SULAN J

NO.65/2006

R V ANDRE CHAD PARENZEE

THURSDAY, 21 DECEMBER 2006

RESUMING 10.15 A.M.

+ELENI PAPADOPULOS-ELEOPULOS CONTINUING

+CROSS-EXAMINATION BY MS MCDONALD

MS MCDONALD: Just before I get started, I can indicate that the new studies which were referred to yesterday were provided at about 9.30 this morning. I haven't had a chance to read them. So based on that alone, I'm not going to be in a position to finish my cross-examination today. Having said that, I don't think I would have been anyway. I just raise that so your Honour knows.

XXN

Q. I want to start off by asking you a few questions about your knowledge of HIV and AIDS in the Asian Pacific Region. I am talking about Africa and other countries.

EXHIBIT #P24 DOCUMENTS ENTITLED 'HIV/AIDS IN ASIA PACIFIC - THE PROGRESSION' TENDERED BY MS MCDONALD. ADMITTED.

Q. Looking at Exhibit P24, are you aware that the Australian government every year donates hundreds of

millions of dollars to combat HIV and AIDS in the Asian Pacific Region.

A. Yes.

Q. And that is done through AusAID.

A. Excuse me, that is done -

HIS HONOUR

Q. Through AusAID.

A. Yes. I don't know how it is given but I know that it is given.

XXN

Q. Do you agree that there is a belief in the scientific community that HIV, or the HIV epidemic, is expanding

faster in East Asia than anywhere else in the word.

A. That's what I hear in the press but I can't see any evidence, scientific evidence. It is not here. For example, here is a draft which says 'HIV/AIDS in Asia Pacific, Papua New Guinea'.

HIS HONOUR: That's the heading of the page.

HIS HONOUR

Q. Did you want to make any point about that page.

A. Yes, I will, because it is on very different ground. It shows something. It says it is AIDS in Asia Pacific. Now, HIV is not the same thing as AIDS. You can't combine the two. To say HIV/AIDS, HIV evidence you have to have is that HIV is the cause of AIDS. HIV is a virus and AIDS is a syndrome of diseases. So you just cannot speak in one breath like them being the same thing. You cannot do that.

Q. Unless you have reached the conclusion that someone suffering from AIDS, or someone who has the symptoms of AIDS, obtained those symptoms or those symptoms were caused by an HIV virus. If you make that assumption.

A. Yes, your Honour, that's what I said.

Q. Then you can talk about HIV/AIDS.

A. Only then you can. That's what I stated. You cannot talk about HIV and AIDS unless what you said, your Honour, unless you first have the evidence that HIV - not just evidence, proof beyond reasonable doubt that

HIV is the cause of AIDS. Then you can use that altogether, otherwise the two cannot be interchanged.

XXN

Q. I want to ask you about that document for the moment.

A. Yes.

Q. I want to ask you now about an English court case that you referred to -

A. Yes.

Q. - during your evidence yesterday.

A. Yes.

Q. Just remind us about what your understanding is as to what that court case stands for or says.

A. Well, that court case, as far as I know, was about a gay man who was accused of transmitting HIV to another gay man. That's what the case is. That's my understanding.

Q. Yes, but yesterday in your evidence you said it stood for a particular proposition about the science in relation to HIV in AIDS.

A. I didn't say about the science. I'm sorry, I didn't say about the science.

MR BORICK: My friend has a copy. It is not a judgment. What it is, it is a direction to the jury in the case that I have referred to. What we haven't got yet is the actual evidence that the judge is referring to in his direction. So for what it is worth, if my friend wants your Honour to have it so that you can see what they are talking about -

MS MCDONALD: Yes, I propose to tender it.

MR BORICK: - I have a copy. Bear in mind its limitations. The judge is talking to a jury and he is talking about people whom we don't know.

EXHIBIT #P25 DOCUMENT ENTITLED 'IN THE CROWN COURT AT KINGSTON ON THAMES' DATED 9/8/2006, A DIRECTION TO THE JURY BY JUDGE BINNING IN THE MATTER OF R V COLLINS, TENDERED BY MS MCDONALD. ADMITTED.

XXN

Q. Do you have a copy of that document with you.

A. Yes, I do. What I said there, I said on the basis of scientific evidence by HIV experts, the accused was found not guilty. That's where the science comes.

Q. Isn't it the case that what is apparent from what the judge said to the jury in this case is that the issue there wasn't one of science but whether or not the prosecution had proved that a particular person was HIV negative at a particular point in time.

A. No. No, it was - the case was about a gay man transmitting HIV to another gay man and that is all it is about. A gay man was accused of transmitting HIV to another gay man, and on the basis of the relatedness of

the two viruses, or the court believed that there were two viruses, the man was - maybe I shall give you - here it is.

MR BORICK: I think we have a bit of confusion here. I don't think the witness has got the actual direction that you have got.

HIS HONOUR

Q. Have you got this document, which is the actual direction.

A. No.

MR BORICK: What she has got is what has already been referred to, which is a summary by the prosecution scientist of her evidence. It looks as though she has some sort of PowerPoint demonstration. We haven't been able to get that from the English court as yet. That is because it is Christmas and they are busy and they have got so many other things to do. I'm sorry, we would love to get our hands on it, but we haven't got it yet.

XXN

Q. You see, this is what you said about this case in evidence yesterday. I asked you this question at 229: 'So you would accept on the basis of that testing, it would appear that one sister has given the virus to the other' and I was asking you about that Russian sailor case at that stage.

A. That is a totally different case. This has nothing to

do -

HIS HONOUR: Just listen to the question.

XXN

Q. I'm just putting it into context for you and reminding you of where this evidence came up yesterday. Your answer was this: 'No, that's what they claim but that is not proof and that is not only what I say. May I remind you about a court case which just took place in London not long ago in which a gay man was accused to have transmitted a virus to another gay man, and because what they have done through genetic analysis, that the virus is from what is called virus from two people was found

to be related, the accused gay man was advised to plead guilty but then he changed his legal team and ultimately he was found not guilty, and this was because an HIV expert, an expert on the so-called HIV genome and through genetic analysis from London, gave court evidence and it was accepted that you cannot prove transmission with this kind of profiling or this kind of testing and here it is. She had a PowerPoint presentation'. Do you agree, firstly, that that was the answer you gave.

A. Yes, I agree.

Q. On the document that you have produced to us that can't be support, I suggest. The issue there was whether or not it could be proved beyond reasonable doubt that at a particular point in time the accused person was HIV negative.

A. No. No, it is not that. There is no way that - nowhere here, the court was not to place - to show that one man was negative while the other was positive. The court was - one man was accused of transmitting the virus to another man. That's what it was all about. It is not that one man was negative and the other was positive.

MR BORICK: I think it would assist my friend if she had the document that the witness has got but she will need some time to understand it. It is headed 'The use of virological evidence, pitfalls and acceptable

standards' and then the author of this talks about matters such as following the genetic tree and bootstrapping. They are difficult concepts to get your head around quickly. I am not objecting. I'm simply suggesting my friend gets this before she embarks on this cross-examination.

HIS HONOUR: You are being assisted.

MS MCDONALD: It am being assisted. It would have been of assistance if I got it overnight when I requested.

MR BORICK: I didn't know.

HIS HONOUR: If you could make that available, Mr Borick.

Q. I will move on to another topic. I want to ask you some questions about your presentation in relation to the issue of sexual transmission. Looking at Exhibit A8, the print-out of the PowerPoint presentation, just before we go to that I just want to ask you a general question. A number of times during the course of your evidence you talked about the need for there to be scientific evidence of various things before they are proved. What do you mean by the term 'scientific evidence'.

A. I mean scientific studies where comes evidence which proves that claim, whatever it is. Like if it is sexual transmission, scientific evidence that is standard - if it is for sexual transmission, you have to have studies which proves sexual transmission of a virus from one person to another by sexual conduct.

Q. But isn't it the case that when you are giving your evidence about sexual transmission, and there are examples in the studies that you referred to that were said to be evidence of sexual transmission - your response was regularly people lie - there could be other explanations despite what appears on the face of the statement.

A. The people lie, it was in relation to giving census study. It was not my accusation, it was Dr Bodick who

said that, who said that Dr de Vincenzi agreed that whole study does not prove sexual transmission. The evidence in whole study does not prove the sexual transmission but since heterosexual transmission is everywhere else. That's what you have to accept.

Q. Could you just turn to your PowerPoint in A8. The first few slides are general summaries prepared by you so I won't take you through those for the moment. What I want to do is to turn and look at some of the particular studies which you say are support for your evidence that HIV has not been proved to be heterosexual transmissions. Just so this is clear, is it your

evidence that it can be heterosexually transmitted via anal intercourse.

A. No. What I said is a positive antibody test can be acquired by practicing passive anal intercourse, and that means not only by gay men because there are more heterosexuals who practice anal intercourse in number than gay men. So a positive antibody test, not HIV. There is a difference between, as far as I am concerned, a positive antibody test and HIV and we do agree that the practice of passive anal intercourse, as Gallo has shown, leads to the acquisition of a positive test.

Q. Just so we are clear about this, is that passive anal intercourse both between two men and a man and woman.

A. Yes.

Q. And you say that you accept that that can lead to a positive antibody test.

A. Yes.

Q. What do you say causes the antibody test to react positively as a result of anal sex.

A. Well, the semen is full of proteins, antigens, what are called the antigens, and in the passage from the vagina to the gut they can be absorbed into the bloodstream. That is like injecting foreign proteins in the body, especially if the gut is traumatised by some way or the other, then the passage will be more easy, and every time that you subject a person to foreign antigens, that

person will make antibodies, and in the kits, in the antibody test kits, the proteins, there is all the evidence that the proteins are similar cellular proteins and the antigens are from foreign cells. Then one would expect that any foreign antigens which comes into the body, especially cellular antigens, no matter how they come, they are injected or they come via sexual intercourse to the gut, then you will develop antibodies and these antibodies will react with the proteins which are in the test kits.

HIS HONOUR

Q. I just want to make it absolutely clear that I understand what you're saying. That you can have a perfectly healthy male suffering from no diseases or viruses, perfectly healthy, who has anal intercourse with either a man or a woman and ejaculates.

A. Yes your Honour.

Q. And you say that as a consequence of that antibodies will be created.

A. Yes.

Q. Because of the foreign proteins which are contained in the semen.

A. Yes your Honour.

Q. And those antibodies will react to the HIV test.

A. Yes your Honour.

Q. And give a positive reading.

A. Yes, the more frequent - it is logic that the more frequent the intercourse is, and the more traumatised the gut is, the more foreign antigens you have going into the body.

Q. And the more - the higher risk of antibodies being formed.

A. Being formed, Yes your Honour.

XXN

Q. Do you say that those antibodies can then lead on to someone developing AIDS.

A. No antibody leads to the development of AIDS or any other disease -

Q. Do you - sorry.

A. No they don't.

HIS HONOUR

Q. Someone who creates antibodies which reacts to the HIV tests is not really - may not be ill. If you are creating antibodies are you ill? Is there anything wrong with you.

A. Sorry?

Q. When you create antibodies.

A. Yes.

Q. Does that mean you are suffering from an illness.

A. No, no it doesn't mean you suffer from illness.

Q. So you can be perfectly healthy.

A. You can be perfectly healthy.

Q. You create the antibodies, you will test positive. And so somebody who - I just want to understand your evidence - so someone who is having anal intercourse, a recipient of semen -

A. Yes.

Q. - who creates antibodies, who reacts to the HIV test kit.

A. Yes your Honour.

Q. If they are at some stage diagnosed as suffering from tuberculosis.

A. Yes your Honour.

Q. Your position is that there is no evidence which connects the creation of the antibodies which react to the HIV test kit, with the tuberculosis that that person's suffering.

A. No, there is no evidence. What we are saying is that in the risk groups, in the risk groups - and we are not against doing the antibody test, we are against the interpretation of the antibody test; we are saying, yes, do the antibody test - in the risk groups indicate a propensity for the development of an illness -

Q. Of some disease.

A. Of some disease, some time after.

Q. That's got nothing to do with HIV.

A. No, that's true.

Q. It's got nothing to do with it being sexually transmissible.

A. Yes your Honour.

Q. Because your risk is just as high with a person who has no - who doesn't react to antibodies, as to someone who does; if they are the donor in other words.

A. The person doesn't die because of the antibodies.

Q. No. Let me ask you this question, just to understand: if, for example, you have a person who is a homosexual

and who has been a recipient of semen, through his anus, right, and he is tested and he has antibodies -

A. Yes.

Q. - that person then has anal intercourse with a third person.

A. Yes.

Q. He being the person who then is the donor of the semen, to the third person.

A. Yes.

Q. And that third person tests positive to antibodies.

A. Yes.

Q. That third person has not tested positive to the antibodies because the person who donated the semen himself had tested positive for antibodies. But he has tested positive to antibodies because of the receipt of foreign semen material, which could have been received from a healthy person without any antibodies.

A. Said much better than me.

Q. And you can't, you say scientifically, make the connection, is that -

A. Yes your Honour. As I said, I'm very - that's why I'm nervous because I cannot put my ideas through, but you did much better than me.

Q. I'm just trying to understand, if I understand clearly what your evidence is.

A. Yes your Honour.

Q. Is it your evidence that there is no link between anal sexual intercourse and a person developing AIDS-related illness.

A. As I said, we aren't the ones who are saying that. We are saying if you practice passive anal intercourse - as I say it has been proven by Gallo in 1984/1986 - if you practice passive anal intercourse, and it doesn't have to be by a gay man, it can be by woman. If a woman practices anal intercourse, and this can be shown by Padian and de Vincenzi. If you practice, I repeat, passive anal intercourse then you develop AIDS - develop

antibodies. And these antibodies in the risk groups, in the AIDS risk groups, the indicator that sooner, maybe never, but the risk, there are indication of a risk sometime in the future to develop an illness. It may be an illness which is considered to be AIDS indicative, or maybe another illness. And at the same time your Honour, I forgot to mention that, this is linked to a decrease in T4 cell as well.

Q. You just said it may relate to an AIDS-related illness or another illness.

A. Yes, could be another illness.

Q. What other illnesses could these antibodies cause.

A. Many illnesses cause antibodies, you can find antibodies through many illnesses. Including autoimmune diseases, that is diseases which will develop as a reaction of something being wrong in our body. When we are sick, like rheumatoid arthritis, you develop antibodies. The antibodies are the result, they are autoantibodies, they are against antibodies, against your other constituents.

Q. Is your evidence then that the -

HIS HONOUR

Q. Do you have some water with you, would you like some water.

A. Yes please. Thank you.

XXN

Q. Your evidence is then, that the antibodies that you

might receive, as a result of being the recipient of some semen from anal intercourse, can lead to you getting AIDS-related illnesses or other sorts of illnesses, correct.

A. The antibodies you don't, you receive the antigens and you develop antibodies, and the antibodies are indicia in the AIDS risk groups for a future development or then if the person is - if the antibodies is done to the person who is sick.

Q. Is one of those illnesses that you say you might get as a result of this process rheumatoid arthritis.

A. No, no, no, no.

Q. I asked you for some examples of what other illnesses, other than AIDS-related illnesses, you say that someone can get as a result of this process. What other illnesses; you tell us.

A. Well, AIDS - it could become a Kaposi's sarcoma for example. Kaposi's sarcoma, everybody agrees now, including Gallo, that is not caused by HIV, yet you get Kaposi's sarcoma.

Q. What other AIDS-related illnesses might you get through this.

A. You get all the, all non-AIDS illnesses.

HIS HONOUR

Q. I think Ms McDonald is asking you what non-AIDS illnesses do you say.

A. People suffer from many diseases.

Q. I don't know what AIDS and non-AIDS illnesses are, you might assist me.

A. When we started, as I said, when AIDS came to be, there were only about three/four diseases which are considered to be AIDS. And the main ones were Kaposi's sarcoma and PCP, which is a lung disease. About 1985 the gay men, I might say, already knew there is something wrong. They worked it out before any scientist did, what is going on, and they took medicine. And the diseases start to decrease. And by 1987 we have increase enormously the AIDS numbers by just re-defining what we mean by AIDS.

And then they put many other diseases as indicating AIDS. Just before 1990s the numbers of AIDS cases start to decline again. So AIDS was again re-defined. And in fact, without definition you didn't even have to have an illness, if you just had a low T4 cell - there are certain diseases sorry, by 1993 we had certain diseases, as indicating AIDS, and then we do not have to have any diseases. If you had low TC4 and you're HIV positive, that is if you had a positive test or antibody test, what is called HIV test, then you had AIDS. So we now have a limited number of AIDS if you want, even if you don't have illness. S stands for syndrome and syndrome

means a disease. But yet you can have AIDS even if you don't have a disease, you just have low T4 cells and a positive test. So nearly everything is included.

XXN

Q. You just told us that you can be diagnosed as having AIDS with no illness, just based on the low CD4 count.

A. That is the centre for the risk control is American.

Q. That's not the case in Australia is it though.

A. It may not be here. In Europe, definitely in Europe they refuse.

Q. Well, we are here in Australia now. What is the definition of AIDS in Australia.

A. You have to have 30 diseases; one of the 30 diseases.

Q. Thank you. Why did you tell us about -

A. May I - sorry, sorry. May I? Let me clarify because you introduce this point and how diagnosed AIDS here. Now in Africa, you don't have even to have neither disease, no T4 count's tested. No HIV tested. In Africa you can be said to have AIDS just by having a combination of signs and symptoms; like diarrhoea, like weight loss, fever. And if you combine this, if a person has more than one of these two/three, there are some combination, you have AIDS. So it is if you have TB. So in Africa you can have an unlimited number of AIDS.

HIS HONOUR

Q. Even without a positive test for HIV.

A. Even without a positive test.

Q. If someone has tuberculosis in Africa you say they have been diagnosed.

A. They have weight loss -

Q. They have got to have other symptoms.

A. The symptoms, the symptoms, this is the definition for AIDS in Africa.

XXN

Q. Why did you tell his Honour that you can be diagnosed as having AIDS with no illness when you knew that wasn't the case in Australia.

A. But that was the case everywhere else. I should have pointed out that in Australia, and in Europe this is not the case.

Q. Let's move on to your PowerPoint presentation. I want to move ahead to slides 9, 10, 11, 12, and then 13 and 14. These are the slides headed 'Gay Men'.

A. Sorry, I don't think I have it.

HIS HONOUR

Q. This is A8. You've got it, have you.

A. Yes, that's it.

XXN

Q. Do you have that in front of you.

A. Yes thanks.

Q. Now those slides relate to studies done in relation to gay men.

A. Yes.

Q. I notice, just dealing with 9, 10, 11 and 12 for a moment.

A. 10, 11 and 12. Yes.

Q. That all the studies that you seemed to have relied on there are studies from very early on in the AIDS epidemic.

A. Yes.

Q. '82 -

A. Hang on, sorry, you say they all the studies?

Q. I'm sorry?

A. I didn't hear you, you said 10, 11 and 12 were all studies or - what was the comment?

HIS HONOUR

Q. The question is that the material, the studies which underlie the slides -

A. 10, 11, 12.

Q. 8, 9, 10, 11 and 12, are all studies which were made relatively early in the discussion or discovery of HIV.

A. Yes, that's true.

XXN

Q. Before I go on to ask some further questions about those slides I want to go back to what I was asking you about

a moment ago, before we go too far and you forget your evidence. This is about how I said HIV is defined in different areas of the world, I want to go back to that topic.

A. Yes.

Q. You just told us in Africa if you have TB and some weight loss -

A. I had said a few signs and symptoms, which include things such as weight loss, fever, night sweats.

Q. TB.

A. Sorry?

Q. TB.

A. TB is not a sign or symptom, TB is a disease.

Q. You say in Africa you can be diagnosed as having AIDS just on that basis.

A. Yes, that is the Bangui definition of AIDS.

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.DBL...00602 397 E. PAPADOPULOS-ELEOPULOS XXN

Q. I suggest to you that is just not true. In Africa, like Australia, there needs to be a positive anti-body test, the presence of an antibody before someone is diagnosed.

A. This is the definition, it is not my definition. It is a Bangui definition and is available everywhere and has not been changed and this would have a very big discussion on this and at a meeting with the president Umbecki it is composed of both dissidence and HIV protagonist.

HIS HONOUR

Q. I want to get it clear: do you say that the Bangui definition of AIDS is the officially applied definition for AIDS right throughout Africa.

A. That is the official. Now some people may do other body cells. They may do T4 cells, depends on the institution, but the Bangui definition of AIDS in Africa does not require it.

Q. Right throughout Africa.

A. This is for Africa, the Bangui definition is for Africa.

XXN

Q. I go back to the slides now. Slides 9, 10, 11 and 12. I was putting to you that all of those studies that you referred to in those slides often vary early on in the AIDS epidemic.

HIS HONOUR: I think she has accepted that.

MR BORICK: I begin an explanation: when your Honour

put the question you used 'the HIV existence'. My friend's question is 'early on in the AIDS epidemic' and they are two different things.

HIS HONOUR: Well perhaps you'd better put your question.

A. Yes they are all papers, they are all papers. I read all the papers.

XXN

Q. The slide No.9 is from a study in 1982.

A. Yes.

Q. No.10 is from '84.

A. Yes.

Q. And 11 is from '84.

A. Yes.

Q. And 12 is from 1986.

A. Yes.

Q. And when do you understand that it is believed that the AIDS epidemic began.

A. Yes, they are all papers.

HIS HONOUR

Q. The question is: when do you say the AIDS so-called epidemic began.

A. Officially in 1981, but AIDS, the test for HIV - because this depends on HIV as well, the Gallo papers are based on HIV, the test was introduced in '94, '95.

Q. 1994.

A. 1984, 1985.

XXN

Q. Is it the case that since that time there have been many, many studies about the sexual transmission of HIV between gay men.

A. Yes.

Q. Is there any reason why it didn't include any more recent studies -

A. Yes, it did.

Q. The most recent one is 1994, it is 12 years ago now.

A. Does it mean, do you imply that because these studies are old they are not good any more? Can you say that

Einstein, theory of relativity is not valid any more because it was announced in 1905? I don't think so. Or are Newton's laws - to take just some examples of physics, no, or because, you know, all people - not all people - for example when Einstein left Germany, many German physicists wrote that Einstein, science, Jewish science is not valid, it has to be unavailable. It was unanimous more or less acceptance about the physicists in Germany is not good - no sorry I accept. This study - there has been no better study than the Gallo study regarding the acquisition of a positive test in gay men. All the other studies have come with the same

conclusion. The reference 1994 is a reference - the reference 1994 -

Q. Please keep going.

A. The reference 1994 -

HIS HONOUR

Q. I'm the one who is supposed to be listening, you give your evidence. You need not talk to me.

A. I will talk to your Honour. The reference - but when they put the question, I seem to address -

Q. If they go off and read something else, don't worry about them, you keep answering.

A. The reference ''94' is a reference which examined about 25 studies in gay men, and every single study shows exactly what Gallo has shown in 1984. In fact, I think we put there - we caught what the people, the authors there concluded and it was exactly what Gallo concluded. It is 90, 80 papers.

XXN

Q. If we go to one of these slides then. Slide 11, and the study that you cite there, the Goedert - is that how you pronounce it, Goedert.

A. Yes, 11.

Q. You have relied on a particular study there.

A. Yes.

Q. Let me remind you what you said about that slide in your evidence and then we will go to the study and see how it

compares; p.146, line 19. 'Slide 11: once the age of the anti-body test was developed, Gallo was the first to report on the relationship between sexual activity and the positive anti-body test which he interpreted as proof for HIV infection. I again quote the paper published in 1984 of eight different sex acts. Seropositivity correlated only with receptive anal intercourse and with manual stimulation of the subject's rectum, that is rectal trauma and was inversely correlated with insertive anal intercourse'. Do you agree that was the answer that you gave.

A. Yes, that is the slide and that is a quote.

Q. What were you trying to convey to us in putting that quote in that slide. What were you trying to say that that quote meant.

A. It is exactly what it says there. It is very clear. I cannot make any other interpretation than what is there.

Q. Are you saying to the court there, with that slide, that a person only becomes seropositive if they are the receptive partner in anal intercourse.

A. That's what it says, I don't have to interpret it. If I say anything else, I will misinterpret it.

Q. You are saying that study stands -

A. That is what it says.

Q. The proposition is that, really, the only way that you can become seropositive, through sexual intercourse, is to be the recipient in anal intercourse.

A. That is Gallo and that is what is there.

Q. Let's go to the study. This could be shown at this document and I tender it.

EXHIBIT #P26 DOCUMENT TITLED DETERMINANT OF RETROVIRUS HTLV-(III) ANTI-BODY AND IMMUNODEFICIENCY CONDITIONS IN HOMOSEXUAL MEN PUBLISHED IN THE LANCET DATED 29/09/1984 TENDERED BY MS MCDONALD. ADMITTED.

Q. That is the study that you cited from.

A. Yes, that is cited.

Q. In slide 11.

A. Yes.

Q. At the beginning of that study there is a summary -

A. Yes.

Q. - of what occurred.

A. Yes sorry.

Q. It commences: 'A cohort of homosexual men at high risk of the required immunodeficiency syndrome (A) was monitored to examine the relation between lifestyle, clinical conditions. It cites sub sets and anti-body to the AIDS associated human retrovirus, human T with leukaemia virus, (III) and HTLV-(III)'. That's how the summary commences.

A. Yes, I'm following.

Q. It goes on to describe the sample and the antibody's presence.

A. Yes.

Q. And I take you to the bottom of that summary.

A. Yes.

Q. There is something of a conclusion to the summary, if you like.

A. Yes.

Q. In that it says 'In both univariant and multivariant analysis, the lifestyle risk factors for HTLV-(III) seropositivity were large number of homosexual partners and receptive anal intercourse with an apparent syngistic interaction between those two activities'. I have left out the figures. 'These data suggests that frequent receptive anal intercourse with many homosexual partners predisposes to the HTLV-(III) infection with the consequent emergence of lymphadenopathy and the various manifestations of lesser and fully fledge AIDS'. Do you agree that's what it says at the end of the summary.

A. Yes.

Q. It doesn't suggest there that the only way that you can become seropositive is through receptive anal intercourse, does it.

A. It says 'passive anal intercourse'.

Q. That passage simply suggests that being the recipient in anal intercourse puts you in a high risk category.

A. That is what was said. That's what I say, the anti-body test, the more sexual passive - the higher the frequency of passive anal intercourse, the higher probability of getting a positive test and rectal trauma also, so it doesn't say nothing different.

HIS HONOUR

Q. Do you go as far as to say it is the only way.

A. No. When it comes to sex?

Q. Yes.

A. Yes because Gallo says inversely related so it means the

more active.

Q. But do you say that it is not possible, it does not occur in vaginal sex.

A. No, there is no evidence for that, no.

Q. No, I understand that, I want to understand your position.

A. Yes, no.

Q. As I understand it, you say that the more often you have anal intercourse as a recipient and the more partners you have, the more likely you will develop anti-bodies and this study supports that.

A. That is Gallo study. That was the - they must have some of the best study conducted.

XXN

Q. You accept, between saying that the only sexual act that will cause you to become seropositive is being the recipient in anal intercourse and saying that you are in a high risk group. Do you accept there are two propositions.

A. I don't understand what the question is.

HIS HONOUR

Q. The question is: do you accept the proposition - there are two different propositions; one, is the only way that you can become seropositive is by anal intercourse, that's one proposition.

A. Yes.

Q. And there is a much higher risk of becoming seropositive if you engage in passive anal intercourse, that's the second proposition.

A. Yes.

Q. The question is: do you accept that there is a difference between those two propositions.

A. No. I think the second proposition has not been proven. That is, there is no proof that other sexual acts can lead to a positive test.

Q. I think we might be at cross-purposes.

A. Sorry.

Q. There are two propositions. This is just a

straightforward question, don't relate it back to what you said earlier. There are two propositions. The first proposition is that the only way in which you will develop anti-bodies is by - and please correct me if I am wrong - is being a recipient of anal sex.

A. Yes.

Q. That's the first proposition, that's the only way that you develop anti-bodies or the only way that you will become seropositive.

A. Yes.

Q. The second proposition is that you are at a greater risk of becoming seropositive if you engage in passive anal sex and you extend that by saying 'but that is not the only way'.

A. Which the other way?

Q. Well, no, the first question.

A. I accept the first, yes.

Q. Do you accept that they are different propositions.

A. I accept they are different propositions, I do accept that.

Q. That's all the question addresses.

A. Sorry, yes I accept.

XXN

Q. I suggest that this example, this study supports that second proposition but not the first one.

HIS HONOUR

Q. In other words -

A. No, I think this study supports - as the quote says there, Gallo says, Gallo says - and we are not misquoting of AIDS, different sex acts, seropositivity correlated only -

MR BORICK: What page are you referring from?

HIS HONOUR: Slide No. -

A. 11.

XXN

A. Gallo says 'Of different sex acts, seropositivity correlated only with receptive anal intercourse'. 'Only with receptive anal intercourse'. I agree with Gallo.

HIS HONOUR

Q. That's what his study revealed, but do you say that you can draw a conclusion from that that that is the only way in which you can develop seropositivity.

A. Yes, that's what Gallo said in 1986, and that's what all the prospective studies, which were analysed by Bochera, have shown, so that's the evidence.

Q. Do you say that that is the only way in which you can become seropositive; by anal sex.

A. By sexual means.

Q. By sexual means.

A. Yes, but when it comes to sexual acts, I agree with these findings.

XXN

Q. Let's go to the context in which that passage appears. Can I take you to the second page of the study, headed '712'. This forms part of what's been described as the introduction. We have reported that 'An AIDS-like deficit of helper T-lymphocytes was associated with frequent homosexual contacts amongst homosexual men in New York city; a group at high risk of AIDS. Receptive anal intercourse was the specific sexual activity which correlated most strongly with reduced levels of helper T-cells. This data, in conjunction with other observations, suggests that a transmissible agent is the cause of AIDS'. Do you agree that's what it says.

A. Yes.

Q. Do you agree that what it says is that receptive anal intercourse correlated most strongly -

A. Specifically correlated.

Q. Was the specific sexual activity which correlated - and I'm emphasising the word 'most' - strongly with reduced levels of helper T-cells.

A. Yes.

Q. They are not there saying that is the only act, they are saying there is the strongest correlation where you have anal intercourse, aren't they.

A. No, they are saying for T4s, that this relates to T4s.

It doesn't relate to positive test. Yes, there are many other means which should -

Q. Section 3, the heading 'Determinants of HTLV3 Antibodies', second column, halfway down. Do you see that.

A. Yes.

Q. So we are clear, when they are talking about HTLV3 antibodies, we are talking about what we now call HIV antibodies; is that right.

A. Sorry, you said second paragraph. Is that the section we are talking about?

Q. Yes, the question was simply HTLV3, what they are actually talking about is what's now called HIV antibodies.

A. Yes.

Q. One and the same thing; that's the old name for what's now called HIV.

A. Yes.

HIS HONOUR

Q. You have to assume that I know nothing, so you've got to go back to basics - that's what the question was all about - just to get the terminology correct so that there can be no debate later on that when you were talking about HTLV, and they are talking about HIV, that you are talking about different things.

A. Sorry, I did specify I know zero about legal terms so

please correct me.

XXN

Q. When this test was conducted, HIV hadn't even started to be called HIV yet.

A. Yes, in fact, it was called the leukaemia virus.

Q. I want to take you to a paragraph under that heading 'Determinants of HTLV', the second paragraph commencing 'None of the eight subjects with fewer than 10 homosexual partners during the year preceding the study were seropositive'. Then it refers to table 2. 'More than half of the subjects with 10 to 50 partners had HTLV3 antibodies, while more than 70% with greater than

50 partners were seropositive. A similar relation was noted between HTLV3 seropositivity and the number of receptive anal intercourse acts'. Do you agree that's what it says so far.

A. Yes.

Q. It goes on to say 'The proportion of seropositive men increased from 29% amongst subjects reporting no receptive anal intercourse, to 74% with more than 20 such acts', and gives a figure. 'Study subjects who are very frequently the insertive partner in anal intercourse were less often seropositive, (39%), than those who were seldom (62% seropositive), or occasionally (65% seropositive) the insertive partners in anal intercourse'. Do you agree that's what it says.

A. Yes.

Q. Isn't what that is saying not that the only way you can become seropositive is that you are the receptive partner in anal intercourse, but that it makes it more likely if you engage in anal intercourse that you will be seropositive.

A. Yes, but when he summarised his findings, when he did the actual statistics, and including other things, they came to the conclusion that it was only passive anal intercourse that seropositivity - when they did the statistics, they found seropositivity was directly related to passive anal intercourse and indirectly

related to insertive intercourse. If it is indirectly, then it cannot be.

Q. Let's go to the discussion, p.714, the heading on the right-hand column 'Discussion'.

A. May I interrupt, to specify here, because these gay men were not only practising very high frequencies of anal intercourse - and that was the problem; the problem is not sexual orientation, as far as we are concerned, or sexual practices, as in passive anal intercourse, the problem is very high frequencies of anal intercourse. I want to specify that. Secondly, these gay men at that period of time were not only having a very high

frequency of anal intercourse. They are, all of them - there are studies which show about 95% of them, were using recreational drugs and the drugs themselves could lead to that positive test. So, at that time it was very hard to discriminate between what is what, but when they did the statistics they found this study directly correlated to passive intercourse.

Q. I suppose you'd say here that although people were testing seropositive who had not been the recipients in anal intercourse, there must be some other explanation for why they are seropositive.

A. Yes.

Q. Let's go to the discussion, what the authors have to say about what this means. I'm reading from the first paragraph under 'Discussion'. 'This study of homosexual men at high risk of AIDS shows that the presence of HTLV3 antibodies is an important risk factor for three AIDS related clinical conditions (lymphodenopathy, lesser AIDS and fully fledged AIDS). The presence of antibodies is also associated with a low helper T-cell level, the salient immunological characteristic of AIDS. We have also shown that the prevalence of HTLV3 antibodies correlates best with number of homosexual partners and frequency of receptive anal intercourse, lifestyle variables previously linked as important risk factors in analytical, epidemiological studies of AIDS,

thus epidemiologically HTLV3 could be the putative AIDS agent'. You agree that's what it says.

A. Yes.

Q. I suggest nowhere there does the author say this goes to establish, or support the proposition, that the only way you can become seropositive through sexual intercourse is by being the recipient in anal sexual intercourse.

A. That says there.

Q. This paper stands for no more, on this topic, than you are in a higher risk group if you are the recipient in anal sexual intercourse.

A. No, gay men are considered to be one of the AIDS three

groups, and if you have a positive test you have a risk of developing AIDS. We agree with that.

WITNESS LEAVES COURT 11.26 A.M.

HIS HONOUR: Mr Borick, this witness is not going to finish today.

MR BORICK: I'm acutely aware of that.

HIS HONOUR: And Dr Turner is not going to start today.

MR BORICK: Equally aware of that.

HIS HONOUR: We are starting again on the 30th, and I might have been an optimist when I thought we would complete it in six days, or five days. I presume I am an optimist.

MS MCDONALD: I think your Honour is.

MR BORICK: I don't think my cross-examination of the witnesses is going to be as long, for a number of reasons. I'm getting a pretty good advanced knowledge of what's going to be said, and I've got, obviously, a bit of time to be prepared. I was wondering if my friend could finish this cross-examination and have Dr Turner on the first of those days.

HIS HONOUR: I don't know that that is going to happen. I think I had better set more time aside. 6th, 7th and 8th we better pencil out as well. I have set a matter for the 9th so I can't give you the 9th. Do you think if I give it an extra three days there is a chance

that we will finish?

MS MCDONALD: I do. Can I raise a difficulty I run into in terms of my availability? When those days were set down your Honour might recall I had a difficulty with the trial I had listed, and because of the resource situation in the office I made an application to push that trial back two weeks to allow this to occur. Duggan J was not so generous and only agreed for it to be pushed back - there was no opposition from defence - to Wednesday, the 7th. Because it is a retrial I was only going to have one day's preparation time anyway.

HIS HONOUR: There is an assumption in your request

that I have judicial clout with Duggan J. I can certainly ask him, but that's all I can do.

MS MCDONALD: I will just have to have the matter called back on.

HIS HONOUR: He is aware that I am hearing this matter, as are a number of my colleagues. I have not discussed it with him but I assume he would be aware that it is a matter that needs to be resolved urgently. I think you will have to make your application to him, but I will have a word to him. If I give you a further three days, realistically, can we finish it in that time?

MS MCDONALD: I would have thought so. Dr Turner won't be anywhere near as long as this witness. I don't propose to deal with her sections, just simply his presentation. Ms Eleopulos, I will probably be the better part of the day with her, so maybe a day and a half to two days for defence witnesses.

HIS HONOUR: I will indicate that I will set aside the 6th, 7th and 8th as well.

MS MCDONALD: Can I also indicate, with the prosecution witnesses, rather than have each of them reinvent the wheel, what we have done with Professor McDonald is isolate the areas for which they have particular expertise and then focus on those areas, so that should truncate things to some extent.

HIS HONOUR: Are there reports available, or they going to be available?

MS MCDONALD: They are going to be available, but the difficulty we have there is they have been waiting on materials that only arrived -

HIS HONOUR: So they will be available.

MS MCDONALD: Yes, we will have some further reports to address the issues directly.

HIS HONOUR: What about the reports that were already presented, are you going to be relying on those as well?

MS MCDONALD: In a general sense, yes, but what we are hoping for is something more specific now.

HIS HONOUR: It would be of assistance if you can identify before we resume the reports upon which you intend to rely and, in particular, if it can be done, those parts of those reports, if there are only parts of them that you intend to rely upon - that's the early reports. If you say to me 'We rely on all the reports', that's fine, I understand that, and Mr Borick will understand that and tailor his cross-examination accordingly.

MS MCDONALD: It is the case we rely on everything in court but some of it is becoming relevant in the context of the issues that are being agitated.

HIS HONOUR: You will try and refine those down then?

MS MCDONALD: Yes.

HIS HONOUR: I assume in that time you should allow at least a day for addresses, half a day each, and I would be assisted if I could have some written material. I understand the pressures everybody is under, but it may be that they can be provided afterwards or whatever.

MR BORICK: Just another matter, I don't want you to comment on it at the moment, but I raised the proposition this morning with the three experts that are in court that they could meet together, solely on their own, to see if they could assist all of us to bring some of these issues to a head. I can tell your Honour the case has got strong international prominence amongst

scientists so there is a lot of pressure on everybody, but I see no legal impediment to the three experts having such a meeting, if they felt it useful. My question is, would your Honour have any problem if that did happen?

HIS HONOUR: Experts are experts and if they choose to meet to exchange their views, that's entirely a matter for them.

MR BORICK: Thank you, that answers my question.

HIS HONOUR: I wouldn't have seen any impediment to that from the court's point of view. Ultimately, that's a matter for the experts to decide whether a meeting

together will achieve anything and what it might achieve, but that's entirely a matter for them, I'm not in a position to tell them or direct them. Subject to advice which they may get from those from whom they take advice - and they may be taking independent advice, I don't know - subject to that, there is no impediment on experts getting together and discussing their views, even during the course of their evidence.

ADJOURNED 11.35 A.M.

RESUMING 11.48 A.M.

MR BORICK: With regard to the housekeeping matters we referred to, personally, from my point of view, those dates I will just have to fit in. I make no point about that. Getting the witnesses back from Perth is my fundamental problem. Dr Turner - I'm not going to deal with his particular problems relating to his family matters, if you like. He doesn't have an accent and if we could organise for him to give evidence from Perth, would there be any difficulty with that?

HIS HONOUR: There would be as far as I am concerned because this material, there is a lot of it, and as you know, there are difficulties even identifying the correct document which someone is looking at, what they are looking at, how they are referring to it. Frankly, I find this evidence challenging because it is evidence which is very technical and it requires a lot of concentration.

MR BORICK: I appreciate that.

HIS HONOUR: I just would have real difficulty, Mr Borick, personally, trying to take this evidence over a video.

MR BORICK: We are not going to finish today. Would your Honour adjourn for another 10 minutes? I just want to discuss things a bit more.

HIS HONOUR: Yes. I will adjourn for a little longer

if you need longer. I will adjourn now. We can pick the hour up after by sitting a little longer in the New Year. I assume things might go a bit quicker in the New Year when people have had a bit more time to absorb some of this material because it is becoming fairly dated as we go, so I am in your hands.

MR BORICK: Would your Honour adjourn for 15 minutes at the moment and I can talk to your associate and get you back when I think we might be able to give you some more help.

HIS HONOUR: I will adjourn for 15 minutes while you talk to your witnesses but can I indicate that I would

really prefer to have them in court.

MR BORICK: Yes.

HIS HONOUR: Ms McDonald, I have spoken to his Honour. His Honour is making some inquiries but he said that subject to making those inquiries, and subject to the defence not opposing it, he would be sympathetic to starting the following Monday.

MS MCDONALD: Thank you.

HIS HONOUR: But he has just got to work out what the court position is.

MS MCDONALD: Yes, I understand that.

HIS HONOUR: So it is subject to all of those things. My associate will speak to his associate in the next 10 or 15 minutes before we resume. You might, in the interim, speak to the defence.

MS MCDONALD: I have. In fact, on the last occasion they didn't oppose two weeks.

HIS HONOUR: They wouldn't oppose it starting on the Monday.

MS MCDONALD: No, that was the position on the last occasion.

HIS HONOUR: You better have someone in your office confirm that. Duggan J may not need you to come before him if you can get that agreement.

MS MCDONALD: That is very helpful. Thank you.

Mr Borick, I will come back at quarter past 12.

MR BORICK: Thank you.

ADJOURNED 11.53 A.M.

RESUMING 12.16 P.M.

HIS HONOUR: Ms McDonald, Monday the 12th.

MS MCDONALD: Thank you.

HIS HONOUR: I take it you will inform the defence, because I gather Ms Chapman, who is for the accused, is not available at the moment.

MS MCDONALD: No, but we have a mobile number.

HIS HONOUR: Will you inform them? There is no need to go before Duggan J. So unless either of you need to go before him, you need not.

MR BORICK: The position with regard to Dr Turner, it has got some problems which I have got to deal with and they are not going to be dealt with within the next half an hour or so. They are personal problems particularly with regard to Dr Turner. However, what I propose, and I just mentioned this very briefly to Ms McDonald, is that she and I will get together early in the New Year and by then I will be able to tell her how long I will be with witnesses. I am certain I am going to be a lot shorter than what she has had to be. There are obvious reasons for that. The best I can say at the moment is that we adjourn now. I will confer with Ms McDonald as to the way we organise the next sitting time, how we do it, and let you know as soon as we get back from leave.

HIS HONOUR: I understand all of that but as I understood it, is there going to be any difficulty in resuming on the resume date, which I think is the 30th, and with witnesses being here?

MR BORICK: That will be the resuming date whatever happens but I foreshadow that you may have a very serious request from Dr Turner to be permitted to give the best of his evidence from Perth.

HIS HONOUR: I see Dr Turner is in court now. I don't want to delve into his personal affairs in open court obviously but I would indicate that I would much prefer if Dr Turner were here.

MR BORICK: Dr Turner has heard that and Dr Turner has a very strong preference not to be here. That preference is dictated by personal matters.

HIS HONOUR: Yes, I understand that, and I don't want to delve into that in open court but I think if there is going to be an application for Dr Turner to give his evidence other than in court I ought to deal with that, and I am quite happy to deal with it in private if there is any embarrassment about it, but I would need to deal with it and I would need to be satisfied that there are compelling reasons why he can't be here.

MR BORICK: I would like to spend some time with

Ms McDonald so that we can sort through some of the difficulties and I would really like to take up that offer to meet you in private about that - in chambers I mean.

HIS HONOUR: Yes, but Ms McDonald or someone from the Crown would have to be here, or in chambers but in open court but I would close the court because it is a chamber hearing.

MR BORICK: I will explain to the witness what you meant by 'privately'. When will you be back?

HIS HONOUR: I will certainly be back on 22 January but I will be available from about 3 January onwards. I anticipate for some of that time I will be coming in and out of chambers anyway. You can contact my associate. She will be back on 2 January, so you can contact her and she can make arrangements with me.

MR BORICK: Thank you.

HIS HONOUR: Ms McDonald, is that a satisfactory process?

MS MCDONALD: Yes.

HIS HONOUR: Ms Papadopulos-Eleopulos will be back on the 30th to continue her evidence and we will continue with Dr Turner's cross-examination after she is completed and then any Crown witnesses, and any additional material, Ms McDonald, I would appreciate it if I can be provided with that earlier rather than

later. When I say earlier, I don't mean that I want you to necessarily work over the Christmas break but to give me some time to absorb it.

MS MCDONALD: Yes, I appreciate that.

HIS HONOUR: And perhaps you could speak to my associate or send a fax through just setting out the reports that you want me to rely upon so that I might try and get some time to read them before we resume.

MS MCDONALD: Yes.

MR BORICK: Thank you very much.

ADJOURNED 12.24 P.M. TO TUESDAY, 30 JANUARY 2006 AT 10 A.M.