

'I'm putting it to you directly because you say it ...
which contains very large numbers.'
No such sequence, so far as I understand it, was ever
forthcoming.

Then Gallo's evidence on sequence is at p.1279. He
said:

'The full genome had been completely sequenced in 1985
by us and by the Pasteur Institute.'

Further down, he says:

'HIV is unique. Its sequences are not ... endogenous
and viral particles.'

Professor McDonald said, at p.1353:

'When they identified the gene sequence and could ...
such as they would grow in.'

At p.1361:

'I think all we know about what the argument is ...
outline of what a gene is.'

Then, at p.1362, line 17 - this is significant - he
says:

'On the one hand, you could use the whole 9,600 ...
part of the make-up of the HIV.'

If you go to the last document that was tendered - I
think it is the last document - P85, this is the report
from Professor Gordon which he directed to me. I'm not
sure whether your Honour has had a chance to look at
this because there was no evidence really associated
with it.

HIS HONOUR: This seems to be a letter from Gordon to
you.

MR BORICK: That's right, dated 12 February.

I understand what happened, Professor Gordon, I said
to him 'You can provide me with some further information
about sequence analysis', and he then corresponded
directly to me, but it went, obviously, to my friend,
then to your Honour, but no evidence was given.

HIS HONOUR: Yes.

MR BORICK: It is not a particularly easy letter to
understand in one sense, but in another sense it is

because he tells me he is pleased to provide information 1
and he says: 2

'The initial approach taken was to access a complete ... 3
nucleotides 336 to 1838.' 4

There are, in fact, as Professor McDonald has told us, 5
about 9,600 bases, from which, of those 9,600 bases, 6
someone selected 336 to 1838, which represents 7
approximately 1,500, and 1,500 sequences out of 9,500, 8
that is, 16%. 9

So, what you are in fact looking at - this is one of 10
the points Dr Turner was making - is a very small region 11
of the whole sequence. So, you can say that the sort of 12
information you are getting here is something to do with 13
the genetic sequence, there is a base to it, but it is 14
not looking at the whole thing; you are only looking at 15
a part. 16

If you are just looking at a part of it, a very 17
small part of that - and you have, as Professor McDonald 18
says, this 30% variation, he says 'About 30% of the 19
genes might drop out or alter' - how is it then possible 20
to say, when you are looking at a small part of the 21
whole sequence, that you then have got a genetic 22
sequence? 23

The document that was tendered at trial, that big 24
long graph, that purported to show the comparison 25
between the alleged victim and Parenzee, Crispin - her 26
name is still suppressed, I think - then that is not a 27
genetic sequence as such; it is a comparison between the 28
two. Dr Higgins said they are not the same. They are 29
similar, but they are different. 30

Professor McDonald, when he was talking about that 31
in his evidence, and your Honour reminded him it had 32
been presented at trial, this document, he said he 33
looked at it and he said they were the same. They are 34
not. They are not a genetic sequence, they are not 35
proof that here is a unique genetic sequence unique to 36
Parenzee. 37

Obviously - it seems to me obvious anyway - if you 38

can come up with a unique genetic sequence, looking at
the whole of the sequence, and say 'Here it is, here is
Crispin's', we wouldn't be here, there wouldn't be any
argument.

The final point I want to make about sequences is
that the sequence comparison used in the final genetic
tree is based on an analysis of only 1,100 bases out of
9,500 bases; that is, about 12% of the total.

Professor McDonald said at p.1364 that the graph
tendered at trial is the gene sequence of Parenzee's
virus. That implies it is the whole virus, and that,
with respect, is clearly wrong. The question is:
'Is it possible to be more of a genome ... might be
revealed.'

Professor McDonald pointed out, at p.1362:

'HIV is prone to a lot of ... might drop out.'

That leads to an analogy:

'In the early days of forensic science, it was ...
A, AB, B and O.'

He repeatedly pointed out:

'In cases it became impossible to look at another ...
than has been presently shown.'

Dr Higgins at trial apparently said that:

'Crispin was about 1% from Parenzee, the person ...
this virus in this person and that person.'

On that topic of following the genetic tree, I
remind you of the case in England which you have been
referred to. As at present, you still have only got the
direction to the jury. I can tell you we are still
trying to get the actual transcript of the evidence, and
it is proving a much more difficult task than what I had
envisaged, but we are obviously continuing to try to get
that so we can fill out the reference to that case.

Finally, I remind you on the issue of scientific
controversy that there is the Argentine case in 1997
where this issue was litigated and it was recognised
there was a scientific controversy.

So, for all of those reasons, and they are

fundamentally these - the Perth scientists are experts,
whether they are right or wrong, partly right, partly
wrong - there is a controversy as to whether HIV has
been scientifically proven to exist. Although I have
not concentrated upon that in these submissions, it is
because your Honour is fully aware of that issue, but
the alternative argument, which doesn't depend upon the
Perth scientists at all, it really is contained in the
question I put to Professor McDonald this morning, it is
a question we have put thought into, and if I had been
standing up delivering this submission, that is what I
would have been putting to you, but that is our case, in
relation to HIV does not cause AIDS.

CONTINUED

In relation to the Montagnier paper, my submission to you about that is that Eleni Papadopoulos gave evidence, and, on my understanding, it was uncontradicted as to the test that Montagnier carried out. She listed the criticisms and my understanding of the evidence is none of the witnesses for the prosecution have really challenged that proposition.

In my learned friend's argument at p.17, she deals directly with the issues that HIV has never been proven to exist and she starts with Montagnier and, by implication, Gallo. My argument on that is you can't rely upon those people.

P.24, on electron microscopy, that is pretty thin on the grounds, the argument there but it has to be because there is such little evidence from everybody as to what electron microscopy is all about. P.25, he refers in 3.121 of the entire HIV genome sequence, published by Gallo. At p.26, 3.127, he says:

'Our knowledge and research into the genetic ... now been developed.'

I understand they haven't been:

'Which are intricate enough ... variability of the virus.'

I think my friend should have explained to you what she meant by the genetic variability of the virus because that seems to refer to what I have just been arguing.

P.27, she refers to endogenous retroviruses and, of the four examples that are given, there are no references, except in the fourth one when there's a reference to some evidence in the footnote 75.

P.28, in relation to the question that HIV causes AIDS -

HIS HONOUR: Footnote 65?

MR BORICK: Yes. There is no reference of or any footnotes in I, II and III in the endogenous retroviruses. 'Does HIV cause AIDS?', which is 28. If you read her argument, it is very much - I'll call it the political, but the view that is held by people.

There is not a lot of science in that section. I think
my learned friend really has to deal with the
proposition that was put to Professor McDonald this
morning, rather than to just go back and look at what
everybody knows, the Durban Declaration and all the
other - what I would classify as political documents.

I don't intend to put any further argument in
relation to the sexual transmission. My friend says
that Ms Papadopoulos has fudged the figures, so to speak,
and Ms Papadopoulos says 'No, she has not'. She has
taken their data and put her interpretation onto it.
She is perfectly entitled to do that.

Already I have answered your Honour's query of me
about the chapter from the textbook. That was put to
her by the prosecution for a specific purpose. She
referred to the issue of culture - again, I don't need
to go over it, you have heard it enough times - she
didn't rely on that book, she didn't present it as part
of her case, she simply took out the passage from the
chapter that she had been handed. That is not an
example of fudging the evidence.

On the question of diligence, whether we should have
found out about this, I submit it is impossible for
anyone to have known that this scientific debate, which
has been tucked away in the journals - it is never
published anywhere, so far as I'm aware, where the
general public could know about it. Everybody knew that
HIV existed, that HIV caused AIDS and that was it.

There is no way that any lawyer could have known
about this, unless they were told by the experts that
were giving assistance to the court or giving assistance
to the defence. Those that I spoke to didn't tell me
anything about the controversy and, certainly none of
the witnesses - Professor Gordon or Professor McDonald -
didn't mention it to the court. They didn't mention it
to the court because they, presumably, took the view
that it was so way out, they didn't believe it. There
is perhaps an argument that they should have. There is

no way that any lawyer, in these circumstances, could
have found out about the argument that is now raised.

In my submission, your Honour should grant leave.

HIS HONOUR: Ms McDonald, do you want to start now?

MS MCDONALD: I would probably prefer to start after
lunch. I won't actually be very long because I have
prepared a very lengthy written submission and I don't
propose to traverse through that. What I want to do is
just deal with a couple of things that have arisen
during my friend's submissions, which we weren't on
notice about until he started speaking - things like the
Gallo papers and so forth. I would ask to start after
lunch. I can indicate, subject to anything that your
Honour requires assistance with, I don't propose to be
particularly long.

ADJOURNED 12.55 P.M.

RESUMING 2.17 P.M.

MS MCDONALD: Can I just indicate, in relation to my
written submissions, I am proposing, if it will be of
assistance to your Honour, to give your Honour a further
document, another copy, where I have referred to
exhibits or transcript references, it will actually
include what the exhibit is and the name of the witness
giving evidence at that point. I had wanted to do that
but I ran out of time. At the moment there are just
page references and exhibit numbers and I have set it
out in that way so your Honour has all of the
information.

The first point I want to deal with is one raised by
my learned friend today and that is what this fresh
evidence is. My learned friend raised the issue of what
evidence may or may not be presented if there was to be
a subsequent trial. Your Honour heard from two
witnesses called by the applicant in this trial:
Ms Papadopoulos-Eleopoulos and Dr Turner.

My learned friend, at the beginning of this whole
hearing, expressly disavowed any reliance upon the
proposition that HIV does not cause AIDS. Your Honour

might recall that occurred at the time that the
respondent's expert reports had started to come in and
they spent some time on the issue between the
relationship of HIV and AIDS. My learned friend
indicated to the court that wasn't a plank of their
argument. It surfaced its head during the hearing. It
is just not a useful exercise to speculate about what
other evidence there might be out there that might be
called - witnesses who might be prepared to say that
they don't accept that HIV has been proved to cause
AIDS.

The evidence before your Honour is, of course, that
there are two experts who hold the view that HIV has not
been proved to exist and they stand, if you like, on an
island of their own, in amongst the other dissidents. I
raise that in response to my learned friend's submission
this morning, that there might be other evidence
presented at another trial. In terms of this hearing,
your Honour has heard what the fresh evidence is and it
is limited to those two witnesses.

HIS HONOUR: Do they go on to say that if they're
wrong about that, then it has not been proved that it
causes AIDS?

MS MCDONALD: Yes.

HIS HONOUR: They do?

MS MCDONALD: Eventually they do. There was confusion
when Mrs Papadopoulos-Eleopoulos wouldn't accept as an
assumption -

HIS HONOUR: She had some difficulty working from an
assumption where she didn't accept the basis.

MS MCDONALD: I took the end product of her evidence to
be that that is another prong of their argument and that
is one of the points that is raised on the home page of
the website.

ADJOURNED 2.21 P.M.

RESUMING 2.23 P.M.

MS MCDONALD: Just whilst I am on that topic of this
issue of HIV being the cause of AIDS, your Honour has

heard quite a bit of evidence throughout the course of
this hearing, but particularly this morning from
Professor McDonald, about the causative link, if you
like, between HIV and AIDS. I'm sure your Honour will
recall that my learned friend, this morning, put to the
court that you can use some sort of mathematical
equation: H, being HIV, plus X, equals AIDS. That
really highlights a misunderstanding, if you like, of
the causation that is involved because, really, what the
witness has put to your Honour is that HIV leads to
AIDS, but that there's a causative link in there, the
mechanics of which aren't completely clear.

It is more a case of an equation of H leads to X,
leads to AIDS. In putting it like that, my learned
friend really highlighted what the misunderstanding was.
It is not like there is 95% of something else out there
that jumps in and leads to AIDS, but rather HIV leads to
a consequence that leads to AIDS.

In that context, I just remind your Honour of P20,
which was the response of those who were responsible for
the Rodriguez study and that was a document not
dissimilar to the Nancy Padian response, in which she
attempted to make clear what her studies stood for.
That document sets out, in absolute black and white,
what the authors of that study say that their study
stands for and it is not that HIV doesn't lead to AIDS;
in fact, quite the contrary.

As they say at the beginning of para.3:
'There is absolutely no doubt that HIV is the cause of
AIDS. Far from challenging the veracity of this
statement, our work further confirms it.'
And then they go on and explain why they say that is so.
I remind your Honour of that document, because it is all
very well and good for my learned friend to provide his
interpretation of what it means to the court, but your
Honour has a document in which the people who were
responsible for that very study have attempted to
clarify what the proper interpretation is.

HIS HONOUR: Can you remind me of the source of that document? It seems it comes off a website. 1
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MS MCDONALD: There's no issue, though, as to the integrity of the document. 3
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HIS HONOUR: If there's no issue as to its integrity, then I can rely upon it. 5
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MS MCDONALD: No. Likewise, the Padian document, that is also published on a website. The Nancy Padian document, that's the one where she comes forward and says - 7
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HIS HONOUR: You have referred to that in your submissions, haven't you? 11
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MS MCDONALD: I have but I can give your Honour the exhibit number again, though. 13
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Can I turn then to this issue of genetic sequencing of the virus. I have attempted to set out what the respondent's position is in relation to that, based on the expert evidence, but to try and really put it in a nutshell, the situation, I submit, is this: many, many times the entire genome of the virus has been sequenced. Within the virus there are certain areas called the conserved areas, which are absolutely unique to HIV and, consequently, if someone is looking at the genome to determine if someone is HIV-positive, those are the relevant portions. There are other areas in the genome of the virus which are variable and it is those variable areas that are used for a couple of things; one being the contact tracing that Professor Higgins talked about during his evidence and; secondly - 15
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HIS HONOUR: The antiretroviral treatment? 30

MS MCDONALD: Yes, precisely. The letter of Professor Gordon, which is P85, attempts to assist in understanding all that. I might just take your Honour through it. 31
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