HEARING

5 THE COURT ALL RIGHT YES, SIR

6 MR. GIBSON YOUR HONOR, OUR RESPONSE TO THAT IS TO
7 THAT EXTENT THIS THING IS VALID, IT SAYS, "I CONSENT TO THE
8 COURT BEING THE SOLE AUTHORITY " THAT'S NOT -- YOU KNOW,
9 THAT'S NOT MS. GODWIN THAT'S NOT MS STROM IN MY READING,
10 THAT'S YOU ANY OTHER READING OF THAT IS BASICALLY THAT
11 YOU'RE NOT NECESSARY FOR THIS PROGRAM AND YOU SHOULDN'T EVEN
12 BE HERE, AND BASICALLY IT SHOULD BE A PROGRAM THAT SHOULD
13 JUST BE RUN BY THE SOLICITOR'S OFFICE YOU SHOULD BE DOING
14 OTHER THINGS AND WHEN THEY WANT TO TERMINATE SOMEBODY, THEY
15 SHOULD BE ABLE TO TERMINATE THEM BASICALLY WITHOUT ANY
16 PROCEDURAL RIGHTS WHATSOEVER

17 NOW, LIKE I SAID, YOUR HONOR, I CAN'T TESTIFY OR I CAN'T
18 DISCUSS WHAT HAS HAPPENED IN THE PAST BUT IF THESE PEOPLE
19 -- IF THEY'RE CLAIMING THAT THEY DID SOMETHING WRONG IN THE
20 PROGRAM, THEN THE BURDEN RESTS WITH THEM AND PART OF THAT
21 BURDEN IS TO LAY A PROPER FOUNDATION FOR ANY TEST THAT THEY
22 ARE GOING TO RELY ON IF THEY'RE NOT, YOU KNOW -- IF THEY
23 HAVEN'T LAID A FOUNDATION, THEY SHOULD NOT BE ABLE TO RELY ON
24 TESTS IT GOES TO THE VERY CREDIBILITY AND LEGITIMACY OF THE
25 TEST THAT THEY ARE TRYING TO RELY UPON

MATTERS AND MOTIONS

1 THE COURT ALL RIGHT HERE'S WHAT I'M GOING TO DO
2 I'M GOING TO TAKE THE MOTION UNDER ADVISEMENT WE'RE GOING
3 TO GO AHEAD AND BUILD THE RECORD AT THIS POINT SUBJECT TO
4 YOUR OBJECTION I'M GOING TO ALLOW BOTH OF YOU DURING THE
5 LUNCH BREAK TO ADDRESS THAT ISSUE, THEN WE'LL ADDRESS IT BACK
6 IN CHAMBERS BEFORE COMMENCEMENT AFTER LUNCH BECAUSE I DON'T
7 KNOW THE BASIS OF THE DRUG COURT TEAM'S RECOMMENDATION IT
8 MAY OR MAY NOT BE DIRECTLY RELATED TO POSITIVE SCREENS OR ANY
9 NUMBER OF OTHER ITEMS

10 AND I ALSO WANT AFTER THE LUNCH BREAK FOR THE STATE'S
11 POSITION ON, IN LIGHT OF THE CONTRACT, WHETHER OR NOT THE
12 DRUG PATCH IS AN APPROPRIATE TESTING DEVICE OR IS IT THE
13 INHERENT AUTHORITY OF THE COURT TO USE ANY TYPE OF TESTING
14 DEVICE OKAY SO

15 MS STROM AND I JUST WANT TO PUT ON THE RECORD, AS WE
16 HAVE ALREADY STATED, IN TERMS OF THE CONTRACTS THAT THESE
17 INDIVIDUALS SIGNED, IT WAS DONE PRIOR TO OUR BEGINNING THE
18 USE OF THE SWEAT PATCH THEY OBVIOUSLY SIGNED EVERY TIME --
19 THEY SIGN A DOCUMENT EVERY TIME ONE IS APPLIED, AND I WOULD
20 SUBMIT THAT IF THEY HAD A PROBLEM, IF THEY DIDN'T FEEL THAT
21 WAS PART OF THEIR -- ONE OF THEIR REQUIREMENTS, THEY SHOULD
22 HAVE RAISED THAT AT THAT TIME

23 THE COURT I UNDERSTAND AND WAIVER TO THE EXTENT THE
24 TENETS AND THE CONCEPTS OF CONTRACTS PLAY INTO THIS OR ANY
25 WAIVER IS A VIABLE DEFENSE

1 SO, IN OTHER WORDS, FOR THE RECORD, I'M GOING TO ALLOW
2 THE CONTINUATION OF THE BASIS FROM THE DRUG COURT TEAM'S
3 RECOMMENDATION, AND THEN WE WILL ADDRESS THE ITEMS AFTER
4 LUNCH ONCE BOTH SIDES HAVE AN OPPORTUNITY TO THOROUGHLY
5 ARTICULATE THE REASONS THEREFORE, AND WE WILL PROCEED AT THAT
6 POINT

7 MS. STROM THANK YOU

8 DIRECT EXAMINATION CONTINUES BY MS. STROM

9 Q MS GODWIN, IF YOU WOULD, CONTINUE YOU SAID THAT
10 CEDRIC PERKINS ENTERED THE DRUG COURT PROGRAM ON SEPTEMBER
11 THE 13TH OF 2002?

12 A THAT IS CORRECT THIS IS CONSIDERED A DRUG COURT
13 PARTICIPANT -- THIS IS A RECORD OF HIS PARTICIPATION IN DRUG
14 COURT ON SEPTEMBER THE 16TH THERE WAS A POSITIVE COCAINE
15 DRUG SCREEN HE ADMITTED TO USING COCAINE, AND HE WAS
16 SANCTIONED WITH TWO WEEKENDS IN JAIL

17 Q DO YOU RECALL WHAT TYPE OF DRUG SCREEN THAT WAS?

18 A IT WAS A URINE SCREEN

19 ON OCTOBER THE 24TH, HE MISSED A DRUG SCREEN, WHICH HE
20 WAS SUPPOSED TO REPORT ON THE 18TH HE WAS ALSO LATE IN
21 COMPLETING A HOMEWORK ASSIGNMENT, AND HE WAS GIVEN TWO HOURS
22 COMMUNITY SERVICE WORK AND A WEEKEND IN THE JAIL FOR A MISSED
23 SCREEN

24 Q WHAT DO YOU CONSIDER A "MISSED SCREEN"? WHAT DOES THAT
25 MEAN?

BOBBIE SUE GODWIN -- DIRECT CONTINUES BY MS STROM

1 A IF THEIR NAME IS ON THE DRUG SCREEN LIST AND THEY FAIL
2 TO REPORT THAT DAY FOR A SCREEN, THAT IS A MISSED SCREEN AND
3 WE CONSIDER THAT A POSITIVE SCREEN WE HAVE NO WAY OF
4 PROVING THAT THEY WERE NEGATIVE THEY UNDERSTAND THEY HAVE
5 TO REPORT FOR THEIR DRUG SCREENS WHEN THEIR NAME IS ON THE
6 LIST

7 Q SO WHEN SOMEONE -- HOW WOULD SOMEONE KNOW THAT THEIR
8 NAME IS ON THE LIST?

9 A THEY ARE GIVEN A NUMBER TO CALL, WHICH IS A DRUG SCREEN
10 LINE, AND THE LIST IS PUT ON THAT DRUG SCREEN LINE EVERY DAY

11 Q AND THEY ARE INSTRUCTED TO CALL THAT DRUG SCREEN LINE?

12 A YES

13 Q AND IF THEIR NAME COMES UP, THEN THEY ARE TO REPORT TO
14 HAVE A DRUG SCREEN?

15 A THAT IS CORRECT

16 Q AND IF THAT PERSON MISSES A DRUG SCREEN, YOU CONSIDER
17 THAT A VIOLATION---

18 A IT'S A VIOLATION OF RULES

19 Q PLEASE CONTINUE

20 A DECEMBER 12TH, THE CLIENT WAS LATE IN PROVIDING HIS AA
21 AND NA TWELVE STEP GROUP ATTENDANCE VERIFICATION AGAIN,
22 SANCTIONED WITH COMMUNITY SERVICE WORK

23 Q WHAT DOES THAT MEAN EXACTLY, "HE WAS LATE IN PROVIDING
24 IT"?

25 A ONE OF -- ANOTHER ONE OF THE RULES OF THE PROGRAM IS

1 THEY ARE SUPPOSED TO TURN IN THEIR AA/NA TWELVE STEP
2 VERIFICATION ATTENDANCE TO THE COUNSELOR, THEIR GROUP
3 COUNSELOR ON MONDAY, BECAUSE THEY DO THIS OVER THE WEEKEND
4 IF THEY DON'T BRING THAT, WE HAVE NO WAY OF VERIFYING IT'S
5 A PIECE OF PAPER WHERE IT SHOWS WHAT MEETING THEY ATTENDED,
6 WHAT TIME THEY ATTENDED IT, AND A CHAIRPERSON AT THAT MEETING
7 SIGNS THAT THEY DID IN FACT GO THERE SO WHEN THEY DON'T
8 BRING US THAT, WE HAVE NO WAY OF KNOWING DID THEY IN FACT
9 ADHERE TO THE GUIDELINES OF THE RULES OF GOING TO A TWELVE
10 STEP PROGRAM

11 Q OKAY

12 A ON DECEMBER THE 19TH, THE CLIENT WAS LATE FOR COURT AND
13 HE WAS SANCTIONED AGAIN WITH COMMUNITY SERVICE WORK ON
14 JANUARY THE 9TH HE FALSELY DOCUMENTED A TWELVE STEP
15 VERIFICATION AND WAS GIVEN TEN HOURS OF COMMUNITY SERVICE AS
16 A SANCTION

17 ON JANUARY THE 16TH WE DID RECEIVE A POSITIVE COCAINE
18 RESULT FOR A PATCH THAT HAD BEEN WORN OVER THE HOLIDAYS HE
19 ALSO MISSED A DRUG SCREEN I'M SUMMARIZING THERE BUT HE
20 HAD MISSED A DRUG SCREEN, WAS LATE FOR COURT, LATE FOR GROUP
21 HE DENIED USING DRUGS, AND HE WAS SANCTIONED FOR ALL OF
22 THOSE VIOLATIONS HE WAS GIVEN A TOTAL OF THIRTY DAYS'
23 INCARCERATION

24 Q OKAY

25 A ON FEBRUARY 20TH, THAT WAS HIS FIRST WEEK BACK FROM THE

BOBBIE SUE GODWIN -- DIRECT CONTINUES BY MS STROM

1 SANCTION, HE WAS AGAIN LATE FOR COURT HE WAS GIVEN FIVE
2 HOURS COMMUNITY SERVICE WORK AS A SANCTION

3 ON FEBRUARY THE 24TH, HE MISSED HIS CASE MANAGEMENT
4 APPOINTMENT HE HAD NOT MADE ANY FEE PAYMENTS AND HE HAD
5 FAILED TO FOLLOW THROUGH WITH THE SANCTION WE HAD GIVEN HIM
6 FOR COMMUNITY SERVICE WORK HE WAS SANCTIONED FOR THAT WITH
7 A WEEKEND IN JAIL

8 ON MARCH THE 7TH, HE HAD A THIRD POSITIVE SCREEN FOR
9 COCAINE HE TOLD ME THAT HE HAD USED COCAINE AND THAT THE
10 NEXT PATCH WOULD PROBABLY ALSO COME IN AS POSITIVE

11 ON MARCH THE 12TH, THE STAFF DECISION WAS MADE TO SEND
12 THE CLIENT TO AN IN-PATIENT TREATMENT FACILITY

13 ON APRIL THE 15TH, AFTER HE HAD COMPLETED ONE WEEK AT
14 THE IN-PATIENT FACILITY, FAITH HOME, HE WAS DISCHARGED FOR
15 MULTIPLE RULE VIOLATIONS FROM FAITH HOME NORMALLY, THE
16 STAFF -- IF A CLIENT DOES NOT FOLLOW THROUGH WITH A REFERRAL,
17 THAT COULD ACTUALLY BE GROUNDS FOR TERMINATION

18 SO WE LOOKED AT THAT VERY LONG AND HARD, AND WE DID
19 AGREE AS A STAFF HE WAS GIVEN ANOTHER OPPORTUNITY TO STAY
20 IN THE PROGRAM AND TO RECEIVE IN-PATIENT TREATMENT AT
21 HOLMESVIEW CEDRIC DID NOT WANT TO COMPLETE IN-PATIENT AT
22 THAT TIME HE WAS ENCOURAGED BY STAFF TO DO THAT, AND HE WAS
23 TOLD THAT IF HE DID NOT GO TO HOLMESVIEW, YOU KNOW, WE WERE
24 OFFERING THAT OPPORTUNITY, YOU KNOW, THAT HE WAS REFUSING TO
25 GO TO IN-PATIENT WE HAD NOT MADE THAT A MANDATE BECAUSE HE

BOBBIE SUE GODWIN -- DIRECT CONTINUES BY MS STROM

1 WAS VERY MUCH BEHIND IN HIS CHILD SUPPORT PAYMENTS AND AT
2 TIME TOO, WE LOOKED AT THAT, THAT HE NEEDED TO -- HE SAID HE
3 ALREADY HAD SOME CLEAN TIME, WHICH WE HAD BEEN -- YOU KNOW,
4 WE VERIFIED FIVE WEEKS ABSTINENCE, THAT HE COULD POSSIBLY
5 COME BACK AND START OUT-PATIENT AND THAT WAY GET A JOB AND
6 NOT BE FURTHER BEHIND AND FURTHER STRESSED BY GETTING BEHIND
7 IN THESE CHILD SUPPORT PAYMENTS

8 HE WAS RETURNED TO A PHASE ONE STATUS ON MAY THE 22ND
9 HE FAILED AGAIN TO ATTEND HIS TWELVE STEP MEETING HE MISSED
10 A CASE MANAGEMENT APPOINTMENT HE WAS AGAIN GIVEN 25 HOURS
11 COMMUNITY SERVICE WORK

12 ON JUNE THE 6TH, HIS PATCH THAT WAS WORN FROM MAY 16TH
13 TO JUNE 3RD WAS POSITIVE FOR COCAINE AND HE WAS AGAIN
14 SANCTIONED WITH INCARCERATION AFTER REVIEWING HIS CASE,
15 THIS TIME WE DIDN'T GIVE HIM AN OPTION WE ACTUALLY MADE
16 THAT A MANDATED REFERRAL THAT HE HAD TO COMPLETE HOLMESVIEW
17 IN-PATIENT TREATMENT

18 Q LET ME ASK YOU ABOUT THAT PATCH WORN MAY 16TH TO JUNE
19 3RD THAT WAS POSITIVE FOR COCAINE DID HE ADMIT TO USING
20 DURING THAT TIME?

21 A NOT AT FIRST, BUT LATER, YES

22 Q LATER HE DID

23 A ON AUGUST THE 18TH, HE ENTERED HOLMESVIEW ON SEPTEMBER
24 THE 15TH, HE WAS RELEASED FROM HOLMESVIEW AND RETURNED TO
25 PHASE ONE

BOBBIE SUE GODWIN -- DIRECT CONTINUES BY MS STROM

1 ON SEPTEMBER THE 16TH HE MET WITH THE CASE MANAGER,
2 DISCUSSED HIS NEED TO PAY HIS INDICTMENT FEES THAT HE HAD NOT
3 PAID, TO GET A JOB DRUG COURT DID WRITE A LETTER TO HIM TO
4 FAMILY COURT EXPLAINING TO THEM WHY, YOU KNOW, HE HAD BEEN
5 SENT, INCARCERATED AS SANCTIONS AND THEREFORE WAS BEHIND ON
6 HIS CHILD SUPPORT SO, YOU KNOW, WE WERE HOPING THAT THEY
7 WOULD NOT FURTHER PUNISH HIM AND UNDERSTAND THAT, YOU KNOW,
8 WE WERE HOPING THAT HE COULD COME BACK INTO DRUG COURT IN
9 PHASE ONE AND CONTINUE IN PARTICIPATION

10 ON SEPTEMBER THE 22ND, HE MISSED HIS SATURDAY DRUG
11 SCREEN HE SAID THAT, YOU KNOW, HE DIDN'T REALIZE HE WAS
12 SUPPOSED TO DO THAT BUT WE HAD ACTUALLY REMINDED HIM NOT
13 JUST IN GROUP THAT WEEK BUT IT WAS ALSO ON THE DRUG SCREEN
14 LINE THAT DON'T FORGET TO CALL THE DRUG SCREEN LINE ON
15 SATURDAY

16 OCTOBER THE 4TH HE WAS GIVEN AN ALCOHOL SWAB TEST ON
17 SATURDAY BY THE WEEKEND CASE MANAGER THIS TEST WAS
18 PERFORMED BY THE WEEKEND CASE MANAGER AND IT WAS ONLY GIVEN
19 FOR ALCOHOL NO OTHER DRUGS WERE TESTED AT THAT TIME

20 Q AND WHAT WAS THE RESULT?

21 A IT WAS NEGATIVE

22 Q OKAY

23 A ON OCTOBER THE 6TH, CEDRIC CALLED ME AND REPORTED THAT
24 HIS PATCH WAS ROLLING UP HE WAS CONCERNED THAT HIS PATCH
25 NEEDED TO BE LOOKED AT, YOU KNOW HE WAS CONCERNED IT MIGHT

1 COME LOOSE I TOLD HIM TO REPORT TO MRW THE FOLLOWING
2 MORNING AND HAVE THAT PATCH EXAMINED BY THE MRW STAFF

3 ON OCTOBER THE 7TH, MRW REPORTED TO ME THAT THEY HAD
4 MADE THE DECISION THAT THIS WAS A TAMPERED PATCH, AND THEY
5 SENT -- I REQUESTED THAT THEY PUT THAT IN WRITING TO ME, AND
6 AT THAT TIME WE DID RECOMMEND INCARCERATION UNTIL WE COULD
7 AGAIN LOOK AT -- REVIEW HIS CASE FULLY

8 ON OCTOBER THE 12TH, WE RECEIVED ANOTHER PATCH RESULT
9 FOR A PATCH THAT HAD BEEN WORN SEPTEMBER 17TH THROUGH THE
10 24TH WAS POSITIVE FOR COCAINE THIS WAS NOT THE TAMPERED
11 PATCH THIS WAS THE PATCH WORN BEFORE THAT ALLEGEDLY
12 TAMPERED PATCH WAS APPLIED THE POSITIVE PATCH WAS THE PATCH
13 THOUGH THAT HE HAD BEEN WEARING WHEN HE DID FAIL TO GO TO THE
14 DRUG SCREEN ON SEPTEMBER 20TH

15 CEDRIC HAS BEEN IN THE PROGRAM FOR 13 MONTHS, AND HE HAS
16 HAD 18 SANCTIONS HE HAS HAD A TOTAL OF SIX POSITIVE
17 SCREENS, TWO MISSED SCREENS ALSO CONSIDERED POSITIVE BY US
18 FOR REASONS I EXPLAINED EARLIER, A TAMPERED SCREEN HE HAD
19 RECEIVED 65 HOURS COMMUNITY SERVICE WORK FOR MULTIPLE
20 VIOLATIONS IN HIS ENTIRE 13 MONTHS IN THE PROGRAM, HE HAD
21 AN INDICTMENT FEE OF \$125 WHICH HE HAD NEVER PAID ON AT ALL
22 HE HAD BEEN REFERRED TO IN-PATIENT TWICE, WAS GIVEN A SECOND
23 CHANCE AFTER BEING DISMISSED FROM FAITH HOME FOR RULE
24 VIOLATIONS

25 DESPITE SEVERAL LENGTHY INCARCERATION SANCTIONS, IN-

BOBBIE SUE GODWIN -- DIRECT CONTINUES BY MS STROM

1 PATIENT TREATMENT AND MONTHS OF GROUP COUNSELING SANCTIONS,
2 HE CONTINUED TO VIOLATE DRUG COURT RULES HIS RECORD OF
3 PARTICIPATION CONSISTENTLY DEMONSTRATES A PERSONAL DISREGARD
4 OF PROGRAM RULES AND TREATMENT INTERVENTIONS IT IS FOR THIS
5 OVERALL LACK OF PARTICIPATION AND NONADHERENCE TO THE RULES
6 THAT THE STAFF RECOMMENDS HIS TERMINATION FROM THE PROGRAM

7 Q I WANT TO GO BACK TO THE PATCH WORN JANUARY 16TH -- OR
8 THE DATE IN YOUR PARTICIPATION RECORD DATE, 1/16/03, AND IT
9 SAYS, "PATCH WORN OVER THE HOLIDAYS RESULTED IN POSITIVE FOR
10 COCAINE CLIENT ALSO MISSED A DRUG SCREEN AND WAS LATE FOR
11 COURT " DID HE ADMIT TO DRUG USE REGARDING THAT DRUG SCREEN?

12 A HE DID AFTER THE SANCTION HE DID LATER HE DID NOT
13 ADMIT IT AT THE TIME, NO

14 Q AND IF SOMEONE HAS A POSITIVE DRUG SCREEN AND ADMITS TO
15 IT, ARE THEY SANCTIONED THE SAME AS SOMEONE WHO HAS A
16 POSITIVE DRUG SCREEN AND DOES NOT ADMIT TO IT?

17 A YES

18 Q SPECIFICALLY AS TO THE OCTOBER THE 6TH, WHICH WAS THE
19 PATCH THAT WAS REMOVED ON OCTOBER 7TH AT MRW, WHAT
20 SPECIFICALLY DID HE TELL YOU REGARDING THE PATCH WHEN HE
21 CALLED YOU?

22 A WHEN CEDRIC CALLED ME, HE JUST INDICATED THAT THE PATCH
23 -- HE WAS AFRAID THAT IT WAS COMING LOOSE

24 Q THAT IT WAS COMING LOOSE DID HE TELL YOU ANY SPECIFIC
25 INSTANCE THAT HAD OCCURRED THAT WOULD HAVE CAUSED IT TO COME

1 LOOSE?

2 A NOT AT THAT TIME

3 Q OKAY DID HE LATER ON?

4 A YES

5 Q WHAT DID HE TELL YOU?

6 A LATER HE SAID THAT HE HAD HELPED HIS MOTHER MOVE
7 FURNITURE AND THE PATCH HAD GOTTEN CAUGHT AND TORN AS A
8 RESULT

9 Q AND HOW LONG AFTER -- WHEN DID THAT OCCUR IN RELATION TO
10 THE PHONE CALL YOU RECEIVED SAYING THAT HE WAS AFRAID
11 SOMETHING WAS WRONG WITH IT?

12 A I THINK THAT WAS THE NEXT DAY I THINK THAT IS ALSO
13 WHAT HE TOLD MRW, AND THEN HE CAME BACK AND SAID THE SAME
14 THING TO ME

15 Q OKAY IF YOU WOULD, PLEASE GO TO YOUR REPORT REGARDING
16 DANE JANELLI

17 A DANE JANELLI ENTERED---

18 MR. ARMSTRONG EXCUSE ME, YOUR HONOR SAME OBJECTION
19 THAT MR GIBSON MADE, ALSO A CONTRACTUAL OBJECTION HERE THE
20 STATE IS GOING TO RELY ON EARLIER PATCHES OF TESTING AND
21 WHATNOT, WE WOULD SUBMIT THAT IT'S MANDATORY FOR THE STATE TO
22 ESTABLISH THAT FOUNDATIONAL BASIS AGAIN, AS PREVIOUSLY
23 STATED

24 THE COURT ALL RIGHT YOU'RE PROTECTED ON THE RECORD

25 Q GO AHEAD, MS GODWIN

BOBBIE SUE GODWIN -- DIRECT CONTINUES BY MS STROM

1 A DANE JANELLI ENTERED DRUG COURT ON AUGUST THE 9TH, 2002
2 HE CAME INTO THE DRUG COURT PROGRAM AND TESTED POSITIVE THAT
3 SAME DAY FOR COCAINE THIS WAS A URINE SCREEN

4 ON AUGUST THE 12TH, HE HAD A SECOND POSITIVE HE WAS
5 SANCTIONED WITH A WEEK IN JAIL

6 ON AUGUST THE 30TH, HE DID NOT SHOW UP FOR A DRUG TEST
7 SEPTEMBER THE 3RD HE TESTED POSITIVE AGAIN FOR SEDATIVES AND
8 PRESENTED A COLD SPECIMEN, WHICH INDICATED HE HAD TRIED TO
9 DILUTE THE URINE SAMPLE

10 Q LET ME ASK YOU THIS, YOU SAY THAT HE TESTED POSITIVE
11 WITH URINALYSIS BUT HAD SUBMITTED A COLD SPECIMEN?

12 A RIGHT

13 Q DID HE ULTIMATELY PRODUCE ANOTHER SPECIMEN?

14 A RIGHT, THAT WAS POSITIVE

15 Q OKAY THE COLD SPECIMEN Y'ALL DID NOT TEST BECAUSE IT
16 WAS COLD?

17 A THAT'S CORRECT

18 Q OKAY YOU HAD HIM GIVE A SECOND SPECIMEN?

19 A TO MY KNOWLEDGE, YES

20 Q OKAY CONTINUE

21 A SEPTEMBER 12TH HE WAS SANCTIONED FOR WHAT I JUST STATED
22 WITH THE POSITIVE SCREEN AND THE ATTEMPT TO DILUTE IT WITH 90
23 DAYS IN JAIL ON DECEMBER THE 9TH HE WAS RELEASED FROM
24 DETENTION INTO PHASE ONE ON JANUARY THE 3RD HE FAILED TO
25 PAY HIS PARTICIPATION FEES AND WAS GIVEN COMMUNITY SERVICE

1 WORK FOR THAT

2 Q HOW MUCH IS THE PARTICIPATION FEE?

3 A TWENTY-FIVE DOLLARS A WEEK

4 Q CONTINUE

5 A ON JANUARY THE 15TH, HIS CHRISTMAS PATCH THAT WAS WORN
6 FROM DECEMBER 19TH THROUGH THE 26TH WAS POSITIVE FOR COCAINE
7 ON JANUARY THE 16TH, HE WAS INCARCERATED FOR THIS POSITIVE
8 SCREEN UNTIL WE COULD GET HIM TO AN IN-PATIENT FACILITY ON
9 FEBRUARY THE 11TH, HE DID ENTER FAITH HOME, AND ON APRIL THE
10 12TH HE WAS RELEASED FROM FAITH HOME AND RETURNED TO PHASE
11 ONE ON MAY THE 22ND WE COMPLETED HIM FROM PHASE ONE OF THE
12 PROGRAM, AND ON JULY THE 7TH, WE RECEIVED THE RESULTS BACK
13 THAT THE PATCH THAT HE HAD WORN FROM JUNE 17TH TO JUNE THE
14 25TH WAS POSITIVE FOR COCAINE

15 IN SUMMARY, DANE HAD BEEN AN ACTIVE PARTICIPANT IN OUR
16 PROGRAM FOR 11 MONTHS HE VIOLATED THE RULES OF THE PROGRAM
17 EIGHT TIMES HIS VIOLATIONS INCLUDED A MISSED DRUG SCREEN,
18 FAILURE TO PAY FEES, TAMPERING WITH/DILUTING A SCREEN, FIVE
19 POSITIVE SCREEN RESULTS WE HAD SANCTIONED FOR HIS
20 VIOLATIONS WITH IN-PATIENT TREATMENT, COMMUNITY SERVICE WORK
21 AND LENGTHY INCARCERATIONS IN ADDITION HE RECEIVED MONTHS
22 OF OUT-PATIENT COUNSELING THROUGH OUR PROGRAM AND OVER A
23 HUNDRED HOURS OF MANDATED SUPPORT GROUP ATTENDANCE BUT WAS
24 NEVER ABLE TO SUSTAIN ABSTINENCE FROM DRUGS LONGER THAN THREE
25 MONTHS OUT OF A STRUCTURED ENVIRONMENT HE CONTINUED TO

BOBBIE SUE GODWIN -- DIRECT CONTINUES BY MS STROM

1 DISREGARD BASIC TREATMENT RECOMMENDATIONS, SUCH AS NO
2 ASSOCIATIONS WITH PEOPLE WHO USE DRUGS

3 IN CONSIDERATION OF HIS OVERALL PARTICIPATION RECORD,
4 STAFF FEELS THAT ALL TREATMENT OPTIONS HAVE BEEN EXHAUSTED
5 AND RECOMMENDS TERMINATION FROM THE PROGRAM

6 Q AND DOES HE HAVE A BALANCE REMAINING ON HIS RESTITUTION
7 AND FEES?

8 A TO MY KNOWLEDGE, I BELIEVE HE DOES, YES

9 Q LET ME GO BACK TO THE POSITIVE DRUGS FOR COCAINE ON
10 AUGUST THE 9TH, 2002, WHEN HE ENTERED THE PROGRAM WHEN THIS
11 SCREEN CAME BACK POSITIVE, DID HE ADMIT TO USING?

12 A AUGUST THE 9TH, I BELIEVE HE DID, BECAUSE HE ACTUALLY
13 CAME INTO THE PROGRAM, SO HE WAS SAYING HE HAD USED BEFORE
14 PLEADING INTO THE PROGRAM

15 Q AND THAT'S NOT UNUSUAL---

16 A NO

17 Q ---FOR PEOPLE TO TEST POSITIVE AT THE BEGINNING OF THE
18 PROGRAM?

19 A NO NOW WE DON'T -- WE HANDLE THAT DIFFERENTLY TODAY,
20 SO I THINK THE WORD IS GETTING OUT NOW WE LOCK PEOPLE UP
21 WHEN THEY PLEAD IN IF THEY HAVE A POSITIVE SCREEN WE SEND
22 THEM TO INCARCERATION WE WERE NOT DOING THAT THEN

23 Q OKAY AND HIS OTHER POSITIVE SCREENS ON AUGUST THE 12TH
24 AND SEPTEMBER THE 3RD, DID HE ADMIT -- DID HE ULTIMATELY
25 ADMIT TO USING?

1 A NOT ORIGINALLY LATER HE DID

2 Q BUT ULTIMATELY HE DID ADMIT DO YOU FIND THAT UNUSUAL
3 IN DEALING WITH DRUG ADDICTED INDIVIDUALS WHEN THEY ARE FACED
4 WITH A POSITIVE DRUG SCREEN?

5 A I DON'T EVER REMEMBER CONFRONTING A CLIENT WITH A
6 POSITIVE DRUG SCREEN AND HAVING THEM ADMIT USING

7 Q AT THE FIRST INSTANCE?

8 A RIGHT

9 Q IT'S ONLY AFTER -- WHAT DO YOU -- WHAT OCCURS?

10 A USUALLY IT'S AFTER THEY HAVE RECEIVED THEIR SANCTION
11 THAT THEY ARE BACK IN GROUP OR THEY COULD BE INCARCERATED AT
12 THE L E C WHILE THEY'RE AT THEIR SANCTION BUT, YOU KNOW,
13 THEY'VE RECEIVED THEIR SANCTION, THEY KNOW WHAT IT'S GOING TO
14 BE AND WHEN THEY'RE RELEASED AND SOMETIMES WHEN I INTERVIEW
15 THEM THERE THEY WILL TELL ME WHAT HAPPENED

16 Q THEIR ADMISSION TO THE DRUG USAGE DOES NOT RELEASE THEM
17 FROM THAT SANCTION, THEY STILL HAVE TO FINISH OUT THEIR
18 SANCTION?

19 A THAT'S CORRECT

20 Q AND THE DRUG SCREEN OF JANUARY THE 15TH, 2003, ARE YOU
21 AWARE HE ULTIMATELY OR EVENTUALLY ADMITTED TO USAGE?

22 A HE DID ADMIT TO USING

23 Q I BELIEVE THAT YOU HAD HIM ENTERING FAITH HOME ON
24 FEBRUARY THE 11TH, 2003?

25 A YES

BOBBIE SUE GODWIN -- DIRECT CONTINUES BY MS STROM

1 Q DO YOU EVER ADMIT SOMEONE INTO IN-PATIENT CARE IF THEY
2 HAVE NOT ADMITTED TO THEIR DRUG USAGE?

3 A NO

4 Q I BELIEVE IN YOUR SUMMARY YOU ALSO STATED THAT HE HAD
5 VIOLATED THE RULES BY ASSOCIATING WITH PEOPLE WHO USE DRUGS
6 IS THAT ONE OF THE REQUIREMENTS OF DRUG COURT, THAT YOU NOT
7 ASSOCIATE WITH PEOPLE WHO USE DRUGS?

8 A YES IT'S ONE OF THE, AS I SAID EARLIER, A BASIC
9 GUIDELINE IN RECOVERY THAT WE EXPECT THEM TO FOLLOW AND
10 ADHERE TO

11 Q THEY ARE SUPPOSED TO REMOVE THEMSELVES NOT ONLY FROM
12 DRUGS BUT FROM PEOPLE WHO USE DRUGS AND FROM PLACES WHERE
13 DRUGS ARE?

14 A YES AND THE REASON FOR THAT IS THAT ANYONE WHO WORKS
15 IN THE FIELD OF ADDICTIONS, YOU CANNOT EXPECT AN ADDICT TO BE
16 IN AN ENVIRONMENT WHERE DRUGS ARE USED AND STAY CLEAN, YOU
17 KNOW ULTIMATELY, THAT'S JUST TOO RISKY FOR THEM SO---

18 Q THE TEMPTATION IS TOO GREAT?

19 A THE TEMPTATION IS TOO GREAT

20 Q IF YOU WOULD, PLEASE GO TO THE PARTICIPATION RECORD OF
21 ANGEL HURKS

22 A ANGELA WAS ADMITTED TO THE PROGRAM ON AUGUST THE 3RD,
23 2002 ON OCTOBER 21ST, SHE WAS SANCTIONED FOR A LATE GROUP
24 ASSIGNMENT, GIVEN TWO HOURS COMMUNITY SERVICE WORK NOVEMBER
25 26TH, SHE SUCCESSFULLY COMPLETED PHASE ONE ON DECEMBER THE

1 DISCUSSION AMONG HER PHASE THREE COUNSELOR AND THE OTHER
2 STAFF MEMBERS ABOUT THAT SHE -- ANGELA JUST DIDN'T SEEM TO BE
3 DOING AS WELL AS SHE HAD DONE IN THE FIRST TWO PHASES OF THE
4 PROGRAM JUNE THE 5TH, SHE FAILED TO PAY HER FEES AS AGREED
5 SHE WAS SANCTIONED WITH COMMUNITY SERVICE WORK JULY THE 3RD,
6 SHE TOLD US SHE HAD A NEW JOB WITH CHURCH'S CHICKEN, THAT SHE
7 POSSIBLY THOUGHT THIS COULD EVEN BE A MANAGEMENT POSITION AND
8 WAS VERY EXCITED ABOUT THAT JOB ON JULY THE 10TH, HER PATCH
9 THAT SHE HAD ON FROM MAY 30TH TO JUNE 20TH WAS POSITIVE FOR
10 COCAINE SHE TOTALLY DENIED USING AND SAID THAT SHE WAS
11 VICTIMIZED BY HER COWORKERS WHO PROBABLY PUT SOMETHING IN HER
12 DRINK SANCTIONED, WE GAVE HER A WEEK INCARCERATION, WHICH
13 IS A REGULAR SANCTION FOR A POSITIVE SCREEN IT WAS HER
14 FIRST POSITIVE SCREEN, AND SHE WAS RETURNED TO PHASE ONE,
15 WHICH IS ALSO A REGULAR SANCTION THAT WE DO FOR EVERYONE,
16 WEEK ONE STATUS ON JULY THE 24TH, SHE CONTINUED TO HAVE A
17 POOR ATTITUDE SHE RESISTED STAFF ENCOURAGEMENT TO MOVE ON
18 TOTALLY UNCOOPERATIVE AND CONTINUED TO RESIST TREATMENT
19 INTERVENTIONS AND COMMUNICATION FROM STAFF ON JULY THE
20 31ST, SHE NOW REPORTED TO US HER JOB WAS OKAY, BUT HER
21 ATTITUDE WAS STILL POOR SHE STILL CONTINUED TO SAY SHE HAD
22 NOT USED COCAINE HER ANGER AND RESENTMENT CONTINUED TO
23 BUILD UP AGAINST STAFF AND SHE INSISTED ON HAVING A HAIR
24 SCREEN TO PROVE HER INNOCENCE SHE WAS NO LONGER SAYING --
25 HER FIRST DEFENSE, OF COURSE, WAS VICTIMIZATION BY COWORKERS

BOBBIE SUE GODWIN -- DIRECT CONTINUES BY MS STROM

1 BUT NOW SHE WAS SAYING THAT THE PATCH HAD TO BE WRONG IT
2 WAS A FAULTY PATCH AGAIN, THAT'S NOT UNUSUAL HER NEGATIVE
3 BEHAVIOR BECAME NOT ONLY DISRUPTIVE TO HER OWN TREATMENT BUT
4 ALSO TO OTHER PARTICIPANTS WITHIN THE GROUP, AND ON AUGUST
5 THE 14TH, ALTHOUGH NOT STANDARD PROCEDURE, WE DID DO A HAIR
6 SCREEN FOR HER IN THE HOPES THAT IT WOULD BENEFIT HER
7 TREATMENT THE HAIR SCREEN RESULTS WERE POSITIVE FOR
8 COCAINE, WHICH WE FELT CONFIRMED THE PATCH RESULTS, BUT SHE
9 CONTINUED TO DENY THAT AND SHE DENIED THE VALIDITY OF THE
10 HAIR SCREEN AS WELL AND ACCUSED STAFF OF BEING AGAINST HER
11 ON AUGUST THE 21ST, SHE GOT A NEW JOB AT THE WAFFLE HOUSE
12 SHE CONTINUED TO STRUGGLE WITH THE ACCEPTANCE OF LOSING HER
13 PHASE THREE STATUS SHE HAD BEEN MOVED FROM PHASE ONE AFTER
14 SHE COMPLETED HER REWORK GOALS IN PHASE ONE WE MOVED HER
15 BACK INTO PHASE TWO, WEEK ONE STATUS WE HOPED THAT THAT
16 WOULD HELP HER TO DEAL -- REALLY FOCUS ON DEALING WITH HER
17 CONTINUED ANGER AND RESENTMENT AND ALTHOUGH SHE HAD MOVED
18 UP IN THE PROGRAM, SHE STILL REMAINED FOCUSED ON BLAMING
19 OTHERS FOR THE PATCH AND DIDN'T SEEM TO BE ABLE TO MOVE ON
20 AND GET A POSITIVE ATTITUDE ABOUT HER RECOVERY ON AUGUST
21 THE 27TH, WE CONTINUED TO HEAR REPORTS FROM DRUG COURT
22 PARTICIPANTS THAT SHE HAD A POOR ATTITUDE AND THAT SHE WAS
23 NOW COMPLAINING ABOUT DRUG COURT, THE PATCHES, STAFF MEMBERS
24 AND OTHER PARTICIPANTS OPENLY IN TWELVE STEP MEETINGS AND IN
25 THE DETENTION CENTER WHILE INCARCERATED SEVERAL

1 PARTICIPANTS IN DRUG COURT VOICED THEIR CONCERNS IN WRITING
2 TO THE STAFF CONCERNING THIS ISSUE SHE WAS REPORTEDLY
3 IDENTIFYING DRUG COURT PARTICIPANTS AND THEIR OWN PERSONAL
4 TREATMENT ISSUES, WHICH IS, AGAIN, A VIOLATION OF OUR POLICY
5 NOT TO BE DISCUSSED OUTSIDE OF THE PROGRAM, AND THIS WAS
6 ADDRESSED IN COURT AND SHE WAS REPRIMANDED BY THE JUDGE FOR
7 THAT BEHAVIOR ON SEPTEMBER 11TH, SHE REPORTED SHE HAD A NEW
8 JOB WITH ALEGIS AND WANTED TO BE MOVED INTO PHASE THREE TO
9 ACCOMMODATE HER JOB SCHEDULE WE INFORMED HER THAT SHE COULD
10 NOT MOVE TO PHASE THREE BASED ON HER JOB SCHEDULE BUT THAT
11 WOULD BE BASED ON HER TREATMENT PROGRESS SHE STILL
12 CONTINUED TO DENY BOTH THE PATCH AND THE POSITIVE HAIR SCREEN
13 AND ACCUSE STAFF AND MRW PERSONNEL OF BEING AGAINST HER HER
14 ATTITUDE CONTINUED TO BE ONE OF NONCOMPLIANCE AND RESISTANCE
15 TO TREATMENT SHE HAS A SECOND PATCH ON SEPTEMBER 25TH THAT
16 RETURNED AS POSITIVE FOR COCAINE SHE WAS CONFRONTED BY
17 STAFF AGAIN WITH THIS AND TOTALLY DENIED USING THIS TIME A
18 SANCTION OF 90 DAYS INCARCERATION WAS GIVEN, BUT WE WANTED
19 HER TO GO INTO THE DETENTION WORK RELEASE PROGRAM IN THE
20 HOPES THAT SHE WOULD BE ABLE TO CONTINUE IN HER EMPLOYMENT
21 AND DO HER SANCTION AT THE SAME TIME AND NOT LOSE HER JOB
22 OCTOBER THE 2ND, STAFF LEARNED FROM DETENTION PERSONNEL THAT
23 SHE HAD LOST HER JOB---

24 MR. BANNISTER JUDGE---

25 THE COURT HOLD ON JUST A MINUTE

BOBBIE SUE GODWIN -- DIRECT CONTINUES BY MS STROM

1 **MR BANNISTER** I'M SORRY, MS GODWIN AT THIS POINT,
2 IF THIS IS A BASIS FOR THE TERMINATION, SPECIFICALLY WHAT'S
3 GETTING READY TO BE READ INTO THE RECORD IS HEARSAY ON
4 HEARSAY THEY'RE TALKING ABOUT SOMETHING THEY HEARD FROM THE
5 DETENTION FACILITY PERSONNEL IF IT'S PART OF THE
6 TERMINATION, THEN I OBJECT TO IT COMING IN BECAUSE IT'S
7 DOUBLE HEARSAY IF IT'S NOT, I OBJECT AS TO RELEVANCE

8 **THE COURT** LET ME SEE I'M GOING TO GO AHEAD AND
9 ALLOW HER TO PROFFER IT, AND THEN I'LL RULE

10 **MR BANNISTER** OKAY THANK YOU, JUDGE

11 **A** THAT MEANS I GET TO CONTINUE?

12 **THE COURT** YES, MA'AM, I'M SORRY

13 **A** STAFF LEARNED FROM DETENTION PERSONNEL THAT CLIENT HAD
14 LOST HER JOB FOR FAILURE TO REPORT HER CRIMINAL HISTORY AND
15 FALSIFYING APPLICATION CONCERNING HER AVAILABLE HOURS TO
16 WORK OCTOBER 7TH, DESPITE---

17 **THE COURT** IS THERE ANYTHING OTHER THAN THAT, MR
18 BANNISTER?

19 **MR BANNISTER** NO, I THINK THAT'S IT, YOUR HONOR

20 **THE COURT** WHAT'S THE STATE'S POSITION ON THAT?

21 **MS STROM** YOUR HONOR, THE STATE'S POSITION IS THIS IS
22 A -- FOR LACK OF A BETTER TERM, THIS IS A REVOCATION HEARING,
23 AND I BELIEVE THAT HEARSAY IS ADMISSIBLE JUST AS IN OTHER --
24 SUCH AS A PRELIMINARY HEARING AND THAT TYPE OF THING WHERE
25 HEARSAY IS ADMISSIBLE, AND I BELIEVE THAT THE COURT IS

1 ENTITLED TO HEAR THAT

2 THE COURT I'M GOING TO SUSTAIN THE OBJECTION AT THIS
3 POINT SO YOU CAN CONTINUE

4 MS STROM YOU'RE GOING TO SUSTAIN THE OBJECTION?

5 THE COURT YES, AS TO WHAT SOMEONE TOLD SOMEONE AT THE
6 DETENTION CENTER THAT WAS THEN TOLD TO DRUG COURT

7 A YOUR HONOR, THERE IS, I THINK, A NOTE IN ANGELA'S FILE
8 WRITTEN BY ME WHERE I ALSO TALKED TO ALEGIS AND CONFIRMED
9 THAT THERE IS A NOTE IN THE FILE THAT THE WORK SCHEDULE,
10 YOU KNOW, THE---

11 THE COURT I THINK ANY CONVERSATION SHE HAD WITH MS
12 HURKS CLEARLY IS ADMISSIBLE BUT I AM CONCERNED ABOUT THERE
13 ARE JUST TOO MANY LOOPS THAT I DON'T FEEL COMFORTABLE WITH
14 THAT SOMEBODY TOLD SOMEBODY THAT TOLD DRUG COURT

15 MS STROM THEN THE FACT THAT MS GODWIN COULD TESTIFY
16 THAT SHE TALKED WITH THE EMPLOYER HERSELF---

17 THE COURT THAT HAS NOT BEEN PROFFERED NOR HAS THERE
18 BEEN AN OBJECTION TO IT

19 MS STROM OKAY

20 Q MS GODWIN, REGARDING THE EMPLOYMENT AT ALEGIS, DID YOU
21 HAVE AN OPPORTUNITY TO TALK WITH SOMEONE THERE AT ALEGIS?

22 A YES

23 MR BANNISTER JUDGE, SAME OBJECTION I MEAN, I --
24 THE PROBLEM IS, I DON'T HAVE SOMEBODY FROM ALEGIS TO -- I
25 DON'T BELIEVE THAT THE REASONS THAT ARE GOING TO BE STATED

BOBBIE SUE GODWIN -- DIRECT CONTINUES BY MS STROM

1 ARE IN FACT THE REASONS THAT MS HURKS LOST HER JOB AT
2 ALEGIS

3 MS STROM MS STROM?

4 MR. BANNISTER SO I OBJECT TO THIS IT'S
5 INAPPROPRIATE

6 THE COURT WHAT'S THE STATE'S POSITION ON WHY IS THIS
7 NOT HEARSAY?

8 MS. STROM YOUR HONOR, I'M NOT SAYING THAT IT'S NOT
9 HEARSAY I'M NOT AT ALL TRYING TO SAY THAT

10 THE COURT THEN WHAT EXCEPTION?

11 MS. STROM THE EXCEPTION IS BECAUSE OF THE PROCEEDING
12 THAT WE ARE IN HEARSAY IS ALLOWED IN CERTAIN PROCEEDINGS
13 IT'S NOT EXCLUDED JUST BECAUSE IT'S HEARSAY IT IS EXCLUDED
14 IN A CRIMINAL TRIAL WHERE SOMEONE IS BEING JUDGED BY EITHER A
15 JUDGE OR A JURY AS TO WHETHER THEY ARE GUILTY OF A CRIME, NOT
16 WHETHER THEY HAVE VIOLATED THE RULES OF A PARTICULAR
17 VOLUNTARY PROGRAM WHICH THEY HAVE ENTERED HEARSAY IS
18 ALLOWED IN PRELIMINARY HEARINGS IT IS MY UNDERSTANDING,
19 ALTHOUGH I CAN'T CITE YOU TO ANYTHING, THAT IT IS ALLOWED IN
20 PROBATION REVOCATION HEARINGS IT'S DONE -- I MEAN, WE SEE
21 IT ALL THE TIME AS BEING ALLOWED THERE ARE---

22 THE COURT HERE'S WHAT I'M GOING TO DO I'M GOING TO
23 SUSTAIN THE OBJECTION AT THIS TIME, ALLOW YOU TO PROFFER IT
24 IF YOU CAN FIND SOME AUTHORITY TO THE CONTRARY, THEN I'LL BE
25 GLAD TO REVISIT THAT ISSUE

1 MS STROM THANK YOU

2 THE COURT SO YOU MAY ANSWER THE QUESTION IN THE FORM

3 OF A PROFFER

4 Q DID YOU CONTACT SOMEONE AT ALEGIS?

5 A SOMEONE FROM ALEGIS CONTACTED ME, I BELIEVE, IS---

6 Q CAN YOU LOOK IN YOUR FILE TO SEE WHO THAT WAS AND WHAT

7 WAS REPORTED TO YOU?

8 A ANGELA'S FILE IS BIG

9 Q TAKE YOUR TIME

10 A ON SEPTEMBER THE 29TH, I HAVE A NOTATION IN HER PROGRESS

11 NOTES THAT B GODWIN WAS INFORMED BY DETENTION OFFICER AND I

12 WAS ALSO TOLD BY ALEGIS THAT CLIENT HAD NOT INFORMED THEM OF

13 A PRIOR RECORD AND ALSO STATED THAT SHE WAS FREE TO WORK

14 EVENINGS, WHICH WAS NOT THE CASE YOU KNOW, THEY GAVE ME HER

15 WORK SCHEDULE, AND SHE WAS IN PHASE TWO AT THAT TIME AND

16 THAT CONFLICTED WITH WHAT ANGELA HAD TOLD US I HAD A NOTE

17 IN MY FILE PRIOR TO THAT THAT ANGELA---

18 MR. BANNISTER MS GODWIN, WHAT DATE IS THAT? CAN YOU

19 REFER ME TO A---

20 WITNESS IT LOOKS LIKE 9/29/03

21 MR BANNISTER JUDGE, MAY I APPROACH JUST TO SEE WHAT

22 THAT PAGE LOOKS LIKE?

23 THE COURT YES, SIR

24 MR BANNISTER I'VE GOT THE FILE, BUT I CAN'T SEEM TO

25 FIND THAT (APPROACHES WITNESS) HANG ON JUST A SECOND

BOBBIE SUE GODWIN -- DIRECT CONTINUES BY MS STROM

1 JUDGE, THE LAST DRUG COURT PROGRESS NOTE I HAVE IS
2 4/16/03 THEN I'VE GOT A DRUG COURT PARTICIPATION RECORD,
3 WHICH IS TYPED UP I DON'T SEE ANY PROGRESS -- ANY
4 HANDWRITTEN PROGRESS NOTES AFTER APRIL 16TH, 2003 SO LET ME
5 JUST STAND UP HERE, AND I'LL READ ALONG WITH HER AND I'LL---

6 THE COURT THAT'S FINE

7 IF YOU COULD, GO AHEAD WITH THE QUESTION, MS STROM

8 Q IF YOU WOULD, CONTINUE, MS GODWIN YOU SAID THAT YOU
9 HAD A NOTE REGARDING YOUR CONVERSATION WITH ALEGIS AND THAT
10 IT CONFLICTED WITH WHAT---

11 A SHE HAD TOLD US

12 Q ---MS HURKS HAD TOLD YOU

13 A ON SEPTEMBER 9TH, I MET WITH ANGELA THIS WAS ON
14 SEPTEMBER 9TH AND SHE TOLD ME ABOUT HER NEW JOB WITH
15 ALEGIS, AND SHE SAYS, YOU KNOW, "THE HOURS ARE 8 00 TO 5 30
16 I HAVE SPECIAL PERMISSION TO LEAVE AT 5 15 IN ORDER TO BE IN
17 GROUP " BUT, SEE, WHAT THEY WERE SAYING WAS THEY WERE -- HER
18 SCHEDULE WAS, I THINK, 8 00 TO 9 00 MONDAYS AND TUESDAYS WHEN
19 SHE IS IN GROUP SHE HAD TOLD US SHE HAD PERMISSION TO
20 LEAVE THEY WERE TELLING US THAT THEY THOUGHT THAT SHE HAD
21 PERMISSION FROM US

22 Q THEN AFTER ALL OF THESE VIOLATIONS AND -- WELL, LET ME
23 JUST CONTINUE ON WITH THE SUMMARY I BELIEVE THAT WAS ON
24 10/2/03, ACCORDING TO YOUR SUMMARY?

25 MR BANNISTER JUDGE, MAY I ASSUME WE'RE PAST THE

1 PROFFER STAGE AT THIS POINT?

2 THE COURT YES, SIR

3 MR BANNISTER OKAY, THANK YOU

4 A YES AND THEN ON 10/7, DESPITE STAFF EFFORTS TO
5 COMMUNICATE HONESTLY, CLIENT RESISTS TREATMENT AND CONTINUES
6 TO DENY USING COCAINE ALL TREATMENT EFFORTS ARE REJECTED BY
7 CLIENT AFTER FULL CASE REVIEW, THE DECISION WAS MADE TO
8 RECOMMEND TERMINATION FROM THE PROGRAM

9 THE SUMMARY SAYS, "ANGELA HAS BEEN IN DRUG COURT FOR 18
10 MONTHS SHE DID VERY WELL FOR THE FIRST NINE MONTHS OF HER
11 PARTICIPATION SHE WAS PROGRESSING IN TREATMENT, PAYING FEES
12 AS AGREED, BUT PROGRESS BEGAN DETERIORATING IN MAY 2003 WHEN
13 MANY PROBLEMS BEGAN TO SURFACE THE STRESS OF HER SISTER'S
14 ILLNESS, JOB DISSATISFACTION, DELINQUENT FEE PAYMENTS,
15 REPORTED DIFFICULTIES WITH UTILITIES CUT OFF, FAILURE TO CALL
16 THE DRUG SCREEN LINE AS INSTRUCTED, AND THEN WE HAD A FIRST
17 POSITIVE SCREEN THAT RESULTED UPON HER INSISTENCE AND IN A
18 DESIRE FOR TREATMENT BENEFITS, A HAIR SCREEN WAS DONE WHICH
19 CONFIRMED HER FIRST POSITIVE DESPITE THIS, SHE CONTINUED TO
20 DENY USE AND CONSEQUENTLY CLOSED HERSELF OFF FROM ANY
21 TREATMENT PROGRESS SHE ALIENATED HERSELF FROM OTHER
22 PARTICIPANTS BY VIOLATING GROUP RULES AND SHARING OTHER
23 PARTICIPANTS' PERSONAL ISSUES IN PUBLIC WITH THE SECOND
24 POSITIVE SCREEN, STAFF HOPED SHE WOULD BE ABLE TO MOVE ON AND
25 ACCEPT HER SANCTIONS AND SHARE HONESTLY ABOUT PROBLEMS THAT

BOBBIE SUE GODWIN -- DIRECT CONTINUES BY MS STROM

1 HAD LED TO HER RELAPSE REFERRAL TO AN IN-PATIENT FACILITY
2 WAS NOT AN OPTION BECAUSE SHE DENIED USING HER REFUSAL TO
3 COOPERATE WITH STAFF AND ALLOW FOR EXCHANGE OF OPEN
4 DISCUSSION ALSO DIMINISHED HER TREATMENT OPTIONS THE
5 INFORMATION SHE GAVE CONCERNING HER LAST USE AND RELAPSE WAS
6 CONFLICTING AND CONTRADICTED PRIOR INFORMATION GIVEN AT THE
7 TIME OF HER APPLICATION ASSESSMENT FROM JULY 2003 TO
8 OCTOBER 2003 HER COMMENTS AND BEHAVIOR INCREASINGLY BECAME
9 WORSE AND PREVENTED TREATMENT PROGRESS SHE OPENLY VOICED
10 CRITICISM OF STAFF MEMBERS, THE PROGRAM AND OTHER
11 PARTICIPANTS OFTEN WITH UNRELATED ISSUES TO HER OWN CASE IN
12 AND OUT OF DRUG COURT SHE RESISTED TREATMENT
13 RECOMMENDATIONS, AND COMMUNICATION EFFORTS WERE BLOCKED BY
14 HER ANGER AND INSISTENCE ON FOCUSING ON FALSE POSITIVES
15 RATHER THAN PERSONAL ISSUES IN LIFE WHICH DAMAGED HER
16 RECOVERY AFTER CASE REVIEW, THE STAFF RECOMMENDS
17 TERMINATION FOR NONCOMPLIANCE DUE TO HER OVERALL BEHAVIOR
18 SINCE HER FIRST POSITIVE SCREEN RESULT IT IS HER MANNER OF
19 DEALING WITH THE ISSUE NOT THE POSITIVE SCREENS THAT IS THE
20 BASIS OF THE TERMINATION RECOMMENDATION STAFF FEELS THAT
21 HER BEHAVIOR TOTALLY PREVENTS ANY FURTHER PROGRESS AND
22 TREATMENT OVERALL, SHE RECEIVED SEVEN SANCTIONS FOR
23 VIOLATION, TWO OF THOSE WERE FOR POSITIVE SCREENS SHE PAID
24 \$203 OF \$515 INDICTMENT FEES DUE, AND SHE WAS INCARCERATED
25 TWO TIMES FOR SANCTIONS "

BOBBIE SUE GODWIN -- DIRECT CONTINUES BY MS STROM

1 Q THANK YOU MS GODWIN, I'M GOING TO ASK YOU SOME
2 QUESTIONS IN GENERAL REGARDING DRUG COURT YOU SAID EARLIER
3 THERE WERE SEVERAL AREAS THAT YOU LOOK TO IN ORDER TO -- FOR
4 THE STAFF TO MAKE A DECISION AS TO WHETHER TO TERMINATE IS
5 THAT EVER BASED UPON ONE POSITIVE SCREEN?

6 A NO

7 Q INSTEAD YOU LOOK TO WHAT?

8 A THE OVERALL PARTICIPATION RECORD, PROGRESS IN THOSE FOUR
9 AREAS THAT I MENTIONED EARLIER

10 Q SPECIFICALLY IN REGARDS TO YOUR DUTIES AS THE HEAD OF
11 THE DRUG COURT PROGRAM, HAVE YOU HAD AN OCCASION TO LOOK AT
12 THE NUMBER OF SWEAT PATCH TESTS THAT HAVE BEEN CONDUCTED IN
13 ACCORDANCE WITH THE DRUG COURT PARTICIPATION PROGRAM?

14 A YES, I HAVE

15 Q AND DO YOU KNOW APPROXIMATELY HOW MANY TESTS -- OR DO
16 YOU KNOW HOW MANY SWEAT PATCH TESTS WE HAVE DONE?

17 A ON MARCH THE 5TH, AS OF MARCH THE 5TH, WE HAD DONE 910
18 PATCH TESTES A TOTAL OF 57 OF THOSE HAD RESULTED IN A
19 POSITIVE RESULT

20 Q AND OF THOSE 57, HOW MANY OF THOSE EITHER ADMITTED TO
21 DRUG USAGE OR IT WAS CONFIRMED BY ANOTHER FORM OF TESTING?

22 A FIFTY-THREE

23 Q SO THERE WERE FOUR THAT EITHER DID NOT ADMIT OR WERE NOT
24 CONFIRMED BY ANOTHER TESTS?

25 A THAT'S CORRECT

BOBBIE SUE GODWIN -- DIRECT CONTINUES BY MS STROM

- 1 Q OKAY I TAKE IT THREE OF THEM INVOLVED THESE
2 DEFENDANTS?
- 3 A THAT'S CORRECT
- 4 Q AND ONE INVOLVES ONE OTHER CLIENT-DEFENDANT?
- 5 A YES
- 6 Q AND IS THAT PERSON STILL IN THE PROGRAM?
- 7 A NO
- 8 Q WAS HE TERMINATED OR SHE TERMINATED SIMPLY ON THE BASIS
9 OF FAILING TO ADMIT?
- 10 A NO
- 11 Q I WANT TO GO TO THE DATES INVOLVING THE APPLICATION AND
12 REMOVAL OF THE SWEAT PATCHES ON THE VARIOUS DEFENDANTS AND
13 I BELIEVE YOU DID SOME RESEARCH FOR ME REGARDING OTHER TESTS
14 THAT WERE -- OTHER PATCHES THAT WERE APPLIED AND REMOVED ON
15 THAT SAME DAY, CORRECT?
- 16 A I DID
- 17 Q DO YOU HAVE THAT INFORMATION WITH YOU?
- 18 A I HOPE SO I BELIEVE I DO
- 19 Q IS THIS ONE OF THEM?
- 20 A THAT'S ONE OF THEM
- 21 Q JUST ONE SECOND LET ME GET MY PAPERWORK TOGETHER
22 ARE YOU READY?
- 23 A UH-HUH (AFFIRMATIVE)
- 24 Q AS TO THE DATE THAT ONE OF ANGELA HURKS' PATCHES WAS
25 APPLIED, 5/30/03

1 **MR ARMSTRONG** YOUR HONOR, I OBJECT TO THIS LINE OF
2 QUESTIONING AS BEING TOTALLY IRRELEVANT WHAT HAPPENED IF
3 THEY TOOK FIVE TESTS ON A PARTICULAR DAY AND WHAT THE RESULTS
4 WERE ON THE OTHER FOUR ARE TOTALLY IRRELEVANT GIVEN THE
5 CIRCUMSTANCES OF EACH PERSON AS AN INDIVIDUAL PERSON, THEIR
6 SKIN, THEIR EXPOSURE, THEIR -- ALL FACTORS ARE VERY PECULIAR
7 AND FACTUALLY SIGNIFICANT TO THE SPECIFIC INDIVIDUAL

8 CONVERSELY, IF THEY'RE GOING TO GO INTO FIVE OR SIX
9 TESTS ON MAY 30TH, OR WHATEVER THE DATE IS, YOU KNOW, THEN
10 THEY SHOULD BE PRODUCING THAT INFORMATION TO US SO WE CAN
11 LOOK AT IT, WE CAN EVALUATE IT, HAVE OUR EXPERT LOOK AT IT
12 AND TO GET TO THE BOTTOM OF WHAT THE PROTOCOL WAS THAT WAS
13 EMPLOYED HERE

14 BUT TO GO DOWN THAT TANGENT HERE AND SAY, WELL, WE DID
15 THIS OVER HERE ON TOTALLY UNRELATED CIRCUMSTANCE, IT JUST
16 HAPPENED TO BE THE SAME DATE, THEREFORE, THESE SHOULD BE GOOD
17 TESTS TOO---

18 **THE COURT** TELL ME WHERE WE'RE HEADED ON THIS,
19 SOLICITOR

20 **MS STROM** WELL, YOUR HONOR, THEY HAVE ALREADY THROUGH
21 THEIR CROSS EXAMINATION OF MY WITNESSES AND THEIR
22 PRESENTATION OF THEIR EXPERT, I SUBMIT THEY ARE GOING TO
23 CLAIM THAT THERE WAS CONTAMINATION OR AT LEAST THE LIKELIHOOD
24 OF CONTAMINATION AT THE TIME THAT THESE PATCHES WERE APPLIED
25 AND REMOVED AND I WANT TO SHOW THIS COURT THAT THE OTHER

BOBBIE SUE GODWIN -- DIRECT CONTINUES BY MS STROM

1 PATCHES THAT WERE APPLIED AND REMOVED AT THE SAME TIME, WHAT
2 THE RESULTS OF THOSE PATCHES WERE

3 THE COURT GO AHEAD, SUBJECT TO MR ARMSTRONG'S
4 OBJECTION, WHICH IS OVERRULED

5 Q ON MAY 30TH, 2003, HOW MANY OTHER PATCHES WERE APPLIED
6 FOR DRUG COURT PARTICIPANTS? I KNOW THERE MAY HAVE BEEN
7 OTHER PATCHES APPLIED BY OTHER AGENCIES, BUT---

8 A OTHER THAN THE ONE FOR ANGELA, THERE WAS ONLY ONE OTHER
9 PATCH APPLIED ON MAY 30TH

10 Q AND DO YOU KNOW THE RESULT OF THAT PATCH?

11 A IT'S NEGATIVE

12 Q THE DATE OF JUNE 20TH, 2003, THE DATE THAT ONE OF
13 ANGELA'S PATCHES WAS REMOVED

14 A I DON'T HAVE -- OH, YEAH, 2003, REMOVED?

15 Q YES

16 A THERE WERE NINE PATCHES REMOVED THAT DAY

17 Q HOW MANY WERE POSITIVE?

18 A ONE, ANGELA'S

19 Q IF YOU WILL, LOOK AT THE DATE OF 8/29/03, ANOTHER DATE
20 THAT ANGELA HURKS HAD A PATCH APPLIED

21 A YES

22 Q HOW MANY OTHER PATCHES WERE APPLIED THAT DAY?

23 A THERE WERE A TOTAL OF TEN

24 Q AND HOW MANY WERE TESTED POSITIVE?

25 A ONE

BOBBIE SUE GODWIN -- DIRECT CONTINUES BY MS STROM

- 1 Q AND WHOSE WAS THAT?
- 2 A ANGELA'S
- 3 Q THE DAY OF THE REMOVAL OF THAT PATCH, SEPTEMBER 5TH,
- 4 2003?
- 5 A TEN WERE REMOVED, INCLUDING ANGELA'S
- 6 Q TEN INCLUDING ANGELA'S AND HOW MANY WERE POSITIVE?
- 7 A TWO
- 8 Q ANGELA'S IS ONE OF THEM?
- 9 A YES
- 10 Q WITHOUT REVEALING THE NAME OF THE OTHER PERSON, BECAUSE
- 11 I KNOW YOU HAVE STRICT GUIDELINES, BUT IS THAT PERSON STILL
- 12 IN THE PROGRAM?
- 13 A NO
- 14 Q AND HAS THAT PERSON BEEN TERMINATED OR IS THERE SOME
- 15 OTHER REASON WHY THAT PERSON IS NOT IN THE PROGRAM?
- 16 A THE PERSON IS CURRENTLY A FUGITIVE OF THE PROGRAM, LEFT
- 17 OUR PROGRAM AFTER TESTING POSITIVE ON A URINE SCREEN
- 18 Q THANK YOU I DIRECT YOUR ATTENTION TO JUNE 17TH, '03,
- 19 THE DATE THAT DANE JANELLI'S PATCH WAS APPLIED?
- 20 A TWO---
- 21 Q TWO WERE APPLIED?
- 22 A ---WERE APPLIED THAT DAY ONE OF THEM WAS DANE'S
- 23 Q AND HOW MANY OF THOSE TWO WERE POSITIVE?
- 24 A ONE
- 25 Q AND WHOSE WAS THAT?

BOBBIE SUE GODWIN -- DIRECT CONTINUES BY MS STROM

- 1 A DANE'S
- 2 Q THE DATE OF REMOVAL OF JUNE 25TH, '03?
- 3 A FIVE
- 4 Q FIVE WERE REMOVED HOW MANY WERE POSITIVE?
- 5 A TWO
- 6 Q AND, AGAIN, ONE OF THEM BEING DANE JANELLI?
- 7 A YES
- 8 Q AND THE OTHER PERSON, WITHOUT GIVING THAT PERSON'S NAME,
- 9 IS THAT PERSON STILL IN THE PROGRAM?
- 10 A NO
- 11 Q AND WAS THAT PERSON TERMINATED OR IS THERE SOME OTHER
- 12 REASON FOR THAT PERSON NOT TO BE IN THE PROGRAM?
- 13 A THE PERSON WAS TERMINATED
- 14 Q WAS THE PERSON TERMINATED ON THE SOLE BASIS OF THIS
- 15 PATCH?
- 16 A NO
- 17 Q DID THAT PERSON ADMIT TO USING?
- 18 A YES
- 19 Q FOR THAT PATCH?
- 20 A YES
- 21 Q WITH REGARDS TO SEPTEMBER 17TH, 2003, THE DATE THAT
- 22 CEDRIC PERKINS' PATCH WAS APPLIED, HOW MANY PEOPLE ALSO HAD
- 23 PATCHES APPLIED THAT DAY?
- 24 A EIGHT WELL, EIGHT, INCLUDING CEDRIC
- 25 Q EIGHT, INCLUDING CEDRIC AND HOW MANY WERE POSITIVE?

1 A ONE

2 Q AND THAT WAS CEDRIC'S?

3 A YES

4 Q THE DATE OF REMOVAL WAS 9/26/03?

5 A YES

6 Q HOW MANY PEOPLE HAD PATCHES REMOVED ON THAT DAY?

7 A NINE PEOPLE

8 Q AND HOW MANY WERE POSITIVE?

9 A ONE

10 Q AND THAT WAS CEDRIC'S?

11 A YES

12 MS. STROM COURT'S INDULGENCE, YOUR HONOR (PAUSE)

13 THANK YOU, MS GODWIN, PLEASE ANSWER ANY QUESTIONS THE

14 DEFENSE MAY HAVE

15 MR. ARMSTRONG YOUR HONOR, I'M LOOKING AT THE TIME

16 IT'S ABOUT THE LUNCH HOUR I ANTICIPATE A RATHER LENGTHY

17 CROSS EXAMINATION MYSELF OF THIS LADY I EXPECT THESE OTHER

18 GENTLEMEN'S WOULD BE EQUALLY LENGTHY MY REQUEST TO THE

19 COURT WOULD BE TO BREAK FOR LUNCH AND RETURN WITH CROSS

20 EXAMINATION OF THIS YOUNG LADY

21 THE COURT MS STROM?

22 MS STROM I LEAVE THAT TO YOUR HONOR'S DISCRETION I

23 THINK MS GODWIN IS VERY CAPABLE OF HANDLING HERSELF I

24 WOULD PERCEIVE THAT WE MOVE ON, MOVE FORWARD I'D LIKE TO

25 GET THIS FINISHED BUT I LEAVE THAT IN YOUR DISCRETION

MATTERS AND MOTIONS

1 **THE COURT** WHY ARE YOU STANDING UP, MR BANNISTER?

2 **MR BANNISTER** BECAUSE I'M GOING TO NEED A LITTLE BIT
3 OF TIME TO TAKE A LOOK AT SOME OF THE DOCUMENTS I DON'T HAVE
4 WITH REGARDS TO ANGELA'S FILE I DON'T KNOW HOW MANY THAT
5 IS, BUT

6 **THE COURT** I ASSUME YOU'RE GOING TO MAKE IT A SOLID
7 THREE?

8 **MR. GIBSON** YES, SIR THE OTHER ISSUE, YOUR HONOR, IS
9 I WOULD LIKE TO ADDRESS THE URINALYSIS TEST RESULTS THAT WE
10 ASKED FOR WITH MS GODWIN, AND I HAVE NOT RECEIVED THOSE

11 **MS STROM** WE'RE WORKING ON THAT IT'S JUST NOT
12 SOMETHING WE CAN GET IMMEDIATELY

13 **THE COURT** THAT'S FINE WE'LL GO AHEAD---

14 **MS STROM** WE ARE WORKING ON THAT, YOUR HONOR

15 **THE COURT** WE'LL GO AHEAD AND TAKE A BREAK MR
16 ARMSTRONG, HOW MANY WITNESSES DO YOU ANTICIPATE CALLING IN
17 YOUR CASE?

18 **MR. ARMSTRONG** POSSIBLY FIVE, BUT I WOULD SUSPECT
19 LESS

20 **THE COURT** ALL RIGHT MR GIBSON?

21 **MR GIBSON** FOUR, YOUR HONOR

22 **THE COURT** MR BANNISTER?

23 **MR BANNISTER** I HAVE THREE THAT ARE GOING TO BE
24 EXTREMELY BRIEF, AND MS HURKS AND THEN PROBABLY TWO MEDIUM
25 LENGTH ONES SO ONE LONG ONE, TWO MEDIUM, TWO OR THREE

MATTERS AND MOTIONS

1 SHORTS

2 MS. STROM THAT'S SIX ACCORDING TO MY MATH

3 THE COURT WE'LL START BACK AT 1 45

4 MS STROM MS GODWIN, YOU ARE NOT ALLOWED TO DISCUSS
5 YOUR TESTIMONY WHILE YOU ARE ON THIS BREAK

6 MR. BANNISTER IS IT OKAY IF I HAVE ANGELA'S FILE?

7 MS. STROM I DON'T HAVE A PROBLEM WITH THAT, YOUR
8 HONOR, AND I BELIEVE THAT WE HAD PROVIDED THE COPIES OF THEIR
9 PARTICIPATION FILE OBVIOUSLY THERE WAS A PAGE OR TWO THAT
10 WAS MISSED, BUT WE DID PROVIDE ALL THAT TO THEM

11 (A LUNCH RECESS WAS TAKEN FROM 12 26 TO 1 45 P M)

12 (WITNESS RETAKES THE STAND)

13 THE COURT I JUST REMIND YOU THAT YOU ARE STILL UNDER
14 OATH

15 GENTLEMEN, ARE YOU STARTING FIRST, MR BANNISTER?

16 MR BANNISTER NO, SIR, I WAS GOING TO HAND HER HER
17 PAGES BACK

18 THE COURT ALL RIGHT ALL RIGHT, MR ARMSTRONG

19 MR ARMSTRONG THANK YOU, YOUR HONOR

20 CROSS EXAMINATION BY MR. ARMSTRONG

21 Q MS GODWIN, YOU TESTIFIED THAT YOU ARE AN EMPLOYEE OF
22 THE SOLICITOR'S OFFICE, IS THAT CORRECT?

23 A YES, SIR

24 Q AND, IN FACT, THE ENTIRE DRUG COURT PROGRAM IS UNDER THE
25 AUSPICES OF THE THIRTEENTH CIRCUIT JUDICIAL SOLICITOR'S

BOBBIE SUE GODWIN -- CROSS BY MR ARMSTRONG

1 OFFICE, IS THAT CORRECT?

2 A YES, SIR

3 Q I THINK IT'S PROBABLY PATENTLY OBVIOUS WITH THAT
4 RESPONSE THAT YOU ARE NOT AN EMPLOYEE OF NOR IS THE DRUG
5 COURT AN EMPLOYEE OF THE JUDICIAL BRANCH OF THIS GOVERNMENT,
6 IS IT?

7 A I'M NOT SURE I UNDERSTAND

8 Q WELL, YOU'RE NOT EMPLOYED BY THE COURT OR COURT
9 ADMINISTRATION YOU'RE EMPLOYED BY THE SOLICITOR'S OFFICE?

10 A THE SOLICITOR'S OFFICE

11 Q OKAY YOU TESTIFIED ABOUT THE REJECTION OR THE DECISION
12 TO TERMINATE MR JANELLI, AND YOU REFERRED NOT ONLY AS TO HIM
13 BUT ALL THESE OTHER DEFENDANTS AS TO A STAFF DECISION DO
14 YOU REMEMBER THAT TESTIMONY?

15 A UH-HUH (AFFIRMATIVE)

16 Q WHO IS "STAFF"?

17 A ROSA GONZALEZ, WHO IS THE COUNSELOR FOR PHASE TWO,
18 PATRICK PHILLIPS, WHO IS COUNSELOR FOR PHASE THREE

19 Q AND YOURSELF?

20 A AND MYSELF

21 Q ANYONE ELSE?

22 A NO

23 Q AND DO YOU HAVE FORMAL MEETINGS OR IS THIS JUST SORT OF
24 AN INFORMAL KIND OF AN AD HOC PROCESS THAT IS DEALT WITH?

25 A WE DO MEET BEFORE GROUP

1 IN THE FILE DO YOU SEE WHERE I AM?

2 A YES

3 Q I'VE TAKEN THE LIBERTY OF MAKING A COPY OF THIS WAIVERS
4 AND AGREEMENTS AS THEY APPLY TO MR JANELLI HERE, AND I'M
5 GOING TO HAND YOU THIS DOCUMENT AND ASK YOU IF YOU CAN
6 IDENTIFY IT AND MORE PARTICULARLY IS IT AN EXACT OR AN
7 ACCURATE COPY OF WHAT YOU MAINTAIN IN THE ORIGINAL FILE?

8 A YES

9 Q CONSISTING OF TWO PAGES?

10 A YES

11 MR ARMSTRONG I ASK THIS BE MARKED AS AN EXHIBIT,
12 YOUR HONOR

13 MS STROM NO OBJECTION

14 (WAIVER AND AGREEMENTS FORM FROM FILE OF DANE JANELLI
15 MARKED AS DEFENDANT JANELLI EXHIBIT NUMBER 3 AND MOVED INTO
16 EVIDENCE)

17 Q MS GODWIN, YOU HAVE A COPY OF THIS OR I CAN LET YOU
18 OPERATE OFF OF THE ORIGINAL DOCUMENT?

19 A YES

20 MR ARMSTRONG YOUR HONOR, I WOULD HAND ONE UP TO THE
21 COURT HERE, THE ORIGINAL

22 THE COURT FOR THE RECORD THIS IS DEFENDANT JANELLI
23 NUMBER 3

24 Q ISN'T IT TRUE, MS GODWIN THAT BEFORE A PROSPECTIVE
25 DEFENDANT CAN COME INTO THIS PROGRAM THAT HE HAS GOT TO FILL

BOBBIE SUE GODWIN -- CROSS BY MR ARMSTRONG

1 OUT VARIOUS APPLICATIONS, DOCUMENTS AND WHATNOT, BUT MORE
2 PARTICULARLY HE HAS TO SIGN THIS WAIVERS AND AGREEMENTS
3 DOCUMENT?

4 A THERE ARE MANY PAGES THIS IS ONE OF MANY

5 Q BUT THIS IS ONE OF THE CRITICAL ONES?

6 A YES

7 Q AND I'M GOING TO CALL YOUR ATTENTION IN PARTICULAR TO
8 PARAGRAPH SEVEN OF THAT AGREEMENT YOU READ IT A BIT IN YOUR
9 DIRECT EXAM IN RESPONSE TO QUESTIONS ASKED YOU BY MS STROM
10 BUT PARAGRAPH SEVEN STATES THAT "I UNDERSTAND AND AGREE TO
11 SUBMIT TO RANDOM DRUG TESTING AT THE REQUEST OF THE TREATMENT
12 PROVIDER, DRUG COURT CASE MANAGER, THE JUDGE OR ANY OTHER
13 STAFF INVOLVED IN THE PROCESS OF MY TREATMENT PROGRAM DRUG
14 TESTS INCLUDE URINE, BLOOD, HAIR ANALYSIS AND BREATHALYZER "
15 DID I READ PARAGRAPH SEVEN CORRECTLY?

16 A YES

17 Q ISN'T IT ALSO CORRECT THAT SUBSEQUENT TO THE EXECUTION
18 OF THIS DOCUMENT, WHICH IS ON JUNE THE 10TH, 2002, THAT THERE
19 HAS BEEN NO MODIFICATION OR ADDENDUM ISSUED TO THIS WAIVERS
20 AND AGREEMENTS CONTRACT?

21 A IN DANE'S PARTICULAR FILE, NO

22 Q YES, MA'AM THERE IS NONE?

23 A NO

24 Q THIS IS IT? THIS IS HIS AGREEMENT TO BE IN DRUG COURT?

25 A UH-HUH (AFFIRMATIVE)

1 Q IS IT ALSO CORRECT THAT AFTER JUNE THE 10TH OF 2002 THAT
2 THE PROGRAM FOR REASONS WHICH ARE UNIMPORTANT AT THIS
3 PARTICULAR TIME ALSO BEGAN TO START USING THE SWEAT PATCH
4 TESTING PROCESS?

5 A WHEN WAS THAT DATE?

6 Q JUNE THE 10TH, 2002

7 A I THINK YOU SAID AFTER JUNE THE 10TH WE STARTED USING
8 THEM, I BELIEVE, IN OCTOBER 2002

9 Q SO WHEN MR JANELLI SIGNED THIS CONTRACT THE PROGRAM WAS
10 NOT USING THE SWEAT PATCH?

11 A THAT'S CORRECT

12 Q SO WHEN YOU STARTED USING THE SWEAT PATCH WAS THERE ANY
13 ALTERATION, AGAIN, AMENDMENT OR ADDENDUM, TO THE CONTRACT
14 WHEREBY THE PARTICIPANT WOULD CONSENT TO THE UTILIZATION OF
15 THE SWEAT PATCH TESTING PROCESS?

16 A THIS PARTICULAR FORM

17 Q WHAT ARE YOU REFERRING TO?

18 A (INDICATING) THIS IS THE CHAIN OF CUSTODY FOR ANALYSIS
19 OF PHARMCHEK, AND THERE'S A PLACE HERE WHERE THE DONOR HAS TO
20 COMPLETE, AND IT SAYS, "DONOR CERTIFICATION AND CONSENT "
21 THAT WOULD -- ALSO, "I CONSENT TO THE ANALYSIS OF THE
22 SPECIMEN ACCOMPANYING THIS FORM BY THE LABORATORY AND RELEASE
23 BY THE LABORATORY OF THE RESULTS OF THE ANALYSIS AS WELL AS
24 THE INFORMATION RECORDED ON THIS FORM TO THE ORGANIZATION OR
25 INDIVIDUAL LISTED ON THIS FORM "

BOBBIE SUE GODWIN -- CROSS BY MR ARMSTRONG

1 Q ALL RIGHT YOU ARE REFERRING TO OR JUST READ FROM
2 STATE'S EXHIBIT NUMBER 2, WHICH IS A PATCH ON, ACTUALLY,
3 ANGELA HURKS---

4 A OKAY

5 Q ---IS THAT CORRECT?

6 A WE CAN FIND THE ONE FOR DANE, BUT IT'S THE SAME
7 STATEMENT HERE IT IS FOR DANE

8 Q SO YOU HAVE NOW GONE THROUGH THE EXHIBITS AND YOU HAVE
9 HANDED ME ONE CONCERNING A PATCH PLACED ON JUNE THE 17TH AND
10 REMOVED ON JUNE THE 25TH, 2003, IS THAT CORRECT?

11 A YES

12 THE COURT FOR THE RECORD, THAT'S EXHIBIT NUMBER WHAT?
13 MR ARMSTRONG FOUR

14 THE COURT STATE'S FOUR

15 MS STROM STATE'S FOUR, YOUR HONOR

16 MR ARMSTRONG YES, IT IS

17 THE COURT ALL RIGHT

18 Q SO LET'S TALK ABOUT A LITTLE BIT OF THE PROCESS OF THAT
19 PARTICULAR FORM THAT YOU HAVE REFERRED TO AS EXHIBIT NUMBER
20 4 ISN'T IT TRUE THAT YOU OR ANOTHER MEMBER OF THE DRUG
21 COURT TEAM TOLD PEOPLE SUCH AS DANE THAT YOU'VE GOT TO SUBMIT
22 TO THIS PARTICULAR TEST, AND IT WAS PERFECTLY CLEAR TO THEM
23 BY YOUR EITHER WORD OR DEED THAT IF THEY DID NOT SUBMIT TO
24 THIS TEST THEN YOU WOULD TERMINATE THEM FROM THE PROGRAM?

25 A I DON'T RECALL EVER HAVING SAID THAT IN THOSE TERMS I

BOBBIE SUE GODWIN -- CROSS BY MR ARMSTRONG

1 DO KNOW THAT ONE OF THE CONDITIONS OF THE PROGRAM WAS TO TAKE
2 URINALYSIS AND SWEAT PATCHES AFTER OCTOBER IT NEVER -- NO
3 ONE EVER OPPOSED TAKING THE TEST

4 Q WELL, ISN'T IT TRUE THAT YOU ARE VERY MUCH IN CONTROL OF
5 THE SITUATION AS THE PROGRAM ADMINISTRATOR? LET ME ASK YOU
6 THIS HYPOTHETICAL IF MR JANELLI HAD COME IN ON JUNE THE
7 17TH AND STATED, "I REFUSE TO SUBMIT TO A DRUG SCREEN USING A
8 SWEAT PATCH," BECAUSE OF THIS CONTRACT WHICH WAS EXECUTED
9 BACK ON JUNE THE 10TH, 2002, YOU WOULD HAVE TERMINATED HIM,
10 WOULDN'T YOU?

11 A NO, SIR

12 MS. STROM I OBJECT, YOUR HONOR, TO THE FORM OF THE
13 QUESTION

14 A NO, SIR

15 THE COURT ALL RIGHT

16 MR. ARMSTRONG CROSS EXAMINATION, YOUR HONOR

17 THE COURT I UNDERSTAND WHAT'S THE OBJECTION TO THE
18 FORM, MS STROM?

19 MS STROM THE FACT THAT HE IS ASKING A HYPOTHETICAL
20 QUESTION TO A LAY WITNESS

21 THE COURT ALL RIGHT I'M GOING TO SUSTAIN THE
22 OBJECTION

23 MR ARMSTRONG I WOULD SUBMIT THAT WOULD BE
24 APPROPRIATE SHE IS BY DEFINITION AND BY TESTIMONY THE
25 ADMINISTRATOR WHO IS CHARGED WITH ADMINISTRATING---

BOBBIE SUE GODWIN -- CROSS BY MR ARMSTRONG

1 THE COURT YOU MAY PROFFER IT, SHOULD YOU SO DESIRE

2 MR. ARMSTRONG ALL RIGHT

3 Q BUT YOU AND YOUR ROLE AS THE DRUG COORDINATOR, LEADER,
4 WHATEVER YOUR PARTICULAR TITLE IS HERE, YOU ARE THE ONE
5 THAT -- YOU SET THE POLICY HERE, DID YOU NOT, AS FAR AS
6 REQUIRING THESE PEOPLE TO SUBMIT TO SWEAT PATCH TESTING?

7 A NO, SIR

8 Q WHO DID?

9 A IT WAS A DECISION MADE BY MYSELF AND MY SUPERVISOR

10 Q AND WHO IS YOUR SUPERVISOR?

11 A JUDY STEADMAN ARE YOU SPEAKING PARTICULARLY IN REGARD
12 TO THE SWEAT PATCHES?

13 Q YES, MA'AM BUT YOU DID NOT UNDER ANY CIRCUMSTANCES
14 ORDER OR AMEND THE CONTRACT OF JUNE THE 10TH, 2002, TO
15 INCLUDE THE SWEAT PATCH, DID YOU?

16 A I DID NOT I DID NOT FEEL THAT THAT WAS NECESSARY TO DO
17 SO

18 Q WHAT ARE THE POLICIES AND PROCEDURES FOR AN INDIVIDUAL
19 WHO REFUSES TO SUBMIT TO SWEAT PATCH TESTING?

20 A NO ONE HAS REFUSED TO SUBMIT TO THAT

21 Q I DIDN'T ASK YOU THAT WHAT'S THE POLICY?

22 A AGAIN, THAT'S NEVER HAPPENED SO I WOULD SAY THE
23 POLICY WOULD BE TO EXPLORE THE REASONS FOR NOT WANTING TO
24 TAKE THE TEST

25 Q WELL, BY YOUR ANSWER, I WOULD SUSPECT THAT YOU HAVE NO

BOBBIE SUE GODWIN -- CROSS BY MR ARMSTRONG

1 POLICY DO YOU?

2 A IT'S NEVER COME UP, SO -- AGAIN, THE POLICY IS THEY ARE
3 EXPECTED TO COMPLETE THE TERMS AND CONDITIONS OF THE PROGRAM
4 AS PRESCRIBED BY THE PROGRAM

5 Q LET ME BE A LITTLE MORE PRECISE IS THERE A WRITTEN
6 POLICY WITHIN THE DRUG COURT PROGRAM SPELLING OUT WHAT THE
7 TERMS AND CONDITIONS ARE IF SOMEONE REFUSES TO SUBMIT TO A
8 SWEAT PATCH TEST?

9 A NO

10 Q IS THERE A WRITTEN PROCEDURE AS TO WHAT THE CONSEQUENCES
11 ARE OR WHAT THE PROCEDURE WOULD BE FOR ONE WHO REFUSES TO DO
12 SWEAT PATCH TESTING?

13 A THERE IS A STATEMENT OF NONCOMPLIANCE IN THE FILE WHICH
14 PERTAINS TO DRUG SCREENS, FAILURE TO PROVIDE A SAMPLE

15 Q ALL RIGHT AND WHAT DOCUMENT ARE YOU REFERRING TO?

16 A UM

17 Q IS THAT THIS CONTRACT?

18 A NO IT'S CALLED -- NONCOMPLIANCE IN THE DRUG COURT
19 PROGRAM IS DEFINED AS ANY OF THE FOLLOWING BEHAVIORS

20 Q ALL RIGHT THAT'S THE PAGE ABOVE IT, RIGHT, IN YOUR
21 BOOK? IS THAT ALSO DATED JUNE THE 10TH, 2002?

22 A YES, IT IS

23 Q WHERE DOES IT SAY THAT THERE IS A POLICY ABOUT THE
24 FAILURE TO SUBMIT TO SWEAT PATCH TESTING?

25 A IT SAYS A FAILURE TO PROVIDE DRUG SCREEN SAMPLE, WHICH

BOBBIE SUE GODWIN -- CROSS BY MR ARMSTRONG

1 WOULD INCLUDE SWEAT PATCH

2 Q THAT'S NOT WHAT IT SAYS IT JUST SAYS FAILURE TO
3 PROVIDE THE SCREEN SAMPLE

4 A WHICH WOULD ALSO INCLUDE ANY SCREEN SAMPLE

5 Q SO, IN OTHER WORDS, THERE IS NO SPECIFIC LANGUAGE IN
6 THIS NONCOMPLIANCE DOCUMENT WHICH DEALS WITH SWEAT PATCH
7 TESTING AT ALL?

8 A YES, WE BELIEVE THAT STATEMENT IS SPECIFIC TO SWEAT
9 PATCH SAMPLES

10 Q THAT'S YOUR INTERPRETATION BUT YOU SHOW ME THE WORDS
11 "SWEAT PATCH" IN THAT NONCOMPLIANCE DOCUMENT

12 MS STROM YOUR HONOR, I WOULD OBJECT I THINK IT'S
13 PATENTLY CLEAR IT'S NOT IN THE DOCUMENT, THAT IT'S NOT
14 WRITTEN IN THE DOCUMENT I CONCEDE THAT POINT

15 THE COURT ALL RIGHT LET'S MOVE ON

16 MR ARMSTRONG IF SHE'LL STATE IT, THAT'S GREAT, YOUR
17 HONOR

18 Q LET ME TALK TO YOU A LITTLE BIT ABOUT THE --

19 MR ARMSTRONG PRESERVING ALL OBJECTIONS TO ANY
20 PREVIOUS TESTING, YOUR HONOR

21 Q WHO IS TERESA MOORE?

22 A SHE IS AN ADMINISTRATIVE ASSISTANT WHO WORKS IN DRUG
23 COURT

24 Q AND IS SHE A -- CERTIFIED TO TAKE A SAMPLE OF DRUGS OR
25 MORE PARTICULARLY A SWEAT PATCH?

1 A YES

2 Q HOW LONG HAS SHE BEEN EMPLOYED WITH THE PROGRAM?

3 A JULY '02? JULY '02

4 Q DID SHE TAKE A SAMPLE OF MR JANELLI ON DECEMBER THE
5 19TH, 2002?

6 A THAT'S HER SIGNATURE, YES

7 Q AND IS THAT A COPY OF WHAT IS IN YOUR COURT FILE ON THIS
8 GENTLEMAN?

9 A YOU MEAN IN THIS PARTICULAR FILE?

10 Q YES, MA'AM I JUST WANT TO MAKE SURE THAT YOU AGREE
11 WITH THE AUTHENTICITY OF THAT PARTICULAR DOCUMENT

12 A YES NO YES, I GUESS IT'S -- IF I HAVE IT HERE -- I
13 MEAN, THAT IS TERESA MOORE'S STATEMENT -- SIGNATURE, IF
14 THAT'S WHAT YOU'RE ASKING

15 Q LET ME HELP YOU OUT A LITTLE BIT YOU PROVIDED ME WITH
16 A COPY OF THE COURT FILE, AND I REPRESENT TO YOU THAT THIS
17 WAS IN IT

18 A OKAY I'M LOOKING---

19 MS STROM IT'S OUR FILE, YOUR HONOR, NOT THE COURT'S
20 FILE I JUST WANT TO MAKE THE RECORD CLEAR IT'S OUR FILE
21 THE COURT ALL RIGHT

22 A I'M LOOKING UNDER THE POSITIVE SCREENS IT'S PROBABLY
23 THIS ONE HERE YES

24 Q ALL RIGHT NOW JUST SAVE THAT PAGE, IF YOU WOULD

25 A UH-HUH (AFFIRMATIVE)

BOBBIE SUE GODWIN -- CROSS BY MR ARMSTRONG

1 Q WAS THIS SAMPLE ALSO SENT OUT TO PHARMCHEM?

2 A YES

3 Q ALL RIGHT AND I'M GOING TO SHOW YOU ANOTHER DOCUMENT
4 AND ASK YOU IF THAT'S A COPY OF THE RESULT

5 A YES

6 Q SAVE THAT A MOMENT, PLEASE

7 MR. ARMSTRONG I'D LIKE THESE TWO DOCUMENTS MARKED AS
8 AN EXHIBIT, PLEASE PERHAPS IT WOULD BEST AS TWO EXHIBITS,
9 JUDGE

10 THE COURT ALL RIGHT

11 MS STROM ARE YOU INTENDING TO ADMIT THOSE---

12 MR. ARMSTRONG YEAH

13 MS STROM ---OR ARE YOU JUST MARKING THEM?

14 MR ARMSTRONG I OFFER THEM AS AN EXHIBIT

15 MS STROM THEN I'M GOING TO OBJECT, YOUR HONOR IF
16 THE RULES ARE GOING TO BE THAT I HAVE TO PROVIDE A CHAIN OF
17 CUSTODY ON EVERY TEST THAT I PLAN TO RELY ON, THEN I SUBMIT
18 THEY DO THE SAME • • • • •

19 THE COURT ISN'T THE OLD ENGLISH COMMON LAW THEORY OF
20 THE GOOSE AND GANDER APPLICABLE HERE?

21 MS STROM NOW, I'M WILLING TO CONCEDE THAT NEITHER
22 ONE OF US HAVE TO PRODUCE THAT FOUNDATION BUT IF HE'S GOING
23 TO---

24 THE COURT THE OLD THEORY OF QUID PRO QUO

25 MR ARMSTRONG JUDGE, THEY MADE A PROFFER -- YOU

BOBBIE SUE GODWIN -- CROSS BY MR ARMSTRONG

1 ALLOWED THE STATE TO MAKE A PROFFER, YOU KNOW, AND---

2 THE COURT BUT YOU HAVE NOT PROFFERED THIS YOU HAVE
3 INTRODUCED THIS, AS THE SOLICITOR HAS SO APTLY POINTED OUT

4 MR ARMSTRONG WELL, LET ME JUST BE CANDID ABOUT IT
5 AND DO IT AS A PROFFER

6 THE COURT ALL RIGHT AS A PROFFER THEN

7 MS STROM AS A PROFFER, GO RIGHT AHEAD

8 THE COURT ARE YOU OKAY NOW, MR GIBSON?

9 MR. GIBSON YES, SIR

10 (LAUGHTER IN THE COURTROOM)

11 (PHARMCHEM LAB REPORT RE DANE JANELLI MARKED AS
12 DEFENDANT JANELLI EXHIBIT NUMBER 4 FOR PURPOSES OF
13 IDENTIFICATION ONLY)

14 (12/19/02 CHAIN OF CUSTODY MARKED AS DEFENDANT JANELLI
15 EXHIBIT NUMBER 5 FOR PURPOSES OF IDENTIFICATION ONLY)

16 Q PART OF THE PROFFER, TERESA MOORE'S SHEET IS EXHIBIT
17 NUMBER 5, JANELLI NUMBER 5 AND WHAT CAME BACK FROM PHARMCHEM
18 IS NUMBER 4, IS THAT CORRECT?

19 A IT APPEARS TO BE, YES

20 Q ALL RIGHT I WANT YOU TO PAY PARTICULAR ATTENTION TO
21 NUMBER 4 HERE AND READ TO ME THE NAME THAT IS ON THE TOP
22 THERE OF THE SUBJECT WHO IS IN QUESTION

23 A DANE JANELLI SPELLED WRONG BUT

24 Q YES, MA'AM WHAT IS THE SPELLING, PLEASE?

25 A J-A-M-I-L-L-I

BOBBIE SUE GODWIN -- CROSS BY MR ARMSTRONG

1 Q OKAY

2 A WHICH ALSO LOOKS LIKE THIS HANDWRITING SIGNATURE

3 Q WELL, ISN'T IT TRUE HIS HANDWRITING SIGNATURE LOOKS LIKE
4 J-A-M-E-L-L-I?

5 A UH-HUH (AFFIRMATIVE) J-A-M, RIGHT

6 MR. ARMSTRONG PART OF THE PROFFER, YOUR HONOR

7 THE COURT ALL RIGHT

8 Q DID YOU ALSO -- OR AREN'T YOU ALSO AWARE THAT DANE HAD A
9 BAD BACK?

10 A YES

11 Q AND, IN FACT, AS A RESULT OF HIS BAD BACK, THAT HE WAS
12 IN FACT TAKING SOME MEDICATIONS---

13 THE COURT CAN YOU HOLD ON WHILE MR BANNISTER TURNS
14 OFF HIS CELL PHONE, WHICH IS CLEARLY NOTED ON THE COURTROOM
15 DOOR TO BE TURNED OFF BEFORE HE ENTERS I DON'T WANT TO
16 INTERRUPT MY COURT REPORTER

17 MR BANNISTER I APOLOGIZE

18 THE COURT THANK YOU, MR BANNISTER

19 ALL RIGHT, MR ARMSTRONG

20 Q YES YOU HAVE TESTIFIED -- YOU'VE AGREED WITH ME THAT
21 YOU KNOW THAT DANE HAD A BAD BACK, IS THAT CORRECT?

22 A YES

23 Q AND YOU ALSO HAVE AS PART OF YOUR FILE VARIOUS
24 STATEMENTS FROM PHYSICIANS, X-RAY REPORTS, ET CETERA,
25 DOCUMENTING THE FACT THAT HE DOES INDEED HAVE A MEDICALLY

1 DETERMINED BACK DISORDER, IS THAT CORRECT?

2 A I HAVE INFORMATION IN THERE THERE WAS NO SPECIFIC
3 DIAGNOSIS, BUT THERE WAS INFORMATION AS TO HE WAS BEING
4 TREATED

5 Q OKAY AND ON JULY 7TH, 2003, THIS IS THE DAY THAT HE
6 WAS PLACED IN JAIL, YOU HAD ALSO TALKED TO HIM ABOUT HIM
7 USING MEDICINES, FLEXERIL AND PAIN MEDICATIONS, WHILE ON
8 THE -- IN THE PROGRAM, IS THAT CORRECT?

9 A IS THAT IN A PROGRESS' NOTE?

10 Q YES, MA'AM

11 A ON WHAT DAY?

12 Q JULY THE 7TH, 2003

13 A NO, IT DOESN'T SAY HE USED -- HE DISCUSSED THE USE OF
14 PAIN MEDICATION WITH ME IT DOESN'T SAY HE WAS USING PAIN
15 MEDICATION

16 Q DID HE EVER INDICATE TO YOU THAT HE HAD USED PAIN
17 MEDICATION BECAUSE OF HIS BACK CONDITION?

18 A PRIOR TO COMING INTO DRUG COURT HE WAS TOLD BEFORE HE
19 CAME INTO DRUG COURT HE WOULD NOT BE ALLOWED TO DO THAT

20 Q EVEN IF A DOCTOR HAD ORDERED IT?

21 A THAT'S CORRECT SINCE IT WAS A CONDITION THAT WE
22 ALREADY KNEW ABOUT, HE HAD SIGNED A PIECE OF PAPER THAT
23 UNDERSTOOD OUR MEDICATION POLICY CONCERNING THAT

24 Q NOW, LET ME ASK YOU A QUESTION HERE THE PATCH THAT IS
25 IN QUESTION WAS APPLIED ON JUNE THE 17TH, 2003, ISN'T THAT

BOBBIE SUE GODWIN -- CROSS BY MR ARMSTRONG

1 CORRECT?

2 A WELL, YOU'VE SHOWN ME TWO PATCHES ONE WAS IN DECEMBER
3 AND---

4 Q I'M ASKING YOU ABOUT THE ONE IN JUNE I BELIEVE IT'S
5 THIS ONE RIGHT HERE IT'S EXHIBIT NUMBER 4

6 A IT WAS APPLIED 6/17, JUNE 17TH, 2003

7 Q IT WAS REMOVED ON JUNE THE 25TH, 2003, WASN'T IT?

8 A YES

9 Q AND, IN FACT, YOUR DRUG COURT PARTICIPATION RECORD
10 INDICATES INCORRECTLY IT WAS REMOVED ON JUNE THE 27TH, 2003?

11 A YES I NOTICED THAT MYSELF

12 Q SO THAT WAS A LITTLE ERROR IN YOUR RECORDS AS WELL

13 NOW, ISN'T IT TRUE THAT YOU GAVE DANE PERMISSION TO GO
14 TO VIRGINIA WITH HIS MOM AND GRANDMOTHER FOR PARTICIPATION IN
15 A FAMILY GET TOGETHER?

16 A YES

17 Q AND WHEN WAS THAT PARTICIPATION -- EXCUSE ME, THAT
18 PERMISSION GIVEN?

19 A I DON'T REMEMBER THE EXACT DATE I JUST REMEMBER IT WAS
20 SOMETIME ABOUT THAT TIME

21 Q DO YOU HAVE ANYTHING IN YOUR NOTES WHICH WOULD REFLECT
22 THE PRECISE TIME THAT YOU ALLOWED HIM TO DO THAT?

23 A I DON'T SEE THAT

24 Q IF I TOLD YOU THAT HE LEFT FOR VIRGINIA ON THE 27TH OF
25 JUNE 2003 AND DID RETURN ON JUNE THE 29TH, 2003, WOULD YOU

1 AGREE WITH THAT OR DISAGREE WITH IT?

2 A I DON'T KNOW I DON'T HAVE THAT RECORDED IN HERE WHAT
3 DATES HE WENT AND WHEN HE RETURNED

4 Q BUT IS IT CLEAR THOUGH THAT HE DID HAVE YOUR PERMISSION
5 TO SO GO?

6 A YES, I THINK I'VE SAID THAT

7 Q NOW, THE PATCH THAT CAME BACK, WHICH IS EXHIBIT NUMBER
8 4, WHICH YOU HAVE BEEN LOOKING AT, WAS REMOVED ON JUNE THE
9 25TH, 2003 WHEN DID YOU RECEIVE THOSE RESULTS BACK FROM THE
10 LABORATORY?

11 A WEEKS LATER

12 Q WEEKS LATER?

13 A YEAH

14 Q WELL, APPARENTLY THERE WAS SOME -- YOU HAD IT ON THE 7TH
15 OF JULY WOULD IT HAVE BEEN THAT DAY OR A COUPLE OF DAYS
16 BEFORE OR DO YOU KNOW?

17 A DON'T KNOW

18 Q BUT IS IT SAFE TO SAY YOU DID INDEED HAVE IT ON JULY
19 7TH?

20 A YES

21 Q AND WHEN YOU -- WAS JULY THE 7TH -- LET ME JUST CHECK
22 THE CALENDAR HERE I BELIEVE THAT WAS A MONDAY SO WOULD
23 THAT HAVE BEEN A REGULAR GROUP MEETING THAT HAD BEEN CALLED?

24 A YES

25 Q AND WHAT WERE YOUR INSTRUCTIONS REGARDING DANE AT THAT

BOBBIE SUE GODWIN -- CROSS BY MR ARMSTRONG

1 TIME?

2 A I DON'T KNOW WHAT YOU MEAN

3 Q HE WAS ARRESTED ARE YOU THE ONE THAT TOLD HIM TO --
4 TOLD THE AUTHORITIES TO ARREST HIM OR TOLD THE OFFICERS TO
5 ARREST HIM? HOW DOES THAT WORK?

6 A IF WE BELIEVE THAT HE MIGHT BE A FLIGHT RISK WE
7 USUALLY DO THAT IN THE CASE OF SOMEONE WHO HAS HAD MULTIPLE
8 POSITIVE OR MULTIPLE VIOLATIONS WE DO THAT SOMETIMES, YEAH

9 Q OKAY AND IN THIS CASE YOU DID?

10 A YES

11 Q WOULD THAT HAVE BEEN YOUR DECISION OR IS THAT A STAFFING
12 DECISION?

13 A WE DISCUSS IT IT WOULD HAVE BEEN MY DECISION, BUT
14 CERTAINLY AFTER INPUT WITH THE STAFF

15 Q AND, IN FACT, HE HAS REMAINED IN JAIL -- OR DID REMAIN
16 IN JAIL FROM THE 7TH OF JULY UNTIL A COUPLE DAYS BEFORE
17 CHRISTMAS OF 2003, ISN'T THAT CORRECT?

18 A CORRECT

19 Q AND DURING THAT PROCESS HE -- WHILE HE WAS IN JAIL NOT
20 ONLY DID HE HAVE ONE HAIR STRAND ANALYSIS TEST, BUT HE
21 ACTUALLY HAD A TOTAL OF THREE, THE MIDDLE ONE WHICH WAS
22 CONDUCTED AT YOUR DIRECTION, IS THAT CORRECT?

23 A UH-HUH (AFFIRMATIVE) THAT'S CORRECT

24 Q AND YOU ARE AWARE THAT HE HAD A DRUG SCREEN BASED ON A
25 SAMPLE TAKEN ON JULY THE 24TH, 2003 AND ALSO ONE, I BELIEVE,

BOBBIE SUE GODWIN -- CROSS BY MR ARMSTRONG

1 ON APRIL -- STRIKE THAT -- AUGUST THE 24TH, 2003, DONE BY THE
2 FAMILY? YOU'RE AWARE OF THAT?

3 A I WAS AWARE THAT THEY HAD DONE THE SCREEN, BUT I WAS NOT
4 AWARE OF THE SPECIFIC DATE

5 Q OKAY YOU ARE ALSO AWARE THAT THERE WAS A TESTING ON
6 THE FIRST ONE FOR, I BELIEVE, IT'S A -- WHAT IS KNOWN AS A
7 FIVE PANEL EXAMINATION---

8 MS. STROM YOUR HONOR, I'M GOING TO OBJECT IF THESE
9 ARE TESTS THAT WERE DONE AT THE CLIENT'S REQUEST, I
10 PREVIOUSLY HAVE ASKED FROM DEFENSE COUNSEL TO GET COPIES OF
11 THE LITIGATION PACKETS INVOLVING THOSE TESTS SO THAT I COULD
12 HAVE MY EXPERT LOOK AT THEM OR IN THE ALTERNATIVE TO GIVE ME
13 WRITTEN PERMISSION TO GET THEM, AND THEY HAVE FAILED TO
14 PROVIDE THAT TO ME, AND I WOULD SUBMIT THAT IT WOULD BE
15 INAPPROPRIATE FOR THEM TO GO INTO THAT WITH NOT GIVING ME THE
16 OPPORTUNITY TO REVIEW THE RESULTS OF THAT AND THE VALIDITY OF
17 THAT

18 THE COURT MR ARMSTRONG?

19 MR ARMSTRONG THOSE RESULTS ARE IN THE STATE'S FILE,
20 YOUR HONOR I'VE GOT A COPY OF THE STATE'S FILE I'M
21 LOOKING RIGHT HERE AT THE JULY THE 24TH SAMPLING

22 THE COURT DO YOU HAVE THAT REPORT, MS GODWIN?

23 WITNESS THE ONLY ONE I'M AWARE THAT I HAVE IS THE
24 ONE WE DID

25 THE COURT SEE IF YOU CAN REFER TO IT

BOBBIE SUE GODWIN -- CROSS BY MR ARMSTRONG

1 MS STROM YOUR HONOR, EVEN IF WE HAD THE REPORT, I
2 SUBMIT THAT THE LITIGATION PACKETS WHICH GIVE ALL THE
3 RELEVANT DETAIL ABOUT CUTOFF LEVELS AND WHAT THAT---

4 THE COURT I UNDERSTAND LET'S SEE WHAT'S IN FILE,
5 AND THEN I'LL RULE

6 MS STROM OKAY

7 (PAUSE)

8 A THE ONLY DRUG SCREENS I HAVE IN THE FILE ARE THE
9 POSITIVE SCREENS (REVIEWS FILE WITH MR ARMSTRONG)

10 MR GIBSON YOUR HONOR, THIS SAME ISSUE IS GOING TO
11 COME UP LATER ON WITH TESTIMONY OF MS RADDATZ, AND I THINK I
12 MIGHT HAVE SOMETHING THAT MAY CLEAR SOME OF THIS UP THE
13 THURSDAY BEFORE WE BEGAN, LAST THURSDAY, I CONTACTED THE
14 SOLICITOR'S OFFICE TO GET COPIES OF THEIR LITIGATION PACKET
15 BECAUSE WE HADN'T GOTTEN IT IN RESPONSE TO THAT MS WINN
16 GAVE ME COPIES OF THEIR PACKET AND SHE WROTE A LETTER AND IN
17 THAT LETTER SHE ASKED ME ABOUT OUR LITIGATION PACKETS FOR ANY
18 TESTS THAT WE WERE GOING TO SUBMIT WE SPOKE THAT DAY, AND
19 WE TALKED, AND I SAID, "WELL, AS FAR AS I'M CONCERNED, I
20 DON'T HAVE A PROBLEM WITH YOU GETTING THEM I DON'T HAVE
21 THEM " SHE TOLD ME, SHE SAID, "OH, WE'RE LOOKING FOR THE
22 ONES IF YOU'VE GOT THEM IN YOUR POSSESSION " I ALSO LOOKED
23 IN THEIR MOTION THAT THEY FILED IN REGARDS TO THE LITIGATION
24 PACKETS -- OR LITIGATION TESTS, AND WHAT THEY ASKED FOR
25 SPECIFICALLY IN THE MOTION ARE ANY TEST RESULTS WHICH ARE IN

MATTERS AND MOTIONS

1 OUR POSSESSION AND/OR CONTROL I HAVE NEVER HAD ANY TEST
2 RESULTS IN MY POSSESSION MS RADDATZ, WHO IS THE
3 ADMINISTRATOR OF THE LAB THAT DID THE TEST, SHE HAS THOSE
4 TEST RESULTS AND SUBSEQUENTLY AT SOME POINT DURING THE DAY
5 OR TOMORROW I'M GOING TO BE CALLING HER TO TESTIFY AS TO A
6 HAIR STRAND TEST THAT MR PERKINS DID AND THE RESULTS OF THAT
7 TEST

8 MS. STROM LET ME HEAR FROM THE STATE
9 MS. STROM YOUR HONOR, WE HAVE REPEATEDLY REQUESTED
10 THE LITIGATION PACKETS WE HAVE ALSO BY WRITTEN LETTER
11 REQUESTED THE LITIGATION PACKETS AND I BELIEVE THAT IN THE
12 LETTER THAT WE SENT TO MR ARMSTRONG, MR BANNISTER AND MR
13 GIBSON WE CARBON COPIED YOU ON THAT, WHICH WAS FEBRUARY 5TH,
14 AND IT SAYS, "IT IS THIS OFFICE'S UNDERSTANDING THAT YOUR
15 CLIENT MAY HAVE UNDERGONE INDEPENDENT HAIR STRAND OUTSIDE THE
16 REQUIREMENTS OF THE DRUG COURT PROGRAM AND IN LIGHT OF THE
17 HEARING SET, AT THAT TIME, FOR MARCH 1ST BEFORE THE HONORABLE
18 CHARLES B SIMMONS TO LITIGATE THE VALIDITY OF THE PATCH
19 TEST, WE'D REQUEST YOUR CLIENT GIVE HIS PERMISSION ALLOWING
20 US TO REQUEST THE LITIGATION PACKETS FROM ANY INDEPENDENT
21 TEST PERFORMED OUR EXPERT WOULD LIKE TO HAVE A CHANCE TO
22 EVALUATE ALL TESTS PERFORMED ON YOUR CLIENT IN ORDER TO MAKE
23 A COMPETENT REPORT ON THIS MATTER PLEASE LET ME KNOW YOUR
24 CLIENT'S DECISION AT YOUR EARLIEST CONVENIENCE IF YOU HAVE
25 ANY FURTHER QUESTIONS, PLEASE DO NOT HESITATE TO CONTACT ME "

MATTERS AND MOTIONS

1 WHAT WE WERE ASKING WAS SOMETHING FROM THEM THAT WE
2 COULD THEN TAKE TO THIS COMPANY BECAUSE THEY WILL NOT RELEASE
3 IT TO US IT'S MY UNDERSTANDING THAT THE CONVERSATION TOOK
4 PLACE BETWEEN MR GIBSON AND MS WINN ON FRIDAY EXCUSE ME,
5 IT WAS THURSDAY

6 **THE COURT** HOW ABOUT MR GIBSON'S CONTENTION THAT HE
7 HAS NOT HAD THE REPORT, THAT THE REPORT IS IN THE HANDS OF
8 THE REPRESENTATIVE FROM THE TESTING LAB?

9 **MS STROM** THEN ALL HE HAD TO DO WAS GIVE ME SOMETHING
10 IN WRITING FROM HIS CLIENT THAT WOULD HAVE ALLOWED THAT
11 COMPANY TO RELEASE THAT INFORMATION TO ME, WHICH IS WHAT I
12 ASKED FOR

13 **THE COURT** MR GIBSON?

14 **MR. GIBSON** AND AGAIN, YOUR HONOR, WHEN WE SPOKE ON
15 THAT THURSDAY, I SAID I DON'T HAVE A PROBLEM WITH YOU GETTING
16 THEM AND, YOU KNOW, IF YOU WANT TO GET THEM FROM THEM I
17 SAID I DON'T HAVE THEM, BUT, YOU KNOW, IF YOU WANT TO, YOU
18 CAN GET THEM FROM THEM MS WINN TOLD ME, IF YOU DON'T HAVE
19 THEM IN YOUR POSSESSION -- AND I'M NOT SURE EXACTLY WHAT HER
20 WORDS WERE IF YOU DON'T HAVE THEM IN YOUR POSSESSION---

21 **THE COURT** WHATEVER THE REPRESENTATIVE FROM THAT LAB
22 HAS IS TO BE IMMEDIATELY PRODUCED TO THE STATE, AND THEN I'LL
23 ADDRESS THE ISSUE ONCE YOU HAVE A CHANCE TO LOOK AT IT AND
24 SEE IF IT IS SOMETHING THAT WOULD HAVE NECESSARILY BEEN
25 RELIED UPON BY YOUR EXPERT, WHICH I CERTAINLY ANTICIPATE WHAT

1 YOUR THOUGHT WILL BE BUT I DON'T WANT TO RULE UNTIL YOU
2 HAVE A CHANCE TO LOOK AT THE DOCUMENT

3 MS STROM THANK YOU IF THAT PERSON IS HERE, CAN WE
4 GET THE COPY MADE?

5 THE COURT ALL RIGHT

6 UNIDENTIFIED I HAVE IT

7 THE COURT ALL RIGHT, MR ARMSTRONG

8 MS STROM FOR THE RECORD, I'VE ALREADY RELEASED MY
9 EXPERT TO GO BACK HOME BUT I'LL DEAL WITH THAT

10 THE COURT ALL RIGHT, MR ARMSTRONG

11 MS GODWIN, LET ME ASK YOU, IS THE REPORT THAT MR
12 ARMSTRONG IS REFERENCING, IS IT IN THE STATE'S OR DRUG
13 COURT'S TEAM'S FILE?

14 WITNESS I DIDN'T SEE IT IN THERE

15 THE COURT OKAY THEN I'M GOING TO SUSTAIN THE
16 OBJECTION UNLESS YOU CAN SHOW THAT IT WAS IN THE FILE
17 CROSS EXAMINATION CONTINUES BY MR. ARMSTRONG

18 Q MS GODWIN, WE WERE LOOKING THROUGH WHAT WAS -- FIRST OF
19 ALL, I'M GOING TO SHOW YOU A FOLDER ON MR JANELLI DO YOU
20 RECOGNIZE THAT FOLDER?

21 A YES

22 Q ALL RIGHT AND IS THIS NOT THE FOLDER THAT WAS PROVIDED
23 TO ME BASED UPON A REQUEST QUITE SOME TIME AGO?

24 A YES, IT IS

25 Q ALL RIGHT AND CONTAINED IN THIS FOLDER IS A DOCUMENT

1 HERE THAT'S A NORTHWEST DRUG TESTING DIVISION TEST RESULT
2 REPORT DATED ON A SAMPLE OF JULY THE 24TH, 2003 DO YOU SEE
3 WHAT I'M REFERRING TO?

4 A I DO

5 Q YOU'RE TELLING THE COURT THAT YOU DO NOT HAVE OR CANNOT
6 FIND THAT PARTICULAR DOCUMENT IN THE COURT FILE, IS THAT
7 CORRECT?

8 A I---

9 Q OR IN THE STATE'S FILE?

10 A I DON'T SEE IT IN HERE

11 Q ALL RIGHT THAT STATED HERE, THERE'S A HANDWRITTEN NOTE
12 AT THE BOTTOM OF THAT AND WHAT DOES THAT HANDWRITTEN NOTE
13 SAY?

14 A "FAMILY ORDERED THIS DRUG SCREEN "

15 Q WHOSE HANDWRITING IS THAT IN?

16 A IT LOOKS LIKE MINE

17 MR. ARMSTRONG ALL RIGHT I WOULD OFFER -- I'M GOING
18 TO PULL THIS OUT OF MY REPORT HERE, YOUR HONOR, WHICH WAS
19 PROVIDED TO ME BY THE STATE, AND I REPRESENT TO THE COURT IT
20 WAS WHAT WAS PROVIDED, AND I WOULD ASK THAT THIS BE MARKED AS
21 AN EXHIBIT

22 THE COURT AND, MS STROM, SUBJECT TO YOUR OBJECTION,
23 I'M GOING TO ALLOW IT FOR THE LIMITED PURPOSE THAT MS GODWIN
24 MAY HAVE SOME EXPERTISE AND BE ABLE TO GLEAN SOME TYPE OF
25 INFORMATION FROM THIS

BOBBIE SUE GODWIN -- CROSS CONTINUES BY MR ARMSTRONG

1 MS STROM THAT'S FINE

2 THE COURT THANK YOU

3 (NORTHWEST DRUG TESTING DOCUMENT MARKED AS STATE'S
4 EXHIBIT NUMBER 6 AND MOVED INTO EVIDENCE)

5 Q I SHOW YOU JANELLI DEFENDANT'S EXHIBIT NUMBER 6 THIS
6 IS THE DOCUMENT WE WERE JUST SPEAKING OF, IS THAT CORRECT?

7 A UH-HUH (AFFIRMATIVE) IT IS

8 Q IS THAT WHAT IS KNOWN AS A FIVE PANEL DRUG SCREEN?

9 A YES, IT IS

10 Q AND WHAT ARE THE DRUGS THAT WERE SCREENED FOR?

11 A AMPHETAMINES, COCAINE, OPIATES, PCP AND POT -- CANNABIS,
12 MARIJUANA

13 Q ALL RIGHT AND WAS THE RESULT NEGATIVE FOR ALL OF THOSE
14 FIVE ITEMS?

15 A YES

16 Q IS THIS A HAIR STRAND TEST?

17 A IT'S A TEST RESULT FOR HAIR ANALYSIS

18 Q ALL RIGHT AND THE DRUG PROGRAM USES HAND STRAND
19 ANALYSES, DON'T THEY?

20 A WE DO BUT OURS WOULD BE DIFFERENT FROM THIS

21 Q BUT NONETHELESS YOU USE THEM?

22 A YES

23 Q OKAY IF I TOLD YOU THAT THIS TEST WAS ADMINISTERED BY
24 I THINK IT'S ACCURATE DIAGNOSTICS -- LET ME GET THE PROPER
25 NAME HERE -- MS RADDATZ IN PARTICULAR, ARE YOU FAMILIAR WITH

BOBBIE SUE GODWIN -- CROSS CONTINUES BY MR ARMSTRONG

1 MS RADDATZ?

2 A YES, I KNOW HER

3 Q ALL RIGHT AND WHAT IS THE NAME OF HER BUSINESS -- THE
4 NATURE OF HER BUSINESS?

5 A ACCURATE DIAGNOSTICS IS A DRUG TESTING COMPANY

6 Q ALL RIGHT AND IN FACT DOES THE DRUG COURT EMPLOY
7 ACCURATE DIAGNOSTICS TO CONDUCT VARIOUS DRUG SCREENS AND
8 TESTING AT ITS DIRECTION?

9 A NO

10 Q IT DOES NOT?

11 A EMPLOY?

12 Q WELL, EMPLOY, HIRE?

13 A NO

14 Q DO THEY GET THEM TO DO DRUG TESTS? OR DO YOU SEND
15 CLIENTS TO THEM TO GET TESTING?

16 A NO

17 Q NONE?

18 A THE ONLY CLIENTS THAT WAS SENT TO THEM WAS DURING THE
19 BOND HEARING FOR ANGELA HURKS, DANE JANELLI AND CEDRIC
20 PERKINS WE DID NOT WANT TO USE MRW BECAUSE OUR CLIENT WAS
21 TOLD NOT TO HAVE ANY CONTACT WITH THEIR CLIENTS SO WE COULD
22 NOT SEND THEM THERE SO THAT WAS IN THE COURT ORDER THAT
23 THEY WOULD REPORT TO ACCURATE DIAGNOSTICS WE DO NOT PAY FOR
24 THOSE DRUG SCREENS WE DO NOT EMPLOY ACCURATE DIAGNOSTICS TO
25 DO THAT

1 Q ALL RIGHT BUT YOU ARE USING THEIR RESULTS TO MONITOR
2 THESE THREE INDIVIDUALS WHILE THEY ARE OUT ON BOND, IS THAT
3 CORRECT?

4 A THEY WERE TOLD TO SEND THEIR RESULTS TO US AS PART OF
5 THAT CONDITION OF BOND

6 Q ALL RIGHT AND THE DRUG COURT PROGRAM ACCEPTS THOSE
7 RESULTS, IS THAT CORRECT?

8 A TO MY KNOWLEDGE, YES, UNDER THOSE BOND CONDITIONS

9 Q I UNDERSTAND THAT AND HAVE YOU BEEN OVER TO ACCURATE
10 DIAGNOSTICS?

11 A I BELIEVE I WENT OVER THERE THE DAY BEFORE CHRISTMAS OR
12 CHRISTMAS EVE PERHAPS TO MEET THEM, TO TELL THEM ABOUT THE
13 BOND HEARING AND WHAT HAD HAPPENED AND THAT WE WOULD BE USING
14 THEM AND WHO WE WERE AND -- YES

15 Q SO YOU ARE USING THEM?

16 A WE DON'T PAY FOR THOSE DRUG SCREENS WE DON'T EMPLOY
17 THEM WE HAVEN'T HIRED THEM TO DO THAT

18 Q AND THE REQUIREMENT OF THESE PEOPLE IS WHILE THEY ARE ON
19 BOND THY MUST HAVE A URINALYSIS BECAUSE WE'VE BEEN IN COURT
20 ON THIS BEFORE BUT THEY MUST HAVE URINALYSIS AT LEAST TWICE A
21 WEEK?

22 A I BELIEVE THAT WAS PART OF THE BOND AGREEMENT, YES

23 Q ALL RIGHT AND THESE PEOPLE ARE COMPLIANT WITH THAT,
24 ARE THEY NOT?

25 A THEY ARE

BOBBIE SUE GODWIN -- CROSS CONTINUES BY MR ARMSTRONG

1 Q AND THAT HAS BEEN GOING ON SINCE YOU SAID RIGHT AROUND
2 CHRISTMAS?

3 A YES

4 Q AND HERE WE ARE AT THE VERY END OF APRIL WHICH WOULD BE
5 ABOUT FOUR MONTHS, IS THAT CORRECT?

6 A THAT'S CORRECT

7 Q AND, IN PARTICULAR, HAS MR JANELLI BEEN IN COMPLIANCE
8 WITH HAVING URINALYSES DONE AT ACCURATE DIAGNOSTICS?

9 A TO MY KNOWLEDGE, YES

10 Q ALL RIGHT AND YOU RECEIVE THOSE REPORTS, DON'T YOU?

11 A YES

12 Q AND THEY'VE ALL BEEN NEGATIVE, HAVEN'T THEY?

13 A YES

14 Q IS THAT TRUE ALSO OF MS HURKS AND MR PERKINS?

15 A YES

16 Q YOU TESTIFIED THAT ONE OF THE CONDITIONS AND ONE OF THE
17 PROBLEMS THAT MR JANELLI HAD THAT HE WAS ASSOCIATING WITH
18 PEOPLE WITH WHOM HE SHOULD NOT HAVE BEEN ASSOCIATING DO YOU
19 REMEMBER THAT TESTIMONY?

20 A YES, I DO

21 Q WHO ARE YOU REFERRING TO IN PARTICULAR? OR MORE
22 PRECISELY, WHAT DID HE DO, IN YOUR OPINION, HE WASN'T
23 SUPPOSED TO?

24 A HE HAD INDICATED THAT HE HAD BEEN WITH A GIRLFRIEND WHO
25 USED DRUGS

- 1 Q WHAT IS THE TIME FRAME THAT THIS ALLEGEDLY OCCURRED?
- 2 A THE SUMMER, JUNE, JULY OF 2003
- 3 Q WHAT SPECIFICALLY DID HE SAY TO YOU?
- 4 A TO ME PERSONALLY?
- 5 Q YES, MA'AM
- 6 A THE NIGHT THAT HE WAS CONFRONTED WITH THE POSITIVE PATCH
- 7 RESULT I ASKED HIM, "DANE, WHAT HAPPENED?" AND HE INDICATED
- 8 HE WAS WITH HIS GIRLFRIEND
- 9 Q WHAT ELSE DID HE SAY TO YOU ABOUT -- WE'RE TALKING ABOUT
- 10 JULY THE 7TH, AREN'T WE?
- 11 A YES
- 12 Q WHAT ELSE DID HE SAY TO YOU?
- 13 A HE DIDN'T MAKE EYE CONTACT HE DIDN'T SAY ANY MORE
- 14 Q SO THE ONLY THING HE SAID IS HE HAD BEEN WITH HIS
- 15 GIRLFRIEND?
- 16 A THAT'S CORRECT
- 17 Q NOTHING ELSE?
- 18 A AT THAT PARTICULAR POINT IN TIME, NO
- 19 Q ALL RIGHT DID HE SAY ANYTHING SUBSEQUENT TO JULY THE
- 20 7TH?
- 21 A NO, NOT TO ME
- 22 Q DID HE SAY ANYTHING TO YOU BEFORE JULY THE 7TH?
- 23 MS STROM YOUR HONOR, I WOULD OBJECT IT'S AWFUL
- 24 BROAD HE'S BEEN IN DRUG COURT FOR SEVERAL YEARS
- 25 THE COURT NARROW IT DOWN

BOBBIE SUE GODWIN -- CROSS CONTINUES BY MR ARMSTRONG

1 Q SPECIFICALLY, FROM THE TIME THIS PATCH WAS PUT ON ON
2 JUNE THE 17TH, 2003, TO JULY THE 7TH, 2003, DID YOU HAVE ANY
3 CONVERSATION WITH HIM?

4 MS. STROM AND, AGAIN, YOUR HONOR, I'M GOING TO OBJECT
5 TO THE BROAD NATURE THIS MAN AT THE TIME WAS GOING THROUGH
6 DRUG COUNSELING, GROUP THERAPY---

7 THE COURT NARROW YOUR QUESTION DOWN A LITTLE, PLEASE,
8 SIR

9 Q ALL RIGHT DID HE SAY ANYTHING TO YOU DURING THAT
10 PERIOD OF TIME, JUNE 17TH, 2003, TO JULY 7TH, 2003, ABOUT
11 USING DRUGS?

12 A ABOUT DANE PARTICULARLY HIMSELF USING DRUGS?

13 Q DANE, THAT HE WAS USING DRUGS

14 A NO, NOT THAT I RECALL

15 Q YOU SAY HE TOLD OTHER PEOPLE I ASSUME THAT WOULD BE
16 MS ALEXANDER AND MS ROBERTSON, WHO TESTIFIED TODAY, IS THAT
17 CORRECT?

18 A I THINK THAT CAME MORE FROM IN GROUP DISCUSSION TOO,
19 THAT

20 Q WHO ELSE ARE YOU TESTIFYING ABOUT TO YOUR KNOWLEDGE WHO
21 THEORETICALLY HAD RECEIVED INFORMATION FROM DANE CONCERNING
22 DRUGS---

23 MS STROM I WOULD OBJECT THAT'S SPECULATION, YOUR
24 HONOR

25 Q ---OR USE OF DRUGS?

1 **THE COURT** REPEAT THE QUESTION, PLEASE, SIR
2 **MR ARMSTRONG** YES, SIR
3 **Q** DURING THAT TIME PERIOD WHO ELSE, MS GODWIN, DID YOU
4 TALK TO WHO REPORTED TO YOU ALLEGEDLY THAT MR JANELLI HAD
5 BEEN USING DRUGS?
6 **MS. STROM** NO OBJECTION
7 **THE COURT** GO AHEAD
8 **A** MR JANELLI HAD BEEN USING DRUGS?
9 **Q** YEAH
10 **A** PRIOR TO THAT JULY 7TH DATE?
11 **Q** YES, MA'AM
12 **A** I DON'T KNOW THAT I REMEMBER ANYBODY SPECIFICALLY SAYING
13 TO ME THAT DANE HAD TOLD THEM THAT HE USED DRUGS PRIOR TO
14 JULY 7TH
15 **Q** BUT DANE DIDN'T SAY ANYTHING TO YOU OTHER THAN THE FACT
16 THAT HE HAD BEEN WITH HIS GIRLFRIEND AND HUNG HIS HEAD AND
17 DIDN'T LOOK AT YOU, THAT'S
18 **A** THAT'S CORRECT
19 **Q** AND HE HAS NEVER ADMITTED TO YOU THAT "I HAVE BEEN USING
20 DRUGS" OR "I DID USE COCAINE," WHICH RESULTED IN THAT DIRTY
21 PATCH?
22 **A** THAT PARTICULAR PATCH, NO, HE NEVER HAS
23 **Q** PRIOR TO THIS TIME -- I'M TALKING WHEN HE FIRST GOT INTO
24 THE PROGRAM -- HE HAD HAD SOME DIFFICULTY WITH DRUGS, HADN'T
25 HE?

BOBBIE SUE GODWIN -- CROSS CONTINUES BY MR ARMSTRONG

1 A YES, SIR

2 Q AND, IN FACT, YOU LOCKED HIM UP FOR 90 DAYS IN THE END
3 OF 2002, AND YOU LOCKED HIM UP ON JANUARY THE 16TH, ---

4 MS STROM YOUR HONOR, I'M GOING TO OBJECT TO THE TERM
5 WE "LOCKED HIM UP " WE BRING HIM BEFORE THE COURT FOR THE
6 COURT TO DETERMINE THE SANCTION

7 THE COURT REPHRASE THE QUESTION

8 Q HE WAS INCARCERATED, WASN'T HE?

9 A HE WAS SANCTIONED WITH INCARCERATION

10 Q LOCKED UP?

11 THE COURT YOU KNOW, THE LAST TIME I CHECKED, I WAS
12 THE ONE DOING IT NOT THE SOLICITOR'S OFFICE

13 MR ARMSTRONG I UNDERSTAND THAT

14 MS. STROM THAT'S THE POINT I WAS TRYING TO MAKE---

15 THE COURT I UNDERSTAND

16 MS STROM ---THAT WE BRING THEM BEFORE THE COURT FOR
17 SANCTIONS, YOUR HONOR

18 Q BUT NONETHELESS, AS A RESULT OF INFRACTIONS, HE WAS
19 SANCTIONED FOR 90 DAYS IN JAIL IN SEPTEMBER OF 2002 HE ALSO
20 WAS SANCTIONED IN JANUARY OF 2003 HE STAYED IN JAIL UNTIL
21 EARLY FEBRUARY 2003 WHEN HE WENT TO FAITH HOME IS THAT
22 CORRECT?

23 A THAT'S CORRECT HE HAD SEVERAL INCARCERATIONS DUE TO
24 CONTINUED POSITIVE SCREENS MOST OF THOSE WERE URINE PRIOR
25 TO JANUARY

BOBBIE SUE GODWIN -- CROSS CONTINUES BY MR ARMSTRONG

1 Q AND THEN ONCE HE GOT OUT OF FAITH HOME IT WAS -- HE WAS
2 PUT BACK INTO PHASE ONE?

3 A FOR A PERIOD OF TIME, YES

4 Q NOW, YOU TESTIFIED EARLIER --

5 MR ARMSTRONG AND I'M PRESERVING OBJECTIONS, YOUR
6 HONOR

7 Q ---ABOUT SO MANY PATCHES WERE PUT ON IN A GIVEN DAY AND
8 SO MANY PATCHES WERE POSITIVE AND NEGATIVE DO YOU REMEMBER
9 THAT TESTIMONY ON DIRECT?

10 A YES

11 Q YOU TESTIFIED ON JUNE THE 17TH, 2003, TWO PATCHES WERE
12 APPLIED AND ONE WAS POSITIVE, MEANING DANE'S, AND THEN THE
13 OTHER ONE WAS NEGATIVE DO I RECALL YOUR TESTIMONY
14 CORRECTLY?

15 A I BELIEVE YOU SAID JUNE 17TH?

16 Q YES, MA'AM

17 A THERE WERE TWO PATCHES APPLIED ONE WAS DANE AND THERE
18 WAS SOMEONE ELSE

19 Q OKAY BUT ON JUNE THE 17TH NOBODY WAS POSITIVE THAT
20 DAY, WERE THEY?

21 A I DIDN'T TESTIFY TO THAT I TESTIFIED THAT THE PATCH
22 APPLIED BUT I DON'T KNOW -- YOU MEAN OTHER POSITIVE SCREENS
23 THAT DAY?

24 Q NO YOUR TESTIMONY, IF I RECALL, WAS THAT TWO PATCHES
25 WERE APPLIED AND DANE'S WAS POSITIVE, IS THAT CORRECT?

BOBBIE SUE GODWIN -- CROSS CONTINUES BY MR ARMSTRONG

1 A WHAT MY TESTIMONY WAS STATING WAS THAT TWO PATCHES WERE
2 PUT ON JUNE THE 17TH AND OF THOSE TWO PATCHES, ONE OF THOSE
3 LATER RESULTED IN A POSITIVE, AND THAT WAS DANE'S

4 Q RIGHT AND THAT WOULD HAVE BEEN ON JUNE THE 25TH?

5 A THAT'S CORRECT

6 Q BUT, AGAIN, THERE WAS TESTIMONY -- I DON'T WANT TO
7 BELABOR IT, BUT THERE WAS TESTIMONY THAT ONE WAS POSITIVE ON
8 THE 17TH

9 A (NO RESPONSE)

10 Q YOU TESTIFIED ALSO, MADAME, THAT HE HAD MISSED A -- I
11 BELIEVE IT WAS ON AUGUST 30TH, 2003, HE DIDN'T SHOW UP FOR A
12 DRUG TEST DO YOU REMEMBER THAT?

13 A YES, THAT'S WHAT'S IN MY NOTES

14 Q DON'T YOU RECALL THAT YOU HAD CHANGED OR THE PROGRAM HAD
15 CHANGED THE LOCATION OF THE DRUG TESTING IN THAT TIME PERIOD
16 AND MR JANELLI GOT LOST? DO YOU RECALL THAT?

17 A NO, SIR

18 Q COULD IT HAVE HAPPENED AND YOU JUST DON'T REMEMBER?

19 A I DON'T REMEMBER THAT, NO, SIR

20 Q DO YOU REMEMBER HAVING DISCUSSIONS WITH DANE'S MOTHER,
21 BRENDA DILL?

22 A YES, I DO

23 MS STROM YOUR HONOR, I'M GOING TO OBJECT I DON'T
24 SEE THE RELEVANCY OF ANY DISCUSSION THAT SHE MAY HAVE HAD
25 WITH MR JANELLI'S MOTHER

BOBBIE SUE GODWIN -- CROSS CONTINUES BY MR ARMSTRONG

1 THE COURT WHERE ARE YOU GOING WITH THIS, MR
2 ARMSTRONG?

3 MR ARMSTRONG I MOST PROBABLY WILL CALL MS DILL ON A
4 COUPLE OF MATTERS SHE HAS BEEN DISCLOSED AS A POTENTIAL
5 WITNESS

6 THE COURT THAT STILL DOESN'T MAKE IT RELEVANT

7 MR ARMSTRONG I KNOW THAT, BUT I NEED TO MAKE A
8 PROFFER TO EXPLORE THE ISSUE AS TO WHETHER OR NOT THIS LADY
9 HAS EVER SPOKEN TO MY CLIENT'S MOTHER

10 THE COURT SHE SAID, YES SO LET'S MOVE ON

11 Q DID DANE -- WHEN HE WAS TALKING TO YOU ON JULY 7TH AND
12 MADE THE REMARK ABOUT HIS GIRLFRIEND, DID HE GIVE ANY
13 INDICATION AS TO WHETHER OR NOT THIS GIRLFRIEND, WHOMEVER SHE
14 MAY HAVE BEEN, WAS HERSELF A DRUG USER?

15 A I THINK HE MADE THAT INDICATION MORE TO HIS COUNSELOR
16 ROSA GONZALEZ

17 MR. ARMSTRONG COURT'S INDULGENCE, PLEASE

18 THE COURT ALL RIGHT

19 (OFF RECORD DISCUSSION)

20 MR ARMSTRONG NO FURTHER QUESTIONS, YOUR HONOR

21 THE COURT MR GIBSON?

22 CROSS EXAMINATION BY MR. GIBSON

23 Q MS GODWIN, AS FAR AS ACCURATE DIAGNOSTICS IS CONCERNED,
24 DO YOU HAVE ANY REASON TO BELIEVE THAT THEY ARE NOT A
25 RELIABLE LAB?

BOBBIE SUE GODWIN -- CROSS BY MR GIBSON

1 A NO, SIR

2 Q MR ARMSTRONG EXPLORED WITH YOU THE CONTRACT THAT PEOPLE
3 ARE REQUIRED TO SIGN WHEN THEY ENTER THE DRUG COURT PROGRAM
4 WOULD YOU LOOK IN MR PERKINS' FILE AND SEE IF YOU CAN FIND
5 THE SAME SUCH CONTRACT?

6 A MR PERKINS?

7 Q YES, MA'AM

8 A I ASSUME YOU ARE REFERRING TO THE WAIVERS AND AGREEMENT?

9 Q YES, MA'AM AND I SPECIFICALLY WOULD LIKE TO DRAW YOUR
10 ATTENTION TO PARAGRAPH SEVEN

11 A YES

12 Q OKAY ON PARAGRAPH SEVEN IS THAT -- AND I APOLOGIZE I
13 HAVE NOT MADE A COPY TO SUBMIT TO THE COURT, SO WHAT I WOULD
14 LIKE YOU TO DO IS, WOULD YOU PLEASE LOOK AT THAT PARAGRAPH
15 AND SEE IF IT IS IDENTICAL TO THE PARAGRAPH THAT MR JANELLI
16 SIGNED?

17 A YES, IT IS

18 Q OKAY AND AGAIN, THAT IS A COPY OF --- YOU'RE LOOKING
19 AT THE COPY THAT MR PERKINS -- CEDRIC EMMANUEL PERKINS
20 SIGNED TO GET INTO THE DRUG COURT PROGRAM AND THAT CONTRACT
21 WAS EXECUTED ON AUGUST 29TH OF 2002?

22 A YES

23 Q OKAY NOW, AS FAR AS THE CONTRACT IS CONCERNED, WHO
24 PREPARES THAT CONTRACT?

25 A I DON'T KNOW WHO PREPARED THAT CONTRACT I WAS NOT HERE

BOBBIE SUE GODWIN -- CROSS BY MR GIBSON

1 AT THAT TIME

2 Q WAS IT PREPARED BY THE SOLICITOR'S OFFICE, THE DRUG
3 COURT PROGRAM?

4 A I DON'T KNOW

5 Q OKAY DID MR PERKINS PREPARE THAT CONTRACT?

6 MS STROM OBJECTION, YOUR HONOR SHE SAID SHE DIDN'T
7 KNOW WHO PREPARED IT ASKED AND ANSWERED TWICE

8 MR. GIBSON I THINK SHE MIGHT KNOW IF MR PERKINS
9 PREPARED IT

10 THE COURT IF SHE WASN'T HERE -- WELL---

11 Q LET ME ASK YOU THIS WERE YOU HERE WHEN MR PERKINS
12 SIGNED THAT CONTRACT?

13 A YES

14 Q OKAY DID MR PERKINS PROVIDE THAT CONTRACT TO YOU OR
15 DID YOU PROVIDE IT TO HIM?

16 A DRUG COURT PROVIDED THE CONTRACT TO HIM

17 Q OKAY SO IT'S FAIR TO ASSUME THAT MR PERKINS DID NOT
18 PREPARE THAT CONTRACT?

19 MS STROM I'LL CONCEDE THAT POINT, YOUR HONOR HE
20 DID NOT PREPARE IT

21 MR GIBSON OKAY AND IF YOU'LL STIPULATE THAT, I
22 WON'T EVEN GO INTO THIS

23 THE COURT ALL RIGHT LET'S MOVE ON

24 Q WERE THERE ANY WAIVERS OR ADDENDUMS TO MR PERKINS'
25 CONTRACT THAT YOU ARE AWARE OF?

BOBBIE SUE GODWIN -- CROSS BY MR GIBSON

1 A NOT THAT I'M AWARE OF IT'S THE SAME CONTRACT

2 Q OKAY AND WHAT I'M SPECIFICALLY ASKING IS, THERE WASN'T
3 ANYTHING THAT HE SIGNED AFTER THIS THAT WOULD HAVE
4 SPECIFICALLY AUTHORIZED SWEAT PATCH TESTING?

5 A (PICKS UP STATE'E EXHIBIT NUMBER 1)

6 Q I'M GLAD YOU PICKED THAT UP NOW, WE'RE LOOKING AT
7 STATE'S EXHIBIT 1, IS THAT CORRECT?

8 A CORRECT

9 Q OKAY NOW, CAN YOU SHOW ME ON THERE WHERE -- I'M
10 ASSUMING FROM THE TESTIMONY THAT YOU GAVE WHEN MR ARMSTRONG
11 WAS QUESTIONING YOU THAT YOU'RE SAYING THAT THAT CONTRACT OR
12 THIS DOCUMENT, HIS SIGNING THIS DOCUMENT, AUTHORIZED OR
13 ADDENDED THAT OTHER AGREEMENT TO ALLOW FOR SWEAT PATCH
14 TESTING, IS THAT CORRECT? AND I'M SORRY IF THAT'S POORLY
15 WORDED

16 A IT'S CALLED A DONOR CONSENT

17 Q OKAY CAN YOU READ TO ME WHERE IN THAT DONOR CONSENT IT
18 SAYS THAT MR PERKINS CONSENTED TO ALLOW ANY SANCTIONS OR
19 TERMINATION FROM THE DRUG COURT PROGRAM BASED ON A SWEAT
20 PATCH TEST?

21 A IT SAYS, "I CONSENT TO THE ANALYSIS OF THIS SPECIMEN AND
22 TO THE RELEASE OF THE LABORATORY OF THE RESULTS OF THE
23 ANALYSIS AS WELL AS THE INFORMATION RECORDED ON THIS FORM TO
24 THE ORGANIZATION OR INDIVIDUAL LISTED ON THIS FORM "

25 Q OKAY SO HE CONSENTED TO IT TO BE ANALYZED, AND HE

BOBBIE SUE GODWIN -- CROSS BY MR GIBSON

1 CONSENTED FOR YOU GUYS TO SEE THE INFORMATION BUT IS THERE
2 ANYTHING IN THAT AGREEMENT WHERE HE SAYS, "I CONSENT TO BE
3 SANCTIONED BY THE DRUG COURT PROGRAM BASED ON THE RESULTS OF
4 THIS TEST"?

5 A I BELIEVE THAT WOULD BE IN THE WAIVERS AND AGREEMENT
6 WHERE IT SAYS, "I EXPRESSLY AGREE TO ACCEPT AND ABIDE BY ALL
7 OF THE TERMS AND CONDITIONS OF THE DRUG COURT TREATMENT
8 PROGRAM AS ESTABLISHED BY THE COURT AND TREATMENT PROVIDERS "

9 Q OKAY IS THAT THE ONLY PROVISION THAT YOU THINK
10 AUTHORIZES THAT?

11 A THAT'S THE TERMS AND CONDITIONS OF THE PROGRAM

12 Q OKAY AND AGAIN THERE IS NOTHING -- THE DOCUMENT SPEAKS
13 FOR ITSELF

14 NOW, YOU LISTED A NUMBER OF OFFENSES THAT MR PERKINS
15 HAD SUPPOSEDLY COMMITTED, OKAY? AND I'M NOT GOING TO GET
16 INTO ALL OF THAT BUT WHAT I DO WANT TO GET INTO IS YOUR
17 NOTES, YOUR PROGRESS NOTES AND ON 9/25 2003, I'M
18 SPECIFICALLY REFERRING TO THAT DATE -- (PAUSE) -- SEE WHAT
19 I'M TALKING ABOUT, YOUR PROGRESS NOTE?

20 A YES, I DO

21 Q WOULD YOU READ THAT NOTE FROM 9/25 2003, PLEASE?

22 A "CLIENT REPORTS HE WASN'T USED TO CALLING THE DRUG
23 SCREEN LINE ON SATURDAY HE WAS TOLD, HOWEVER, TO DO SO AND
24 REMINDING ON THE DRUG SCREEN LINE TO DO SO CEDRIC WAS TOLD
25 HE MUST HAVE NO OTHER RULE VIOLATIONS IF HE IS TO REMAIN AN

BOBBIE SUE GODWIN -- CROSS BY MR GIBSON

1 ACTIVE PARTICIPANT "

2 Q OKAY SO SEPTEMBER 25TH, 2003, YOU HAD MADE A
3 DECISION -- OR IS IT FAIR TO SAY THAT YOU HAD MADE A DECISION
4 THAT IF HE HAD NO OTHER RULE VIOLATIONS BEYOND THAT POINT
5 THAT HE COULD REMAIN IN THE PROGRAM? OR THAT HE COULD REMAIN
6 IN THE PROGRAM SO LONG AS HE HAD NO OTHER RULE VIOLATIONS?

7 A CEDRIC WAS TOLD THAT HE WAS NOT TO HAVE ANY MORE RULE
8 VIOLATIONS

9 Q OKAY AND A DECISION HAD BEEN MADE AT THAT TIME THAT HE
10 COULD REMAIN IN THE PROGRAM, IS THAT CORRECT?

11 A I DON'T WANT TO SAY THAT'S CORRECT, BECAUSE I'M NOT SURE
12 IT WOULD BE I MEAN, WHEN I WROTE THE NOTE IS WHEN HE CAME
13 IN THAT DAY AND WE DISCUSSED THAT I DON'T KNOW AT THAT
14 PARTICULAR TIME THAT I HAD HAD A CHANCE TO STAFF THAT

15 Q SO LET ME GET THIS STRAIGHT SO YOU TOLD HIM THAT HE
16 MUST HAVE NO OTHER RULE VIOLATIONS IF HE IS TO REMAIN AN
17 ACTIVE PARTICIPANT IN THE PROGRAM, BUT AT THE TIME YOU SAID
18 THAT YOU DIDN'T EVEN REALLY KNOW THAT -- IF HE WAS GOING TO
19 BE ABLE TO REMAIN AN ACTIVE PARTICIPANT IN THE PROGRAM?

20 A I TOLD CEDRIC THAT HE NEEDED TO NOT HAVE ANYMORE RULE
21 VIOLATIONS

22 Q OKAY

23 A I'D LIKE TO SEE THE DATES AND SEE WHEN WAS 9/25 IN
24 COMPARISON WITH SATURDAY I KNOW THAT THE STAFF -- WE HAD
25 ALL TALKED ABOUT THE FACT THAT HE NEEDED NOT TO HAVE ANYMORE

BOBBIE SUE GODWIN -- CROSS BY MR GIBSON

1 RULE VIOLATIONS

2 Q OKAY WHEN YOU SAY "SATURDAY," YOU MEAN THAT DRUG
3 SCREEN TEST THAT HE MISSED?

4 A YES

5 Q OKAY IF YOU TURN TO YOUR SUMMARY OF YOUR PARTICIPATION
6 RECORD -- OF MR PERKINS' PARTICIPATION RECORD, I APOLOGIZE,
7 AND LOOK ON THE SECOND PAGE, AND THERE IS AN ENTRY THAT SAYS
8 9/22 2003

9 A RIGHT

10 Q OKAY

11 A YEAH, THAT'S WHAT I'M SAYING THAT HAPPENED ON A
12 SATURDAY HE CAME IN ON A MONDAY

13 Q OKAY

14 A I PROBABLY HAD NOT HAD A CHANCE TO DO THE STUFF THAT WAS
15 STAFFED, BUT, YOU KNOW, I WAS WRITING A NOTE THERE THAT I
16 KNEW -- IN OTHER WORDS, I WAS LETTING CEDRIC KNOW HE WAS IN
17 JEOPARDY

18 Q OKAY SO LET ME GET THIS STRAIGHT NOW ACCORDING TO
19 YOUR ENTRY, HE MISSED THE SATURDAY DRUG SCREEN, AND ON
20 MONDAY, WHICH WOULD HAVE BEEN SEPTEMBER 22ND, YOU PUT THE
21 NOTATION THAT HE MISSED IT OKAY?

22 A UH-HUH (AFFIRMATIVE)

23 Q THEN THREE DAYS LATER YOU PUT IN THERE THAT YOU HAD
24 SPOKEN WITH CEDRIC AND THAT YOU TOLD HIM THAT IF HE WAS GOING
25 TO REMAIN IN THE PROGRAM HE NEEDED TO HAVE NO OTHER RULE

BOBBIE SUE GODWIN -- CROSS BY MR GIBSON

1 VIOLATIONS?

2 A CORRECT

3 Q OKAY SO AT THE TIME OF SEPTEMBER 25TH YOU KNEW -- I

4 MEAN, IT WAS OBVIOUS YOU KNEW THAT HE HAD MISSED THAT

5 SCREEN, RIGHT?

6 A I DID, YES

7 Q OKAY ARE YOU SAYING THAT NOBODY ELSE KNEW?

8 A WELL, AGAIN, I'M SAYING IF I MET HIM ON A MONDAY, I MAY

9 NOT SEE ROSA OR PAT TILL MONDAY NIGHT I DON'T KNOW THAT I

10 DISCUSSED THAT WITH THEM BUT---

11 Q SO YOU WOULD HAVE MET THEM ON, SAY, MONDAY?

12 A (INDICATES AFFIRMATIVE RESPONSE)

13 Q OKAY NOW, SEPTEMBER 25TH, IF MONDAY WAS ACTUALLY THE

14 22ND, THAT MEANS SEPTEMBER 25TH WAS ACTUALLY THAT THURSDAY

15 A OKAY IF MONDAY -- WAS MONDAY THE 22ND? HAVE WE

16 ESTABLISHED THAT?

17 Q YES, MA'AM

18 A THEN THAT'S FINE

19 Q SO CHANCES ARE YOU HAD ALREADY SEEN ROSA AND

20 EVERYBODY---

21 A EXACTLY

22 Q ---AND DISCUSSED THE ISSUE WITH THEM?

23 A RIGHT SO THAT NOTE WAS PRETTY MUCH WHAT IT'S SAYING,

24 THAT---

25 Q SO GIVEN THAT, IS IT FAIR TO ASSUME THAT IF HE HAD DONE

1 NOTHING ELSE WRONG THAT HE WOULD STILL BE IN THE PROGRAM?

2 A THAT'S FAIR TO ASSUME

3 Q OKAY AND IS IT -- AND I WANT YOU TO ASSUME THIS FOR ME
4 FOR PURPOSES OF THIS QUESTION NOW, MR PERKINS SAID HE DID
5 NOT TAMPER WITH THE PATCH HE SAYS IT WAS TORN HE ALSO
6 SAYS THAT THE POSITIVE SWEAT PATCH TEST THAT HE CAME UP WITH
7 WAS NOT THROUGH USAGE BUT WAS PROBABLY DUE TO ENVIRONMENTAL
8 CONTAMINATION ASSUMING FOR THE PURPOSES OF THIS QUESTION
9 THAT MR PERKINS IS RIGHT, WOULD HE IN FACT STILL BE IN THE
10 PROGRAM? AND HAD DONE NOTHING ELSE WRONG

11 A IT'S HARD TO ANSWER THAT QUESTION THAT'S AN
12 ASSUMPTION, YOU KNOW I MEAN, AGAIN, HE WAS TOLD NO RULE
13 VIOLATIONS

14 Q YES, MA'AM

15 A NONE WHATSOEVER

16 Q BUT WHAT I'M SAYING IS, IF HE'S RIGHT AND HE IN FACT DID
17 NOT VIOLATE THE RULES AND HAD DONE NOTHING ELSE WRONG, ISN'T
18 IT FAIR TO ASSUME HE WOULD STILL BE IN THE PROGRAM TO THIS
19 DATE IF HE HADN'T ALREADY GRADUATED FROM IT? WELL, I THINK
20 HE PROBABLY WOULDN'T HAVE GRADUATED BY NOW BUT, YOU KNOW,
21 GIVEN THAT, ISN'T IT FAIR TO ASSUME HE'D STILL BE IN THE
22 PROGRAM RIGHT NOW?

23 A IF HE HAD NO OTHER RULE VIOLATIONS, IT WOULD BE FAIR TO
24 ASSUME THAT BUT, AGAIN, THAT'S AN ASSUMPTION

25 MR GIBSON YES, MA'AM THANK YOU

BOBBIE SUE GODWIN -- CROSS BY MR GIBSON

1 THE COURT MR BANNISTER

2 MR BANNISTER THANK YOU, JUDGE

3 CROSS EXAMINATION BY MR BANNISTER.

4 Q MS GODWIN, WHO WAS THE -- WAS CURTIS PITTS THE MANAGER
5 OR THE PERSON WHO HANDLED THE DRUG COURT PROGRAM BEFORE YOU
6 CAME ON BOARD?

7 A HE WAS THE DRUG COURT CASE MANAGER BEFORE I TOOK THAT
8 POSITION

9 Q WERE THERE ANY ISSUES THAT YOU BROUGHT UP ABOUT DRUG
10 TESTING SAMPLES WITH HIM OR WITH THE DRUG COURT PROGRAM WHEN
11 YOU CAME ON BOARD---

12 A NOT THAT I'M AWARE OF

13 Q ---IN THAT CAPACITY? MS HURKS HAD -- WHEN SHE FIRST
14 CAME INTO DRUG COURT, YOU WERE AWARE THAT SHE HAD HAD SEVERAL
15 HEART ATTACKS, IS THAT CORRECT?

16 A I BELIEVE SHE TOLD ME THAT ON HER ASSESSMENT

17 Q OKAY WOULD THAT BECOME PART OF -- WOULD YOU USE THAT
18 AS PART OF HER TREATMENT, THAT IS, COCAINE USE CAN LEAD TO
19 MORE HEART ATTACKS FOR YOU, SO NOT ONLY DO YOU HAVE A --
20 YOU'VE GOT A REAL LIFE AND DEATH SITUATION THAT'S FACING YOU?

21 A I BELIEVE ANGELA AND I DISCUSSED THE FACT THAT COCAINE
22 WAS NOT VERY GOOD -- A GOOD DRUG TO USE FOR ANYBODY, BUT
23 ESPECIALLY SOMEONE WITH A HEART CONDITION

24 Q OKAY IN OTHER WORDS, ANY FURTHER CONTINUED DRUG USE
25 WOULD POTENTIALLY---

1 A IT'S A STIMULANT DRUG

2 Q ---COULD LEAD TO HER DEATH OR ANOTHER HEART ATTACK?

3 A (INDICATES AFFIRMATIVE RESPONSE)

4 Q ALL RIGHT IF I'VE GOT IT RIGHT -- AND I'M LOOKING AT
5 YOUR SUMMARY -- REALLY, FOR ANGELA, THE MAIN REASON THAT
6 YOU'RE RECOMMENDING TERMINATION IS BECAUSE SHE AND YOU AND
7 OTHER MEMBERS OF THE STAFF CAN'T SEEM TO GET -- SHE CAN'T
8 SEEM TO GET PAST THE POSITIVE TEST?

9 A THAT'S CORRECT

10 Q AND SO IF I HAD TO JUST SUM IT UP IN A NUTSHELL, IT'S
11 NOT THAT SHE TESTED POSITIVE, BUT IT'S THAT HER ATTITUDE
12 REGARDING THOSE TESTS?

13 A SHE ONLY HAD -- SHE HAD, WHAT, TWO, THREE, IF WE LOOK AT
14 THE HAIR ANALYSIS AS A POSITIVE SHE WOULD NOT HAVE BEEN
15 TERMINATED OR RECOMMENDED FOR TERMINATION, AS YOU SAID IT'S
16 HER ATTITUDE IT WASN'T THE NUMBER OF VIOLATIONS

17 Q OKAY AND SO I DON'T WASTE TIME ON IT -- I KNOW YOU'VE
18 READ INTO THE RECORD HER ENTIRE CASE FILE I DON'T WANT TO
19 WASTE TIME ON THINGS THAT REALLY AREN'T PART OF THIS
20 TERMINATION IS IT FAIR TO SAY THAT IT'S THE ATTITUDE AFTER
21 THE POSITIVE TEST?

22 A UH-HUH (AFFIRMATIVE)

23 Q AND THAT'S REALLY IT?

24 A YES HER ATTITUDE CHANGED, YES

25 Q OKAY SO I DON'T NEED TO GET INTO THE FACT THAT SHE WAS

BOBBIE SUE GODWIN -- CROSS BY MR BANNISTER

1 DELINQUENT ON THE FEES OR THAT SHE MISSED ONE DRUG SCREEN ON
2 A CALL IN OR THE ISSUES WITH THE JOB APPLICATION THAT WERE
3 PROBLEMS CAN I LEAVE THOSE OUT OR ARE THEY PART OF---

4 A THEY'RE PART OF IT BECAUSE NONE OF THAT WAS BEHAVIOR
5 THAT ANGELA HAD PRIOR TO

6 Q OKAY SO I DO NEED TO GO INTO THOSE AND TALK ABOUT
7 THOSE ISSUES?

8 A YEAH SHE HAD NOT MISSED DRUG SCREENS SHE HAD NOT
9 FAILED TO PAY FEES, YOU KNOW THE FIRST TWO PHASES, I THINK,
10 SHE WAS IN DRUG COURT SHE HAD HAD A GOOD TRACK RECORD

11 Q OKAY ALL RIGHT SO THEN LET ME GO THROUGH IT I'VE
12 GOT POSITIVE DRUG TEST THAT WOULD BE ONE OF THE REASONS FOR
13 THE TERMINATION TWO IS I'VE GOT HER ATTITUDE WOULD THAT
14 BE FAIR?

15 A UH-HUH (AFFIRMATIVE)

16 Q ALL RIGHT UNDER THAT, HER ATTITUDE IS -- ONE OF THE --
17 THE PROBLEM WITH HER ATTITUDE IS HER REFUSAL TO ADMIT TO
18 HAVING USED DRUGS?

19 A IT WOULD BE MORE IN THE MANNER IN WHICH SHE REFUSED TO
20 ADMIT TO DRUGS

21 Q ALL RIGHT SO IF SHE -- IF YOU HAVE SOMEBODY WHO
22 REFUSES TO ADMIT DRUGS IN A NICE WAY, THEN YOU DON'T HAVE A
23 PROBLEM WITH THAT ATTITUDE VERSUS SOMEBODY WHO GETS MAD ABOUT
24 IT AND SAYS, "I ABSOLUTELY DIDN'T USE DRUGS" AND, I GUESS,
25 BECOMES ANGRY OVER THE SITUATION?

1 A WE'VE HAD PEOPLE WHO DID NOT ADMIT BUT WHO DID NOT DO --
2 WE'RE NOT JUST TALKING ABOUT -- THERE WERE OTHER VIOLATIONS,
3 THE TAKING THINGS OUT OF DRUG COURT, NAMING OTHER
4 PARTICIPANTS IN TWELVE STEP MEETINGS---

5 Q ALL RIGHT AND I'M GOING TO GET TO THAT---

6 A ---OTHER THINGS LIKE THAT THAT---

7 Q I'M JUST TALKING -- I JUST WANT TO FOCUS ON -- I WANT TO
8 GET SOME IDEA OF WHERE I AM PART OF HER ATTITUDE WAS THE
9 REFUSAL TO ADMIT AND YOU'RE TELLING ME THAT IT WASN'T JUST
10 THE REFUSAL TO ADMIT THERE ARE PEOPLE IN THIS PROGRAM WHO
11 REFUSE TO ADMIT AND THEY NEVER GET KICKED OUT FOR THAT

12 A RIGHT

13 Q IT'S THAT SHE WAS ANGRY ABOUT IT?

14 A WELL, AGAIN, IT WAS THE MANNER IN WHICH SHE HANDLED IT,
15 YES

16 Q OKAY ALL RIGHT THE MANNER SHE HANDLED HER REFUSAL TO
17 ADMIT

18 WOULD IT ALSO BE HER REFUSAL TO GO INTO ADDITIONAL DRUG
19 TREATMENT?

20 A WELL, YOU CAN'T SEND SOMEONE TO DRUG TREATMENT IF THEY
21 TELL YOU THEY HAVEN'T USED THERE'S NOBODY WHO'S GOING TO --
22 AN IN-PATIENT FACILITY WOULD NOT, IF IT'S AN ASAM CRITERIA
23 FACILITY, WOULD NOT TREAT HER YOU KNOW, IF SHE HAD NO
24 ADMISSION OF USE, THEN SHE WOULDN'T NEED IN-PATIENT
25 TREATMENT

BOBBIE SUE GODWIN -- CROSS BY MR BANNISTER

1 Q LET ME FLIP IT JUST TO MAKE SURE I UNDERSTAND IF
2 YOU'VE GOT SOMEBODY WHO TESTS POSITIVE, THEY REFUSE TO ADMIT
3 BUT THEY'RE DOING IT IN A POLITE WAY WITHOUT BEING
4 DISRUPTIVE, YOU'RE STILL RECOMMENDING THAT THEY GO TO SOME
5 KIND OF DRUG TREATMENT, BUT THEY CONTINUE TO REFUSE TO ADMIT
6 HAVING EVER USED IT, AGAIN, IN A NICE WAY, THOSE PEOPLE
7 AREN'T GOING TO GET TERMINATED?

8 A THEY WOULDN'T BE TERMINATED BUT THEY WOULDN'T ALSO GET
9 REFERRAL TO IN-PATIENT

10 Q ALL RIGHT WOULD THEY BE SANCTIONED IN ANY WAY?

11 A THEY'D ALL BE SANCTIONED FOR A POSITIVE SCREEN

12 Q REGARDLESS OF WHETHER THEY WERE---

13 A WHETHER THEY ADMITTED OR NOT

14 Q OKAY SO HER INABILITY TO ADMIT AND THEN TO GO INTO
15 ADDITIONAL DRUG TREATMENT IS NOT ONE OF THE REASONS WE ARE
16 HERE FOR TERMINATION?

17 A SHE -- HER INABILITY TO ADMIT IT WAS THE REASON THAT SHE
18 DIDN'T GO INTO DRUG TREATMENT THE REFERRAL WASN'T MADE FOR
19 THAT REASON

20 Q OKAY THEN THAT DOESN'T HAVE ANYTHING TO DO WITH
21 TERMINATION HERE TODAY?

22 A RIGHT

23 Q OKAY JUST CHECKING ALL RIGHT

24 AND THEN THE -- UNDER HER ATTITUDE, I'M GUESSING, IT
25 WOULD BE THE ADDITIONAL PROBLEMS THAT SHE CAUSED INSIDE THE

BOBBIE SUE GODWIN -- CROSS BY MR BANNISTER

1 DRUG COURT PROGRAM?

2 A INSIDE AND OUTSIDE, YES

3 Q OKAY ALL RIGHT AND THEN WE -- WOULD THAT SUM UP THE
4 PROBLEM WITH THE ATTITUDE, WHAT I'VE GOT UP HERE, THE MANNER
5 IN WHICH SHE REFUSED TO ADMIT AND THE FACT THAT SHE WAS
6 CAUSING ADDITIONAL PROBLEMS INSIDE AND OUTSIDE THE DRUG COURT
7 PROGRAM?

8 A AND THEN THERE IS THE OTHER VIOLATION---

9 Q I'M GETTING TO THOSE ALL RIGHT
10 THEN THERE WAS HER FAILURE TO MAKE IT TO A -- WAS IT A
11 PATCH REMOVAL? SHE HAD CALLED IN AND----

12 A SHE JUST FAILED TO -- SAID SHE FORGOT TO CALL THE DRUG
13 SCREEN LINE, I BELIEVE, IS WHAT

14 Q OKAY

15 A SO THAT'S A MISSED SCREEN, WHEN THEY DON'T SHOW UP

16 Q ALL RIGHT AND THEN DELINQUENT IN FEES?

17 A YES

18 Q AND THEN THE ISSUE WITH THE JOB APPLICATION REASON FOR
19 TERMINATION WITH ALEGIS?

20 A WELL, AGAIN, SHE HAD INDICATED TO US THAT SHE WAS GOING
21 TO BE FREE TO COME TO GROUP SHE HAD INDICATED TO THEM THAT
22 SHE WAS FREE TO GO TO WORK

23 MR BANNISTER ALL RIGHT AGAIN, JUDGE, THIS IS UNDER
24 THE PROFFER

25 THE COURT I UNDERSTAND

BOBBIE SUE GODWIN -- CROSS BY MR BANNISTER

1 Q ALL RIGHT SO ISSUES WITH ALEGIS, CAN WE JUST PUT IT
2 UNDER ONE HEADING HERE?

3 A (INDICATES AFFIRMATIVE RESPONSE)

4 Q ALL RIGHT IN TERMS OF HER ATTITUDE ITSELF, SHE WOULD
5 NEVER ADMIT THAT SHE HAD USED, BUT YOU AND YOUR STAFF, I'M
6 ASSUMING, KEPT TELLING HER, "LOOK, WE'VE GOT THESE POSITIVE
7 TESTS YOU HAD TO HAVE USED " WOULD THAT BE A FAIR
8 STATEMENT?

9 A WE WOULD CERTAINLY CONFRONT HER WITH THAT IN THE
10 BEGINNING, YES

11 Q AND IN FACT -- LET'S SEE IF YOU'LL TURN TO YOUR NOTE
12 ON SEPTEMBER 22ND

13 A PROGRESS NOTES?

14 Q PROGRESS NOTES, YES, MA'AM

15 A RIGHT

16 Q ABOUT MIDWAY DOWN WHERE IT STARTS -- IT SAYS, "CLIENT'S
17 POOR ATTITUDE CONCERNING HER LAST SANCTION STAFF FEELS
18 CLIENT SHOULD BE SANCTIONED WITH JAIL TIME LENGTHY UNLESS SHE
19 IS WILLING TO GET HONEST "

20 A CORRECT

21 Q SO THE OPTION THAT SHE WAS BEING GIVEN IS BE HONEST FROM
22 Y'ALL'S STANDPOINT, THAT IS, ADMIT TO THE DRUG USE, OR WE'RE
23 GOING TO HAVE TO SANCTION HER WITH A LENGTHY JAIL TIME?

24 A FROM OUR STANDPOINT, SHE HAD A POSITIVE PATCH, AND THIS
25 IS AFTER SHE HAD REQUESTED A HAIR STRAND, WHICH ALSO CAME

1 BACK POSITIVE SO IN OUR PARTICULAR CASE IT WAS LIKE, YOU
2 KNOW -- ORIGINALLY SHE HAD SAID TO US, "I NEED A HAIR STRAND
3 I WANT A HAIR STRAND I WANT A HAIR STRAND " AND WHEN THAT
4 CAME BACK POSITIVE, THAT WASN'T -- AGAIN, IT WAS NOT PROOF
5 FOR HER SO, YES, OUR ATTITUDE THERE WAS, YOU KNOW, WE CAN'T
6 WORK WITH HER SHE WASN'T WORKABLE

7 Q WHICH MEANS ANGELA EITHER HAD TO SAY, "YES, I USED
8 DRUGS" OR SHE WAS GOING TO BE SANCTIONED WITH A LENGTHY JAIL
9 TIME---

10 A NO ACTUALLY IT'S THE SECOND POSITIVE SCREEN IS WHAT WE
11 LOOKED AT THERE BUT, YES, WE HAVE TWO POSITIVE THERE, AND I
12 HAVE SOMEONE WHO SAYS NO THEY DIDN'T USE AT ALL SO THAT'S
13 USUALLY WHAT WE DO WE GIVE THEM ADDITIONAL TIME WITH THE
14 SECOND SCREEN

15 Q OKAY

16 A THIS WAS ACTUALLY -- BY THAT TIME I THINK YOU HAD --
17 THIS WAS REALLY A THIRD -- WASN'T IT? -- BY THAT TIME?

18 Q THIS WOULD HAVE BEEN AFTER THE TWO PATCHES AND THE HAIR
19 STRAND

20 A EXACTLY

21 Q RIGHT I WANT YOU TO LISTEN REAL CLOSELY TO MY
22 QUESTION IT'S YES OR NO, AND I DON'T WANT TO PUT WORDS IN
23 YOUR MOUTH YOU CAN EXPLAIN AFTER THAT BUT WHEN YOU'VE GOT
24 IN YOUR NOTES, "SHE'S GOING TO GET A LENGTHY JAIL TIME" --
25 THESE ARE YOUR WORDS -- "UNLESS SHE IS WILLING TO GET

BOBBIE SUE GODWIN -- CROSS BY MR BANNISTER

1 HONEST " WHAT THAT MEANT WAS LENGTHY JAIL TIME OR ADMIT TO
2 THE USE OF COCAINE
3 A WELL, NOT NECESSARILY BY "GETTING HONEST" WHAT WE --
4 WHAT WE REALLY MEANT BY THAT TOO IS GIVE US SOMETHING TO WORK
5 WITH FROM A TREATMENT PERSPECTIVE, YOU KNOW ANGELA HAD
6 NEVER -- WAS WITH SOMEONE, SOMETHING HAPPENED, YOU KNOW
7 WHAT'S GOING ON HERE? ALL WE EVER GOT WAS SOMEBODY AT WORK
8 SPIKED MY DRINK AND THEN IT WENT FROM THERE TO THE PATCHES
9 ARE FAULTY AND THEN IT WENT FROM THERE TO BOBBIE OR MRW IS
10 OUT TO GET ME I MEAN, YOU KNOW WHAT I'M SAYING? IT WASN'T
11 A TREATMENT ISSUE AND WHEN I SAY "HONEST," THAT WOULD
12 ENCOMPASS THAT, WAS THERE SOMETHING THERE THAT WE COULD HAVE
13 WORKED ON WITH TREATMENT

14 Q BUT THAT WOULD ALSO ENCOMPASS SOME ADMISSION OF DRUG
15 USE I REALIZE THAT THERE WERE OTHER THINGS THAT YOU WERE
16 LOOKING FOR, BUT IT'S GOT TO INCLUDE SOME ADMISSION OF DRUG
17 USE

18 A WE DON'T ALWAYS ADMIT -- THEY DON'T ALWAYS HAVE TO SAY,
19 "YES, I ADMIT USING " BUT GIVE US SOMETHING THAT WE CAN GO
20 BACK IN AND SAY, YOU KNOW, WHAT WAS GOING ON IN YOUR LIFE?
21 WERE THERE PROBLEMS? SEE, WE HAD CONFRONTED HER WHERE SHE
22 HAD HAD LATE FEES THIS WAS UNLIKE HER SHE HAD NOT MISSED
23 FEE PAYMENTS BEFORE BUT THERE WAS NOTHING FROM ANGELA THAT
24 WOULD INDICATE THAT SHE WAS HAVING PROBLEMS

25 Q OKAY DID -- WELL, LET ME GO TO THE SUMMARY THEN CAN

1 YOU TURN TO YOUR SUMMARY FOR JUST A SECOND?

2 A UH-HUH (AFFIRMATIVE)

3 Q ALL RIGHT AND WHERE IT SAYS -- IT STARTS "WITH THE
4 SECOND POSITIVE SCREEN "

5 A WHERE IS THAT?

6 Q IN YOUR SUMMARY ABOUT MIDWAY DOWN

7 A "WITH THE SECOND POSITIVE SCREEN STAFF HOPED"? YEAH

8 Q THAT'S RIGHT AND AT THE END OF THAT SENTENCE IT SAYS
9 "STAFF HOPES SHE WOULD SHARE HONESTLY ABOUT THE PROBLEMS THAT
10 HAVE LED TO HER RELAPSE "

11 A RIGHT

12 Q SO Y'ALL CONSIDERED THIS TO BE -- THESE POSITIVE DRUG
13 SCREENS TO BE A RELAPSE YOU WANTED HER TO BE HONEST NOT
14 ONLY ABOUT WHAT WAS GOING ON IN HER LIFE BUT ALSO THAT SHE
15 HAD USED DRUGS, I E , IT WAS A RELAPSE?

16 A WELL, AGAIN, I WOULD SAY THAT OUR POINT THERE WAS WE
17 NEEDED TO KNOW WHAT WAS GOING ON IN HER LIFE WE WANTED HER
18 TO SHARE ABOUT THE PROBLEMS WE WERE GETTING NOTHING TO WORK
19 WITH FROM ANGELA

20 Q OKAY AND AT THE END OF YOUR SUMMARY WHERE IT SAYS
21 "STAFF FEELS THAT HER BEHAVIOR TOTALLY PREVENTS ANY FURTHER
22 PROGRESS IN TREATMENT " THE BEHAVIOR WE'RE REFERRING TO, AT
23 LEAST IN PART, IS NOT ADMITTING TO DRUG USE BUT ALSO NOT
24 TELLING YOU WHAT ELSE IS GOING ON IN HER LIFE THAT WOULD HAVE
25 LED TO A RELAPSE FOR DRUG USE?

BOBBIE SUE GODWIN -- CROSS BY MR BANNISTER

1 A RIGHT, SOMETHING TO OPEN THE DOOR THAT WE COULD HAVE
2 ADDRESSED THAT IN HER TREATMENT

3 Q BUT THE FIRST STEP SEEMS TO BE IN ALL OF THIS THAT SHE'S
4 GOT TO AT LEAST COME FORWARD WITH "THERE IS SOMETHING GOING
5 ON IN MY LIFE THAT'S WHY I RELAPSED YES, I DID USE "

6 A IT WOULD HAVE BEEN SUFFICIENT WITH "SOMETHING IS GOING
7 ON IN MY LIFE "

8 Q OKAY WAS THERE -- DIDN'T -- LET ME ASK IT THIS WAY,
9 WERE YOU AWARE THAT SHE HAD HAD -- THERE WERE SOME MEDICAL
10 PROBLEMS WITH HER SISTER---

11 A YES

12 Q ---OBVIOUSLY BECAUSE SHE HAD A MEDICAL---

13 A WE ACTUALLY CONFRONTED HER ABOUT THAT, YOU KNOW, LOOKING
14 FOR AVENUES AGAIN

15 Q RIGHT AND THAT WAS INSUFFICIENT, I'M ASSUMING?

16 A CORRECT

17 Q OKAY ALL RIGHT THE -- LET ME JUMP NOW FOR JUST A
18 SECOND TO TALKING ABOUT THE FEE ISN'T IT TRUE THAT IN PHASE
19 FOUR THAT A LOT OF INDIVIDUALS IN DRUG COURT ARE ALLOWED TO
20 PAY UP THEIR FEES DURING THAT PHASE?

21 A NO

22 Q I MEAN, THE FEE ITSELF ALONE IS NOT ENOUGH FOR A
23 TERMINATION?

24 A AGAIN, YOU WOULD LOOK AT CONSISTENT -- WHAT WE WOULD
25 LOOK AT IS AN OVERALL IF WE HAD SOMEBODY WHO WAS CONSTANTLY

1 NOT PAYING THEIR FEES, THAT COULD BE CERTAINLY LOOKED AT AS A
2 GROUNDS FOR RECOMMENDING TERMINATION

3 MR BANNISTER JUDGE, JUST A MOMENT

4 Q MAYBE I -- IT'S MY MISUNDERSTANDING IT IS MY -- AM I
5 CORRECT IN STATING THAT YOU HAVE TO BE PAID UP WITH YOUR FEES
6 IN PHASE THREE BEFORE YOU CAN GO INTO PHASE FOUR?

7 A NOT ALWAYS

8 Q ALL RIGHT SO WHAT YOU'RE TALKING ABOUT HERE THEN IS
9 THE SCHEDULE FEES THAT Y'ALL HAD SET OUT FOR HER IN THE
10 PHASE SHE WAS IN AT THIS TIME AND SHE HAD MISSED---

11 WELL, THERE'S PARTICIPATION FEES AND THEN THERE'S FEES
12 THAT THEY OWE FOR INDICTMENT FEES AND RESTITUTION FEES
13 GENERALLY THE RESTITUTION AND INDICTMENT FEES, THEY'RE
14 DUE TO BE PAID BEFORE THEY FINISH PHASE THREE UNLESS WE

15 HAVE WORKED OUT AN ALTERNATIVE PLAN WITH THEM

16 Q ALL RIGHT LET ME CHANGE SUBJECTS AND GO TO HER MISSED
17 SUBJECT -- THE DATE THAT THE INFORMATION WAS
18 LEFT FOR HER ON, AS I UNDERSTAND IT, AN ANSWERING MACHINE
19 WHERE SHE CALLS IN, IS THAT CORRECT?

20 A (INDICATES AFFIRMATIVE RESPONSE)

21 Q YOU NEED TO SAY YES, MS GODWIN

22 A I HAVE IT RECORDED, YES, ON THAT DATE

23 Q OKAY AND IF YOU WILL, TELL ME WHAT DATE THAT WAS

24 A MAY THE 29TH WELL, THAT DOESN'T NECESSARILY MEAN THAT
25 THAT'S THE DATE THAT'S THE DATE THAT I WOULD HAVE RECORDED

BOBBIE SUE GODWIN -- CROSS BY MR BANNISTER

1 THAT THE DATE THAT IT HAPPENED MAY NOT HAVE BEEN ON THE
2 29TH IS THAT ON A THURSDAY?

3 Q I WOULD HAVE TO LOOK AND SEE BUT -- AND I'LL DO IT IN
4 JUST A SECOND

5 BUT LET ME -- SO IT'S IMPOSSIBLE TO SAY FROM YOUR NOTES
6 THE DATE THAT ANGELA WAS SUPPOSED TO CALL IN BUT SHE DIDN'T
7 AND MISSED HER INSTRUCTIONS TO GO HAVE THE SCREEN DONE?

8 A YEAH WHAT I USUALLY DO THERE IS THAT'S A COURT DATE,
9 AND THAT'S USUALLY WHEN SANCTIONS ARE GIVEN SO IT'S
10 RECORDED USUALLY BY THAT SANCTION DATE, WHICH IS ON A
11 THURSDAY IT MAY NOT BE THE DATE SHE ACTUALLY MISSED THE
12 SCREEN

13 Q OKAY IS IT UNUSUAL TO HAVE ALL THOSE INSTRUCTIONS THAT
14 YOU LEAVE -- NOT ONLY INSTRUCTIONS TO SHOW UP FOR A SCREEN
15 BUT ALSO INSTRUCTIONS TO SHOW UP FOR AN APPOINTMENT? IN
16 OTHER WORDS, YOU'VE GOT AN APPOINTMENT AND YOU'VE GOT TO GO
17 HAVE YOUR SCREEN DONE?

18 A MOST OF THE TIME I DO TRY TO REMIND CLIENTS THAT THEY
19 HAVE A CASE MANAGEMENT APPOINTMENT WITH ME SCHEDULED THAT DAY
20 BECAUSE THEY ALWAYS HAVE TROUBLE REMEMBERING THAT

21 Q ALL RIGHT IS IT POSSIBLE THAT YOU REMINDED MS HURKS
22 -- THAT SHE DID CALL IN YOU REMINDED MS HURKS ON THE FRONT
23 PART OF THE MACHINE THAT SHE'S GOT AN APPOINTMENT, AND THEN
24 THE INSTRUCTIONS ABOUT THE DRUG SCREEN WERE AT THE END OF THE
25 TAPE?

1 A I DON'T KNOW USUALLY DRUG SCREENS ARE FIRST AND CASE
2 MANAGEMENT FOLLOWS

3 Q OKAY DID SHE MISS ANY OF HER CASE MANAGEMENT
4 APPOINTMENTS AROUND THIS SAME TIME PERIOD?

5 A I DON'T KNOW I'D HAVE TO LOOK BACK IN HERE AND SEE

6 Q ALL RIGHT DO YOU MIND DOING THAT FOR ME? BECAUSE IT
7 IS IMPORTANT

8 A ARE YOU TALKING ABOUT MAY THE 29TH?

9 Q YES, MA'AM

10 A ARE YOU SAYING IN MAY -- I DON'T SEE ANYTHING IN MAY

11 Q OKAY SO AROUND THE TIME THAT SHE MISSED THE SCREEN AND
12 OBVIOUSLY ALSO MISSED APPARENTLY THE INSTRUCTIONS TO BE
13 THERE, SHE MADE IT TO HER CASE MANAGEMENT APPOINTMENTS, IS
14 THAT A FAIR STATEMENT?

15 A I'M ASSUMING

16 Q ALL RIGHT YOU DON'T HAVE ANYTHING TO INDICATE
17 OTHERWISE?

18 A NOT IN THAT PARTICULAR RECORD, NO

19 Q OKAY IS THERE ANY RECORD YOU CAN REFER TO THAT WOULD
20 ANSWER THE QUESTION DEFINITELY ONE WAY OR THE OTHER?

21 A THE SANCTIONING SHEETS THAT WE KEEP BUT USUALLY I --
22 THAT MATCHES THAT SO

23 Q OKAY SO WE SUFFICIENTLY ESTABLISHED SHE DIDN'T GO TO
24 -- SHE DIDN'T MISS ANY CASE MANAGEMENT APPOINTMENTS DURING
25 THIS MAY -- END OF MAY, END OF JUNE TIME PERIOD BASED ON WHAT

BOBBIE SUE GODWIN -- CROSS BY MR BANNISTER

1 YOU'VE GOT IN FRONT OF YOU?

2 A BASED ON WHAT I HAVE IN FRONT OF ME

3 Q WOULD YOU TELL ME MS HURKS' WORK HISTORY DURING THE
4 RELEVANT TIME PERIOD OF THESE POSITIVE PATCHES, MAY 30TH, I
5 THINK, WAS THE FIRST ONE, UP UNTIL THE LAST ONE SOMETIME
6 AROUND SEPTEMBER?

7 A I THINK SHE WORKED WITH CHURCH'S CHICKEN AND WAFFLE
8 HOUSE AND THEN ALEGIS, IF I REMEMBER CORRECTLY

9 Q OKAY BY THE WAY, THE MISSED SCREEN, WAS THAT A PATCH
10 OR A URINE TEST?

11 A I WOULD HAVE TO LOOK BACK ON THE DRUG SCREEN THE THING
12 -- SHE WAS SANCTIONED WITH EIGHT HOURS COMMUNITY SERVICE, SO
13 SHE WAS PROBABLY WEARING A PATCH AT THE TIME

14 Q OKAY SO IT WOULD HAVE BEEN A REMOVAL OF A PATCH?

15 A NO IT COULD HAVE BEEN THAT OR ALCOHOL OR URINE

16 Q OKAY

17 A THAT'S WHY SHE WAS NOT SANCTIONED AT THAT TIME WITH A
18 WEEKEND FOR A MISSED SCREEN, BECAUSE SHE WAS WEARING A PATCH

19 Q DO YOU KNOW WHETHER OR NOT WHATEVER THE NEXT SCREEN
20 WAS -- IF IT WAS A PATCH, IT'D BE FAIR TO SAY THE PATCH WAS
21 NEGATIVE, SINCE WE KNOW THE POSITIVE PATCH WAS MAY 30TH AND
22 BEYOND, CORRECT?

23 A RIGHT

24 Q ALL RIGHT IF IT WAS A MISSED URINE SCREEN, THEN HAD
25 HER THE NEXT URINE SCREEN BEEN POSITIVE, WE WOULD SEE THAT

1 SOMEWHERE, CORRECT?

2 A THE POSITIVE SCREENS WOULD HAVE BEEN RECORDED IN THE
3 FILE, CORRECT

4 Q OKAY SO THERE'S EVERY LIKELIHOOD THAT THE SCREEN THAT
5 SHE MISSED, IF IT WAS A PATCH, WAS NEGATIVE ANYWAY?

6 A YES UNLESS -- RIGHT -- YOU HAVE A POSITIVE ONLY THE
7 POSITIVE SCREENS ARE PUT IN THE FILE

8 Q OKAY IF MS HURKS' ATTITUDE HAD BEEN THE SAME AS MS
9 ROBERTSON'S ATTITUDE AFTER HER POSITIVE PATCH DENIAL, SHE'D
10 STILL BE IN THE PROGRAM MORE THAN LIKELY?

11 A PROBABLY I CAN'T ANSWER THAT TOTALLY, BUT PROBABLY
12 MR. BANNISTER JUDGE, I AM GETTING READY TO GO INTO
13 ISSUES ABOUT THE JOB AT ALEGIS GROUP, SO THIS WOULD BE MY
14 PROFFER IN RESPONSE TO THEIRS, DEPENDING ON WHETHER YOU RULE
15 IT IN OR OUT

16 THE COURT YES, SIR GO AHEAD

17 Q DID YOU RECEIVE A LETTER FROM A BRIAN MITCHELL, WHO WAS
18 WITH EMPLOYEE DEVELOPMENT AT ALEGIS, REGARDING MS HURKS'
19 EMPLOYMENT? AND I'M PRETTY SURE THAT'S IN YOUR FILE

20 A YES, I THINK I REMEMBER SEEING IT

21 Q OKAY AND IN THAT LETTER DOESN'T HE REFERENCE THAT IT
22 WAS ABSENTEEISM THAT CAUSED THE PROBLEM?

23 A YES, HE DOES

24 Q ALL RIGHT AND MS HURKS SPENT A GOOD BIT OF TIME
25 INCARCERATED WHILE SHE WAS TECHNICALLY EMPLOYED WITH ALEGIS?

BOBBIE SUE GODWIN -- CROSS BY MR BANNISTER

1 A (NO RESPONSE)

2 Q I MEAN, THE LAST PART OF HER EMPLOYMENT WITH ALEGIS SHE
3 WAS IN JAIL, FAIR ENOUGH?

4 A I DON'T THINK SHE WORKED AT ALEGIS VERY LONG BEFORE
5 SHE -- SHE HAD ONLY BEEN HIRED PROBABLY A FEW DAYS OR A WEEK
6 BEFORE SHE WAS SENT TO JAIL

7 Q OKAY DO YOU KNOW WHO ACTUALLY HIRED HER?

8 A AT ALEGIS? NO

9 Q ALL RIGHT DO YOU KNOW WHO SHE INTERVIEWED WITH?

10 A NOT REALLY, NO

11 Q ALL RIGHT DO YOU KNOW WHETHER THE PERSON YOU TALKED TO
12 WAS THE PERSON THAT SHE INTERVIEWED WITH?

13 A I DON'T KNOW THAT

14 Q ALL RIGHT DID YOU EVER SEE THE JOB APPLICATION THAT
15 SHE FILLED OUT?

16 A I DON'T THINK SO

17 Q OKAY DID YOU EVER HAVE DISCUSSIONS WITH THE PERSON WHO
18 WAS THE INTAKE FOR THAT JOB APPLICATION?

19 A I DON'T RECALL

20 Q OKAY SO -- THAT'S FINE

21 MR. BANNISTER JUDGE, IF YOU WILL GIVE ME JUST A
22 MINUTE, I THINK I AM ABOUT FINISHED (PAUSE)

23 JUDGE, I DON'T HAVE ANY FURTHER QUESTIONS

24 THE COURT ALL RIGHT ANYTHING ELSE FROM THE STATE?

25 MS STROM YES, SIR VERY BRIEFLY THOUGH, YOUR HONOR

1 REDIRECT EXAMINATION BY MS STROM

2 Q MS GODWIN, I WANT TO CHECK A COUPLE OF THINGS STATE'S
3 EXHIBIT NUMBER 4, WHICH IS THE PHARMCHEM PHARMCHEK CHAIN OF
4 CUSTODY FORM WHICH SHOWS DANE JANELLI'S PATCH APPLIED 6/17
5 AND REMOVED 6/25/03, CORRECT?

6 A YES

7 Q YOU WOULD NOT GET THE RESULTS BACK ON 6/25?

8 A NO

9 Q IT WOULD TAKE SOME TIME FOR YOU TO ACTUALLY GET THE
10 RESULTS BACK FROM PHARMCHEM?

11 A YES

12 Q OKAY DO YOU KNOW APPROXIMATELY HOW LONG THAT TAKES?

13 A WEEKS

14 Q AND I THINK I WAS TALKING WHEN YOU WERE ANSWERING THIS
15 QUESTION, SO I APOLOGIZE FOR ASKING IT OVER BUT YOU WERE
16 SAYING THAT DANE HAD INFORMED POSSIBLY ROSA ABOUT HIS
17 GIRLFRIEND WAS THAT THAT HIS GIRLFRIEND WAS A DRUG USER?

18 MR. ARMSTRONG I OBJECT, YOUR HONOR THAT CERTAINLY
19 CALLS FOR HEARSAY

20 THE COURT GO AHEAD BECAUSE THAT'S ALREADY -- THAT
21 CAME OUT, I THINK, IN RESPONSE TO ONE OF YOUR QUESTIONS

22 MS STROM THAT WAS MY QUESTION I DID NOT HEAR --

23 Q I WASN'T SURE I HEARD THE RESPONSE WHEN HE WAS ASKING
24 HER ABOUT "DID DANE INFORM YOU ABOUT HIS GIRLFRIEND?" AND I
25 BELIEVE YOUR RESPONSE WAS SOMETHING TO THE EFFECT THAT HE

BOBBIE SUE GODWIN -- REDIRECT BY MS STROM

1 INFORMED ROSA, AND THEN I DIDN'T HEAR THE REST OF WHAT YOUR
2 ANSWER WAS

3 A I BELIEVE MY RESPONSE WAS THAT HE HAD TALKED TO ROSA
4 ABOUT HIS GIRLFRIEND OR MADE SOME REFERENCE TO HIS GIRLFRIEND
5 TO HER, EVEN THOUGH HE HADN'T DONE THAT -- THE ONLY THING HE
6 HAD SAID TO ME WAS WHAT I SAID HERE---

7 Q OKAY

8 A ---THAT "I WAS WITH MY GIRLFRIEND "

9 Q OKAY I WANT TO GO NOW TO WHEN YOU WERE QUESTIONED BY
10 MR BANNISTER ONE OF HIS QUESTIONS WAS QUITE CRAFTILY
11 WORDED IT ASKED YOU, "DID MS HURKS MISS HER DRUG SCREEN OR
12 POSSIBLY MISS HER INSTRUCTIONS?" DO YOU HAVE ANY EVIDENCE
13 THAT SHE MISSED THE INSTRUCTIONS?

14 A IF THEY FAIL TO CALL THE DRUG SCREEN LINE, IF YOU DIDN'T
15 CALL IT AND DIDN'T HEAR YOUR NAME ON THERE, THEN I WOULD
16 ASSUME THAT YOU MISSED YOUR INSTRUCTION

17 Q ARE YOU REQUIRED AS PART OF PARTICIPATING IN DRUG COURT
18 TO CALL THE DRUG SCREEN LINE?

19 A EVERY DAY

20 Q THANK YOU AND SPECIFICALLY AS TO -- YOU WERE TALKING
21 ABOUT EARLIER ABOUT THE FEES AND THAT IN AND OF ITSELF IF
22 SOMEONE MISSED A FEE, THAT WOULDN'T NECESSARILY BE GROUNDS
23 FOR TERMINATION, AND MISSING A SINGLE DRUG SCREEN WOULDN'T BE
24 GROUNDS PARTICULARLY AS TO MS HURKS, WHEN SHE HAD DONE SO
25 WELL IN THE FIRST PART OF THE PROGRAM, WHEN YOU STARTED

1 SEEING THAT SHE WAS MISSING A DRUG SCREEN AND FAILING TO PAY
2 HER FEES, WHAT DID THAT INDICATE TO YOU?

3 A SOMETHING'S NOT RIGHT, BECAUSE HERE'S SOMEONE WHO'S GONE
4 FROM PHASE ONE INTO PHASE TWO, HAS ALWAYS PAID HER FEES ON
5 TIME, REALLY BEEN A MODEL PARTICIPANT, AND SUDDENLY WE HAD
6 BEHIND IN FEES, YOU KNOW, THE FAILURE TO CALL THE LINE I
7 KNOW THAT THERE HAD BEEN SOME ISSUES IN GROUP ABOUT
8 RELATIONSHIP ISSUES, AND I KNOW THAT TOO FROM COMMENTS ANGELA
9 HAD MADE TO ME, NOT ALWAYS HAD -- NOT EASY GOING YOU KNOW,
10 SOMETIMES SHE HAD TROUBLE WITH RELATIONSHIP ISSUES

11 SO, YOU KNOW, WHAT THAT SAID TO US WAS, AGAIN,
12 SOMETHING'S NOT RIGHT HERE WHEN YOU WORK IN ADDICTION, I
13 THINK ONE OF THE THINGS THAT'S PROBABLY HARD FOR THE FAMILIES
14 AND EASIER FOR US AS COUNSELORS, WHEN SOMEONE HAS HAD A
15 DEGREE OF ABSTINENCE OVER A PERIOD OF TIME AND THEY ARE DOING
16 MUCH BETTER, AND THEY DO BETTER, AND THEY ARE RESPONSIBLE,
17 AND THEY ARE PAYING THEIR DUES, AND THEY'RE GETTING A JOB AND
18 THINGS LOOK REALLY GOOD, IF THEY START MISSING, OF COURSE,
19 THOSE ARE THE THINGS WE LOOK AT FIRST, THAT SOMETHING IS
20 GOING AWRY HERE WHEREAS THE FAMILY MEMBER, TO THE FAMILY
21 MEMBER OR SOMEONE CLOSE THEM, THEY MAY NOT LOOK ANY
22 DIFFERENT BECAUSE THERE AGAIN, IF SOMEONE HAS USED AND
23 THEY'VE JUST USED A FEW TIMES AND THAT ADDICTION MAY BE
24 GETTING FED, IT MAY NOT BE THAT IT'S IN LATE STAGE -- YOU
25 KNOW, MOVED THAT FAST INTO LATE STAGE ADDICTION, WHICH IS

BOBBIE SUE GODWIN -- REDIRECT BY MS STROM

1 WHERE THEY WERE IN THE BEGINNING SO THOSE ARE JUST RED
2 FLAGS FOR US THAT SOMETHING IS GOING WRONG

3 Q SO, IT'S SORT OF A HINT TO BE ON THE LOOKOUT?

4 A YES

5 Q AND I WANT TO MAKE CLEAR WITH REGARDS TO THE ATTITUDE
6 AND THE MANNER IN WHICH SOMEONE REFUSES TO ADMIT DRUG USE
7 YOU'RE NOT SIMPLY SAYING IF THEY COME UP AND SAY, "I'M SORRY,
8 MS GODWIN, BUT I'M NOT GOING TO ADMIT USING," THEY STAY IN
9 YOUR PROGRAM AND SOMEONE WHO COMES UP AND ADAMANTLY SAYS,
10 "I'M NOT GOING TO ADMIT " IT'S MORE THAN JUST BEING NICE
11 ABOUT IT?

12 A OH, YEAH IT'S A LOT MORE SINCE HE USED CHARLENE, I
13 MEAN, I COULD USE CHARLENE AS AN EXAMPLE I THINK IT WAS
14 QUITE SOME TIME BEFORE CHARLENE ACTUALLY ADMITTED, BUT SHE
15 WAS PUT IN PHASE ONE WE DID SOME GROUPS AROUND ADDRESSING
16 THINGS THAT LEAD TO RELAPSE AND TALKING ABOUT IT BUT NO ONE
17 FORCED HER TO OPEN UP OR SHARE YOU KNOW, OUR FEELING THERE
18 IS, AGAIN, WHEN THEY START GETTING WELL AND THE MORE CLEAN
19 THEY GET AND THE MORE MOTIVATED THEY GET FOR RECOVERY, THEY
20 WANT TO TELL THAT IT GENERALLY HAPPENS AS A PROCESS MOST
21 OF THE PEOPLE WE'VE EVER HAD, AGAIN, LIKE I ANSWERED EARLIER
22 TODAY, I DON'T RECALL ANYBODY EVER WHEN I'VE CONFRONTED THEM
23 WITH A POSITIVE SCREEN SAYING, "OH, YEAH, I USED " I DON'T
24 RECALL EVER HAVING THAT, AND THAT INCLUDES WITH URINE
25 SCREENS

1 BUT GENERALLY SPEAKING, WHAT WILL HAPPEN IS, GIVEN SOME
2 TIME, WHETHER THAT BE DAYS OR WEEKS OR WITH SOME PEOPLE IT
3 MIGHT EVEN BE MONTHS, THAT GENERALLY WILL COME OUT WITHOUT A
4 GREAT DEAL OF PRESSURE ON OUR PART

5 Q SO WHEN YOU SPEAK IN TERMS OF MANNER, I THINK YOU SAID
6 IT EARLIER, THAT IT REALLY INVOLVED ARE THEY OPEN AND
7 CONDUCTIVE TO RECOVERY?

8 A YES

9 Q AND IT WAS YOU AND YOUR STAFF'S DETERMINATION THAT MS
10 HURKS DID NOT HAVE AN ATTITUDE THAT WAS INDUCIVE TO RECOVERY?

11 A THAT'S CORRECT

12 MS STROM THANK YOU I HAVE NO FURTHER QUESTIONS

13 MR GIBSON YOUR, I HAVE ONE ISSUE REGARDING THE URINE
14 TEST RESULTS THAT WE'RE STILL WAITING ON FROM THE SOLICITOR'S
15 OFFICE

16 MS STROM FROM?

17 MR GIBSON FROM VARIOUS PERIODS

18 MS STROM OKAY THE ONES FROM SEPTEMBER 22ND TO THE
19 PRESENT, IS THAT WHAT YOU'RE TALKING ABOUT FROM MR WATERS?

20 MR GIBSON I ASKED FOR SEPTEMBER 13TH, 2002, TO
21 PRESENT FOR MR PERKINS

22 MS STROM FROM -- LET ME MAKE SURE I'M CORRECT ARE
23 YOU WANTING THE RECORDS FROM MRW?

24 MR GIBSON ALL I REALLY WANT IS A SHEET WHICH SHOWS
25 WHAT HIS URINALYSIS TEST WAS I'M SORRY IF THAT WASN'T

1 CLEAR I MEAN, I JUST WANT TO KNOW -- IT'S MY UNDERSTANDING
2 HE HAS TAKEN NUMEROUS URINALYSIS TESTS IN FACT, HE TOOK ONE
3 AT THE TIME THERE WAS THIS ALLEGED TAMPERED PATCH THAT IT'S
4 MY UNDERSTANDING CAME BACK NEGATIVE, AND I JUST WANT THOSE
5 DOCUMENTS -- OR JUST RESULTS I THINK THAT MS GODWIN IS
6 PROBABLY FAMILIAR ENOUGH WITH THEM TO BE ABLE TO TESTIFY TO
7 THEM

8 MS STROM YOUR HONOR, I HAVE SEVERAL DOCUMENTS THAT
9 ARE CONSENTS FOR DRUG SCREENS FROM ACCURATE DIAGNOSTICS THAT
10 ARE---

11 MR GIBSON YEAH, THOSE ARE THE ONES TOO ALL THOSE
12 ARE, I THINK, DURING THE TIME FRAME OF WHEN HE WAS OUT ON
13 BOND THERE WAS ALSO A NUMBER OF DOCUMENTS THAT WERE DONE AT
14 THE REQUEST OF DRUG COURT BY MRW

15 THE COURT ALL RIGHT I'M ASSUMING THAT THERE IF
16 THERE TEST RESULTS FROM ACCURATE THAT YOUR CLIENT HAD THOSE

17 MR GIBSON NO, SIR WE WERE NOT GIVEN COPIES OF
18 THOSE, NOT FOR THE BOND -- NOT WHEN THEY'RE OUT ON BOND NOT
19 WHEN THEY DO THE URINALYSIS ON THE BOND

20 THE COURT WELL, CLEARLY, YOUR CLIENT WOULD BE
21 ENTITLED TO A COPY OF THAT FROM WHOEVER THE COLLECTING AGENCY
22 WAS, INDEPENDENT OF ANY COURT ORDER

23 MR GIBSON AND IF THAT'S THE CASE, YOUR HONOR, I
24 THINK MS RADDATZ HAS THEM AND SHE CAN TESTIFY AS TO THOSE
25 BUT AS TO THE ONES AT MWR, YOU KNOW, I WOULD LIKE THOSE --

1 MRW, I APOLOGIZE MRW I DON'T HAVE ANY -- THOSE ARE REALLY
2 THE ONES THAT I---

3 MS. STROM AND THE ONES I HAVE RECEIVED FROM MRW ARE
4 ALL INVOLVING ANGELA HURKS

5 THE COURT DOES THE STATE HAVE IN ITS POSSESSION ANY
6 URINALYSIS TESTS RELATED TO MR GIBSON'S CLIENT?

7 MS. STROM I WOULD HAVE TO ASK MS GODWIN THAT

8 THE COURT ALL RIGHT ASK HER THAT QUESTION

9 Q DO WE HAVE IN OUR POSSESSION EITHER HERE OR IN OUR
10 OFFICE URINALYSIS TESTING AND RESULTS ON MR PERKINS?

11 A WE ONLY KEEP TESTS FOR SEVERAL MONTHS BECAUSE MRW KEEPS
12 TESTS IN THEIR -- AND THEY ARE THE PERFORMING AGENCY THAT
13 DOES THE DRUG SCREENS WE MAY HAVE THEM BACK TO JUNE, BUT
14 WE'RE NOT REQUIRED TO KEEP THOSE COPIES BECAUSE MRW HAS THAT
15 THE ONLY TEST THAT WE REALLY KEEP AND PUT IN A PERSON'S FILE
16 ARE POSITIVE RESULTS

17 MR. GIBSON YOUR HONOR, CAN I ASK HER A COUPLE
18 QUESTIONS AND WE CAN DO AWAY WITH THE WHOLE ISSUE QUITE
19 FRANKLY I -- WE MADE A MOTION FOR THE DOCUMENTS BUT
20 RECROSS EXAMINATION BY MR GIBSON

21 Q LET ME ASK YOU THIS, MS GODWIN WHEN MR PERKINS
22 CALLED YOU ABOUT THE PATCH THAT HAD TORN AND YOU SAID HE WAS
23 SENT TO MRW, ARE YOU AWARE WHETHER OR NOT HE TOOK A URINE
24 TEST ON THAT SAME DAY?

25 A I'M NOT AWARE OF THAT

BOBBIE SUE GODWIN -- RECROSS BY MR GIBSON

1 Q OKAY SO YOU DID NOT ORDER A URINE TEST OR YOU JUST
2 CAN'T RECALL?

3 A I CAN'T RECALL IF HE HAD IT DONE WE PREFER THAT MRW --
4 WHENEVER THERE IS A QUESTION ON A PATCH THAT SOMEONE GET A
5 URINE SCREEN BUT I CAN'T TELL YOU WHETHER THAT WAS DONE OR
6 NOT

7 Q SO, DID YOU -- WAIT A MINUTE LET ME BACK UP A MINUTE
8 YOU ASKED THAT -- IS YOUR GENERAL POLICY THAT MRW IS SUPPOSED
9 TO DO A URINALYSIS TEST WHEN SOMEONE HAS A "TAMPERED PATCH",
10 IS THAT CORRECT?

11 A THAT'S USUALLY WHAT WE DO OR WE WILL REQUEST THAT
12 USUALLY, YES

13 Q OKAY DO YOU HAVE---

14 A BUT I DON'T KNOW IF THAT WAS DONE

15 Q DO YOU HAVE ANY REASON TO BELIEVE THAT THAT WAS NOT DONE
16 IN THIS CASE?

17 A I DON'T KNOW THE ANSWER TO THAT QUESTION

18 Q WELL, I'M ASKING YOU DO YOU HAVE ANY REASON TO BELIEVE
19 THAT WAS NOT DONE?

20 MS. STROM YOUR HONOR, ASKED AND ANSWERED SHE SAID
21 SHE DIDN'T KNOW

22 MR. GIBSON I DON'T THINK SHE REALLY DID---

23 THE COURT DO YOU KNOW IF MRW WAS INSTRUCTED OR IF
24 THEY DID IN FACT PERFORM A URINALYSIS TEST ON MR PERKINS ON
25 THAT PARTICULAR DATE?

1 WITNESS I DON'T KNOW IF THEY DID OR DIDN'T ON THAT
2 PARTICULAR DAY

3 THE COURT ALL RIGHT THANK YOU, MA'AM

4 Q DO YOU KNOW IF THEY WERE NOT INSTRUCTED?

5 A I DON'T RECALL THAT EITHER

6 MR GIBSON YOUR HONOR, I KIND OF NEED THAT TEST AND
7 IT WAS MY UNDERSTANDING---

8 THE COURT WHY WASN'T THE WITNESS AT MRW SPECIFICALLY
9 ASKED THAT QUESTION WHEN HE WAS ON THE STAND?

10 MR GIBSON BECAUSE I WAS GOING TO BRING IT OUT
11 THROUGH MS GODWIN

12 THE COURT WOULDN'T HE BE THE BEST SOURCE OF THAT?

13 MR GIBSON YOUR HONOR, MY---

14 THE COURT THE GENTLEMAN IS HERE YOU CAN TALK TO HIM
15 DURING THE BREAK

16 MR GIBSON OKAY

17 THE COURT MR ARMSTRONG, DO YOU HAVE ANY OTHER
18 QUESTIONS?

19 MR ARMSTRONG EXCUSE ME, I WAS TALKING TO MY CLIENT
20 WHAT?

21 THE COURT THAT'S FINE DO YOU HAVE ANY OTHER
22 QUESTIONS OF MS. GODWIN?

23 MR ARMSTRONG I DO NOT

24 THE COURT MR BANNISTER?

25 RECROSS EXAMINATION BY MR BANNISTER

BOBBIE SUE GODWIN -- RECROSS BY MR BANNISTER

1 Q THERE WERE AT LEAST TWO ISSUES YOU'RE AWARE OF, PERSONAL
2 ISSUES, GOING ON WITH MS HURKS, BASED ON WHAT I'VE HEARD
3 ONE WAS HER SISTER HAD A SERIOUS ILLNESS, AND, TWO, WAS SHE
4 HAD RELATIONSHIP ISSUES DURING THIS TIME CORRECT?

5 A WELL, SHE HAD RELATIONSHIP ISSUES THROUGHOUT THE TIME IN
6 DRUG COURT YES, I REMEMBER THAT

7 Q AND THE THINGS YOU WERE LOOKING AT THAT WERE RED FLAGS
8 THAT WERE GOING ON, YOU NOT ONLY -- WELL, Y'ALL BELIEVED THAT
9 SHOWED DRUG ADDICTION---

10 THE COURT MR BANNISTER, WE'VE ALREADY PLOWED THIS
11 GROUND MANY DIFFERENT DIRECTIONS AND ANGLES SO IF YOU HAVE
12 ANY NEW QUESTIONS, YOU MAY ASK THEM

13 MR. BANNISTER THANK YOU

14 THE COURT THANK YOU, SIR

15 MR BANNISTER NOTHING FURTHER, JUDGE

16 THE COURT ALL RIGHT THANK YOU, MA'AM YOU CAN STEP
17 DOWN

18 (WITNESS STEPS DOWN AT 3 25 P M)

19 THE COURT ANY OTHER WITNESSES FROM THE STATE?

20 MS STROM NO, SIR, YOUR HONOR

21 THE COURT I GUESS THE STATE RESTS?

22 MS STROM THE STATE RESTS

23 THE COURT ALL RIGHT WHO IS GOING TO PROCEED FIRST,
24 GENTLEMEN?

25 MR ARMSTRONG (INDICATING)

1 **THE COURT** ALL RIGHT WE'LL TAKE A 15-MINUTE BREAK,
2 AND WE'LL START BACK AT TWENTY TILL 4 00

3 (A RECESS WAS TAKEN FROM 3 25 TO 3 42 P M)

4 **THE COURT** ALL RIGHT ARE YOU READY FOR YOUR FIRST
5 WITNESS?

6 **MR ARMSTRONG** YES, I'D CALL NINA RADDATZ

7 **MS STROM** AND AGAIN, YOUR HONOR, I'M GOING TO RENEW
8 MY OBJECTION, IF THIS IS INVOLVING THE NORTHWESTERN DRUG
9 TESTING DIVISION REPORTS THAT WE JUST RECEIVED I HAVE
10 LOOKED OVER THEM, AND ALL THAT THEY HAVE IS THE RESULT IN
11 TERMS OF THE FACT THAT IT WAS REPORTED OUT AS NEGATIVE THIS
12 WOULD NOT, I SUBMIT TO THE COURT, WOULD NOT BE CONSIDERED A
13 LITIGATION PACKET WHICH WOULD THEN INCLUDE WHAT THE ACTUAL
14 NUMERICAL RESULT WAS IT GIVES US WHAT CUTOFF LEVELS ARE,
15 SUCH AS FOR COCAINE IT HAS TO BE 50 PG/MG I DON'T KNOW IF
16 THIS TEST RESULTED IN A 49, WHICH I THINK WOULD BE RELEVANT
17 AND I COULD UTILIZE

18 **THE COURT** I UNDERSTAND AT THIS POINT I'M GOING TO
19 TAKE YOUR MOTION UNDER ADVISEMENT LET'S SEE WHERE SHE GOES
20 WITH THE TESTIMONY, AND THEN WHAT YOU SAY MAY BE APPROPRIATE
21 AND A BASIS TO SUSTAIN THE OBJECTION OR IT MAY BECOME
22 IRRELEVANT

23 **MS STROM** THANK YOU

24 **THE COURT** SO SUBJECT TO THIS OBJECTION

25 **MS STROM** AND, YOUR HONOR, BEFORE WE GET STARTED, I

NINA RADDATZ -- DIRECT BY MR ARMSTRONG

1 WAS ASKED TO PROVIDE THE ACCURATE DIAGNOSTIC TESTINGS WHILE
2 THE DEFENDANTS HAVE BEEN OUT ON BOND, AND I HAVE THOSE COPIES
3 AND I WOULD PROVIDE THOSE TO THEM UNFORTUNATELY, THEY ARE
4 NOT SEPARATED OUT I JUST GAVE YOU EVERYTHING I HAVE

5 MR. GIBSON WE'LL DO IT

6 THE COURT THANK YOU, MS STROM

7 MR GIBSON THANK YOU, MS STROM

8 MS STROM YOU'RE WELCOME

9 NINA RADDATZ, HAVING BEEN DULY
10 SWORN, TESTIFIED AS FOLLOWS

11 DIRECT EXAMINATION BY MR ARMSTRONG.

12 Q MS RADDATZ, LET ME GET YOU FIXED HERE SO YOU DON'T HAVE
13 TO BEND OVER YOU CAN JUST SLIDE UP A LITTLE BIT

14 A OKAY THANK YOU

15 Q IS THAT BETTER?

16 A THAT'S MUCH BETTER

17 Q OKAY MS RADDATZ, BY WHOM ARE YOU EMPLOYED?

18 A ACCURATE DIAGNOSTICS

19 Q AND WHAT IS ACCURATE DIAGNOSTICS?

20 A WE PERFORM DRUG SCREENING SERVICES AS WELL AS DNA AND
21 PHYSICAL EXAMS

22 Q AND IS YOUR BUSINESS LOCATED HERE IN GREENVILLE?

23 A YES, IT IS [REDACTED]

24 Q AND IS ACCURATE DIAGNOSTICS A PART OF AMERICAN
25 PARAPROFESSIONAL SYSTEMS?

NINA RADDATZ -- DIRECT BY MR ARMSTRONG

- 1 A NO, IT IS NOT
- 2 Q WHAT IS THE -- ARE YOU INVOLVED ALSO WITH AMERICAN
- 3 PARAMEDICAL SERVICES?
- 4 A YES, WE ARE ACTUALLY, IT'S -- TO EXPLAIN THE WHOLE SET
- 5 UP, IT'S SANQUEST, LLC, IS DIVIDED INTO TWO DIVISIONS
- 6 BASICALLY, SANQUEST, LLC, HAS THE RIGHTS TO REPRESENT APS
- 7 PARAMEDICAL IN THE UPSTATE OF SOUTH CAROLINA APS
- 8 PARAMEDICAL ONLY CONDUCTS PARAMEDICAL EXAMS ACCURATE
- 9 DIAGNOSTICS CONDUCTS ALL OF OUR OTHER SERVICES, SUCH AS THE
- 10 DRUG SCREENING, DNA AND OTHER TYPE OF PHYSICAL EXAMS FOR PRE-
- 11 EMPLOYMENT AND OCCUPATIONAL TESTING
- 12 Q AND ARE YOU FULL-TIME ENGAGED IN THIS PARTICULAR
- 13 BUSINESS?
- 14 A YES, I AM
- 15 Q ALL RIGHT WHAT IS YOUR EDUCATIONAL BACKGROUND, MA'AM?
- 16 A I DO HOLD A CHEMISTRY DEGREE, BACHELOR'S FROM WESTERN
- 17 CAROLINA UNIVERSITY
- 18 Q AND DO YOU HAVE ANY SUBSEQUENT DEGREES IN CHEMISTRY OR
- 19 ANY OTHER ACADEMIC DISCIPLINE?
- 20 A NO
- 21 Q AT MY REQUEST DID YOU BRING A COPY OF YOUR DEGREE WITH
- 22 YOU?
- 23 A YES YES, I DID
- 24 Q WOULD YOU PLEASE PRODUCE THAT?
- 25 THE COURT CAN YOU STIPULATE THAT SHE HAS A B A IN

NINA RADDATZ -- DIRECT BY MR ARMSTRONG

1 CHEMISTRY FROM WESTERN CAROLINA?

2 MS STROM I HAVE NO PROBLEM WITH THAT, YOUR HONOR

3 THE COURT ALL RIGHT

4 MR ARMSTRONG THAT NEGATES THE NECESSITY OF THAT
5 DOCUMENT

6 Q YOU IN YOUR TASK WITH ACCURATE DIAGNOSTICS YOU STATE
7 THAT YOU DO DRUG SAMPLING, IS THAT CORRECT?

8 A YES, THAT IS CORRECT

9 Q YOU'RE RUNNING A COLLECTION OPERATION AS OPPOSED TO A
10 LABORATORY, ARE YOU NOT?

11 A THAT IS CORRECT THE ONLY TYPE OF DRUG SCREENING THAT
12 WE ACTUALLY CONDUCT ON SITE WOULD BE THE INSTANT DRUG
13 SCREENS OTHERWISE, THEY ARE -- THEY GO TO A LABORATORY THAT
14 IS CERTIFIED

15 Q AND YOU FOLLOW CERTAIN PROCEDURES WITH THE SAMPLING
16 AND THEN HOW DO YOU GET THE SAMPLE TO THE LABORATORY?

17 A WE FOLLOW STRICT PROCEDURES, ACTUALLY WOULD YOU LIKE
18 ME TO EXPLAIN THE URINE OR THE HAIR COLLECTION?

19 Q I'D LIKE YOU TO EXPLAIN THE HAIR, FOR EXAMPLE

20 A OKAY WHEN WE COLLECT FOR HAIR, THE FIRST THING THAT WE
21 DO IS IDENTIFY THE DONOR BY A PHOTO I D WE ALWAYS MAKE A
22 COPY OF THAT, HAVE THAT IN OUR FILES THEN WE HAVE THE DONOR
23 SIT DOWN I MEAN, I DON'T KNOW HOW EXPLICIT YOU WANT ME TO
24 GET BUT THEY SIT DOWN IN A CHAIR WE EXPLAIN TO THEM WHAT
25 WE ARE GOING TO DO WE PULL THEIR HAIR UP, AND FROM THE

NINA RADDATZ -- DIRECT BY MR ARMSTRONG

1 BOTTOM PORTION OF THE HAIR, WE TAKE APPROXIMATELY ABOUT THREE
2 SECTIONS WITH A SCISSORS AND IN FRONT OF THEM WE LIE IT ON A
3 PIECE OF FOIL WE FOLD IT, PUT IT IN A ENVELOPE SEAL IT, OF
4 COURSE, ALL IN THEIR PRESENCE, SEAL IT WITH A TAMPER EVIDENT
5 TAPE, AND HAVE THEM INITIAL THAT THAT IS THEIR SPECIMEN
6 THEN WE SEND IT BY COURIER, IN THIS CASE, AIRBORNE, TO OUR
7 LAB, AND OUR LAB IS NORTHWEST TESTING IN SALT LAKE CITY,
8 UTAH

9 Q IS THIS ONE OF SEVERAL LABS THAT YOU WOULD USE?

10 A YES, IT IS

11 Q AND ONCE THEY RECEIVE IT DO THEY ULTIMATELY ISSUE A
12 REPORT?

13 A YES WHEN THE LAB RECEIVES IT, THEY MAKE SURE THAT THE
14 SPECIMEN IS INTACT WITH THE TAMPER EVIDENT TAPE, AND THEN
15 THEY TEST IT AND FAX TO US A REPORT, AND THEN FOLLOW UP WITH
16 EMAIL AS WELL

17 Q OKAY AND HOW LONG DOES THIS PROCESS TAKE?

18 A IT TAKES -- IF IT'S NEGATIVE, -ONE TO TWO DAYS IF IT'S
19 POSITIVE, ANYWHERE BETWEEN THREE TO FIVE DAYS

20 Q ARE THERE ANY CERTIFICATIONS OR REGULATORY AGENCIES
21 WHICH OVERSEE OR LICENSE OR REGULATE THE COLLECTORS OF HAIR
22 SAMPLES?

23 A NOT WITH HAIR WITH URINE, YES WE DO USE A SAMHSA
24 CERTIFIED LAB THEY ACTUALLY TEST URINE AS WELL AS HAIR
25 AND PRESENTLY, RIGHT NOW, THE URINE IS REGULATED, AND IT IS

NINA RADDATZ -- DIRECT BY MR ARMSTRONG

- 1 NECESSARY, ESPECIALLY WITH THE DEPARTMENT OF DRUG --
2 DEPARTMENT OF TRANSPORTATION URINE TESTING THAT THE LABS BE
3 CERTIFIED, SAMHSA CERTIFIED, TO DO THAT
- 4 Q WHY?
- 5 A THAT'S WHY I CHOSE THE LAB THAT I DID, TO MAKE SURE THEY
6 WERE SAMHSA CERTIFIED ALTHOUGH, YOU ARE NOT REQUIRED TO BE
7 CERTIFIED RIGHT NOW HOWEVER, VERY, VERY SOON HAIR WILL BE A
8 PART OF THE DEPARTMENT OF TRANSPORTATION TESTING
- 9 Q ALL RIGHT NOW, ARE YOU CERTIFIED IN ANY CAPACITY AS A
10 COLLECTOR FOR ANY TYPE OF DRUG SCREENING PROCESS?
- 11 A YES, I AM A CERTIFIED DEPARTMENT OF TRANSPORTATION, DOT,
12 CERTIFIED COLLECTOR
- 13 Q DO YOU HAVE A COPY OF THAT CERTIFICATE?
- 14 A YES, I DO
- 15 Q WOULD YOU PLEASE PRODUCE THAT?
- 16 THE COURT WILL YOU STIPULATE TO THAT?
- 17 MS STROM I DON'T HAVE A PROBLEM WITH IT, YOUR HONOR
- 18 MR ARMSTRONG FOR THE RECORD, I'D LIKE TO PUT THIS
19 IN, YOUR HONOR
- 20 A AND THIS IS ALSO WHERE I AM CERTIFIED TO INSTRUCT MY
21 EMPLOYEES ON HOW TO COLLECT---
- 22 Q LET ME ASK YOU THAT
- 23 A OKAY SURE
- 24 Q ALL RIGHT MS RADDATZ, YOU PRESENTED TO ME ACTUALLY
25 TWO CERTIFICATES, ONE BEING THE FIRST, THE SUBSTANCE ABUSE

1 COLLECTION PROFESSIONAL URINE DRUG SCREEN SPECIMENS ISSUED ON
2 APRIL THE 22ND, 2003, IS THAT CORRECT?

3 A YES

4 Q AND YOU ALSO PRODUCED A CERTIFIED INSTRUCTOR OF
5 SUBSTANCE ABUSE COLLECTION PROFESSIONAL URINE DRUG SCREEN
6 SPECIMEN ISSUED ALSO THE SAME DAY?

7 A UH-HUH (AFFIRMATIVE)

8 Q SO THESE ARE THE CERTIFICATIONS THAT YOU HAVE, IS THAT
9 CORRECT, MA'AM?

10 A YES, THAT IS CORRECT

11 Q ARE THERE ANY OTHER CERTIFICATIONS THAT YOU HAVE IN THIS
12 PARTICULAR DISCIPLINE THAT YOU ARE INVOLVED IN?

13 A NO

14 Q ARE THERE ANY OTHER THAT ARE AVAILABLE CURRENTLY?

15 A NO

16 (RADDATZ CERTIFICATE MARKED AS DEFENDANT JANELLI EXHIBIT
17 NUMBER 7 AND MOVED INTO EVIDENCE)

18 (RADDATZ CERTIFICATED MARKED AS DEFENDANT JANELLI
19 EXHIBIT NUMBER 8 AND MOVED INTO EVIDENCE)

20 Q AT THE REQUEST OF MR JANELLI OR HIS FAMILY DID YOU
21 CONDUCT ANY SAMPLINGS OF HAIR ON MR JANELLI?

22 A YES, WE DID

23 Q AND WHEN DID YOU DO THE FIRST SAMPLING?

24 A OKAY I JUST NEED TO REFER TO MY NOTES ,

25 Q YOU MAY

NINA RADDATZ -- DIRECT BY MR ARMSTRONG

1 A OKAY THE FIRST SAMPLE FOR HAIR TESTING OCCURRED IN OUR
2 OFFICE ON JULY 23RD, 2003

3 Q AND WHEN HE PRESENTED HIMSELF AT THAT TIME WHAT DID YOU
4 DO?

5 A WE TOOK A SAMPLE OF HIS HAIR IN HIS PRESENCE AND PUT IT
6 IN AN ENVELOPE SEALED IT WITH A TAMPER EVIDENT TAPE AND SENT
7 IT BY COURIER AIRBORNE TO THE LAB

8 Q DID YOU FOLLOW THE PROCEDURE THAT YOU HAD PREVIOUSLY
9 TESTIFIED ABOUT?

10 A YES, WE DID

11 Q AND IN DUE COURSE DID YOU RECEIVE BACK A TEST REPORT OR
12 A TEST RESULT FROM THE LABORATORY?

13 A YES

14 MS STROM OBJECTION IF SHE PLANS TO GET INTO THE
15 RESULTS OF THOSE TESTS, YOUR HONOR

16 THE COURT OBJECTION BEING BASED UPON WHAT?

17 MS STROM BEING BASED UPON THE FACT THAT AS I STATED
18 BEFORE IF I AM GOING TO BE REQUIRED ON EVERY TEST TO PROVE
19 THE FOUNDATION, THEY HAVE TO PROVE THE FOUNDATION THERE HAS
20 BEEN NOTHING HERE TALKING ABOUT NORTHWEST DRUG TESTING
21 DIVISION, THE POLICIES AND PROCEDURES AND SAFEGUARDS THAT
22 THEY USE, WHAT TESTINGS THEY USE AGAIN, WE DON'T HAVE THE
23 LITIGATION PACKETS TO GO INTO

24 THE COURT MR ARMSTRONG?

25 MR ARMSTRONG YOUR HONOR, I THOUGHT THIS WAS A

NINA RADDATZ -- DIRECT BY MR ARMSTRONG

1 PROFFER AT THIS STAGE OF THE GAME

2 THE COURT SO YOU'RE PROFFERING IT?

3 MR. ARMSTRONG I THINK THAT'S WHERE WE ARE, YOUR
4 HONOR I'M NOT -- MAYBE I'M NOT CERTAIN HERE YOU HAVE
5 TAKEN THE INITIAL OBJECTION UNDER ADVISEMENT

6 THE COURT YES, SIR AND OBVIOUSLY, UNDER RULE 702,
7 AN EXPERT HAS FAR GREATER LATITUDE IN TESTIFYING AS TO
8 CERTAIN ITEMS THAN WOULD SOMEONE ELSE BUT AT THIS POINT, I
9 WILL ALLOW IT IN THE FORM OF A PROFFER

10 MS STROM AS A PROFFER?

11 THE COURT YES, MA'AM

12 MS STROM THANK YOU

13 MR ARMSTRONG LET ME DEVELOP THIS A LITTLE ON THE
14 RECORD, YOUR HONOR THIS IS ONE OF THE TESTS WHICH WAS INT
15 STATE'S FILE WHICH WAS DEVELOPED IN MS GODWIN'S TESTIMONY
16 HERE

17 THE COURT YES, SIR, I UNDERSTAND

18 MR ARMSTRONG THOSE RESULTS WERE INDEED THERE

19 THE COURT I UNDERSTAND

20 MR ARMSTRONG SO, I THINK, BASED ON THAT, THE RESULTS
21 SHOULD COME IN NOT BEING A PROFFER IF YOU RULE AGAINST
22 THAT, THEN I MAKE IT AS A PROFFER

23 THE COURT WELL, I THINK IT CAN CERTAINLY COME IN AS
24 BEING IN THE FILE IT DOES NOT HAVE ANYTHING TO DO WITH
25 NECESSARILY THE TRUTH OR THE ACCURACY OF IT, WHICH, I

NINA RADDATZ -- DIRECT BY MR ARMSTRONG

1 UNDERSTAND, THAT'S THE SUBSTANCE OF THE STATE'S OBJECTION
2 SO I'M GOING TO ACCEPT IT AS A PROFFER

3 MR ARMSTRONG ALL RIGHT

4 Q AT MY REQUEST -- OR ACTUALLY, WERE YOU SUBPOENAED TO
5 BRING DOCUMENTS WITH YOU?

6 A YES

7 Q AND DID YOU BRING THE RECORDS FROM THE COLLECTION AND
8 THE SUBSEQUENT DOCUMENTATION THAT WAS GENERATED EITHER BY
9 YOUR OFFICE OR NORTHWEST DRUG TESTING DIVISION IN RESPONSE TO
10 THAT SUBPOENA?

11 A YES, I DID

12 Q ALL RIGHT WOULD YOU PLEASE HAND THAT TO ME?

13 A (COMPLIES)

14 MR ARMSTRONG DOES THE STATE HAVE A COPY OF THIS?

15 MS STROM OH, I'M SORRY YES, I HAVE A COPY I'M
16 SORRY

17 MR ARMSTRONG I WOULD ASK THAT THIS BE MARKED
18 ACCORDINGLY

19 THE COURT ALL RIGHT FOR A PROFFER

20 (NWT TEST RESULTS REPORT MARKED AS DEFENDANT JANELLI
21 EXHIBIT NUMBER 9 FOR PURPOSES OF IDENTIFICATION ONLY)

22 Q MS RADDATZ, IF YOU WILL, LOOK TOGETHER WITH ME HERE
23 IN FACT, LET ME GET A COPY OF IT SO I DON'T HAVE TO --
24 (PRESENTS COPY OF DOCUMENT TO WITNESS) LOOKING FIRST AT YOUR
25 SHEET, NOT THE RESULTS BUT THE INITIAL SHEET WHICH WAS

NINA RADDATZ -- DIRECT BY MR ARMSTRONG

1 COMPLETED HERE, IS THIS THE FORM, WHICH IS PART OF EXHIBIT
2 NUMBER 9, IS THIS THE FORM THAT IS COMPLETED IN YOUR OFFICES?

3 A YES, IT IS

4 Q AND THE SPECIMEN TAKER IS A WOMAN BY THE NAME OF KELLY
5 VELAZQUEZ?

6 A YES

7 Q ALL RIGHT AND WHO IS MS VELAZQUEZ?

8 A YES KELLY VELAZQUEZ WAS AN EMPLOYEE WITH ACCURATE
9 DIAGNOSTICS FROM AUGUST OF 2002 UNTIL DECEMBER OF 2003 SHE
10 COLLECTED THE SAMPLE

11 Q AND ARE YOU PRODUCING THESE RECORDS AS BUSINESS RECORDS
12 THAT YOU WOULD MAINTAIN IN THE NORMAL AND ORDINARY COURSE OF
13 YOUR BUSINESS?

14 A YES

15 Q AND DID SHE, TO THE BEST OF YOUR KNOWLEDGE, COMPLY --
16 AND BY THE WAY, IS SHE IN THE COURTROOM HERE TODAY?

17 A YES, SHE IS

18 Q AND DID SHE COMPLY WITH THE RULES AND THE REGULATIONS AS
19 FAR AS -- AND THE INTERNAL POLICIES FOR SAMPLING THE HAIR?

20 A YES

21 Q AND YOU THEN RECEIVE -- THIS IS A TEST FOR 5P HAIR LOD
22 WHAT DOES THAT MEAN?

23 A FIVE-PANEL HAIR TEST SCREENED AT THE LOWEST LIMITS OF
24 DETECTION FOR THE SCREENING IT'S A LITTLE BIT LOWER
25 SCREENING CUTOFF THAN WHAT WOULD BE USED IN THE PRE-

1 EMPLOYMENT OF OCCUPATIONAL TESTING

2 Q ALL RIGHT AND DID YOU -- ATTACHED TO THAT EXHIBIT IS
3 THERE INDEED THE RESULTS FROM THE NORTHWEST DRUG TESTING
4 DIVISION?

5 A YES

6 Q AND IS THAT INDEED A FIVE-PANEL SCREEN RESULT?

7 A YES, IT IS

8 Q AND WHAT ARE THE RESULTS AS TO COCAINE IN HAIR?

9 A OKAY THE RESULTS IS THAT IT WAS SCREENED WITH A CUTOFF
10 LEVEL OF 500 PICOGRAMS PER MILLIGRAM AND IT WAS NEGATIVE

11 Q THAT 500 PICOGRAMS, IS THAT MORE OR LESS THAN -- WELL
12 LET ME ASK YOU THIS, IS A PICOGRAM MORE OR LESS THAN AN A
13 NANOGRAM?

14 A A PICOGRAM IS A TRILLIONTH OF THE GRAM SO, IT'S GOING
15 DOWN LOWER THAN THE NANOGRAM WOULD GO DOWN

16 Q IS A NANOGRAM A BILLIONTH OF A GRAM?

17 A UH-HUH (AFFIRMATIVE), YES, THAT'S CORRECT

18 Q YOU HAVE TO ANSWER VERBALLY

19 A YES YES

20 Q AND WAS THERE ANY OTHER PAPERWORK GENERATED AS A RESULT
21 OF THIS PARTICULAR TESTING BY YOUR OFFICE OR THE REPORT THAT
22 WAS RECEIVED BY NORTHWEST DRUG TESTING?

23 A NO THIS IS IT

24 MR. ARMSTRONG YOUR HONOR, TO STEP BACK A SECOND HERE,
25 I THINK IT IS INTUITIVELY RECOGNIZED BY THE COURT HERE, BUT I

NINA RADDATZ -- DIRECT BY MR ARMSTRONG

1 OFFER THIS LADY AS AN EXPERT IN DRUG SPECIMEN COLLECTION

2 THE COURT ANY VOIR DIRE ON THAT LIMITED ISSUE?

3 MS STROM YES, SIR

4 THE COURT ALL RIGHT

5 MS STROM LET ME RESTATE, YOUR HONOR SINCE SHE
6 DIDN'T COLLECT THESE SAMPLES, SOMEONE ELSE COLLECTED THESE
7 SAMPLES, I DON'T SEE WHERE HER EXPERTISE IN THE COLLECTION OF
8 IT -- MY UNDERSTANDING, SHE WAS HERE AS THE BUSINESS RECORD
9 AND PRESENTING THESE AS BUSINESS RECORDS I WOULDN'T HAVE
10 ANY QUESTIONS

11 THE COURT IS SHE TESTIFYING AS THE CUSTODIAN OR AS
12 THE ONE WHO ACTUALLY PERFORMED THE COLLECTION TESTS?

13 MR ARMSTRONG THIS TEST IS AS THE CUSTODIAN BUT SHE
14 HAS PERFORMED TESTS AND SHE INSTRUCTS PEOPLE AND SHE
15 TESTIFIED HOW TO DO VARIOUS TESTS

16 THE COURT ALL RIGHT BUT CAN SHE TESTIFY AS TO WHAT
17 HAPPENED ON THESE SPECIFIC TESTS?

18 MR ARMSTRONG PROBABLY NOT I'VE GOT MS VELAZQUEZ--

19 -

20 THE COURT ALL RIGHT THAT'S FINE THEN I THINK MS
21 STROM'S OBSERVATION IS WELL PLACED

22 MR ARMSTRONG OKAY

23 Q MS RADDATZ, DID MR JANELLI OR MEMBERS OF HIS FAMILY
24 SUBSEQUENTLY REQUEST THAT YOU CONDUCT ANOTHER HAIR STRAND
25 ANALYSIS?

1 A YES

2 Q AND IN FACT WHEN THESE TESTS WERE DONE, BOTH THE ONE IN
3 JULY AND THE ONE THAT YOU'RE ABOUT READY TO TESTIFY IN
4 AUGUST, WAS MR JANELLI IN JAIL?

5 A I DON'T KNOW FROM MY UNDERSTANDING, HE WAS

6 Q OKAY AND WERE THESE TESTS, TO THE BEST OF YOUR
7 KNOWLEDGE, CONDUCTED AT YOUR OFFICES?

8 A YES, THEY WERE CONDUCTED IN OUR OFFICE

9 Q OKAY AT MY REQUEST IN THE SUBPOENA DID YOU BRING WITH
10 YOU THE RESULTS OF THE TEST WHICH WAS DONE IN AUGUST?

11 A YES, I DID

12 Q AND THE INITIAL SCREENING PAPER?

13 A YES THE CHAIN OF CUSTODY FORM, YES, I DID

14 Q OKAY WOULD YOU PLEASE PRODUCE THEM?

15 A (COMPLIES)

16 MR ARMSTRONG DOES THE STATE HAVE A COPY OF THIS?

17 MS. STROM YES, SIR

18 MR. ARMSTRONG I'D OFFER THIS ALSO, YOUR HONOR

19 MS STROM SUBJECT TO MY PRIOR OBJECTION, YOUR HONOR

20 THE COURT I UNDERSTAND IN THE FORM OF A PROFFER

21 (NWT TEST RESULTS REPORT MARKED AS DEFENDANT JANELLI

22 EXHIBIT NUMBER 10 FOR PURPOSES OF IDENTIFICATION ONLY)

23 Q ALL RIGHT MS RADDATZ, I'M GOING TO STAY HERE AND READ

24 THIS ONE WITH YOU MS VELAZQUEZ -- AND I APOLOGIZE TO YOU,

25 MS ---

NINA RADDATZ -- DIRECT BY MR ARMSTRONG

1 A VELAZQUEZ

2 Q ---VELAZQUEZ, FOR BUTCHERING YOUR NAME HERE THE
3 INITIAL SHEET WAS COMPLETED, I BELIEVE, ON AUGUST THE 26TH,
4 2003?

5 A YES

6 Q AND WHAT WAS THE PURPOSE OF THIS TEST?

7 A THAT WAS REQUESTED FOR ISOLATED COCAINE USING THE GAS
8 CHROMATOGRAPHY IN OTHER WORDS, IT DID NOT GO THROUGH A
9 SCREEN IT WENT STRAIGHT INTO CONFIRMATION THROUGH GAS
10 CHROMATOGRAPHY GOING DOWN AS LOW AS POSSIBLE TO TEST

11 Q OKAY AND---

12 A FOR THE COCAINE

13 Q AND THIS WAS FOR COCAINE?

14 A YES, FOR COCAINE

15 Q AND WHAT WERE THE RESULTS OF THAT TEST?

16 A THE RESULTS WERE NEGATIVE THE METABOLITES THAT WERE
17 TESTED AS WELL AS THE COCAINE PARENT WERE BENZOYLECGONINE AND
18 NORCOCAINE AND COCETHYLENE AND THEY SHOW HERE THEY WENT
19 DOWN AS FAR AS THEY COULD POSSIBLY GO WITH -- USING THE GAS
20 CHROMATOGRAPHY AND THE CUTOFF LEVELS ARE THERE

21 Q ALL RIGHT IS THIS A VERY PRECISE AND VERY
22 SOPHISTICATED ANALYSIS THAT WAS DONE?

23 MS STROM I OBJECT, YOUR HONOR SHE HAS NO
24 EXPERTISE

25 THE COURT SUSTAIN THE OBJECTION

NINA RADDATZ -- DIRECT BY MR ARMSTRONG

1 Q LET ME REPHRASE THAT YOU DID REQUEST OR IT WAS
2 REQUESTED THAT THE MOST SENSITIVE TEST BE EMPLOYED IN THIS
3 PARTICULAR CASE FOR THE DETECTION OF COCAINE IN HAIR, IS THAT
4 CORRECT?

5 A YES, THAT IS CORRECT

6 Q ALL RIGHT AND IS THIS THE RESULT THAT YOU RECEIVED
7 FROM THE LABORATORY?

8 A YES

9 Q DID YOU PERFORM ANY OTHER HAIR STRAND TEST OR ANALYSES
10 ON -- AND I'M TALKING ABOUT HAIR -- ON MR JANELLI OTHER THAN
11 THESE TWO? I DON'T THINK THERE ARE BUT---

12 A NO, WE DID NOT

13 Q NOW, ARE YOU CURRENTLY -- AND I'M TALKING ABOUT ACCURATE
14 DIAGNOSES -- ARE YOU CURRENTLY PERFORMING YOUR ANALYSES ON
15 MR JANELLI?

16 A YES AS OF LAST WEEK WE WERE PERFORMING SEVERAL
17 URINALYSIS TESTS DURING THE -- EVERY WEEK SINCE DECEMBER

18 Q ALL RIGHT AND WHAT IS THE BUSINESS RELATIONSHIP THAT
19 YOU HAVE WITH THE DRUG COURT PROGRAM FOR CONDUCTING THESE
20 TESTS ON MR JANELLI?

21 A WE HAVE A CONTRACT THAT STATES THAT WE ARE TO CONDUCT
22 THESE DRUG SCREEN TESTS UNTIL FURTHER NOTICE FOR URINALYSIS
23 FIVE PANEL -- ACTUALLY, SIX PANEL BECAUSE WE DID INCLUDE
24 ANOTHER, BENZODIAPINES SO

25 Q ALL RIGHT AND HAVE YOU -- SO BENZODIZAPINE IS THE --

NINA RADDATZ -- DIRECT BY MR ARMSTRONG

1 WAS ONE---

2 A IT'S THE SIXTH PANEL THAT WE INCLUDED IN THE DRUG
3 SCREEN

4 Q AND HAS HE BEEN REQUIRED BY THE DRUG COURT PROGRAM TO
5 APPEAR REGULARLY AT THE -- AT YOUR OFFICES FOR THE PURPOSES
6 OF HAVING URINE COLLECTED?

7 A YES

8 Q DO YOU PERFORM THE TEST AT YOUR OFFICES THAT YOU ARE
9 CONDUCTING FOR THE DRUG COURT?

10 A YES

11 Q THEY'RE NOT SENT OFF SOMEWHERE?

12 A THEY ARE NOT SENT OFF THOSE ARE PERFORMED ON AN
13 INSTANT DRUG SCREEN USING PAPER CHROMATOGRAPHY IS BASICALLY
14 WHAT IS USED IN THAT A VERY COMMON SCREEN

15 Q ALL RIGHT AND THIS IS AN ACCEPTED STANDARD WITHIN THE-
16 --

17 A YES

18 Q ---INDUSTRY? AND IN FACT HAVE YOU YOURSELF TAKEN
19 SEVERAL SAMPLES AND RUN SEVERAL TESTS ON MR JANELLI?

20 A YES, I HAVE

21 Q AND OTHERS IN YOUR OFFICE HAVE DONE SO AS WELL AS ANDRE
22 KANIPE, IT LOOKS LIKE?

23 A UH-HUH (AFFIRMATIVE) YES

24 Q AND A---

25 A SID GUEDERI (PHONETIC)

1 Q THOMAS ANDREWS (PHONETIC)?

2 A YES THOMAS ANDRE KANIPE AND SID GUEDERI AND MYSELF
3 HAVE PERFORMED THE TESTS---

4 Q ALL RIGHT

5 A ---DURING THIS TIME

6 Q AND I'M GOING TO SHOW YOU A PACKET OF THESE ANALYSES OF
7 THE CONSENT FOR DRUG SCREEN AND THE VARIOUS RESULTS HERE AND
8 ASK YOU IF THESE ARE INDEED COPIES OF THE DOCUMENTS AND THE
9 DRUG -- EXCUSE ME, THE URINALYSES YOU WOULD HAVE PERFORMED ON
10 MY CLIENT, MR JANELLI, SINCE DECEMBER OF 2003?

11 A (REVIEWS DOCUMENTS) I NEED TO LOOK OVER ALL OF THESE,
12 HUH? OKAY IT APPEARS SO THIS CAME FROM THE DRUG COURT
13 (CONTINUES TO REVIEW DOCUMENTS) FROM WHAT I CAN TELL, YES
14 (CONTINUES TO REVIEW DOCUMENTS) YES

15 Q ALL RIGHT I HAVE HANDED YOU A LARGE PACKET OF
16 DOCUMENTS WHICH ARE CONSENTS FOR DRUG SCREEN OR ALCOHOL
17 SCREEN ON MR JANELLI LET ME ASK YOU A QUESTION NOW THAT
18 YOU'VE HAD AN OPPORTUNITY TO LOOK AT THEM DO THESE APPEAR
19 TO BE ACCURATE COPIES OF THE TESTING RESULTS THAT YOU HAVE
20 CONDUCTED WHILE MR JANELLI HAS BEEN IN THE DRUG COURT
21 PROGRAM?

22 A THEY DO APPEAR TO BE, YES

23 MR ARMSTRONG I WOULD OFFER THESE AS AN EXHIBIT, YOUR
24 HONOR

25 MS STROM STILL UNDER THE PROFFER OR ARE WE

NINA RADDATZ -- DIRECT BY MR ARMSTRONG

1 MR ARMSTRONG THESE ARE OUT OF THE STATE'S FILE,
2 JUDGE, ON THE CONTRACT WITH THE DRUG COURT PROGRAM

3 THE COURT IS THE STATE IN A POSITION TO---

4 MS. STROM YOUR HONOR, I BELIEVE THESE ARE COVERING
5 THE TIME PERIOD OF WHEN THEY WERE OUT ON BOND TO THE PRESENT

6 MR ARMSTRONG THAT'S MY UNDERSTANDING

7 MS STROM THAT'S NOT AN ISSUE HERE

8 THE COURT ALL RIGHT THANK YOU

9 MS STROM I HAVE NO OBJECTION

10 THE COURT ALL RIGHT COLLECTIVELY AS AN EXHIBIT

11 MR ARMSTRONG THAT'S CORRECT

12 (ACCURATE DIAGNOSTICS TEST RESULTS FOR DANE JANELLI
13 MARKED AS DEFENDANT JANELLI EXHIBIT NUMBER 11 AND MOVED INTO
14 EVIDENCE)

15 Q MS RADDATZ, I HAND YOU THOSE DOCUMENTS THAT PREVIOUSLY
16 REFERRED TO ARE NOW JANELLI EXHIBIT NUMBER 11

17 A OKAY

18 Q BE IT AN ALCOHOL SCREEN OR A COCAINE SCREEN OR WHATEVER
19 YOU ARE SCREENING FOR, EVERY ONE OF THOSE RESULTS ARE IN FACT
20 NEGATIVE, ARE THEY NOT?

21 A YES, THEY ARE

22 Q YOU TESTIFIED THAT YOU HAVE A CONTRACT WITH THE DRUG
23 COURT, IS THAT CORRECT?

24 A YES

25 Q AND AS FAR AS THIS CONTRACT GOES, DO YOU DO ANY TESTING

NINA RADDATZ -- DIRECT BY MR ARMSTRONG

- 1 FOR PEOPLE OTHER THAN MR JANELLI, MS HURKS AND MR PERKINS?
- 2 A NO I DO NOT IN FACT, THE CONTRACT DOES STATE THE
- 3 THREE NAMES THAT I WILL BE TESTING FOR SO
- 4 Q AND WHAT IS THE CHARGE FOR THE TEST?
- 5 A THE CHARGE IS \$18
- 6 Q FOR EACH ONE?
- 7 A YES WITH \$2 FOR A BREATH ALCOHOL AT THE SAME TIME
- 8 Q AND WHO HAS TO PAY THAT?
- 9 A DANE JANELLI, ANGELA HURKS AND CEDRIC PERKINS PAY
- 10 Q IS THE DRUG COURT PAYING YOU ANYTHING TO CONDUCT THESE
- 11 TESTS?
- 12 A NO
- 13 Q BEFORE YOU SIGNED THIS CONTRACT WITH THE DRUG COURT DID
- 14 YOU MEET WITH ANY DRUG COURT OFFICIALS?
- 15 A YES
- 16 Q WHO?
- 17 A MS BOBBIE GODWIN CAME TO OUR OFFICE, AND I SHOWED HER
- 18 WHAT WE DID AND HOW WE COLLECTED, WHAT OUR PROCEDURES WERE,
- 19 AND THAT WAS ON THE 24TH OF DECEMBER
- 20 Q AND THEN AFTER THAT IS WHEN YOU EXECUTED THIS CONTRACT?
- 21 A YES YES
- 22 MR ARMSTRONG I HAVE NO FURTHER QUESTIONS, MA'AM
- 23 THE COURT ANY QUESTIONS, MR GIBSON?
- 24 MR GIBSON YES, SIR
- 25 CROSS EXAMINATION BY MR GIBSON

NINA RADDATZ -- CROSS BY MR GIBSON

1 Q MS RADDATZ, AS YOU ALLUDED TO EARLIER, YOU HAVE
2 URINALYSIS AND ALCOHOL TESTING ON MR PERKINS AS WELL?

3 A YES

4 Q OKAY

5 (OFF RECORD WITH MS STROM)

6 Q IF YOU WOULD, PLEASE TAKE A MOMENT---

7 THE COURT CAN THEY COME IN AS WELL?

8 MS. STROM YES, SIR WE'RE TALKING ABOUT THE SAME
9 PERIOD, WHILE THEY WERE OUT ON BOND?

10 MR. GIBSON YES, MA'AM

11 MS. STROM NO OBJECTION

12 THE COURT CAN WE ALSO STIPULATE NONE OF THEM SHOWED
13 ANY NEGATIVE RESULTS?

14 MS. STROM MY UNDERSTANDING IS THEY ALL SHOWED
15 NEGATIVE RESULTS

16 THE COURT CAN WE DO THE SAME STIPULATION WITH MR
17 BANNISTER?

18 MS STROM BE GLAD TO

19 MR GIBSON CAN WE STIPULATE THAT THEY WERE DONE TO
20 PROPER TESTING PROCEDURES AND ALL THAT STUFF?

21 MS STROM THEY WERE DONE UNDER PROPER TESTING
22 PROCEDURES I HAVE NO ISSUE WITH THESE RESULTS

23 MR GIBSON. EXCELLENT

24 IF YOU WOULD PLEASE MAKE THAT DEFENDANT PERKINS EXHIBIT
25 5, I GUESS WE'RE UP TO, COLLECTIVE?

NINA RADDATZ -- CROSS BY MR GIBSON

1 COURT REPORTER IT'S 4

2 MR GIBSON IS IT 4?

3 COURT REPORTER YES

4 (ACCURATE DIAGNOSTICS TEST RESULTS FOR CEDRIC PERKINS
5 MARKED AS DEFENDANT PERKINS EXHIBIT NUMBER 4 AND MOVED INTO
6 EVIDENCE)

7 MR. GIBSON OKAY NOW, YOUR HONOR, JUST FOR THE
8 RECORD PURPOSES AS A MATTER OF PROFFER

9 Q DID MR PERKINS ALSO REQUEST THAT YOU PERFORM A HAIR
10 STRAND TEST ON HIM AROUND THE TIME FRAME OF DECEMBER OF 2002?

11 A IT WAS DECEMBER THE 3RD OF 2003

12 Q OKAY DID -- I'M SORRY, 2003 DID YOU IN FACT PERFORM
13 SUCH A TEST?

14 A YES ACCURATE DIAGNOSTICS COLLECTED A SPECIMEN TO BE
15 TESTED AT NORTHWESTERN TESTING

16 Q OKAY IN RESPONSE TO THE SUBPOENA ISSUED BY MR
17 ARMSTRONG DID YOU BRING A COPY OF THAT TEST RESULTS?

18 A YES UH-HUH (AFFIRMATIVE)

19 Q MAY I SEE IT, PLEASE?

20 A SURE

21 MR GIBSON AND I PRESUME THERE IS A COPY OF THIS---

22 MS STROM YES, WE HAVE THAT

23 MR GIBSON THANKS OKAY WOULD YOU PLEASE MARK THIS
24 AS DEFENDANT PERKINS PROFFER? I DON'T KNOW WHAT NUMBER THAT
25 WOULD BE I GUESS, 5?

NINA RADDATZ -- CROSS BY MR GIBSON

1 (NORTHWEST TESTING TEST RESULTS MARKED AS DEFENDANT
2 PERKINS EXHIBIT NUMBER 5 FOR PURPOSES OF IDENTIFICATION ONLY)

3 Q WOULD YOU PLEASE TAKE A LOOK AT THAT AND TELL ME BASED
4 ON THAT DOCUMENT WHAT DID THAT HAIR STRAND TEST COME BACK AS?

5 A IT IS NEGATIVE FOR ALL FIVE DRUGS SCREENED,
6 AMPHETAMINES, COCAINE, OPIATES, PHENOCYLOTHENE AND
7 CANNABINOIDES

8 Q OKAY DOES IT SAY ON THERE WHAT THE CUTOFF LEVEL IS?

9 A THE SCREENING CUTOFF LEVEL FOR EACH ONE, OF COURSE, IS
10 DIFFERENT, BUT, YES, IT DOES

11 Q FOR COCAINE?

12 A FOR COCAINE IT'S 500 PICOGRAMS PER MILLIGRAM

13 Q OKAY COULD YOU TELL ME WHO -- CAN YOU LOOK AT THE
14 SECOND PAGE OF THAT DOCUMENT AND TELL ME WHO ACTUALLY
15 COLLECTED THE SAMPLE?

16 A YES, MS KELLY VELAZQUEZ SHE WAS A COLLECTOR

17 Q AND IS THAT MS VELAZQUEZ AT THE BACK OF THE COURTROOM?

18 A YES, IT IS UH-HUH (AFFIRMATIVE)

19 Q OKAY TO THE BEST OF YOUR KNOWLEDGE, WERE ALL OF
20 ACCURATE DIAGNOSTICS POLICIES AND PROCEDURES TESTING POLICIES
21 AND PROCEDURES FOLLOWED IN THE COLLECTION AND TRANSFER OF
22 THAT SAMPLE?

23 A YES

24 MR GIBSON OKAY THANK YOU I HAVE NO FURTHER
25 QUESTIONS, YOUR HONOR

NINA RADDATZ -- CROSS BY MR GIBSON

1 THE COURT MR BANNISTER?

2 MR BANNISTER THANK YOU

3 CROSS EXAMINATION BY MR BANNISTER

4 Q DO YOU HAVE IN YOUR RECORDS A HAIR STRAND TEST THAT WAS
5 PERFORMED FOR MS ANGELA HURKS ON AUGUST 19TH, 2003?

6 A YES

7 Q AND DO YOU HAVE A COPY OF THAT WITH YOU?

8 A I SURE DO

9 MR BANNISTER MAY I GET THIS MARKED, PLEASE

10 (ANGELA HURKS' ACCURATE DIAGNOSTICS TEST RESULTS MARKED
11 AS DEFENDANT HURKS EXHIBIT NUMBER 5 FOR PURPOSES OF
12 IDENTIFICATION ONLY)

13 Q IS HURKS EXHIBIT 6 A COPY OF THE RESULTS OF THAT HAIR
14 STRAND TEST ON AUGUST 19TH, 2003?

15 A YES

16 MR BANNISTER JUDGE, SUBJECT TO THE PROFFER, WHEREVER
17 WE ARE IN THAT, I'D ASK THAT THAT BE ADMITTED INTO EVIDENCE
18 (DEFENDANT HURKS EXHIBIT NUMBER 5 MOVED INTO EVIDENCE)

19 Q WHAT WERE THE RESULTS OF THAT TEST?

20 A NEGATIVE TO ALL FIVE PANELS

21 Q ALL RIGHT AND THAT WOULD INCLUDE COCAINE?

22 A THAT DOES INCLUDE COCAINE

23 MR BANNISTER THANK YOU NO FURTHER QUESTIONS

24 THE COURT MS STROM?

25 MS STROM VERY BRIEFLY, YOUR HONOR

1 CROSS EXAMINATION BY MS STROM

2 Q I JUST HAVE A COUPLE OF QUESTIONS IS IT MY
3 UNDERSTANDING THAT MS VELAZQUEZ IS THE ONE WHO COLLECTED ALL
4 OF THESE SAMPLES, YOU DID NOT COLLECT THEM?

5 A THAT'S CORRECT

6 Q OKAY AND WERE YOU PRESENT WHEN SHE WAS COLLECTING
7 THEM, PHYSICALLY PRESENT WHEN THEY WERE---

8 A I WAS PROBABLY IN THE OFFICE AT SOME TIMES, BUT, YOU
9 KNOW, I WAS NOT IN THE ROOM WHERE THE HAIR WAS BEING
10 COLLECTED

11 Q DOES SHE WORK UNDER YOUR SUPERVISION?

12 A YES

13 Q OKAY THE ACTUAL REPORT THAT WE HAVE REPORTS OUT AS A
14 NEGATIVE AND THEN IT GIVES US -- LET ME ASK YOU THIS, AS TO
15 DANE JANELLI REPORT OF 7/23/03 FOR THE DATE COLLECTED
16 7/23/03, DO YOU HAVE ANY DOCUMENT WITH YOU THAT STATES WHAT
17 THE ACTUAL AMOUNTS WERE THAT IT TESTED?

18 A IT TESTED AT A CUTOFF LEVEL IN OTHER WORDS, IT TESTED
19 FOR COCAINE AT NOT BELOW 500 PICOGRAMS PER MILLIGRAM

20 Q NOT BELOW OR BELOW?

21 A NO AT NOT BELOW 500 PICOGRAMS PER MILLIGRAM

22 Q ARE YOU SAYING---

23 A SO IT'S SCREENED FOR COCAINE WITH A CUTOFF LEVEL ON THE
24 SCREEN OF 500 PICOGRAMS PER MILLIGRAM

25 Q SO IN ORDER FOR THE TEST TO BE NEGATIVE

NINA RADDATZ -- CROSS BY MS STROM

1 A IN ORDER FOR THIS TO HAVE COME OUT NEGATIVE, THERE WAS
2 NO PRESENCE OF COCAINE AT OR ABOVE 500 PICOGRAMS PER
3 MILLIGRAM

4 Q OKAY SO YOU DON'T KNOW IF IT REPORTED OUT 499
5 PICOGRAMS PER MILLIGRAM?

6 A NO, I DON'T KNOW THAT

7 Q OKAY AND THE SAME FOR HIS REPORT ON 8/26/03, THAT
8 REPORT IN FACT ON THE REPORT ITSELF JUST SHOWS A RESULT
9 NEGATIVE, AND THEN ON THE REPORT GIVING THE SCREEN CUTOFFS,
10 IT JUST HAS PG/MG, CORRECT?

11 A RIGHT THAT IS INDICATING THAT IT IS THE GAS
12 CHROMATOGRAPHY IS GOING DOWN AS FAR AS IT POSSIBLE CAN GO
13 DOWN---

14 Q SURE

15 A ---TO LOOK FOR COCAINE

16 Q AND THEN ATTACHED TO THAT WAS THE CUTOFF LEVELS FOR
17 COCAINE IT'S 50 PG MG?

18 A YES

19 Q AND THERE AGAIN, YOU DON'T KNOW WHAT IT ACTUALLY
20 REPORTED OUT AS?

21 A IT REPORTED OUT AS NEGATIVE

22 Q DO YOU KNOW IF IT REPORTED OUT AT 47, 49, 23 OR 17?

23 A WELL, YOU CAN ACTUALLY GET THE RESULTS FROM
24 NORTHWESTERN BUT, NO, I WOULD NOT KNOW THAT

25 Q OKAY YOU CAN GET THOSE RESULTS FROM NORTHWESTERN,

NINA RADDATZ -- CROSS BY MS STROM

1 CAN'T YOU?

2 A RIGHT BUT THAT'S AS FAR DOWN AS THE MACHINE -- AS
3 SENSITIVE AS THE MACHINE CAN GO, THEY WENT DOWN AS FAR AS
4 THEY COULD POSSIBLY GO DOWN

5 Q SURE

6 A SO I KNOW WHAT THIS TEST RESULTS TELLS ME AND WHAT IT
7 SHOWS YOU THAT'S

8 Q RIGHT IT'S REPORTING OUT AS A NEGATIVE

9 A RIGHT

10 Q I'M NOT ARGUING WITH YOU THE FACT THAT IT'S REPORTING
11 OUT AS A NEGATIVE

12 A YEAH, I UNDERSTAND

13 Q OKAY?

14 A YES

15 Q YOU JUST DON'T KNOW WHAT THE RESULTS ACTUALLY WERE IN
16 TERMS OF A NUMERICAL AMOUNT?

17 A I DID NOT PERFORM THE TEST

18 Q OKAY AND YOU DON'T HAVE ANY DOCUMENTATION WITH YOU
19 THAT WOULD SHOW US THAT INFORMATION?

20 A WHAT THIS TEST SHOW ON THE REPORT IS THAT IT IS NEGATIVE
21 AS FAR DOWN AS IT COULD POSSIBLY GO, AND THE CUTOFFS ARE
22 RIGHT THERE TESTING THE METABOLITES

23 Q OKAY

24 A SO THAT -- I MEAN, THAT'S---

25 Q ALL THAT YOU CAN SAY, IF I'M UNDERSTANDING YOU -- I

NINA RADDATZ -- CROSS BY MS STROM

1 DON'T THINK WE'RE DISAGREEING WITH ONE ANOT -- IS ALL YOU CAN
2 SAY IS WHAT'S REPORTED ON THE FRONT OF THE REPORT AND THE
3 CHAIN OF CUSTODY FORMS?

4 A THAT'S CORRECT

5 Q WHEN YOU OR YOUR GROUP IS PERFORMING THE URINALYSIS TEST
6 FOR THE TIME PERIOD DECEMBER THROUGH THE PRESENT---

7 A UH-HUH (AFFIRMATIVE)

8 Q ---DO Y'ALL TEST AND REPORT OUT FOR ADULTERANTS?

9 A NO, WE DO NOT TEST FOR ADULTERANTS BUT WE DO AN
10 OBSERVED COLLECTION

11 Q YOU DO AN OBSERVED COLLECTION?

12 A UH-HUH (AFFIRMATIVE)

13 Q BUT YOU DON'T TEST FOR ADULTERANTS?

14 A NO

15 MS STROM OKAY COURT'S INDULGENCE, YOUR HONOR?

16 THE COURT YES, MA'AM

17 (OFF RECORD WITH CO-COUNSEL)

18 MS STROM THANK YOU NO FURTHER QUESTIONS

19 THE COURT ALL RIGHT THANK YOU, MA'AM YOU CAN STEP
20 DOWN

21 (WITNESS STEPS DOWN AT 4 21 P M)

22 THE COURT CALL YOUR NEXT WITNESS

23 MR ARMSTRONG WE CALL KELLY VELAZQUEZ

24 COULD WE EXCUSE, MS RADDATZ?

25 MS STROM I HAVE NO OBJECTION

KELLY VELAZQUEZ -- DIRECT BY MR ARMSTRONG

1 THE COURT ALL RIGHT THAT'S FINE

2 KELLY VELAZQUEZ, HAVING BEEN
3 DULY SWORN, TESTIFIED AS FOLLOWS

4 DIRECT EXAMINATION BY MR ARMSTRONG

5 Q YOU'RE GOING TO HAVE TO SPEAK UP

6 A OKAY I KNOW

7 THE COURT HOLD ON JUST A MINUTE (PAUSE) ALL RIGHT
8 YOU CAN GO AHEAD, MR ARMSTRONG

9 MR ARMSTRONG THANK YOU, YOUR HONOR I WAS JUST
10 LOOKING THROUGH A PARTICULAR COUPLE OF DOCUMENTS HERE

11 Q OKAY YOU ARE MS VELAZQUEZ BY WHOM ARE YOU CURRENTLY
12 EMPLOYED?

13 A RIGHT NOW, GREER OB-GYN

14 Q AND IN WHAT CAPACITY?

15 A (NO RESPONSE)

16 Q WHAT DO YOU DO?

17 A AS A MEDICAL ASSISTANT

18 Q OKAY AND DO YOU HAVE FORMAL TRAINING AS A MEDICAL
19 ASSISTANT?

20 A YES, I DO

21 Q FROM WHERE AND WHEN?

22 A FROM CALIFORNIA A LONG TIME AGO DO YOU NEED THE YEAR?

23 Q YES, PLEASE

24 A 1978, I THINK

25 Q OKAY AND HAVE YOU INVOLVED YOURSELF PROFESSIONALLY AS

KELLY VELAZQUEZ -- DIRECT BY MR ARMSTRONG

- 1 A MEDICAL ASSISTANT SINCE THEN?
- 2 A YES, I HAVE
- 3 Q HOW LONG DID YOU WORK FOR ACCURATE DIAGNOSTICS?
- 4 A ABOUT A YEAR AND A HALF
- 5 Q AND DID YOU WORK FOR NINA RADDATZ AT THAT TIME?
- 6 A YES
- 7 Q AND WHAT WERE YOUR JOB DUTIES?
- 8 A I COLLECTED URINE -- DRUG SCREENS -- HAIR, URINE, AND
- 9 DID INSURANCE PHYSICALS, ANSWERED PHONES I WAS EVERYTHING
- 10 BASICALLY
- 11 Q AND DID YOU INDEED CONDUCT SOME HAIR SAMPLE TESTING ON
- 12 MR DANE JANELLI?
- 13 A YES, I DID
- 14 Q DID MR JANELLI WHEN HE CAME FOR THE TESTING -- IT'S
- 15 ALREADY IN EVIDENCE THAT HE CAME IN JULY 23RD, AND HE ALSO
- 16 CAME ON AUGUST THE 26TH OF 2003 WAS HE IN CUSTODY AT THAT
- 17 TIME?
- 18 A YES, HE WAS
- 19 Q WAS HE BROUGHT THERE TO YOUR OFFICES ON EAST NORTH
- 20 STREET BY A DEPUTY SHERIFF?
- 21 A YES, HE WAS
- 22 Q AND DID A DEPUTY SHERIFF WITNESS WHAT WAS GOING ON
- 23 BETWEEN YOU AND MR JANELLI?
- 24 A YES
- 25 Q I WOULD SHOW YOU THE EXHIBIT NUMBER 9 AS TO JANELLI AND

KELLY VELAZQUEZ -- DIRECT BY MR ARMSTRONG

1 IN PARTICULAR THE DOCUMENT WHICH IS THE QUOTE PRIVATE DRUG
2 TESTING CUSTODY AND CONTROL FORM AND ASK YOU IF YOU RECOGNIZE
3 THAT DOCUMENT?

4 A YES, I DO

5 Q DID YOU COMPLETE THAT DOCUMENT?

6 A YES, I DID

7 Q DOES YOUR SIGNATURE APPEAR ON THE DOCUMENT?

8 A YES, IT DOES

9 Q AND WHAT DID YOU DO THAT DAY AS FAR AS TESTING OR
10 SAMPLING?

11 A THEY BROUGHT HIM IN AND I JUST CUT HIS HAIR

12 Q HOW DO YOU DO THAT?

13 A OKAY YOU GO FROM THE ROOT DOWN AS CLOSE TO THE SCALP
14 AS POSSIBLE I PICK UP SECTIONS AND CUT DIFFERENT SECTIONS,
15 ABOUT THREE TO MAKE IT A CERTAIN AMOUNT, A WEIGHT, OF HAIR
16 THAT THEY NEED

17 Q AND YOU -- THEN YOU TAKE THAT AND WHAT DO YOU DO WITH
18 THE SAMPLES THAT YOU RETRIEVE FROM THE INDIVIDUAL?

19 A I PUT IT IN THE FOIL, FOLD IT UP, PUT IT IN THE
20 ENVELOPE, SEAL IT, AND HAVE HIM INITIAL THAT IT IS HIS HAIR,
21 THE DAY IT WAS COLLECTED, ALL THAT, MY INITIALS

22 Q AND THEN ONCE THAT IS COMPLETED THEN WHAT HAPPENS TO
23 THE---

24 A WELL, IT GOES IN ANOTHER BAG AND THEN THAT'S SEALED UP
25 AND THEN THAT GOES OUT AIRBORNE

KELLY VELAZQUEZ -- DIRECT BY MR ARMSTRONG

1 Q AND THEN IT IS REPORTED BACK AS MS RADDATZ STATES HERE?

2 A UH-HUH (AFFIRMATIVE) YES

3 Q I'M ALSO GOING TO SHOW YOU EXHIBIT NUMBER 10 AS TO MR
4 JANELLI AND ASK YOU TO LOOK AT THE THIRD PAGE HERE, WHICH IS
5 ALSO A PRIVATE DRUG TESTING CUSTODY AND CONTROL FORM

6 A YEAH

7 Q DOES THAT LOOK FAMILIAR TO YOU?

8 A YES, IT DOES THAT'S MY SIGNATURE ON THERE

9 Q DID YOU SAMPLE MR JANELLI ON AUGUST THE 26TH---

10 A 2003

11 Q ---2003?

12 A YES

13 Q WAS HE ALSO BROUGHT IN -- WAS HE IN CUSTODY AT THAT
14 TIME?

15 A YES, HE WAS

16 Q AND DID YOU GO THROUGH THE SAME PROCEDURE AT THAT TIME
17 TO SAMPLE HIS HAIR?

18 A YES

19 Q AND WHAT WAS REQUESTED AT THAT TIME AS FAR AS THE TYPE
20 OF TEST THAT YOU WERE LOOKING FOR?

21 A THE COCAINE ISOLATED AT LOWEST LEVEL OF DETECTION

22 Q OKAY AND WAS THERE ANYTHING DIFFERENT ABOUT THIS --
23 THE WAY YOU TOOK THIS TEST AS OPPOSED TO THE WAY---

24 A NO

25 Q ---YOU CONDUCTED THE PREVIOUS TEST?

KELLY VELAZQUEZ -- DIRECT BY MR ARMSTRONG

1 A NO, IT'S THE SAME THING

2 Q ALL RIGHT DID MR JANELLI SIGN BOTH OF THESE DOCUMENTS
3 IN YOUR PRESENCE? AND I'M TALKING ABOUT EXHIBIT 10 AND ALSO
4 EXHIBIT NUMBER 9

5 A YES, HE DID YES, HE DID

6 Q DID YOU PERFORM ANY OTHER SAMPLING PROCEDURES ON MR
7 JANELLI AT THAT TIME?

8 A NO

9 Q NO URINALYSIS OR ANYTHING LIKE THAT?

10 A NO NO

11 MR. ARMSTRONG OKAY I HAVE NO FURTHER QUESTIONS FOR
12 THIS LADY

13 THE COURT MR GIBSON?

14 CROSS EXAMINATION BY MR. GIBSON

15 Q MS VELAZQUEZ, DID YOU RECEIVE ANY TRAINING TO TAKE HAIR
16 SAMPLES?

17 A YES WELL, NINA HELPED TRAIN ME, AND THERE WAS A
18 VIDEOTAPE THAT CAME WITH THE -- YOU KNOW, THAT THE LAB SENT
19 US IN OUR PACKAGE OF EVERYTHING THAT WE NEEDED TO DO, STEP BY
20 STEP

21 Q OKAY DID YOU IN FACT REVIEW THE TAPE?

22 A YES, I DID

23 Q DOES THAT TAPE SET FORTH POLICIES AND PROCEDURES OF HOW
24 YOU'RE SUPPOSED TO TAKE A HAIR SAMPLE?

25 A YES, IT DID

KELLY VELAZQUEZ -- CROSS BY MR GIBSON

1 Q OKAY WHEN YOU TOOK MR -- FOUNDATION QUESTION THERE
2 DID COME A TIME IN DECEMBER OF 2003 WHERE YOU TOOK A HAIR
3 SAMPLE FOR A HAIR STRAND TEST FOR MR PERKINS, IS THAT
4 CORRECT?

5 A YES, I DID

6 Q OKAY WHEN YOU TOOK THAT HAIR SAMPLE, THAT HAIR STRAND
7 -- OR THAT HAIR SAMPLE OF MR PERKINS, DID YOU FOLLOW THOSE
8 PROCEDURES?

9 A YES, I DID YES

10 Q AFTER YOU TOOK THE HAIR SAMPLE FROM MR PERKINS DID YOU
11 PUT IT IN THE PROPER FOIL AND EVERYTHING ELSE THAT YOU WENT
12 THROUGH WITH MR ARMSTRONG?

13 A YES SEALED IT, INITIALED, YEAH, SIGNED EVERYTHING, UH-
14 HUH (AFFIRMATIVE)

15 Q OKAY AND JUST FOR MR JANELLI'S SAKE, DID YOU ALSO
16 FOLLOW THOSE SAME POLICIES AND PROCEDURES WHEN YOU TOOK HIS
17 HAIR SAMPLE, THE ONES THAT WERE ON THE VIDEOTAPE THAT YOU'VE
18 BEEN TRAINED ON?

19 A ON MR PERKINS?

20 Q MR JANELLI

21 A OH, YES

22 Q OKAY

23 A THE SAME, YES THE SAME THING

24 MR GIBSON OKAY THANK YOU NO FURTHER QUESTIONS

25 THE COURT ANY QUESTIONS?

KELLY VELAZQUEZ -- CROSS BY MR GIBSON

1 **MR BANNISTER** WOULD THE STATE BE WILLING TO STIPULATE
2 AS TO MS HURKS AND THE SAMPLE THAT WAS TAKEN FROM HER THAT
3 RESULTED IN -- I CAN GO THROUGH THE SAME QUESTIONS, BUT

4 **MS STROM** YES, SIR

5 **MR BANNISTER** THANK YOU JUDGE, THEN I DON'T HAVE
6 ANY FURTHER QUESTIONS

7 **THE COURT** MS STROM?

8 **MS STROM** NO QUESTIONS

9 **THE COURT** THANK YOU, MA'AM
10 MAY MS VELAZQUEZ BE EXCUSED?

11 **MS STROM** NO OBJECTION

12 **THE COURT** ALL RIGHT THANK YOU, MA'AM

13 (WITNESS EXCUSED AT 4 30 P M)

14 **THE COURT** CALL YOUR NEXT WITNESS

15 **MR ARMSTRONG** I'D LIKE TO CALL BRENDA DILL

16 **BRENDA DILL, HAVING BEEN DULY**
17 **SWORN, TESTIFIED AS FOLLOWS**

18 **DIRECT EXAMINATION BY MR ARMSTRONG.**

19 **Q** MA'AM, WOULD YOU PLEASE STATE YOUR FULL NAME FOR THE
20 RECORD?

21 **A** YES, SIR I'M BRENDA FAY DILL

22 **Q** MS DILL, ARE YOU RELATED TO DANE JANELLI?

23 **A** YES, I'M HIS MOTHER

24 **Q** AND DOES DANE LIVE WITH YOU OR NOT?

25 **A** HE LIVES WITH HIS DAD AND GRANDMOTHER AND I, BACK AND

BRENDA DILL -- DIRECT BY MR ARMSTRONG

1 FORTH BETWEEN US NOW THAT HE'S AN ADULT HE STAYS EQUAL WITH
2 US ALL

3 Q OKAY THERE HAS COME TO SOME ISSUE ABOUT THE TRIP THAT
4 WAS TAKEN BY DANE IN 2003 WHEN WAS THAT TRIP TAKEN AND
5 WHERE WAS IT?

6 A WE LEFT GREENVILLE -- LET'S SEE I BROUGHT MY CALENDAR
7 LET ME MAKE SURE (PAUSE) WE LEFT GREENVILLE ON JUNE 27TH
8 AND RETURNED ON JUNE 30TH

9 Q WHAT DAY OF THE WEEK IS JUNE 27TH -- OR WAS JUNE THE
10 27TH?

11 A THAT'S A FRIDAY

12 Q OKAY AND I BELIEVE THAT THE TESTIMONY REVEALS THAT
13 DANE HAD A PATCH PLACED ON HIM ON JUNE 17TH AND WAS REMOVED
14 ON THE 25TH, IS THAT CORRECT?

15 A THAT'S CORRECT

16 Q SO YOU AND DANE AND WHO ELSE WENT ON THE FAMILY TRIP?

17 A HIS GRANDMOTHER, MY HUSBAND, HIS BROTHER, HIS SISTER,
18 GRANDCHILDREN IT WAS -- IT'S USUALLY AROUND 90 TO 100 THAT
19 COME FROM ALL OVER AND MEET IN VIRGINIA

20 Q OKAY

21 A BUT FROM HERE, I THINK, 12 WENT

22 Q OKAY AND YOU RETURNED ON, I GUESS, IT WAS THAT SUNDAY?

23 A ON SUNDAY, YES, SIR

24 Q DID HE RECEIVE THE RESULTS OF THIS PATCH TEST THAT WAS
25 TAKEN OFF OF HIM ON THE 25TH ON OR ABOUT JULY THE 7TH, IS

BRENDA DILL -- DIRECT BY MR ARMSTRONG

1 THAT CORRECT?

2 A NOW, WHAT? REPEAT THAT

3 Q YES, MA'AM LET ME REPHRASE IT A LITTLE BIT
4 DIFFERENTLY YOUR SON WAS LOCKED UP WHEN?

5 A I THINK IT WAS THE 5TH DAY OF JULY

6 Q OKAY COULD IT HAVE BEEN THE 7TH?

7 A YEAH MAYBE PROBABLY YEAH, THE 4TH OF JULY WEEK
8 IT WAS THE 7TH

9 Q ALL RIGHT AND THIS WAS AFTER, OF COURSE, YOU HAD
10 RETURNED FROM VIRGINIA?

11 A CORRECT

12 Q AND IS IT YOUR UNDERSTANDING THAT HE WAS SANCTIONED ON
13 JULY THE 7TH AS A RESULT OF THE PATCH RESULTS WHICH WERE
14 REMOVED FROM HIS BODY ON JUNE THE 25TH?

15 A THAT'S CORRECT

16 MR ARMSTRONG THANK YOU, MA'AM

17 THE COURT MR GIBSON, ANY QUESTIONS?

18 MR GIBSON YOUR HONOR, I HAVE NO QUESTIONS OF MS
19 DILL

20 MR BANNISTER NONE, YOUR HONOR

21 THE COURT APPRECIATE THAT UNUSUAL RESPONSE FROM BOTH
22 OF YOU GENTLEMEN

23 (LAUGHTER IN THE COURTROOM)

24 THE COURT MS STROM, ANY QUESTIONS?

25 MS. WINN NOTHING FROM THE STATE